

Chapter 11

Conditions of Referral to Private Legal Practitioners

Part 1

Introduction

"Practitioner" in these General Conditions of Referral means "a private legal practitioner" as defined in sub-section 4(1) of the *Legal Aid Act* and whose name appears on the list maintained by the Commission pursuant to sub-section 30(1).

The arrangements entered into between the Commission and the practitioner constitute a binding and enforceable contract between them on the basis that in consideration of the approval of a grant of aid by the Commission the practitioner will undertake the work in accordance with the terms and conditions of the grant to the best of his/her ability and at the highest professional standards and upon completion the Commission will pay the amount approved.

1. Acceptance of Referrals

- 1.1 Should a practitioner not be prepared to accept any assignment she/he must notify her/his refusal in writing within 14 days of the notification of grant of assistance. If a practitioner does not so notify her/his refusal to accept the assignment she/he is deemed to have accepted it and to be bound by all the conditions of the grant of assistance unless otherwise agreed. In special circumstances an extension of time may be permitted.
- 1.2 The Commission reserves the right to amend the Guidelines and Terms and Conditions of Referral to private legal practitioners and the Scales of Costs at any time and will advise the Northern Territory Bar Association and the Law Society of the Northern Territory of such amendments.
- 1.3 The Commission reserves the right to fix individual terms and conditions where such are appropriate to any individual matter assigned.
- 1.4 It is expected that when assistance is granted an applicant will accept the advice of the solicitor or counsel to whom she or he is assigned. Practitioners are required to report any significant failure to accept such advice where in her/ his legal judgment client's interest or the conduct of the case is thereby prejudiced.
- 1.5 Practitioners are required to advise the client to advise the Commission of any circumstances which come to their notice relevant to the continuance of aid and, in particular, any alteration to an assisted person's financial circumstances. Practitioners should note that where a person is reassessed and found to be ineligible, any work done, after the client's change in circumstances, and not yet invoiced may not be paid where the practitioner was aware of the client's changed circumstances.
- 1.6 Without derogating from the general application of these terms and conditions to all private legal practitioners, including barristers, the following conditions apply in matters accepted by counsel on assignment:

- (a) No counsel shall purport to charge any fee except that approved by the Commission.
 - (b) It shall be the duty of counsel in a legally assisted matter to ascertain the terms and conditions approved by the Commission.
- 1.7 Where a private legal practitioner performs or has performed legal services on behalf of a legally assisted person she or he shall not demand, take or accept payment for performing the services in respect of which the legally assisted person is receiving or has received legal assistance under the Act, other than the payment or payments to which she or he is entitled under the Act.
- 1.8 These terms and conditions shall apply to all partners of the firm (if any) of which the practitioner on the list is a member.

2. Reporting Obligations and Submitting a Claim to the Commission

- 2.1 Pursuant to section 30 of the *Legal Aid Act (NT)* the Director may in such classes of cases as the Commission determines refer to a Legal Aid Committee accounts from practitioners in respect of fees, disbursements or out of pocket expenses in connection with the provision of legal assistance for the purpose of determining whether the amounts claimed are properly payable.
- 2.2 Practitioners are required to advise the Commission of any relevant developments in the conduct of the matter which would increase the anticipated costs above those stipulated in the certificate granting aid. Failure to notify may result in the Commission's declining to accept liability for such increase in costs.
- 2.3 All invoices submitted to the Commission must be accompanied by a brief progress report on the matter.
- 2.4 On completion of a matter practitioners shall forward a report containing the following information, especially including full details of all monies recovered or to be recovered:
- (a) the result of the action, including details of orders made;
 - (b) particulars of any orders for costs;

- (c) without limiting the discretion of the Director in an appropriate case to call for an itemised bill of costs, an account in narrative form, sufficient to enable an officer of the Commission to determine whether the fee sought by the practitioner is properly payable, will be accepted by the Commission provided the account is certified by a principal of the firm as relating only to work covered by the legal aid certificate;
- (d) subject to the provisions of the Act, vouchers in support of all disbursements of a large or unusual nature are to be supplied.

No accounts forwarded in a form or without supporting material prescribed hereby will be assessed or paid.

