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NOTICE TO THE PROFESSION

1. Tracing Applicant Information

Legal Aid Manitoba maintains a Tracing service that allows counsel to access updated information for any application they have taken, or on which a client has requested them as counsel. This service can be accessed in two ways:

- 1) by calling 985-8506 during regular business hours (8:30 a.m. to 4:30 p.m.);
- 2) by sending an e-mail to the attention of tracing@legalaid.mb.ca.

Counsel should feel free to use this service which enables them to provide up-to-date information both to their clients and to the court. The *Freedom of Information and Protection of Privacy Act* prevents Legal Aid Manitoba from providing personal information respecting applicants in response to a third party request. In making requests for tracing, counsel must understand that Legal Aid Manitoba cannot provide personal information about an applicant unless they originally received the information in an application personally from the applicant, or the applicant, by requesting the lawyer as counsel of choice, has indicated their desire for Legal Aid Manitoba to communicate with that counsel.

2. Changes to the Area Director's Manual

Several changes have been made to the Area Director's Manual which affect the assessment for eligibility of Legal Aid Manitoba applicants. The following sections should be read in the context of the Area Director's Manual as a whole.

- 1) With respect to Financially Motivated Major Crimes, a paragraph has been added to the end of the existing **Section 4.1.10** of the Area Director's Manual to read:

Compliance with this section in youth cases may be waived in the discretion of the Area Director where a *Youth Criminal Justice Act* section 25 application would otherwise be successful. Appointment of counsel for young persons charged with a Financially Motivated Major Crime, where the assessment has been waived by the Area Director, shall be made on the same basis as if counsel had been appointed in response to a direction under that section.

The wording of Section 6, CLIENT CONTRIBUTIONS, and the wording elsewhere in the Area Director's Manual is amended such that where:

- a) the ADM currently reads “Expanded Eligibility”, it be changed to read “Agreement to Pay - Full”;
- b) the ADM currently reads “Agreement to Pay”, it be changed to read “Agreement to Pay - Partial”;
- c) the ADM currently reads “Agreement to Pay” and a matter is also subject to a charge on land it be changed to read “Agreement to Pay - Full” and a new section is added to what is now 6.3 that reads:

2) **Section 6.3.5**

Where an Applicant falls into the Agreement to Pay - Partial category but has an interest in property that is to be subject to a Charge on Land as set out in section 6.4 below, a certificate may issue as an Agreement to Pay - Full, but will be paid at a rate consistent with the Applicant's ability to pay and full recovery prior to conclusion of the case may be waived.

The first two changes are merely changes of wording to return the ADM to the wording used in the Act. The last change reflects the intention to recover fully the costs of representation from the Applicant and, where the Applicants resources permit a small payment toward the cost, continue those payments until the cost is paid in full, at which point a discharge of the Charge on Land can be provided.

3) The wording of **Section 6.6.3** has been changed to make clear that default on a prior Agreement to Pay/Expanded Eligibility contract does not in itself prevent a currently fully eligible applicant from receiving legal aid, nor does it remove the obligation to pay as soon as possible. Section 6.6.3 now reads:

6.6.3

If the applicant would, but for the default, be fully eligible now, then the Area Director shall consider the applicant financially eligible for legal aid. In issuing any such certificate the Area Director shall affirm the continuing requirement to repay the amount owing and take such steps as are prudent to ensure the client is reviewed for financial eligibility, and a repayment scheme is initiated, as soon as repayment can reasonably be commenced.

4) The wording of **Section 4.1.8** has been amended so that cash and assets readily turned into cash, are now assessed as income. Where the applicant's income in the past 12 months and their income in the proceeding 12 months, are each determined to be below the full eligibility threshold, they will remain eligible for legal aid regardless of such assets. Section 4.1.8 has been amended to read:

4.1.8(f).

Cash and assets readily turned into cash (securities, bonds, etc.) shall be considered for financial assessment purposes as income. Provided an

applicant's assessed income in the past 12 months (inclusive of these cash or assets) remains below the fully eligible guideline, and the applicant's assessed income in the proceeding 12 months (inclusive of these cash or assets) remains below the fully eligible guideline, the client shall not on account of these cash and/or assets alone be found to be financially ineligible for legal aid.

