

AREA

DIRECTOR'S

MANUAL

Approved Management Council April 1, 2009

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MISSION STATEMENT

Legal Aid Manitoba is committed to ensuring equal access to justice for all Manitobans. We will treat our clients professionally, with respect and dignity, and in a manner that shows we care about them. We will treat each other in the same way. In addition, we acknowledge that every staff member is an equal member of the Legal Aid Manitoba team.

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PRACTICE NOTES

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1.0 GENERAL DUTIES

- 1.1** The Executive Director, Deputy Director, Legal Director, and in the temporary absence of the Area Director, a lawyer appointed by the Executive Director or Deputy Executive Director to be Acting Area Director, may all perform the duties of any Area Director.
- 1.2** The Area Director administers the Legal Aid plan with respect to the matters indicated in subsections 10(1), 10(2), 11(1), 11(2), and 11(3) of Legal Aid Regulation 225/91 (as am.) and shall ensure:
- 1.3** communication with the public, private bar, and Legal Aid Manitoba staff is professional and courteous;
- 1.4** Solicitor - Client Privilege and all legislated obligations respecting confidentiality of client disclosed information are rigorously maintained at all times;
- 1.5** eligible individual applicants in the Area Director's district receive competent and timely legal assistance, in accordance with available local resources, and in accordance with the guiding principle of equal access to justice for all Manitobans;
- 1.6** legal assistance is provided in accordance with the Legal Aid Manitoba Act and Regulations;
- 1.7** Legal Aid Manitoba policies and guidelines are followed;
- 1.8** the Government of Manitoba policy on French language services is followed, written forms and communications are provided in the French language on request, and oral French language services are provided in districts designated as "French language service areas" where possible;
- 1.9** all information relied upon in fulfilling the duties of the Area Director is retained in the file in a legible form. Where material is removed from a file a clear indication of the location of that material is maintained with the file;
- 1.10** staff assisting with the Area Director's duties are properly supervised;
- 1.11** office staff are always aware how to contact another Area Director in case of emergencies.

- 1.12** all correspondence with persons in custody is sent in an envelope clearly marked "SOLICITOR CLIENT PRIVILEGE" on both sides of the outside of the envelope in red ink and initialed by the Area Director or their designate in red ink.

1.0 GENERAL DUTIES: PRACTICE NOTES

Legal Aid Manitoba forms have been translated into French and are available for use on the Legal Aid home database at [usr/legal/home/share/Forms](#).

2.0 APPLICATIONS

- 2.1** Applications on a current Legal Aid Application Form that has been signed in the preceding 60 days and submitted with:
- a)** sufficient information to determine the substance and limits of a certificate;
 - b)** sufficient information to assess financial eligibility;
 - c)** sufficient information to determine merit; and
 - d)** the prescribed Application fee, or waiver, where applicable;

are ordinarily assessed for eligibility within 14 days.

- 2.1.1** Applications that do not satisfy the criteria in 2.1 result in a request for further required information or explanation of why it is not available. These Applications are either designated as pending further information, or refused.
- 2.1.2** Applications disclosing income \$2000.00 less than the applicable yearly full eligibility guideline or higher, include documentation from a credible 3rd party source (pay stubs from employment, letter from employer or accountant, Income Tax documents, etc.).
- 2.1.3** Applications that do not satisfy the criteria in 2.1.2 result in an immediate request for the missing information or an explanation of why it is not available. These Applications are either designated as pending further information or refused.
- 2.1.4** Applications that remain pending further information after 30 days are refused.
- 2.1.5** Applications that have been refused pursuant to 2.1.4 will be reconsidered without a further Application if the requested information or explanation is provided within 60 days of the date of issuance of a refusal.
- 2.1.6** In exceptional circumstances an Area Director may personally waive any or all requirements of the formal Application process and authorize representation on information the Area Director determines to be reliable. The representation authorized shall not exceed what is reasonably necessary in light of the exceptional circumstances.

2.1.7 Where an Application has previously been refused and an appeal of that refusal to the Appeal Committee of Management Council has been denied, the Appeal Committee of Management Council remains seized of the matter and any subsequent Applications by the same person for the same matter are directed, along with any information relevant to the Application, but without further consideration, to the Chair of that Appeal Committee.

2.0 APPLICATIONS: PRACTICE NOTES

APPLICATIONS REFERRED TO THE EXECUTIVE DIRECTOR

Applications, or requests for amendments on active certificates, for the following are directed to the Executive Director:

- a) Civil lawsuits involving damages;
- b) Appeals to the Court of Appeal or the Supreme Court of Canada;
- c) Test cases;
- d) *Charter* challenges to legislation;
- e) Wrongful Conviction proceedings;
- f) Applications under section 745.6 *Criminal Code* (Faint Hope Applications);
- g) Coverage for Groups and Public Interest Cases;
- h) Court appointed counsel other than under s. 25 of the *Youth Criminal Justice Act* and section 34 of the *Child and Family Services Act*; and
- i) Cases and Appeals in Federal Court and the Federal Court of Appeal.

