

The Saskatchewan Legal Aid Commission

**Appointments to The
Private Bar**

The Legal Aid Act

Policy, Procedures, Tariffs

October 1, 2014

**(*updated June 2016 because of program name changes and update
to section G – Procedures For Referral)**

Saskatchewan Legal Aid Commission

Private Bar Appointment Policy

Effective October 1, 2014

The purpose of legal aid is to provide services to persons and organizations in respect of certain civil and criminal matters where those persons and organizations are unable to secure those services from their own resources.

The Saskatchewan Legal Aid Commission is funded by the Provincial Government through Saskatchewan Justice. By agreement, the Federal Government reimburses the Province for a portion of legal aid expenditures on adult criminal matters, and young offender matters.

A. GOALS

1. To ensure clients receive a high level of service.
2. To maintain costs of providing service to clients at a reasonable cost.
3. To promote the efficient delivery of legal aid service throughout the province.
4. To create a better understanding of legal aid amongst the private bar.

B. FINANCIAL ELIGIBILITY AND SERVICES COVERED

An applicant is eligible for legal aid if:

1. The applicant receives income or other benefits from social assistance (i.e., Saskatchewan Assistance Plan, or Indigenous and Northern Affairs Canada).
2. The applicant is not receiving social assistance but would be entitled to because their financial resources are at social assistance levels (i.e., total Family Income using a sliding scale based on family size).
3. The applicant's obtaining legal services outside the Act would reduce their financial resources to the social assistance level.

NOTE: A client is required to report any changes in their financial circumstances so that continuing eligibility can be reassessed.

If there is professional merit, services are provided to eligible applicants in the following areas:

1. Criminal Matters - a great many, but not all, legal services are provided.
2. Civil Law Matters - most legal services in civil law are restricted to family law.
3. Summary advice and information may be provided to anyone about a wide range of matters if they involve no more than a brief interview or telephone call.

4. Immediate, although temporary advice, regardless of financial status, is available to those arrested or detained.

C. PANEL OF SOLICITORS

1. A 'solicitor' means a person who is authorized to engage in the practice of law in Saskatchewan.
2. a) A solicitor who wishes to provide legal services may apply to be placed on the panel of solicitors by completing the prescribed form (schedule E) and return it to Saskatchewan Legal Aid Commission, Head Office.

b) A Curriculum Vitae of the lawyer should be provided with the prescribed form.
3. The Commission will periodically update the panel lists and request confirmation that the solicitor wishes to remain on the panel (schedule E) and return it to Saskatchewan Legal Aid Commission, Head Office.
4. A solicitor appointed to act for a client may withdraw their services with respect to a particular client by notifying the Commission of their intention to do so.
5. Any change of the solicitor of record, from the one named in the letter of appointment, must be approved by the Chief Executive Officer or their designate.

D. STATUTE

Section 29 of **The Legal Aid Act** describes the circumstances when the Saskatchewan Legal Aid Commission can appoint a member of the panel of solicitors.

“The chief executive officer or any person designated by the chief executive officer may appoint a solicitor who is a member of the panel to provide legal services to a person who is eligible to receive the services of a solicitor pursuant to this Act.”

Section 15(1) of **The Legal Aid Act** refers to the composition of the panel.

“Any solicitor who wishes to provide legal services under this Act, including a solicitor who is a member or an employee of the commission, may be designated by the commission as a member of the panel subject to any terms and conditions that may be prescribed by the commission.”

E. CONDITIONS FOR REFERRAL

Private bar appointments MAY be authorized where:

1. A conflict of interest may exist such as in any of the following circumstances:
 - a) where an area office is already acting for a co-accused or a party who takes a position adverse to the interest of the client;
 - b) where an area office is already acting for a co-accused on a matter and where the client is at the same time subject to cross examination in another matter;
 - c) where a Commission employee may be faced with the use of information against a client who has revealed that information in confidence to a Commission employee.

2. It may be impossible or improper to act for a client such as in the following circumstances:
 - a) where an appropriate level of expertise is unavailable at the area office;
 - b) where assigned commitments of Commission staff to make attendance upon a matter, at short notice, impossible;
 - c) where, as a result of the failure of a client to cooperate with or to instruct counsel, the Commission staff feel unable to act, with resulting consequences if the client were to be convicted;
 - d) where it is more economical in terms of travel time and costs.
3. In civil matters referred to the Commission from another legal aid plan in Canada, where the Commission determines that a private bar appointment is required.
4. In other exceptional circumstances, in the discretion of the Chief Executive Officer or their designate.

