



Legal Aid, Ju\$stice At the Right Price

Checklist Information Supplement

The Legal Aid Application

Residing in Québec

In order to be eligible for legal aid, an applicant must reside in Québec. However, a resident of another State or province may be eligible if the applicant's State or province of origin offers similar legal services to residents of Québec. Currently, there is a reciprocity agreement between the Canadian provinces and territories only with respect to civil matters. There is also a reciprocity agreement with France.

In criminal matters, agreements exist between the federal government and the provinces regarding the eligibility of residents from other provinces who are being prosecuted in Québec and Québec residents who are being prosecuted in other provinces. In general, the legal aid application must be made in the province in which the person is being prosecuted, except where there is a request to transfer the case for purposes of entering a guilty plea.

The legal aid appointment

In general, you must make an appointment at the legal aid office closest to your residence. On the scheduled date, you must present yourself and provide all the documents required for the review of your application, such as proof of all your income, your bank statements, your investment statements, your real estate tax statements, proof of your indebtedness, including mortgage statements, as well as proof of the sums to be deducted from income, such as day-care expenses, support payments, tuition fees and expenses incurred to make up for a physical or mental deficiency. You will also have to provide personal information, such as your address, your social insurance number and the name of the members of your family.

You will have to sign the legal aid application. The application includes an undertaking to inform the director general of the regional legal aid centre of any change in your financial or matrimonial situation or that of your family, to inform the director general without delay of any change in your place of residence, to repay the costs of legal aid in the cases provided for by the Act and the regulations and, if applicable, to pay the contribution, including the administrative expenses. It also includes a declaration to the effect that all the information provided is accurate. You will also have to sign an authorization allowing the regional legal aid centre to contact the tax authorities in question, a financial

institution, an organization, a government department or an employer, in order to verify the financial information provided by you.

The freedom to chose your lawyer

If you are eligible for legal aid, you have the option to be represented by a lawyer who is a permanent legal aid staff member or a lawyer in private practice who accepts legal aid mandates.

The payment of fees

You do not have to pay anything directly to the lawyer representing you. In certain cases, you may have to pay a contribution. This contribution is paid to the legal aid office.

Financial Eligibility

In determining your financial eligibility for legal aid, we will consider your income, property and liquidities and, if applicable, those of your spouse.

Income

Income for purposes of establishing financial eligibility is calculated on an annual basis. We will consider all sources of income, such as employment income, business income, income from property, employment insurance benefits, CSST income replacement benefits, SAAQ income replacement benefits, salary insurance benefits, support payments, bursaries and all other benefits.

Deductions

From income, we may deduct the expenses incurred to make up for a severe physical or mental deficiency, day-care expenses paid, up to the amount eligible for the provincial tax credit, support payments actually paid and tuition fees deductible under the *Taxation Act*.

Property

We will take into account the value of your property and that of your spouse, such as immovables and non-locked-in retirement funds, that exceeds the levels prescribed in the regulation, namely, \$47,500 for a person who does not own his residence and \$90,000 for a person who owns his residence. In such a case, 10% of the amount exceeding the prescribed levels will be considered as income. In computing the value of your property, your debts will be taken into account.

Liquidities

We will take into account your liquidities as well as those of your spouse, namely cash or assets that can be converted into cash in the short term, such as savings bonds and exchange-traded shares, when they exceed the levels prescribed in the regulation, namely \$2,500 for a single person and \$5,000 for a family. In such a case, 100% of the amount exceeding the prescribed levels will be considered as income.

Income scales

Your income and that of your spouse must fall below the scales prescribed by regulation. These are indexed annually. There are two types of scales, one for eligibility for gratuitous legal aid and the other for eligibility for contributory legal aid.

Eligibility of beneficiaries of last resort financial assistance

The Act creates a presumption of eligibility for gratuitous legal aid for any person who receives benefits, other than special benefits, under a program of last resort financial assistance provided for in the *Individual and Family Assistance Act* (R.S.Q., c. A-13.1.1) or who is a member of a family that receives such benefits.

Eligibility for Contributory Legal Aid

Situations of eligibility for contributory legal aid

Even if your income, property or liquidities and those of your spouse exceed the amount provided for in the eligibility scales for gratuitous legal aid, you may nevertheless be eligible for contributory legal aid. To determine your eligibility, we will calculate deemed income that takes any excess amounts into account.

If the income so determined falls within the scales prescribed for the contributory scheme, you will be financially eligible for legal aid, provided you pay the prescribed contribution.