CONFLICTS OF INTEREST

Where an actual or apparent conflict of interest between an Applicant and the Area Director comes to the attention of the Area Director, the Application will be immediately referred to a different Area Director for consideration.

APPLICATION FEE

Every Application must be accompanied by a \$25.00 Application processing fee, an assignment of \$25.00 from a prisoner's account, or a valid waiver. Only one fee, assignment, or waiver is required per Application. The Application processing fee must be paid by cash, money order, certified cheque, or lawyers trust cheque.

APPLICATION FEE WAIVERS

The Application processing fee is waived for:

- a) persons in receipt of social assistance;
- b) women applying from women's shelters;
- c) persons applying from Mental Health facilities;
- d) adults in full-time attendance at a secondary or post-secondary institution and in receipt of student aid or student loans;
- e) remand prisoners who were dependent on social assistance at the time of arrest;
- f) prisoners who have signed a form assigning \$25.00 from the inmates account;

- g) youths whose parents/legal guardians (or parent/legal guardian) are in receipt of social assistance benefits;
- h) persons incarcerated as a result of a sentence under the *Youth Criminal Justice Act* applying for a review or an appeal;
- i) infants who are a ward of a Child and Family Service Agency (including children subject to a Voluntary Placement Agreement); or
- j) court appointed counsel.

The Area Director may waive the Application processing fee:

- a) if the Applicant indicates an intention to apply for social assistance and appears to be eligible for social assistance;
- b) if a young person is denied release and reasonable efforts to have the parents/legal guardians pay have been unsuccessful; or
- c) where payment of the fee would cause undue delay or hardship.

Where release is arranged for a person in remand custody, an assignment form is not used, and the representing counsel and Applicant are advised that the fee must be paid within 14 days of their release or their Application will be refused.

APPLICATION FEE REFUNDS

The Area Director may refund the Application processing fee where it appears to have been collected in error or where the Applicant withdraws the Application prior to it being entered into LAMAS.

3.0 COURT APPOINTED COUNSEL

- 3.1** Appointments of counsel made by a Judge pursuant to section 34 of *The Child and Family Services Act* result in the immediate appointment of a lawyer.
- 3.2** Directions for the Attorney General to provide counsel pursuant to section 25(4)(b) of the *Youth Criminal Justice Act* result in the immediate appointment of a lawyer.
- 3.3** A request of the court pursuant to section 672.24 and 672.5(8) of the *Criminal Code* will result in the immediate appointment of a lawyer. An Application shall be taken and an assessment of financial eligibility made, where possible. The cost of representation is recovered from the Applicant, their trustee or committee, or the Crown.

3.0 COURT APPOINTED COUNSEL: PRACTICE NOTES

AMICUS CURIAE (CHILD WELFARE)

Pursuant to section 34 of the *Child and Family Services Act* children over the age of 12 may, upon direction of the court, instruct counsel. When Legal Aid Manitoba receives an Order from the court advising that a lawyer is to be provided to the child, a certificate is issued which Legal Aid Manitoba pays. Legal Aid Manitoba will seek compensation from an agency if the child is a ward of an Agency.

SECTION 25 OF THE YOUTH CRIMINAL JUSTICE ACT

Section 25 (4)(a) of the *Youth Criminal Justice Act* authorizes a Judge to refer a young person to the Legal Aid program to obtain counsel. This referral will result in an Application being taken and will be dealt with in the ordinary course.

Where a young person is unable to obtain counsel, section 25(4)(b) authorizes a Judge to order the Attorney General to provide counsel.

In order for a section 25(4)(b) order to be made, an Application must first be taken and refused. A section 25(4)(b) appointment made before a Legal Aid Application has been refused will not be honoured by Legal Aid Manitoba unless it will result in undue delay or detriment to the defence of the accused Youth.

OTHER COURT APPOINTED COUNSEL

All other decisions to grant certificates or otherwise fund Court appointed counsel must be referred to the Executive Director immediately for assessment.

4.0 FINANCIAL ASSESSMENTS

4.1 FINANCIAL ASSESSMENTS GENERAL GUIDELINE

- 4.1.1** Every application will be assessed for financial eligibility prior to a certificate issuing.
- 4.1.2** Financial assessments require examination of all available financial resources that are reasonably available to fund the legal matter. Indebtedness may restrict the availability of financial resources to fund the matter and must be considered alongside an Applicant's income and assets.
- 4.1.3** The income of a common-law partner or spouse that resides with the Applicant is deemed to be reasonably available to fund the legal matter in issue as long as the common-law partner or spouse is not adverse in interest in the legal matter.
- 4.1.4** Adult persons cohabiting for over 1 year are presumptively living common-law for the purposes of financial eligibility for legal aid. Self-declaration or other evidence of common-law status may also be conclusive where cohabitation is less than one year.
- 4.1.5** Income for a financial assessment means gross income. Tips, gratuities, bonuses, earned interest, annuities, personal income drawn from a business, maintenance payments, taxable benefits, and similar resources are all included in income for the financial assessment.
- 4.1.6** Day care expenses, maintenance payments actually paid out, monies garnished, the universal child care benefit, the child tax credit, money received as a foster parent, and residential school settlements are not included in income.
- 4.1.7** Where an Applicant under the age of 18 is in the care of a parent or guardian, or is a ward of an agency, the responsible person or agency has a legal obligation to assist the Applicant. The financial resources of that person or agency are reasonably available to the Applicant and are included in the assessment of financial eligibility.
- 4.1.8** An asset is reasonably available to fund a legal matter if it:
- a)** is not reasonably needed to secure food, shelter, clothing, ongoing training, education programs, or a means of income to an Applicant or their immediate family;

