



# Agent Agreement – Terms and Conditions

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October 2025

# AGENT AGREEMENT – TERMS AND CONDITIONS

Cette publication est également disponible en français sous le titre: Conditions d'ententes des mandataires

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Catalogue No. J79-19/2023E-PDF

ISBN No. 978-0-660-49491-3

## PREFACE

The Public Prosecution Service of Canada (PPSC) has as its mandate to act as prosecutor for offences under the authority of the Attorney General of Canada and to provide advice to law enforcement agencies. As an agent for the federal Crown in criminal matters, you are critical to the PPSC's ability to achieve its mandate and mission, and to ensuring that prosecutions, in all areas of the country, are conducted fairly, objectively and in a transparent manner.

Certainly, the work will at times be challenging, but I hope that you will also find it rewarding. You will benefit from the support of experienced prosecutors who are there to guide you in your work. Your assigned agent supervisor is your primary contact, and your gateway into the PPSC. He or she will be able to refer you, as needed, to other legal resources, and will quickly bring you to appreciate the guidance provided by the PPSC Deskbook.

In addition to the agent supervisor, you will benefit from the support of experienced corporate staff in the Agent Affairs Division who are there to help with contracting and billing issues, including questions that may arise in respect of the terms and conditions of your agreement.

When acting as an agent for the PPSC, you are exercising authority that I delegate to you. I am hereby entrusting you with important responsibilities to the Canadian justice system and to the public at large. I wish you all the best in exercising this authority. I know I will continue to be able to count on the excellent work done by our agents across the country.

George Dolhai  
Director of Public Prosecutions and Deputy Attorney General of Canada

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## Quick Reference Guide

### Before you act, you must obtain written approval from your Agent Supervisor in order to:

#### COUNSEL AND PERSONNEL

- have more than one Agent appear before the same court at the same time [6.13]
- have new personnel work on a file [3.6]
- use an Articling Student, Student, or Paralegal [6.14; 10.2.1]

#### COSTS AND DISBURSEMENTS

- carry out legal research exceeding one hour on a file [10.6]
- incur a disbursement expenditure of over \$500 [10.8]
- claim fees in excess of the 10-hour daily limit [10.5]
- incur witness costs [10.9]
- incur costs for ordering a transcript [10.8.5]
- incur travel costs for travel outside the designated locations [10.7; 10.8.7]

#### APPEALS

- launch or discontinue an appeal [6.7]
- a decision is appealed and the federal Crown is the respondent [6.7]
- you believe that an appeal by the federal Crown is warranted [6.7]

#### AUTHORITY TO ACT

- accept a case directly referred to you by an enforcement agency or federal government department involving a location or statute not set out in your Agreement [6.1.1]
- continue to work when the court orders a change of venue outside your designated locations [6.2]

#### THE MEDIA

- initiate contact with the media [8.4]

### You need to notify the Agent Supervisor immediately when:

#### AUTHORITY TO ACT

- you are assigned a case where there are only *Criminal Code* charges [6.1.3]
- your case is waived to another location or transferred to another Agent [6.4]
- you must transfer the file to another Agent [6.4]
- you are asked to provide training to enforcement agencies [6.1.5]

#### SIGNIFICANT LEGAL ISSUES

- there are significant legal issues [6.5.2]

#### CONFIDENTIAL INFORMATION

- information falls, or might fall, within the protection of sections 37 to 39 of the *Canada Evidence Act* [6.8.2]

#### INFORMATION REQUESTS

- a law enforcement agency or a federal government department requests a legal opinion on an access to information matter [6.15.1]
- there is a request for records or information under the *Access to Information Act* or the *Privacy Act* [6.15.2]
- members of the media request information other than the date of trial or similar routine matters [8.2]

## AGENT AGREEMENT – TERMS AND CONDITIONS

### CONFLICT OF INTEREST

- as an Agent, you have conduct of one or several cases at the time of your Agreement that may fall within the ambit of the conflict of interest provisions [2.5]
- you have doubts about accepting or continuing a file because of conflict of interest considerations [2.4]
- you are challenging the constitutionality of a provision of the *Criminal Code* or other federal legislation [2.3]
- you are in a situation in which there is or there may appear to be a conflict of interest with the Director of Public Prosecutions and/or Attorney General of Canada [2.4]
- you acquire an interest that would result or appear to result in a conflict of interest [2.1]
- you are thinking of becoming engaged in political activity [3.10]

### PERSONAL SITUATION

- you are subject to a criminal charge, legal action, or personal or professional bankruptcy or insolvency; you are in default of a court order or decision; or you are subject to a disciplinary hearing or complaint before the law society or Bar [1.6]

### OFFICIAL LANGUAGE REQUIREMENTS

- you cannot provide services and communication in the official language as required [6.9.1]

## Part One – Terms and Conditions

### 1.1 Application of Terms and Conditions

The Terms and Conditions set out the nature of the Agent’s relationship with the Public Prosecution Service of Canada (PPSC) and provides direction to all Agents on a number of important matters.

The Agreement, these Terms and Conditions, and their schedules constitute the basis of the Agreement between the Agent and the Director. There are no other terms or conditions, express or implied, other than those in these documents. The PPSC may provide specific protocols or instructions from time-to-time. The Agent must, at all times, act within the scope of this Agreement and follow protocols and instructions provided by the PPSC.

### 1.2 Guiding Principle

As a representative of the Director of Public Prosecutions, an Agent is expected to uphold the highest standards of personal and professional conduct. An Agent must at all times obey the law, be in compliance with federal government policies and act with integrity, fairness and impartiality.

The Agent is not an employee of the Crown; it is prohibited for any member of an Agent Firm to hold themselves out as such. Moreover, Agents must not identify themselves as Federal Crown or Crown Counsel in any written communications; Agents may identify themselves as “Agent for the Public Prosecution Service of Canada”.

### 1.3 Amendments and Notifications

#### 1.3.1 Authority to Amend

The Director may adopt a policy or process aimed at the effective administration and management of Agreements arising from a situation not covered by these Terms and Conditions.

#### 1.3.2 Notification of Amendments

These Terms and Conditions and their schedules are subject to change. The Contact Agent will be notified accordingly and provided with the timeframe in which the Agent Firm must comply. These documents and their amendments, are available on the PPSC website: <https://www.ppsc-sppc.gc.ca> under “Other Publications”.

### 1.4 Terminology

In these Terms and Conditions,

“**Agent**” refers to any private-sector lawyer, being an active member of a provincial or territorial bar, who has been authorized to act as a federal prosecutor pursuant to ss. 7(2) of the Director of Public Prosecutions Act and authorized to act under ss. 9(1) of the Act.

“**Agent Firm**” refers to a legal entity consisting of one or more Agents practicing in an association, a corporation, a partnership, limited liability partnership or sole proprietorship, who have entered into an Agreement. An Agent Firm may include any articling student, student, paralegal and administrator, as well as an independent contractor authorized by the PPSC to assist its Agents.

“**Agent Supervisor**” refers to the PPSC counsel assigned as the Agent’s point of contact with respect to policy, legal, procedural, and advice arising during the course of the Agreement. The Agent Supervisor is responsible for ensuring that commitment and certification authorities are obtained.

“**Agent Supervision Unit**” refers to the PPSC’s regional office section dedicated to the daily management of Agents.

“**Agent Working in Association**” refers to an Agent who is affiliated with the Agent Firm as an independent contractor, and whose primary work location differs from the Agent Firm’s.

“**Agreement**” refers to a Fixed-Term Agreement entered into by an Agent Firm with the Public Prosecution Service of Canada, to conduct federal prosecutions on behalf of the Director of Public Prosecutions. The Agreement sets out the duration of the term, general guidelines and instructions, the locations and statutes for which the Agent Firm is responsible, as well as an Acknowledgment signed by all Agents within the Agent Firm.

“**Articling Student**” refers to a graduate from a Canadian university law school program, or from an equivalent accredited university, registered in a licensing process with a Canadian law society, authorized to assist an Agent.

# AGENT AGREEMENT – TERMS AND CONDITIONS

“**Administrator**” refers to the individual responsible for creating the File Assignment Report (FAR) and performing time keeping tasks on behalf of the Agent Firm.

“**Chief Federal Prosecutor**” refers to the head federal prosecutor within a PPSC regional office.

“**Contact Agent**” refers to the Agent within an Agent Firm designated as the point of contact for all administrative and legal matters stemming from the Agreement and responsible for ensuring compliance with the Agreement.

“**Director**” refers to the Director of Public Prosecutions.

“**Indemnification**” refers to payment or reimbursement of amounts paid as a result of a judgment or a cost award against an Agent, or as a result of a monetary settlement of a claim or an action made or brought against an Agent that is pre-approved by the Director of Public Prosecutions.

“**Legal Assistance**” includes the cost of the services of the Department of Justice Canada or private counsel (if a conflict exists), as well as paralegal services and includes necessary travel costs, incidental costs, and the use of essential expert witnesses.

“**Paralegal, Licensed**” refers to an individual who is provincially licensed and authorized to assist an Agent in accordance with the rules of their respective law society.

“**Paralegal, Qualified**” refers to an individual who benefits from an acceptable combination of education, training, and/or experience, authorized by the PPSC to assist an Agent in accordance with the PPSC Paralegal Classification Guidelines.

“**Personnel**” refers to an Administrator, Student, Articling Student and Paralegal, authorized by the PPSC to assist other members within an Agent Firm.

“**Principal**” or “**Articling Principal**” where applicable, refers to the Agent within an Agent Firm responsible for the direct supervision of Articling Students and Paralegals.

“**Student**” refers to a student (other than articling) enrolled in a Canadian law school program, authorized to assist an Agent with administrative duties.

## 1.5 PPSC Deskbook

Part 1 of the [PPSC Deskbook](#) contains the directives and guidelines that govern the conduct of all federal prosecutions.

The PPSC Deskbook uses terms such as “Prosecutor” or “Crown counsel” and for ease of reference, these terms generally refer to both in-house federal prosecutors and Agents acting as such. When in doubt about the interaction between the PPSC Deskbook and these Terms and Conditions, Agents must refer to their Agent Supervisor for directions.

## 1.6 Personal Conduct

The Contact Agent must notify their Agent Supervisor in writing if

- 1) any individual within the Agent Firm is:
  - subject to any investigation, prosecution or conviction by any federal agency or under any federal statute, including the Criminal Code, or subject to personal or professional bankruptcy or insolvency, or to any disciplinary proceedings before a law society or bar;
  - in default of any Court order or decision, or of a family support obligation; or
  - subject to any investigation, prosecution or conviction in respect of a provincial offence that is quasi-criminal in nature, including those offences related to matters within the agent’s mandate, such as provincial environmental offences or provincial taxation.
- 2) the Contact Agent becomes aware of any conduct that is not in keeping with the highest standards of personal and professional conduct as required by section 1.2, including but not limited to: conduct by a member of the Agent Firm or their immediate family or household, that may jeopardize security clearance, Canada Revenue Agency endorsement, or that has the potential to create an actual or apparent conflict of interest.

## AGENT AGREEMENT – TERMS AND CONDITIONS

These requirements exist at the time of acceptance and extend throughout the duration of the Agreement.

### 1.7 Authority to Verify Compliance

The Agent, upon submission of their application and throughout the duration of their Agreement, authorizes the PPSC to contact:

- the appropriate agencies to verify the Agent’s compliance with the personal conduct requirements of section 1.6;
- federal enforcement agencies to verify the Agent’s compliance with federal statutes;
- the Canada Revenue Agency to verify the Agent’s compliance with the Income Tax Act and other Acts administered in whole or in part by the Canada Revenue Agency; and
- the law society or Bar of the Agent’s province or territory to verify the Agent’s status to practise law.

### 1.8 Sanctions

Failure to comply with these Terms and Conditions or instructions from the PPSC may result in sanctions including:

- formal note to file;
- reduction or disallowance of accounts;
- suspension or termination of the Agreement with an Agent Firm;
- suspension or revocation of the individual Agent’s delegation;
- initiation of a complaint before the appropriate professional disciplinary body; and
- initiation of a civil action against the Agent.

## Part Two – Conflict of Interest

### 2.1 Principle

An Agent’s responsibilities flow from the special obligations resting on the Office of the Director of Public Prosecutions in the execution of its mandate under the Director of Public Prosecutions Act (DPPA). Agents serve the public interest. Agent Firms must not engage in work that could place demands on them that are inconsistent with their duties as an Agent or that could call into question their capacity to perform their duties objectively and loyally.

- Agent Firms must take all necessary steps to avoid a conflict of interest or the appearance of one.
- Agent Firms must be aware of and comply with:
- these Terms and Conditions;
- all applicable case law, including the Supreme Court of Canada’s decision in *Martin v. Gray*, [1990] 3 SCR 1235; *Canadian National Railway Co. v. McKercher LLP*, [2013] 2 SCR 649;
- their law society’s rules concerning conflict;
- the provisions of the Conflict of Interest and Post-Employment Code for Public Servants, if applicable; and
- the provisions of the *Criminal Code* respecting Offences Against the Administration of Law and Justice (Part IV) and, in particular, section 121 (influencing public employees).

If any individual within the Agent Firm acquires an interest or becomes involved in a situation during the term of the Agreement that would result in a conflict of interest, real or apparent, the Contact Agent must immediately notify their Agent Supervisor.

### 2.2 Prohibited Work

Agent(s) will not act for the defence in matters in relation to statutes identified in their Agreement.

The Contact Agent must ensure, at all times, that their Agents do not undertake prohibited work.

### 2.3 Deemed Conflicts

An Agent Firm is deemed to be in a conflict of interest whenever the Agent Firm engages in work that is directly or indirectly contrary to the interests of the Director and/or of the Attorney General of Canada, including, but not limited to:

- challenges to the constitutionality of a federal statute or regulation, including the *Criminal Code*;
- legal work involving Aboriginal rights or treaty claims;
- legal work involving the *Official Languages Act*; or
- challenges to a federal government policy or program.

The Contact Agent must immediately advise their Agent Supervisor in writing of such a situation.

### 2.4 Conflict, Real or Apparent – Duty to Notify

In a situation where there may be a conflict of interest, real or apparent, the Contact Agent must immediately advise their Agent Supervisor. The Agent Supervisor will assess the situation and recommend to the Director whether it warrants the suspension of or the termination of the Agent Firm’s Agreement to avoid a conflict of interest or the appearance of a conflict of interest.

The Contact Agent must also notify immediately their Agent Supervisor whenever any individual within the Agent Firm:

- is uncertain about the applicability of the conflict rules to a particular situation;
- is involved in a situation that may be a deemed conflict of interest as described in section 2.3;
- is considering taking on defence work relating to a federal enforcement agency or a federal statute, other than the *Criminal Code*;
- is in a situation that might appear to be a conflict of interest; or
- where the Agent previously represented the accused, or
- is in contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act.

### 2.5 Allegation of a Conflict of Interest – Duty to Notify

The Contact Agent must advise their Agent Supervisor immediately if an enforcement agency, a member of the court, or a member of the public raises a concern about or objects to an alleged conflict of interest involving any individual within the Agent Firm. The Agent Supervisor will determine whether it is necessary to transfer the file.

## Part Three – Fixed-Term Agreement

### 3.1 General

The PPSC presents opportunities for Fixed-Term Agreements on a competitive basis. The Director decides to retain Agents when and where business cases warrant; consequently, prospective Agents are selected based on the results of the application they submit in response to Notices of Opportunities. All applicants, including incumbents, must provide a completed application with supporting documents, and clearly demonstrate how they meet the PPSC criteria.

Agents Firms that fail to submit an application for the location(s) in which they currently provide prosecutorial services are deemed to have resigned at the conclusion of their Agreement.

### 3.2 Status and Authority of an Agent

An Agent is an Agent of the Director, retained pursuant to ss. 7(2) of the *DPP Act* and authorized to act under ss. 9(1) of the Act. The Agent’s authority to prosecute is limited to the designated location(s) and statute(s) stipulated in their Agreement.

The Agent is not an employee of the Crown. It is prohibited for any Agent, or any member of an Agent Firm, to hold themselves out as such.

The Agent’s Agreement is with the PPSC and not with any enforcement agency.

### 3.3 Tenure of Agreement

An Agent’s Agreement, which is confirmed in writing by the Chief Federal Prosecutor, and entered into under to ss. 7(2) of the DPP Act, is valid until the stipulated end date; however, it can be terminated at any time for convenience or default. Consult section 3.8 for further information.

#### 3.3.1 Notification of Amendments

Written communications regarding amendments to an Agent Firm’s Agreement, such as changes to its legal entity, its structure, addition or removal of statutes or court locations, and of Agent Firm resources, are also confirmed in writing by the Chief Federal Prosecutor.

### 3.4 Effective Date of Agreement

The Agent Firm’s mandate takes effect once the Contact Agent signs the Acknowledgement and confirms the Agreement.

### 3.5 Acceptance of Agreement

All Agents within an Agent Firm must sign the Acknowledgement and return it to the PPSC within five (5) working days of receipt of the Agreement in order to be authorized to accept any file assignment.

By signing the Acknowledgement, the Agents attest that they have read and are in compliance with these Terms and Conditions, agree to be bound by them, and accept the Agreement.

### 3.6 Changes to Resources

Agent Firms may be required to add or replace Agents or obtain additional personnel during the course of their Agreement. The Contact Agent must obtain the PPSC’s approval of new personnel before authorizing them access to files held on behalf of the Director.

### 3.7 Suspension of an Agent

For reason of serious non-compliance with these Terms and Conditions, the Agent Supervisor can recommend the suspension of an Agent to the Chief Federal Prosecutor while the matter is being investigated. The underlying issues will dictate the severity and timing of the outcome.

Refer to section 1.8 for further details.

## 3.8 Termination of an Agent Firm Agreement

### 3.8.1 *Termination – End of term*

An Agreement terminates at the end of its duration when the incumbent Agent Firm does not submit a new application for an Agreement as indicated in section 3.1, or is unsuccessful in doing so; it may also be terminated before this date by convenience, default or resignation.

The Agreement will stipulate the end date, unless one of the following circumstances arise:

### 3.8.2 *Termination for Convenience*

At any time before the completion of the Agreement, the Director may, by providing a minimum of ninety (90) days' notice in writing to the Contact Agent, terminate for convenience the Agreement, in whole or in part. Once such a notice is given, the Agent Firm must comply with the requirements of the termination notice. If the Agreement is terminated in part only, the Agent Firm must complete any part of the Agreement that is not affected by the notice. The termination will take effect immediately or, as the case may be, at the time specified in the notice.

If a termination notice is given pursuant to the above paragraph, the Agent Firm will be entitled to be paid for costs that have been reasonably and properly incurred to perform the Agreement until the date of termination.

### 3.8.3 *Termination for Default*

If the Agent Firm is in default in carrying out any of its obligations under the Agreement, the Director may, on recommendation by the Chief Federal Prosecutor, approve the termination of the Agreement, in whole or in part, for default. The termination will take effect immediately or at the expiration of a period specified in the notice, in the event the default has not been resolved to the satisfaction of the Director within that period.

The PPSC may, to the extent permitted by the laws of Canada, upon approval of the Director and by giving written notice to the Agent, immediately terminate for default the Agreement, in whole or in part if:

- an Agent becomes bankrupt or insolvent,
- makes an assignment for the benefit of creditors,
- is suspended or disbarred, or
- takes the benefit of any statute relating to bankrupt or insolvent debtors, or
- if the law society of the jurisdiction in which the Agent practices is appointed trustee of the Agent's firm, or
- if a receiver is appointed under a debt instrument, or
- a receiving order is made against the Agent, or
- an order is made or a resolution passed for the winding down of the Agent.

The PPSC may, to the extent permitted by the laws of Canada, upon approval of the Director and by giving written notice to the Agent, immediately terminate for default the Agreement, in whole or in part.

### 3.8.4 *Termination by an Agent Firm*

An Agreement terminates when the Agent Firm withdraws from representing the PPSC on all matters, confirmed by way of a letter to their Agent Supervisor from the Contact Agent. A minimum of a 90-day notice is required, unless the Agent Firm has been inactive for a period of one year or more, or if exceptional circumstances apply, such as an appointment to the Bench.

An Agent Firm unable to carry out its obligations for selected locations set out in its Agreement may withdraw from the locations in question provided the Contact Agent notify their Agent Supervisor in writing with 90-days notice.

### 3.8.5 *Return of PPSC Property*

Agent Firms must return within 90 days of the termination to the PPSC all PPSC-based property, including access tokens, copies of all relevant training materials and prosecution manuals, wiretap manuals and any other documents, electronic files or paper files, active or closed, provided by, or relating to, the PPSC or other federal departments or agencies.

### 3.8.6 *Inventory of Outstanding Matters*

The Agent Firm must provide their Agent Supervisor a list of outstanding matters upon termination or as requested by the Agent Supervisor.

## 3.9 Individual Resignation

Upon the withdrawal of an individual from representing the PPSC for the Agent Firm, the Contact Agent is required to advise the Agent Supervisor without delay.

The PPSC will revoke system and network access of the individual.

The Agent Firm must complete all outstanding invoicing for or on behalf of the individual within 30 days of the resignation.

## 3.10 Political Activity

All citizens are entitled to express themselves freely and to participate in political activities. Agents, however, are expected to use discretion and judgment in doing so. In particular, when taking part in political activities, Agents are expected to exercise restraint so as not to jeopardize the impartiality and independence of the PPSC.

An Agent must inform the Agent Supervisor, without delay, of any involvement or proposed involvement in a political activity.

An Agent's Agreement may be suspended, or terminated under section 3.8, if the Agent engages in a political activity without consent from the PPSC, that undermines the impartiality and independence of the prosecution function.

Political activities include, but are not limited to, seeking nomination as, or being, a candidate in an election, or carrying on any activity in support of, or in opposition to, a candidate or a political party whether it is during an election period or not.

### 3.10.1 *Nomination for a federal, provincial or territorial election and appointment to the Senate*

An Agent who is seeking nomination as a candidate for election as a member of the House of Commons, of the legislature of a province or territory, or who has been appointed as a Senator, will cease to be an Agent.

### 3.10.2 *Nomination for a municipal election*

An Agent who intend to run for a position, or is elected, in a municipal election must seek prior approval from the PPSC; these political activities will be examined on a case-by-case basis to assess the impact on the Agent's ability to perform his or her duties and may result in the suspension or termination of the Agent's Agreement.

## 3.11 Proof of Agent Status

Agents are provided with a standard delegation issued pursuant to ss. 9(1) of DPP Act, authorizing the Agent to act as a federal prosecutor for or on behalf of the Director, in the exercise of the powers or the performance of the duties or functions set out in the delegation, subject to these Terms and Conditions and to their Agreement. The delegation ceases to be valid upon termination or resignation.

## Part Four – Requirements

### 4.1 Conditions of Agreement

The Agent Firm must ensure that the following requirements are satisfied throughout the duration of their Agreement as stipulated in section 1.7, and must be prepared to provide an updated status upon request:

#### 4.1.1 Security Clearance

All members of an Agent Firm who have access to the Agent Firm's files pertaining to work for the Director must hold, at a minimum, a valid Enhanced Reliability clearance in accordance with the Treasury Board Secretariat [Policy on Government Security](#).

#### 4.1.2 Lawyer Licensing

An Agent must be an active member of the provincial or territorial bar in which the Agent practices, be and remain in good standing with its law society.

#### 4.1.3 Canada Revenue Agency

An Agent must be, and remain, in compliance with all tax legislation.

### 4.2 Insurance

As stated in section 3.2, an Agent is not an employee of the Crown, further; an Agent Firm is independent from the Crown. Consequently, Agents and Agent Firms must ensure to carry the provincially mandated law practice insurance in accordance with the requirements of their respective law society.

Agents, and Agent Firms, are also responsible for deciding if other insurance coverage is necessary to fulfill their obligations under the Agreement, to cover their risks, or to ensure compliance with any applicable laws.

Any insurance acquired or maintained by Agents, or Agent Firms, is at their own expense and for their own benefit and protection. It does not release the Agents, or Agent Firms, from or reduce their liability under the Agreement.

### 4.3 Standard Technology Requirements

Agent Firms must have adequate computing devices based on the Windows or MacOs platforms and capable of executing mainstream browsers in order to access internet-based case management tools that the PPSC authorizes.

The PPSC requires Agent Firms to adequately communicate and transmit data in electronic format at their own cost.

Agent Firms must have individual e-mail addresses for all personnel; additionally, the Agent Firm must ensure that the email addresses are password protected at all times and they are provisioned through any of the following methods:

- a Canadian-based internet service provider(e.g. Bell, Telus, Rogers);
- an enterprise-based email service with a registered Canadian-based domain name.

The PPSC may also require Agent Firms to acquire appropriate electronic legal research tools at their own cost.

### 4.4 Reference Materials

Agent Firms must have access to an up-to-date version of the Criminal Code and other specific legislation relating to their Agreement. Agents must also have current legal resources, electronic or otherwise, on evidence, criminal procedure, and drug offences. Individual requirements may be determined by the Agent Supervisor.

Agents may obtain additional reference materials at the PPSC website (<https://www.ppsc-sppc.gc.ca>).

### 4.5 Training Materials

The PPSC will provide Agent Firms with a copy of any relevant policies and training materials developed by the PPSC relating to the statute(s) under which they exercise responsibilities as Agents of the Director.

These materials remain the property of the Government of Canada and must be returned to the PPSC upon request, or at the end of the Agent Firm's Agreement

### 4.6 Training

From time to time, members of an Agent Firm must participate in training programs on substantive and administrative matters relating to their mandate. The PPSC will reimburse the out-of-pocket expenses they incur (such as meals, accommodation, and transportation) to attend such training. Unless otherwise authorized in writing by the Agent Supervisor, the PPSC will not pay for time spent attending training sessions or becoming familiar with training materials it provides, which includes all information related to authorized case management tools and solutions.

Agent Supervisors may recommend Agents to attend the yearly PPSC's School for Prosecutors, a career-development training opportunity provided by the PPSC; although the time spent may be applicable to the Agent's Continuing Professional Development requirement, agents are not remunerated. However, Agents will be reimbursed, as stated above.

Exceptionally, the PPSC may, at its sole discretion, compensate Agent Firms for the time spent attending mandatory training.

Section 10.8 provides further information on travel allowances and disbursements.

## Part 5 – The Working Relationship

### 5.1 Point of Contact with the PPSC

The Agent Supervisor is the Agent Firm’s point of contact with the PPSC with respect to policy, legal, procedural, and advice arising during the course of the Agreement. Where necessary, the Agent Supervisor will seek further direction from the appropriate authorities within the PPSC.

The PPSC will identify the Agent Supervisor in the Agreement and will advise Agents of any changes.

### 5.2 Roles and Responsibilities of the Agent Supervisor

The Agent Supervisor is responsible for instructing, monitoring and evaluating the work of the Agent, ensuring that the Agent is informed of pertinent policies and providing advice and assistance when required. The Agent Supervisor is also responsible for ensuring that the Agent Firm complies with their Agreement, these Terms and Conditions, and any specific protocols or instructions provided to them.

The Agent Supervisor has authority to verify an Agent Firm’s accounts.

### 5.3 Approval of the Agent Supervisor

Where, in accordance with these Terms and Conditions and the *PPSC Deskbook*, the Agent requires the approval of the Agent Supervisor in order to proceed with an activity, the Agent must obtain the written approval prior to proceeding.

In rare situations, where circumstances warrant that the Agent proceed with an activity without the prior written approval, the Agent must notify the Agent Supervisor about the situation at the earliest opportunity.

### 5.4 Communication with the PPSC

When communicating with the PPSC, Agent Firms may use the official language of their choice.

