



<p style="text-align: center;"><b>LAO PANEL STANDARDS</b> <b>REFUGEE AND IMMIGRATION: APPELLATE</b></p>
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## **GENERAL<sup>1</sup>**

These are the standards for membership on Legal Aid Ontario's (LAO) Refugee and Immigration: Appellate Panel. Membership on this panel will entitle the lawyer to acknowledge refugee and immigration certificates for matters before the Refugee Appeal Division, Federal Court, Federal Court of Appeal, Ontario Superior Court, Court of Appeal for Ontario, and the Supreme Court of Canada.

Lawyers can represent clients on these certificates, and be paid in accordance with the *Legal Aid Services Act*, LAO's regulations, the Tariff and Billing Handbook, and any applicable LAO policies. Staff at LAO and those providing services pursuant to a service agreement with LAO are also required to meet these standards in order to represent refugee and immigration clients and deliver these services.

Membership on this panel entitles a lawyer to use the services of LAOLAW and other LAO lawyer services, including LAO training resources that may be available.

Membership on the Refugee and Immigration: General panel is a prerequisite for membership on the Refugee and Immigration: Appellate panel. Conditional empanelment on the Refugee and Immigration: Appellate Panel is possible. The standards also include exemption clauses to allow LAO to empanel lawyers with equivalent skills.

These standards constitute the minimum requirements to join and remain on the panel, including experience and continuing professional development requirements, and LAO's expectations regarding quality client service and best practice.

The standards include criteria for both full and conditional membership on the panel; however, meeting these criteria does not guarantee admission to the panel. LAO reserves the right to determine an applicant's eligibility and suitability for empanelment, and may refuse empanelment or remove a person from the panel if necessary for the protection of vulnerable clients.

LAO reserves the right to make discreet inquiries, as it deems appropriate, with respect to a lawyer's competence.

Panel membership is for a duration of three\* (3) years, unless the lawyer withdraws from the panel or membership is revoked by LAO prior to the expiry of the three\* year period. Panel membership can be renewed on application by the lawyer, who will be required to establish to

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<sup>1</sup> LAO will develop, in consultation with the RLA, a process for implementation and enforcement of these standards

\* Duration changed from three (3) to five (5) years.

the satisfaction of LAO that s/he continues to meet these standards, or any such standards as are in force at the time of renewal.

## **COMPLIANCE AND ANNUAL REPORTING - PANEL MANAGEMENT**

All lawyers on the Refugee and Immigration: Appellate Panel must certify their ongoing compliance with these standards (including LAO's Quality Service Expectations, Best Practices Guide, and any applicable conditions) on an annual basis. All lawyers on this panel must also comply with the Refugee and Immigration: General panel standards, the *Legal Aid Services Act*, its regulations and schedules, the Tariff and Billing Handbook, and LAO's general policies, and administrative procedures. Failure to comply with LAO's panel standards, Quality Service Expectations, Best Practices Guide, or in the case of conditionally empanelled lawyers, any applicable conditions may result in the lawyer being suspended or removed from the panel.

LAO may require verification of compliance with the standards at any time. All lawyers on this panel are required to co-operate fully with reasonable LAO verification requests and compliance investigations.

## **PANEL MEMBERSHIP CRITERIA**

### **1. Law Society Member In Good Standing**

Lawyers on the Refugee and Immigration: Appellate panel must be licensees in good standing with the Law Society of Upper Canada.

### **2. Demonstrated competence in appellate level refugee/immigration law<sup>2</sup>**

To be eligible for full membership on the Refugee and Immigration: Appellate Panel, a lawyer must demonstrate competence in refugee/immigration law. There are several ways to demonstrate competence.

#### **a. Recent experience**

While not determinative, having significant recent experience in refugee/immigration law at the appellate level may be an indicator of competence. A lawyer will be deemed to have significant recent experience if, **in the past two years**, s/he has dedicated a minimum of 50% of his/her practice to refugee/immigration law, and during that time has completed 10 or more of any combination of the following:

- Refugee Appeal Division appeals
- Perfected Federal Court Applications for Leave and for Judicial Review of RPD, RAD, PRRA or Danger Opinion decisions
- Federal Court motions to stay removal
- Federal Court judicial review hearings in respect of RPD, RAD, PRRA or Danger Opinion decisions

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<sup>2</sup> Note: LSUC certification as a specialist in refugee law satisfies the requirement for minimum related experience.