- b) can be borrowed against, used as security for a private retainer, or otherwise readily converted into cash;
- c) is not security for a debt greater than its value that will become due upon its disposition;
- d) is reasonably capable of funding the costs associated with the legal matter on a private fee basis; or
- e) is available to an Applicant in the reasonably foreseeable future.

4.1.9 Where an Application under section 462.34 of the *Criminal Code* would not prejudice the defence of an Applicant, cash and/or property in the Applicant's possession on arrest, and seized as proceeds of crime, is deemed to be reasonably available until a judge has denied such an application.

4.1.10 Where a legal settlement or monies otherwise exempted under this section have been converted into an asset, such as a motor vehicle or house, the asset shall, for purposes of financial eligibility for legal aid, be treated as any other asset.

4.1.11 Where an Applicant is not reasonably cooperating with the process required for a proper financial assessment, the Area Director has the discretion to refuse their Application on this basis alone. This discretion is exercised rarely and only in clear cases.

4.2 FINANCIAL ELIGIBILITY GUIDELINES

4.2.1 Legal Aid Manitoba assesses eligibility as set out in the chart below.

Family	Fully Eligible	Eligible—Partial Contribution	Eligible—Full Contribution
1	\$14,000	\$16,000	\$23,000
2	\$18,000	\$20,000	\$27,000
3	\$23,000	\$25,000	\$31,000
4	\$27,000	\$29,000	\$34,000
5	\$31,000	\$33,000	\$37,000
6	\$34,000	\$36,000	\$40,000
> 6	\$37,000	\$39,000	\$43,000

4.2.2 These guidelines are established by Management Council and reflect the present ability of Legal Aid Manitoba to provide ongoing funding for eligible low income Applicants. An Area Director has discretion to waive strict compliance with these guidelines to prevent an apparent injustice or, with reference to all aspects of the Mission Statement of Legal Aid, to ensure the guiding principles of Legal Aid are fulfilled. The Area Director should avoid any marked or regular departure from the guidelines.

4.2.3 Applicants on social assistance are presumptively financially eligible for legal aid. Where a social assistance recipient has equity in real property, a Charge on Land is required so the cost of representation can ultimately be recovered upon the sale of the property.

4.0 FINANCIAL ASSESSMENTS: PRACTICE NOTES

FOSTER PARENTS

Foster parents generally receive funds in that capacity only to provide for the needs of the foster child(ren) in their care. They do not receive funds as pay for employment. The funds foster parents receive to provide for the needs of foster children are not included in income. Since the money received is sufficient to cover the child(ren)'s needs, the child(ren) is(are) not counted when calculating family size.

FOSTER TREATMENT HOMES

Foster treatment programs sometimes hire foster treatment teams to parent high needs foster children. The teams or parents in these homes are often paid a substantial salary. In these situations, the funds received for the child(ren) result in their not being counted in family size, but the income is taken into account when assessing financial eligibility.

5.0 MERIT ASSESSMENTS

5.1 MERIT ASSESSMENTS GENERAL GUIDELINE

- 5.1.1** A Legal Aid certificate will not issue without a determination as to merit. The Area Director maintains on each file a clear and concise statement of the basis for the assessment as to merit and all materials upon which that assessment as to merit is based.
- 5.1.2** The Area Director assesses the reasonable likelihood of success and the potential benefit to the Applicant to determine if the cost of providing coverage is justified in light of the current resources available to Legal Aid Manitoba. The general test is whether the matter is “significant enough that a reasonable person of modest means would pay a lawyer to represent them”.
- 5.1.3** The Area Director determines merit on the basis of the nature of the matter as disclosed in pleadings, and any summaries, reports, or opinion letters submitted on behalf of the Applicant or disclosed by reasonable investigation.
- 5.1.4** The Area Director considers the availability of other forms of assistance, as well as the ability of an unrepresented Applicant to meaningfully participate in the court process, when deciding the merit of an Application.
- 5.1.5** The Area Director has discretion to find there is no merit to an otherwise meritorious Application where it is apparent that the Applicant has been using the services of Legal Aid Manitoba for an improper purpose such as unreasonably delaying or frustrating the court process.
- 5.1.6** Applications in circumstances other than those specifically set out in this manual are assessed for merit by the Area Director on a case by case basis.
- 5.1.7** The Area Director retains a discretion to assess and find merit based on any reasonable information to prevent an apparent injustice or, with reference to all aspects of the Mission Statement of Legal Aid Manitoba, to ensure the guiding principles of Legal Aid Manitoba are fulfilled. Each exercise of this discretion must be reported to the Executive Director or his designate.

