



A NEW LEGAL AID ACT

Consultation Paper

August 2011

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Introduction

Currently, the *Legal Services Act* provides the statutory framework for the Legal Services Board of the Northwest Territories (the "Board"). The Board is responsible for legal aid in the NWT. Legal aid is legal advice and representation provided by a lawyer to a person who is eligible to receive these services under the *Legal Services Act* and the regulations.

The Department of Justice has drafted a new *Legal Aid Act* to ensure that the Northwest Territories continues to provide a responsive and efficient legal aid system for residents of the Territory. The current legislation is outdated and many of its provisions prevent the Legal Services Board from operating the program efficiently. Additionally, the current *Legal Services Act* is confusing when it comes to defining the roles and responsibilities of the Board and the Executive Director.

The new Act will help the Department of Justice maximize the value of legal aid for the benefit of NWT citizens. This is important at any time but is particularly relevant in light of the current fiscal environment. Modernization and streamlining will allow the new Commission to operate more efficiently and give users a better understanding of process and legal aid operations. The new Act will reflect the realities of operating a legal aid program in the NWT in the 21st century.

The Department of Justice is interested in hearing your views on the proposed changes in the draft *Legal Aid Act*, and would also encourage comments you might like to make on any other aspect of the legislation. We are interested in making legislation more effective and responsive to the interests of northerners.

The deadline for receiving comments is **September 30, 2011**.

Main Changes Found in the New Act

Renaming the Legal Services Board of the NWT

Section 4 of the proposed Act renames the "Legal Services Board of the Northwest Territories" to the "Northwest Territories Legal Aid Commission." The current title of "Legal Services Board" is confusing, as there is no indication from the title that the Board is responsible for legal aid. The proposed name change makes it clear that the Commission is indeed responsible for legal aid. The name change also makes the title consistent with other provincial and territorial legal aid commissions across the country.

Specifying the Duties and Powers and Composition of the Commission

a. *Duties and Powers*

The duties and powers of the Commission are set out at section 4(8) and (9) of the proposed Act. Duties of the Commission include:

- Annual reporting;
- Receipt of payments;
- Making of payments;
- Hearing and deciding on appeals and reviews of claim adjustments; and
- Supervising the Executive Director.

Powers of the Commission include:

- The making of guidelines in respect of the provision of legal aid services;
- The development and coordination of programs in alternative dispute resolution and legal education;
- The establishing of panels and new services;
- Advising the Minister;
- Evaluating services and programs; and
- Exchanging information with its provincial and territorial counterparts.

b. *Appeals*

The new Act authorizes the Commission to hear appeals from:

- Individuals who have been denied legal aid because they were determined to be ineligible (section 9);
- Individuals who are eligible but have been denied authorization for legal aid for other reasons, as set out in the Act (section 10); and
- Individuals who have received legal aid services but contest the amount that they have been assessed by the Executive Director to repay to the Commission (section 11).

c. *Panel of Lawyers*

Section 14 of the new Act authorizes the Commission to establish and maintain panels of lawyers who may be assigned legal aid cases. The Commission is also able to set guidelines and requirements on how lawyers are designated to or removed from panels.

d. *Role of Executive Director*

Section 6 of the new Act clarifies that day-to-day operational decisions, such as hiring lawyers, court workers and other staff to carry out the program, is to be carried out by the Executive Director on behalf of the Commission.

e. Role of Board of Commissioners

The Commission maintains a general oversight role to ensure that the program is operating within its legislated parameters and achieving its strategic goals and objectives. Paragraph 4(9)(d) of the proposed Act clarifies that in certain matters, such as the decision to increase the number of staff or establish a new service, the Commission has the ability to make recommendations to the Minister of Justice, but decisions on such matters remains with the Minister under subsection 3(2) of the proposed Act.

f. Commission Membership

Currently, the *Legal Services Act* does not specify the maximum number of board members that may be appointed. Subsection 4(4) of the proposed Act requires that the Minister appoint at least three and not more than five members to the Commission. This subsection also requires that both the Law Society and the public service are represented on the board of commissioners, similar to what is required in other jurisdictions. Subsection 4(5) of the proposed Act requires that the Minister must consider the diversity of the population and the gender balance of the Northwest Territories when appointing members.

g. Legal Services Provided

Section 8 of the proposed Act clarifies the types of proceedings and matters for which legal services are provided. The current list is confusing and needs to be revised to include other types of proceedings, such as family law matters, for which an individual can obtain legal aid.