- Appeals before the Federal Court of Appeal in respect of refugee/immigration law matters

**b. Historical experience**

Likewise relevant but not determinative of appellate competence is significant historical experience in refugee/immigration law at the appellate level. A lawyer will be deemed to have significant historical experience in refugee/immigration law at the appellate level if, during at least five of the past seven years, s/he has dedicated a minimum of 50% of his/her practice to refugee/immigration law, and during that time has completed 25 or more of any combination of the following:

- Refugee Appeal Division appeals
- Perfected Federal Court Applications for Leave and for Judicial Review of RPD, RAD, PRRA or Danger Opinion decisions
- Federal Court motions to stay removal
- Federal Court judicial review hearings in respect of RPD, RAD, PRRA or Danger Opinion decisions
- Appeals before the Federal Court of Appeal in respect of refugee/immigration law matters

**c. Alternatives to experience**

Length of experience or numbers of cases do not necessarily indicate competence or expertise. For example, some highly competent lawyers from smaller centres or practicing in poverty law clinics may be unable to meet the numerical experience thresholds. Such persons may nevertheless be able to demonstrate their competence in appellate level refugee/immigration law through other means. Lawyers in this situation should advise LAO as to the length of time during which they have practiced refugee/immigration law and the number and types of refugee/immigration matters they have undertaken during this period; and should:

- Provide details regarding any supervision or mentoring they have received while undertaking these matters;
- Explain the circumstances leading to lower numbers (e.g., having recently been called to the bar; having recently transferred from another area of law; practicing in a smaller centre with fewer claimants; having experienced a significant recent reduction in claims from a client community that was a focus of the person's refugee practice; having been engaged in lengthy or particularly complex test cases);
- Explain any expertise they have in the area, whether acquired as a decision-maker, in academia, or otherwise;
- Explain any other relevant circumstances.

**Supporting documents**

All applicants, regardless of experience, will be required to provide to LAO copies of two recently completed and filed RAD, JR or stay motion records, including the indices, affidavits, and memoranda of argument, along with copies of the decisions and reasons in those cases.

All applicants are requested to provide the names and telephone numbers of two experienced refugee lawyers (preferably LAO panel members) who are familiar with the applicant's work and

are willing to act as references. This requirement can be waived if the applicant is reasonably unable to provide such references.

Applicants seeking admission to the panel under section (c) above (“alternatives to experience”) must also provide LAO with their CV and any relevant and applicable documentation to support their request, such as names and contact information of mentors, proof of other relevant experience such as in academia or as a refugee decision maker, citations for, or copies of, published articles or papers on refugee law issues, etc.

### **LAO’s Discretion**

LAO retains the discretion to decline to empanel a lawyer, even if the lawyer meets or exceeds the recent and/or historical experience threshold, if the lawyer fails to demonstrate to LAO’s reasonable satisfaction that s/he is competent in refugee/immigration law or if, in LAO’s opinion, it is in the public interest to refuse empanelment.

### **Remaining on the panel**

To remain a full member of the Refugee and Immigration: Appellate panel, a lawyer must be able to demonstrate competence on an ongoing basis. LAO shall have the discretion to remove a panel member if s/he has not acted on a minimum of 5 refugee/immigration matters within the previous year.

### **CONDITIONAL EMPANELMENT**

LAO may consider a lawyer for conditional empanelment to the Refugee and Immigration: Appellate panel if the lawyer was called to the Bar of Ontario:

- Within the previous two years, or
- More than two years prior but wishes to change his or her practice concentration to Refugee and Immigration matters.

LAO shall require a conditionally empanelled lawyer to fulfill certain conditions. The conditions are designed to ensure the lawyer acquires adequate refugee law appellate experience before being appointed to the full panel. LAO expects conditionally empanelled lawyers to commit to fulfilling any applicable conditions within a stipulated time period.

Conditions may include:

- Working under the supervision of a mentor approved by LAO, and pursuant to a mentorship arrangement approved by LAO
- Engaging in Second Chair opportunities through LAO’s Second Chair program
- Observing three or more refugee-related proceedings at the Federal Court
- Completing approved refugee law or LAO-related training programs
- Successfully completing an examination or test mandated by LAO
- Completing approved appellate advocacy training programs
- Attending meetings with LAO staff as required by LAO
- Any other reasonable conditions deemed appropriate by LAO.

LAO will consult with the lawyer to develop conditions that are appropriate to the applicant's circumstances, including an applicant's prior experience in refugee law.

Upon fulfillment of the conditions, LAO will normally appoint the lawyer to the full panel. However, LAO shall retain the discretion to determine if and when a panel member is eligible to have their conditions of empanelment removed or extended, or if it is appropriate to deny the lawyer entry to the panel.

