

**CONSOLIDATION OF LEGAL SERVICES ACT**  
R.S.N.W.T. 1988,c.L-4

*(Current to: October 18, 2013)*

**AS AMENDED BY NORTHWEST TERRITORIES STATUTES:**

S.N.W.T. 1995,c.11  
S.N.W.T. 1996,c.9  
S.N.W.T. 1996,c.19  
    In force April 1, 1998: SI-005-98  
S.N.W.T. 1998,c.5  
S.N.W.T. 1998,c.24  
S.N.W.T. 1998,c.32  
S.N.W.T. 1999,c.6

**AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:**

S.N.W.T. 1998,c.34  
    In force April 1, 1999  
S.N.W.T. 1998,c.37  
    In force April 1, 1999

**AS AMENDED BY NUNAVUT STATUTES:**

S.Nu. 1999,c.8  
    In force April 1, 2000  
S.Nu. 2000,c.3,s.6  
    s.6 NIF  
S.Nu. 2003,c.4,s.19  
    s.19 in force March 28, 2003  
S.Nu. 2003,c.12,s.49(2)  
    s.49(2) in force November 5, 2004  
S.Nu. 2011,c.6,s.16  
    s.16 in force February 25, 2011  
S.Nu. 2013,c.23  
    In force September 17, 2013

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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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".
- 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.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*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.

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## LEGAL SERVICES ACT

### INTERPRETATION

#### Definitions

1. In this Act,

"Board" means the Legal Services Board of Nunavut established by subsection 3(1); (*Commission*)

"eligible person" means a person who is eligible to receive legal services; (*personne admissible*)

"Executive Director" means the Executive Director of the Board appointed under subsection 15(2); (*administrateur délégué*)

"Law Society" means the Law Society of Nunavut established under subsection 2(1) of the *Legal Profession Act*; (*Barreau*)

"lawyer" means a barrister and solicitor who is entitled to practise law in Nunavut; (*avocat*)

"legal aid" means legal services provided by a lawyer or student-at-law; (*aide juridique*)

"legal services" means services and disbursements that are provided to eligible persons under this Act and the regulations; (*services juridiques*)

"non-professional" means a person providing legal services who is not a lawyer or student-at-law; (*non-juriste*)

"panel" means a panel of lawyers established under subsection 34(1); (*liste*)

"region" means a prescribed area of Nunavut; (*région*)

"regional committee" means a regional legal services committee referred to in subsection 17(1); (*comité régional*)

"regional contract" means a contract between the Board and a regional committee made under subsection 22(1); (*contrat régional*)

"rotation system" means a system established under subsection 37(1); (*roulement*)

"student-at-law" means a student-at-law as defined in the *Legal Profession Act*. (*stagiaire en droit*)

S.N.W.T. 1996,c.9,Sch.G,s.1; S.N.W.T. 1998,c.37,Sch.D,s.1; S.Nu. 1999,c.8,s.2;  
S.Nu. 2011,c.6,s.16(3); S.Nu. 2013,c.23,s.2.

## ADMINISTRATION

### Administration of Act

2. The costs of administering this Act, providing legal services and operating other programs under this Act shall be paid out of moneys appropriated for these purposes by the Legislature.

### Legal Services Board

3. (1) A corporation called the Legal Services Board of Nunavut is established.

### Appointments to Board

(2) All members of the Board shall be appointed by the Minister.

### Composition of Board

- (3) Subject to subsection (4), the Board shall be composed of
- (a) one lawyer appointed on the nomination of the President of the Law Society of Nunavut;
  - (b) one employee of the Department of Justice;
  - (c) for each region, one person appointed on the nomination of the regional committee or, if there is no regional committee for the region, one person representing the region.

### Additional members

(4) The Minister may, in his or her discretion, appoint up to two additional members of the Board who are not members of the Law Society and who are not members of the public service.

### Appointment without nomination

(5) Where a person having the power to nominate under subsection (3) does not exercise the power within the time that the Minister considers reasonable in the circumstances, the Minister may make the appointment without the nomination.

### Term of appointment

(6) Members of the Board are appointed for a term not exceeding three years specified in the instrument of appointment.

### Revocation of appointment

(7) Notwithstanding subsection (6), where a person is appointed to the Board on the nomination of a regional committee and the appointment of the society as that regional committee subsequently terminates, the appointment of the member is automatically revoked.

