

Rule 2022/1

Made by the Board on 2022-08-03
under the *Legal Aid Services Act, 2020* and
published on 2022-08-10

RULES AMENDING THE LEGAL AID SERVICES RULES (MINIMUM EXPERIENCE REQUIREMENTS)

AMENDMENTS

1 Sections 26 and 27 of the *Legal Aid Services Rules* are revoked and the following substituted:

Application for enrolment on roster

26 (1) An individual who is a member in good standing with the Law Society of Ontario may apply to the Corporation to be enrolled on the roster, at the times and in the manner determined by the Corporation.

(2) Subject to the Appendix to this Division, the Corporation may approve an application if the individual

- (a) has completed and submitted the application in the form and manner approved by the Corporation;
- (b) has submitted the information and documents required by the Corporation, including
 - (i) documents that authorize the Corporation to disclose the application or information contained in the application to third parties for the purpose of requesting documents or information from the third parties, and
 - (ii) documents that authorize the following to provide information and documents to the Corporation:
 - (A) the Law Society of Ontario and any other law society of which the applicant is or was a member,
 - (B) any court, professional insurer or other third party that has information or documents relevant to the application; and
- (c) establishes to the satisfaction of the Corporation that the applicant meets the conditions and requirements specified by the Corporation.

(3) The Corporation may require the applicant to provide any further information or documents for the purposes of assessing the application, including but not limited to, information or documents demonstrating that the applicant meets the conditions and requirements referred to in clause (2) (c).

(4) An application is deemed to be withdrawn if the applicant fails or refuses to provide

- (a) the documents referred to in subclause (2) (b) (i) or (ii) within 21 days after submitting the application, or
- (b) the information or documents referred to in subsection (3) within 21 days after the Corporation requests them.

(5) The Corporation may refuse to approve an application for any reason in respect of conduct by the applicant that, in the opinion of the Corporation, is or was inconsistent with the purpose of the Act set out in section 1 of the Act.

(6) A decision made under subsection (5) is reviewable in accordance with section 43.

(7) The Corporation shall deliver a written notice of a decision made under subsection (5) to the applicant in accordance with subsection 41 (2).

Authorizations

27 (1) A roster member may apply for an authorization to provide legal aid services in one or more specified districts or parts of a district, in the area or areas of law for which they meet the minimum experience requirements set out in Schedule 3.

(2) If the roster member meets the minimum experience requirements set out in Schedule 3, the Corporation may grant the authorization.

(3) If the roster member does not meet the minimum experience requirements set out in Schedule 3, the Corporation may grant the roster member a conditional authorization described in section 3 of that Schedule.

(4) The Corporation shall deliver a written notice of its decision under subsection (2) or (3), including reasons, to the roster member.

(5) The Corporation may, at any time, impose any conditions or requirements on the roster member's authorization that the Corporation considers necessary, and shall deliver a written notice to that effect to the roster member, including but not limited to the following:

- (a) requiring the roster member to be mentored or supervised in a manner and for a period specified by the Corporation;
- (b) limiting the type of legal aid services or volume of legal aid services that the roster member may provide;
- (c) requiring the roster member to provide the Corporation with the reports or updates specified by the Corporation within a specified period;
- (d) requiring the roster member to meet minimum experience requirements within a specified period;
- (e) imposing limitations and requirements on the submission of accounts to the Corporation;
- (f) requiring the roster member, in order to provide specified legal aid services, to maintain an office in a specific district or have an established practice in a specific district.

(6) The Corporation may require that all roster members complete any training programs required by the Corporation relating to the provision of legal aid services.

(7) Every roster member shall, with respect to each area of law in which they are authorized to provide legal aid services, complete a minimum of three hours of continuing professional development each year.

2 Clause 28 (1) (c) of the Rules is revoked and the following substituted:

- (c) the roster member's authorization, including any conditions or requirements imposed under section 27;

3 Clause 33 (1) (b) of the Rules is revoked and the following substituted:

(b) revoke or amend the roster member's authorization;

4 The Rules are amended by adding, after Schedule 2, Schedule 3 as set out in the Schedule to these Rules.

COMING INTO FORCE

5 (1) These Rules, except Divisions 4 and 5 of Part 2 of Schedule 3, as enacted by section 4, come into force on August 10, 2022.

(2) Divisions 4 and 5 of Part 2 of Schedule 3, as enacted by section 4, come into force on June 1, 2023.

