

September 2010

#6 - 2010

NOTICE TO THE PROFESSION

1. Updated Legal Aid Application

Legal Aid Manitoba recently rolled out its updated Application. You will notice several sections in blue ink. This is intended to highlight areas where supplementary information needs to be provided for the Application to be properly assessed. Providing this information will help Legal Aid Manitoba to ensure timely processing of Applications, as well as ensuring that your particular Application is not held up in the process of assessment for want of required information.

There are some new divisions that hopefully will make completing the Application flow a little more intuitively. It remains important that you fill out all of the sections on the Application that relate to your clients and his/her case. Several questions have been changed to check boxes. We hope this will make filling out the Application faster and more straightforward. Our aim is to receive fewer Applications with sections simply stroked out where a yes or no, or some similar answer, is required.

We initially hoped that we might be able to include sufficient identification information to meet the Law Society's ID verification requirements. While the information on the form will cover this off for many situations, it remains the responsibility of the lawyer to ensure they have complied fully with that requirement. For this purpose, the name of the interviewer has become more important and we have moved that name to the last page of the Application form to highlight its importance and, hopefully, to enhance the use of the Application as a useful document in counsel's file in meeting the ID requirement.

The provisions of *The Freedom of Information and Protection of Privacy Act* remain of considerable importance and Legal Aid Manitoba is dedicated to protecting the personal information of applicants. If you are filling out a Legal Aid Manitoba Application and will later be calling the tracing department to find out information respecting the Application, you should ensure that the interviewer's name is clearly set out on the Application and the lawyer requested is clearly indicated on the first page. In most circumstances, unless you are requested counsel, or counsel from your firm can clearly be identified as the person who did the interview, information respecting the Application will not be provided by the tracing department before counsel has been appointed.

Recent jurisprudence has alleviated some concerns respecting the provision of "retainer related" information to the courts. Legal Aid Manitoba has incorporated in its Consent and Release provisions on the Application, and in the Privacy Statement, an indication that we will be providing information to the court, when necessary, to account for our responsibility to ensure timely legal assistance and representation are provided.

We hope the new Application and the various steps we have taken with respect to its use will be of ongoing assistance to counsel. We appreciate the efforts of counsel who diligently assist eligible clients seeking access to justice, as well as your efforts to help keep the cost of providing legal aid to a reasonable level, ensuring that we can continue to provide the broadest possible coverage to the largest group of eligible applicants.

2. Area Directors Manual

Legal Aid Manitoba has been issuing certificates pursuant to the new Area Directors Manual for over a year and a half. The manual is moving into a phase of review, continuing indefinitely, that we refer to as Continuous Quality Improvement or CQI. In order for the manual to remain up to date, and to meet the needs of all stakeholders, including private bar counsel, ongoing input from you is required. One major avenue for input into the Area Directors Manual is through the Tariff Review Committee which is comprised of members from Legal Aid Manitoba senior management, members of the private bar who take legal aid cases, and members of Legal Aid Manitoba staff from community law offices. If you wish to bring any matter to the attention of the Tariff Review Committee please feel free to forward it to my assistant, Gayle Zacharias, at gazac@legalaid.mb.ca. Please indicate 'Tariff Review Committee' in the subject line.

We have received a number of concerns and complaints respecting the time lines in the Area Directors Manual. Management Council has directed that Legal Aid Manitoba Applications must be decided on current financial, family, and merit information. This has been quantified as information no less than six months old. In order to ensure that decisions made on Legal Aid Manitoba Applications can be finally determined within that six month window, all assessments and appeals must be concluded within six months of the Application date. The deadlines that were imposed in the new Area Directors Manual have been selected to ensure compliance with the direction of Management Council. The common time lines of concern are:

1. The Application must be signed within the 60 days prior to its receipt at Legal Aid Manitoba;
2. Where further information is required, it must be received within 30 days of our request or the Application will be refused;
3. An Application refused following the 30 day deadline above will be reconsidered without a further Application, if the information requested is provided within 60 days of the date the refusal issued;
4. Appeals to the Executive Director or Management Council from refusal to issue a certificate both have a 30 day limitation date after which they may not be accepted;
5. When a financial review is commenced, further information is requested. If there is no response to the request within 21 days, the certificate will be cancelled unless counsel has advised there is a hearing date pending within the next 60 days.
6. If a certificate is cancelled due to failure to respond to requests on a financial review, it can be reactivated if the information requested is provided within 30 days of the date the cancellation issued.
7. If a certificate is cancelled for any reason, other than an error on the part of Legal Aid Manitoba, and the financial information on file is older than six months, the client is required to reapply for legal aid in order to reinstate coverage.

