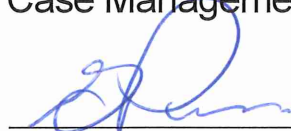


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## Administrative Policy 5

### Case Management for Certificate-Based Matters

Approved By:



G. John Panusa, President & CEO

Approved:

April 30, 2021

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**Purpose:**

This document sets out Legal Aid Alberta's policies and expectations surrounding case management and how lawyers represent clients on legal aid certificates, and how lawyers may invoice LAA for that work. This policy includes (a) general provisions about how certificate matters are managed, (b) guidance about how LAA decides which lawyer will receive a certificate, (c) principles about how lawyers request discretionary funding from LAA, (d) provisions about billing in certificate matters, (e) an explanation about how lawyers invoice LAA and how LAA reviews invoices, and (f) guidelines about how LAA reviews decisions in a certificate matter.

**Related Rules:**

Part I, Rules 1.9 to 1.11  
Part VII, Rules 7.1 to 7.7  
Schedule 2, Tariff for Roster Lawyers

## Policy

<b>Part 1 – General Principles that Apply to Certificates .....</b>	<b>4</b>
Scope of this Policy .....	4
Legal Aid Certificates.....	4
Who Makes Decisions .....	5
Policy Provides Guidance, but LAA Has Discretion .....	5
Residual Discretion in Exceptional Circumstances.....	5
Lawyer Named on Certificate is Counsel for the Client .....	5
Certificate Lawyers Cannot Delegate Work Unless an Exception Applies .....	6
Delegated Trials Do Not Fall Within These Exceptions and Require Special Permission.....	6
Exception: Delegating Minor or Peripheral Work.....	6
Exception: Delegating Certain Work when a Lawyer is Temporarily Unavailable .....	6
Exception: Delegating with the Consent of the Client and LAA.....	6
Requirements when Delegating Work to a Second Lawyer.....	7
Confidentiality of Case Management Information .....	7
Lawyer's Duty to Advise LAA About Ineligible Clients.....	8
Conditions Attached to Certificates.....	8
Lawyers Must Explain Nature of Coverage to Client.....	9

Coverage Begins when Certificate Issued .....	9
High-Cost Cases Subject to Additional or Different Rules.....	9
Staff Lawyers.....	9
<b>Part 2 – Selecting Lawyers for Cases &amp; Changing Lawyers .....</b>	<b>10</b>
Selecting Lawyers for Certificates.....	10
Offers .....	10
Offers Sent in Error .....	10
Certificates May be Issued by Geographic Service Locations .....	10
Lawyers are Responsible for Conflict Screening .....	11
Rationale for Change of Counsel Rules .....	11
How LAA Decides Whether to Grant Requests for Changes of Counsel .....	11
Administrative Transfer of Certificates to Other Lawyers .....	12
Representing More than One Party to the Same Matter .....	12
Court-Ordered Counsel, <i>Rowbotham</i> Orders, and <i>Amicus Curiae</i> .....	13
<b>Part 3 – Discretionary Authorizations .....</b>	<b>15</b>
Why LAA Uses a Discretionary Authorization Process.....	15
Roster Lawyers’ Duty of Good Faith .....	15
Authorization Requests.....	15
LAA May Request Information to Support Authorization Request.....	16
Extra Hours.....	17
Authorization Requests Must be Submitted in Advance of Performing Work for Clients.....	17
Exceptions – Retroactive Authorization Requests.....	17
Discretionary Case Collapse Fees.....	18
Maximum Hourly Rates for Expert and Professional Disbursements.....	18
Disbursements Must Not Exceed the Authorized Amount.....	19
Discretionary Authorizations May Be Subject to Conditions .....	19
Second Counsel Only Authorized in Exceptional Circumstances .....	20
<b>Part 4 – Rules Surrounding Billing and Invoicing .....</b>	<b>21</b>
Lawyer May Not Accept Additional Payments for Certificate Services .....	21
Retainer Agreements .....	21
No Referral or Transfer Fees .....	21
Old Lawyer Cannot Claim Lien or Withhold Client’s File.....	21
Lawyer Must File Bail Assignment in Favour of LAA .....	22
Rationale for Requiring Clients to Pay Money to Lawyer for LAA’s Benefit .....	22
Use of Costs, Settlements, etc. to Cover Client Accounts (and Exceptions) .....	22
Transferring Funds to LAA to Cover Client Fees & Remitting the Balance to the Client.....	23
LAA Does Not Accept Trust Funds.....	23
Lawyer Must Help Implement Security Agreement.....	23
Lawyers Must Seek Guidance when they Cannot Comply with these Rules .....	23
Internal LAA Guidelines for Specific Tariff Issues.....	24
<b>Part 5 – Specific Rules for Certain Types of Certificates .....</b>	<b>25</b>
Court-Ordered Children’s Counsel Certificates (Reimbursement Requirements).....	25

Merit Opinion Certificates .....	25
Bail Only Certificates .....	25
Appeal Certificates .....	25
Drug Treatment Court .....	26
Complainant’s Counsel Certificates (Duty Counsel for Complainants on 276 Applications, etc.) .....	26
<b>Part 6 – Lawyers’ Accounts and Review of Accounts .....</b>	<b>27</b>
Rationale for Billing and Compliance Review Rules .....	27
Lawyers Must Keep Time Records, Appearance Records, and Disbursement Records .....	27
Lawyers Issued Certificates are Responsible for Other Lawyers’ Records .....	27
Lawyers Must Keep Records for Four Years from Final Invoice .....	28
Accounts Submitted via Lawyer Portal Only .....	28
Interim Accounts .....	28
Final Accounts and Deadline for Submitting Final Accounts .....	28
Lawyers Have a Limited Period in which to Correct Errors in Accounts .....	29
Shorter Deadlines for Duty Counsel Certificates .....	29
Statistical Information Submitted with Lawyer’s Account .....	29
Initial Review of a Lawyer’s Account When Account is Submitted (Certificate & Tariff Officers) .....	29
Subsequent Compliance Review of a Lawyer’s Account Within Three Years (Internal Audit) .....	29
LAA May Request Supporting Information, and Lawyers Must Provide Information .....	30
Client Complaints About Lawyers’ Accounts .....	31
Client Complaints – Step 1: Informal Review of a Client’s Complaint .....	31
Client Complaints – Step 2: Compliance Reviews Resulting from Client Complaints .....	31
New Information Can Lead to Subsequent Compliance Reviews .....	32
Factors Considered on Review of an Account .....	32
Remedies After Compliance Review .....	33
Client Reimbursement for Overpayment .....	33
Additional Remedies .....	33
<b>Part 7 – Administrative Review of Decisions .....</b>	<b>34</b>
Review of Discretionary Authorization Decisions .....	34
No Appeal of Administrative Review Decision .....	34
Deadline for Initiating Review .....	34
Who Performs a Review .....	34
Review is a Document-Based Process .....	34
Administrative Review is Not the Only Way to Revisit Authorization Request .....	35
<b>Table 1: Case Management Decisions .....</b>	<b>36</b>

## Part 1 – General Principles that Apply to Certificates

### Scope of this Policy

- 1.1 In this policy, “lawyer” means any roster lawyer or staff lawyer and includes a student-at-law.
- 1.2 This policy defines how LAA will manage certificates, how LAA will make discretionary case management decisions, how lawyers may submit accounts, and how LAA will review accounts.

