



REFUGEE & IMMIGRATION STANDARDS IMPLEMENTATION GUIDELINES

The *Legal Aid Services Act (LASA)* makes the provision of high quality legal services a key component of Legal Aid Ontario's mandate.

LASA Section 1:

The purpose of this act is to promote access to justice throughout Ontario for low-income individuals by means of
(a) providing consistently high quality legal aid services in a cost-effective and efficient manner...

Refugees and immigrants are some of the most vulnerable clients LAO serves. In order to safeguard the interests of this vulnerable client group, LAO is committed to ensuring that its panel of refugee and immigration service providers is of the highest quality possible. Therefore, LAO is implementing new practice standards for lawyers on its refugee and immigration panel. These standards were developed following consultation with the Refugee Lawyers Association (RLA) and received approval of LAO's Board of Directors. The standards apply to everyone who provides legal aid refugee and immigration services, including lawyers on certificates, LAO staff lawyers and paralegals, and clinic staff providing services pursuant to a refugee pilot agreement. Commencing April 2015 LAO will begin to assess LAO funded immigration and refugee lawyers for compliance with these quality standards.

LAO values its private bar service providers who are committed and passionate practitioners and who deliver most LAO funded refugee and immigration services. Every effort will be made to provide support to service providers who may not currently meet the standards but who, with some conditions and support from LAO, are able to deliver high quality services.

PRINCIPLES

The following principles will govern LAO's new refugee and immigration standards implementation:

1. **Transparency:** LAO will make every effort to ensure transparency of policy and process, including detailed and ongoing communication and information sharing regarding standards implementation.
2. **Fairness:** LAO will give service providers adequate time and support to complete and submit the Standards Form. Applicants will be assessed by LAO staff and a Peer Review committee (PRC) consisting of private bar practitioners. LAO will anonymize applications to avoid the perception of bias arising from committees composed of lawyers evaluating the work of colleagues.
3. **Timeliness:** Service standards will be established to facilitate timely application decision-making.
4. **Support:** When appropriate and feasible, LAO will offer support to service providers (training, mentors) who do not meet the standards. Persons who do not meet the standards will be asked to agree to conditions to ensure quality service to clients.

STANDARDS APPLICATION FORM

All persons, including existing panel members, who wish to provide legal aid funded refugee and immigration services must complete and submit a standards application form. Standards forms can be accessed on LAO's website.

Applicants seeking panel membership for the first time, including new calls, can submit their standards form at any time. Applicants must meet the standards and be admitted to the panel before they can provide refugee and immigration services on a legal aid certificate.

Existing panel members should complete the standards form by July 17, 2015. LAO will contact those who do not meet this deadline to determine whether they intend to submit a form or resign. Existing panel members may have their status rendered "inactive" pending receipt of their completed application or resignation letter. Inactive service providers are generally unable to acknowledge new refugee and immigration certificates.

LAO will schedule regular information sessions and provide tips on how to complete the standards form for those who might find this useful. LAO will also send monthly reminders by email and through Legal Aid Online regarding the July 17, 2015 deadline for existing panel members. LAO will also make best

efforts to contact persons whose forms have not been received at least one month prior to the deadline.

FORM PROCESSING

There will be five main stages in the processing of the standards application form:

Stage 1: Standards form review for accuracy and completeness

On receipt, LAO administrative staff will review the standards application form to ensure all the information requested has been provided, including supporting documents. The standards form includes a check list of documents to be provided; LAO administrative staff will use this to confirm that the form is complete and the requisite information has been received.

Staff will contact lawyers whose forms are incomplete and request the information needed. Commencing July 17, 2015, existing service providers who have either not submitted the standards form and its attachments, or who have been informed that the standards form is incomplete, but have failed to rectify this, will be rendered inactive until the required documents and forms are submitted. Inactive service providers are unable to acknowledge new refugee and immigration certificates, but may continue to complete work on existing legal aid certificates.

Once the file is received and complete, administrative staff will forward an anonymized copy of the applicant's dossier to the Staff Review Committee (SRC).

Stage 2: Triaging of applicants by LAO's Staff Review Committee (SRC)

The SRC will be composed of LAO staff lawyers with at least three years' experience in refugee law practice, led by a staff refugee lawyer with more than fifteen years' experience.

The SRC will assess the quality of the applicant's written work on an anonymous basis, triaging applications into those which don't raise quality concerns and those which do. If concerns are identified, the SRC will document these, including identifying any concerns that may require investigation by the appropriate LAO director general (DG) for that geographic area. The DG will carry out a front end "complaints and concerns" review.

Stage 3: Front end review by the director general for complaints and concerns

DGs will assess the validity of complaints and concerns which involve alleged breaches of the standards as required in the Quality Service Expectations/Best Practices Guide, if any have been made. This part of the process is not anonymous.