### Secretary

(8) The Executive Director is, by virtue of his or her position, the Secretary to the Board. S.N.W.T. 1998,c.5,s.19(2),(3); S.N.W.T. 1998,c.32,Sch.C,s.1; S.N.W.T. 1998,c.37,Sch.D,s.2; S.Nu. 1999,c.8,s.3.



### Chairperson

**4.** (1) At its first meeting in each fiscal year, the Board shall elect a chairperson from among its members.

### Vacancy

(2) Where the position of chairperson becomes vacant during the fiscal year, the Board may fill the vacancy pending the first meeting of the Board in the next fiscal year.

(3) **Repealed, S.N.W.T. 1998,c.5,s.19(4).**

### Honoraria

**5.** (1) Members of the Board, other than a person who is a member of the public service of Canada or Nunavut, shall be paid the prescribed honoraria.

### Expenses

(2) Members of the Board shall be reimbursed for the prescribed expenses.  
S.N.W.T. 1998,c.5,s.19(5); S.Nu. 2011,c.6,s.16(3).

### Head office

**6.** The head office of the Board shall be located at a place designated by the Minister. S.N.W.T. 1998,c.37,Sch.D,s.3.

### Objects of Board

**7.** The objects of the Board are

- (a) to ensure the provision of legal services to all eligible persons;
- (b) to ensure that the legal services provided and the various systems for providing those services are the best that circumstances permit; and
- (c) to develop and co-ordinate territorial or local programs aimed at
  - (i) reducing and preventing the occurrence of legal problems,
  - (ii) increasing knowledge of the law, legal processes and the administration of justice, and
  - (iii) providing public education and outreach with respect to human rights.

S.Nu. 2003,c.12,s.49(2); S.Nu. 2011,c.6,s.16(3).

### Duties of Board

**8.** The Board shall

- (a) administer this Act and the regulations;
- (b) make every endeavour to attain the objects of the Board;
- (c) keep under review the legal services provided and the performance of the regional committees;
- (d) co-ordinate the provision of legal services; and
- (e) publish details of the legal services available.

### Annual report of Board

**9.** (1) The Board shall prepare an annual report and submit it to the Minister in accordance with Part IX of the *Financial Administration Act*.

### Legislative Assembly

(2) Every report submitted under subsection (1) shall be laid before the Legislative Assembly at the earliest possible time after it is received by the Minister.

### Information

**10.** (1) The Minister may at any time request the Board in writing to furnish information about legal services specified in the request, including legal services provided or to be provided in a specific case.

### Duty of Board

(2) The Board shall comply with every request made under subsection (1).

### Powers of Board

**11.** Subject to this Act and the regulations, the Board may, in addition to its powers under the *Interpretation Act*,

- (a) make policies and rules
  - (i) applicable to the provision of legal services including the various systems for providing legal services and eligibility for legal services,
  - (ii) for administering this Act and the regulations, and
  - (iii) providing for the payment by eligible persons of part or all of the cost of legal services provided;
- (b) establish or permit the establishment of legal services centres;
- (c) exchange information about legal aid or other legal services with persons administering corresponding legislation in a province or territory;
- (d) provide for programs for training non-professionals;
- (e) enter into regional contracts;
- (f) enter into contracts of service or for services with lawyers with respect to the provision of legal aid;
- (g) encourage the location or relocation of lawyers to all regions;
- (h) establish the offices and agencies and maintain the facilities that are necessary;
- (i) do the things that are necessary, incidental or conducive to the attainment of its objects or the fulfilment of its duties;
- (j) establish committees and assign to the committees any functions of the Board, other than the prescribed functions, that the Board thinks fit;
- (k) advise the Commissioner of any amendments that it considers should be made to the regulations; and

- (1) enter into agreements with the Commissioner relating to the administration of this Act and the regulations.  
S.Nu. 2011,c.6,s.16(3).

#### Meetings of Board

**12.** (1) The Board shall meet on receiving notice from the Secretary calling a meeting.

#### Request for meeting

(2) The Secretary shall call a meeting when requested to do so by three members of the Board.

#### Proceedings

(3) Subject to subsections (1) and (2), the Board may

- (a) regulate its own proceedings and the manner of calling meetings of the Board; and
- (b) provide generally for the conduct of its business.

