

# Financial eligibility testing for entity services provided by community legal clinics and student legal services organizations



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This policy applies to the application of the financial eligibility test, as established in the Legal Aid Services Rules (rules), by community legal clinics (clinics) and student legal services organizations (SLSOs).

## The financial eligibility test

Financial eligibility for legal aid services is established by the rules (see Appendix), and is based on a test that considers the following three elements:

- The individual's family unit,
- The family unit's gross income, and
- The family unit's liquid assets.

Subsection 12(1) of the rules addresses financial eligibility for all legal aid services, subject to section 15 of the rules which applies only to financial eligibility for entity services.

Subsection 12(1) provides that an individual is financially eligible to receive or to continue receiving legal aid services if:

- (a) the income of the individual's family unit, less any support reduction or medical reduction, does not exceed the maximum income set out for those legal aid services and
- (b) the value of the liquid assets of the individual's family unit does not exceed the maximum value of liquid assets set out for those legal aid services.

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The Financial Eligibility Table in section 12 establishes the gross annual income limits and the liquid asset value limits for entity services.

Section 15 of the rules applies to financial eligibility for entity services. Section 15:

- Addresses the financial eligibility of groups of individuals to receive entity services,
- Provides that any individual is financially eligible to receive summary legal advice and public legal education from an entity service provider, and
- Modifies the application of subsection 12(1) by providing that an individual is financially eligible to receive entity services if the primary source of income of the individual's family unit is one of the income sources named in subsection 15(2), as follows:
  - a. Ontario Works;
  - b. Ontario Disability Support Program;
  - c. Old Age Security Pension and Guaranteed Income Supplement;
  - d. Canada Pension Plan;
  - e. War Veterans Allowance;
  - f. Workplace Safety and Insurance Board benefits.

When an individual's primary source of income is one of the income sources named in subsection 15(2) of the rules, the individual is determined to be financially eligible without applying the income or asset thresholds.

## Summary legal advice and public legal education

As set out in subsection 15(4) of the rules, financial eligibility testing does not apply to the provision of summary legal advice and public legal education by an entity service provider.

## Contribution agreements

Contribution agreements are not required for clients of clinics or SLSOs.

# Discretion

A clinic or SLSO may exercise discretion to provide legal aid services that are subject to financial eligibility testing to an individual who does not meet the eligibility requirements set out in section 15 and whose income and liquid assets exceed the maximum amounts established in section 12 of the rules.

The exercise of discretion by a clinic or SLSO to provide legal aid services to a financially ineligible individual should occur in rare circumstances, and only with the approval of a clinic's board, in the case of services provided by a clinic, and only on the basis of one or more of the following grounds:

- debt load;
- importance of legal issues to low-income interests;
- high non-discretionary transportation expenses (relative to income);
- costs associated with a disability;
- excessive rental costs (relative to income);
- when the area of law is income-related, based on the merits of the case and the nature of the services requested;
- lack of alternative services;
- excessive child care expenses (relative to income)

A clinic's board may authorize the executive director to approve the exercise of discretion in individual cases on its behalf, in accordance with the requirements of this policy.

For clarity, the income and asset inclusions and exclusions that apply in financial eligibility determinations are as stated in the rules. Where no exemption or exclusion exists in the rules, discretion under this policy may be considered, as appropriate. Individuals must be considered on a case by case basis to determine whether discretion is appropriate.

The exercise of discretion to provide entity services to a financially ineligible individual shall be reported to LAO, in a form and manner approved by LAO.

Such reporting shall include the following information about the financially ineligible individual and the services provided by the clinic or SLSO to the individual:

- Income
- Liquid assets
- Ownership of real property, if any

- Legal issue
- Services provided
- Basis for exercise of discretion

## Transition

Recipients of legal aid services from a clinic or SLSO who were determined to be eligible prior to the effective date, including on the basis of a financial eligibility exemption approved by a clinic's board, will continue to be eligible until their existing retainer concludes.

# APPENDIX: Rule provisions that are relevant to financial eligibility testing for entity services

## FAMILY UNIT

As established by s. 4 of the rules (“Definitions”), the family unit consists of the individual who is seeking or receiving legal aid services and the individual’s family members.