5.0 MERIT ASSESSMENTS: PRACTICE NOTES

TEST CASES AND CHALLENGES TO LEGISLATION

These are cases where the rights of a group of persons are deliberately put in issue. They are generally brought to determine an issue separate from the immediate matter before the court, or to establish a precedent that will assist Legal Aid Manitoba in fulfilling its mandate. There are often significant political issues involved, and these cases can be very costly. Legal Aid Manitoba has limited and fluctuating resources. Where a challenge to the legislation might have significant repercussions more generally it shall be treated as a test case. Appropriate information shall be collected and the Application shall be referred to the Executive Director.

A lawyer who wishes to challenge the validity of legislation as part of defending an action for which a certificate has issued needs further approval. If this is the most effective way of defending the action, an Area Director may grant approval.

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

Where a certificate of independent legal advice is sought in relation to a matter Legal Aid Manitoba would ordinarily cover, there is merit. A good example is a collaborative law case where one party who has agreed to participate in the collaborative process, is self-represented, and requires independent legal advice for the purposes of executing a final agreement. A certificate will issue for the time necessary to review the agreement, give the advice, and provide a "Certificate of Legal Advice".

5.2 MERIT IN CRIMINAL MATTERS

5.2.1 Applications from adults and young persons charged with:

- a) indictable offences;
- b) offences under the *Extradition Act*;
- c) offences under the *Fugitive Offenders Act*; or
- d) a matter that includes a Crown application for preventative detention under PART XXIV of the Criminal Code (Dangerous Offenders and Long Term Offenders)

are deemed to have merit.

5.2.2 Applications have merit when:

- a) conviction will likely result in a sentence of imprisonment;
- b) conviction will likely result in the loss of the Applicant's primary source of income, or a student's anticipated primary livelihood;
- c) counsel have been appointed under s.25(4)(b) YCJA;
- d) a Crown appeal, if successful, will likely result in imprisonment;
- e) breach of a conditional sentence order is alleged;
- f) the Crown seeks a Peace Bond under s. 810.2 of the *Criminal Code*;
- g) a firearms prohibition will result from the conviction and hunting for food is a significant part of the family sustenance; or
- h) the Area Director determines that a fair hearing is unlikely to occur without the assistance of counsel due to the Applicant's disability, the complexities of the case, or other intractable barrier.

5.2.3 Applications for persons in custody have merit where:

- a) an application for release has not been made and Legal Aid duty counsel is not available to make a bail application;
- b) a bail application has been made and denied; or
- c) the Applicant has been sentenced to incarceration and a conviction is likely to lengthen the period of incarceration or result in a significant loss of freedom or livelihood while incarcerated.

Where the only basis of merit is this section, merit extends only to representation necessary to secure the release of the Applicant or relief from the loss of freedom or livelihood.

- 5.2.4** Applications to assist with a LERA complaint, or where the RCMP are implicated, to Division “D” professional standards unit, have merit where there is concrete and compelling evidence for complaint. LERA hearings that are already proceeding to a hearing have merit as a result of the pre-screening process of LERA itself.
- 5.2.5** Applications to pursue a Peace Bond do not generally have merit because the process to swear an Information to obtain a Peace Bond and the hearing are available as a summary process through the Provincial Court Clerk's Office.

5.2 MERIT IN CRIMINAL MATTERS: PRACTICE NOTES

COURT APPOINTED COUNSEL UNDER SECTION 25(4)(b)

Where the court appoints counsel under section 25(4)(b) of the YCJA, and the parents do not qualify due to excess income, a staff lawyer will be appointed, since choice of counsel is otherwise available to the client through private retainer.

5.3 MERIT IN DOMESTIC MATTERS

5.3.1 Applications have merit where:

- a) counsel have been appointed pursuant to section 34 of the *Child and Family Services Act*;
- b) parents/legal guardians are newly separated and only *ex parte* orders, or no court orders, have been made for custody, access, or child support;
- c) custody or access are in issue and there is evidence that the physical or psychological well-being of a child, or an established parent child relationship is at stake;
- d) spousal maintenance alone is sought by a wholly dependent spouse or common-law partner in a long term, traditionally dependent role;
- e) an Applicant in receipt of social assistance seeks, and is reasonably likely to receive, child support;
- f) a declaration of parentage is needed to determine responsibility;
- g) access is denied or seriously restricted contrary to a court order;
- h) an Applicant entitled to arrears seeks to have a *Divorce Act* order varied to include a maintenance enforcement clause;
- i) a payor has a reasonable case to substantially reduce arrears and the costs of serving the payee are known and reasonable;
- j) a grandparent seeking access has a strong relationship to a child and there is a reasonable likelihood of success;
- k) Child and Family Services have apprehended a child, or advised apprehension will take place absent a court order;
- l) guardianship is contested, and there is a reasonable likelihood of success; or
- m) adoption proceedings are opposed and there is a reasonable likelihood the Applicant will ultimately be granted custody or access.

5.3.2 Applications for divorce have merit where a client has waited, or will wait, one year from the date of separation to pursue the divorce proceedings and corollary relief respecting children, or any other relief set out in 5.3.1, is in issue.