#### Fiscal year of Board

**13.** The fiscal year of the Board shall be the same as that of the Government of Nunavut. S.Nu. 2011,c.6,s.16(3).

#### Appointment of auditor

**14.** (1) The Minister may appoint an auditor for the purpose of subsection (2).

#### Audit

(2) The accounts of the Board shall be audited annually in accordance with Part IX of the *Financial Administration Act* by an auditor.

#### Executive Director

**15.** (1) The Executive Director shall be a barrister and solicitor.

#### Appointment

(2) The Executive Director shall be appointed by the Board.

#### Terms and conditions

(3) The Board may fix the terms and conditions on which the Executive Director shall hold office.

#### Superannuation

(4) The Executive Director may be treated as a member of the public service for the purposes of superannuation.

#### Duties of Executive Director

(5) The Executive Director is the chief executive officer of the Board and shall perform the duties that

- (a) are imposed on the Executive Director by this Act and the regulations; and
- (b) may be assigned to the Executive Director by the Board.

#### Supervision

(6) The Executive Director shall supervise and direct the work and staff of the Board.

#### Employees

- 16.** (1) The Board may, with the approval of the Commissioner,
- (a) provide for the appointment of employees, other than the Executive Director, that the Board considers necessary for the proper conduct of its business; and
  - (b) fix the remuneration of employees appointed under paragraph (a).

#### *Public Service Act*

(2) Employees appointed under subsection (1) shall be appointed and employed under the *Public Service Act*.

#### Regional legal services committee

**17.** (1) A society incorporated under the *Societies Act* may apply to the Board to be appointed by the Board as the regional legal services committee for the region where its operations are to be chiefly carried on.

#### Form

(2) The Board may establish the form in which an application under subsection (1) is to be made.

#### Application

- (3) An application must be accompanied by
- (a) the certificate of incorporation of the society;
  - (b) a copy of the application of the society for incorporation;
  - (c) a copy of the by-laws of the society;
  - (d) a statement setting out
    - (i) the names, addresses and occupations of the directors of the society,
    - (ii) the address referred to in section 19 of the *Societies Act*;
  - (e) the latest annual financial statement of the society filed under the *Societies Act*; and
  - (f) other information that may be required by the Board or by the regulations.

#### Appointment of society as regional committee

**18.** (1) If the Board is satisfied that a society applying under subsection 17(1) is suitable for appointment and that its objects and by-laws are consistent with the intent of

this Act and the objects of the Board, the Board may appoint the society as the regional legal services committee for that region.

#### Notice of extraordinary resolution

(2) At the time that notice is given to its members of an extraordinary resolution to rescind, alter or add to its by-laws or change its name or objects, the regional committee shall file the resolution with the Board.

#### Filing of statements or information

(3) The regional committee shall, at the time it files with the Registrar of Societies the financial statement, statement of directors and any further information or particulars required under section 18 of the *Societies Act*, file them with the Board.

#### Further information

(4) A regional committee shall file with the Board further prescribed information and any further information that may be required at any time by the Board.

#### Appointment for two or more regions

(5) This section and section 17 do not prevent a society from applying for and being appointed as the regional committee for two or more regions, but this section and section 17 must be complied with.

#### Revocation of appointment

**19.** (1) The Board may revoke the appointment of a society as a regional committee if, after an investigation, the Board is satisfied that

- (a) the by-laws or objects of the regional committee have changed so as to be inconsistent with the intent of this Act or the objects of the Board;
- (b) the regional committee has become inactive;
- (c) the regional committee has contravened this Act, the regulations or the *Societies Act* in a material way;
- (d) the regional committee is in breach of a material term or condition of its regional contract or a contract referred to in subsection 22(2);
- (e) the regional committee has ceased in its activities to represent fairly the interests of eligible persons in its region or to co-operate with the Board in attempting to attain the objects of the Board in the region;
- (f) the regional committee is no longer suitable to hold the appointment; or
- (g) it is no longer in the public interest for the regional committee to act as a regional committee.

#### Approval of Minister

(2) The Board may not revoke an appointment under paragraph (1)(g) except with the written approval of the Minister.

#### Director of regional committee

**20.** (1) Notwithstanding the *Societies Act* or the by-laws of a regional committee, the Minister may appoint one person, whether or not that person is a member of the society, to act as a director of each regional committee.

#### Effect of appointment

(2) A person appointed under subsection (1) shall be treated for all purposes as a full voting director, within the meaning of the *Societies Act*, of the regional committee.