Where the assessment of complaints and concerns relies upon subject matter expertise (e.g., an allegation that the lawyer failed to draft adequate submissions), the DG shall document the complaints/concerns and pass them along to the Peer Review Committee (PRC). The validity of all other complaints and concerns will be determined by the DG, who will document his/her conclusions.

The DG will review the triaging of applicants performed by the SRC with the complaints and concerns if any. If the DG does not have any standards concerns in relation to applicant triaged by the SRC, and no other concerns are identified, these applicants shall be informed that they have met the standards. The files of all remaining applicants will be passed to the PRC for assessment, along with a summary of any complaints and concerns found to have been substantiated, and a summary of any complaints which can only be resolved with the input of the PRC.

Stage 4: Review by the Peer Review Committee (PRC)

The Peer Review Committee (PRC) will be composed of experienced private bar lawyers identified by the Refugee Lawyers Association and approved by LAO. LAO Senior Counsel Refugee Law will chair the PRC. The PRC acts in an advisory role, making recommendations as appropriate.

In depth quality standards review of those applicants for whom quality concerns have been identified at Stages 2 or 3 (or both) will be conducted by the PRC.

To conduct its assessment, the PRC will have access to the materials relied upon by the SRC and the SRC's conclusions, a synopsis of the complaints identified by the DGs, and a synopsis of any complaint determined by the DGs to require subject matter expertise to resolve. The PRC will, in addition, review the quality of two other legal submissions prepared by the applicant and selected by the DGs. In exceptional cases where the PRC believes that additional materials are needed to make an assessment, the PRC members may ask the PRC chair to request the applicant submit additional materials for consideration.

The PRC will advise the DGs as to whether the applicant meets the quality standards or not. The PRC may recommend the DGs impose conditions on a

lawyer who does not meet the standards to ensure the delivery of high quality service. The PRC may also recommend removal for failure to meet the standards.

Stage 5: Back end review by the director general

Each LAO director general has accountability for LAO's panel and ultimately will decide whether the standards are met or not and what steps should be taken as a consequence. The DGs will consider the PRC's advice and recommendations, the materials upon which the PRC relied, the SRC's assessment and the DG's earlier synopsis of complaints and concerns in determining next steps.

The DG will then take the appropriate action: the candidate will be advised that he/she

- has met the standards
- has not met the standards and will be required to abide by conditions
- has not met the standards and removal proceedings are being initiated

APPROVAL

Persons who meet the refugee and immigration standards (general and/or appellate) will be allowed to provide refugee and immigration services for a period of five years. A new standards application form may have to be submitted after the five year period. During the five year period, the practitioner is expected to maintain the standards and best practices and may be subject to a random quality review. Persons will be notified in writing regarding meeting or not meeting the general or the general and appellate standards.

CONDITIONAL APPROVAL

As noted above, LAO is likely to receive applications from some service providers who do not currently meet the new standards but who might be good candidates for conditional approval. For example:

- all new calls
- experienced lawyers newly practicing refugee/immigration law or with mixed practices where refugee/immigration numbers fall short of threshold
- lawyers whose work raises concerns but appears remediable

- highly experienced service providers who practice in another area but who, because of particular expertise/interest in an area of refugee law, take on occasional refugee matters

The following 'menu' of conditions that might apply in each of these and/or other scenarios includes:

- mentoring
- peer review of materials and hearings
- training
- limitations on types and numbers of cases
- an exam

LAO will ensure that conditions are reasonable and where feasible, resources available to the lawyer to fulfill the conditions (e.g., mentoring, training).

The length and nature of conditions will be decided by each director general, following consultation and discussion with the applicant concerned. The director general or delegate will regularly meet with panel members who are conditionally approved to ensure ongoing compliance with the conditions and to make a determination regarding removal of the condition or removal from the panel. Failure to abide by conditions could result in steps to remove.

REMOVALS

Lawyers who fail to meet the standards can be removed from the refugee and immigration panel pursuant to the *Legal Aid Services Act*, s. 31 and LAO's panel removal procedure.

LAO's panel removal procedure for refugee and immigration legal aid funded practitioners is an administrative process that is the same as the removal process for lawyers from any of LAO's other areas of practice (e.g., criminal, family, etc.). The procedure will be no different in the context of the refugee and immigration standards.

LAO's panel removal process is designed to be fair and reasonable. Only LAO's president, vice presidents and DGs have the authority to seek removal of a lawyer from an LAO panel. Only LAO's president or his/her delegate is authorized to make the decision whether to remove a lawyer from a panel. Before being removed, the subject lawyer is entitled to a written hearing. The vice president or DG is required to submit to the president and serve on the lawyer a written notice of removal setting out the basis upon which removal is sought. The lawyer then has the right to submit a written response. The matter is decided either by the president or the president's delegate.