The amount of the contribution

The contribution is determined on the basis of the deemed income established. It ranges from \$100 to \$800, in increments of \$100. This amount includes the \$50 of administrative expenses. Regardless of the cost of the services rendered, the contribution remains the same. Moreover, the contribution cannot exceed the cost of the services rendered. Thus, if the contribution is equal to \$700 and the cost of the services is equal to \$450, you will only pay \$450. If you have paid a greater amount, the difference will be reimbursed to you.

Payment of the contribution

Administrative expenses of \$50 must be paid when a file is opened. Within 15 days following your acceptance, you will have to pay, to the regional legal aid centre, the contribution or an amount equal to the actual foreseeable costs.

The director general may, under certain conditions, agree that the contribution will be paid in several instalments. The total period for such instalments may not exceed 6 months.

Coverage in criminal law matters

Telephone consultation

A telephone consultation service is available at all times in criminal and penal matters for any individual who has been arrested or is being held in custody, whether or not the person is financially eligible for legal aid.

Services always covered

Generally, in criminal matters, legal aid will be granted to a financially eligible applicant under the following circumstances:

- 1) the applicant has been charged with an indictable offence under a federal statute;
- 2) the applicant is subject to a conditional sentence order and appears before a court for a breach of a condition of that order;
- 3) the applicant is being held in custody at the time of his appearance, without the custody resulting from his failure to be present in court when required to appear;
- 4) the applicant has been charged with a summary offence under a federal statute and is facing charges of sexual assault or charges of mistreatment of his spouse or children; or
- 5) the applicant has been charged with a summary offence and will be brought before a court in the presence of a child under 14 years of age.

Certain other services are always covered. For a complete list, please refer to the Act.

Services that are sometimes covered

Services in criminal matters are sometimes covered for summary proceedings or proceedings under the *Code of Penal Procedure* in cases in which, if the applicant were convicted, there is a likelihood he would be imprisoned or would suffer a loss of his means of earning a livelihood or where it is in the interests of justice that legal aid be granted, having regard to exceptional circumstances, such as the seriousness of the matter or the complexity of the case.

Coverage in Youth Law Matters

Criminal justice

Services are always covered in matters involving the defence of adolescents facing proceedings under the *Youth Criminal Justice Act*.

Youth protection

Services are always covered for matters in which a court exercises its jurisdiction under the *Youth Protection Act*. Services are also covered when a minor requires assistance for the purposes of an agreement pertaining to voluntary measures under the *Youth Protection Act*.

Coverage in matters involving family law and the law of persons

Services are always covered in the following circumstances:

- 1) an application relating to separation from bed and board, divorce, marriage, filiation, adoption, parental authority, the compensatory allowance to the surviving spouse and the obligation of support;
- 2) an application for a financial contribution filed against the succession of a debtor of support;
- 3) an application relating to tutorship to a minor, protective supervision or a mandate given in anticipation of the mandator's incapacity; or
- 4) an application relating to the *Act respecting the civil aspects of international and interprovincial child abduction*.

Certain other services are always covered. For a complete list, please refer to the Act.

Coverage in administrative law matters

Services for an administrative review of a decision or judicial review by a court are always covered with respect to an application for benefits, compensation or a payment exemption or with respect to the contestation of a demand for the recovery of benefits or compensation, if such application or contestation is made within the framework of the programs established under certain statutes such as the *Act respecting occupational health and safety*, the *Automobile Insurance Act*, the *Crime Victims Compensation Act*, the *Act respecting the Québec Pension Plan*, the *Individual and Family Assistance Act* or the *Employment Insurance Act*.

Other Coverage in Civil and Administrative Matters

Legal aid may be granted in other cases if the physical or psychological safety of a person, his means of livelihood or his essential needs are at stake. It may also be granted if the freedom of a person is seriously restricted, due to committal to custody or detention.

The Act also provides for discretionary coverage for a person in the drawing up of a document that is customarily within the scope of the professional duties of a notary or lawyer if such service is necessary because of the difficulty the person is having in preserving or asserting his rights or because of the harmful consequences for the person's physical or psychological well-being or that of his family that would result from not being provided the service.

Excluded Services

Certain services are never covered, such as a recourse instituted by a plaintiff for defamation or libel and the defence of a person prosecuted under an Act, regulation or by-law for an offence relating to parking.

Review

If an applicant's legal aid is refused or withdrawn or the applicant wishes to contest a request for the repayment of legal aid costs or the amount of the contribution payable, the applicant may apply for a review within 30 days of the decision. A person may also contest the decision to maintain or withdraw legal aid following the contestation of an applicant's financial eligibility for legal aid.

The application for review is heard by three individuals, including at least one lawyer. The decision of the Review Committee is final and without appeal.