#### Power of Board

**21.** Until a society is appointed as a regional committee, the Board may perform any of the duties and exercise any of the powers of a regional committee in a region for which

- (a) there is no society appointed as a regional committee; or
- (b) no regional contract is in force.

#### Regional contracts

**22.** (1) The Board and each regional committee may enter into a contract providing for

- (a) the implementation of this Act and the regulations in the region of the regional committee;
- (b) the funding by the Board of the regional committee for the purposes referred to in paragraph (a); and
- (c) other matters relating to the region of the regional committee that the Board thinks fit.

#### Other contracts

(2) In the special circumstances that are prescribed, the Board may enter into a contract with a regional committee respecting the provision by that committee of legal services in another region on the terms and conditions that are agreed upon.  
S.Nu. 2011,c.6,s.16(3).

#### Duties of regional committee

**23.** Each regional committee shall

- (a) fulfil its obligations under the regional contract or a contract entered into under subsection 22(2);
- (b) advise and keep the Board informed of
  - (i) the state of legal services and the level of attainment of the objects of the Board in its region, and
  - (ii) any matter for which the regional committee is responsible under a contract entered into under subsection 22(2); and
- (c) supply any information required by the Board respecting the matters referred to in paragraph (a) or (b).

#### Powers of regional committee

**24.** Subject to this Act and the regulations, any policies or rules made by the Board under paragraph 11(a) and its regional contract, each regional committee may

- (a) make and implement policies for its region respecting the provision of legal services and for the purposes of attaining the objects of the Board in the region;
- (b) publish information about legal services available in its region and its other programs;
- (c) employ and dismiss lawyers, with the prior approval of the Executive Director, where authorized by
  - (i) the regional contract, or
  - (ii) a contract entered into under subsection 22(2); and
- (d) exercise any powers delegated to it by the Board.

#### Appointment of auditor

**25.** (1) The Minister may appoint an auditor for the purposes of this section.

#### Audit

(2) Notwithstanding the *Societies Act*, the accounts of each regional committee shall be audited by an auditor.

#### Report

(3) The auditor shall submit to the Minister a report of the audits done under subsection (2).

#### Liability of Board

**26.** (1) The Board or a member of the Board is not liable for anything done or omitted to be done by a lawyer, a regional committee or a non-professional in the course of providing legal services.

#### Liability of regional committee

(2) A regional committee or a member of a regional committee is not liable for anything done or omitted to be done by a lawyer or non-professional in the course of providing legal services.

#### Contravention of *Legal Profession Act*

(3) Nothing done by the Board, a regional committee or a member or employee of the Board or a regional committee in the due exercise of the powers conferred or performance of the duties imposed by this Act or the regulations shall be construed as contravening the *Legal Profession Act*.

#### Liability of lawyer

(4) Notwithstanding this section, a lawyer who is also a member of the Board or a regional committee may be liable in respect of legal aid provided by the lawyer.

#### Definition of "advisory committee"

**27.** (1) In this section, "advisory committee" means an advisory committee established under subsection (2).

#### Advisory committee

(2) The Minister may establish an advisory committee to advise the Minister and, if requested by the Board, to advise the Board on

- (a) matters of general and regional concern affecting the provision of legal services;
- (b) the administration of this Act and the regulations; and
- (c) the objects of the Board.

#### Composition of advisory committee

(3) The advisory committee shall be composed of

- (a) the senior judge of the Nunavut Court of Justice or another judge nominated by the senior judge;
- (b) one lawyer in private practice; and
- (c) other persons selected by the Minister.

#### Appointment of members

(4) The members of the advisory committee under paragraphs (3)(b) and (c) shall be appointed by the Minister.

#### Expenses

(5) Members of the advisory committee shall be reimbursed for the prescribed expenses. S.N.W.T. 1998,c.34,Sch.C,s.18(2).

**Note:** On a day to be fixed by order of the Commissioner, paragraph 27(3)(a) is amended by striking out "senior judge" each place it appears and substituting "Chief Justice".

*See* S.Nu. 2000,c.3,s.6.

#### Agreement with Government of Canada

**28.** The Minister, on behalf of the Government of Nunavut, may enter into agreements with the Government of Canada respecting the sharing by the governments of the costs of providing legal services, administering this Act and related matters. S.Nu. 2011,c.6,s.16(3).