This change prevents applicants from being found to be ineligible for legal aid in circumstances where to do so would amount to a de facto lowering of the eligibility guidelines.

3. Mandatory Impoundment of Drivers' Licenses

Upon passing sentence, Judges will begin to seize drivers' licenses, pursuant to the mandatory impoundment provided for in s. 267(7) of the Highway Traffic Act, where a vehicle was used in the course of committing an enumerated offence. Legal Aid Manitoba encourages counsel to make themselves familiar with the enumerated offences, which have been broadened significantly, and the provision for a temporary license where appropriate.

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NOTICE TO THE PROFESSION

a) Important Address Change

Legal Aid Manitoba will be moving to its new Administrative Office on the 4th floor - 287 Broadway, Winnipeg MB R3C 0R9 effective November 28, 2011. Email and Facsimile addresses will not change and communication can continue to be addressed and sent in the same manner. Mail and Courier communication should be addressed to this new location as of that date.

While the move is taking place, from November 24 – 28, 2011 and immediately subsequent, there may be some interruptions to e-mail and other services. All stakeholders are encouraged to follow up on communications made during this time to ensure they are received by Legal Aid Manitoba and responded to in a timely manner.

b) Duty Counsel Role and Responsibilities

1) Role of Duty Counsel

Legal Aid Manitoba provides duty counsel in the docket courts in Winnipeg and rural circuit points to:

- a) ensure immediate access to justice where the assistance of legal counsel is reasonably required to prevent a miscarriage of justice and/or fulfil the *Charter* right to counsel, and where;
- b) the delay necessary to assess eligibility for legal aid and appoint counsel in the ordinary course, would significantly prejudice the interests of the accused or the administration of justice.

2) Legal Aid Manitoba duty counsel provide the following services:

- a) Same day bail at first instance;
- b) Same day guilty plea in lieu of bail;
- c) Same day services to negotiate a stay of proceedings, mediation, restitution or other arrangement that may be dispositive of the case;
- d) Adjournments for same day duty counsel service where justified by the Role in 1. above;
- e) Remands to retain counsel and/or pursue an application for legal aid coverage.

3) In accordance with established policy, where duty counsel are provided in a court, and that counsel is not in conflict respecting a duty counsel client, no fees will be paid to other attending counsel for the duty counsel services indicated above.

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NOTICE TO THE PROFESSION

Annual Fee Cap

Legal Aid Manitoba has removed the \$250,000 fee billing cap, effective immediately.

Counsel are hereby given notice that there must be compliance with *The Legal Aid Manitoba Act*, specifically section 15(2) of the *Act*:

Delegation by solicitor

15(2) A solicitor may not delegate a legal aid matter or any portion thereof to another solicitor, whether or not the solicitors are practising in association with each other, except

- (a) under exceptional circumstances, and then only with the consent of the applicant and the approval of the area director; or
- (b) in respect of interlocutory or other preliminary steps in the matter.

and section 41 of the *Regulations*:

Contents of account

41 A solicitor who completes the furnishing of legal aid under a certificate or who ceases to act, shall submit without delay to the executive director

(a) an account setting out the services furnished, the date on which each item of service was performed and, where appropriate, the time spent in providing the service, together with the fees and disbursements sought for each service in accordance with the Schedule, and a certificate signed by the solicitor in the following form:

"I certify that the legal aid authorized by the certificate was rendered by me, or by such other named person, and that the disbursements set out herein were paid or liability therefor incurred, and were necessary and proper, and that I have not received reimbursement for any of them.";

- (b) the account of any agent or counsel engaged, prepared and certified in accordance with clause (a);
- (c) a final report with respect to the matter;
- (d) if the solicitor was retained by the client to furnish legal services with respect to the same matter before the certificate was issued
 - (i) a statement of the services furnished by the solicitor before the certificate was issued,

- (ii) a statement of disbursements made by the solicitor before the certificate was issued, and
 - (iii) a statement of any payment made by the client to the solicitor for fees and disbursements; and
- (e) any other information required by the executive director.

Legal Aid Manitoba may from time to time conduct spot audits to monitor compliance with the legislation.