

# Referral Eligibility Policy

## Part 1 - Definitions:

“Director” - is the Director, Finance and Corporate Services, or his or her designate

“Executive Director” – is the Executive Director, Legal Services LSS

“Manager” – is the Manager, Audit and Investigation, or his or her designate

“Reasonable Cause” – includes:

- (a) failure of a lawyer to meet applicable professional standards;
- (b) failure of a lawyer to provide an acceptable quality of service;
- (c) failure of a lawyer to comply with a condition imposed on the lawyer’s eligibility to receive referrals from LSS;
- (d) a lawyer billing LSS for services, knowing that the services have not been rendered or the nature or extent of the services rendered have been misrepresented;
- (e) a lawyer creating an administrative burden on LSS that outweighs the benefit(s) provided by the lawyer to LSS or LSS’s clients.

“Referral” – is a LSS authorization for a lawyer to provide legal services to a client and to bill LSS for legal fees and disbursements for the case according to the tariff contract.

“Representations” – does not include an oral hearing

“LSS” – is the Legal Services Society

## Part 2 – General Principles:

1. Legal aid clients are entitled to the same quality of service as paying clients.
2. Lawyers are responsible for ensuring:
  - (a) they meet applicable standards; and
  - (b) legal aid clients receive quality service.
3. Relations between lawyers and LSS as described in the “General Terms and Conditions” section of the Guide to Legal Aid Tariffs are contractual in nature. LSS as payor is entitled to determine who will provide legal services to legal aid clients.
4. LSS may address quality concerns by providing support and encouragement to help lawyers improve service quality.

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5. LSS may impose conditions on, or temporarily or permanently suspend, a lawyer's eligibility to receive referrals from LSS, if a lawyer:
  - (a) fails to respond to repeated requests from LSS for information;
  - (b) has criminal charges laid against him or her;
  - (c) has an outstanding disciplinary matter before the Law Society;
  - (d) has restrictions placed on his or her practice by the Law Society;
  - (e) is prohibited from practicing law in British Columbia;
  - (f) manages his or her practice in a way that puts the clients at significant risk of not receiving quality service;
  - (g) fails to pay a practice debt arising from a legal aid file;
  - (h) fails to meet applicable professional standards;
  - (i) fails to provide an acceptable quality of service;
  - (j) fails to comply with a condition on their eligibility to receive referrals from LSS;
  - (k) bills LSS for services, knowing that the services have not been rendered or the nature or extent of the services rendered have been misrepresented; or
  - (l) creates an administrative burden on LSS that outweighs the benefit(s) provided by the lawyer to LSS or LSS's clients.
  
6. LSS will endeavor to make inquiries and decisions under this policy in a timely manner.

## Part 3 – Decision by Manager:

1. The Manager may impose conditions on, or temporarily or permanently suspend, a lawyer's eligibility to receive referrals from LSS, where the Manager has evidence that a lawyer:
  - (a) has failed to respond to repeated requests from LSS for information;
  - (b) has criminal charges laid against him or her;
  - (c) has an outstanding disciplinary matter before the Law Society;
  - (d) has restrictions placed on his or her practice by the Law Society;
  - (e) is prohibited from practicing law in British Columbia;
  - (f) manages his or her practice in a way that puts the clients at significant risk of not receiving quality service; or
  - (g) has failed to pay a practice debt arising from a legal aid file.
  
2. Any decision made by the Manager under Part 3(1)(f) must be made with the agreement of the Director.
  
3. The Manager will notify the lawyer of his or her decision in writing.
  
4. If the Manager imposes conditions on, or temporarily or permanently suspends, the lawyer's eligibility to receive referrals from LSS, the Manager may require that within time limits set by the Manager, the lawyer:
  - (a) report on the status of all unfinished work;

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- (b) complete work on existing legal aid referrals as authorized by the Manager;
  - (c) render accounts for fees and disbursements for services already provided, unless the Manager determines that LSS may reasonably refuse payment in the circumstances; and
  - (d) deliver legal aid files to the Manager, or another lawyer, in accordance with the Manager's directions.
5. A lawyer who has conditions imposed on his or her eligibility to receive referrals from LSS may apply to the Manager to remove or modify the conditions (see Part 4).
6. A lawyer who has been temporarily or permanently suspended from being eligible to receive referrals from LSS under this Part may request a review of the decision by the Director within 30 days of the Manager's decision (see Part 8).

## **Part 4 – Application to the Manager to Remove or Modify Conditions:**

1. A lawyer who has conditions imposed on his or her eligibility to receive referrals from LSS under Part 3 may apply to the Manager to remove or modify the conditions.
2. The Manager may remove or modify the conditions if, in the Manager's opinion:
  - (a) the lawyer has fulfilled the conditions that were imposed; or
  - (b) there has been a change of circumstances justifying the removal or modification.
3. The Manager will notify the lawyer of his or her decision in writing.
4. A lawyer who has received a decision under this Part, may request a review of that decision by the Director within 30 days of the Manager's decision (see Part 8).

