

Eligibility for appellate matters and prerogative relief applications



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Eligible applications

LAO may fund applications:

- to appeal a court order or tribunal decision
- to seek judicial review of a court order or tribunal decision
- to respond to an appeal or an application for judicial review
- for prerogative relief, including mandamus, habeas corpus, prohibition, and certiorari

A decision with respect to an application for appellate or prerogative relief certificate services is final and not reviewable.

Merit assessments

Appellate and prerogative application services are subject to an initial and ongoing merit assessment that includes consideration of:

- whether a reasonable client of modest means would pursue the matter having regard to legal fees and the likely outcome of the case
- the cost of proposed litigation against any amount(s) in dispute
- the likelihood of success
- the availability and relevance of any evidence put forward by the parties
- any applicable statute of limitations
- whether the individual seeking the services is a respondent in an appellate matter initiated by a State funded litigant, such as the Crown or a Children's Aid Society
- the opinion of the roster member who provided services in the matter being appealed, or regarding which a prerogative application is being sought, as the case may be

Eligible matters

LAO may provide certificate services for meritorious appellate and prerogative relief matters as follows:

Criminal law matters

Certificates may be available for the following:

- to appeal conviction and sentence, conviction only, or sentence only decisions of:
 - the Ontario Court of Justice
 - the Ontario Superior Court of Justice
 - the Ontario Court of Appeal
- to appeal dangerous offender designations
- to appeal long-term offender designations
- to respond to Crown appeals

An application for certificate services in respect of appellate criminal law matters will be considered meritorious where LAO has determined that there is sufficient likelihood that the individual will face a custodial sentence.

Certificate services are not available for an appeal of a non-custodial or conditional sentence.

Individuals seeking certificate services who have completed a custodial sentence, or who will have completed the custodial portion of a sentence before an appeal on the merits can be heard, are not eligible for certificate services.

Family and child protection law matters

Certificate services may be available to appeal temporary or final family law or child protection decisions of the:

- Ontario Court of Justice
- Ontario Superior Court of Justice
- Divisional Court of the Superior Court of Justice
- Ontario Court of Appeal
- Federal Court (Trial Division)

- Federal Court of Appeal

Immigration and refugee law matters

Merit is presumed where an individual is seeking certificate services to respond to:

- a Minister of Public Safety and Emergency Preparedness's motion in federal court to stay execution of an order for release where the individual has been ordered released from immigration detention by the Immigration and Refugee Board (IRB)
- a Minister of Citizenship and Immigration's application for leave to appeal and for judicial review of a decision of the IRB

Certificate services may be available with an assessment of merit where the underlying decision from which an appeal or judicial review is being sought was determined to have merit for the following:

- Refugee Appeal Division appeals
- applications to federal court for judicial review in relation to the following types of decisions:
 - Refugee Protection Division decisions
 - Refugee Appeal Division decisions
 - Immigration Division decisions
 - Immigration Appeal Division decisions
 - Pre-Removal Risk Assessment application decisions
 - Decisions on in-Canada application for permanent residence on humanitarian and compassionate grounds
 - Decisions of an Immigration, Refugees and Citizenship Canada officer finding a refugee claimant ineligible to make a refugee claim
 - Decisions of the Minister of Citizenship and Immigration confirming a danger opinion
 - Decisions of a Canada Border Services Agency officer refusing to defer removal
 - Other decisions made under the Immigration and *Refugee Protection Act (IRPA)* where there are exceptional circumstances
- applications in Ontario Superior Court for the prerogative writ of habeas corpus where the individual has been in immigration detention continuously for a minimum of 180 days
- applications in federal court for judicial review certified as a question of general importance pursuant to section 75 of the *IRPA*

Consent and Capacity Board matters

Certificate services may be available for Consent and Capacity Board appeals with a merit assessment.

Ontario Review Board matters

Certificate services may be available for Ontario Review Board appeals with a merit assessment.

Prison Law matters

Certificate services may be available for judicial review and prerogative relief with a merit assessment for the following:

- Parole Board of Canada decisions, including
 - unescorted temporary absences (temporary release)
 - escorted temporary absences (temporary release)
 - post-suspension hearing/post-revocation hearing
 - accelerated parole review
- Voluntary and involuntary transfers
- Discipline court hearings
- Conditions of confinement

Opinion certificates

An individual seeking certificate services for which a merit assessment is required will be issued a certificate to obtain a legal opinion as to the merits of an appeal or prerogative relief request (“opinion certificate”), except in immigration appeal or judicial review and prerogative relief applications where LAO has determined that the original proceeding which led to the decision to be appealed had no merit.

Where the individual was provided legal aid services at the trial stage of a case, an opinion certificate will generally be issued to the roster member who represented the client at trial (“trial counsel”) to provide a legal opinion as to merit.

An opinion certificate may be issued to a roster member other than the trial counsel:

- at the client's request
- where there is a conflict of interest
- where the grounds of appeal or prerogative relief may include ineffective assistance of counsel
- where the client was self-represented for the initial proceeding

The trial counsel may instead obtain an opinion from the roster member who will represent the individual on the appeal if approved ("appellate counsel"). In such a case, the appellate counsel provides the opinion as agent for the trial counsel who holds the opinion certificate. Opinion certificates may authorize the cost of obtaining relevant transcripts, such as reasons for judgment, reasons for sentence, or the charge to the jury.

Where an individual seeks LAO immigration appeal services or a prerogative relief request and LAO had previously determined that the original proceeding, which led to the decision to be appealed or reviewed had no merit, LAO will conduct a merit assessment without an opinion.

Once the opinion is received, LAO will assess whether the matter has sufficient merit. Where LAO determines that sufficient merit has been established, LAO will authorize legal aid services to be provided, with or without a financial contribution from the client, depending on the client's financial circumstances. Where LAO determines that sufficient merit has not been established it will issue a notice of refusal with reasons.