### Legal Aid Certificates

- 1.3 LAA appoints lawyers, authorizes services for clients, and keeps track of billing and payments using *certificates*. There are several different kinds of certificates, including:
  - (a) ***duty counsel certificates***, where LAA appoints a lawyer to provide summary or short-term legal assistance, generally without regard for the client’s financial circumstances, which can be further subdivided into:
    - (i) ***schedule-based duty counsel certificates***, where a lawyer provides summary or short-term assistance for more than one person in a specific place, on a specific day, or with a common legal issue (for example, acting as duty counsel in a criminal docket courtroom on a given day); and
    - (ii) ***client-based duty counsel certificates***, where a lawyer provides summary or short-term legal assistance to a specific individual with respect to a narrowly defined legal issue that usually concludes in one or two appearances (for example, assisting a specific person at an emergency protection order review hearing);
  - (b) ***client-based certificates***, which generally require the client to be financially eligible for LAA’s services, and which can be further subdivided into:
    - (i) ***client-based representation certificates***, where a lawyer acts for the client with respect to a defined legal issue or issues (for example, defending the accused on an ongoing basis with respect to a specific criminal charge);
    - (ii) ***opinion certificates***, where a lawyer is retained to provide LAA with a written opinion about the merits or details of a client’s legal issue or issues (for example, preparing an opinion about whether there is arguable merit to a client’s appeal); and
    - (iii) ***limited-hours and appropriate-hours certificates***, where a lawyer acts for a client with respect to a defined legal issue or issues, but where the lawyer may only provide a specified number of hours of assistance for the client until LAA specifically approves additional coverage or hours (for example, a certificate for helping a client before an immigration tribunal).

### **Who Makes Decisions**

- 1.4 If this policy requires or empowers LAA to make a decision, the person identified in Table 1 will make the decision on behalf of LAA unless a specific decision-maker is identified in this policy.

### **Policy Provides Guidance, but LAA Has Discretion**

- 1.5 When this policy empowers LAA to make a decision or take an action, LAA may make that decision or take that action at its sole discretion. LAA is not required to consult with anyone before making the decision or before acting.
- 1.6 If this policy suggests that LAA may consider or may apply certain criteria when making a decision or when considering whether to grant an authorization or take an action, LAA is not required to consider or apply any or all of those criteria in any specific case. LAA may exercise its discretion as it sees fit, regardless of whether all, none, or some of those criteria are satisfied.

### **Residual Discretion in Exceptional Circumstances**

- 1.7 Although LAA will ordinarily make certificate management decisions in accordance with this policy, nothing in this policy limits LAA's residual discretion to select lawyers for matters or to manage the certificates it issues. Notwithstanding anything in this policy – and except as may be limited by the Rules – the CEO may make a case management, appointing, discretionary authorization, or account review decision, or any other decision provided for under this policy, at any time, without advance notice, and without any right of appeal.

### **Lawyer Named on Certificate is Counsel for the Client**

- 1.8 If LAA issues a client-based certificate to a lawyer, that lawyer (the “certificate lawyer”) must act for the client with respect to any matters that fall within the scope of the certificate.
- 1.9 A certificate lawyer must appear as counsel of record before a court or tribunal that hears the client's matter unless the certificate:
- (a) is for a duty counsel service;
  - (b) is an opinion certificate; or
  - (c) has a condition qualifying the scope of the lawyer's retainer that makes it inappropriate for the lawyer to appear as counsel of record.
- 1.10 A lawyer who accepts a certificate with a less-than-full-scope retainer must disclose the scope of that retainer as required by any rules of the court or tribunal.

### **Certificate Lawyers Cannot Delegate Work Unless an Exception Applies**

- 1.11 A certificate lawyer must not delegate work under a certificate to a lawyer who is not named on the certificate (a “second lawyer”) unless one of the exceptions in this Part allows the certificate lawyer to delegate such work.

### **Delegated Trials Do Not Fall Within These Exceptions and Require Special Permission**

- 1.12 Notwithstanding any of the exceptions in this Part, a certificate lawyer must not delegate the conduct of a trial to a second lawyer without the consent of both LAA and the client. LAA will only consent in exceptional circumstances. If a certificate lawyer cannot conduct a trial, in most cases, the lawyer should request a change of counsel or ask for the certificate to be transferred to another lawyer.

### **Exception: Delegating Minor or Peripheral Work**

- 1.13 A certificate lawyer may allow a second lawyer to provide minor or peripheral assistance in a client’s matter if the certificate lawyer has express or implied authority to delegate such work to another lawyer. For example, in most circumstances, a certificate lawyer may delegate a straightforward scheduling appearance or docket court appearance to a second lawyer.

### **Exception: Delegating Certain Work when a Lawyer is Temporarily Unavailable**

- 1.14 A certificate lawyer may delegate work to a second lawyer if:
- (a) the certificate lawyer is temporarily unavailable to assist the client;
  - (b) because of the urgency of the matter or possible prejudice to the client, a reasonable lawyer would not wait until the certificate lawyer was available; and
  - (c) the client consents to the second lawyer’s involvement in the matter.
- 1.15 For example, in most cases, this exception will allow a second lawyer to:
- (a) assist a client with a straightforward bail hearing or a straightforward guilty plea for “time served” when the certificate lawyer is occupied in the trial of another matter; and
  - (b) assist a client with an urgent family law application when the certificate lawyer is away on vacation.

### **Exception: Delegating with the Consent of the Client and LAA**

- 1.16 A certificate lawyer may delegate work to a second lawyer if:
- (a) the client consents to the second lawyer’s involvement in the matter; and

- (b) the certificate lawyer only delegates work as approved by LAA in response to the certificate lawyer's Authorization Request.

### **Requirements when Delegating Work to a Second Lawyer**

- 1.17 When a certificate lawyer delegates work to a second lawyer:
- (a) the certificate lawyer remains the sole point of contact with LAA on the certificate;
  - (b) the certificate lawyer remains personally responsible to LAA for:
    - (i) the conduct of the second lawyer in relation to the client's matter;
    - (ii) ensuring the second lawyer provides competent service to the client;
    - (iii) avoiding any potential conflicts because of the second lawyer's involvement; and
    - (iv) ensuring the accuracy of all accounts submitted on the certificate;
  - (c) the certificate lawyer must keep records of the specific work the second lawyer performed, and when that work was performed, and must provide these records to LAA upon request;
  - (d) LAA has no financial obligations to the second lawyer with respect to their involvement in the matter, and the certificate lawyer and second lawyer must make their own arrangements regarding remuneration of the second lawyer for their involvement in the file;
  - (e) the certificate lawyer will submit all accounts on the certificate, and payments will be made to the certificate lawyer; and
  - (f) the certificate lawyer may invoice LAA for a second lawyer's work only at the rates or block fees authorized under the Tariff.

### **Confidentiality of Case Management Information**

- 1.18 When a lawyer or client provides LAA with information in support of a review of a lawyer's account, or in support of an Authorization Request or another discretionary case management decision, this information might reveal aspects of the client's litigation strategy and will often include privileged information that a lawyer has received from the client or others.
- 1.19 LAA collects this information to make decisions about the lawyer's account or an Authorization Request or to make other case management decisions. LAA will use this information to make coverage and funding decisions about the client's matters, to pay the lawyer, to review the lawyer's account, for billing and collection purposes, for statistical purposes in a manner that does not identify the client, and in the course of a Law Society complaint or investigation.
- 1.20 LAA takes the position that, in general, a client's case management information is subject to solicitor-client privilege. As such, LAA will keep such information confidential except as between LAA, the lawyer, and the client, unless:

- (a) the client waives privilege;
- (b) an exception to privilege applies; or
- (c) disclosure is otherwise authorized by law or under the terms of a client agreement.

### **Lawyer's Duty to Advise LAA About Ineligible Clients**

- 1.21 A lawyer acting for a client on a certificate must promptly notify LAA if they believe:
- (a) the client's matter is ineligible for coverage because the client's claim, application, or appeal does not have any reasonable prospect of success;
  - (b) the client is financially ineligible for any coverage or services being provided; or
  - (c) the client is committing a fraud against LAA by knowingly providing false or misleading information about the client's financial or personal circumstances,
- unless the lawyer is prohibited from disclosing this information because of legal or professional obligations owed to the client. If a lawyer is uncertain about their duties under this section, LAA encourages the lawyer to consult with a Practice Advisor at the Law Society of Alberta.

### **Conditions Attached to Certificates**

- 1.22 LAA may offer a certificate to a lawyer subject to conditions, which may include conditions:
- (a) narrowing or qualifying the scope of assistance that a lawyer may provide to a client or the matters covered by the certificate;
  - (b) making the client's ongoing coverage contingent on LAA reassessing the merit of the matter at a later stage of the proceedings;
  - (c) authorizing coverage only up to a certain stage of proceedings, with or without the option to extend coverage; or
  - (d) responding to the specific circumstances of a client or a client's matter, if LAA deems those conditions reasonable in the circumstances.
- 1.23 If a lawyer fails to comply with a condition attached to a certificate, LAA may cancel the certificate and may offer a certificate for this matter to another lawyer, and LAA may refuse to compensate the lawyer for any services performed (or disbursements incurred) in contravention of the condition.
- 1.24 If a client fails to comply with a condition attached to a certificate, LAA may cancel the certificate and withdraw the client's coverage for that matter.



### **Lawyers Must Explain Nature of Coverage to Client**

- 1.25 A lawyer who represents a client on a certificate must make reasonable efforts to inform the client about:
- (a) the scope of the certificate, the breadth of the lawyer's retainer, and any limits on the representation the lawyer is authorized to provide under by the certificate;
  - (b) any certificate conditions that LAA has imposed on the lawyer or the client; and
  - (c) the financial consequences of any discretionary funding authorizations.

### **Coverage Begins when Certificate Issued**

- 1.26 Coverage begins on the day LAA issues a certificate. Lawyers cannot submit an account for services they performed (or disbursements they incurred) before LAA issued the certificate.
- 1.27 LAA may agree to cover services performed (or disbursements incurred) before a certificate was issued, but only in exceptional circumstances.

### **High-Cost Cases Subject to Additional or Different Rules**

- 1.28 This policy also applies to High-Cost Case matters that are dealt with under Administrative Policy 7, but where this policy is inconsistent with Administrative Policy 7 or that policy contains a more specific rule for High-Cost Cases, Administrative Policy 7 takes precedence to the extent of any inconsistency.

### **Staff Lawyers**

- 1.29 LAA may, by internal policy, exempt some or all staff lawyers or staff offices from the billing or discretionary coverage rules found in this policy and may create alternative processes for managing staff lawyers' accounts or discretionary funding requests.

## **Part 2 – Selecting Lawyers for Cases & Changing Lawyers**

### **Selecting Lawyers for Certificates**

- 2.1 If LAA concludes that a client is eligible for certificate-based representation, LAA may take the following factors into consideration when deciding which lawyer should be offered a certificate:
- (a) for those matters where LAA typically offers certificates to a client's preferred lawyer, the client's choice of counsel, subject to any rules surrounding choice of counsel set out in the Governance Agreement, the Rules, or internal LAA policy;
  - (b) whether there are specialized panels or lawyer qualifications that apply to a practice area or a type of certificate;
  - (c) whether a lawyer practices within a geographic service area, and any internal policies about whether LAA will reimburse a lawyer from outside that geographic service area for the lawyer's travel time or travel expenses;
  - (d) the operational capacity, specialization, geographic service locations, and file selection criteria for any group of LAA staff lawyers;
  - (e) any criteria or offer processes set out in LAA's internal appointing rules.

### **Offers**

- 2.2 LAA will offer certificates to lawyers using the Lawyer Portal, and lawyers may only accept certificates using the Lawyer Portal.

### **Offers Sent in Error**

- 2.3 An offer expires on the date and time specified in the offer, and LAA may rescind an offer at any time before a lawyer accepts the offer. If LAA issues a certificate to a lawyer in error, LAA may:
- (a) revoke and cancel that certificate within five business days of when the certificate was issued without engaging the usual change-of-counsel process; and
  - (b) reimburse the lawyer, at the normal Tariff rate, for any time a lawyer has spent working on that certificate and for any reasonable disbursements.

### **Certificates May be Issued by Geographic Service Locations**

- 2.4 LAA may allow lawyers to select one or more geographic service areas that represent the lawyers' primary place (or places) of practice. LAA will typically offer certificates within a geographic service area only to lawyers who have selected that geographic service area.

### **Lawyers are Responsible for Conflict Screening**

- 2.5 LAA does not screen matters for conflicts of interest before offering certificates to lawyers, and lawyers are responsible for implementing their own conflict screening processes.
- 2.6 If a lawyer accepts a certificate but then identifies a disqualifying conflict of interest, the lawyer must promptly advise LAA and ask for the matter to be reassigned.

### **Rationale for Change of Counsel Rules**

- 2.7 LAA recognizes that there are sometimes unforeseen developments or breakdowns in a lawyer-client relationship that justify ending a lawyer's involvement in a matter and issuing a new certificate to a different lawyer. LAA also recognizes the importance of clients having confidence in the lawyers who have been appointed to represent them. At the same time, clients must make reasonable, good-faith efforts to work with their lawyers and clients do not have an unqualified right to change their lawyers upon request. When responding to a change of counsel request, LAA seeks to strike a balance between these competing interests.

### **How LAA Decides Whether to Grant Requests for Changes of Counsel**

- 2.8 A lawyer or a client may request a change of counsel. LAA will consider these requests on a case-by-case basis, and in accordance with any internal LAA policies. Without limiting LAA's discretion, LAA will generally apply the following guidelines when evaluating these requests:
  - (a) LAA will not approve more than two changes of counsel caused by a breakdown in the lawyer-client relationship – for example, where a lawyer has withdrawn for ethical reasons because of a client's conduct, or where a client has lost confidence in his or her lawyer – unless there are exceptional circumstances justifying the request; and
  - (b) LAA will approve a request for a change of counsel if a lawyer makes the request for reasons that were entirely outside a client's control, such as when:
    - (i) a lawyer believes they cannot competently represent the client;
    - (ii) a lawyer discovers a disqualifying conflict of interest; or
    - (iii) a lawyer is leaving the practice of law or taking a sabbatical.
- 2.9 When considering a request for a change of counsel, LAA may consider:
  - (a) how many other changes of counsel LAA has authorized for the client;
  - (b) the seriousness of the matter and the importance of the legal issues to the client;
  - (c) the client's concerns about the lawyer's representation;
  - (d) whether the client behaved reasonably during the lawyer-client relationship and whether the client has made unreasonable requests of prior counsel;

- (e) the status of the client's matter before a court or tribunal, including:
    - (i) whether the matter has been set down for a trial or hearing,
    - (ii) whether counsel has sought or been granted permission to withdraw, and
    - (iii) whether the court or tribunal has appointed *amicus curiae* or counsel to assist the client;
  - (f) whether the client remains eligible for LAA services; and
  - (g) any internal policies LAA has established regarding changes of counsel.
- 2.10 A lawyer or client who requests a change of counsel must tell LAA why they are making the request. If LAA needs more information to assess the criteria mentioned in the preceding section, the lawyer and client must respond to LAA's requests for information. LAA may share the information it receives with both the lawyer and client.
- 2.11 LAA may ask a lawyer to attempt to address a client's concerns before LAA processes the client's request for a change of counsel.
- 2.12 LAA may re-assess a client's service eligibility or financial eligibility (under the relevant LAA policies) whenever LAA considers a request for a change of counsel. LAA may limit or cancel coverage if LAA determines the client is no longer eligible for services.

### **Administrative Transfer of Certificates to Other Lawyers**

- 2.13 In circumstances and for certificates defined in internal LAA policy, and with the client's consent, LAA may allow a lawyer to transfer a certificate to another lawyer without submitting a request for a change of counsel. If a certificate is transferred using such a process, the original lawyer cannot submit an invoice for that certificate.

### **Representing More than One Party to the Same Matter**

- 2.14 If a lawyer represents a client on a certificate, the lawyer must not act for:
- (a) another party to the same proceeding, or
  - (b) another accused person with charges that arise out of the same circumstances,
- without the express, written permission of LAA.
- 2.15 In general, LAA does not appoint a single lawyer to represent more than one party to the same proceeding. There are circumstances, however – such as court-ordered representation of more than one child in a family law matter – where multiple representation may be practical and cost-effective without raising substantial concerns about conflicts of interest.

- 2.16 If LAA issues a certificate authorizing a lawyer to act for more than party to the same proceeding or more than one accused person with charges that arise out of the same circumstances, a lawyer must submit either a combined invoice or separate invoices, as directed by LAA, and:
- (a) the lawyer may only charge a single block Tariff fee for each combined appearance or step that involved more than one client;
  - (b) if representing multiple clients causes additional work not fully compensated by the Tariff, the lawyer may submit an Authorization Request seeking extra hours; and
  - (c) the lawyer remains responsible for identifying and managing any conflicts of interest.

**Court-Ordered Counsel, *Rowbotham* Orders, and *Amicus Curiae***

- 2.17 A court or tribunal, Alberta Justice & Solicitor General, or another government agency may ask LAA to facilitate the appointment of a lawyer:
- (a) to act for or assist an individual pursuant to a statutory provision that permits a court or tribunal to appoint counsel (for example, under section 486.3 of the *Criminal Code*);
  - (b) to represent a child in a family law matter, the lawyer being appointed under a superior court's *parens patriae* jurisdiction;
  - (c) to act as *amicus curiae* in a matter; or
  - (d) in response to a *Rowbotham* application, a *Rowbotham* order, or a similar order directing state-funded counsel for someone whose section 7 *Charter* rights are jeopardized by the proceedings,
- and LAA may be required to provide coverage or facilitate the appointment of counsel in such circumstances (*see Governance Agreement, ss. 1(f), 1(m), 1(p)*).
- 2.18 If LAA facilitates the appointment of a lawyer in such circumstances:
- (a) LAA may offer the appointment to any lawyer it chooses;
  - (b) LAA will manage the appointment by way of a certificate, and if a lawyer accepts such a certificate, LAA will – to the extent possible and subject to the terms of a court order – manage the certificate like an ordinary matter where LAA has granted a client coverage;
  - (c) LAA may attach conditions to the certificate to address any unique circumstances arising from the appointment;
  - (d) LAA will, to the extent possible and subject to the terms of a court order:
    - (i) reimburse the lawyer in accordance with the Tariff provisions that apply to the legal issue or the most analogous legal issue, and,
    - (ii) manage discretionary coverage requests, lawyer billing, and the review of the lawyer's accounts in accordance with ordinary LAA policy; and

- (e) LAA may, as a condition for granting or continuing coverage under such a certificate, require a person who is represented by such a lawyer to agree to the same terms and conditions as an ordinary LAA client, including agreeing to repay LAA for legal services or disbursements in accordance with LAA policies.

## **Part 3 – Discretionary Authorizations**

### **Why LAA Uses a Discretionary Authorization Process**

- 3.1 While LAA sometimes makes certificate management decisions, LAA does not oversee lawyers' conduct of files or provide lawyers with instructions about how they must represent clients. A lawyer forms a lawyer-client relationship with the client, not with LAA.
- 3.2 Some clients will require legal services or disbursements that are not specifically authorized under the Tariff. Lawyers may request funding for these services or disbursements on behalf of their clients. In these cases, LAA will make a discretionary decision about whether to fund a legal issue, an application, additional lawyer preparation time, an expert, or some other step on the certificate matter.
- 3.3 When LAA decides whether to grant a discretionary funding request, LAA's goal is to use the legal aid plan's resources responsibly – allowing LAA to assist the most Albertans possible – while also ensuring that LAA's clients receive competent and effective legal assistance that is proportionate to the seriousness and complexity of the legal problems the client faces.

### **Roster Lawyers' Duty of Good Faith**

- 3.4 LAA relies on roster lawyers' representations when it makes discretionary funding decisions. Although LAA will review a lawyer's request, in most cases, LAA cannot independently confirm information about a client's circumstances. Accordingly, when roster lawyers make discretionary funding requests, they must act in good faith and must:
  - (a) provide candid and reasonably complete information about the relevant circumstances that pertain to Authorization Requests; and
  - (b) provide their reasonable professional opinion about clients' circumstances and legal needs.

### **Authorization Requests**

- 3.5 If a lawyer believes that it is necessary to perform services (or incur a disbursement) in order to properly represent a client in relation to a certificate matter, but:
  - (a) the Tariff does not specifically authorize the services (or the disbursement);
  - (b) the Tariff allows a lawyer to bill a certain number of hours in relation to a specific Tariff item, but the lawyer believes they require additional time beyond the default number of hours permitted by that Tariff item;
  - (c) coverage for the service (or the disbursement) is discretionary under the Tariff, under LAA policy, or under a condition attached to a certificate; or
  - (d) the certificate is less-than-full scope and does not cover those services (or disbursements),

the lawyer may submit an Authorization Request through the Lawyer Portal seeking LAA's approval for the services (or the disbursement).

- 3.6 LAA may authorize some, all, or none of the coverage a lawyer seeks through an Authorization Request. When deciding whether to grant an Authorization Request, LAA will consider whether a reasonable person of modest means, who was funding the matter using the client's own resources, would have the lawyer perform those services (or would incur the disbursement). LAA may also consider:
- (a) the potential benefit or advantage the client stands to gain from the legal services (or disbursement) being requested;
  - (b) if the services (or disbursement) relate to a specific legal issue or legal argument, the importance that issue or argument would have to a reasonable person of modest means who was in a similar position as the client;
  - (c) the likelihood of success of any legal argument or application that relates to the additional services (or disbursement);
  - (d) how the lawyer has used any time that is permitted by the Tariff or that was granted in response to earlier Authorization Requests;
  - (e) whether the services (or disbursement) the lawyer is requesting appear to reflect a reasonable estimate of the time (or expense) associated with the services (or disbursement);
  - (f) whether there are any reasonable alternatives to the services (or disbursement) being requested, and whether the lawyer has adequately investigated those alternatives;
  - (g) whether a block Tariff item already compensates the lawyer for any related services;
  - (h) the type of certificate under which the lawyer is representing the client and the usual expectations regarding the nature or scope of the lawyer's representation under that kind of certificate;
  - (i) whether a legal issue that arises in the client's case is important to LAA's clientele, and if so, whether approving the Authorization Request could benefit other LAA clients; and
  - (j) any other criteria set out in an internal policy or guideline that LAA establishes for a specific legal issue, service area, or category of disbursement.

### **LAA May Request Information to Support Authorization Request**

- 3.7 When considering an Authorization Request, LAA may require the lawyer or the client to provide additional information to assess the lawyer's request. This includes, for example:
- (a) details about any legal or factual issue relevant to the Authorization Request;
  - (b) timekeeping records documenting the lawyer's work on the file;
  - (c) a plan detailing how the lawyer intends to use any additional preparation time; or



- (d) quotes or estimates from experts or anyone else the lawyer hopes to retain.

### **Extra Hours**

- 3.8 If LAA grants an authorization request allowing for additional preparation time on a certificate matter beyond what is already authorized by the Tariff (“extra hours”):
  - (a) the extra hours are paid at the standard hourly rate set out in the Tariff;
  - (b) the lawyer must maintain timekeeping records to document the time spent working on the client’s matter and how that time was used, and the lawyer must provide these records to LAA, upon request;
  - (c) the extra hours authorization is not a block fee or flat rate that the lawyer may charge in the matter, and the lawyer may only submit an account for the actual time the lawyer has worked on the matter.

### **Authorization Requests Must be Submitted in Advance of Performing Work for Clients**

- 3.9 In general, LAA will not reimburse lawyers for any legal services that were performed (or disbursements that were expended) on behalf of a client if the services (or disbursements) were not specifically authorized by the Tariff, or if the services (or disbursements) were not requested and approved in advance, by way of an Authorization Request.
- 3.10 LAA may approve a retroactive Authorization Request for legal services (or a disbursement) and reimburse a lawyer for some or all the retroactive services (or disbursement), but only if:
  - (a) one of the exceptions set out in this Part applies; or
  - (b) an exception does not apply, but there are other exceptional circumstances where the lawyer made reasonable and good-faith efforts to adhere to the discretionary authorization process and failing to reimburse the lawyer would cause substantial unfairness to the lawyer.

### **Exceptions – Retroactive Authorization Requests**

- 3.11 LAA may approve a retroactive Authorization Request if:
  - (a) it was reasonably necessary to perform the services (or expend the disbursement) to protect the client’s position or the client’s interests;
  - (b) the lawyer could not have reasonably anticipated the need to submit an Authorization Request at an earlier stage of proceedings; and
  - (c) the lawyer promptly submitted a retroactive Authorization Request after they performed the services (or expended the disbursement).

- 3.12 LAA may approve a retroactive Authorization Request if:
- (a) the lawyer submitted an Authorization Request before performing those services (or expending the disbursement);
  - (b) the services (or disbursement) were reasonably necessary the circumstances; and
  - (c) LAA had not yet responded to the lawyer's Authorization Request when the lawyer performed the services (or expended the disbursement).

### **Discretionary Case Collapse Fees**

- 3.13 LAA does not ordinarily pay for lost trial or hearing time that a lawyer expected to be able to bill under the Tariff. LAA may compensate a lawyer if a matter unexpectedly fails to proceed and if the case was subsequently concluded without a trial or hearing (that is, the matter was not merely adjourned). When deciding whether to grant a lawyer's Authorization Request in these circumstances, and when deciding how much to compensate the lawyer, LAA may consider:
- (a) the reason the trial or hearing did not proceed;
  - (b) how much time the anticipated trial or hearing took up in the lawyer's calendar;
  - (c) the amount of notice the lawyer received that the trial or hearing would not proceed;
  - (d) whether, with the exercise of due diligence, the lawyer might have had more notice that the trial or hearing would not proceed;
  - (e) whether the lawyer can be reasonably expected to use time that was scheduled for the trial or hearing for other matters or for other remunerative work; and
  - (f) the actual time the lawyer expended in preparation for the trial or hearing that would have been compensated by a block Tariff item if the trial or hearing had proceeded, but that the lawyer is now unable to bill under any other Tariff item.
- 3.14 Despite the preceding section, LAA will not compensate a lawyer for lost trial or hearing time:
- (a) when the trial or hearing that did not proceed was scheduled to last fewer than five business days; or
  - (b) when the lawyer had more than six months' notice that the trial or hearing would not proceed,
- except in extraordinary circumstances and with the approval of the CEO.

### **Maximum Hourly Rates for Expert and Professional Disbursements**

- 3.15 LAA will not authorize expert or professional fees that exceed the following maximum rates:

<b>Expert / Professional</b>	<b>Amount / Rate</b>
Registered Psychologists	up to \$155.00 per hour
Physicians – General Practitioners	up to \$180.00 per hour
Other Physicians, Including Psychiatrists	up to \$200.00 per hour
Other Experts, Professionals, or Investigators	up to \$115.00 per hour

- 3.16 In extraordinary circumstances and with the approval of the CEO, LAA may authorize expert or professional fees that exceed the guidelines in the preceding section, but only if:
- (a) the fees are sought in a criminal law matter or a child welfare matter;
  - (b) LAA is satisfied it is necessary to pay higher expert or professional fees to ensure the client receives a fair trial; and
  - (c) LAA is satisfied that the fees being sought are no greater than required to ensure a fair trial.

**Disbursements Must Not Exceed the Authorized Amount**

- 3.17 It is the lawyer's responsibility to ensure that an expert, or anyone else who the lawyer retains on behalf of the client, understand the terms, conditions, or limits upon which LAA has approved funding for a disbursement. This includes, for example, limits on an expert's hourly rate or the number of hours an expert has been authorized to work on the file.
- 3.18 When a client is represented by a roster lawyer, the contractual relationship with an expert – or anyone else who the lawyer retains on behalf of the client – is between that person and the roster lawyer or the client, as the case may be, and not between that person and LAA.
- 3.19 If LAA authorizes a disbursement, and if the actual disbursement exceeds the amount that LAA has authorized, LAA may decline to reimburse the roster lawyer for any excess amount.

**Discretionary Authorizations May Be Subject to Conditions**

- 3.20 LAA may grant an Authorization Request on conditions, including, for example:
- (a) a condition requiring the lawyer to submit an interim account or an interim report on the time the lawyer has spent working on the file;
  - (b) a condition requiring the lawyer to submit an opinion regarding the merit of a legal issue or application at a later point in the file, with additional coverage contingent on LAA agreeing there is merit, based on the lawyer's opinion;
  - (c) a condition defining how many hours of work are authorized for a lawyer, or the hours of work and hourly rate authorized for an expert, or anyone retained on behalf of the client; or
  - (d) the maximum amount of any disbursement.

- 3.21 If a lawyer fails to comply with any conditions attached to an Authorization Request:
- (a) LAA may cancel the authorization; and
  - (b) LAA may refuse to reimburse the lawyer for all or part of the services (or disbursements) that it had authorized.

**Second Counsel Only Authorized in Exceptional Circumstances**

- 3.22 Certificates are issued to a single lawyer, and LAA does not issue concurrent certificates so that more than one lawyer may act for a client in the same matter.
- 3.23 LAA recognizes that unusual or particularly complex files sometimes require the involvement of more than one lawyer. Accordingly, in exceptional circumstances and where there is a demonstrable need for the assistance of a second lawyer on a file, LAA may grant an Authorization Request for extra hours on a certificate on the condition that these hours be used to compensate a second lawyer for that lawyer's involvement in the matter, including involvement at trial or in a special chambers hearing. If LAA grants an Authorization Request permitting second lawyer on a matter:
- (a) the client must consent to the second lawyer's involvement in the matter;
  - (b) the second lawyer's involvement is subject to the usual requirements surrounding the involvement of a second lawyer, as set out in Part 1 of this policy;
  - (c) the additional hours are subject to the usual requirements for extra hours, as defined in this Part; and
  - (d) LAA may impose additional conditions on the involvement of the second lawyer.
- 3.24 LAA may also grant a training, mentorship, or "second chair" certificate to allow a lawyer to gain experience in a legal area, under the direct, personal supervision of another lawyer, on such terms or conditions as LAA may specify.

## **Part 4 – Rules Surrounding Billing and Invoicing**

### **Lawyer May Not Accept Additional Payments for Certificate Services**

- 4.1 When a lawyer acts on a certificate or as duty counsel, LAA must be the sole source of funding for any matters falling within the scope of that certificate or duty counsel appointment. A lawyer must not:
- (a) seek or accept any payment or reimbursement from the client or from any source other than LAA for any services provided (or disbursements incurred) when acting on that certificate or as duty counsel, or,
  - (b) accept any gift or gratuity of more than a nominal value,
- unless LAA specifically approves that payment, reimbursement, gift, or gratuity in writing.

### **Retainer Agreements**

- 4.2 A lawyer may send an LAA client a retainer letter or require the client to enter into a retainer agreement that defines reasonable terms of the lawyer-client relationship, but:
- (a) the terms must be consistent with the LAA Rules, the Tariff, and any LAA policies or client agreement; and
  - (b) the lawyer must provide LAA with a copy of any such letter or agreement upon request.

### **No Referral or Transfer Fees**

- 4.3 A lawyer must not pay or accept a referral fee, or give or accept any gift of more than nominal value, for:
- (a) recommending a lawyer to an LAA client for a certificate matter; or
  - (b) transferring a certificate to another lawyer or recommending the transfer of the certificate to another lawyer.

### **Old Lawyer Cannot Claim Lien or Withhold Client's File**

- 4.4 A lawyer who has previously acted for a client on a certificate:
- (a) must promptly produce the client's file to the client's new lawyer when the client directs the lawyer to do so; and
  - (b) must not claim a lien for fees, disbursements, or expenses on the client's file or any of the client's property or records in the lawyer's possession.

### **Lawyer Must File Bail Assignment in Favour of LAA**

- 4.5 If an LAA client has been released on a recognizance with a cash deposit, and if those bail monies have not already been assigned to a third party, the lawyer who represents the client on that matter must – as a condition of the lawyer continuing to represent the client – require the client to assign the bail monies to LAA and must file a bail assignment with the court.

### **Rationale for Requiring Clients to Pay Money to Lawyer for LAA's Benefit**

- 4.6 LAA clients are sometimes entitled to receive money from third parties. Because LAA recovers the costs of legal services from its clients, LAA requires lawyers who represent clients on certificates to take steps to protect LAA's financial interests when those clients become entitled to receive money during a proceeding covered by a certificate.

### **Use of Costs, Settlements, etc. to Cover Client Accounts (and Exceptions)**

- 4.7 A lawyer who represents a client on a certificate must seek the client's instructions to have certain money paid or transferred from third parties to the lawyer. This money is applied first against what the client owes – or will owe – LAA for legal fees, with any remaining balance returned to the client.
- 4.8 A lawyer who represents a client on a certificate must, in proceedings related to that certificate, seek the client's instructions to transfer money to the lawyer in the following circumstances:
- (a) if a court or tribunal orders costs in favour of the client, or orders a judgment for a specific sum of money in favour of the client;
  - (b) if the parties reach a settlement agreement that involves someone paying a specific sum of money to the client;
  - (c) if matrimonial or common property is sold and the client and others agree to divide the proceeds of the sale; or
  - (d) if a third party has seized cash from a client and a court or tribunal orders this cash returned to the client.
- 4.9 Subject to the requirements of any security agreement between LAA and the client, a lawyer does not need to seek a client's instructions to have money paid to the lawyer under the preceding section if:
- (a) the lawyer represents the client on a duty counsel certificate;
  - (b) the payment from the third party is periodic or ongoing child or spousal support;
  - (c) the payment from the third party is a lump-sum payment of child support; or
  - (d) the payment involves the return of only a nominal amount of petty cash.

### **Transferring Funds to LAA to Cover Client Fees & Remitting the Balance to the Client**

- 4.10 When a lawyer accepts money on behalf of a client pursuant to this Part:
- (a) the lawyer must promptly prepare and submit an interim or final account to LAA that covers all legal services and disbursements that relate to that client to date;
  - (b) when the lawyer submits the account, the lawyer must advise LAA that the lawyer holds money in trust that may be applied against LAA's fees, and then await direction from LAA;
  - (c) after receiving direction from LAA, the lawyer must transfer enough money to LAA – in the manner directed by LAA – to cover the lawyer's account (or accounts) and any other amounts the client owes LAA for other certificate matters; and
  - (d) if there is client money remaining after that sum has been transferred to LAA:
    - (i) if the lawyer has submitted a final account, the lawyer must remit the balance to the client, in accordance with the Law Society rules about returning money to clients; and
    - (ii) if the lawyer has not yet submitted a final account, the lawyer must hold back any amount that LAA instructs the lawyer to withhold in the expectation of the lawyer's subsequent accounts, and then remit the balance, if any, to the client, in accordance with Law Society rules about returning money to clients.

### **LAA Does Not Accept Trust Funds**

- 4.11 LAA only accepts settlement funds or other client funds from lawyers when that money is being used to satisfy a lawyer's account. LAA will not accept client funds before a lawyer issues an account, and a lawyer is responsible for holding client funds in trust until they are transferred to LAA in accordance with this Part.

### **Lawyer Must Help Implement Security Agreement**

- 4.12 As a condition of granting a client coverage, LAA may require the client to enter into a security agreement where LAA takes an interest against real or personal property. If LAA notifies a lawyer that LAA has required the client to enter into a security agreement, the lawyer must take reasonable steps to help implement the terms of that security agreement.

### **Lawyers Must Seek Guidance when they Cannot Comply with these Rules**

- 4.13 A lawyer must promptly contact LAA and seek LAA's direction if:
- (a) the lawyer is uncertain whether they must accept client funds under this Part;
  - (b) a client refuses to instruct the lawyer to accept or transfer money as required by this Part; or
  - (c) the lawyer believes they cannot accept money or transfer money as required by this Part because of the lawyer's professional obligations or for any other reason.

#### **Internal LAA Guidelines for Specific Tariff Issues**

- 4.14 If the Rules, Tariff, or LAA's administrative policies do not address how a lawyer may bill or invoice LAA in relation to a specific issue or Tariff item, LAA may create and apply internal LAA policies or guidelines that explain how to address that issue or Tariff item.



## Part 5 – Specific Rules for Certain Types of Certificates

### Court-Ordered Children’s Counsel Certificates (Reimbursement Requirements)

- 5.1 If a judge orders counsel for a child in family law proceedings, the court order should require the parents or the other parties to reimburse LAA for the costs of children’s counsel, in accordance with the Tariff and LAA policies. A lawyer who represents a child on such a certificate must:
- (a) inform the parties of their obligation to repay LAA under the terms of the court order and take reasonable steps to assist LAA in enforcing this obligation; and
  - (b) if the court order does not address who will pay LAA for the lawyer’s services,
    - (i) obtain a second court order that defines how LAA will be reimbursed, and,
    - (ii) send LAA a copy of this order.

### Merit Opinion Certificates

- 5.2 If a certificate requires a lawyer to prepare an opinion about the merits of a client’s case, application, or appeal, the lawyer must provide both LAA and the client with a copy of the opinion. LAA may require the lawyer to provide the opinion in the form specified by LAA. The lawyer is not authorized to order transcripts to prepare the opinion unless LAA approves a transcript disbursement by way of an Authorization Request.

### Bail Only Certificates

- 5.3 If someone is financially ineligible for certificate coverage but the person is detained in custody on a criminal matter, then LAA may issue an hourly, client-based duty counsel certificate that authorizes the lawyer to assist the person with an application for judicial interim release or an application to review a decision denying judicial interim release. The lawyer is responsible for ensuring the client, court, and prosecutor understand the scope of the lawyer’s retainer. LAA will limit the amount of time the lawyer may spend assisting the client, and, in exceptional circumstances, LAA may grant an Authorization Request allowing additional time to assist the client with bail, beyond the time initially authorized under the certificate.

### Appeal Certificates

- 5.4 If LAA issues a certificate to a lawyer that authorizes representation of a client on appeal:
- (a) LAA may define the scope of the appeal coverage (for example, limiting the appeal to an appeal against conviction or sentence);
  - (b) the lawyer must promptly advise the appellate court and opposing counsel that the lawyer has been retained and must advise the court of the scope of the lawyer’s retainer; and
  - (c) if the matter will be heard in the Court of Appeal,

- (i) the lawyer must consult with Transcript Management Services to determine whether LAA may be billed directly for preparation of transcripts and appeal books, and,
- (ii) if TMS is prepared to bill LAA directly, the lawyer must arrange for TMS to do so, rather than billing the cost of transcripts and appeal books as a disbursement.

### **Drug Treatment Court**

- 5.5 If a client is accepted into a Drug Treatment Court program, a client's certificate coverage on the matters dealt with through that program continues only until the client enters a guilty plea. If all the matters covered by the certificate are dealt with through that program, the lawyer who represented the client must submit an invoice within 30 days of when the client entered the guilty plea. If the client's guilty plea is later struck, or if the client requires assistance in speaking to sentence that duty counsel cannot provide, the client may reapply to LAA for additional coverage and LAA may issue another certificate.

### **Complainant's Counsel Certificates (Duty Counsel for Complainants on 276 Applications, etc.)**

- 5.6 If LAA issues a client-based duty counsel certificate for a lawyer to assist a complainant or another witness in a criminal matter with respect to an application brought under the provisions of sections 276 to 278.96 of the *Criminal Code* or analogous common law rules:
- (a) the lawyer must ensure the client, the court, and the other lawyers understand that the lawyer is limited to providing summary, short-term assistance in relation to that specific application and that the lawyer does not act for the complainant or witness at large or on other applications; and
  - (b) the lawyer may submit an Authorization Request to LAA seeking additional time to assist the complainant in relation to that application – beyond the time initially authorized under the certificate – but LAA will only grant these requests in exceptional circumstances.

## **Part 6 – Lawyers’ Accounts and Review of Accounts**

### **Rationale for Billing and Compliance Review Rules**

- 6.1 Most certificate-based services are not free, and clients are expected to repay LAA for the services LAA provides via certificate lawyers. LAA is also publicly funded and is accountable to the Government of Alberta and Law Society of Alberta under the terms of the LAA Governance Agreement. As such, LAA must take steps to ensure that lawyers’ accounts are complete and accurate, and LAA must establish processes for the review of these accounts.

### **Lawyers Must Keep Time Records, Appearance Records, and Disbursement Records**

- 6.2 If the Tariff or a discretionary authorization allows a lawyer to charge for actual time the lawyer spent working on a file, performing legal services, travelling, or waiting in court or at a tribunal, the lawyer must keep timekeeping records that:
- (a) provide a reasonably descriptive and itemized list of each specific service rendered, referring to the Tariff item that authorizes the lawyer’s fee, if applicable;
  - (b) identify how much time was spent on each item; and
  - (c) identify the day on which each itemized service was rendered.
- 6.3 If the Tariff allows a lawyer to charge a block rate for a court or tribunal appearance, pre-trial conference, portion of a trial or hearing, or any service where the Tariff item is inclusive of both preparation and attendance, the lawyer must keep a record of:
- (a) the day or days when the lawyer performed any such services, and whether the service was performed in the morning, afternoon, or both;
  - (b) the place or courtroom where a service was performed; and
  - (c) any other information necessary to justify the lawyer’s account based on the definition of that Tariff item.
- 6.4 A lawyer must keep:
- (a) an itemized list of disbursements incurred when representing a client on a certificate; and
  - (b) any invoices, records, receipts, or reports associated with those disbursements.

### **Lawyers Issued Certificates are Responsible for Other Lawyers’ Records**

- 6.5 Where a lawyer submits an account that includes charges for services that were performed by another lawyer – including work charged at an hourly rate and any block Tariff items – the lawyer must:
- (a) keep a record of the name of the lawyer who provided those services;

- (b) ensure that the second lawyer maintains the same records that the lawyer is required to keep under this policy; and
- (c) provide LAA with a copy of those records in the same manner as though the lawyer created the records.

### **Lawyers Must Keep Records for Four Years from Final Invoice**

- 6.6 If this policy requires a lawyer to keep a record or information in relation to a certificate, the lawyer must keep the record or information for at least four years from when the lawyer submits the final invoice for that certificate.

### **Accounts Submitted via Lawyer Portal Only**

- 6.7 A lawyer must submit all accounts for a certificate using the Lawyer Portal, in the form required by the Lawyer Portal, and including supporting documents or records the Lawyer Portal requires.

### **Interim Accounts**

- 6.8 A lawyer may submit an interim account on a certificate for any legal services the lawyer provides (or disbursements the lawyer incurs) before the client's matter concludes.
- 6.9 LAA may, by an internal business rule:
- (a) require a lawyer to submit interim accounts on certificates periodically; or
  - (b) limit how frequently a lawyer may submit an interim account on a certificate.

### **Final Accounts and Deadline for Submitting Final Accounts**

- 6.10 Delays submitting accounts have a significant impact on LAA's ability to manage its financial affairs and LAA's ability to recover expenses from clients who may be responsible for repaying the lawyer's account.
- 6.11 As a result, there is a deadline for lawyers to submit accounts in relation to their certificate matters. A lawyer must submit their final account no later than six months after:
- (a) LAA cancels the client's coverage on the certificate,
  - (b) all matters covered by the certificate have been resolved or have concluded, or
  - (c) the lawyer stops acting for the client on the matters covered by the certificate,
- whichever comes first.
- 6.12 A lawyer who has missed the deadline for submitting an account may submit an Authorization Request to LAA, requesting an extension of time to submit the account. The Authorization Request must explain why the lawyer failed to submit the account before the deadline.

- 6.13 If a lawyer submits an account after this deadline, LAA may, at its sole discretion:
- (a) refuse to pay the lawyer's account, or
  - (b) choose to pay all or some of the lawyer's account.

#### **Lawyers Have a Limited Period in which to Correct Errors in Accounts**

- 6.14 A lawyer who submits a final account has 45 days from when the account was submitted to advise LAA of any errors or omissions on the final account or any related interim accounts and to amend their account or accounts. A lawyer cannot make any changes to an account on the certificate once this period has passed.
- 6.15 Despite the preceding section, a lawyer cannot amend an account if:
- (a) the lawyer has already released funds to a client under Part 4 of this policy; and
  - (b) the account was issued before the lawyer released those funds.

#### **Shorter Deadlines for Duty Counsel Certificates**

- 6.16 LAA may attach a condition to a duty counsel certificate that requires a lawyer to submit an account sooner than the deadline set out in this policy.

#### **Statistical Information Submitted with Lawyer's Account**

- 6.17 LAA may require a lawyer to collect information about the outcome of the client's matter (for example, in a criminal matter, whether the client was sentenced to a period of incarceration, and if so, how long) or information about the duty counsel services the lawyer has provided (for example, the number of people the lawyer assisted), and LAA may require the lawyer to submit this information with the lawyer's account.

#### **Initial Review of a Lawyer's Account When Account is Submitted (Certificate & Tariff Officers)**

- 6.18 When a lawyer submits an account, LAA may review the account and may refuse to pay the lawyer for any unauthorized or undocumented items or expenses (including, for example, refusing to pay for disbursements that are not supported by receipts) or for any aspects of the account that do not comply with the Tariff, any conditions attached to the certificate, or any discretionary funding authorizations.
- 6.19 If LAA pays a lawyer's account after an initial review of the account, this does not prevent LAA from subsequently initiating a compliance review with respect to that account.

#### **Subsequent Compliance Review of a Lawyer's Account Within Three Years (Internal Audit)**

- 6.20 LAA may initiate a compliance review:

- (a) of a specific account (or specific accounts), either interim or final; or
- (b) with respect to a specific Tariff item or a specific type of disbursement that a lawyer has billed on a series of accounts.

6.21 LAA may initiate a compliance review:

- (a) randomly, without any prior concerns about a lawyer or an account;
- (b) in response to concerns about a lawyer, an account, a Tariff item, or a type of disbursement; or
- (c) or for any other reason.

6.22 LAA may initiate a compliance review of an account by sending a letter to the lawyer who submitted the account, advising the lawyer that LAA is reviewing the account.

6.23 LAA may initiate a compliance review:

- (a) in the case of an interim account,
  - (i) at any time before a lawyer submits a final account on the certificate; or
  - (ii) if the lawyer has already submitted a final account on the certificate, at any time within three years of when the final account was submitted; or
- (b) in the case of a final account, at any time within three years of when the lawyer submitted the final account.

#### **LAA May Request Supporting Information, and Lawyers Must Provide Information**

6.24 During either the initial review of an account or a compliance review, LAA may require a lawyer to provide LAA with records that pertain to the accounts under review, including:

- (a) any records the lawyer is required to create or keep under this policy;
- (b) any billing records created or kept by another lawyer who performed work for the client; or
- (c) a copy of originating documents, endorsements or clerk's notes, court orders, affidavits, transcripts, written argument, or any document that was filed in court by any party to the matter (unless the lawyer is legally prohibited from providing these documents to LAA); and
- (d) any records necessary to account for funds or property that was received from, or on behalf of, a client, including any settlement funds or any costs awards made in favour of the client.

6.25 LAA may require a lawyer to provide these records in electronic (PDF) format.

6.26 A lawyer must provide LAA with these records within 30 days of when LAA requests the records, unless LAA extends this deadline.

- 6.27 If the lawyer does not provide the information or records before the deadline, LAA may make a decision on the compliance review based on the information known to LAA.

#### **Client Complaints About Lawyers' Accounts**

- 6.28 A client may contact LAA to raise a concern or make a complaint about a lawyer's account. LAA may require the client to complete the prescribed complaint form before LAA begins a review of that account.
- 6.29 A client may initiate a complaint about a lawyer's account no later than one year after the lawyer submitted their final account to LAA with respect to that matter.

#### **Client Complaints – Step 1: Informal Review of a Client's Complaint**

- 6.30 After receiving a client's complaint, LAA will alert the lawyer to the complaint and may contact the client and the lawyer to gather more information. LAA may attempt to resolve the complaint informally by discussing the matter with the client and the lawyer. At the conclusion of any informal review:
- (a) LAA may dismiss the client's complaint if it is satisfied that:
    - (i) the complaint is frivolous or vexatious;
    - (ii) the complainant has failed to respond to its reasonable requests for information; or
    - (iii) it has enough information to conclude the complaint does not require an adjustment to the lawyer's account;
  - (b) LAA may adjust the lawyer's account to correct any errors, oversights, or unjustified charges it has identified during this informal review; or
  - (c) LAA may decline to resolve the matter informally and undertake a compliance review with respect to the account.
- 6.31 If a lawyer is dissatisfied with any adjustments LAA made to an account after an informal review, the lawyer may, within 15 days of being informed of the adjustment, submit a written request that LAA conduct a compliance review for the account. When requested by the lawyer, LAA will undertake a compliance review into the account, and the compliance review will determine what adjustments, if any, LAA will make to the account.

#### **Client Complaints – Step 2: Compliance Reviews Resulting from Client Complaints**

- 6.32 The person who conducts a compliance review in response to a client's complaint may hold an informal in-person or teleconference meeting with the lawyer and the client, either at the request of the lawyer or the client or on the reviewer's own motion, but there is no right to such a meeting.

- 6.33 To eliminate any doubt about whether LAA may have unfettered access to a client's file during a compliance review, LAA may, before proceeding with a compliance review in response to a client's complaint, require the client to sign a waiver directing the client's lawyer to provide LAA with a complete copy of the client's file.
- 6.34 A client who makes a complaint must respond to LAA's request for information, records, or a waiver within 30 days of the request unless LAA grants an extension of time to respond. If the client fails to respond to LAA's request within this timeline, LAA may:
- (a) dismiss the complaint and cancel the compliance review; or
  - (b) proceed with a compliance review based on the information known to LAA.
- 6.35 When LAA completes a compliance review in response to a client's complaint it will provide the lawyer and the client with a summary of its findings and will advise the lawyer and client of any right to request a review of the decision.

#### **New Information Can Lead to Subsequent Compliance Reviews**

- 6.36 If LAA becomes aware of new information or different concerns about a lawyer or an account, LAA may initiate additional compliance reviews, even if LAA has already completed a compliance review or has already dismissed a client's complaint about an account.

#### **Factors Considered on Review of an Account**

- 6.37 After an informal review or a compliance review, LAA will determine whether a lawyer's account was inordinately high or unjustifiable because:
- (a) the account or its supporting records were materially incomplete or inaccurate;
  - (b) the account did not comply with the Tariff, any LAA policy, a discretionary funding authorization, or any conditions attached to a certificate or an authorization;
  - (c) the lawyer took plainly unnecessary steps in relation to the client's matter or spent grossly excessive time providing services to the client;
  - (d) the lawyer has invoiced LAA for services that fall outside of the scope of the matters covered by a certificate;
  - (e) a disbursement was excessive, unapproved, plainly unnecessary, or incorrectly allocated to the account.
- 6.38 When determining whether a lawyer's account was inordinately high or unjustifiable, LAA may consider:
- (a) any standards or criteria applied by the Review Office of the Court of Queen's Bench of Alberta when that office assesses the reasonableness of an ordinary lawyer's account, insofar as those standards or criteria may be adapted and applied to LAA accounts, and,



- (b) any billing, invoicing, or timekeeping guidelines, policies, or best practices that LAA has created to assist roster lawyers and has published on the LAA website.

### **Remedies After Compliance Review**

- 6.39 If, after conducting an informal review or a compliance review, LAA determines that a lawyer's account was inordinately high or unjustifiable, LAA may:
  - (a) require the lawyer to reimburse LAA for any overpayments or unjustified payments; or
  - (b) set off any overpayments or unjustified payments against future payments to the lawyer in relation to other matters.
- 6.40 LAA may establish a repayment schedule or a set-off schedule with a lawyer.

### **Client Reimbursement for Overpayment**

- 6.41 LAA will reimburse a client for any credit on their account if:
  - (a) LAA concludes that a lawyer's account was inordinately high or unjustifiable;
  - (b) the client has already paid LAA any excess amount the lawyer charged the client; and
  - (c) there is a net credit on the client's LAA account after factoring in any other amounts the client owes LAA on other matters.

### **Additional Remedies**

- 6.42 If, after having been given a reasonable opportunity to do, a lawyer does not provide LAA with any records LAA has requested under this Part, LAA may suspend a lawyer from the roster and stop issuing that lawyer certificates until they produce those records.
- 6.43 If a lawyer fails to repay LAA in accordance with a repayment schedule that was established under this Part, LAA may suspend the lawyer from the roster and stop issuing that lawyer certificates until they make the payments required under the repayment schedule.
- 6.44 Nothing in this policy limits:
  - (a) LAA's ability to suspend or remove a lawyer from the roster or a panel in accordance with Administrative Policy 6 or a roster lawyer agreement; or
  - (b) LAA's ability to take any other steps that may be available to LAA under any roster lawyer agreement or otherwise.

## **Part 7 – Administrative Review of Decisions**

### **Review of Discretionary Authorization Decisions**

- 7.1 A lawyer to whom a certificate was issued may request an administrative review of:
- (a) a discretionary authorization decision made under Part 4;
  - (b) the outcome of an initial review of the lawyer's account;
  - (c) the outcome of a compliance review of the lawyer's account; or
  - (d) suspension from the roster for failing to provide records during a compliance review or for failing to comply with a repayment schedule.
- 7.2 A client with coverage under a certificate may request an administrative review of:
- (a) the decision to refuse a change of counsel;
  - (b) the decision to dismiss the client's complaint about an account; or
  - (c) the outcome of a compliance review that was initiated in response to a client complaint.
- 7.3 There is no administrative review of LAA's decision to offer a certificate to a lawyer or of LAA's decision to rescind or cancel an offer to a lawyer.

### **No Appeal of Administrative Review Decision**

- 7.4 LAA's decision on an administrative review is final and there is no further appeal.

### **Deadline for Initiating Review**

- 7.5 A lawyer or client must initiate an administrative review of a decision within 30 days of when LAA advises the lawyer or client of the decision, unless LAA extends this deadline.

### **Who Performs a Review**

- 7.6 The reviewer identified in Table 1 will conduct the administrative review (or, if a delegate is noted in Table 1, his or her delegate).
- 7.7 An administrative reviewer may consider the decision under review afresh, without deference to the earlier decision-maker's decision, and may gather any new information the administrative reviewer believes would help perform the review.

### **Review is a Document-Based Process**

- 7.8 An administrative review under this policy is commenced and conducted in writing. The reviewer will consider the written submissions of the lawyer or client.

- 7.9 An administrative reviewer may contact the lawyer or client to obtain more information, but neither the lawyer nor the client has the right to appear before or make oral submissions to the decision-maker.

**Administrative Review is Not the Only Way to Revisit Authorization Request**

- 7.10 If LAA denies an Authorization Request under Part 4 of this policy, then instead of requiring the lawyer to apply for an administrative review, LAA may invite the lawyer to submit a new Authorization Request:
- (a) with additional details or information; or
  - (b) at a later stage in the proceedings.

**Table 1: Case Management Decisions**

Issue / Type of Decision	Initial Decision	Admin. Review Decision
<ul style="list-style-type: none"> <li>• Changes of counsel</li> <li>• Transfer of certificates</li> <li>• Cancellation of certificates</li> <li>• Imposing conditions on certificates</li> <li>• Review of a lawyer's account (before the account is approved and paid)</li> <li>• Applications for extensions of time to submit a lawyer's account, after the deadline has passed</li> </ul>	Certificate & Tariff Officer	Senior Manager, Certificate & Assessment Services (or delegate)
<ul style="list-style-type: none"> <li>• Discretionary authorizations under Part 3 (extra hours, disbursements, expert funding requests, retroactive requests, hours for second counsel, adding additional legal issues in family files, etc.) and conditions attached to those authorizations</li> <li>• Discretionary reimbursement for cancelled certificates or lost trial time</li> </ul>	Lawyer, Legal Assessment Team	Manager, Legal Assessment Team (or staff lawyer delegate)
<ul style="list-style-type: none"> <li>• Informal review of a lawyer's account in response to a client's complaint (after the account has been paid)</li> </ul>	Quality Advisor	<ul style="list-style-type: none"> <li>• <i>When requested by a client:</i> Senior Manager, Certificate &amp; Assessment Services (or delegate)</li> <li>• <i>When requested by a lawyer:</i> No administrative review; lawyer may request a compliance review if dissatisfied with CTO adjustment to account</li> </ul>
<ul style="list-style-type: none"> <li>• Compliance review of a lawyer's account (after the account has been paid), whether it was initiated by client complaint or by LAA</li> </ul>	Internal Auditor or Lawyer, Legal Assessment Team	Vice President, Finance & Technology (or delegate)
<ul style="list-style-type: none"> <li>• Suspension of a lawyer for failing to reimburse LAA or for failing to provide records within a reasonable time</li> </ul>	Vice President, Finance & Technology (or delegate)	CEO (or delegate)