5.3.3 Applications for divorce without other relief have merit where one year has passed since separation and the costs of serving the opposite party are known and reasonable.

- 5.3.4** In all other circumstances Applications for custody, access, child support, or divorce will be assessed on the basis set out in 5.1 above.
- 5.3.5** Applications to vary or set aside existing orders in circumstances other than 5.3.1 above only have merit in exceptional circumstances and are determined by the Area Director on a case by case basis.
- 5.3.6** Applications to defend Maintenance Enforcement proceedings have merit where a matter has been referred to the Master and there is a reasonable likelihood of incarceration or loss of employment.

5.3 MERIT IN DOMESTIC MATTERS: PRACTICE NOTES

CUSTODY AND ACCESS VARIATIONS

Legal Aid Manitoba will generally not issue a certificate to vary an existing custody or access agreement. The Applicant will have a heavy onus to show that the *status quo* is no longer in the best interests of the child. A Winnipeg or Brandon client seeking such a variance will generally be referred to Family Conciliation for mediation.

CUSTODY AND ACCESS: DELAYED APPLICATION

There is generally no merit to an Application for access or custody of a child where a substantial period of time has elapsed before the Applicant makes an effort to establish a relationship with the child. An Area Director may find merit where the person has a satisfactory explanation for the delay, or where the Applicant is the only defence to an Application for guardianship by a CFS agency.

CHILD SUPPORT VARIATION: CHILD SUPPORT GUIDELINES

The Provincial Child Support Recalculation Service (PCSRS) provides services relating to the variation of ongoing child support orders. There is usually no benefit to the Applicant beyond what PCSRS can provide and hence no merit for Legal Aid purposes.

COSTS FOR SERVICE OF DOCUMENTS

The costs of service are a substantial factor in assessing merit where the costs would reasonably cause a person of modest means to forego legal action. In some cases the cost of service (or substitutional service) will not be known until a ruling determining the means of service has been obtained. When assessing the impact of such costs on merit, consideration must be given to whether the issue of costs can be addressed by placing conditions on the certificate or effecting service by registered mail followed by a motion to validate improper service.

PROTECTION ORDERS

Applications for Protection Orders do not generally have merit as they are provided in a timely manner by a Judicial Justice of the Peace. Applications to set aside a Protection Order without other relief have merit where there is a reasonable likelihood of success and matters such as access to children, or loss of employment, are in issue.

INTER-JURISDICTIONAL SUPPORT ORDERS

Applications that invoke the *Inter-jurisdictional Support Orders Act* have merit where an order is needed to ground other relief. Where all that is sought is the relief available under an ISO, the Application does not have merit but the client should be referred to a paralegal for assistance with making the application.

5.4 MERIT IN CIVIL MATTERS

5.4.1 Applications for the matters listed below will be assessed for merit in the ordinary course. Applications for matters that affect a significant number of low income persons will be assessed for merit by the Executive Director and directed to the Public Interest Law Centre.

5.4.2 Applications have merit where there is sufficiently concrete and compelling evidence that supports the Applicant's case, and it involves:

- a) a Residential Tenancies Branch or Commission hearing that could result in eviction;
- b) a WCB matter before a Review officer or Appeals Commission;
- c) an MPI matter at the Review Office or before the Automobile Injury Compensation Appeals Commission;
- d) a CPP matter at or above the Reconsideration level;
- e) a Social Assistance matter where the Applicant has been wrongly denied Social Assistance, or an appropriate benefit, or is liable for a substantial overpayment;
- f) opposing a finding that the Applicant is not competent to arrange their affairs, or to remove the Public Trustee or other person as the Applicant's committee; or
- g) a person being detained under The Mental Health Act. There is a reasonable likelihood that intervention of counsel will shorten the period of detention or substantially change restrictive conditions on release.

5.4.3 Applications to oppose registration on the Child Abuse Registry have merit where there is no criminal conviction and registration would significantly restrict opportunities for work in the Applicant's primary employment or a student's anticipated livelihood.

5.4.4 Crown requests to represent persons who are the object of a third party records application will result in the immediate appointment of a Legal Aid Manitoba staff lawyer. The crown will reimburse Legal Aid Manitoba in full together with an administration fee.

5.4.5 Applications for representation in immigration matters have merit where:

- a) a finding of Refugee Status is sought;

- b)** a deportation or removal order is opposed;
- c)** a detention review or bail hearing is to be contested; or
- d)** a person will continue to be resident in Manitoba pending an admissibility hearing

and there is a reasonable likelihood of success.

5.4 MERIT IN CIVIL MATTERS: PRACTICE NOTES

6.0 CLIENT CONTRIBUTIONS

6.1 WARDS OF CHILD AND FAMILY SERVICES AGENCIES

6.1.1 Child and Family Services Agencies have an obligation to provide legal services to their wards. Legal Aid Manitoba has an agreement to provide these services to some Child and Family Services Agencies, but not all. A certificate will issue to a ward of a Child and Family Services Agency only if they have a contract with us to provide legal services to their wards.