#### Agreements with Government of the Northwest Territories

**28.1.** (1) The Minister, on behalf of the Government of Nunavut, may enter into agreements with the Government of the Northwest Territories

- (a) establishing terms and conditions under which the Government of the Northwest Territories and the Legal Services Board of the Northwest Territories, established by subsection 3(1) of the *Legal Services Act* (Northwest Territories), may, on behalf of Nunavut, provide services, exercise powers and perform duties and functions with respect to the administration and operation of this Act; and
- (b) providing for the division of the assets and liabilities of the Legal Services Board of the Northwest Territories.



**Amendment or replacement of agreement entered into by Interim Commissioner**

(2) An agreement made under subsection (1) may amend or replace an agreement entered into between the Interim Commissioner of Nunavut and the Government of the Northwest Territories for the same purposes. S.N.W.T. 1998,c.32,Sch.C,s.2; S.N.W.T. 1998,c.37,Sch.D,s.4.

**Paramountcy of agreement**

**28.2.** If a provision of this Act is inconsistent with or in conflict with a term or condition of an agreement made under section 28.1 or made for the same purposes between the Interim Commissioner of Nunavut and the Government of the Northwest Territories, the term or condition of the agreement prevails to the extent of the inconsistency or conflict. S.N.W.T. 1998,c.37,Sch.D,s.4.

**Agreement with other jurisdiction**

**29.** The Minister, on behalf of the Government of Nunavut, may enter into agreements with a province or territory respecting the application of

- (a) this Act and the regulations to residents of that province or territory; and
  - (b) corresponding legislation of that province or territory to residents of Nunavut.
- S.Nu. 2011,c.6,s.16(2).

**PROVISION OF LEGAL SERVICES****Eligibility for legal services**

**30.** Unless otherwise provided by regulation, no person other than an individual is eligible to receive legal services.

**Financial criteria**

**31.** (1) A person is not eligible to receive legal services to the extent that, according to the prescribed financial criteria, the person can afford to pay for the services from his or her own resources.

**Scope of criteria**

(2) The criteria referred to in subsection (1) shall include reference to the assets, liabilities, income, expenses and requirements of the applicant and his or her spouse and dependants. S.N.W.T. 1998,c.24,s.16.

**Power to refuse legal aid**

**32.** The Executive Director may refuse to authorize legal aid on the ground that, in the opinion of the Executive Director, the aid requested is for a civil matter of a kind that a lawyer would ordinarily act for the client on the understanding that the lawyer would receive remuneration from the client only out of the proceeds generated through pursuing the matter.

### Disqualification

**33.** (1) An applicant who makes a false statement or conceals information in an application for legal services may be disqualified from receiving legal services.

### Subsequent disqualification

(2) A person who has been found to be eligible to receive legal services may be found to be no longer eligible if it is subsequently discovered that

- (a) in the application, the person made a false statement or concealed information;
- (b) the person was in fact not eligible to receive legal services; or
- (c) circumstances have changed since the person was found to be eligible and as a result the person is no longer eligible to receive legal services.

### Repayment

(3) A person who is found to be no longer eligible to receive legal services under subsection (2) shall

- (a) receive no further legal services; and
- (b) pay for the cost of providing legal services to the person up to the time of the finding.

### Debt

(4) The amount payable under paragraph (3)(b) is a debt owing to the Commissioner.

### Panels

**34.** (1) The Board may establish and maintain the number of panels of lawyers that the Board considers fit and may appoint lawyers to a panel.

### Application for appointment

(2) Any lawyer may apply for appointment to a panel who is

- (a) in private practice;
- (b) prepared to provide legal aid; and
- (c) not under a contract of service or for services entered into with the Board or a regional committee under which the lawyer is required to provide legal aid in a specified region or area.

### Removal from panel by Board

**35.** (1) The Board may remove a lawyer from a panel for cause.

### Appeal

(2) A lawyer removed under subsection (1) may appeal the removal to a judge of the Nunavut Court of Justice.

### Reinstatement

(3) On an appeal under subsection (2), the judge may order reinstatement of the lawyer to the panel. S.Nu. 2011,c.6,s.16(3).

### Removal from panel by member

**36.** A member of a panel may, by giving written notice to the Executive Director, have himself or herself removed from the panel.

### Rotation system

**37.** (1) The Executive Director shall establish a proper system for allocating legal aid work among lawyers on each panel on a rotational basis.