Section 4 states that “family member”, in relation to an individual, means

- a. if the individual resides with a spouse, the spouse,
- b. a dependent child of the individual or of the individual’s spouse,
- c. if the individual resides with the individual’s parent and relies on the parent for support, the parent and any other dependent child of the parent,
- d. if the individual or the individual’s spouse has a dependent child who resides outside the home in accordance with a temporary order or agreement under the *Child, Youth and Family Services Act, 2017*, that child, and
- e. if the individual or the individual’s spouse shares parenting time of a dependent child and the child resides with the individual at least 50% of the time, that child; (“membre de la famille”)

Section 4 of the rules defines “dependent child” and “spouse” as follows:

- “dependent child”, in relation to an individual, means an individual
  - a. who has not reached 18 years of age, or who has not reached 26 years of age and is in full-time attendance at a school, college, university or other educational institution, and
  - b. who resides with the individual or is financially supported by the individual to reside outside the home; (“enfant à charge”).
- “spouse” means
  - a. a spouse as defined in section 29 of the *Family Law Act*,
  - b. either of two individuals who live together in a conjugal relationship outside marriage, or
  - c. either of two individuals who have declared to an agency other than the

Corporation that they are common law spouses; (“conjoint”).

## INCOME

The maximum gross annual income thresholds for entity services are set out at s. 12 of the rules as follows:

Family unit size for entity services	Gross annual income
1	\$22,720
2	\$32,131
3	\$39,352
4	\$45,440
5 or more	\$50,803

As established by s. 4 of the rules, “income” includes the sum of the gross annual income received by all of an individual’s family members during a given period from all sources. It includes, but is not limited to, every family member’s total earnings from wages and from investment enterprises and any other ventures.

Section 4 provides that “income” does not include any of the following:

- a. harmonized sales tax credit,
- b. earnings of a dependent child,
- c. criminal injury compensation paid by the Criminal Injuries Compensation Board,
- d. student loans and grants from the Government of Canada or the government of a province or territory and other student grants, bursaries and scholarships,
- e. income from the Government of Ontario’s Second Career Program,
- f. payments from a benefit plan for families with children from the Government of Canada or the Government of Ontario, including the universal child care benefit, the child tax benefit and the child disability benefit,
- g. compensation under the Canadian Thalidomide Survivors Support Program,
- h. payments made by a First Nation to its members of money received under an Aboriginal land claim settlement; (“revenu”)

Subsection 15(2) of the rules states that:

- (2) An individual is financially eligible to receive entity services if the primary source of income of the individual’s family unit is one of the following:

- a. Ontario Works;
- b. Ontario Disability Support Program;
- c. Old Age Security Pension and Guaranteed Income Supplement;
- d. Canada Pension Plan;
- e. War Veterans Allowance;
- f. Workplace Safety and Insurance Board benefits.

## ASSETS

Section 12 of the rules sets out that the maximum liquid asset thresholds for entity services are:

Family unit size for entity services	Liquid asset value limit for entity services
Individual	\$ 8,933
Family unit of 2 or more	\$11,910

Section 4 of the rules defines “assets” as the sum of all the assets owned by the family members, including but not limited to liquid assets and real property but not including any of the following:

- a. pensions and annuities that are locked in until retirement under the *Pension Benefits Act* or the *Pooled Registered Pension Plans Act, 2015*,
- b. Registered Disability Savings Plans,
- c. lump sum or periodic payments made under any of the following:
  - i. the Indian Residential Schools Settlement Agreement,
  - ii. the Federal Indian Day School Settlement,
  - iii. a “60s Scoop” settlement,
  - iv. an Aboriginal land claim settlement,
  - v. any other payment received from the Government of Canada or the government of a province or territory under a settlement specified by the Corporation,
- d. compensation received under the Canadian Thalidomide Survivors Support Program,
- e. assets of a dependent child, including Registered Education Savings Plans,
- f. an absolute discretionary trust (otherwise known as a “Henson trust”) of which a

disabled member of the family unit is the beneficiary.

Clause 12(1)(b) of the rules, and the “liquid asset value limit for entity services” in the s. 12 Table, provide that the calculation of assets for the purpose of determining financial eligibility is based on liquid assets.

Section 4 of the rules defines “liquid assets” as follows:

- “liquid assets” means cash and assets that are readily convertible to cash and, for greater certainty, does not include real property; (“biens liquides”).

## GROUPS OF INDIVIDUALS

Subsection 15(3) of the rules states that:

- (3) A group of individuals who have a common legal matter is financially eligible to receive entity services in relation to that legal matter if
  - a. the number of members of the group makes it impractical to assess financial eligibility under subsection 12 (1) for each member;
  - b. the entity services provider applies a financial test that demonstrates objectively that a majority of the members of the group would be financially eligible under subsection 12 (1) or subsection (2) of this section for the entity services; and
  - c. the financial circumstances of the members of the group and the likely cost of retaining the services of a lawyer prevent the group from retaining a lawyer and sharing the cost of the lawyer.