## **Part 5 – Investigation by Manager:**

1. The Manager may conduct an enquiry where the issue is not one listed under Part 3(1) and the Manager has information suggesting that a lawyer:
  - (a) fails to meet applicable professional standards;
  - (b) fails to provide an acceptable quality of service;
  - (c) fails to comply with a condition on their eligibility to receive referrals from LSS;
  - (d) bills LSS for services, knowing that the services have not been rendered or the nature or extent of the services rendered have been misrepresented; or
  - (e) creates an administrative burden on LSS that outweighs the benefit(s) provided by the lawyer to LSS or LSS's clients.
2. Once the Manager has gathered preliminary information, he or she will notify the lawyer, explaining the nature of LSS's concerns.

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3. The Manager may receive such representations from the lawyer as he or she deems appropriate and set time limits for this purpose.
4. Once the Manager has reviewed the lawyer's representations and, if necessary, completed further inquiries, the Manager may:
  - (a) take no action;
  - (b) resolve the matter together with the lawyer in accordance with LSS's quality control program; or
  - (c) provide a report on the matter, accompanied by a recommendation, to the Director.

## Part 6 – Decision by Director:

1. The Director will review the Manager's reports, the lawyer's representations, and any supporting documents.
2. The Director may receive such representations from the lawyer as he or she deems appropriate and set time limits for this purpose.
3. Where the Director determines that there is reasonable cause, the Director may impose conditions on, or temporarily or permanently suspend, a lawyer's eligibility to receive referrals from LSS.
4. The Director will notify the lawyer in writing of his or her decision.
5. If the Director imposes conditions on, or temporarily or permanently suspends, the lawyer's eligibility to receive referrals from LSS, the Director may require that, within time limits set by the Director, the lawyer:
  - (a) report on the status of all unfinished work;
  - (b) complete work on existing legal aid referrals as authorized by the Director;
  - (c) render accounts for fees and disbursements for services already provided, unless the Director determines that LSS may reasonably refuse payment in the circumstances; and
  - (d) deliver legal aid files to the Director, or another lawyer, in accordance with the Director's directions.
6. A lawyer who has conditions imposed on his or her eligibility to receive referrals from LSS may apply to the Director to remove or modify the conditions (see Part 7).
7. A lawyer who has been temporarily or permanently suspended from being eligible to receive referrals from LSS under this Part may request a review of the decision by the Executive Director within 30 days of the Director's decisions (see Part 9).

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## Part 7 – Application to the Director to Remove or Modify Conditions:

1. A lawyer who has conditions imposed on his or her eligibility to receive referrals from LSS under Part 6 may apply to the Director to remove or modify the conditions.
2. The Director may remove or modify the conditions if, in the Director's opinion:
  - (a) the lawyer has fulfilled the conditions that were imposed; or
  - (b) there has been a change of circumstances justifying the removal or modification.
3. The Director will notify the lawyer of his or her decision in writing.
4. A lawyer who has received a decision under this Part, may request a review of that decision by the Executive Director within 30 days of the Director's decision (see Part 9).

## Part 8 – Review by the Director:

1. A lawyer, who has:
  - (c) conditions imposed on his or her eligibility to receive referrals from LSS under Part 3, or
  - (d) has been denied a removal or modification of conditions imposed under Part 4may, within 30 days of that decision, request a review of that decision by the Director.
2. The Director may receive such representations from the lawyer as he or she deems appropriate.
3. After completing a review, the Director may confirm or vary the decision.
4. The Director will notify the lawyer of his or her decision in writing. The Director's decision is final and binding.

## Part 9 – Review by the Executive Director:

1. A lawyer who has:
  - (a) conditions, or a temporary or permanent suspension, imposed by the Director under Part 6; or
  - (b) has been denied a removal or modification of conditions imposed under Part 7may, within 30 days of that decision, request a review of the decision, by the Executive Director.
2. The Executive Director may receive such representation from the lawyer as he or she deems appropriate.

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3. After completing a review, the Executive Director may confirm or vary the decision.
4. The Executive Director will notify the lawyer of his or her decision in writing. The Executive Director's decision is final and binding.

**HISTORY:**

October 9, 2007 EMC Approved Revisions: part 2 and part 3 item (g) added 'fails to pay a practice debt from a legal aid file'.

September, 26, 2006 EMC Approved Policy: this policy replaces the Policy on Restriction of Lawyer Billing Privileges effective from June 14, 2002 to September 25, 2006

**QUESTIONS TO:**

Manager, Audit & Investigation Department

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## Referral Eligibility Policy Flow Chart