- 2.5 If so required by the Commission a practitioner shall produce to the Commission the file or files relating to the matter in respect of which assistance was granted.
- 2.6 In the event that the Commission considers that the practitioner requires further training in a particular area of the law, the Commission will not approve any future grant of aid to that practitioner until she or he has undertaken such training to the satisfaction of the Commission.
- 2.7 In connection with any application for assistance, assigned matter or account a practitioner shall provide all information and give such assistance as the Commission may require from time to time.
- 2.8 No private legal practitioner shall make a claim for any disbursement or fee for the payment of which she or he could have obtained an exemption by virtue of the fact that the client was legally aided.

3. Limits on Liability of the Commission

- 3.1 The Commission will not accept liability to pay any fee charged in respect of any or all of the following:
 - (a) assisting an applicant to complete an application form as required by the Commission;
 - (b) interviews, letters and communications with the client and/or the Commission for the purpose of an application for legal assistance or concerning the grant or refusal of an application for assistance; or

- (c) preparation of and work done in connection with any itemised bill which it requires.

Provided that a Legal Aid Committee or the Director may in its or her/his discretion determine that the applicant or the Commission shall pay a fee to a practitioner in respect of providing any legal opinion it may require from a practitioner in order to determine the legal merits of an application.

- 3.2 (a) No counsel may be briefed in any matter without the approval of the Commission in writing.
- (b) If such approval is given counsel shall not be briefed except upon the terms notified to the solicitor by the Commission.
- (c) It is the responsibility of a solicitor to notify counsel of the terms of such approval.
- (d) It will be the responsibility of the solicitor to pay counsel her or his fee.

- 3.3 Section 30(9) of the *Legal Aid Act (NI)* provides that the fees to be paid to private legal practitioners for the performance of services on behalf of assisted persons shall be less than the ordinary professional cost of those services.

Where possible the Commission will offer to a private practitioner lump sum fees fixed by the Commission for the performance of particular services on behalf of an assisted person.

In the absence of a "lump sum" agreement or any other specific agreement as to the fees to be paid to the practitioner, the Commission will normally pay 80% of the fees ordinarily payable in respect of similar services provided to a person who is not an assisted person.

- 4.1 Except upon the bases set out in Chapter 8 the Commission will not accept responsibility for the payment of costs awarded against the applicant.
- 4.2 (a) Attention is drawn to section 29 of the *Legal Aid Act 1990*, pursuant to which the Commission may grant legal assistance subject to a condition that the applicant pays to the Commission either:
- (i) the full amount or a contribution towards the costs of the Commission providing assistance; or
 - (ii) a payment to the Commission in respect of any out-of-pocket expenses incurred in providing the assistance.
- (b) In the event that an applicant is ordered to pay any amount by way of contribution the Commission hereby appoints the private practitioner to whom a matter is assigned as its duly authorised agent(s) to receive such contribution on its behalf and to account in such manner as the Commission, from time to time.
- (c) Should any funds whatsoever be received by a private practitioner on behalf of any applicant such practitioner shall not disburse such funds without retaining out of the said funds an amount equal to the whole of the costs which would be ordinarily payable in respect of similar services provided to a person who is not an assisted person.
- (d) Such funds so retained shall not be dealt with in any way until the amount of the client's contribution has been determined by the Commission and advised to such practitioner.
- (e) In this connection the private practitioner is required to receive the proceeds of any judgment, order or settlement and hold an amount sufficient to cover the full contribution and out of pocket expenses.
- (f) The Commission may by notice in writing direct a legally assisted person or a private legal practitioner acting for such person to pay to the Commission the whole or such part as is determined by the Commission and specified in the notice of any money recovered by or on behalf of the person in any proceedings in respect of which legal assistance was granted to the person.

- 4.3 This grant may be varied at any time so as to terminate the provision of legal assistance; alter the nature or extent of the legal assistance; require the applicant to pay a contribution or an increased contribution to the Commission; or to pay any out-of-pocket expenses incurred by the Commission.
- 4.4 No agreement shall be entered into with any party which would limit an applicant's right to recover costs without the consent of the Commission first having been obtained.