### 5.5 Correspondence with the PPSC

The Agent Firm must quote in all letters to the PPSC the file number provided in connection with the particular matter, and the case and billing numbers where available. No sensitive or confidential correspondence related to a file (or files) or other similar material must be sent by email or facsimile transmission, except over secure lines or methods approved by PPSC. The Agent Supervisor should be contacted for further information.

### 5.6 Role and Responsibilities of the Contact Agent

The Contact Agent is accountable for maintaining compliance with the Agreement. They maintain the necessary level of direction and compliance over tasks performed by all members of the Agent Firm, including Agents, articling students, students, paralegals, and administrative staff, to ensure that such tasks are carried out competently and in accordance with the terms of the *PPSC Deskbook* and these Terms and Conditions. Furthermore, the Contact Agent is responsible for ensuring that all members of the Agent Firm comply with the PPSC’s instructions relating to the submission of accounts.

The Contact Agent is also responsible for keeping the Agent Supervisor apprised of the Agent Firm status; any changes to the firm structure such as amendment to legal entity (merger, change of firm name), as well as the departure of Agents and/or authorized personnel, must be reported to the Agent Supervision Unit immediately; failure to do so could result in the delay of account processing.

If the Contact Agent, for reasons beyond the Agent Firm’s control, becomes unavailable to continue the work (for example due to departure or illness), the Agent Firm shall be responsible for identifying and providing a replacement. The PPSC reserves the right to determine the suitability of the proposed replacement, which may consist of an interview.

## Part 6 – File Management

### 6.1 Authority to Act – Agent Firms

#### 6.1.1 Agent Firms

Agents will receive files from the PPSC, an enforcement agency, or a federal government department for matters that fall within their designated locations and statutes, as set out in their Agreement.

Files may be re-assigned as directed by the Agent Supervisor.

Agents are not authorized to accept files involving locations or statutes that are not listed in their Agreement. If, for any reason, an enforcement agency or federal government department refers a file of this nature directly to the Agent, they must immediately advise the Agent Supervisor and obtain approval prior to proceeding with billable work.

#### 6.1.2 Responsibility for Reporting

It is the responsibility of Agents to complete and submit to the Agent Affairs Division a File Assignment Report (FAR) within three working days of receipt of a file, for all files assigned to them.

Consult section 10.10.2 and Schedule A for further details.

#### 6.1.3 Criminal Code Charges Only

An Agent cannot accept a matter where there are charges under the *Criminal Code* but no charges under another federal statute, except in relation to a failure to appear, breach of probation, and other offences against the administration of justice that stem from a substantive federal file.

This provision is to be read in conjunction with Appendix A of the Agent Firm's Agreement's.

#### 6.1.4 Legal Advice

An Agent is authorized to provide legal advice to an enforcement agency concerning specific issues relating to the legislation set out in the Agent's Agreement.

Refer to the Schedule B - Guide to the Preparation and Submission of Invoices for further details.

#### 6.1.5 Training to Enforcement Agencies

An Agent must obtain approval from the Agent Supervisor prior to providing training to an enforcement agency relating to the legislation provided in the Agent's Agreement.

### 6.2 Change of Venue

If a court orders a change of venue outside the locations set out in their Agreement, Agents must receive written approval from the Agent Supervisor before undertaking travel arrangements and continuing to work on the file.

Consult section 10.8 concerning travel allowances and disbursements.

### 6.3 Waiver of Charges

Chapter 3.9 of the [PPSC Deskbook](#) provides that the DPP, or their delegate, generally will consent to a waiver of charges from one jurisdiction to another for purposes of a guilty plea. If there is a request to waive a charge to another jurisdiction, the Agent must contact the Agent Supervisor for instructions.

### 6.4 File Transfers

If an Agent cannot, for whatever reason, continue to work on a file, they must contact the Agent Supervisor for instructions.

Sections 10.10.6 and 13.8 should be consulted for further information.

### 6.5 Reporting and Consulting Requirements

#### 6.5.1 General Duty to Report and Consult

Agent Firms must comply with any reporting and consulting requirements (for example, financial, legal, administrative, or substantive requirements) that the Agent Supervisor establishes. They may be stipulated in the

documents provided to the Agent Firm at the time of the Agreement or the Agent Supervisor may specify them at a later date.

### 6.5.2 *Significant Legal Issues*

Notwithstanding section 6.5.1, Agent Firms must report in a timely manner to the Agent Supervisor in writing, any “significant legal issues” set out in Schedule A.

### 6.5.3 *Reporting of Fines*

Where an accused is convicted and the Court imposes a fine or a fine in lieu of forfeiture, the Agent Firm is required to update the file information in the PPSC’s legal case management system, report and provide a copy of the Fine Order to the Agent Supervision Unit within 30 days, unless instructed otherwise by the Agent Supervisor.

## 6.6 Approval of Legal Opinions or Court Documents

Upon request of the Agent Supervisor, Agent Firms must submit any legal opinions, submissions, pleadings, or *facta* for approval in accordance with instructions from the Agent Supervisor.

## 6.7 Appeals

Agents do not have the authority to initiate an appeal or respond to an appeal on behalf of the Director, unless specifically instructed to do so in writing by the Agent Supervisor.

Believing that an appeal is warranted, the Agent must contact the Agent Supervisor as soon as practical to discuss the merits of the appeal. The Agent will provide recommendations in writing to the Agent Supervisor within seven days of the ruling or result. The Agent should outline the nature of the charge, the evidence, the Crown’s position, the defence’s position, the court’s ruling, the legal issues, and the reasons for the recommendation.

Similarly, the Agent must not discontinue an appeal without the prior written approval of the Agent Supervisor.

Where a decision is appealed and the federal Crown is the respondent, the Agent must immediately notify the Agent Supervisor.

An appeal may only be assigned to the Agent by the Agent Supervisor. Agents are not to submit a [FAR](#) for appeal matters.

## 6.8 Confidentiality

### 6.8.1 *Duty not to Disclose*

In the performance of their duties and functions, Agents may receive information of a privileged, sensitive, or confidential nature. This information must not be disclosed except in accordance with the principles described in the [PPSC Deskbook](#). When in doubt, consult with the Agent Supervisor.

In particular, Agent Firms must implement practices and procedures to safeguard information that could reveal the identity of a Confidential Informant.

Consult section 7.2 for further information.

### 6.8.2 *Canada Evidence Act Certificates*

Agents must bring information that falls, or might fall, within the protection of sections 37 to 39 of the *Canada Evidence Act* to the immediate attention of the Agent Supervisor. The Agent Supervisor will give specific instructions as to whether and how to object to disclosure under those provisions.

## 6.9 Official Languages

### 6.9.1 *Language of Proceedings*

Agent Firms must use the same official language as that of the accused in both oral and written pleadings. Where an Agent Firm initiates communications or proceedings on behalf of the Crown and the language preference of the accused is known, that official language must be used.

Where an accused has elected under section 530 of the *Criminal Code* to be tried before a judge who speaks the official language that is the language of the accused, an Agent acting as federal prosecutor must also use the language of the accused.

For published legal notices, Agent Firms must publish them in bilingual format in accordance with the *Official Languages Act*.

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If an Agent Firm is unable to comply with the language requirements of the *Criminal Code* and the *Official Languages Act*, the Agent Firm must notify the Agent Supervisor immediately so that appropriate measures can be taken.

Consult chapter 2.11 of the [PPSC Deskbook](#) for further information.

## 6.9.2 Communication with Parties and the Public

The Agent Firm must be able to provide services and communications (such as correspondence) in the preferred official language of the parties in accordance with the *Official Languages Act*. The Agent Supervisor must be notified immediately if an Agent Firm is unable to provide those services or if the Agent Firm requires assistance in preparing a legal notice in bilingual format.

In addition, members of the public, apart from the parties and counsel to a given file, have the right to communicate with the Agent Firm in the official language of their choice, both in oral and written communications.

If the matter is referred to the Agent Supervisor, it must be done in a fashion that ensures that the quality and expediency of service provided is comparable, regardless of the official language.

Agents may visit the [Office of the Commissioner of Official Languages](#) and also consult “[Official Languages in Prosecutions](#)” in the [PPSC Deskbook](#).

## 6.10 Gender-Based Analysis Plus: Equity, Diversity, Inclusion, and Commitment to Truth and Reconciliation

Agents are required to consult the PPSC Deskbook, particularly Chapters [2.3 Decision to Prosecute](#) and [6.1 Drug Treatment Courts](#) to obtain guidance and ensure they align with the PPSC commitment to serving the public interest and help make Canada a safe and just society by conducting prosecutions in a manner that is equitable, objective and independent, while protecting the rights of every individual, and contributing to the change necessary to support a criminal justice system that is fair to all.

To achieve this, the PPSC is amplifying awareness and refining its practice guidelines to integrate the lived experiences of individuals navigating the criminal justice system. A key component of this effort is the strategic use of the Gender-Based Analysis Plus (GBA Plus) framework to drive meaningful change.

The GBA Plus is an intersectional analysis tool that examines factors such as age, disability, ethnicity, economic status, and more, beyond biological and socio-cultural differences. It aims to address systemic discrimination and biases in Canada's criminal justice system, fostering diversity, equity, and inclusion throughout the prosecutorial process. Its ultimate goal is to promote equality, equity, and inclusion for all people.