SCHEDULE

(Section 4)

SCHEDULE 3

(Section 27)

MINIMUM EXPERIENCE REQUIREMENTS TO BE AUTHORIZED TO PROVIDE LEGAL AID SERVICES BY AREA OF LAW

PART 1

PURPOSE AND SCOPE

Purpose

1 This Schedule sets out the minimum experience requirements for a roster member to be authorized to provide certificate services and duty counsel services in specific areas of law.

Authorizations

2 (1) To be authorized to provide certificate services or duty counsel services in a particular area of law, a roster member must

- (a) satisfy the Corporation that they meet all applicable criteria for that area of law; and
- (b) certify that they are qualified to provide high-quality, effective and efficient legal services in the specified area of law.

(2) A roster member may hold authorization in more than one area of law.

(3) An authorization to provide certificate services or duty counsel services does not guarantee a minimum number of certificates or duty counsel shifts.

(4) For greater clarity, experience as described in this Schedule consists of experience obtained practising law in the Province of Ontario.

Conditional authorizations

3 (1) If a roster member who applies under section 27 of the Rules for authorization to provide legal aid services in an area of law does not meet the minimum experience requirements set out in this Schedule for that area of law, the Corporation may grant a conditional authorization for up to 24 months.

(2) A conditional authorization is revoked on its expiry unless it is renewed in accordance with subsection (3).

(3) On the request of the roster member, the Corporation may renew the conditional authorization for up to a further 12 months, at the end of which period the conditional authorization is revoked.

(4) When a conditional authorization is revoked under subsection (2) or (3), the roster member may not apply for another authorization in the same area of law until three years have elapsed since the revocation, unless the roster member can demonstrate that they meet the minimum experience requirements for that area of law.

PART 2

CRIMINAL LAW

DIVISION 1

CRIMINAL LAW — GENERAL

Minimum experience

4 (1) To be authorized to provide certificate services in general criminal law, a roster member must have completed at least 20 criminal law files within the last three years before applying for authorization, including at least three contested trials, preliminary inquiries or appeals or any combination of them.

(2) A roster member who has been certified as a specialist in criminal law by the Law Society of Ontario is considered to have met the minimum experience requirements.

(3) The roster member must

- (a) review the materials listed in the document entitled Material for review by roster members authorized to provide legal aid services in general criminal law matters published on the Corporation's website; and
- (b) in their application, attest that they have reviewed those materials.

DIVISION 2

CRIMINAL LAW — EXTREMELY SERIOUS MATTERS

Definition of "extremely serious matter"

5 (1) In this Part, "extremely serious matter" means

- (a) a youth or adult trial or appeal in relation to any of the following offences:
 - (i) any offence of culpable homicide,
 - (ii) any offence for which the Criminal Code provides a mandatory minimum sentence of four years or more,
 - (iii) any offence related to terrorism set out in Part II.1 of the Criminal Code;
- (b) a dangerous offender application; or

- (c) an extradition hearing in relation to anything listed in clause (a) or (b).
- (2) To be authorized to provide certificate services in extremely serious matters, a roster member must be authorized in accordance with section 4 to provide certificate services in general criminal law, without having had any conditions or requirements imposed on their authorization under subsection 27(5) of the Rules.
- (3) A roster member whose authorization is conditional within the meaning of section 3 may not provide certificate services in extremely serious matters.
- (4) Despite subsection (3), a roster member whose authorization is conditional may be authorized to provide certificate services in extremely serious matters if the Corporation determines that it is necessary for the roster member to be so authorized in order to meet the Corporation's operational needs or the needs of the district or part of a district where the services are to be provided.

Minimum experience

- 6** (1) A roster member must have the following minimum experience before applying for authorization to provide certificate services in extremely serious matters:
- (a) at least five years of practice restricted to criminal law;
 - (b) all of the following experience:
 - (i) conducted 100 days of contested trials or contested preliminary inquiries,
 - (ii) acted as counsel, co-counsel or junior counsel on at least one jury trial,
 - (iii) conducted at least five voir dires with issues of similar fact, statements, hearsay or expert evidence,
 - (iv) conducted at least five contested Charter applications related to disclosure, search and seizure, detention or arrest, right to counsel, section 11(b) or abuse of process.
- (2) A roster member who has been certified as a specialist in criminal law by the Law Society of Ontario is considered have met the minimum experience requirements.
- (3) The roster member must
- (a) review the materials listed in the document entitled Material for review by roster members authorized to provide legal aid services in extremely serious criminal law matters published on the Corporation's website; and
 - (b) in their application, attest that they have reviewed those materials.

