

# The Legal Services Board of Nunavut

## Criminal Law Coverage and Eligibility Policy



2014

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This Policy was ratified by the Legal Services Board of Nunavut on September, 2014



## LEGAL SERVICES BOARD OF NUNAVUT

Box 125, Gjoa Haven, Nunavut. X0B-1J0  
(867) 360-4600 Telephone (867) 360-6112 Fax

### Criminal Law Coverage and Eligibility Policy

#### **1.0 Policy Statement**

The Nunavut Legal Services Board (the “LSB”) provides, based upon the presumption of eligibility, legal aid coverage for every person charged with a criminal, statutory or regulatory offence in Nunavut through the first stages of the criminal law process. The coverage offered under the presumption of eligibility is limited to the provision of legal advice on a Charter of Rights and Freedoms 10(b) call, representation at a show cause hearing and the entering of a plea at a first appearance. Should a plea of guilty be entered at a first appearance, legal aid coverage extends to representation for the purposes of the making of submissions on sentencing on the basis of presumed eligibility.

Once an individual has passed the preliminary stages of the court process, criminal law legal aid coverage is offered to individuals who are deemed eligible based upon financial need.

The LSB aims to provide clarity to criminal law clients, lawyers, the judiciary and the public at large regarding what criminal legal aid services are covered based upon presumed eligibility and when an individual needs to satisfy financial criteria to receive criminal law legal aid past the first stages of a criminal file.

## 2.0 Definitions

“Eligible Person”	An eligible person for criminal law legal aid is an individual who:  (1) Has been charged with a criminal, statutory or regulatory offence in Nunavut;  (2) 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.
“Eligible Offence”	an offence as articulated under Section 44 of the <i>Legal Services Act</i> , R.S.N.W.T. 1988
“Gross income”	total personal income before the payment of taxes
“Net income”	total personal income after the payment of taxes
“Presumed Eligibility”	An individual is presumed eligible, and will receive legal aid coverage from the LSB, when that individual has been charged in Nunavut with an eligible offence. Coverage will include the provision of legal advice on a Section 10B Charter call, at a show cause hearing and at a first appearance to enter a plea. Should a plea of guilty be entered at the first appearance, coverage will

be extended to allow for the making of submissions on sentencing.

### **3.0 Policy Objectives**

- To provide individuals who have been charged in Nunavut with an eligible offence, with criminal law legal aid services through a fair and transparent assignment process.
- To ensure eligible persons are assigned criminal law counsel in an expedient manner.
- To identify which judicial proceedings are covered for individuals under the presumption of eligibility and which are subject to eligibility criteria prior to the assignment of criminal law files to counsel.
- To establish an income grid defining financial eligibility criteria for criminal legal aid clients.

### **4.0 Coverage Criteria**

4.1 Pursuant to Section 44 of the Act, once the presumption of eligibility is no longer relevant, criminal law legal aid is available where financial eligibility is met to eligible persons for proceedings and matters preliminary to anticipated proceedings:

- a) In respect of an offence under an Act of Canada which is or may be proceeded with by way of indictment;
- b) Under the *Extraction Act* (Canada)

- c) Under the *Fugitive Offenders Act* (Canada)
- d) In respect of an offence under an Act of Nunavut or an Act of Canada or regulations made under an Act of Nunavut or an Act of Canada that is proceeded with by way or summary conviction where
  - i) The accused is liable to imprisonment or to another punishment that, in the opinion of the CEO or a person designated by the CEO, would prejudice the livelihood of the accused, or
  - ii) Prescribed circumstances exist that warrant the provision of legal services to the accused;
- e) Under the *Young Offenders Act* or the *Youth Criminal Justice Act* (Canada) where circumstances referred to in subparagraph (d)(i) or (ii) exist;
- f) In respect of any offence or matter not referred to in paragraphs (a) to (e) if, in the opinion of the CEO or a judge, the accused is
  - (i) Incapable of making an informed decision as to his or her proper course of action,
  - (ii) Liable to a punishment that would prejudice the livelihood of the accused;
- g) Constituting an appeal by the prosecution in any preliminary proceeding or matter;

- h) Constituting an appeal by the accused in any preliminary proceeding or matter where
  - (i) A lawyer advises the Board in writing that the appeal has merit and the Board agrees, or
  - (ii) The appellate court or a judge of the appellate court requests the provision of legal services for the conduct of the appeal; or
- i) In respect of any prescribed offence or matter.

## **5.0 Choice of Counsel**

- 5.1 Due to the lack of a resident, private criminal defence bar in Nunavut, the LSB is currently unable to fulfill its obligations under Section 40 of the Act.
- 5.2 Until there is a satisfactory increase in the number of resident, criminal law lawyers willing and able to take on Section 40 files, which would enable the LSB to meet its statutory and common law choice of counsel commitments, the CEO is provided with the sole authority and discretion to assign counsel to those accused facing the possibility of life imprisonment.

## 6.0 Financial Eligibility Grid

6.1 To determine if an applicant is financially eligible for criminal 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

6.2 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.

- 6.3 Those individuals who are not presumed eligible and do not meet the requirements articulated below, will not be approved to receive criminal law legal aid from the LSB. The act of completing and submitting a legal aid application does not constitute a solicitor client relationship.
- 6.4 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.

## **7.0 Real Property and Liens**

- 7.1 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.
- 7.2 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.
- 7.3 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).
- 7.4 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
- 7.5 All liens will be registered on title under the authority of the CEO on behalf of the LSB.
- 7.6 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.