All prosecutors must be diligent in recognizing and addressing personal, unconscious, and institutional biases in decision-making to prevent systemic discrimination or racism. They need to ensure that their analysis of evidence, witness credibility, and defenses is unbiased, and reassess any prosecutorial strategy or decision that may perpetuate inequality or discrimination; in such cases, Agents must inform the Agent Supervisor, requesting direction as required.

All members of the Agent Firm are required to familiarize themselves with the key concepts of GBA Plus by consulting [Women and Gender Equality Canada](#) (WAGE), and taking the short, mandatory [course](#) being offered. Once successfully completed, the Certificate must be submitted to the PPSC's [GBA Plus Responsibility Center](#). Agent Firm members will be compensated as outlined in Section 4.6 of these Terms and Conditions.

## 6.11 Victims Bill of Rights

Agents are required to consider and comply with the provisions of the *Canadian Victims Bill of Rights* where applicable.

## 6.12 Supervision and Assignment of Files

The Contact Agent is responsible for the proper assignment of files to Agents. Whenever possible, given the content of a prosecution file, simpler prosecutions should be assigned to a less experienced Agent and more complex work to a more experienced Agent. The Contact Agent is also responsible for the direct supervision of all members of the Agent Firm, and must ensure that their work is carried out competently and in accordance with the terms of the [PPSC Deskbook](#) and these Terms and Conditions.

## 6.13 Additional Court Counsel

Agent Firms must receive the Agent Supervisor's written approval before authorizing more than one Agent to appear in the same Court at the same time.

## 6.14 Articling Students, Students and Paralegals

The Contact Agent must obtain the PPSC’s approval before allowing an articling student or a paralegal to perform certain tasks on the Agent Firm’s behalf. If approved, they must work under the supervision of a Principal and are governed by the rules of the applicable law society or Bar.

The Contact Agent must provide the name of the Principal supervising all work carried out by the Articling Student and Paralegal. However, tasks undertaken by Students are restricted to those of an administrative nature as defined in sections 1.4 and 10.2.1.

## 6.15 Access to Information Matters

### 6.15.1 *Legal Opinions*

Agents are not to provide legal opinions to law enforcement agencies or federal government departments regarding access to information requests. Upon the receipt of any such request, Agents must immediately direct them to the Agent Supervisor.

### 6.15.2 *Processing Requests Filed under the Access to Information Act and the Privacy Act*

The Access to Information and Privacy (ATIP) Office of the PPSC is responsible for processing all requests received by the PPSC under the *Access to Information Act* (ATIA) and the *Privacy Act* (PA). Subsection 4(1) of the ATIA gives individuals a right of access to records under the control of a government institution. Subsection 12(1) of the PA provides individuals a right of access to his or her “personal information” held by a federal government institution.

Agent Firms’ records relating to PPSC matters are deemed to be under the “control” of the PPSC for the purposes of ATIA and PA. Agent Firms must submit all requested records to the PPSC ATIP Office in accordance with the instructions provided by the Agent Supervisor. There is a strict 30-day statutory deadline under the ATIA and PA; therefore, Agent Firms must act promptly in response to the Agent Supervisor’s request.

Agent Firms are not to provide any records to any other federal, provincial, or municipal government institutions regarding ATIA and PA requests. Upon receipt of such a request, the Agent should immediately direct it to the Agent Supervisor.

## Part Seven – Information Management

### 7.1 General

Agent Firm personnel must ensure that the prosecution file is up to date and contains all documents, correspondence regardless of its format (e.g. emails, letters, extract of text messages, Crown notes), and other records pertaining to it.

Consequently, all records created during the conduct of assigned files are the property of the Crown and must be managed by the Agent Firm in accordance with federal government and PPSC policies, and their respective law society obligations.

### 7.2 Security Requirements

In addition to ensuring compliance with section 4.1.1, Agent Firms must ensure that all PPSC files are properly secured at all times in accordance with the federal government security guidelines. These files must be accessible only to PPSC-approved personnel with appropriate federal government security clearance. Furthermore, it is prohibited for Agents to travel outside of Canada with any “Protected C” PPSC file, paper or electronic or PPSC-issued equipment, nor can Agents connect to any PPSC network from outside Canada.

Although information from a case file may have been filed in the courts and be in the public domain, the PPSC is required to protect sensitive government information and the private information of citizens at all times. Consequently, all members of the Agent Firm must ensure the safeguarding of all protected information and confidential documents by taking the following measures:

- by ensuring they meet all the security requirements enumerated in the PPSC Agent Security Checklist;
- by placing physical paper-based information in a locked cabinet stored separately from the firm’s other case files;
- by segregating all electronic documents pertaining to PPSC-assigned files from the firm’s other files;
- by retaining only file material that forms part of the disclosure. Privileged material (e.g. unvetted Information to Obtain documents) that comes to the Agent during the vetting process should be placed in a dedicated secured location apart from the regular files, as approved by the Agent Supervisor, and accessible by Agents only; in the event that these requirements cannot be met, the documents must be destroyed within 72 hours.
- by ensuring that all devices used to store information electronically (hard drives, thumb drives, back-up tapes, etc.) are protected with passwords and encryption;
- by protecting documents or electronic data in transit by using briefcases or containers with locks. The carrying case used for transport should be durable enough to protect the material from damage and accidental exposure, and make it easy to detect tampering;
- when travelling by public transportation, protected or classified information must not be left unattended; information documents must stay in the personal possession of the bearer at all times;
- when travelling by private vehicle, the locked carrying case containing protected or classified information must be placed in the trunk or out of sight in a locked vehicle from the time of departure and taken out at destination point or at a stopover. The case should never be left in an unattended vehicle; and
- by maintaining a recovery plan to respond to theft, loss, destruction or other incidents that could damage PPSC case files.

### 7.3 Notification of Breach

The Contact Agent must immediately report breaches of security or compromises of information to their Agent Supervisor.

The Agent Supervisor will provide direction to the Contact Agent regarding appropriate measures to implement whenever prompt intervention is required to protect individuals who might be at risk, to conduct proper investigations, to disable equipment, to conduct damage/injury assessments.

### 7.4 File Closure

The PPSC considers that a file is closed when the accused has been sentenced, all appeals are complete or appeal periods have elapsed, and all fines are paid in full.

Transferring a file to another Agent Firm does not constitute closure.

### 7.5 Retaining, Archiving and Returning Records

The Agent Firm must retain the prosecution file for one year after the file is closed and financial information records, such as original timesheets and supporting disbursement documentation, for seven years after closing the file, during which time the PPSC may request such records for audit purposes.

Agent Firms must comply with PPSC Directive on Information Management given by the Agent Supervisor regarding the maintenance of active files and the return and archiving of closed files. Consult section 10.3 for invoicing information.

## Part Eight – Media Relations

### 8.1 Media Inquiries

When Agents are asked by the media to comment on a file for which they are responsible, they must act in accordance with the provisions of the [PPSC Deskbook](#) relating to communications with the media.

### 8.2 Duty to Report to Agent Supervisor

Agents must immediately report any significant media inquiries to the Agent Supervisor. Inquiries on routine matters, such as list of charges and court dates, do not need to be brought to the Agent Supervisor’s attention, unless the circumstances warrant it.

### 8.3 Inquiries Related to Appeals

Agents must not speculate to the media about whether or not the Crown will bring an appeal or an application for leave to appeal. Agents may indicate only that the matter will be studied and a decision taken in due course.

### 8.4 Media Contact

Agents must not initiate contact with the media in respect of any matter arising in the course of their Agreement without specific approval from the Agent Supervisor.

## Part Nine – Assessment of Services Rendered

### 9.1 Assessment Criteria

In order to ensure and maintain the high standard of service expected of Agents of the Director, the PPSC may conduct periodic evaluations of the services performed by Agents. These may have an influence on the continuation of the current Agreement or any subsequent application by the Agent. Assessment criteria include but are not limited to:

- quality of work;
- knowledge of the law;
- productivity;
- efficiency;
- compliance with the Agent Supervisor’s instructions;
- compliance with these Terms and Conditions;
- compliance with PPSC and federal government policies;
- satisfaction of enforcement agencies and federal government departments;
- cost-effectiveness;
- judgment;
- interpersonal skills;
- oral and written communication skills; and
- resourcefulness and creativity.

### 9.2 Review of Records

The PPSC reserves the right to conduct reviews of any record created and maintained by an Agent Firm in the course of the Agreement.

The Agent Firm is expected to cooperate in a timely manner with any requests for additional information related to a review. Consult Part Seven, Information Management, for further information.

## Part Ten - Billing

### 10.1 Agent Remuneration

An Agent’s first date of call to a provincial or territorial Bar is required to establish the rate of pay, which is based on the number of years Standing at the Bar. This information is confirmed by the appropriate law society certificate and must be provided at the time of their application, as the PPSC will not amend the rate of pay retroactively should counsel provide the information once their agreement is signed.

The Agent’s rate is adjusted in accordance with the PPSC’s Criminal Prosecutions [Fee Schedule](#).

### 10.2 Personnel Remuneration

#### 10.2.1 *Articling Students and Paralegals*

Further to section 6.14, Agent Firms may employ Articling Students and Paralegals in accordance with applicable law society rules. The rate of pay for Articling Students and Paralegals is set out in the Criminal Prosecutions [Fee Schedule](#).

Articling Students and Paralegals are restricted to performing, under the supervision of the Principal, tasks or activities that require the application of legal skills, judgment, and experience acquired by professional training and practice (“legal value-added” input). While Agent Firms may require their Articling Students and Paralegals to perform secretarial or clerical tasks, they cannot bill for the time spent performing such administrative tasks.

If it is the Agent Firm’s intention to retain an Articling Student once they have been called to the Bar, it is the Contact Agent’s obligation to advise the Agent Supervisor and request their approval as an Agent. Pending approval, they will continue working as and billing at the Articling Student rate. Their fee rate and status will be amended upon receipt of Agent’s signed Agreement following the Director’s approval.

#### 10.2.2 *Students and Administrators*

Tasks performed by Students and Administrators are limited to those of an administrative nature, offer no added legal value, and therefore are not billable, except as stated in section 10.4.

Administrators using the PPSC’s legal case management system should consult s. 13.4 for allowable billings.

### 10.3 Billable Legal Services

An Agent may bill only for services that fall within the scope of their Agreement. No fees may be claimed for the preparation, review and submission of accounts or for administrative tasks as stipulated in the Paralegal Billable Guidelines. However, Agent Firms may bill 0.1 hours at the personnel rate, per file, for entering file related information in the PPSC’s legal case management system, as well as administrative work in response to a written request from the PPSC.

Agent Firms are expected to be efficient and cost-conscious in the delivery of prosecutorial services.

### 10.4 Approvals

Approvals obtained from the Agent Supervisor must be provided when submitting accounts.

### 10.5 Limit on Billable Hours

Claims for fees are subject to a 10-hour daily maximum limit, per Agent, including travel time. Fees claimed in excess of the daily limit will not be allowed unless the Agent receives written approval from the Agent Supervisor prior to submitting their accounts.

Refer to ss. 10.7 and 10.8.7 for travel time allowances.

### 10.6 Legal Research

Agent Firms must obtain prior written approval from the Agent Supervisor for any legal research exceeding one hour in relation to a file.

## 10.7 Billable Travel Time

The time spent travelling from the Agent's usual place of business, by the most reasonable and economical route is billable time. Refer to section 10.8.7 for disbursement allowances.

Agents working in association with an Agent Firm must disclose their primary work location to ensure accurate billing.

## 10.8 Disbursements

Agent Firms will be reimbursed for all necessary and reasonable disbursements incurred in the conduct of the files assigned to them.

All disbursements are to be recorded against the appropriate file; the Agent Firm must receive the prior written approval from the Agent Supervisor for each disbursement of \$500 or more

### 10.8.1 Supporting Information

In relation to claims for disbursements, Agent Firms must submit a detailed breakdown of costs incurred and, where applicable, must provide relevant invoices for all disbursements over \$50, unless otherwise specified herein.

### 10.8.2 Long Distance Telephone Charges

The Agent Firm will be reimbursed long distance charges. If the total claim exceeds \$25 per file, the Agent Firm must submit the telephone bill with the calls highlighted, and a detailed breakdown of the charges claimed (i.e.: date, individual called, location, and amount).

### 10.8.3 Facsimiles

The Agent Firm will be reimbursed only for the actual charges incurred in the transmission of a facsimile (e.g. long distance, internet fax services). All other activities involved in the transmission and receipt of facsimiles are not billable.

### 10.8.4 Printing and Photocopying (including colour)

Agents should limit the use of paper and consider electronic filing as a first option when available.

The Agent Firm will be reimbursed actual costs for photocopy charges to a maximum of \$0.25 per page and up to a maximum of \$250 per photocopying service order. Any amount surpassing the maximum must be pre-approved by the Agent Supervisor.

Time spent printing and/or photocopying is deemed an administrative task and therefore is not billable.

### 10.8.5 Transcript Charges

The Agent Firm will be reimbursed for transcript charges, provided the Agent Firm received the prior written approval of the Agent Supervisor before ordering the transcript.

### 10.8.6 Taxis and Parking

The Agent Firm will be reimbursed for these costs incurred as a result of a file. Receipts are required.

### 10.8.7 Travel Claims

Agents should consider remote appearance as a first option when available.

Agents must conform to the National Joint Council's (NJC) Travel Directive. As part of this directive, all travel including travel by non-government travelers will require approval by the Agent Supervisor in advance of the travel.

The PPSC has created a Travel Authority Form for use by Agents in the estimation of the anticipated travel costs; this form can be obtained from the Agent Supervision Unit.

When submitting a travel request, the Agent must confirm that they have considered all practical and available alternatives to travel (e.g. videoconferencing, etc).

Agents are required to comply with all instructions from their Agent Supervisor with respect to the completion of the travel authority forms and any other travel-related requirements.

In accordance with [NJC's Travel Directive](#), and further to s. 10.7, if an Agent is required to travel 16 kilometers or more, one way, from the Agent's usual place of business, the Agent may claim as a disbursement a fixed amount per kilometer, as well as meals, in accordance with the instructions provided by the Agent Supervisor.

In finalizing travel arrangements for flights and trains, economy fares must be used. In the event that an Agent is unable to obtain economy fare due to exceptional circumstances, the Agent must obtain written approval from the Agent Supervisor.

### *10.8.8. Electronic Storage*

The Agent Firm will be reimbursed the actual cost incurred for physical media (e.g. CDs, DVDs, USB sticks, and external drives) or authorized storage service. Agents are expected to use the most economical option and may be required to provide receipts.

## **10.9 Witness Cost**

It is the responsibility of the investigative agency to bring forward evidence collected in the course of an investigation. This includes the costs related to witnesses appearing before the court, as well as travel costs.

It is also the responsibility of the investigative agency to produce an accused for trial or appearance, and they should therefore bear the costs of escorting the accused.

An Agent Firm is required to notify the Agent Supervisor immediately if a request for witness cost is received. The requests will be considered on a case-by-case basis.

## **10.10 Submission of Accounts**

### *10.10.1 General*

On the first of each month, Agent Firms are required to begin submitting the accounts related to the work performed during the previous month. These submissions must be completed by the end of the month.

The fiscal year-end of the Government of Canada is March 31<sup>st</sup>; all accounts, whether complete or not, relating to work performed previous to this date must be submitted in accordance with the year-end procedure timelines as provided by the PPSC.

Refer to the Schedule B - Guide to the Preparation and Submission of Accounts for further details.

Failure to comply may result in the rejection of the account. Only under exceptional circumstances will the appropriate authorities within the PPSC grant an extension, on a case-by-case basis.

#### *10.10.1.1 Limitation Period*

Notwithstanding section 10.10.1, Agent firms must submit all accounts within 6 months once a file is considered closed (see s. 7.4). The final account must be identified as such.

Accounts submitted subsequently will be rejected.

### *10.10.2 Case and Billing Numbers*

Agent Firms must complete and provide a File Assignment Report ([FAR](#)) for all matters assigned under the statutes and in the locations set out in their Agreement, within three working days of the receipt of a file, as stipulated in section 6.1.2.

Each file is assigned a unique case number to track the case information and follows the file until completion. A billing number is issued, specific to the Agent Firm and is assigned to the case number for payment purposes.

Refer to the Schedule B - Guide to the Preparation and Submission of Invoices, for further information.

### *10.10.3 “Drug Docket Court” Numbers*

Agents may be required to appear in court to speak to routine drug matters regarding a number of cases on the same day. These routine matters include setting dates, adjournments, and guilty pleas. In order to simplify the billing process, the Agent may request a “docket court” case number to use to record actual time spent in court with respect to these types of matters.

The Agent must provide a breakdown of activities performed, including a list of the accused, and actual time spent per activity for each docket day.

However, if the overall work for a file is in excess of one hour, or if the court proceeds with the charges on any particular matter, the docket court file cannot be used; a specific file must be opened. See section 6.1.2 for further details.

## 10.10.4 “General” Numbers

Agent Firms are assigned a one-time General File case number; this file must be used to invoice for:

- training to enforcement agencies, approved by the Agent Supervisor
- providing legal advice
- recording all administrative work (opening, closing, archiving, returning files)
- recording matters of less than an hour, such as matters delegated to the Province, withdrawal of charge(s), etc.

Agents should keep record of such files, in the event the Agent Supervisor requires more information.

## 10.10.5 “Travel Disbursements” Numbers

In accordance with the Travel Directive as noted in 10.8.7, Agents are assigned a specific case number for the recording of travel disbursements for drug matters; fees are to be recorded against the specific file.

All regulatory matters will have their travel costs and fees recorded against the specific file.

## 10.10.6 Transferring a File

The case number must accompany the file when it is transferred from one Agent Firm to another. The Agent Firm receiving the file must submit a [FAR](#) to the Agent Affairs Division within three working days. They must also indicate that the file has been transferred and specify the name of the originating Agent Firm in the notes field of the FAR.

The Agent Firm receiving the file must ensure that the authority to prosecute is stated in their Agreement.

All matters that do not fall within their designated statutes or locations must be authorized or assigned by the Agent Supervisor, as stated in section 6.1.1.

Refer to section 13.8 for further information regarding file transfers using the Case Management System.

## 10.10.7 Endorsement of Statement of Account

The Contact Agent must endorse the invoice with the following statement:

*“I hereby certify that the services herein referred to were rendered by me or the members of the firm identified herein and this account truly shows the nature of the services rendered, the time occupied, the fees claimed, the disbursements made and all monies received in this matter.”*

## 10.10.8 Payment and Recovery

Payments to Agent Firms are issued in accordance with the [TBS Directive on Payments](#).

Payments are not to be interpreted as final acceptance of the services performed. The PPSC reserves the right to re-assess payments, conduct post-payment audits, and request additional information from Agent Firms for up to seven years after the file is closed.

Agent Firms must fully co-operate with post-payment audits and requests for information. If the PPSC concludes that an overpayment has been made, recovery will be sought from the Agent Firm. Consult sections 7.4 and 9.2 for additional information.

## 10.11 Verification of Accounts

The PPSC has authority to verify an Agent Firm’s accounts with respect to the reasonableness of fees and disbursements. The Agent Affairs Division assists in this process.

In determining what are “fair and reasonable fees and disbursements”, the PPSC applies its own verification policies, which include Treasury Board Secretariat Guidelines as well as modern audit techniques in accordance with PPSC internal practices.

## 10.12 Direct Deposit

The Government of Canada will phase out the issuance of cheques in favor of direct deposits for all payments issued by the Receiver General; therefore, Agent Firms are required to enroll for direct deposit.

In lieu of a cheque stub, the Agent Firm will receive an email providing a brief description of the payment.

## 10.14 Inquiries

Inquiries regarding account matters should be addressed to the respective Verification Officer of the Account Verification Section.

FARs and regulatory accounts are to be sent by email to:

[AAD-AVS.DCM-SVC@ppsc-sppc.gc.ca](mailto:AAD-AVS.DCM-SVC@ppsc-sppc.gc.ca)

## Part Eleven – Legal Assistance and Indemnification

### 11.1 Objectives

The objectives of Part Eleven of these Terms and Conditions are to:

protect Agents from personal financial losses or expenses incurred while they are acting as Agent for the Public Prosecution Services of Canada within the scope of their duties or functions, and are not acting against the interests of the Director and/or the Crown;

- protect the Director and/or the Crown's interest against potential or actual liability arising from the acts or omissions of agents acting as Agent for the Public Prosecution Services of Canada.

### 11.2 Application

This section applies to Agents as defined in section 1.4 of these Terms and Conditions

### 11.3 Principles Applicable to Legal Assistance and Indemnification

#### 11.3.1 Initial Presumption

Agents are responsible for managing risks associated with their law practice. In particular, they have to decide what level of insurance coverage they need given their specific circumstances. Further, Agents also have to ensure compliance with requirements to carry mandatory law-practice insurance in the province or territory in which they practice.

The PPSC does not offer law-practice insurance but, in certain circumstances, it may provide legal assistance and indemnification if the Agent meets the requirements of this Part.

Agents are subject to risks closely tied to the mandate of the PPSC to prosecute federal offences and provides legal advice and assistance to law enforcement.

Depending on the situation, the source of the risk may be external to the Agent, e.g. political, social or economic, and the result of the claim may have a great impact on the mandate of the PPSC. Consequently, even if an Agent is named in a claim, the actual target may be the Crown itself. Further, the PPSC acknowledges that some of these risks may not be insurable.

In order to be considered for Legal Assistance and Indemnification, the Agent has to follow the process set out in Schedule C.

In assessing requests originating from Agents, the Director will assume, initially, that they have met the basic eligibility criteria as described in section 11.3.3. The Director will also assume that the Agent has contacted his or her errors and omissions insurer carrier for initial representation.

#### 11.3.2 Eligibility

In making a decision on whether to approve a request for Legal Assistance and/or Indemnification, the Director will assess whether the Agent meets:

- the three basic eligibility criteria as described in section 11.3.3; or
- the exceptional circumstances as described in section 11.3.6; or
- the requirements set out in Schedule C.

The Director may seek the advice of any officials who may have knowledge of the facts identified in the request as well as the legal advice of the Department of Justice Canada prior to making this decision. The decision should be made before legal counsel representing the PPSC engages with the Agent to avoid a potential conflict situation, which would be detrimental to the interests of both the Agent and the Director and/or the Crown.

#### 11.3.3 Three Basic Eligibility Criteria

Before authorizing Legal Assistance and/or Indemnification, the Director must be satisfied that the Agent:

- acted in good faith;
- did not act against the interests of the Director and/or the Crown; and

- acted within the scope of their duties or functions as Agent for the PPSC with respect to the acts or omissions giving rise to the request.

### *11.3.4 Legal Assistance*

Legal Assistance is provided when Agents meet the three basic eligibility criteria in the following situations:

- when they are sued or threatened with a suit;
- when they are named in a legal action or under threat of being named in a legal action; or
- when they are faced with serious personal liability before any court, tribunal or other judicial body.

### *11.3.5 Indemnification*

Agents are indemnified when they meet the three basic eligibility criteria as described in section 11.3.3.

#### *11.3.5.1 Pre-Approval of Monetary Settlement*

The Director may pre-approve a monetary settlement of a claim or an action made or brought against an Agent.

#### *11.3.5.2 No Claim for Recovery*

Where Agents, or the Crown, are liable as a result of incidents involving Agents, no claims to recover such liability are to be made by the Crown against these Agents provided that the criteria in section 11.3.3 were met.

### *11.3.6 Exceptional Circumstances*

In exceptional circumstances, and if the Director considers that it would be in the public interest to approve the request, the Director may decide to provide Legal Assistance and/or Indemnification where the Agent does not meet one or more of the three basic eligibility criteria enumerated in section 11.3.3.

#### *11.3.7 Parliamentary Proceedings, Commissions of Inquiry, Inquests or other similar Proceedings*

The Director may approve requests for Legal Assistance where an Agent is requested or compelled to appear in connection with a parliamentary proceeding, a commission of inquiry, an inquest or other similar proceedings, provided two qualifying criteria are met:

- that it is in the public interest to have the Agent appear; and
- that the matter concerns events where the Agent was acting within the scope of their duties.

#### *11.3.8 Retroactive Approval*

In circumstances where it was practically unreasonable for the Agent to obtain approval from the Director in advance, and where the need for legal services was immediately necessary to protect the Agent's interest, the Director may approve Legal Assistance retroactively, provided that the Agent has made the request as soon as possible thereafter.

#### *11.3.9 Ineligible Requests*

Legal Assistance and/or Indemnification requests are not approved for an action or claim initiated by an Agent unless it forms part of a legitimate defence to a legal claim, action, or charge for which Legal Assistance was approved.

#### *11.3.10 Termination and Recovery of Legal Assistance*

If at any time during or after the proceedings it becomes clear that the Agent did not meet the basic eligibility criteria outlined in section 11.3.3 or did not continue to qualify under the exceptional circumstances described in section 11.3.6, Legal Assistance is terminated and any assistance provided may be recovered.

Where Legal Assistance was approved for an Agent who met the criteria under 11.3.3, but it was subsequently established that they acted dishonestly or it was determined that the Agent did not act within the scope of their duties or functions, the Director will ensure that recovery action is considered and initiated for an amount equal to the Legal Assistance provided or the Indemnification paid, and this amount shall constitute a debt owing to the Crown.

#### *11.3.11 Reconsideration*

Prior decisions refusing a request for Legal Assistance and/or Indemnification because the three basic eligibility criteria were not met can be reconsidered where a court or tribunal has finally concluded its proceedings and new

evidence or information has demonstrated that the basic eligibility criteria were met. In such an event, the Director may confirm or amend his/her decisions.

### *11.3.12 Private Counsel*

In cases where there is a conflict of interest, or one may arise, between the Agent and the Director and/or the Crown, the Director may authorize payments for private Legal Assistance. The Agent should include in their request the name of the proposed private counsel as well as the private counsel's proposed fee schedule. If it is determined that this source of assistance is appropriate and private Legal Assistance is authorized, then the Director will provide written authorization to the Agent, including the selection of private counsel, the limits of the Crown's commitment, in terms of both total expenditures and the approved fee schedules, and of the requirement for reviewing accounts.

When at any time during a proceeding a conflict arises for the Department of Justice or a private counsel representing the Agent, the Director could instruct such counsel to discontinue representation. In such situations, the Director may authorize the engagement of private Legal Assistance in accordance with the terms of this policy.

## **11.4 Compensation**

Subject to section 11.5, if the matter for which legal assistance and indemnification was approved is on-going as of February 1, 2016 or commenced after that date, the Agent may bill the PPSC for the following activities, whether the activities occurred before or after February 1, 2016, as follows:

- in accordance with the PPSC's Criminal Prosecution Fee Schedule, time required to attend discovery and court,
- with prior approval by the Agent Supervisor, in consultation with PPSC's Corporate Counsel and in accordance with PPSC's Criminal Prosecution Fee Schedule, other necessary activities directly related to the matter such as the preparation of the submission to the Director for legal assistance and indemnification and the necessary time to prepare for the judicial proceeding if required by Counsel representing the Agent;
- the travel time related to attend discovery and court and the related disbursements, in accordance with sections 10.7 and 10.8 of these Terms and Conditions.

### *11.4.1 Limit*

Unless approved by the Deputy Director of Public Prosecution, the total amount paid by the PPSC pursuant to section 11.4 shall not exceed 40 hours.

## Part Twelve – Protection of Agents

### 12.1 Objectives

The objectives of Part Twelve of these Terms and Conditions are to:

- provide information and awareness tools to Agents to mitigate potential incidents;
- propose protective measures following the completion of a situational assessment or Threat and Risk Assessment (TRA);
- provide support to the affected individuals following an incident of threat or act of intimidation.

The term “incident” includes - but is not limited to - events such as direct targeted verbal, gestured or physical threat. Threat information may also come from law enforcement and/or intelligence services.

