

LEGAL SERVICES ACT
CONSOLIDATION OF LEGAL SERVICES REGULATIONS
R.R.N.W.T. 1990,c.L-8

(Current to: July 5, 2012)

AS AMENDED BY:

R-068-95

In force July 4, 1995

R-023-96

s.4(7) in force July 4, 1995

R-062-96

In force July 1, 1996

R-066-96

R-009-99

R-022-2000

In force December 11, 2000, except s.8,11,12

s.8,11,12 in force July 1, 2000 (deemed)

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of regulations can be ascertained from the *Revised Regulations of the Northwest Territories, 1990* and the monthly publication of Part II of the *Northwest Territories Gazette* (for regulations made before April 1, 1999) and Part II of the *Nunavut Gazette* (for regulations made on or after April 1, 1999).

A copy of a regulation of Nunavut can be obtained from the Territorial Printer at the address below. The *Nunavut Gazette* and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any registered regulations not yet published in the *Nunavut Gazette* can be obtained through the Registrar of Regulations at the address below.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

c.	means "chapter".
CIF	means "comes into force".
NIF	means "not in force".
s.	means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
Sch.	means "schedule".

Citation of Acts

R.S.N.W.T. 1988,c.D-22	means Chapter D-22 of the <i>Revised Statutes of the Northwest Territories, 1988</i> .
R.S.N.W.T. 1988,c.10(Supp.)	means Chapter 10 of the Supplement to the <i>Revised Statutes of the Northwest Territories, 1988</i> . (Note: The Supplement is in three volumes.)
S.N.W.T. 1996,c.26	means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
S.Nu. 2002,c.14	means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

Citation of Regulations and other Statutory Instruments

R.R.N.W.T. 1990,c.A-1	means Chapter A-1 of the <i>Revised Regulations of the Northwest Territories, 1990</i> .
R-005-98	means the regulation registered as R-005-98 in 1998. (Note: This is a Northwest Territories regulation if it is made before April 1, 1999, and a Nunavut regulation if it is made on or after April 1, 1999 and before January 1, 2000.)
R-012-2003	means the regulation registered as R-012-2003 in 2003. (Note: This is a Nunavut regulation made on or after January 1, 2000.)
SI-005-98	means the instrument registered as SI-005-98 in 1998. (Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.)
SI-012-2003	means the instrument registered as SI-012-2003 in 2003. (Note: This is a Nunavut statutory instrument made on or after January 1, 2000.)

LEGAL SERVICES REGULATIONS

Interpretation

1. In these regulations,

"Act" means the *Legal Services Act; (Loi)*

"applicant" means a person who applies for legal aid and includes a person in respect of whom legal aid has been approved; (*demandeur*)

"contribution" means the portion of the costs of legal services that an applicant may be required to pay under section 50 of the Act; (*contribution*)

"plan" means the legal aid plan established and administered under the Act and these regulations; (*régime*)

"prior legal aid" means legal aid granted before the commencement of these regulations; (*aide juridique antérieure*)

"recipient" means a person who has received legal aid. (*version anglaise seulement*)

Legal Services Board

2. (1) Four members of the Board constitute a quorum.

(2) The chairperson of the Board shall preside at meetings of the Board, but if the chairperson is absent, the members present may elect from their number a chairperson for the purposes of that meeting.

(3) The chairperson of a meeting has a vote on all questions before the Board and in the event of a tie, the chairperson has a second and deciding vote.

(4) A member of the Board, other than the Executive Director or a member of the public service of Nunavut or Canada, shall be paid an honorarium for each day a meeting is held, as follows:

the chairperson of the Board.....\$150 a day

a member other than the chairperson.....\$100 a day.

(5) A member of the Board shall be paid the actual and reasonable travel and living expenses incurred, in accordance with the rates applicable to members of the public service of Nunavut on duty travel.

(6) **Repealed, R-022-2000,s.2(4).**

(7) A member of the Board who wishes to resign shall tender his or her resignation in writing to the Board. R-022-2000,s.2.

3. The Board may procure and maintain a policy of fidelity insurance covering such employees as the Board may determine and any premium payable for insurance coverage shall be paid out of funds appropriated for the provision of legal services.

4. In exercising its powers and carrying out its duties under the Act and these regulations, the Board is bound by and shall honour the terms of any agreement made under section 28 or 29 of the Act and is responsible for ensuring that such terms are honoured by other persons involved in administering the provision of legal services.

Regions

5. For the purpose of administering legal services, the Territories are divided into three regions as set out in Schedule A, and each region is comprised of those communities listed in Schedule A in respect of that region. R-009-99,s.2; R-022-2000,s.3.

Advisory Committee

6. (1) This section applies where an advisory committee is appointed under section 27 of the Act.

(2) At its first meeting, the advisory committee shall elect a chairperson from among its members, and when the chairperson is absent from a meeting, the committee may elect from among those members present a chairperson for the purposes of that meeting.

(3) Meetings of the advisory committee shall be at the call of the chairperson of the committee.

(4) A majority of the members appointed constitutes a quorum of the advisory committee.

(5) A member of the advisory committee shall be paid the actual and reasonable travel and living expenses incurred, in accordance with the rates applicable to members of the public service of Nunavut on duty travel. R-022-2000,s.4.

Panels

7. (1) A lawyer who wishes to have his or her name entered upon a panel established by the Board and who is so eligible under the Act must submit an application in a form approved by the Executive Director to the Executive Director, who, on the acceptance of the application by the Board, shall have his or her name entered on the appropriate panel.

(2) The Executive Director shall maintain lists of the names on the panels.
R-023-96,s.2.

