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NOTICE TO THE PROFESSION

SECTION 525 of the CRIMINAL CODE OF CANADA
Review of Detention Where Trial Delayed

Please click on the links below to access the following documents provided to Legal Aid Manitoba by Manitoba Justice:

- Section 525 Announcement
- Section 525 Waiver Form
- Notice to Counsel

Summary
Section 525, as decisively interpreted by the Supreme Court of Canada in *R.* v. *Myers*, 2019 SCC 18 (CanLII) , secures an incarcerated accused's right to have the reasonableness of their ongoing detention determined by the Court at specified intervals, dependent on previous decisions respecting release, and the classification of the offence.

The s. 525 Review is an Application of the 'Jailer' with custody of an incarcerated accused, and imposes substantial responsibilities on the reviewing court. The *Myers* decision makes clear that an accused who had a prior bail hearing can waive the s. 525 Review (para. 61). The ability to waive the Review where there has not been a previous bail hearing is less clear.

Where an accused is represented by counsel it should be apparent that the 'Jailer's' review offers little more than an opportunity to take steps that are otherwise available; an accused is always free to secure:

- an initial release hearing under s. 515 whenever they wish to bring one;
- a bail review as of right pursuant to s. 520 (any time there has been a change in circumstances, including a change in circumstances due to passage of time);

Section 525 was first introduced in the 1972 *Bail Reform Act*. Legal Aid Manitoba's historical data demonstrates that counsel delivering legal aid have been (and continue to be) diligent in pursuing release for their clients in spite of the lapse in s. 525 reviews.

Where an accused does not have counsel, the Review will likely result in mandatory hearings that may not have otherwise taken place.

Legal Aid Manitoba Policy

Section 525 Reviews and the fees applicable to those hearings are not specifically mentioned in the tariff; however paragraphs 3 and 5 of *The Legal Aid Regulation* Schedule Tariff of Fees (*Schedule*) provide guidance to Legal Aid Manitoba and practitioners regarding how these matters are intended to be compensated:

> *3. Unless otherwise specified, fees include all services furnished up to and including the first ½ day hearing in a matter. Additional fees are provided for extra ½ days.*
>
> *5. In determining fees for services not mentioned in this tariff the executive director may consider fees payable for comparable services and shall allow a reasonable fee with respect to those services.*

Legal Aid Manitoba consulted with stakeholders, including the Advisory Committee of Legal Aid Manitoba regarding the application of paragraphs 3 and 5 of the *Schedule* to s. 525 hearings. The consensus reached was as follows:

- Per paragraph 3 of the *Schedule,* where s. 525 Review Applications do not result in a hearing, they are not compensated separately; but rather as an included service in the block tariff for a given legal matter;

- Per paragraph 5 of the *Schedule*, where a s. 525 Review Application results in a contested bail at first instance, the tariff for bail at first instance applies and paid in addition to the block tariff for a given legal matter:
    - $80.00/hr up to a max of $160.00);

- Per paragraph 5 of the *Schedule*, where a s. 525 Review Application results in a review of the original bail finding, the tariff for a bail review applies and is paid in addition to the block tariff for a given legal matter:
    - Bail review (when authorized by the executive director including the first ½ day of hearing) $390
    - each additional ½ day $250

Important Practical Considerations

Counsel must take note that this is an Application by the 'Jailer' at first instance, and not by the accused. Absent a valid waiver from an accused, an obligation continues on the 'Jailer' and on the Court to:

- schedule a hearing;
- set a timely date for that hearing; and
- provide the materials necessary to ensure compliance with s. 525.

Regarding compensation for s. 525 hearings, the *Schedule* allows Legal Aid Manitoba to provide additional compensation to counsel (other than through the general block fee tariff), as follows:

- where a contested bail at first instance is conducted at a s. 525 hearing; or
- where a bail review has been authorized by the Executive Director.

The same follows for disbursements: Legal Aid Manitoba will only pay for the transcripts etc., for a s. 525 hearing where a bail review has been authorized by the Executive Director.

The test for bail review authorization remains, (as it has always been) that there has been a change in circumstances, legal error, or other meritorious grounds for a bail review.

As always, counsel must be diligent in seeking authorization for bail reviews at a s. 525 Application where appropriate, and in not agreeing to pay disbursements or other costs they are not authorized by Legal Aid Manitoba to incur, without prior authorization from the Executive Director.

OUT OF COURT FAMILY RESOLUTION CERTIFICATES

Legal Aid Manitoba is committed to providing Manitobans with family law advice and representation services that are focused on:

- the best interests of children and families; and
- out of court resolution services that will help families resolve disputes before entering a courtroom

In September 2018, Notice to the Profession 35-2018, was distributed to panel lawyers and stakeholders. The Notice advises the profession of significant changes made to our processes to ensure that applicants, clients and lawyers are aware of their responsibilities resulting from the amendments to the MBQB Rules. One of the changes made to our processes was having applicants certify that (where appropriate to do so) they would agree to try to resolve their family dispute using an out of court family dispute resolution process such as 4 way meetings or collaborative law before instructing counsel to proceed to contested lititgation. A sample of the changes made to our initial retainer letter (received by clients in family matters) can be accessed here.

In February 2019, Notice to the Professsion 37-2019 was distributed to panel lawyers and stakeholders. The Notice reminds the profession that family matters are case managed by Legal Aid Manitoba. The *Schedule* indicates that the following stages of litigation in family matters are only compensated (in addition to the block tariff) if they have been pre-approved by Legal Aid Manitoba:

- examinations for discovery;
- cross-Examinations of Affidavits; and
- trial

Consonant with concerns expressed broadly about unnecessary litigation in family matters, in May, 2019 Legal Aid Manitoba consulted with stakeholders and panel lawyers to explore ways we could further enhance and improve the delivery of out of court family resolution services to Manitobans. The result of our consultation was the following approach that focuses on the best interests of children and families:

- effective June 1, 2019, a sub-category matter type will be implemented in PBOnline and LAMAS for "Out of Court Family Resolution Certificates";
- as with all matter types, counsel will have the ability to indicate if they are willing to accept these types of certificates. As these files become available they will be offered to counsel who indicate on their PBOnline and LAMAS profile that they are willing to accept these certificates;
- opposing parties that each qualify for legal aid will be granted coverage on the condition that the matter be dealt with using an out of court family resolution process such as collaborative law, 4-way settlement meetings, etc.;
- the certificate will be case managed by Legal Aid Manitoba and will issue on the condition that contested litigation will not be allowed without further authorization from Legal Aid Manitoba;
- clients who fail to cooperate with counsel run the risk of having their coverage cancelled.

This approach to resolving family disputes keeps the focus on the best interests of children and families, and aligns with the new approach taken by the Manitoba Court of Queen's Bench to family justice in our province.