### Fairness

(2) In establishing a rotation system, the Executive Director shall make every attempt to ensure fairness and equity among the lawyers on the panel.

### Assignment of cases

(3) Subject to this section, cases within the scope of this Act that in the opinion of the Executive Director require the aid of lawyers shall be assigned by the Executive Director to lawyers on a panel under the rotation system in effect for that panel.

### Exceptions

(4) The Executive Director may depart from a rotation system if the Executive Director is 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 to provide the aid
  - (i) will not or is unlikely to be available for the assignment,
  - (ii) by providing the legal aid, would or might be involved in a conflict of interest, or
  - (iii) does not have the experience, expertise or qualifications required, having regard to all the circumstances.

### Restriction

**38.** (1) A lawyer who is assigned a case under section 37 shall not procure another lawyer to provide any legal aid relating to that case, except to the extent that

- (a) circumstances warrant and the Executive Director has given his or her approval;
- (b) the legal aid provided is limited to procuring or attempting to procure an adjournment of a proceeding or an interlocutory or other preliminary step in a proceeding; or
- (c) the lawyer and the eligible person agree in writing to transfer the case to another lawyer and the Executive Director approves.

### Application

(2) Subsections 37(3) and (4) apply where another lawyer is to provide legal aid under paragraph (1)(c).

### Refusal to accept assignment

**39.** A member of a panel may, by notice to the Executive Director, decline to accept an assignment to provide legal aid in an individual case.

### Right of eligible person

**40.** Where an eligible person is charged with an offence, other than a prescribed offence, for which the maximum penalty is life imprisonment, the eligible person may for his or her defence select any lawyer who is resident in Nunavut and prepared to act on behalf of the eligible person. S.Nu. 2011,c.6,s.16(3).

### Exception

**41.** Subsections 37(3) and (4) and sections 38 and 39 do not apply where

- (a) legal aid is provided by a lawyer under a contract of service or for services entered into with the Board or a regional committee under which the lawyer is required to provide legal aid in a specified region or area; or
- (b) under section 40 an applicant has a choice of a lawyer.

### Students-at-law

**42.** (1) This Act does not prevent a lawyer from assigning legal aid assigned to the lawyer to a student-at-law if the lawyer and student-at-law comply with the *Legal Profession Act*.

### Responsibility of lawyer

(2) A lawyer who assigns legal aid under subsection (1) to a student-at-law is responsible to the Board for ensuring compliance by the student-at-law with the *Legal Profession Act* and this Act.

### Non-professionals

**43.** (1) The Board or, with the prior written approval of the Board, a regional committee may employ non-professionals to provide legal services to eligible persons.

### Restriction

(2) A non-professional shall not be permitted to act as counsel or agent before any court of record or any judge of a court of record without the leave of the court or judge.

### Preliminary proceedings and matters

**44.** Subject to this Act and the regulations, legal services may, and if so provided by the regulations shall, be provided for proceedings and matters preliminary to anticipated proceedings

- (a) in respect of an offence under an Act of Canada which is or may be proceeded with by way of indictment;

- (b) under the *Extradition Act* (Canada);
- (c) under the *Fugitive Offenders Act* (Canada);
- (d) in respect of an offence under an Act of Nunavut or an Act of Canada or regulations made under an Act of Nunavut or an Act of Canada that is proceeded with by way of summary conviction where
  - (i) the accused is liable to imprisonment or to another punishment that, in the opinion of the Executive Director or a person designated by the Executive Director, would prejudice the livelihood of the accused, or
  - (ii) prescribed circumstances exist that warrant the provision of legal services to the accused;
- (e) under the *Young Offenders Act* or the *Youth Criminal Justice Act* (Canada) where circumstances referred to in subparagraph (d)(i) or (ii) exist;
- (f) in respect of any offence or matter not referred to in paragraphs (a) to (e) if, in the opinion of the Executive Director or a judge, the accused is
  - (i) incapable of making an informed decision as to his or her proper course of action, or
  - (ii) liable to a punishment that would prejudice the livelihood of the accused;
- (g) constituting an appeal by the prosecution in any preliminary proceeding or matter;
- (h) constituting an appeal by the accused in any preliminary proceeding or matter where
  - (i) a lawyer advises the Board in writing that the appeal has merit and the Board agrees, or
  - (ii) the appellate court or a judge of the appellate court requests the provision of legal services for the conduct of the appeal; or
- (i) in respect of any prescribed offence or matter.  
S.N.W.T. 1998,c.34,Sch.C,s.18(3); S.Nu. 2003,c.4,s.19;  
S.Nu. 2011,c.6,s.16(3).