## **MANDATORY PROFESSIONAL DEVELOPMENT**

Members of the Refugee and Immigration: Appellate panel are required to complete a minimum of **three** hours of continuing professional development (CPD) each calendar year in refugee law-related Eligible Educational Activities.<sup>3</sup>

LAO may deem that a lawyer has met this requirement if the lawyer has professional development experience that exceeds or is equivalent to this standard. This experience could include:

- Teaching or publishing materials on refugee law;
- Acting as a mentor in a refugee law mentoring program established or approved by LAO;
- Having recognized and substantial recent experience in refugee law; or,
- Any other professional development experience that LAO determines appropriate.

## **QUALITY SERVICE EXPECTATIONS**

Panel members are required to comply with the following "Refugee and Immigration: Quality Service Expectations:"

Legal Aid Ontario (LAO) expects lawyers to act professionally, competently, and effectively, when representing legally aided clients.

The Law Society of Upper Canada's Rules of Professional Conduct (RPC) as they relate to lawyers reflect LAO's expectations regarding lawyers' duties to both the courts and to clients.

In particular:

### **Rule 2 "Relationship to Clients"**

- Competence
- Quality of Service
- Confidentiality
- Avoidance of Conflicts of Interest,
- Withdrawal from Representation; and

### **Rule 4 "Relationship to the Administration of Justice"**

The duty to act competently requires ongoing education and reflection upon one's work.

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<sup>3</sup> Eligible Educational Activities are the CPD-related activities designated by the Law Society of Upper Canada or LAO recognized equivalent programs.

1. LAO expects every member of the Refugee and Immigration: Appellate Panel to have knowledge of and, acting in the client's best interests, competently apply:

- The Immigration and Refugee Protection Act (IRPA), and other relevant legislation/law
- The Convention relating to the Status of Refugees and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- The Rules of Professional Conduct (Law Society of Upper Canada)
- The IRB Rules of Practice and Chairperson's Guidelines
- The Federal Courts Act
- The Federal Court Rules
- The Federal Court Immigration and Refugee Protection Rules
- Significant jurisprudence
- UNHCR Handbook on Procedures and Criteria for Determining Refugee Status
- Canada Evidence Act
- Interpretation Act

And to provide quality representation considering:

- A reasonable client of modest means
- Specific issues relating to vulnerable clients including survivors of torture
- Privilege
- Confidentiality
- Respect for the clients instructions
- Effective communication with clients using plain language
- Cultural and linguistic barriers
- Essential advocacy and tribunal skills including but not limited to: review of the refugee claim, research, advising the client, careful preparation of the documentation, strategizing, evidence gathering and disclosure, preparation for the hearing, preparation of the client, effective advocacy within the bounds of professional obligations.

2. LAO expects member of the Refugee and Immigration: Appellate Panel to represent his/her clients effectively and ethically considering the following:

- Knowing each of the elements of the claims
- Good familiarity with all of the evidence
- Knowledge of hearing procedures
- Effective interviewing skills
- Careful and timely review of disclosure
- Research on current country conditions
- Knowledge of current jurisprudence relating to the country and issues raised by the claim

3. Know your limits

- Accept only those cases for which you have the knowledge and experience to offer quality representation [Rule 2.01 RPC]
- Refer matters you are not competent to handle, or engage a mentor

4. Adhere to LAO's 'Best Practices Guide' to ensure that clients are provided with high quality legal services.

## **BEST PRACTICES GUIDE - REFUGEE AND IMMIGRATION LAW (APPELLATE)**

Panel members are required to comply with the following "Refugee and Immigration: Appellate Panel Standards Best Practices Guide:"

### **General principles**

In providing quality service to clients, the panel member shall endeavour to communicate with the client in plain language to their understanding and:

- Advance the client's case
- Provide the client with the information necessary to make informed decisions respecting his or her representation
- Respond promptly to reasonable inquiries from the client
- Make reasonable efforts to accommodate clients with special needs, including those who require interpreters and those with literacy or mental health issues
- Act professionally with civility and decorum
- Avoid unreasonable delays consistent with effective representation in the client's best interests, and a lawyer's duty as an officer of the court
- Act reasonably and refrain from pursuing issues that have no real prospect of success and that fail to advance the client's interests.

In addition, the panel member shall have knowledge of and familiarity with relevant provisions of:

- *Canadian Charter of Rights and Freedoms*
- *Convention relating to the Status of Refugees*
- *Convention Against Torture*
- *Immigration and Refugee Protection Act*
- *Immigration and Refugee Protection Regulations*
- *Rules of the Refugee Protection Division*
- *Rules of the Refugee Appeal Division*
- *IRB Chairpersons Guidelines*
- Relevant provisions of the *Federal Courts Act*
- Relevant provisions of the *Federal Court Rules*
- *Federal Court Immigration and Refugee Protection Rules*
- Leading jurisprudence in refugee law and relevant areas of immigration law

### **Best Practices**

- The lawyer (or person acting under her or his direct supervision) should in most cases meet with the client at the first opportunity to explain the legal process, obtain the record below and any available and permissible new evidence, and explore possible issues for argument.