6.2 AGREEMENTS TO PAY

6.2.1 An Applicant who falls into “Partial Contribution” categories in the eligibility guideline, and is able to pay for part of their legal representation, is required to enter into an Agreement to Pay. The Agreement to Pay will require partial payment of the costs of representation as determined by the Area Director.

6.2.2 An Agreement to Pay is signed by the Applicant as a condition precedent to the validity of the certificate. An Agreement to Pay requires a monthly payment until the set amount is paid. The Area Director may vary or dispense with the Agreement to Pay where the financial circumstances of the Applicant change, the Agreement is causing undue hardship, or the Applicant has paid more than will reasonably be required to cover the cost of legal services under the certificate.

6.2.3 If an Applicant fails to make a payment on the Agreement, the Area Director notifies the Applicant of the need to bring the payments up to date. Where a payment remains unpaid for 30 days without a meritorious explanation the certificate is canceled. A canceled certificate may be reactivated without a further Application within 60 days if a meritorious explanation for the failure to pay is provided, the account is brought up to date, or where counsel is unable to remove themselves from the record due to a pending hearing date.

6.2.4 Where the amount collected on the Agreement to Pay exceeds the cost of the representation provided the excess is refunded to the Applicant following the expiration of the 30 day appeal period for taxation of accounts.

6.3 EXPANDED ELIGIBILITY

- 6.3.1** Where an Applicant falls within the full contribution eligibility guideline, a certificate may issue subject to a contract to pay the full cost of the representation in regular payments, usually on a monthly basis (an Expanded Eligibility, or “EE”, contract) plus an administration fee of 25% of fees up to a maximum of \$250.00.
- 6.3.2** An Expanded Eligibility contract is signed by the Applicant as a condition precedent to the validity of the certificate. The Area Director may vary or dispense with the EE contract where the financial circumstances of the Applicant change, the contract is causing undue hardship, or the Applicant has paid more than will reasonably be required to cover the cost of legal services under the certificate.
- 6.3.3** If an Applicant fails to make a payment on the EE contract the Area Director notifies the Applicant of the need to bring the payments up to date. Where a payment remains unpaid for 30 days without a meritorious explanation the certificate is canceled. A canceled certificate may be reactivated without a further application within 60 days if a meritorious explanation for the failure to pay is provided or the account is brought up to date.
- 6.3.4** Where the amount collected on the EE contract exceeds the cost of the representation provided, the excess is immediately refunded to the Applicant following the expiration of the 30 day appeal period for taxation of accounts.

6.4 CHARGES ON LAND

- 6.4.1** A Charge on Land is a special lien against the property of a person whose name appears on title and who has been granted services by Legal Aid Manitoba. The lien secures the cost of representation provided to the person who has the interest in the property. A purchaser of the property will ordinarily insist that the lien be removed prior to purchasing the property. Where the cost of the representation is paid to Legal Aid Manitoba a discharge is provided.
- 6.4.2** Since the equity owned is often not known by Applicants, and property values can change rapidly, a signed Charge on Land is a condition precedent to the validity of the certificate whenever an Applicant has their name on title to property registered in the Land Titles Office.

- 6.4.3** Legal Aid Manitoba does not cause a property owner to sell their property to recover the cost of representation and generally postpones Legal Aid Manitoba's interest where an owner has to refinance their mortgage, unless the client is refinancing to pay creditors, in which case Legal Aid Manitoba expects the lien to be paid out rather than postponed.
- 6.4.4** Where an Agreement to Pay or EE contract is entered into by an Applicant, the Charge on Land need not be registered unless the person defaults on their payments.
- 6.4.5** A Charge on Land, once filed, can secure the cost of representation on any subsequent certificates, but the Applicant must be notified of this intention as each new certificate is issued.

6.5 RECOVERY FROM COURT AWARDS

- 6.5.1** When an award is made to a client, Legal Aid Manitoba is entitled to recover the cost of representation as a charge against the award. Legal Aid Manitoba generally excludes from this recovery all child maintenance awards, ongoing awards of spousal maintenance and awards of modest arrears for spousal maintenance.
- 6.5.2** Where a lump sum spousal benefit is awarded, the Area Director, taking into account the basis for the award and the circumstances and needs of the family, may recover some or all Legal Aid Manitoba's costs from the award.
- 6.5.3** Where costs are ordered in the client's favour, Legal Aid Manitoba is entitled to the costs but will not collect costs ordered that exceed the actual cost of representation, unless double costs are specifically awarded by the court. Legal Aid Manitoba expects counsel acting on behalf of a Legal Aid Manitoba client to make reasonable efforts to collect costs prior to closing the case and billing the certificate. If counsel is able to collect costs for the client, they are paid an incentive and agency fee of 50% of the amount received.

6.6 UNPAID CLIENT ACCOUNTS

- 6.6.1** When an Applicant has previously defaulted on an Agreement to Pay or EE contract, and there are outstanding arrears, the applicant, except in the circumstances set out in 6.6.2 and 6.6.3, is required to make arrangements to satisfy the outstanding amount before they will be considered for coverage.
- 6.6.2** Where an Applicant has an explanation for defaulting that would have resulted in the obligation to pay being deleted, the default will not prevent ongoing financial eligibility.
- 6.6.3** If the Applicant would, but for the default, be fully eligible now, then the Area Director should consider the seriousness of the current matter, present ability to pay, and the circumstances of the default and may grant coverage in spite of the default.