8. Where a lawyer whose name has been entered on a panel is unable for any reason to undertake legal aid during any period in excess of 10 days, he or she shall so inform the Executive Director who shall cause the fact of his or her unavailability to be noted accordingly.

9. Where a notice of complaint is served upon a lawyer by the Law Society or a criminal charge is laid against a lawyer and the offence alleged in the notice of complaint or criminal charge relates in whole or in part to the operation of the plan, the Board may, pending the disposition of the complaint or charge, direct his or her immediate suspension from any panel on such terms as it considers appropriate.

10. A lawyer whose name is removed from a panel under section 35 of the Act may, within 30 days of receipt of the notification of his or her removal, appeal to a judge by way of originating notice of motion for reinstatement to the panel.

11. A lawyer who gives notice to have his or her name removed from a panel under section 36 of the Act shall, subject to subsection 12(2) of these regulations, complete all work that he or she has undertaken under the Act.

12. (1) A lawyer whose name has been removed from a panel for any reason shall not be entitled to reinstatement to any panel without the approval of the Board or the order of a judge under subsection 35(3) of the Act.

(2) A lawyer whose name has been removed from a panel shall

- (a) deliver any legal aid file in his or her possession to the Executive Director when required,
- (b) report to the Executive Director on the state of any uncompleted work, and
- (c) continue, in respect of obligations under the Act or these regulations undertaken as a member of the panel, to be liable to perform those obligations,

and may render an account for fees and disbursements.

13. For the purposes of section 40 of the Act, an eligible person charged with an offence under

- (a) section 348 of the *Criminal Code*, or
- (b) section 4 of the *Narcotic Control Act* (Canada)

does not have the power of selection of lawyer referred to in those Acts.

Applications

14. (1) An application for legal aid shall be in writing and in a form approved by the Executive Director.

(2) An applicant shall provide such information as is required in order to complete the application and shall sign an authorization to investigate his or her financial status in a form approved by the Executive Director.

15. The Executive Director may designate persons as legal aid representatives with the authority to receive legal aid applications and, to the extent so authorized, to deal with the applications.

16. The Executive Director and, where authorized by his or her designation, a legal aid representative may require that an application for legal aid for a person under the age of majority, a mental incompetent or a person mentally ill or incapable of managing his or her affairs, be made on his or her behalf by a parent, guardian, relative, friend, committee or the Public Trustee, as the circumstances require.

17. Where a legal aid representative receives an application for legal aid, he or she shall, after making such inquiries and investigation into the nature of the matter and means of the applicant as may be authorized by his or her designation, forward the application, with a report of his or her inquiries and investigation, to the Executive Director.

18. (1) Without limiting the generality of sections 30 to 33, 44 and 45 of the Act, every application for legal aid shall be considered by the Executive Director or, where authorized by his or her designation, the legal aid representative receiving it.

(2) Subject to subsection 19(1), an application for legal aid shall be refused where it appears to the person considering the application that

- (a) the applicant requires legal aid in a matter in which he or she is concerned in a representative, fiduciary or official capacity and it appears that the costs can be paid out of any property or fund that is sufficient to pay such costs;
- (b) the applicant is entitled to financial or other assistance or has reasonable expectations of such and has failed to demonstrate that assistance is not available to him or her;
- (c) the aid applied for is frivolous, vexatious, an abuse of court process or an abuse of the plan;
- (d) the relief sought can bring no benefit to the applicant;
- (e) the relief sought, if obtained, is not enforceable at law; or
- (f) except in a case referred to in section 32 of the Act, the professional services sought are available to the applicant without legal aid.

(3) Subject to subsection 19(1), an application for legal aid may be refused where it appears to the person considering the application that

- (a) the applicant has failed, without reasonable justification, in any obligation to the Board, a regional committee or the Commissioner with respect to legal aid or prior legal aid;
- (b) the applicant has previously received legal aid or prior legal aid with respect to the same matter;
- (c) the applicant is currently receiving or has received legal aid or prior legal aid in such amount that the granting of additional aid would constitute an excessive charge on the legal aid funds for a single applicant;
- (d) with the exception of proceedings referred to in paragraphs 44(b) and (c) of the Act, the applicant is not ordinarily resident in Canada;
- (e) the relief sought is enforceable only in a jurisdiction other than Nunavut;
- (f) the applicant has the right to be joined in an action as plaintiff with one or more other persons having the same right to relief by reason of there being a common question of law or fact to be determined;
- (g) the applicant is one of a number of persons having the same interests under such circumstances that one or more may sue or defend on behalf of or for the benefit of all; or
- (h) no sufficient reason for granting aid is shown at the particular time of application.

(4) Subject to the discretion of the Legal Services Board in particular cases, there shall be no legal aid coverage for the following matters:

- (a) for first offence impaired driving charges unless there are combined *Criminal Code* charges;
- (b) for offences under the *Motor Vehicles Act*, unless the charges are second, or subsequent offences, for careless driving;
- (c) for civil cases, excluding matrimonial cases, where the expected recovery is less than \$2,000;
- (d) for summary conviction offences where the accused has already been issued three legal aid certificates for summary conviction offences during the past year;
- (e) for summary conviction offences, where the accused has been ordered by the Legal Services Board to contribute to the cost of legal aid previously and has not contributed or made efforts to contribute on a regular basis;
- (f) for the offence of consuming liquor by a minor under the *Liquor Act* unless there are charges under the *Criminal Code* or *Liquor Act* arising out of the same circumstances.

R-022-2000,s.5.