DIVISION 3

GLADUE SERVICES

Definition of "Gladue services"

7 In this Division, "Gladue services" means certificate services in general criminal law provided to clients who self-identify as Indigenous.

Minimum experience

8 (1) To be authorized to provide Gladue services, a roster member must be authorized in accordance with section 4 to provide certificate services in general criminal law.

(2) The roster member must satisfy the Corporation in their application that they are familiar with the resources available for Indigenous clients in the local area where the authorized Gladue services are to be provided.

(3) The roster member must

- (a) review the materials listed in the document entitled Material for review by roster members authorized to provide legal aid services in Gladue matters published on the Corporation's website; and
- (b) in their application, attest that they have reviewed those materials.

DIVISION 4

YOUTH CRIMINAL LAW MATTERS

Minimum experience

9 (1) A roster member must have completed at least six youth criminal law matters within the last year, or have at least six such matters ongoing in that same period, before applying for authorization to provide certificate services in youth criminal law matters.

(2) To be authorized to provide certificate services in youth criminal law matters, a roster member must be authorized in accordance with section 4 to provide certificate services in general criminal law.

(3) A roster member must satisfy the Corporation in their application that they are familiar with the resources available for youth criminal clients in the district or specified part of a district where the roster member is authorized.

(4) The roster member must

- (a) review the materials listed in the document entitled Material for review by roster members authorized to provide legal aid services in youth criminal law matters published on the Corporation's website; and
- (b) in their application, attest that they have reviewed those materials.

DIVISION 5

CRIMINAL MENTAL HEALTH MATTERS

Definition of "criminal mental health matter"

10 In this Division, "criminal mental health matter" means the following:

- (a) a proceeding in mental health court;
- (b) a fitness hearing;
- (c) a proceeding before the Ontario Review Board;
- (d) a Not Criminally Responsible proceeding;
- (e) an Amicus appointment;

- (f) an assignment of counsel in circumstances in which an individual seeking legal aid services cannot complete an application for legal aid due to mental illness.

Minimum experience

11 (1) To be authorized to provide certificate services in criminal mental health matters, a roster member must be authorized to provide certificate services

- (a) in general criminal law in accordance with section 4; or
- (b) in health law — consent and capacity in accordance with section 18.

(2) A roster member must have the minimum experience set out in either paragraph (a) or (b), as follows, before applying for authorization:

- (a) five completed Ontario Review Board proceedings or appeals from such proceedings within the last four years; or
- (b) five of the following types of proceedings, in any combination that includes at least two of the three types, completed within the last four years:
 - (i) a fitness hearing, with expert evidence or report,
 - (ii) a Not Criminally Responsible hearing,
 - (iii) a criminal proceeding for which a mental health block under Schedule 2 was approved.

(3) The roster member must

- (a) review the materials listed in the document entitled Material for review by roster members authorized to provide legal aid services in criminal mental health matters published on the Corporation's website; and
- (b) in their application, attest that they have reviewed those materials.

PART 3

FAMILY LAW AND CHILD PROTECTION LAW

DIVISION 1

FAMILY LAW

Minimum experience

12 (1) To be authorized to provide certificate services in family law, a roster member must have completed the following minimum experience within the last two years before applying for authorization:

- (a) substantial involvement in 10 family law proceedings, including matters of decision-making responsibility, parenting time, child and spousal support, property or divorce or any combination of such matters;
- (b) participation in at least three of any of the following:
 - (i) a case conference,
 - (ii) a contested motion,

- (iii) a settlement conference,
 - (iv) a trial management conference,
 - (v) a summary judgment motion,
 - (vi) a focused hearing or trial,
 - (vii) an arbitration or appeal;
- (c) participation in at least three of any of the following types of consensual dispute resolution processes, at least one of which achieved resolution:
- (i) a mediation,
 - (ii) the negotiation of a separation agreement,
 - (iii) an arbitration,
 - (iv) a Legal Aid settlement conference,
 - (v) a collaborative, alternative or Indigenous family law dispute resolution process.
- (2) The roster member must
- (a) review the materials listed in the document entitled Material for review by roster members authorized to provide legal aid services in family law published on the Corporation's website; and
 - (b) in their application, attest that they have reviewed those materials.

DIVISION 2

CHILD PROTECTION LAW

Minimum experience

13 (1) In this Division, "CYFSA" means the Child, Youth and Family Services Act, 2017.

