

# The Legal Services Board of Nunavut

## Policy on Funded Criminal Appeals



2014



## LEGAL SERVICES BOARD OF NUNAVUT

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### Policy on LSB Funded Criminal Appeals

#### **1.0 Policy Statement**

- 1.1 This policy is intended to provide those convicted of criminal offences along with their trial lawyers with a fair and transparent process in which to request funding for an appeal of a conviction. The request may be made in relation to a finding of guilt, the length of a sentence, certain Charter of Rights issues or in response to an appeal made by the Crown.

The Legal Services Board (the “LSB”) provides support for certain criminal appeals for eligible clients where the appeal is determined to be “arguable” and where there is a “likelihood of success.”

#### **2.0 Definitions**

“Arguable” means that there was, according to existing or emerging legal principles, a substantive defect in the applicable law and/or trial process including rulings on evidentiary, Charter of Rights, and similar issues that could make a significant difference to the result(s) at trial. If there is no likelihood of success the issue is not “arguable”.

“Likelihood of success” there is deemed to be a likelihood of success on an appeal if, in the opinion of counsel, the Court of Appeal will likely adopt the appellant’s position.

### **3.0 Application**

- 3.1 If, after a finding of guilt, either the client or trial lawyer is of the opinion that a criminal appeal should be explored, they may make an application to LSB to cover the costs of the appeal.
- 3.2 The LSB has assigned the authority to decide whether or not to fund an appeal to the Chief Executive Officer (CEO).
- 3.3 The CEO will make a decision based upon the recommendation of the Criminal Appeals Committee (“CAC”) which is made up of the regional lead counsel from each of LSB’s regional clinics and a designate appointed by the CEO. The CEO is an observer member of the CAC and does not participate in the drafting of the recommendation.
- 3.4 Trial counsel will provide a legal opinion to the CAC articulating if the appeal, in her/his opinion, is “arguable” and what the appeal’s “likelihood of success” is thought to be.
- 3.5 The CAC may request from trial counsel a copy of the trial transcript, finding, judgment or order appealed against, a copy of the reasons for the finding, judgment or order, or any other materials they deem necessary to prepare their recommendation. Funding to cover the associated costs of such materials will be provided by the LSB.
- 3.6 Taking into consideration everything provided, the CAC will make a recommendation to the CEO as to whether or not the appeal meets the test of being arguable and having a likelihood of success and correspondingly whether or not the appeal should be funded by LSB.

With consensus not being mandatory, a recommendation made by a majority of the CAC to the CEO will be provided with the highest deference.

- 3.7 The recommendation of the CAC will address the matter from the standpoint of an ordinary solicitor and client relationship taking into account the possibility of success and the cost of the proceedings in relation to the anticipated loss.
- 3.8 The CEO or their designate will advise trial counsel in writing whether an appeal will be funded or if funding for the appeal has been denied.
- 3.9 Pursuant to the regulations, a defendant who has been denied funding for a criminal appeal can request an administrative appeal of the CEO's decision by providing written notice to the LSB through either the CEO or Chair of the Board. The Chair or the CEO shall immediately refer the matter to the Executive Committee of the LSB.
- 3.10 While the Executive Committee of the LSB may vary or confirm the decision of the CEO, an administrative appeal under this section is an informal review and no right to a hearing is established. The Executive Committee of the Board shall be provided with all materials relating to the Criminal Appeal for its review and decision.
- 3.11 The CEO shall not vote on an appeal of her/his decision in proceedings of the Executive Committee.
- 3.12 The CEO shall inform the applicant of the decision of the Executive Committee in writing and implement the decision.
- 3.13 In all cases, trial counsel will file a timely *pro forma* Notice of Appeal so that the defendant's right to appeal is not prejudiced through the expiration of a limitation period pending a funding decision by the Board.