

# The Legal Services Board of Nunavut

## Family Law Coverage and Eligibility Policy



2014

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This Policy was ratified by the Legal Services Board of Nunavut on April 10, 2011.  
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## LEGAL SERVICES BOARD OF NUNAVUT

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### Family Law Coverage and Eligibility Policy

#### **1.0 Policy Statement**

The Legal Services Board (the “LSB”) provides family law legal aid for certain family law issues for eligible Nunavummiut.

The LSB aims to provide clarity to family law clients, lawyers, the judiciary and the public at large regarding what areas of family law are covered by legal aid. This policy also outlines when an individual will be eligible to receive family legal aid based on merit and financial need.

#### **2.0 Definitions**

“Eligible Person” An eligible person for family law legal aid is an individual who:

- (1) is resident in Nunavut;
- (2) has a meritorious case based upon the legal opinion of family law counsel; and

- (3) receives all or most of his or her income from social assistance or falls within the financial eligibility criteria as per the financial eligibility grid.

In certain instances, the LSB and/or Court may provide a child with their own family legal aid lawyer.

“Meritorious claim” if, in the opinion of the lawyer reviewing the file, the legal issue(s) in question can be deemed to be reasonable and arguable, the claim is meritorious.

“Gross income” total personal income before the payment of taxes

“Net income” total personal income after the payment of taxes

“Dependant” an individual who depends upon another for financial support.

“Child” a person who is, or in the absence of evidence to the contrary, appears to be under the age of 18.

“Matrimonial Home” the primary residence owned by spouses during the course of their spousal relationship.

“Spouse” either a man or a woman who are a) married to each other, b) have together entered into a marital relationship that is void or voidable under the *Family Law Act*, or c) have lived

together, without being married, if they have done so i) for at least two (2) years or ii) for some period of time and are the natural or adoptive parents of a child.

“Lien”	the legal right and mechanism to retain or claim possession of another’s property pending the discharge of a debt.
“Chief Executive Officer”	The Chief Executive Officer (CEO) of the LSB or her/his designate.
“Resident”	a person who lives or ordinarily resides in Nunavut.

### **3.0 Policy Objectives**

- To provide “eligible persons” with specific and pre-approved family law legal services through a fair and transparent assignment process.
- To ensure eligible persons are assigned family law counsel in an expedient manner.
- To articulate the family law coverage areas and priority in the assignment of family law files to counsel.

- To prioritize the assignment of family law counsel in child apprehension cases or other files deemed “urgent” by the CEO.
- To establish an income grid defining financial eligibility criteria for family legal aid clients.

#### **4.0 Coverage Criteria**

4.1 Family law legal aid is available where financial eligibility is met to eligible persons for claims of custody, access, child support, spousal support, child welfare, child protection, exclusive possession of a matrimonial home if the applicant has children residing or will reside in the matrimonial home, restraining orders pursuant to the *Children’s Law Act* and the *Family Law Act* and proceedings under the *Maintenance Orders Enforcement Act*.

4.2 Legal aid is also available for certain proceedings pursuant to the *Adoption Act*, the *Aboriginal Custom Adoption Recognition Act* and in child representation matters.

4.3 Legal aid is not provided to those seeking redress under the *Family Abuse Intervention Act* (“FAIA”). The LSB reserves the right to provide representation under FAIA in the event the client has been pre-approved for family law legal aid and relief under FAIA becomes necessary.

#### **5.0 Financial Eligibility Grid**

5.1 To determine if an applicant is financially eligible for family law legal aid, the LSB uses the following financial eligibility guideline:

*Based on an applicant's gross income*

Household Size	Annual Gross Income Level
1 person	\$50,400.00
2 persons	\$62,400.00
3 persons	\$88,800.00
4 persons	\$96,000.00
5 persons	\$103,200.00
6 persons	\$110,400.00
7 persons	\$117,600.00
8 persons	\$124,800.00
9 persons	\$132,000.00
10+ persons	\$139,200.00

5.2 Any person with a gross income exceeding the financial eligibility guideline amount for the number of persons in her/his household will be deemed financially ineligible to receive legal aid. Such an individual will consequently have their legal aid application to receive legal representation or services denied.

- 5.3 Those individuals who are not presumed eligible and do not meet the requirements articulated below, will not be approved to receive family legal aid from the LSB. The act of completing and submitting a legal aid application does not constitute a solicitor client relationship.
- 5.4 A person deemed ineligible on financial grounds to receive legal aid will be given the contact information for The Law Society of Nunavut (the “Law Society”). Through the Law Society, the individual will be able to obtain a list of practicing Nunavut lawyers within the private bar who may be able to assist them with their matter.

## **6.0 Real Property and Liens**

- 6.1 In the event an applicant falls within the financial eligibility guideline but is registered on title as owner of real property, the LSB reserves the right to place a lien on title to that property in the initial amount of \$5,000.00. The lien will be used to secure a contribution payment to recover part or all of the cost of the legal services provided to the client.
- 6.2 If a client, who has had a lien placed title, has a file that is of particular severity and complexity necessitating significant legal resources costing more than \$5,000.00, the LSB reserves the right to increase its security by placing additional liens on title in \$5,000.00 increments.

- 6.3 At the conclusion of the file belonging to a client with real property, an accounting of the services rendered and corresponding value will be invoiced to the client. The lien will be discharged from title when the client has paid the LSB, in full, the amount invoiced and any administrative costs incurred by the LSB through the registration and discharge of the lien(s).
- 6.4 The CEO has the discretion to decrease the invoiced amount after taking into account the services rendered, the results achieved and the appropriateness, based upon standard legal practice, of the time spent on a particular file. The CEO may also take into consideration the financial status of the client
- 6.5 All liens will be registered on title under the authority of the CEO on behalf of the LSB.
- 6.6 A client who contributes to the cost of his or her legal aid will not be given priority of service over others. Nor will a contribution entitle a client to a choice of counsel.

## **7.0 Presumed Eligibility for Child Welfare Matters**

- 7.1 There is presumed eligibility for clients involved in child welfare proceedings. In such cases, the requirement for a legal opinion may be waived.

## **8.0 Priority of Files - Child Apprehension/Urgent/Discretionary Cases**



- 8.1 In exceptional cases, where urgency requires the immediate retention of family law counsel, such as in matters dealing with the apprehension of a child or where there is the threat of a *status quo* being established against the client's interests, the CEO has the discretion to deem a person eligible for imminent and necessary court proceedings.
- 8.2 The continued solicitor/client relationship will be reviewed by the CEO at a point when the urgency has been addressed. At this time a determination regarding lien requirements or the necessity of the client retaining private counsel will be looked into.
- 8.3 It is within the discretion of the CEO to waive any residency requirement for an individual applying for legal aid. Such discretion will be exercised in limited situations where extenuating circumstances exist. Such circumstances may include, but are not limited to, significant ties to Nunavut inclusive of been born or raised in the Territory, having familial or cultural connections and or being a long term Nunavut resident who lost residency unintentionally or through circumstances beyond their control.
- 8.4 In the event a client has had a child, who is ordinarily resident in Nunavut, removed from his or her care through abduction, an apprehension or a failure to return a child after a custody or access visit, the application will be given priority over other non-urgent family law applications.
- 8.5 Where a client alleges a set of facts in which the passage of time is likely to create a *status quo* contrary to the client's interests, the

application may be given priority over other family law applications. An opinion letter must outline in detail the particular facts and the basis upon which priority is being requested.

8.6 Where an eligible client has been served with a Court document, the application will be given priority over other family law applications.

## **9.0 General Family Law Legal Aid Services**

9.1 Family law legal aid services include the provision of general advice, initiating and conducting court proceedings and the provision of independent legal advice and mediation. Which services are provided to each client will be decided by the CEO on the advice of family law counsel who are required to submit legal opinions with each legal aid application.

9.2 Legal Aid is only available for divorce claims, separation issues between non-married spouses or limited property related matters when there are outstanding issues relating to a child of the relationship. The CEO will undertake a review of ongoing coverage if the issues relating to the children are resolved.

9.3 The LSB reserves the right to terminate representation in the event a client insists on taking an unreasonable and/or unwinnable position, against the advice of counsel, in relation to a divorce,

separation issues between non-married spouses and/or a property related matter.

- 9.4 In the event a lawyer with carriage of a file is contemplating terminating representation and the solicitor/client relationship due to an unreasonable and/or unwinnable position taken by the client, the lawyer will advise the CEO who will review the matter and make a recommendation of how best to proceed. The CEO's position will be provided to the client in addition to options the client has in the face of the chosen position. The final discretion as to what options are offered and the terms for the continued legal aid representation always remains with the LSB unless the client chooses to terminate the solicitor/client relationship.
- 9.5 It is in the discretion of the CEO to decide whether legal aid coverage may be available to initiate or respond to a contempt application.
- 9.6 No contempt application may be commenced without a full opinion letter setting out all relevant circumstances of the matter, the facts which justify the bringing of such an application and the steps taken previously to attain the desired result.