

# The Legal Services Board of Nunavut

## Civil Law Coverage and Eligibility Policy



2014

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This Policy was ratified by the Legal Services Board of Nunavut on September 17,  
2014

# LEGAL SERVICES BOARD OF NUNAVUT

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## Civil Law Coverage and Eligibility Policy

### **1.0 Policy Statement**

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

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

### **2.0 Definitions**

Eligible Person – An eligible person for civil law legal aid is an individual who:

- (1) is resident 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; and
- (3) has a meritorious case based upon the legal opinion of LSB counsel.

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

CEO - The Chief Executive Officer 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 civil law legal services through a fair and transparent assignment process.
- To ensure eligible persons are assigned civil law counsel in an expedient manner.
- To articulate the civil law coverage areas and priority in the assignment of files to counsel.
- To establish an income grid defining financial eligibility criteria for civil law legal aid clients.

#### 4.0 Coverage Criteria

- Civil law legal aid is available where financial eligibility is met to eligible persons for matters relating to social issues, including but not limited to human rights, landlord and tenant, employment law and police misconduct files.
- Legal aid is available to individuals facing eviction proceedings under the *Residential Tenancies Act*, R.S.N.W.T. 1988, and c. R-5 (Nu) on a presumed eligibility basis.
- In certain and limited circumstances, and on a case-by-case basis, legal aid may be available for assistance and/or proceedings deemed to be in the public interest, or in matters where access to justice limitations present a real and substantial risk of an individual suffering an unreasonable pecuniary loss due to the unavailability of private counsel. Approval for coverage in such cases lies solely in the discretion of the CEO of the LSB; such discretion to be utilized while taking into consideration Section 45 of the *Legal Services Act*, economic and resource limitations of the LSB in addition to the in-house expertise of legal aid staff and their ability to adequately represent the applicant in a particular matter.
- Pursuant to Section 45(4) of the LSA, the LSB is statutorily prohibited from providing legal services as they relate to:
  - defamation;
  - matters respecting the estates of living or deceased persons;

- the incorporation, formation or dissolution of companies, corporations societies or partnerships;
- real property transactions;
- relator or representative actions, arbitrations or conciliations in respect of any matter; or
- proceedings relating to elections and any prescribed matter

## **5.0 Financial Eligibility Grid**

5.1 To determine if an applicant is financially eligible for civil 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 herein, will not be approved to receive civil law 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**

- 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.
- 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.

- 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).
- 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
- All liens will be registered on title under the authority of the CEO on behalf of the LSB.
- 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 Priority of Files - Urgent/Discretionary Cases**

- In exceptional cases, where urgency requires the immediate retention of civil law counsel, such as in matters dealing with an eviction, the CEO, or its designate, has the discretion to deem a person eligible for imminent and necessary court proceedings.

- Once the urgency has passed, and initial proceedings have been completed to the extent necessary, the person shall submit application for review and approval. The Interim representation shall not affect the usual considerations or outcome of the approval process.
- 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 being 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.

## **8.0 General Civil Law Legal Aid Services**

- Civil law legal aid services include the provision of general advice, initiating and conducting court or similar proceedings and the provision of independent legal advice and mediation. Which services are provided to each client will be decided by the CEO based on the advice and recommendation of counsel who is required to submit legal opinions with each legal aid application.
- 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.