(2) To be authorized to provide certificate services in a matter under the CYFSA, a roster member must have had substantial involvement in at least 15 of the following proceedings or matters under that Act, completed within the last three years before applying for authorization, either representing parents or as counsel for the Office of the Children's Lawyer or for the Children's Aid Society:

- (a) a child protection conference, including a case conference, settlement conference or trial management conference;
 - (b) a temporary care and custody hearing;
 - (c) a motion for access;
 - (d) a motion for summary judgment;
 - (e) a child protection trial;
 - (f) the negotiation of a customary care, voluntary care or temporary care agreement;
 - (g) an Indigenous alternative dispute resolution process.
- (3) The roster member must

- (a) review the materials listed in the document entitled Material for review by roster members authorized to provide legal aid services in child protection law matters published on the Corporation's website; and
- (b) in their application, attest that they have reviewed those materials.

PART 4

IMMIGRATION AND REFUGEE LAW

DIVISION 1

IMMIGRATION AND REFUGEE LAW — GENERAL

Immigration and refugee law — General

14 This Division applies to all immigration and refugee certificate services, with the exception of those set out in section 16.

Minimum experience

15 (1) To be authorized to provide certificate services in general immigration and refugee law, a roster member must have completed at least 10 of the following matters, or any combination of such matters, within the last two years before applying for authorization:

- (a) a Refugee Protection claim before the Refugee Protection Division of the Immigration and Refugee Board;
 - (b) a Cessation or Vacation application before the Refugee Protection Division of the Immigration and Refugee Board;
 - (c) a Pre-removal Risk Assessment (PRRA) submission;
 - (d) a Danger Opinion submission;
 - (e) a Humanitarian and Compassionate Grounds application;
 - (f) an appeal before the Immigration Appeal Division of the Immigration and Refugee Board in respect of any matter for which the Corporation provides coverage;
 - (g) a detention review hearing.
- (2) The roster member must
- (a) review the materials listed in the document entitled Material for review by roster members authorized to provide legal aid services in general immigration and refugee law published on the Corporation's website; and
 - (b) in their application, attest that they have reviewed those materials.

DIVISION 2

IMMIGRATION AND REFUGEE LAW — APPELLATE

Immigration and refugee law — Appellate

16 This Division applies to the following immigration and refugee services:

- (a) appeals before the Refugee Appeal Division of the Immigration and Refugee Board;
- (b) judicial reviews before the Federal Court;
- (c) appeals before the Federal Court of Appeal;
- (d) appeals before the Supreme Court of Canada;
- (e) applications before the Superior Court for a writ of habeas corpus;
- (f) applications to the Canada Border Services Agency for a deferral of removal, and motions for a stay of removal before the Federal Court.

Minimum experience

17 (1) To be authorized to provide certificate services in appellate immigration and refugee law, a roster member must be authorized in accordance with section 15 to provide certificate services in general immigration and refugee law.

(2) To be authorized to provide certificate services in appellate immigration and refugee law, a roster member must have completed at least 10 of the following matters, or any combination of such matters, within the last two years before applying for authorization:

- (a) an appeal before the Refugee Appeal Division of the Immigration and Refugee Board;
- (b) a perfected Federal Court application for leave or for judicial review of any of the following:
 - (i) a decision of the Refugee Protection Division or Refugee Appeal Division of the Immigration and Refugee Board,
 - (ii) a Pre-removal Risk Assessment or Danger Opinion decision,
 - (iii) a decision regarding a Humanitarian and Compassionate Grounds application;
- (c) a motion in Federal Court to stay removal;
- (d) a judicial review hearing in Federal Court in respect of a decision referred to in paragraph (b);
- (e) an appeal before the Federal Court of Appeal in respect of any immigration or refugee law matter.

(3) The roster member must

- (a) review the materials listed in the document entitled Material for review by roster members authorized to provide legal aid services in appellate immigration and refugee law published on the Corporation's website; and
- (b) in their application, attest that they have reviewed those materials.

PART 5

HEALTH LAW — CONSENT AND CAPACITY

Minimum experience

18 (1) To be authorized to provide certificate services in health law — consent and capacity, a roster member must have had carriage of at least three matters under retainer for proceedings before the Consent and Capacity Board within the last two years before applying for authorization.

- (2) The roster member must
- (a) review the materials listed in the document entitled Material for review by roster members authorized to provide legal aid services in health law consent and capacity matters published on the Corporation's website; and
 - (b) in their application, attest that they have reviewed those materials.

PART 6

DUTY COUNSEL

DIVISION 1

DUTY COUNSEL AUTHORIZATIONS — GENERAL

Validity period

19 (1) An authorization to provide duty counsel services is valid for 24 months from the day on which it is approved.