- At this first meeting and all subsequent meetings, the lawyer and anyone acting under her or his supervision should be alert to potential linguistic, cultural or mental health issues that could affect the giving of instructions and/or the preparation or substance of the case. The lawyer should make reasonable accommodations or take reasonable steps, such as providing an interpreter, or providing appropriate referrals to medical or mental health practitioners and/or other relevant community resources. In some cases LAO may authorize translations, interpretation, medical or psychological reports.
- The lawyer should ensure that the client understands generally the procedures, role and powers of the relevant tribunal or court, and should be provided with a realistic assessment of likelihood of success and possible legal alternatives and/or recourses.
- The lawyer must at all times remain alert to potential and actual conflicts of interest that would result in an inability to represent the client.
- As soon as possible after the first meeting, when necessary and appropriate, the lawyer should seek relevant disclosure from previous counsel and from the first instance tribunal, and may also, in appropriate circumstances, seek disclosure under the Privacy Act of the client's file from the IRB, CIC, CBSA, and/or CSIS.
- The lawyer must make every effort to meet statutory and/or court-imposed deadlines. If a deadline is missed through no fault of the client, the lawyer must make best efforts to protect the client's rights and must accept responsibility before the tribunal or court when appropriate.
- Prior to finalizing a record, a lawyer should develop a sensible and coherent theory of the case, and should prepare clear and effective written submissions in support of the matter, addressing the relevant legal, factual and evidentiary issues raised by the application and relying on appropriate jurisprudence.
- Evidence and written submissions should be disclosed in a timely manner.
- In both written arguments and at any hearing, the lawyer is expected to represent the client's interests fearlessly and competently, including by bringing relevant motions, raising objections where necessary or appropriate, and providing fulsome but appropriate submissions addressing all the "live issues" at stake.
- As a general matter, lawyers should take advantage of statutory opportunities to file submissions in reply.
- The lawyer or her staff should keep the client apprised of any significant developments in the case.
- The lawyer should advise the client of the outcome of the case, explaining it where necessary, and should advise the client of the availability of further procedures.

## **Referrals**

Panel members should have the ability to recognize when a referral is appropriate. If a lawyer lacks expertise in other areas of law in which her or his client might need legal advice (e.g. welfare benefits, debt, housing, criminal law or family law issues), the lawyer should refer the client to another lawyer, a Community Legal Clinic, Legal Aid Ontario or the Law Society Referral Service.

## **Mentors**

Panel members are expected only to accept cases for which they have the required competence (see the Law Society of Upper Canada's Rules of Professional Conduct Rule 2.09 (7)). Where, in the course of proceedings, a lawyer determines that the complexity of the matter

exceeds her or his experience level s/he should seek a mentor or second chair; OR should consider a referral or retaining another panel member as an agent.

## **COMPLIANCE REVIEW**

LAO retains discretion to review compliance with these panel standards, and to suspend or remove a lawyer from the panel if, following an investigation, LAO reasonably concludes that the lawyer does not meet the standards. Alternatively or in addition, LAO may impose conditions on the lawyer for continuation on the panel, which may include working with a mentor, providing copies of files for review, permitting LAO representatives to attend hearings (with client consent), or other reasonable measures.

Circumstances that may trigger a compliance review include, but are not limited to:

- Complaints
- Change of Solicitor Requests
- LSUC investigations or proceedings
- Findings of misconduct, incompetence, inadequate representation, or other conduct unbecoming a member of the profession, by a court or tribunal
- Billing irregularities
- Criminal charges or convictions
- Requests from Area Committees or RAD Committees

## Appendix: Relevant legislation and resources

### *Legislation*

- The Immigration and Refugee Protection Act (IRPA) and associated regulations
- The Charter of Rights and Freedoms
- Convention related to the Status of Refugees
- Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment
- Rules of the Refugee Protection Division, Immigration Division, Immigration Appeal Division and the Refugee Appeal Division
- Federal Court Act
- Federal Court Rules
- Federal Court Immigration and Refugee Protection Rules
- Criminal Code
- Citizenship Act
- Canada Evidence Act
- Interpretation Act

### *Other sources*

- Significant relevant jurisprudence in the field of refugee, immigration, administrative and constitutional law
- IRB Chairperson's Guidelines
- Relevant chapters of Citizenship and Immigration Canada's Operations Manual
- UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees
- Applicable UNHCR Guidelines
- James C. Hathaway. *The Law of Refugee Status*
- Guy S. Goodwin-Gill, *The Refugee in International Law*