6.0 CLIENT CONTRIBUTIONS: PRACTICE NOTES

7.0 RECIPROCAL AGREEMENTS

- 7.1** A non-resident requiring legal services for a family or civil matter in Manitoba applies through the Legal Aid plan in their province or territory. An incoming referral from another province is received by the Legal Director, assessed for merit only, and counsel is appointed where appropriate.
- 7.2** Where counsel is appointed on an incoming referral, the matter is dealt with thereafter in the same manner, using the same criteria as for a Manitoba resident.
- 7.3** Information respecting the ongoing provision of legal aid, including the name, address and phone number of the person with conduct of the matter, and any information that might affect disbursement costs and ongoing eligibility, is promptly forwarded to the province or territory of residence.
- 7.4** A resident of Manitoba who requires legal representation on a civil or family matter in another province or territory (outgoing referral) applies through Legal Aid Manitoba. The Area Director makes an initial assessment of financial eligibility and merit and, where appropriate, collects the information in support of the Reciprocal Application.
- 7.5** The information collected for an outgoing referral includes copies of any pleading received or made by the Applicant, names and addresses of opposing parties and/or counsel, and an agreement to attend the other jurisdiction at their own expense as required for court purposes. The Area Director forwards the above information and completed Application to the Legal Director for determination of eligibility and outgoing referral where appropriate.
- 7.6** Criminal matters are not covered by the Reciprocal Agreement. Generally these applications are assessed by, and the representation paid for, in the jurisdiction where the matter will be heard.
- 7.7** Where an inmate has been transferred to an institution in another province while serving a sentence, most matters respecting the sentence including appeals and parole hearings will be heard in the jurisdiction where sentence was imposed. In these cases, Legal Aid can often assist in taking the appropriate Application and gathering supporting materials to be sent to the originating province. The Area Director makes referrals to the institutional Duty Counsel as necessary for this purpose.

- 7.8** Applications to have criminal matters waived into Manitoba for guilty plea will be assessed by the Area Director and dealt with in the ordinary course. Applications by persons in custody to waive in charges from another province for guilty plea will generally have merit, since unresolved matters usually result in denial of parole.

7.0 RECIPROCAL AGREEMENTS: PRACTICE NOTES

8.0 REFUSALS

- 8.1** All Applications that do not meet the criteria for eligibility, or exceed the time lines and other requirements of eligibility in this manual, result in a Notice of Refusal. The Notice of Refusal is prepared and sent to the Applicant, and any counsel indicated on the Application, immediately upon the decision being made to refuse the Application.
- 8.2** A Notice of Refusal is in the form provided in these guidelines and includes:
- a)** a concise statement of all the matters/charges for which eligibility was considered;
 - b)** the exact wording of all refusal codes that apply;
 - c)** notice of the right of appeal in the exact wording provided, and
 - d)** a copy of the form "Notice of Appeal".

8.0 REFUSALS: PRACTICE NOTES

9.0 CERTIFICATE ISSUANCE

- 9.1** A certificate is a formal contract to pay the legal fees and disbursements in a legal matter or matters. It contains:
- a)** the name of the counsel who has been appointed;
 - b)** a concise, complete, and accurate description of all matters for which representation, and billing, is authorized;
 - c)** the tariff category or number of authorized hours that apply to each matter;
 - d)** any conditions placed upon the representation provided; and,
 - e)** any disbursements specifically authorized, including limitations on those disbursements.
- 9.2** All criminal matters on the same Information/Indictment or that arise out of the same transaction, and all family or civil remedies that will be pursued in the same court procedure, are listed in a single paragraph under the heading "Legal Matter". Criminal matters on a second Information/Indictment and that arise out of a separate transaction, or family and civil remedies that have been authorized for a second and separate court procedure, are set out in a separate paragraph under another heading "Legal Matter".
- 9.3** Each Legal Matter on a certificate has a distinct number associated with it, and this number appears on the certificate following the heading "Legal Matter".
- 9.4** Matters assessed as not having sufficient merit on their own to grant separate coverage are set out in a separate paragraph (separated by the word "Also"), but without the heading "Legal Matter" and without a distinct number.
- 9.5** Where a certificate needs to be amended after issuance the Area Director may:
- a)** correct an error in existing coverage by adding the words "amend to read" and rewriting the coverage on the certificate to reflect the correction;
 - b)** add a disbursement or increase the scope of coverage provided on a previously authorized matter by adding the words "amend to include" and describing the change (e.g. permission to proceed to trial); or
 - c)** authorize coverage within the same certificate by adding the phrase "amend to add" and adding a new paragraph identifying the coverage in accordance with the guidelines in 9.1 to 9.6 above.