5. Limitations on Grants

- 5.1 Subject to the Director's discretion, assistance is granted only to cover the matter or the proceedings specified in each letter of assignment and will not be retrospective. If the client requires a grant of aid extended to cover other matters or proceedings the approval of the Commission must first be obtained in writing.
- 5.2 The Commission will not generally approve invoices for work performed by practitioners where prior approval has not been obtained from the Commission. Practitioners should therefore monitor the amount of commitment available on a file and ensure appropriate approvals are sought before work is performed.
- 5.3 Practitioners are expressly directed not to purport to act in a matter on the basis that assistance is terminated or continued by any person or body other than the Commission and by notice in writing.

6. Termination and Transfers of Grant of Assistance

- 6.1 The Commission may terminate a grant of legal assistance in the following circumstances:
- 6.1.1 Where a client unreasonably refuses to accept the advice of the allocated practitioner;
 - 6.1.2 Where a client is abusive to Commission staff or the allocated practitioner;
 - 6.1.3 Where a client is no longer eligible for a grant of legal assistance;
 - 6.1.4 Where a client or practitioner fails to comply with these guidelines. (If aid is terminated due to a practitioner's failure to comply with the guidelines a further grant will be considered for the client.)
- 6.2 No grant of aid to a client may be terminated or transferred by the client or by the private legal practitioner to whom it is assigned without the consent of the Commission being obtained and the grant may only be terminated or transferred on such conditions as the Commission determines.
- 6.3
- (a) Where the services of a private legal practitioner or of an officer of the Commission have been made available to a legally assisted person, and that person has notified the Director that she or he wishes to have her or his grant of aid transferred to another private legal practitioner or to an officer of the Commission, the Director shall only transfer the grant where it is appropriate in the circumstances to do so and no additional expense to the Commission is incurred as a result.
 - (b) The Director or a Legal Aid Committee may transfer a grant of aid to a private legal practitioner or an officer of the Commission if, in the opinion of the Director or of the Committee, it is reasonable in all the circumstances to do so and may require the legally assisted person, as a condition of the transfer, to pay to the Commission a contribution or further contribution of a specified amount towards the costs of the Commission occasioned by the transfer.
 - (c) A legally assisted person will not normally be entitled to have their grant of aid transferred to another private legal practitioner on more than one occasion.

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ACCEPTANCE BY A PRIVATE LEGAL PRACTITIONER

**OF GENERAL CONDITIONS OF REFERRAL IN ACCORDANCE WITH
SECTION 30 OF THE LEGAL AID ACT 1990(NT)**

THIS FIRM WILL ACCEPT REFERRALS IN THE FOLLOWING CLASSES OF MATTERS OR IN THE PARTICULAR COURTS. (Place a tick against the relevant item/s).

- 1. ALL REFERRALS REGARDLESS OF CLASS OR COURT
- 2. LITIGATION - PERSONAL INJURIES
- 3. LITIGATION - CRIME
- 4. LITIGATION - OTHER. (specify)
- 5. FAMILY LAW

I Partner,
(Print name in full)

on behalf of

Hereby agree that in consideration of a grant of aid and referral of a matter by the NT Legal Aid Commission I will undertake the referral to the best of my ability and that I accept the General Terms and Conditions of Referral and Guidelines approved by the said Commission on 12 September 1990 and all Scales of Costs offered by the Commission and undertake to be bound by such Conditions, Scales of Costs and Guidelines in every particular and as amended by the Commission from time to time.

General Terms of Acceptance

Legal assistance is provided only for the matter or matters specified in the grant letter. If assistance is required for other matters, written approval must be obtained from the Commission.

Approval is required for counsel's fees.

The practitioner agrees:

1. (a) To obtain instructions from the assisted person that payment of any amount due to the assisted person, whether by judgment in a legal proceeding or by way of settlement or compromise or by costs awarded or agreed, be made out to and deposited into the solicitor's trust account; and
(b) not to undertake the referral without first obtaining from the assisted person authorizations in terms of both "Annexures 'A' and 'B'" hereto.
2. To retain from any funds received on behalf of the assisted person sufficient to reimburse the Commission.
3. To notify the Commission immediately any money is received on the assisted person's behalf and to hold in trust and then disburse the money according to the Commission's instructions.
4. To inform the Commission of any circumstances which may be relevant to the continuation of the grant of legal assistance, including any change in the assisted person's financial or domestic situation.
5. (a) To provide the Commission with any information it reasonably requests which is relevant to the grant of legal assistance, the services provided to the assisted person, and the costs charged or to be charged for them; and
(b) if requested; to deliver to the Commission the file or files relating to the matter for which legal assistance was provided.
6. Not to do anything, take any action, give any advice, or enter into any agreement that could prejudice the Commission's right to recover its costs by way of contribution.
7. (a) to refrain from entering into any agreement which could prejudice the assisted person's right to recover costs without the Commission's written approval; and
(b) to take all reasonable action to recover costs ordered in favour of the assisted person; and