Clarifying Independence of the Commission and Ministerial Powers

It is important that the independence of the Commission and the rule of law be respected in legal aid proceedings. Under subsection 2(3) of the proposed Act, the Commission is independent from the Government of the Northwest Territories (GNWT), but is accountable to the GNWT with respect to the expenditure of public money.

In order to reinforce the independence of the Commission, section 10 of the current *Legal Services Act*, which permits the Minister to inquire about and receive information on specific cases, is removed. It is important that the Minister is not perceived as influencing – or being able to influence – the decisions of the Commission in terms of the provision of legal aid to eligible persons. Furthermore, the release of such information conflicts with the solicitor-client privilege. The removal of this provision protects the independence of the Commission and the integrity of its processes, and reinforces the rule of law by maintaining public confidence in the impartiality of decisions made by the Commission.

The operation of the Commission within a framework of accountability for expenditure of public money continues because the Commission continues to be a public agency (section 23 of the proposed Act).

Clarifying the Status of the Executive Director and Commission Employees

The current Act specifies that the Executive Director and all other employees of the Legal Services Board are members of the public service (section 16.1 of the current Act). No change is being proposed to this arrangement; however, the new Act provides further clarification on how the Executive Director is appointed, and how employees are hired:

- The Executive Director is to be appointed in accordance by the Commissioner on the recommendation of the Minister (subsections 6(1));
- The staff of the Commission, including the Executive Director, are members of the public service (subsection 6(4)) and therefore must be hired in accordance with the *Public Service Act*.

Changing Choice of Counsel and Resident Counsel Provisions

Under section 40 of the current Act, the possibility of being sentenced to life imprisonment for certain charges automatically entitles an accused to be defended by his or her choice of lawyer residing in the NWT. Under the proposed new Act, the “choice of counsel” provision is removed and the Executive Director is able to appoint legal counsel best suited to assist with the particular charge that an individual faces (subsection 15(2) of the proposed Act). This amendment is consistent with the approach taken in the majority of provincial and territorial legal aid acts across the country.

Removing the “choice of counsel” provision also has the effect of removing the “resident counsel” requirement under section 40 of the current Act. Currently, when an accused is given the opportunity to choose counsel, the accused must choose counsel that is “resident in the Territories”. This is no longer a requirement in the proposed new Act and will permit the Executive Director the ability to appoint counsel from outside the NWT where necessary under subsection 15(2) of the proposed Act. In some instances, it has proven difficult to appoint resident counsel for more serious cases. It is important that an individual accused of a serious crime is provided with a lawyer who is experienced in handling matters that could result in a significant criminal sentence for the accused. This may occasionally require that counsel from outside the NWT is used to represent an accused facing a serious charge.

Eliminating Committees

The proposed Act does not refer to regional legal services committees and advisory committees mentioned throughout the current Act. Although these committees were appropriate in 1979 when the *Legal Services Act* was introduced, the manner in which legal aid services are delivered has changed and the Act has not kept pace with service delivery.

Advisory committees have not been used since at least 1999 (when Nunavut was created). Regional legal service committees have rarely been used since 1999. The only regional committee that existed after 1999 was the Beaufort Delta Legal Services Society, and it was

dissolved in 2005 by the Board's own motion in late 2004. The Legal Services Board recognizes the need for adequate regional representation and has, as a matter of practice, worked with the Minister to ensure good regional representation amongst its members.

How to Provide Your Input and Comments

Comments on the proposed new *Legal Aid Act* should be received by the Department of Justice by **September 30, 2011** in the following ways:

By Mail

Attention: New *Legal Aid Act* Consultations
Policy and Planning Division
Department of Justice, Government of the NWT
6th floor, Courthouse
4903 49th Street, PO Box 1320
Yellowknife, NT X1A 2L9

By Email

communications_advisor@gov.nt.ca

By Fax

(867) 873-0659

If you have questions about this process or the consultation paper, please send an email to the above address or contact the Policy and Planning Division at (867) 920-6418.