#### Authorization for civil matters

**45.** (1) Legal aid consisting of the commencement, defence or continuation of proceedings in a civil matter shall not be authorized unless a lawyer supplies a written opinion stating that it is reasonable in the circumstances for the proceedings to be commenced, defended or continued.

#### Exception

(2) Subsection (1) does not apply where the circumstances of the case necessitate an immediate authorization.

### Terms and conditions

(3) An authorization given under subsection (2) is subject to the terms and conditions that are imposed.

### Legal services for civil matters

(4) Subject to this Act and the regulations, legal services may be provided in relation to all civil matters except

- (a) defamation;
- (b) matters respecting the estates of living or deceased persons;
- (c) the incorporation, formation or dissolution of companies, corporations, societies or partnerships;
- (d) real property transactions;
- (e) relator or representative actions;
- (f) arbitrations or conciliations in respect of any matter;
- (g) proceedings relating to elections; and
- (h) any other prescribed matter.

S.N.W.T. 1996,c.19,s.5.

### Payment of disbursements

**45.1.** The provision of legal services under section 44 or 45 may be limited to the payment of disbursements. S.N.W.T. 1996,c.9,Sch.G,s.2.

### Appeals

**46.** A right of appeal lies to the Board from any decision

- (a) refusing an application for legal services; or
- (b) made by the Executive Director or the person designated by the Executive Director under section 50.

### Court circuits

**47.** (1) The Executive Director shall make arrangements for at least one lawyer to accompany the Nunavut Court of Justice on all circuits where, in the opinion of the Executive Director, a lawyer will be required to provide legal services on the circuit.

### Further arrangements

(2) The Executive Director may arrange for a lawyer to precede the Nunavut Court of Justice on a circuit where, in the opinion of the Executive Director, this is necessary and practicable to enable proper preparations to be made for the cases in which the lawyer will be providing legal services. S.N.W.T. 1998,c.34,Sch.C,s.18(4),(5).

### Privilege

**48.** Any communication between a person applying for or receiving legal services and the Board or a regional committee or a member or employee of the Board or a regional committee, including any information disclosed by the applicant or recipient that would be privileged if made between a client and his or her solicitor, is privileged to the same extent and in the same manner as if it had been made between a client and his or her solicitor.

### Conflicts of interest

**48.1.** A lawyer employed by the Board or a regional committee does not commit a breach of a rule or the code of professional conduct of the Law Society relating to conflicts of interest by reason only of advising or representing a person in a dispute or case involving another person who is or has been advised or represented by another lawyer employed by the Board or a regional committee. S.Nu. 2013,c.23,s.3.

### Submission of accounts

**49.** (1) A lawyer who has provided legal aid other than under a contract of service shall submit an account to the Board for the legal aid and disbursements.

### Taxing and certification

(2) The Executive Director shall

- (a) tax all accounts submitted under subsection (1) on the basis of the applicable part of the tariff referred to in subparagraph 53(1)(m)(i) and in the prescribed manner; and
- (b) certify the accounts for payment.

### Payment

(3) The Executive Director shall ensure the payment of all accounts certified under paragraph (2)(b). S.Nu. 2011,c.6,s.16(3).

### Contribution

**50.** (1) All legal services are provided on the condition that, if the Executive Director or a person designated by the Executive Director is of the opinion that a person who receives or is to receive legal services can afford to contribute to the cost of the legal services, the person shall pay to the Board on the prescribed basis the amount in respect of those legal services that the Executive Director or the person designated considers the person can afford.

### Assessment

(2) The Executive Director or a person designated by the Executive Director shall issue an assessment of the amount fixed under subsection (1) to the person receiving the legal services.

### Debt

(3) An amount assessed under subsection (2) constitutes a debt due and owing to the Commissioner and is recoverable in any court of competent jurisdiction.

### Payment to Board

**51.** (1) All costs that are payable under a judgment, order, settlement or other arrangement to a person receiving legal services in respect of those legal services shall be paid to the Board.