- 9.6** Where additional authorization is required prior to taking a step, such as setting a trial date, the authorization for that matter is preceded by the phrase “prior authorization from the Area Director required prior to _____”, filling in the contingent step.
- 9.7** Where a law firm or the same lawyer represents more than one accused in a criminal matter the paragraph granting coverage shall be followed by the phrase “No fees or disbursements payable if conflict arises as counsel has been advised the same lawyer or firm represents a co-accused”.
- 9.8** Where a certificate is issued for a limited purpose the Area Director assesses the number of hours anticipated to conclude the matter and authorizes representation for a limited number of hours.
- 9.9** Where corollary relief sought is by way of varying an existing order, tariff 2 will only be authorized where there has been a demonstrable change in circumstances and substantial preparation is required to address the issues raised.
- 9.10** Where the same counsel has provided partial representation on a matter (a warrant has issued, or some applicable relief is being sought that could have been included in previous representation), the certificate indicates a reduced tariff will be paid. The paragraph setting out the applicable matters will be followed by the phrase “to be reduced by fees previously paid for Legal Matter # _____”.
- 9.11** Where there is no Duty Counsel in a rural court, Duty Counsel is in conflict on a matter, or a special trial sitting has been set, and there is no local private bar available/willing to provide representation, the Area Director will provide travel time and mileage for non-local private bar to attend court. Such travel time and mileage will be proportionate to the needs of the case but generally will not exceed three trips.
- 9.12** A certificate issued by an Area Director includes authorization for such disbursements as are apparently necessary at the time of issuance. Where a disbursement benefits more than one party in a matter, and the cost of a disbursement can be shared between the Applicant and another party to the action without identifiable prejudice to the Applicant, the expectation is that the cost of the disbursement will be shared. In this case the Area Director will initially authorize only the applicant's *pro rata* share of the disbursement.

- 9.13** The Area Director assesses requests to authorize disbursements or additional steps/motions in light of the potential benefit to the case, with particular value given to those that are likely to be dispositive of matters in issue. The guiding principle here, as elsewhere, is whether a reasonable person of modest means would bear the cost in light of the potential benefit it might afford to their case.
- 9.14** The Area Director may exercise discretion and grant a Legal Aid Manitoba certificate retroactively where counsel has:
- a) provided services necessary to secure a legal benefit for a financially eligible person,
 - b) demonstrated that the person would otherwise have been eligible for legal aid without contributions, and
 - c) provided a Legal Aid application that was taken prior to the disposition and that otherwise complies with Section 2.1 above,
- 9.15** A certificate granted pursuant to 9.14 above is not eligible for consideration in the BCM program or a Discretionary Increase.

9.0 CERTIFICATE ISSUANCE: PRACTICE NOTES

10.0 CANCELLATIONS

- 10.1** Legal Aid Manitoba certificates remain active for a period of six years after which they are automatically canceled absent a decision by an Area Director, recorded in writing on the file, to allow the certificate to remain active. In determining whether a certificate should remain active the Area Director considers:
- a) if the case is still active and beneficial to the client;
 - b) if a resolution is likely at a determinable point within the next two years; and
 - c) if the client is still financially eligible for legal aid.
- 10.2** All certificates are subject to investigation and financial review. They are canceled when the Area Director determines the client:
- a) no longer has reasonable grounds for the proceedings as authorized;
 - b) is no longer financially eligible for legal aid;
 - c) refuses to cooperate with the process of financial review;
 - d) the client lies or conceals information from Legal Aid Manitoba respecting pertinent financial matters, or
 - e) is no longer cooperating with their counsel to reasonably conclude the matter.
- 10.3** When a financial review is begun, a letter is sent to counsel in the matter requesting a status update. If the certificate is canceled prior to receipt of a status update, no fees are allowed for representation after the date of cancellation.
- 10.4** Both the client and counsel are advised of any pending review. Where a client does not respond to a request for information on a financial review within 14 days, a second notice is sent to the client and counsel. Where no response is received within the further 7 days, the certificate is canceled unless counsel has advised they cannot withdraw and a hearing date is set within the next 60 days whereupon the certificate is canceled with the proviso "...to take effect immediately upon conclusion of the scheduled hearing".
- 10.5** A certificate canceled pursuant to 10.3 may be reactivated within 30 days upon satisfactory compliance with the financial review and proof of ongoing eligibility. After 30 days, a new Application and Application fee are required and the Application is processed as a new Application.

- 10.6** A certificate is canceled when Legal Aid Manitoba is advised that the client has retained other counsel or determined to retain current counsel on a fee paying basis. Where new counsel requests that coverage be provided by Legal Aid Manitoba following a change in counsel, a new Application and Application fee are required unless the original Application was signed within the preceding 6 months.

10.0 CANCELLATIONS: PRACTICE NOTES

CHANGES IN COUNSEL

Requests for a change in counsel are made for a variety of reasons. In deciding whether to grant a change in counsel, the reasons must justify any change requested. This involves assessing the reason why the client's present counsel cannot continue.

Changes in counsel are costly to Legal Aid and cause delays in the court process. Legal Aid must allow for a change when needed, manage the costs and delays caused by such a change, and prevent the practice of changing counsel just because another lawyer is considered "better" than the client's first choice.

Except in extraordinary circumstances, where a change in counsel is requested, Legal Aid will appoint a Legal Aid staff lawyer in order to meet the objectives above.