- (2) On request of the roster member, the Corporation may renew the authorization on its expiry for a further 24 months.
- (3) If the roster member does not request the renewal of their authorization before it expires, the authorization is revoked.
- (4) The Corporation may revoke an authorization at any time during the provisional period described in section 21.
- (5) Before an authorization is renewed under subsection (2) or revoked under subsection (3) or (4), the Corporation may carry out an evaluation of the roster member's performance during the period of the authorization, in accordance with section 22.
- (6) A roster member whose authorization is revoked under subsection (3) or (4) may only reapply for a further authorization to provide duty counsel services if at least 12 months have elapsed since the revocation.

Factors for refusal

20 (1) Notwithstanding that a roster member meets the minimum experience requirements set out in Division 2 or 3, the Corporation may refuse to grant an authorization to provide duty counsel services, or to renew such an authorization, if the Corporation has determined that there is already a sufficient number of authorized roster members to meet local demands.

- (2) In making its decision to grant or renew an authorization, the Corporation may consider other related factors, including but not limited to the following:

- (a) the local conditions, including overall staffing and the per-diem requirements of the particular Court;
- (b) the needs of the clients in the district or part of a district;
- (c) budgetary or financial factors.

Provisional period

21 A roster member's authorization to provide duty counsel services in an area of law is subject to a provisional period of at least four months, or until such time as the roster member has completed five duty counsel shifts in that area of law, whichever is longer, in either of the following circumstances:

- (a) it is the first time that the roster member is authorized to provide duty counsel services in that area of law;
- (b) the roster member was previously authorized to provide duty counsel services in that area of law but did not receive a successful evaluation at the time their previous authorization was revoked under subsection 19(3) or (4).

Evaluation

22 The Corporation may evaluate a roster member's performance by taking the following factors into account in its decision to renew or revoke the roster member's authorization, including but not limited to the following factors:

- (a) the roster member's ability to provide high-quality duty counsel services, including their knowledge of substantive law, legal procedure and the specific needs of legally aided clients;
- (b) the roster member's conduct as duty counsel, including their compliance with the Corporation's policies, procedures and administrative requirements;
- (c) the roster member's ability to manage a high volume of clients, their client relations and the quality of service they provided;
- (d) the roster member's punctuality and availability to provide duty counsel services;
- (e) the roster member's ability to utilize the Corporation's data management and other software;
- (f) the roster member's conduct when providing certificate services, including their history in respect of compliance, investigations, audits and complaints.

DIVISION 2

DUTY COUNSEL

Minimum experience — Criminal Court (Adult) and Criminal Court (Youth) Duty Counsel

23 To be authorized to provide legal aid services as duty counsel in criminal court (adult) and criminal court (youth), a roster member must be authorized in accordance with Division 1 of Part 2 to provide certificate services in general criminal law and must have completed the following minimum experience within the last three years before applying for the authorization:

- (a) three contested judicial interim release hearings;

- (b) three guilty pleas or criminal trials;
- (c) three criminal sentencing hearings;
- (d) six hours of Continuing Professional Development in criminal law.

Minimum experience — Family Court Duty Counsel and Advice Lawyer

24 To be authorized to provide legal aid services as duty counsel and advice lawyer in family court, a roster member must be authorized in accordance with Division 1 of Part 3 to provide certificate services in family law and must have completed the following minimum experience within the last three years before applying for the authorization:

- (a) representation at two or more family law trials or contested family law matters;
- (b) representation at two or more child protection hearings;
- (c) representation at two or more Family Responsibility and Support Arrears Enforcement Act, 1996 enforcement proceedings;
- (d) preparation of two or more family law motions, applications or pleadings or any combination of them;
- (e) representation at two or more family law motions;
- (f) negotiation of two or more family matters to settlement, including drafting of Minutes of Settlement;
- (g) representation of clients who face domestic violence, including by representation of such clients in five family law matters in which the client has disclosed domestic violence;
- (h) six hours of Continuing Professional Development in family law.

DIVISION 3

DUTY COUNSEL — ADVICE LAWYERS

Minimum requirements —domestic violence advice lawyer

25 To be authorized to provide legal aid services as a domestic violence advice lawyer, a roster member must meet the following minimum requirements within the last three years before applying for the authorization:

- (a) be authorized to provide certificate services
 - (i) in family law in accordance with Division 1 of Part 3, or
 - (ii) in general immigration and refugee law in accordance with Division 1 of Part 4;
- (b) have represented clients in five family law matters or five general immigration and refugee law matters, as applicable, in which the client has disclosed domestic violence.