Counsel are all aware that legal aid in Manitoba is not a public defender system. Eligibility for legal aid depends upon a fair and proper assessment of financial resources. The availability of legal aid to low income Manitobans depends upon Legal Aid Manitoba's ability to properly assess applicants. The above time lines should be readily achievable in all but extraordinary circumstances. Where extraordinary circumstances exist, an exception can be made by the Area Director, upon provision of cogent reasons.

3. \$250,000.00 Billing Cap

Counsel are reminded of Notice to the Profession #34 - 2009 issued in March of 2009. Item 9 in that notice indicated:

Management Council has directed that a billing cap of \$250,000 per year be imposed on individual counsel billing as of April 1, 2010.

All individual counsel billing matters to Legal Aid Manitoba must be mindful to remain within this billing cap. The billing cap represents 3125 hours of billable time at the nominal Legal Aid Manitoba rate of \$80 an hour (8.6 hours per day, 365 days a year). Individual lawyer billings in excess of this amount cannot be honoured.

4. Tariff Review Committee

The Tariff Review Committee has met several times since the last Notice to the Profession. Proposals have been given to government to enhance or increase the tariff. Most recently, Legal Aid Manitoba has sought enhanced fees to supplement the increased workload required on YCJA cases, in particular, the increased use of case conferences. We also requested that government consider pegging increases in the tariff to increases in public sector collective bargaining agreements. Receipt of our proposals was acknowledged by government, although no substantial response to our suggestions has been received as of the date of this memo.

5. On Call Telephone System

Legal Aid Manitoba has been in the process of reviewing our Brydges on-call telephone service to deal with increased costs and other practical concerns. One option being considered is changing to an automated cascading telephone answer service. If implemented, the service will transfer calls through a number of available counsel until the first available counsel accepts the call. We are hoping to integrate translation services into this process and to coordinate its usage with the various police departments to ensure timely high-quality on-call legal advice is provided. It may be possible to create parallel services for private bar firms using the same system at a relatively low cost. Law firms, or counsel, who might be interested in participation in the development, and potential use, of such a system are invited to contact Bruce Gammon, Legal Director at brgam@legalaid.mb.ca for further information.

6. Booking Flights on Court Party Aircraft

When private bar counsel are flying to circuit courts at Legal Aid Manitoba expense, the certificate number on which the flight is authorized, and to which the flight will be billed, must be provided to, and recorded by, the person booking the flight. Bills received from Government Services that do not have a certificate number with authorization for the flight will be set off against the billings of the lawyer who charged the flight to Legal Aid Manitoba.

7. Big Case Management

Big Case Management eligibility is provided for all Category A matters and a limited number of complex matters in lower categories. Where a matter is eligible for BCM, it will be indicated on the certificate. If Council wishes to avail themselves of the BCM process, they are required to complete the BCM form, which is available on-line. A meeting will be required with the BCM committee that consists of no less than two senior managers from Legal Aid Manitoba.

The outcome of the BCM process is an agreement for additional preparation time that varies with the stage at which proceedings are concluded. This process allows counsel to have a clear indication of what can be anticipated by way of increase over tariff on complex cases where significant preparation is required. Use of the BCM process allows Legal Aid Manitoba to anticipate the draw upon its discretionary increase funds. This in turn provides counsel with greater certainty that these funds will be available at the conclusion of the case. Regular discretionary increases can vary with the available financial resources at the time the request is received.

Legal Aid Manitoba is initiating a requirement that Pretrial Conference Memoranda be provided to the BCM committee as they are received. The review of these memoranda will provide additional information to assist with the determination of the BCM process. Legal Aid Manitoba's ultimate aim is to have enough information prior to the setting of court dates that we can confidently determine BCM amounts prior to counsel setting a preliminary hearing or trial date.

8. Billing Time Lines

From time to time, Legal Aid Manitoba reminds counsel of the six-year limitation on the validity of a certificate. It is useful for counsel doing legal aid cases to review the date of issuance of older certificates. A legal aid certificate expires six years from the date of issuance. In circumstances where a small amount of work remains to be done, this six-year limitation can be extended for a brief period of time. Generally speaking, the certificate will expire and the client will need to reapply for legal aid to retain coverage. Attention to these time lines can avoid substantial difficulty, both for the client and for counsel.

Legal Aid Manitoba monitors the accrual of private bar accounts. There are a number of significant disadvantages both to Legal Aid Manitoba and to counsel when a significant amount of time passes between completion of the work on a certificate and billing that certificate. There should be little need for files to remain open, pending billing beyond 60 days of the final disposition of the legal matters on that certificate. On family files, this means 60 days following the signing and receipt of the order sought. On criminal files, this means 60 days following the stay of proceedings, acquittal, sentencing, etc., that concludes the matter.