### Duty of Board

(2) Where costs are paid to the Board under subsection (1), the Board may, for the benefit of the Commissioner, retain out of those costs an amount equal to the costs for the legal services as assessed under subsection 50(2) and any other amounts owing to the Commissioner under this Act by the person receiving legal services, and the Board shall pay the balance to the person receiving legal services.



### Charge

(3) Where a person or a lawyer on behalf of the person recovers any sum or property under a judgment, order, settlement or other arrangement in a matter in which the person received legal services, the costs for the legal services as assessed under subsection 50(2) constitute a charge against the sum or property in favour of the Commissioner.

### Recovery of charge

(4) The Commissioner may enforce a charge referred to in subsection (3).

### Payment by lawyer

**52.** (1) Where a lawyer receives money, other than in the manner provided by this Act, or other property for legal aid provided by the lawyer, he or she shall pay it or its value to the Board.

### Charge

(2) The Commissioner has a charge against money or other property referred to in subsection (1).

### Payment by recipient

(3) All moneys payable by a person for or in respect of legal services provided to the person, including costs, shall be paid to the Board.

### Duty of Board

(4) The Board shall hold money or property referred to in subsections (1) and (3) on behalf of the Commissioner and pay it to the Commissioner in the prescribed manner.

## REGULATIONS

### Regulations

**53.** (1) On the recommendation of the Minister, the Commissioner may make regulations for carrying the purposes and provisions of this Act into effect and, without limiting the generality of this power to make regulations, may make regulations

- (a) prescribing the financial criteria and the residential and other qualifications for eligibility to receive legal services and factors that disqualify persons from eligibility;
- (a.1) prescribing other information that must accompany an application made under subsection 17(1);
- (b) prescribing the number and boundaries of regions;
- (c) prescribing the duties and functions of
  - (i) the Board,
  - (ii) the advisory committee established under subsection 27(2),
  - (iii) the Executive Director,
  - (iv) regional committees, and
  - (v) employees of the Board and regional committees;

- (d) respecting the establishment and procedures of regional committees;
- (e) authorizing or requiring specified powers or duties of the Board or the Executive Director under this Act to be exercised or performed additionally or alternatively by regional committees;
- (f) fixing a quorum for Board meetings and prescribing the minimum number of meetings to be held by the Board;
- (g) prescribing decisions and matters that may be appealed;
- (h) respecting the procedures and proceedings in appeals referred to in paragraph (g) and appeals under subsection 35(2) and section 46;
- (i) prescribing the proceedings and matters preliminary to anticipated proceedings for which legal services shall be provided under section 44;
- (j) prescribing forms and procedures for applying for legal services and the information to be furnished by applicants;
- (k) prescribing other forms that are necessary for the purposes of this Act and providing for the use of those forms;
- (l) respecting evidence of authorization to receive legal services and to proceed with the provision of legal services;
- (m) after consultation with the Board,
  - (i) fixing a tariff of fees for legal services, and
  - (ii) respecting the disbursements that may be claimed in the course of providing legal services referred to in subparagraph (i);
- (n) respecting the panels, assignments to panel members under the rotation system and the removal or suspension of lawyers from panels or specific cases;
- (o) with the approval of the Board, prescribing categories of non-professionals and classifying non-professionals into the prescribed categories;
- (p) with the approval of the Board, prescribing designations for non-professionals or for each prescribed category of non-professionals;
- (q) with the approval of the Board, specifying the legal services that may be provided by non-professionals or by a prescribed category of non-professionals;
- (r) with the approval of the Board, prescribing conditions under which legal services referred to in paragraph (q) are to be provided;
- (s) with the approval of the Board, providing for the training, qualifications, employment and regulation of non-professionals or each prescribed category of non-professional;
- (t) respecting the manner in which moneys required for the purposes of this Act are to be applied for, held and disbursed;
- (u) respecting the treatment of moneys received by the Board and accounting procedures;

- (v) respecting the manner in which the accounts of lawyers are to be presented, taxed, certified and paid;
- (w) respecting the return and disposition of files, papers and records held by lawyers resigning, suspended or removed from a panel or specific case and the procedures applicable generally in these cases;
- (x) implementing agreements made under sections 28 and 29;
- (y) prohibiting disclosure of information acquired under this Act;
- (z) prescribing any matter or thing that by this Act may or is to be prescribed.

Commencement of regulation

(2) A regulation fixing a tariff of fees for legal services under subparagraph (1)(m)(i) may come into force on a day earlier than the day on which the regulation is registered.