

# Public feedback of LASA 2020 rules

The *Legal Aid Services Act, 2020* (LASA 2020) offers the opportunity to innovate and modernize legal aid services in Ontario and how Legal Aid Ontario (LAO) delivers those services. LASA 2020 directs LAO to establish and administer a flexible and sustainable legal aid system, and to monitor and supervise the provision of legal aid services to ensure that they are efficient, effective and high quality, and that they are delivered in a client-focused, innovative, transparent and accountable manner.

This legislation will aid our work with low-income Ontarians as we provide them with the legal help they need and the access to justice they deserve. It will also give us the opportunity to develop and adapt services and policies more quickly so that we can make improvements and be responsive to changing circumstances in ways that promote a client focused approach.

As LASA 2020 takes effect, we are introducing a [statement of principles](#) that reaffirms our values and commitment to equity and human rights. The statement of principles places LAO's transition to LASA 2020 and its new rules within the context of its values, priorities and strategic direction.

To deliver on its mandate under LASA 2020, LAO is introducing its first set of rules, the Legal Aid Services Rules. The rules replace the regulations which existed under LAO's former legislation, and they have the important job of enabling LAO to implement LASA 2020 in a manner that puts legal aid clients at the centre of LAO's work and ensures that LAO remains a responsible steward of public funds.

In keeping with LAO's tradition of consultation, we held public feedback sessions on the draft version of the LASA 2020 Rules. We heard back from more than 200 individuals and organizations and a [summary of feedback](#) is available. We are grateful for the thoughtful, informed and constructive responses that we received. We have made adjustments to the rules that improve their

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clarity and ensure that they can be implemented in ways that enable LAO to carry out its necessary oversight mandate and maintain its focus on clients without placing unnecessary burdens on service providers.

LAO has also developed [44 Policies](#) to support transparent implementation of the rules.

What follows is a brief commentary that highlights some additional adjustments LAO has made to the rules.

## Rule 1 (Roster management)

LAO is responsible for oversight of the legal aid system and its rules must offer protection to people who are often vulnerable and may not speak up on their own behalf. It is worth noting that the majority of the rules relating to roster management will only be utilized when LAO has a concern and will likely only apply to a minority of roster members. In response to the feedback received, LAO has made clarifications within this rule and adjustments to provide greater flexibility.

- In response to feedback from the Law Society of Ontario, the rule clarifies that removal from the roster for any other reason, in addition to the enumerated reasons, means any other reason related to LAO's mandate to ensure high quality, effective, efficient services and appropriate expenditure of public funds.
- The rule now requires roster members who are temporarily not providing legal aid services to notify LAO within 60 days, not 45 days, providing more flexibility to lawyers. The notice requirement assists LAO in keeping its "find a lawyer" tool for clients up to date, so clients are not inconvenienced by calling lawyers who are not currently taking on legal aid clients.
- In response to feedback from service providers, the revised rule clarifies that roster removal on the basis of costs awarded means costs that were awarded personally against the roster member because of conduct that is inconsistent with LAO's mandate, principles, and priorities, or was unprofessional, not competent or inappropriate.
- The revised rule replaces the Administrative Burden schedule with a requirement that roster members not create any unreasonable or excessive administrative burden on LAO.
- The revised rule replaces the Professionalism Standards schedule with a requirement that roster members be civil in their conduct toward their clients or employees of LAO.
- In response to stakeholder feedback the resignation policy was narrowed in scope to specific listed circumstances, making it clear that any restrictions in this area are for reasons that put the client at the centre of LAO operations

## Rule 2 (Payment to roster members)

LAO wants a clearer, simpler, and more straightforward billing process. Many of the issues raised in feedback will be addressed and clarified in the LAO Policies.

While the Rules do not affect the current legal aid tariff, LAO has begun a project to explore resolution of some long-standing tariff issues in a cost-neutral manner. As part of this project, LAO has consulted with stakeholders and conducted a stakeholder survey this past summer.

Part of LAO's modernization project is the redesign of our lawyer portal, which will be addressing the issues of billing simplification. As with the tariff project, there have been consultations with stakeholder groups, and a targeted survey that was sent out this past summer.

### **Rule 3 (Certificate management)**

This rule is designed to offer protection to our clients and to assist them in finding a lawyer. We received good advice from respondents about this rule and we will be simplifying its implementation.

- The two-year reporting requirement helps ensure that legal services are delivered in a timely manner and certificates do not languish, which are important safeguards for good client service.
- This reporting requirement will take the form of a simplified online form that will be limited to several check boxes and text fields.
- Lawyers will also be required to request an extension of an expiring certificate if the legal services under that certificate have not been completed. This will ensure that a client is assisted through to the end of their matter.
- The Assignment of Lawyer provision permits LAO to assign a lawyer to a client determined to be unable or unlikely to be able to choose a lawyer on their own, or a client who has fired several lawyers. Under the rules a certificate client is responsible for finding their own lawyer, and LAO would only assign a lawyer in rare circumstances.

### **Rule 4 (Eligibility)**

The eligibility rules and Policies have been drafted to ensure that they are clear, transparent and fair, and that they enable LAO to make informed, accountable eligibility decisions. LAO has a duty to verify the eligibility of people applying for legal aid services and to confirm information such as their income and assets. These are matters of fiscal responsibility and fairness to clients who qualify for limited legal aid funding.

### **Rule 5 (Recovery of costs)**

LASA 2020, like legal aid legislation in other jurisdictions, includes recovery of costs provisions. Cost recovery is an important source of funds that enables LAO to serve more clients. LAO received feedback that certain client groups should not be subject to cost recovery for legal aid services. The rule authorizes LAO to waive all or part of its right to recover costs in appropriate cases, and this has been clarified in policy, which sets out specific instances where LAO will generally waive all or part of its right to recover costs.

## Rule 6 (Entity Service Providers)

Community legal clinics, student legal services organizations (SLSOs) and Indigenous legal services organizations (ILSOs) are crucial to the delivery of legal aid in Ontario.

This rule has been revised to incorporate new provisions and changes, including:

- A requirement that ESPs have in place procedures and policies to ensure delivery of services that are respectful, recognize the dignity and worth of every client and are free of bias, discrimination, harassment and racism, including anti-Indigenous and anti-Black racism.
- Where an ESP has an agreement over two fiscal years in length, it will receive at least 18 months' notice of LAO's intention to enter into a new agreement. ESPs with agreements of one fiscal year or less will receive 90 days' notice.
- LAO will provide notice if it does not intend to enter into a new service agreement with a clinic, SLSO or ILSO.
- A decision not to enter a new service agreement must be made by LAO's board and cannot be delegated to a committee of the board, a board member, an officer or staff member.
- ESPs may seek a review of a funding reduction of 5% or more if they can provide new and relevant information or demonstrate that the reduction was based on factual error.
- Definitions of SLSO and ILSO.
- Reviews of decisions to reduce funding or terminate an agreement will be made by LAO's board and shall not be delegated to a committee of the board, a board member, an officer or a staff member.
- Subject to LAO's financial resources, LAO shall provide support services to clinics and ILSOs as set out in their service agreements
- Clinics' procedures to effectively determine the legal needs of communities must include, without limitation, in relation to race, ethnicity, language, age or physical disability.

LAO is developing materials that include:

- Relevant criteria for ESPs categorized as low, medium or high risk.
- Materials that will clarify what is meant by remedial measures that would be "proportionate to the default."