- (c) to notify the Commission if the recovery of costs appears unlikely.
- 8. To immediately inform the Commission if the assisted person does not accept or act on the practitioner's advice.
- 9. To advise the Commission of the progress of the assigned matter, in particular any circumstances which might substantially increase costs above the normal costs for a matter of the type for which legal assistance has been granted.
- 10. On completion of the assignment, to send the Commission within a reasonable time:
 - (a) a report on the outcome of the matter, including details of any order for costs;
 - (b) an account, using the appropriate scale of costs, and if requested a bill of costs in taxable form for fees and disbursements; and
 - (c) an account for all moneys received and paid on behalf of the assisted person during the assignment.
- 11. To undergo such training as the Commission considers necessary to the satisfaction of the Commission.

Dated this _____ day of _____ 20

(Signature)

Business Address:			
Postal Address:			
Phone:		Facsimile	
Email:			

ABN GST Registered YES NO

Method of Payment Cheque Electronic Transfer

BSB A/C No. A/C Name

Annexure A

Authority to Deposit Funds in Solicitor's Trust Account

ANNEXURE A
to Acceptance by a Legal Practitioner of a Referral
by the Northern Territory Legal Aid Commission

In the matter of Proceedings/Dispute between

(Assisted Person)

and

(Other Person)

To:

(Other Person)

and to:

(Other Person's Solicitors)

Irrevocable Authority and Direction

I irrevocably authorize and direct you to pay all monies due to me for any reason, by any means and in any way whatever to my legal practitioner to be deposited into my legal practitioner's trust account.

(Name and address of Legal Practitioner)

Dated this _____ day of _____ 20

SIGNED:
(Assisted Person)

WITNESSED:
(Witness)

Annexure B
Authority to Reimburse
Northern Territory Legal Aid Commission Costs

ANNEXURE B
to Acceptance by a Legal Practitioner of a Referral
by the Northern Territory Legal Aid Commission

In the matter of a Referral of:

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(Assisted Person)

In relation to:

To:

Legal Practitioner accepting
the Referral
(name and address)

Irrevocable Authority and Direction

I irrevocably authorize and direct you or any other solicitor I may retain in this matter to pay to the Northern Territory Legal Aid Commission the amount due to it in consequence of the grant(s) of legal assistance made and advance(s) of funds on my behalf in this matter such amount to be paid from any monies recovered by or due to me whether by judgment or by way of settlement or compromise of claim or recovery of property or award of costs or in any other way recovered or recouped by or payable to me and however held and to be paid to the Commission by you within 14 days of receipt and before disbursement of any monies to me or any other person or entity at my direction.

(Name and address of
Legal Practitioner)

Dated this _____ day of _____ 20____

SIGNED:
(Assisted Person)

WITNESSED:
(Witness)

The Director
Northern Territory Legal Aid Commission
Locked Bag 11
DARWIN NT 0801

Dear Sir/Madam

RE: PAYMENT OF COSTS
CRIMINAL PROPERTY FORFEITURE ACT (NT)

I have received a grant of aid from the Northern Territory Legal Aid Commission (“Commission”) for proceedings under the *Criminal Property Forfeiture Act (NT)* and understand that conditions apply to the grant.

Legal aid is not free and I understand that I may have to pay the costs of legal assistance to the Commission at the end of these proceedings. I must pay back the money as soon as I am told the amount. Interest may be charged until it is paid. If I cannot pay the full amount, I must contact the Commission to ask about paying it off by installments.

If I think I should not pay the total contribution, or any of it, I can ask the Commission to reduce or waive the contribution. The Commission may not agree to reduce or waive the contribution.

I must sign and date this letter, and return this copy to the Commission straight away or my grant of aid may be stopped.

My signature:Date: