

The Legal Services Board of Nunavut

The Nunavut Panel Application Process Policy for Resident and Non Resident Lawyers



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LEGAL SERVICES BOARD OF NUNAVUT

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THE NUNAVUT PANEL APPLICATION PROCESS FOR RESIDENT AND NON RESIDENT LAWYERS

1.0 Policy Objectives

- 1.1 The Legal Services Board (the “LSB”) seeks to increase access to justice for Nunavummiut by supplementing its own staff lawyers with private bar lawyers who are willing to provide legal aid services to LSB approved clients in Nunavut.
- 1.2 The goal of the LSB’s Nunavut panel application process policy is to create a roster of resident and non-resident private bar lawyers to satisfy the LSB’s legislative mandate to maintain private legal aid panels in Nunavut (the “panels”).
- 1.3 The Chief Executive Officer (The “CEO”) of the LSB will assign legal aid work to lawyers on the panels in a fair and equitable manner in accordance with the criteria articulated under Section 37 of the *Legal Services Act*, R.S.N.W.T. 1988, c. L-4 (the “Act”).
- 1.4 The CEO has a positive obligation to ensure the administration of the panels and assignment of circuits is as economically practical as possible and that the interests of eligible persons are not prejudiced by the application of the rotation assignment system. Prior to assigning any private panel lawyer to a circuit, the CEO must take into consideration

the criteria articulated in Section 4.5 below and choose panel counsel who is available and best suited to ensure Nunavummiut are provided quality legal representation in the most economical manner possible.

15. Panel members cannot expect that being on a LSB panel will guarantee a certain minimum amount of circuit work per year.

2.0 Definitions

- “Resident” someone who ordinarily resides in Nunavut and meets the residency requirements of the *Income Tax Act of Canada* R.S.C.1985, c. 1.
- “Resident Lawyer” a lawyer, in good standing with the Law Society of Nunavut, who is ordinarily resident in Nunavut and can provide proof of residency in accordance with the Nunavut residency requirements as stipulated in the *Income Tax Act of Canada* R.S.C. 1985, c. 1. Proof, in the form of the previous year’s tax designation of residency, may be requested by the CEO at the time the lawyer submits an application to be named to the Nunavut Panel.
- A lawyer, newly resident to Nunavut, who is unable to provide the requisite tax designation due to recent relocation, may satisfy the residency requirements by,
- 1) submitting to the CEO for consideration a valid Nunavut driver’s license or Nunavut health card, and 2) proof of either operating a law office or being employed in a law office in Nunavut.

“Law Office” a physical structure, located in Nunavut, open during regular business hours, Monday to Friday, where Nunavummiut may access legal services from a panel lawyer. Proof of a valid business license for Nunavut may be required by the Executive Director.

“Non-Resident Lawyer” a lawyer who is not ordinarily resident in Nunavut. A non-resident lawyer applying for a position on the Nunavut Panel must provide proof that he or she is in good standing with the territorial or provincial law society in which she/he primarily practices.

3.0 Application

- 3.1 All lawyers wishing to have their names added to either the resident or non-resident panel in Nunavut are required to submit their applications to the CEO of the LSB for consideration. In order to be added to a panel, a lawyer must be in private practice, prepared to provide legal aid and not be an employee of the Board or a regional committee under which the lawyer is required to provide legal aid in a specified area.
- 3.2 A resident lawyer, applying to the resident panel, must provide proof of residency in accordance with the Nunavut residency requirements as stipulated under the *Income Tax Act of Canada R.S.C.1985 c.1*.
- 3.3 Proof, in the form of the previous year’s tax designation of residency, may be requested by the CEO at the time of submission of the lawyer’s application to be included on the Nunavut Panel as a resident lawyer.

- 3.4 A lawyer, newly resident to Nunavut, unable to provide the requisite tax designation due to recent relocation, may satisfy the residency requirements by submitting to the CEO for consideration:
- i) a valid Nunavut driver's license or Nunavut health card, and
 - ii) proof of operating a law office or being employed in a law office in Nunavut.
- 3.5 All applicants will furnish to the CEO a detailed work history evidencing her/his experience in the areas of family and or criminal law. Applicants are also required to provide a summary of their work and/or living experience in Nunavut to enable the CEO to properly consider when and if a departure from the rotation system under Section 37 is necessitated in assigning circuit work.
- 3.6 The LSB may request any and or all lawyers on the panel to reapply, reaffirm or renew their panel application, annually or periodically, as LSB sees fit, to ensure that the panel list is current and that all lawyers listed on the panel are eligible, available and interested in being assigned legal aid files.

