



July 24, 2020

Canadian Bar Association (Sask Branch)
135 21st Street East #305
Saskatoon, SK S7K 0B4

I am writing to advise you, as a party likely to be interested, about some significant changes to the procedures for accused people to use when seeking government-funded counsel.

Since 2016, the Ministry of Justice has been reviewing the provision of legal services to indigent people in the province.

The Government is obliged to provide legal services to individuals facing criminal charges or child protection proceedings who are eligible financially and who have a charge or matter that is within the delineated scope of service. The Government meets this obligation primarily by funding Legal Aid Saskatchewan.

If necessary, counsel can be appointed by the Courts when the individual:

- (a) has been denied Legal Aid coverage;
- (b) has been determined by the Court to be “indigent” or in extraordinary financial circumstances; and
- (c) they require counsel to be ensured a fair hearing.

The Government covers the costs of counsel appointed by the Court.

The Ministry’s review indicates a clear need to better coordinate the services provided by Legal Aid with those offered when counsel is appointed by Courts. For example, in April, 2008, *The Legal Aid Regulations, 1995* were amended to make all youth eligible for Legal Aid, eliminating the need for court appointed counsel in youth criminal matters. The Ministry particularly noted the success of the youth counsel representation program.

Other jurisdictions, including British Columbia and Alberta, have adopted a similar model for all matters involving adults.

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Given these experiences, as well as the success of the youth system, the same approach for adults will be adopted in Saskatchewan.

As such, the Ministry plans to transfer the administration of court appointed counsel from Court Services to Legal Aid Saskatchewan. This program will extend to all appointments made at Provincial Court, the Court of Queen's Bench, and the Court of Appeal.

This handover is currently planned to take place in the Fall of this year.

New legislative provisions will require that all full representation appointments made by the Courts must be after a court application, with appropriate notice, and a hearing to which the Ministry of Justice (and the federal Government's agent in appropriate cases) respond. Appointments under the Criminal Code for the limited purpose of cross-examination will not require an application, but cannot be transformed into a full appointment without an application to the Court.

After an order by the Court is made to have counsel appointed, either for a full appointment or for the limited purpose of cross-examination, notice will be given to Legal Aid. Thereafter, Legal Aid will administer all aspects of the appointment, from approaching counsel to receive an appointment, to selection of counsel through administering file work and billing, such as those related to the Legal Aid Tariff of Fees and Disbursements. That Tariff has long been adopted by Court Services and accepted by CAC counsel as prevailing.

Legislative amendments are required to effect this change. In 2016, *The Constitutional Questions Act, 2012*, *The Provincial Court Act, 1998* and *The Queen's Bench Act, 1998* were amended to support changes to the court-appointed counsel program. Those amendments are not yet in force but will be proclaimed in force to effect the changes. As well, proposed new regulations under *The Constitutional Questions Act, 2012* are currently in development.

If you or your organization has any questions or comments about this transition, please email audrey.olson@gov.sk.ca. If you would like to discuss, please contact Audrey Olson at 306-798-2111. We kindly ask that you provide any feedback by **August 26, 2020**.

Sincerely,



Audrey Olson
Senior Crown Counsel
Court Services