F. TARIFF OF FEES

The Commission establishes, after consultation with the Law Society of Saskatchewan, a tariff of fees pursuant to which private bar lawyers will receive remuneration for their services.

The tariff is intended to reflect fees that would customarily be paid by a client of modest means.

Where a solicitor is appointed pursuant to the statute or by policy, the solicitor is deemed to be retained by the Commission and will receive remuneration in accordance with the established tariff of fees.

The schedules of fees and disbursements in Schedules "A" and "B" are the fees and disbursements authorized by the Commission.

In circumstances E.1, E.2, and E.3, the tariff is based on a minimum fee or subject to certain maximums. In situations in E.4, the tariff may be based on an hourly fee, a flat fee, or such other fees as the circumstances require.

The Commission is GST/HST exempt and therefore any fees and disbursements should not have the GST/HST applied. Our exemption certificate is indicated below:

"The property and/or services mentioned in this order are being purchased by The Saskatchewan Legal Aid Commission with Crown Funds and therefore are not subject to the Goods and Services Tax or Harmonized Sales Tax."

Legal services under **The Legal Aid Act** are not subject to the Provincial Sales Tax (PST).

G. PROCEDURE FOR REFERRAL

1. In cases described in E.1, E.2, E.3, and E.4 above, the legal aid area office director is designated to formally appoint a solicitor on the panel to represent a client using such guidelines, procedures or other requirements as the Commission may prescribe in this document.

H. SUBMISSION AND PAYMENT OF ACCOUNTS

1. Submission of Accounts

- a) A solicitor who has provided services pursuant to an appointment and who has completed such services or who has ceased to act shall submit the following within six (6) months of the last service date:
 - i) Prescribed Legal Aid Account Schedule "C" Form completed in full, with signature, which includes:
 1. Report of Lawyer - General, Certificate of Remunerations, date, signature (Section A)
 2. Present Status of Work, (Section B)
 3. Account Summary (Section C)
 4. Report of Lawyer - Legal Services Rendered (Section D)
 5. Charges/Work Performed and Outcome(s), (Section E)
 6. Absence Fees and Disbursement Summary, (Section F)
 - ii) Invoice
 - iii) If applicable, to receive compensation to the maximum amounts established within the tariff, the following additional information must be provided:
 - Fees: detail itemizing each and every service rendered, showing the date and time involved in rendering the service and a summary of fees
 - Absence Fees.
 - iv) Any written authorization received for expenditures
 - v) Such other supporting material as required
- b) Interim Accounts will be accepted in the following circumstances:
 - i) following a written request from the appointed lawyer and approval of the Chief Executive Officer or their designate, whereby a significant part of a criminal or family law proceeding is completed
 - ii) following a request from the Chief Executive Officer or their designate

2. Payment of Accounts

- a) Each account submitted shall be examined, settled, and approved for payment in accordance with this policy statement.
- b) The Chief Executive Officer or their designate may disallow fees, in whole or in part, where, in their opinion:
 - i) proceedings were unreasonably taken or prolonged
 - ii) not calculated to advance the interest of the client

- iii) incurred though negligence
- iv) preparation or counsel fees were unreasonable in their nature, scope or time expended
- c) The Chief Executive Officer or their designate may require justification from a lawyer of all items included in their account.
- d) When the account has been settled, payment will be made to the firm of the solicitor who rendered the account, showing the disposition of the items.
- e) For accounts submitted more than six (6) months after the last service date, an administrative fee **may** be assessed and deducted from accounts paid. The administrative fee will be 25% of the taxed amount before disbursements, with a minimum fee of \$25.00 and a maximum of \$500.00. This may be appealed to the Discretion Committee.

I. APPEAL OF PAYMENT OF ACCOUNTS

1. A Discretion Committee on the payment of accounts consists of a lawyer member of the Commission and a lay member of the Commission. The Chief Executive Officer acts as secretary to the Committee.
2. A solicitor who is dissatisfied with the payment of their account may appeal to the Discretion Committee with respect to:
 - interpretation of the tariff
 - application of the tariff
 - extremely exceptional circumstances having regard to the nature of the offence charged, the complexity of the case, the result obtained, and where circumstances are such that they warrant the payment of any sum in excess of the tariff
3. The decision of the Discretion Committee is final.