19. (1) A legal aid representative who is not a barrister or solicitor shall not refuse an application

- (a) on any of the grounds set out in subsection 18(2) without the approval of the Executive Director;
- (b) on any of the grounds set out in subsection 18(3) without the approval of the regional committee or the Executive Director.

(2) Where an applicant for legal aid is not a resident of Nunavut, no legal aid shall be granted to him or her without the approval of the Executive Director. R-022-2000,s.6.

20. The financial eligibility of an applicant shall be determined in accordance with the rules set out in Schedule C.

21. Where it is determined that an applicant can pay some part or the whole of the cost of legal aid applied for, the Board or person authorized to approve the application shall require the applicant to enter into an agreement to make such payment in a form approved by the Executive Director.

22. (1) The Board may at any time review any decision made as to a contribution and vary the decision as it sees fit.

(2) Where the Board varies a decision as to a contribution, the Executive Director shall immediately so notify the applicant, and may require the applicant to execute an agreement referred to in section 21 to give effect to the decision of the Board.

Civil and Appellate Matters

23. Where the legal aid applied for is for any appellate matter, the applicant, in addition to the application, shall submit

- (a) the opinion of the lawyer who had the conduct of the matter in the lower court, as to the advisability of commencing, defending or continuing the appeal;
- (b) a copy of the finding, judgment or order appealed against, where available;
- (c) a copy of the reasons for the finding, judgment or order appealed against, where available; and
- (d) such other information as may be considered advisable or as is required by the Executive Director.

24. Subject to these regulations and except where the circumstances of the case necessitate an immediate authorization, legal aid for civil and appellate matters shall not be authorized unless

- (a) the application with the materials required by section 45 of the Act and section 23 of these regulations has been received;
- (b) the Executive Director considers that it is reasonable that the appeal or action be commenced, defended or continued; and

- (c) the application is approved by the Board.

25. In determining the reasonableness of any proposed appeal or action, the Executive Director shall consider the matter from the standpoint of a usual solicitor and client relationship, taking into account the possibility of success, the cost of the proceedings in relation to the anticipated loss, remedy or relief and the likelihood of enforcing judgment, where applicable.

Authorizations

26. Subject to these regulations, legal aid shall be authorized where it has been determined that an applicant is eligible for the legal aid applied for and the application has received the approval of the Executive Director or the Board if required.

27. (1) Where the legal aid is for a civil matter or any appellate matter, the authorization shall be in writing in a form laid down by the Board setting out

- (a) the date of the authorization;
- (b) the nature and extent of the services to be rendered on behalf of the applicant;
- (c) the terms of the contribution by the applicant, if any; and
- (d) any restriction or limitation imposed by the Executive Director or the Board.

(2) Where the legal aid is for a criminal matter other than an appeal, the person empowered to authorize the legal aid shall signify such authorization in the manner laid down by the Executive Director.

(3) An applicant or his or her lawyer may apply to the Executive Director to amend or vary an authorization.

28. (1) Authorizations shall be forwarded or given to the lawyer assigned by the Executive Director under the Act.

(2) Where for any reason a lawyer who receives an authorization is unable or unwilling to act, he or she shall without delay notify the Executive Director, and return any written authorization to the Executive Director.

29. (1) Where a lawyer provides services other than those authorized, he or she is not entitled to be paid for those services or any disbursements on account of those services from the plan.

(2) Where the Executive Director or the Board is satisfied that it is just and proper to do so, an authorization having retroactive effect may be issued to cover legal services already provided to an eligible person.

30. (1) Where, in the opinion of a lawyer acting for an eligible person, the matter or proceedings for which legal aid has been authorized requires the assistance of counsel or a student-at-law, he or she may apply in writing to the Executive Director for authority to employ counsel or a student-at-law, as the case may be, setting out the extent of the services to be performed by counsel or the student-at-law and the reasons the services are required.

(2) The authority to employ counsel or a student-at-law must be in writing and specify the extent of the services to be performed.

(3) Counsel and students-at-law so authorized shall be paid fees and disbursements in accordance with these regulations.

31. Where

- (a) a lawyer completes all services authorized,
- (b) a solicitor-client relationship is terminated,
- (c) the case is transferred to another lawyer,
- (d) the authorization is cancelled, or
- (e) a lawyer is of the opinion that no further useful work can be done for the client,

the lawyer shall forward to the Executive Director

- (f) his or her account for fees and disbursements and supporting material, and
- (g) a copy of any authorization.

32. Where any circumstances come to the attention of a lawyer which indicate that his or her client may not be or have been eligible or entitled to legal aid, the lawyer shall immediately report such circumstances to the Executive Director.

33. (1) Where an assessment, including a nil assessment, has been made under section 50 of the Act and the Executive Director or his or her designate subsequently concludes that the assessment should be varied, he or she may issue a new assessment under that section and set or vary terms of the contribution and require the applicant to execute an agreement in the form referred to in section 21 to give effect to any terms.

(2) Where an authorization has been given for legal aid and after authorization has been given, the Executive Director or his or her designate concludes that

- (a) the applicant no longer has reasonable grounds for continuing the proceedings authorized; or
- (b) the applicant has failed without reasonable justification in any obligation to the Board, a regional committee or the Commissioner with respect to legal aid or prior legal aid,

he or she may cancel the authorization.

(3) Where an authorization has been given for legal aid and the applicant is found to be no longer eligible under subsection 33(2) of the Act, the Executive Director or his or her designate shall cancel the authorization.

34. (1) Where an authorization for legal aid is cancelled, the Executive Director or his or her designate shall immediately notify the lawyer and the applicant.