4.0 Principles

- 4.1 In accordance with Section 37 of the *Legal Services Act* R.S.N.W.T. 1988, c. L-4 (the "Act"), the CEO "shall make every attempt to ensure fairness and equity among the lawyers on the panel".
- 4.2 The LSB is committed to ensuring that the assignment of files to panel lawyers is completed through a transparent and accountable rotation process.

4.3 It is within the discretion of the CEO to determine which files require legal representation by panel lawyers. The discretion of the CEO may be exercised in consultation with LSB's Chief Operating Officer and senior regional counsel.

4.4 Section 37 (4) states that the CEO may depart from the rotation assignment system when satisfied that:

(a) the operation of the rotation system would not be economically practical;

(b) the interests of the eligible person would or might be prejudiced by the application of the rotation system; or

(c) the lawyer who would be assigned will not or is unlikely to be available for the assignment; and/or would or might be involved in a conflict of interest; and/or does not have the experience, expertise or qualifications required, having given consideration to all the circumstances.

4.5 The CEO may use any relevant information to determine when a departure from the rotation system is necessary to ensure the panel lawyer encompasses the experience, expertise and qualifications required on the circuit. Such relevant information will include but not be limited to:

- lawyer's seniority
- lawyer's seniority at the Nunavut Bar
- Previous and relevant Nunavut practice area experience
- Cultural and language skills
- Practice experience in the Nunavut Court of Justice
- Previous staff lawyer evaluations
- History, if any, with respect to the lawyer's past performance, complaints or other administrative burden with respect to the LSB

- 4.6 A panel lawyer who has been assigned a file may not procure another lawyer to provide any legal aid relating to that file unless:
- a) prior approval is obtained from the CEO as circumstances warrant such an exception;
 - b) the retention of the Nunavut Panel lawyer is confined to an appearance at an adjournment of a proceeding or an interlocutory or other preliminary motion in a proceeding; or
 - c) the lawyer and eligible person agree in writing to a change of counsel and such agreement is approved by the CEO.

5.0 Roles and Responsibilities

- 5.1 Lawyers who have their names added to a panel will be responsible for submitting sufficiently detailed dockets to the CEO within sixty (60) days of the completion of any assigned file. It is within the discretion of the CEO to request additional information for submitted dockets prior to approving payment. Lawyers may request and reasonably obtain extensions beyond the 60-day period by providing explanation for the delay. The CEO may deny payment, in full or in part, for insufficiently detailed dockets and associated invoices. The CEO may deny payment for dockets received after the 60-day period, if no extension is requested and granted.
- 5.2 A lawyer whose invoice has not been paid due to non-compliance with this policy may appeal, in writing, to the Executive Committee of the LSB for reconsideration.

- 5.3 A non-resident applicant is responsible for procuring her/his own license to practice law in Nunavut, either through a restricted appearance certificate or an annual membership to the Law Society of Nunavut. A non-resident lawyer will not be assigned work until proof of membership with the Law Society of Nunavut or an undertaking to provide same is submitted to the CEO. No file will be assigned to a lawyer who is not entitled to practice law by the Law Society of Nunavut.
- 5.4 In accordance with the regulations, “where a lawyer is unable for any reason to undertake legal aid during any period in excess of ten days he/she shall inform the CEO who shall cause the fact of his or her unavailability to be noted accordingly”.
- 5.5 Any lawyer who, for any reason, decides to have his or her name removed from a panel, will, after giving the CEO formal, written notice of same, complete all remaining work previously undertaken in a competent and professional manner in accordance with the requisite professional obligations.
- 5.6 In accordance with Section 12.1 of the regulations, “a lawyer whose name has been removed from the Panel for any reason shall not be entitled to reinstatement to any Panel without the approval of the Board of Directors or an Order of a Judge of the Nunavut Court of Justice under subsection 35(3) of the *Legal Services Act*.”
- 5.7 Any lawyer, formally under a contract of service with the LSB, who has had that contract terminated for cause, shall not be added to a panel without the approval the Nunavut Court of Justice or the Board of Directors which will take into consideration the nature of the termination to determine the suitability and appropriateness of the applicant’s admission to a Panel.