Legal Aid Manitoba is actively working toward implementation of a policy to require billing of all matters within 60 days of their final disposition. In order to bill a file following the expiry of that 60 days, approval of the Executive Director will be required. We anticipate this policy will come into place at the commencement of fiscal year 2011 -- 2012 (April 1, 2011). We are advising counsel of the anticipated policy at this time to permit an opportunity to bring billings up to date pending implementation of the policy.

November 2010

#7 - 2010

NOTICE TO THE PROFESSION

Legal Aid Manitoba Client Appeal Process

In light of recent events, Senior Management and Management Council's Client Appeals Committee would like to clarify the procedures for filing appeals where LAM has refused a client's application for legal aid coverage.

For any appeal, the client must sign the appeal form and provide reasons why they are appealing LAM's decision to refuse their legal aid application. Clients can appoint a lawyer or agent to represent them during the appeal process within Legal Aid Manitoba, both at the Executive Director and Appeal Committee levels in order to comply with the Act and Regulation. The client's authorization must be in writing.

Within 30 days of issuing any refusal, a client can appeal the decision to the Executive Director. There is no formal meeting process for Executive Director appeals. The Executive Director reviews the client's application and any related documentation to assess whether legal aid coverage should be granted. Clients are provided with a written response outlining the Executive Director's decision to grant or reject the appeal.

Where a refusal is upheld, clients can appeal the Executive Director's decision to Management Council's Appeal Committee. The following circumstances apply:

- 1) the Appeal Committee will hear appeals where clients have submitted a written response within 30 days to invoke their right to appeal;
- 2) the Appeal Committee will grant leave to appeal for an additional 60 days where clients have provided a reasonable written explanation; and
- 3) the Appeal Committee will consider appeals filed after 90 days only where extremely unusual circumstances exist. For all appeals filed after 90 days:
 - i) the matter must be referred to the Chair of Management Council;
 - ii) the appellants must make written submissions to the Chair explaining the reasons for the delay; and
 - iii) the Chair will decide if a leave to appeal to the Appeal Committee will be granted.

#8 - 2011

NOTICE TO THE PROFESSION

1. Legal Aid Manitoba is completing the first year of the \$250,000 billing limit. This limit will remain in place in future years and lawyers are encouraged to continue attending to their billing practices so as not to bring the limit into play. Our fiscal year begins April 1, 2011 and all lawyers' billings commence at zero as of that date. All cheques issued after April 1, 2011 will be reflected in your billing totals for the 2011/2012 fiscal year. Billings are attributed to the lawyer named on the certificate.

2. The Annual Report for the 2010/2011 fiscal year will bring a change in the reporting of lawyers' billings. In previous years, lawyers' billings have been reported by law firm. In this fiscal year and subsequent years, billings will be reported by lawyer's name in the year-end reporting required by the *Public Sector Compensation Disclosure Act*, C.C.S.M.c. P265. This will increase public accountability with respect to payments made to individual lawyers in accordance with the spirit and intent of the Act.

3. Management Council, at the request of the Advisory Committee, has instituted a change in billing practice. Where a definite stage of proceedings as set out in the BCM agreement is concluded, lawyers will be permitted to bill both the completed stage of proceeding and any BCM enhancement authorized for that stage of proceedings by the BCM Committee. For example, a preliminary hearing may be billed when concluded along with the disbursements related to that stage of proceedings and any BCM preparation fees may now also be billed at that time.

4. In accordance with Notice to the Profession #6, Item #8 (September 2010), certificates issued in the 2011/2012 fiscal year will also be subject to a new condition that they be billed within 60 days of disposition. With respect to criminal matters, disposition means the date upon which each Legal Matter is concluded whether by stay of proceedings, guilty plea, conviction and sentence, etc.. On family matters, the date of disposition is the date of signing and receipt of the Order sought, or loss of contact. Where a legal matter will be the subject of an appeal, a new legal aid application is required and the billing on the previous legal matter is not extended by the intention to appeal .

5. It has become of increasing importance that lawyers attend to the wording and coverage provided on the face of the certificates they receive. Where a lawyer is not prepared to act on a matter in accordance with the structure and coverage provided on the face of the certificate, they need to immediately indicate any requested changes to the Area Director so any changes can be considered and determined prior to the lawyer incurring costs associated with representation. While Legal Aid Manitoba makes every effort to revisit and construct coverage in a fair and reasonable way at the date of billing, a lawyer who has undertaken to provide services pursuant to the coverage and conditions stated on the face of a certificate may well be limited to that coverage and those conditions at the time of billing.