(2) A lawyer is not entitled to be paid for any services rendered after his or her receipt of notification that an authorization has been cancelled.

35. (1) Where an applicant wishes to appeal a decision referred to in section 46 of the Act, the applicant shall deliver or cause to be delivered notice in writing of his or her appeal to the Executive Director.

(2) Upon receipt of the notice of appeal, the Executive Director shall without delay refer the matter to the Board, which may vary or confirm the decision.

(3) The Board shall determine the appeal in accordance with the criteria governing the disposition of an application by the Executive Director or his or her designate under the Act and these regulations.

(4) An appeal under this section is an informal review and no right to a hearing is established.

(5) The Executive Director shall inform the applicant as to the disposition of the appeal and implement or cause to be implemented the decision of the Board.

(6) The Executive Director shall not vote on an appeal from his or her decision in proceedings of the Board.

Lawyers' Accounts

36. Where a lawyer submits an account under section 49 of the Act, he or she shall be paid an amount determined on the basis of the tariff of rates, disbursements and the allocation of time pursuant to Schedule D. R-068-95,s.2.

37. (1) Where a lawyer is permitted under subsection (2) or directed to submit an account, he or she shall forward to the Executive Director

- (a) an account in duplicate of his or her fees and disbursements in a form laid down by the Executive Director showing the date and time expended for each item of service performed, the disposition of the case and such other particulars as are required by the form;
- (b) a certification of the account in the following words signed by him or her:

"I certify that the legal services in this account were rendered by me or by such other named person as is

specifically stated in this account and that the disbursements set out in this account were paid or incurred and were necessary and proper.";

- (c) a copy of any authorization for legal aid or expenditure of money; and
- (d) such further or other supporting material as may be required by the Executive Director.

(2) At the discretion of the Executive Director, interim accounts for services for a matter which has not terminated may be submitted.

- 38.** (1) The Executive Director may disallow fees for
- (a) proceedings unnecessarily or unreasonably taken or prolonged;
 - (b) proceedings incurred through negligence of the lawyer;
 - (c) proceedings not calculated to advance the interest of the recipient;
 - (d) preparing any document that is unnecessary or improper;
 - (e) preparation that is unreasonable in its nature, scope or with respect to the time expended; or
 - (f) work left in an incomplete state owing to circumstances which are primarily the responsibility of the lawyer.

(2) The Executive Director may disallow disbursements where, in his or her opinion, the disbursements have been unnecessarily or unreasonably incurred.
R-068-95,s.3.

39. (1) Where the Executive Director, in taxing an account under section 49 of the Act, varies the account submitted, he or she shall without delay send to the lawyer who rendered it a copy of the account showing the taxation and certifying the amount payable under these regulations.

(2) Where a lawyer is dissatisfied with the taxation and certification of his or her account, he or she may, within 15 days of receipt of the copy referred to in subsection (1), apply in writing for a review of the account by the Executive Director, setting out the items objected to and the grounds.

(3) The Executive Director shall review the application and confirm or vary the taxation and certification and shall inform the lawyer of his or her decision.

(4) Where a lawyer is dissatisfied with the review of the Executive Director, he or she may appeal to the Board.

(5) The appeal must be made in writing within 15 days of receipt of the decision of the Executive Director on review and be served by registered mail on the Executive Director.

(6) Upon receipt of the notice of appeal, the Executive Director shall request a hearing of the appeal before the Board.

(7) The chairperson of the Board shall set a date and place of hearing of an appeal and shall give reasonable notice to the Executive Director and the lawyer initiating the appeal.

(8) The Executive Director and the lawyer may appear at the hearing in person or by agent.

(9) The Board shall dispose of each appeal after review and may confirm or vary the amount taxed by the Executive Director.

(10) The Executive Director shall certify the account in accordance with the decision of the Board.

40. Where the Executive Director has certified an account for payment in accordance with the Act and these regulations and

- (a) the account has been approved at the amount for which it was rendered,
- (b) the time for applying for a review by the Executive Director has elapsed and no application has been received,
- (c) the time for appealing the decision of the Executive Director on review has elapsed and no appeal has been taken, or
- (d) an appeal has been disposed of,

the Executive Director shall authorize payment to be made by the Commissioner.

Recoveries

41. A lawyer acting for a legal aid recipient in any matter may, with the prior approval of the Executive Director or the Board, agree to

- (a) waive the right to costs;
- (b) accept a lesser fixed sum for costs; or
- (c) consent to the amount at which costs are to be taxed.

42. (1) Where a lawyer effects a settlement on behalf of a legal aid recipient entitling the recipient to recover any sum or property, he or she shall inform the Executive Director without delay of the terms of the settlement.

(2) The Executive Director shall assess the amount payable by the legal aid recipient under section 50 of the Act and shall give notice to the recipient and the lawyer of the amount due.

(3) A recipient who is dissatisfied with the assessment may, within 15 days of receipt of the notice by him or her or his or her lawyer, apply for a review of the

assessment by the Executive Director who shall confirm or vary the assessment and so inform the recipient.

(4) The recipient, within 15 days of receipt of the results of such review, may appeal to the Board in writing and, subject to these regulations, the Board shall dispose of every appeal so referred in such manner as it considers appropriate and may confirm or vary the amount of the assessment.

43. Where a recipient is entitled to recover any sum or property under a judgment, order or settlement, unless the recipient has paid the assessment referred to in section 50 of the Act, the lawyer shall

- (a) before paying to the recipient or to the order of the recipient any money recovered for him or her, pay to the Board the assessment from the money recovered; or
- (b) before delivery to the recipient or to the order of the recipient of any property other than money recovered for him or her, obtain from the recipient the execution and delivery of an appropriate instrument evidencing the charge on the property created by the Act and shall register the instrument in the proper offices and forward it to the Executive Director.

Reports and Financial Matters

44. At the request of the Executive Director, a lawyer who has provided legal aid shall provide such information with respect to that legal aid as may be required.

45. The Executive Director, at such times as are requested by the Board and in any event not later than May 30 in each year, shall submit a report to the Board stating

- (a) the number of applications for legal services received and authorizations given;
- (b) the amount received by way of contributions under section 50 of the Act;
- (c) the amount received by way of costs and other payments under sections 51 and 52 of the Act;
- (d) the amounts paid for administration and operation of the Act and these regulations;
- (e) the amount received by appropriation of the Legislative Assembly; and
- (f) such other information as is required by the Board or as the Executive Director considers appropriate.

46. The Board shall, at least once in every fiscal year at such times and in such form and manner as the Minister directs, submit to him or her an estimate of the sum required to meet the costs and payments authorized by the Act or these regulations during the next fiscal year, including

- (a) expenses attributable to the administration of the Act and these regulations including salaries, allowances, retainers, office accommodation, office expenses, travelling expenses, advertising expenses, insurance premiums, superannuation contributions and honoraria;
- (b) professional fees and disbursements for legal aid; and
- (c) transportation costs.

47. Moneys payable to the Commissioner under sections 51 and 52 of the Act shall be paid to the Comptroller General.

Miscellaneous

48. No person shall disclose any information furnished by or about an applicant or a recipient of legal services other than for the proper administration of the Act and these regulations.

49. No lawyer has a lien for his or her fees, charges or expenses for legal aid upon the property or papers in his or her possession belonging to a recipient.

50. The Executive Director may extend the time for doing any act or taking any proceeding under these regulations, whether the time at or within which it ought to have been done has or has not arrived or expired.

51. The Executive Director, upon receiving any complaint that a lawyer has failed to carry out his or her duties with respect to legal aid, shall make or cause to be made such investigation of the complaint as the Executive Director considers appropriate and may deliver the complaint, reports and the results of any investigation to the Board or the Law Society or both, as he or she considers necessary.

52. The Executive Director may designate a lawyer to act in his or her absence or in respect of any matter in which he or she is unable to act.

53. The Executive Director may refer to the Board for its recommendation any matter requiring the approval of the Executive Director.

SCHEDULE A

(Section 5)

1. BAFFIN REGION

Arctic Bay
Cape Dorset
Clyde River
Grise Fiord
Hall Beach
Igloolik
Iqaluit
Kimmirut
Nanisivik
Pangnirtung
Pond Inlet
Qikiqtarjuaq
Resolute Bay
Sanikiluaq

2. Repealed, R-022-2000,s.7(1).

3. KEEWATIN REGION

Arviat
Baker Lake
Chesterfield Inlet
Coral Harbour
Rankin Inlet
Repulse Bay
Whale Cove

4. KITIKMEOT REGION

Bathurst Inlet
Cambridge Bay
Gjoa Haven
Kugluktuk
Kugaaruk
Taloyoak
Umingmaktok

5. Repealed, R-022-2000,s.7(3).

R-009-99,s.3; R-022-2000,s.7.

SCHEDULE B

Repealed, R-023-96,s.3.

SCHEDULE C

(Section 20)

RULES FOR DETERMINING FINANCIAL ELIGIBILITY

1. In this Schedule,

"assets" includes the beneficial interest in assets held in trust and available for use for maintenance; (*bien*)

"expenses" means

- (a) basic living allowances for food, clothing, shelter and household supplies,
- (b) taxes, pension and unemployment insurance contributions,
- (c) utility costs,
- (d) transportation costs necessary for the earning of a livelihood or to enable the applicant or his or her children to attend school,
- (e) medical, dental and hospital costs,
- (f) instalment payments on debts incurred before making an application for legal aid, and
- (g) any other expenses allowed by the Board or the Executive Director; (*dépenses*)

"income" includes benefits and allowances received from a government or other agencies; (*revenus*)

"social assistance" means a program established by an Act or Act of Parliament and providing for income or financial assistance to an individual by reason of his or her poverty. (*aide sociale*)

2. The ability or inability of an applicant to contribute to the cost of the legal services applied for or provided and the extent of the ability to contribute shall be determined with reference to the assets and liabilities and the income and expenses of the applicant, his or her spouse and his or her dependants and, where the applicant is an infant, those of his or her parents or guardians.

3. In determining whether there should be a contribution and, if so, the amount of the contribution, the following matters shall be considered, namely

- (a) whether the applicant can contribute without his or her or his or her dependants' suffering undue financial hardship such as incurring substantial indebtedness or being required to dispose of modest necessary assets,
- (b) whether the applicant, his or her spouse and dependants have income after deduction of expenses allowed to them, available for contribution or use,

- (c) whether the applicant has liquid assets available after considering the amount of debts and liabilities that must be paid from the liquid assets,
- (d) with respect to an interest owned by the applicant, his or her spouse or dependants in a chattel, whether the applicant has available any portion of the value of that interest that would exceed the needs of the applicant, his or her spouse and dependents,
- (e) with respect to an interest owned by the applicant, his or her spouse or dependants in real property, whether the applicant has available for contribution any portion of the value of that interest that would exceed his or her needs after deducting from it the value of all encumbrances on the real property, and
- (f) whether it is administratively economical to seek recovery of a contribution if determined

and if so, the extent to which this is the case.

4. (1) Subject to the Act and these regulations, an applicant is eligible to receive legal aid

- (a) where the applicant receives all or most of his or her income from social assistance;
- (b) where the legal fees for services rendered outside the plan would reduce the applicant's income to a level whereby he or she would become eligible for social assistance, in which case, he or she may be required to contribute towards the payment of the costs.

(2) No contribution shall be in an amount so large as to reduce the income of the applicant to a level where he or she would be eligible for social assistance.

5. Where within six months before the date of the application or at any date after the date of the application, an applicant, spouse or dependant of an applicant transfers or disposes of any interest in assets and in the opinion of the Executive Director the transfer or disposition is made for an inadequate consideration or for the purpose of qualifying an applicant for legal aid, the Executive Director may determine that the applicant must pay an increased portion of the cost of legal aid, taking into account the value of the asset so transferred or disposed of less the value of the consideration.

SCHEDULE D

(Section 36)

PART I

GENERAL

Accounts

1. In this schedule, where the Executive Director or the Board is given the power to exercise discretion, the Executive Director or the Board shall exercise that discretion to ensure the efficient delivery of quality legal aid at a cost equivalent to what a reasonable person of modest means would pay.

2. (1) A lawyer to whom a case is assigned may, in writing, request the Executive Director to assign another lawyer to assist the lawyer with the case.

(2) The Executive Director may, in writing, approve a request under subsection (1) and assign another lawyer to the case.

(3) Each lawyer assigned to a case shall submit a separate account and may claim

- (a) between the lawyers assigned to the case, 150% of the preparation time allocated in the Tables to this schedule; and
- (b) the actual court time for each lawyer to the maximum time allocated in the Tables to this schedule.

3. (1) A lawyer submitting an account under the regulations shall be paid the applicable rate set out in Table I of this schedule in accordance with this schedule.

(1.1) The rates set out in Part 1 of Table I of this schedule apply only with respect to a lawyer who maintains an office in Nunavut and primarily practices in Nunavut to reflect

- (a) the higher costs of maintaining an office and practicing in Nunavut and the savings that result from legal services being provided by lawyers based in Nunavut; and
- (b) the higher costs of living in Nunavut.

(2) A lawyer submitting an account shall state the actual time spent dealing with each step taken, up to the maximum time allocated in the Tables to this schedule for each applicable item.

(3) The account of a lawyer may include

- (a) preparation time, including all legal services except court time, for which a lawyer would charge a professional fee;
- (b) court time, including all time actually spent in attendance at a sitting of court or a hearing relating to the client's case and waiting time for those appearances;

- (c) disbursements;
- (d) authorized travel time; and
- (e) any other amount authorized under these regulations.

(4) **Repealed, R-023-96,s.4(3).** R-023-96,s.4(3); R-022-2000,s.8.

4. (1) Where a lawyer does not provide all of the legal services, authorized under these regulations, with regard to a matter for which he or she has been assigned under the Act, the lawyer may submit an account for the actual time he or she spent on the matter, up to the maximum time allocated in the Tables to this schedule for each applicable item.

(2) The Executive Director may exercise his or her discretion and authorize payment for only those items claimed under subsection (1) that, in the opinion of the Executive Director, furthered the interests of the recipient.

5. (1) A lawyer may, in writing to the Executive Director, request an increase in a maximum time allocated set out in this schedule.

(2) The Executive Director may exercise his or her discretion, on a case by case basis, and may, in writing, increase the maximum time allocated, in the Tables to this schedule, to a matter.

(3) The Executive Director may, in writing, and on a case by case basis, restrict the allocation of time for any aspect of a matter for which a lawyer is providing legal services.

6. (1) Where no fee or maximum time allocation is set out in this schedule, the Executive Director or the Board may exercise discretion and set a fee or a maximum time allocation.

(2) The Executive Director may, in writing, exercise his or her discretion to authorize the inclusion of any legal service, provided by a lawyer in the representation of a client and that would otherwise not be considered compensable under these regulations, in an account submitted by a lawyer.

7. The Executive Director may require support for and justification of all items included in an account, either by the production of documents or otherwise, and may require a copy of any opinion, memorandum, brief or research notes to which reference is made or for which time is charged in an account.

8. (1) Except where the Executive Director or the Board requests the services of a lawyer and authorizes payment of the fees and disbursements, no fee or disbursement shall be paid with respect to the preparation of applications for legal aid or to appeals under section 46 of the Act or section 39 of these regulations.

(2) No fee shall be paid for the preparation of accounts and supporting material or for the settlement of accounts.

9. (1) When travel, other than circuit travel, is required in relation to a matter, the Executive Director or the Board may authorize a lawyer to submit an account for the time spent on travel and the Executive Director may determine a point of departure and the destination.

(2) Any amount paid for travel shall be in addition to the amount paid for the actual time spent on the matter.

10. (1) On appointing a lawyer to the panel, the Board shall, for the purposes of the tariff of rates, determine how many years experience the lawyer has.

(2) The Executive Director may, at any time, review the determination of the number of years experience a lawyer has and may change the category under which the lawyer falls in the tariff of rates.

(3) A lawyer may, in writing, request the Board to review a determination made under subsection (1).

(4) Where the Board receives a request under subsection (3), the Board shall review and confirm or amend the determination.

PART II

DISBURSEMENTS

11. (1) The Executive Director may exercise his or her discretion and may, in writing, approve the following expenses:

- (a) where a witness has to be brought from outside Nunavut, witness fees and travelling expenses in accordance with the Act, regulation or rule of court under which the proceeding including the witness is brought;
- (b) to be paid for the services of a person entitled by law or practice to give expert or opinion evidence:
 - (i) fees;
 - (ii) travel, accommodation and living costs calculated according to the rates applicable from time to time to members of the Public Service of the Government of Nunavut;
- (c) fees and disbursements of agents;
- (d) any out-of-pocket disbursements not listed in subsection (2) made in furtherance of the proceeding or matter.

(2) A lawyer submitting an account may include the disbursements approved by the Executive Director under subsection (1) and the following out-of-pocket disbursements actually and reasonably incurred:

- (a) disbursements, excluding witness fees, required or permitted to be made under any Act, regulation or rule of court;
- (b) fees or charges payable, in a proceeding, to the clerk of a court, the sheriff or a court official in Nunavut;
- (c) witness fees and travelling expenses of witnesses, brought from inside Nunavut, in accordance with the Act, regulation or rule of court under which the proceeding involving the witness is brought;
- (d) fees payable to a court reporter for a transcript of evidence
 - (i) for use on an appeal authorized in accordance with the Act,
 - (ii) of a preliminary inquiry where the accused is committed to stand trial,
 - (iii) of an examination for discovery, and
 - (iv) of an examination on an affidavit;
- (e) fees payable to a court reporter for a transcript of reasons for judgement for the use of a counsel, other than trial counsel, in the preparation of an opinion, authorized in accordance with the Act, regarding an appeal;
- (f) long distance telephone and facsimile transmission costs;
- (g) travel, accommodation and living costs when travelling, calculated at the rates and in accordance with the provisions from time to time applicable to members of the public service of Nunavut while on duty travel;
- (h) the cost of preparing appeal books, factums and case books required by a court or by the rules of court for an appeal authorized in accordance with the Act.

R-022-2000,s.9.

PART III

CRIMINAL AND YOUNG OFFENDER MATTERS

12. In this Part and in Table II,

"offence" means the offence with which a person is charged unless a preliminary inquiry is held in relation to that offence, then, after the completion of that preliminary inquiry, "offence" means the offence for which the person is to stand trial;

"preparation time" means the time spent for all legal services relating to a matter before and after a court appearance, including those services that are identified in Table II but excluding time spent in court;

"young person" means a young person as defined in the *Young Offenders Act* and the *Young Offenders Act (Canada)*.

13. The maximum time allowed for legal aid relating to a criminal matter to which a lawyer has been assigned is set out in Table II of this schedule and, subject to sections 5 and 6, no account for time in excess of the time allocated shall be paid.

14. The Executive Director may exercise his or her discretion to, in writing, authorize the payment of an account at the rate set out for a preliminary inquiry for the following legal aid:

- (a) an application under the *Canadian Charter of Rights and Freedoms*;
- (b) a challenge to an Act or regulation of Nunavut or of Canada;
- (c) a motion to quash a committal for trial;
- (d) an application for an extraordinary remedy;
- (e) an application for a curative discharge;
- (f) a challenge to a municipal by-law;
- (g) a challenge to a by-law made by a band as defined in the *Indian Act* (Canada);
- (h) a challenge to the exercise of a power given to a body established under a land claim agreement.

R-022-2000,s.10.

15. A lawyer submitting an account shall include all time for preparation for sentencing in the time calculated for the preparation and conduct of a trial.

16. Unless otherwise indicated in this schedule, all fees and time allocations set out in this Part and in Table II of this schedule apply to the provision of legal services to a young person as if that young person were an adult.

17. Repealed, R-023-96,s.4(6).

18. (1) Subject to subsection (2), where a lawyer or a student-at-law represents a recipient charged with two or more offences and the preliminary inquiries, trials or pleas of guilty occur in the same court at approximately the same time, the lawyer may submit an account for preparation time for the most serious of the offences only.

(2) The Executive Director may exercise his or her discretion to, in writing, increase the time limit set out in subsection (1), where the lawyer submitting the account satisfies the Executive Director that separate and distinct legal services have been provided to the recipient with respect to the different offences.

Circuit and Duty Counsel

19. (1) A lawyer may submit an account for legal aid calculated based on the daily circuit rate set out in Table I of this schedule where

- (a) the lawyer or a student-at-law provides legal aid in a community where the lawyer or the student-at-law does not reside or does not have an office; or
- (b) the lawyer or the student-at-law travels with a court circuit and provides legal aid.

(2) The daily circuit rate set out in Table I of this schedule includes preparation, travel, waiting time and attendance at court while on circuit for matters for which a lawyer is assigned under the Act.

(3) Where a lawyer provides legal aid on circuit for less than four hours in a day, the rate payable shall be half the applicable daily circuit rate set out in Table I of this schedule.

20. A lawyer may submit an account including up to a maximum of 15 hours preparation time for a circuit, as the preparation time for all legal aid provided while on circuit.

21. A lawyer may submit an account for preparation time in excess of the maximum set out in section 20 where that lawyer, while on circuit,

- (a) makes an application that is approved under section 14;
- (b) represents a recipient at a preliminary inquiry;
- (c) represents a recipient at a trial; or
- (d) represents a recipient at an appeal.

22. The provisions of this schedule regarding circuits apply to duty counsel except that duty counsel shall be paid at the hourly rates set out in Table I and not at the daily circuit rate.

PART IV

APPLICATION

23. For work done before July 1, 2000, a lawyer shall be paid in accordance with these regulations as they read before that date. R-022-2000,s.11.

TABLE I (Section 3, Schedule D)

TARIFF OF RATES**Part 1 – Lawyers with an office and primarily practicing in Nunavut**

<u>Item</u>	<u>Category</u>	<u>Hourly rate</u>	<u>Daily circuit rate</u>
1.	Student-at-law	\$60.00	\$348.00
2.	Lawyer with less than four years experience	\$91.50	\$528.00
3.	Lawyer with four or more and less than seven years experience	\$105.00	\$654.00
4.	Lawyer with seven or more and less than 11 years experience	\$129.00	\$774.00
5.	Lawyer with 11 or more years experience	\$153.00	\$913.50

Part 2 – Other lawyers

<u>Item</u>	<u>Category</u>	<u>Hourly rate</u>	<u>Daily circuit rate</u>
1.	Student-at-law	\$46.00	\$266.80
2.	Lawyer with less than four years experience	\$70.15	\$404.80
3.	Lawyer with four or more and less than seven years experience	\$80.50	\$501.40
4.	Lawyer with seven or more and less than 11 years experience	\$98.90	\$593.40
5.	Lawyer with 11 or more years experience	\$117.30	\$700.35

R-022-2000,s.12.

TABLE II

(Section 13, Schedule D)

CRIMINAL AND YOUNG OFFENDER MATTERS

PART 1 - DEFINITIONS

1. In this table,

"Type A offence" means an offence dealt with by summary conviction;

"Type B offence" means an offence dealt with by indictment that is punishable by a term of five years imprisonment or less, including an offence listed in section 553 of the *Criminal Code*;

"Type C offence" means an offence dealt with by indictment that is punishable by a term of more than five years imprisonment, including an offence under section 348 of the *Criminal Code* and section 4 of the *Narcotic Control Act* (Canada), but does not include an offence that is dealt with by indictment and is punishable by a maximum term of life imprisonment;

"Type D offence" means an offence dealt with by indictment that is punishable by a maximum term of life imprisonment but does not include an offence under section 348 of the *Criminal Code* and section 4 of the *Narcotic Control Act* (Canada);

"Type E offence" means an indictable offence punishable by a minimum term of life imprisonment.

PART 2 - MAXIMUM TIME ALLOCATED TO MATTERS

I	II	III	IV
<u>Item</u>	<u>Description of item or matter</u>	<u>Preparation time</u>	<u>Court time</u>
<u>Trials</u>			
1.	Each Type A offence	7 hours	Actual time spent
2.	Each Type B offence	10 hours	Actual time spent
3.	Each Type C offence	10 hours	Actual time spent
4.	Each Type D offence	20 hours	Actual time spent
5.	Each Type E offence	50 hours	Actual time spent

Trial by jury and representation of more than one person

6.	Trial by jury	5 hours in addition to maximum time allowed for the offence	<i>See</i> Type of offence
7.	Where a lawyer represents two or more persons charged with the same offence arising out of the same incident, in addition to the time allocation for the first person charged		
	(a) for the second person charged	30% of the allocation for the first person	Actual time spent
	(b) for the third person charged	20% of the allocation for the first person	Actual time spent
	(c) for each person in addition to the third person charged	10% of the allocation for the first person	Actual time spent

Preliminary inquiries

8.	Each Type B offence	7 hours	Actual time spent
9.	Each Type C offence	10 hours	Actual time spent
10.	Each Type D offence	10 hours	Actual time spent
11.	Each Type E offence	25 hours	Actual time spent
12.	Where a lawyer represents two or more persons charged with the same offence arising out of the same incident, in addition to the time allocation for the first person charged,		
	(a) for the second person charged	30% of the allocation for the first person	Actual time spent
	(b) for the third person charged	20% of the allocation for the first person	Actual time spent
	(c) for each person in addition to the third person charged	10% of the allocation for the	Actual time spent

first person

Appeals

13.	Each Type A offence	7 hours	Actual time spent
14.	Each Type B offence	10 hours	Actual time spent
15.	Each Type C offence	10 hours	Actual time spent
16.	Each Type D offence	20 hours	Actual time spent
17.	Each Type E offence	50 hours	Actual time spent
18.	Review under section 520, 521 or 680 of the <i>Criminal Code</i> of a bail order	10 hours	Actual time spent

Miscellaneous services

19.	Show cause hearing or bail review hearing under section 525 of the <i>Criminal Code</i>	5 hours	Actual time spent
20.	Bail hearing pending an appeal	5 hours	Actual time spent
21.	Pre-trial hearing	3 hours	Actual time spent
22.	Application to have a young person elevated to adult court or to have a young person remain in youth court	7 hours	Actual time spent
23.	Review of the disposition of a matter concerning a young person	10 hours	Actual time spent
24.	Hearing to determine whether recipient is a dangerous offender	25 hours	Actual time spent
25.	Hearing to determine fitness to stand trial	Same allocation applies as preliminary inquiry for offence	Actual time spent
26.	Extradition hearing	10 hours	Actual time spent
27.	Application under section 745 of the <i>Criminal Code</i>	50 hours	Actual time spent

28.	Criminal contempt of court	7 hours	Actual time spent
29.	Opinion	3 hours	Not applicable
30.	Report required at the conclusion of a matter	0.2 hours	Not applicable
31.	Travel, other than on circuit, where the destination is more than 25 km from the office of the lawyer	Actual travel time to a maximum amount equal to the lawyer's daily circuit rate	Not applicable
32.	Memorandum to lawyer taking over case from assigned lawyer	0.2 hours	Not applicable

R-068-95,s.4; R-023-96,s.4; R-062-96,s.2,3,4; R-066-96,s.1.