### 12.2 Application

This section applies to Agents as defined in section 1.4 of these Terms and Conditions. For the purpose of this section, the scope of application includes Agents, members of the Agent Firm, and the immediate members of their respective families.

The Director, in consultation with PPSC Security Services, considers and determines on a case-by-case basis the appropriate measures for Agents who are subject to threats or intimidation.

### 12.3 Protection Program

The PPSC has implemented a program for Agents that ensures readiness through advanced preparation (planning) in cases where potential threats and acts of intimidation may occur during the course of their work under their Agreement. This program also enables the PPSC to respond effectively in order to mitigate risks to the safety and security of Agents when threats or acts of intimidation occur as a result of their prosecution work.

Due to the nature of their work as part of Canada’s criminal justice system, Agents may be vulnerable to incidents of threat or intimidation. The PPSC has established a framework for the security of Agents that focuses primarily on the themes of prevention, response, post-incident management and reporting.

The PPSC has adopted a policy and guidelines that include a Risk Management Protocol (the Protocol), a standardized Incident Reporting Form, risk assessment tools and security protection measures.

### 12.4 Roles and Responsibilities

Agent Supervisor:

- provide training and guidance to Agents on Protection Plan (PP) issues;
- report all incidents of threats, intimidation, or potential security problems to the Chief Federal Prosecutor (CFP) and Security Services;
- ensure that the **Report to Track Incidents of Intimidation** Form – PPSC-SPPC 0089 (E) is completed, and that the form is submitted to Security Services; and
- with the assistance of Security Services, ensure implementation of measures/decisions based on the results of a situational assessment and/or TRA.

Agents:

- report all incidents of threats, intimidation, or potential security problems to their Agent Supervisor;
- provide timely information to an assessment or investigation and follow the recommendations of Security Services, the Agent Supervisor, or the CFP;
- comply with the documented processes and protocols as identified in the training materials for Agents; and
- attend training sessions facilitated by Agent Supervisor.

Security Services:

- address all PP matters for Agents across the country, and perform the liaison function with law enforcement agencies and PPSC partners/collaborators;
- provide support and guidance to the Agent Supervisor, the CFP, and the Agent;
- conduct an assessment of an event;
- coordinate the implementation of security measures; and

- perform incident monitoring and follow-up during and after an event.

## 12.5 Prevention

Real and potential threats and acts of intimidation should be anticipated and identified before a case file is opened and the matter proceeds to litigation. Upon such an identification, the PPSC commits to an assessment regarding any potential security issues. The Agent should conduct a file assessment and report the results to his or her Agent Supervisor. The Agent Supervisor will subsequently review the submission and determine the existence of potential security issues that may arise during litigation, including the safety and security of Agents. This will allow for the appropriate security measures to be applied, which may include additional training, coordination with law enforcement agencies and/or Court security officials, and the provisioning, installation, and use of security devices.

The Agent Supervisor or the CFP must contact Security Services to arrange for liaison with law enforcement, and to conduct a risk assessment leading to recommendations for appropriate measures. The PPSC will monitor cases periodically through follow-ups, to re-assess risk levels throughout the matter.

## 12.6 Incident Reporting

Notification must take place without delay following the incident to ensure that the gathering and preservation of all relevant information and facts, particularly in cases of potential charges under section 423 or section 810.(1) (Recognizance) of the *Criminal Code*. Consistent with for all other situations where police assistance is required, the individual directly affected by the incident must file the complaint with the local police service.

Additionally, the Agent Supervisor or CFP must report actual threats and/or acts of intimidation or potential incidents of violence to Security Services via a completed **Report to Track Incidents of Intimidation** form and must deal with these incidents in a confidential manner.

In situations where it is deemed appropriate or necessary to share personal information with third parties (such as law enforcement), the PPSC Access to Information and Privacy Office will be consulted before any such disclosure to ensure compliance with the *Privacy Act*.

Following completion of the investigation, the PPSC will formulate recommendations to mitigate risks.

## 12.7 Risk Assessment

The PPSC references the RCMP Harmonized Threat and Risk Assessment Methodology (a four step process) as one of its guidance tools in assessing threats. As such, the PPSC employs the following approach in regard to the PP:

- Identify the Agent to be safeguarded (the target/victim);
- Determine the threat to the Agent and assess the likelihood and impact of their occurrence (identify the aggressor);
- Assess vulnerabilities based on the adequacy of safeguards; and
- Implement additional safeguards to reduce residual risk to an acceptable level.

If measures have been implemented, Agent Firms are to provide the PPSC Security Service with a status update on a monthly basis, or as circumstances warrant.

## 12.8 Post Incident Monitoring

While conducting the TRA, the PPSC Security Services will determine an acceptable timeframe to re-evaluate protective measures implemented and any recommendations identified within the TRA. A Post-incident Questionnaire will be used to gather post-incident information to determine if any threats continue to exist.

The PPSC Security Services will advise the Agent Firm when protective measures may be lifted.

## 12.9 Compliance

Agents must follow the recommendations and advice provided by security specialists, the Agent Supervisor, and the CFP.

## 12.10 Termination of Protection Program

The protection offered to the Agent Firm will terminate based on the PPSC Security Services' determination of its ongoing need.

PPSC Security Services will consult the Agent Supervisor for input.

## Part Thirteen – Case Management System (iCase)

### 13.1 Criteria

Agent Firms will be required to use the PPSC’s Case Management System (iCase) to enter timekeeping and disbursement information in order to electronically submit accounts to the PPSC, should their volume of work be in excess of 200 hours per annum.

Only the Agent Firms using iCase are subject to the additional requirements as set out in this section and as found in the iCase Agents’ Training Manual.

### 13.2 Hardware Requirements

Agent Firms must have the minimum required hardware requirements in order to efficiently utilize the iCase application. The Agent Firms are required to demonstrate that they have met these requirements before they will be granted access to the iCase application.

The hardware requirements are subject to change; complying with these modifications is the responsibility of the Agent Firms.

### 13.3 Training

Agent Firms are required to attend a training session on iCase. Expenditures associated to training attendance are subject to the requirements as set out in section 4.6.

Upon completion of this training, the PPSC National iCase Coordinator will be the point of contact for all administrative issues regarding the business and technical functioning of iCase.

### 13.4 Billing for Administrative Work in iCase

Agent Firms must designate one or more iCase Administrators.

Agent Firms are entitled to bill for work performed by Administrators in relation to creating and closing files in iCase; Agent Firms may bill 0.2 hours for opening a file and 0.1 hour for closing a file.

All work related to creating and closing files in iCase must be billed to their General file. Although drug files can either be billed to the specific file or to the Agent Firm’s General file, regulatory files can only be billed to the Agent Firm’s General file. Agent Firms who do not have a General file must create one and obtain a case number and billing number.

### 13.5 Storing Specific Information in iCase

Agent Firms are required to enter all time and file related disbursements for all matters handled on behalf of the Director. They are required to track the following information in iCase:

- all accused must be entered as Participants to the file;
- all charges must be entered against the file, and at the completion of the matter all dispositions for each accused must be entered against the charges;
- if the Agent Firm has been approved to perform work outside the scope of the Agreement (e.g. work outside authorized location(s), work on appeals, additional counsel, daily limit of more than 10 hours, authorization for disbursements, etc.) such approvals must be entered on the “Particulars” page of the file in iCase;
- all files must have a complexity level assigned, and complexity must be periodically re-evaluated through the life of the file;
- the fine information (Fine, Fine in Lieu, Fine Surcharge) must be entered on the “Monetary” page in iCase as an ordered fine, as well as additional information as set out in the iCase Agents Fine Recovery Manual;
- if Litigation Code Set items 34 or 435 are used, the specific issue must be entered on the “Issues” page of the file; and
- Agents are required to add the Agent Firm’s vendor number to the case number for shared files in iCase. A new billing number can be requested by submitting a [FAR](#) that includes the case number of the shared file.

## 13.6 Billing / Billing Forms

Billing the PPSC for services rendered and recoverable expenses is done using two forms – the [Statement of Account](#) (SOA) and [Details of Work Performed](#) (DWP). Note that neither the printing nor the photocopying of accounts is billable.

### 13.6.1 Billing Drug Accounts

Agent Firms submit their accounts for drug-related work electronically; therefore, certification and endorsement is not required for these accounts. Agent Firms are not required to submit receipts for disbursements with the electronic account for drug files; however, the Agent Firm must be prepared to produce such receipts upon request.

### 13.6.2 Billing Regulatory Accounts

Agent Firms' Regulatory accounts must be reviewed and signed by the lead counsel. The signed accounts and related receipts are to be submitted directly to the Agent Affairs Division by email to [AAD-AVS.DCM-SVC@ppsc-sppc.gc.ca](mailto:AAD-AVS.DCM-SVC@ppsc-sppc.gc.ca).

## 13.7 File for Timekeeping of under one hour

Agent Firms using iCase should open a file for routine docket court matters for use in recording time such as for multiple bail hearings, set dates, guilty pleas, and adjournment applications for low to moderate complexity cases.

Refer to section 10.10.3 for further instructions.

## 13.8 File Transfers

Further to section 10.10.6, once a file has been transferred, Agents are no longer able to timekeep; Agents must ensure that all billing, including unbilled time and disbursements, is completed and submitted no later than one day prior to the transfer date.

## 13.9 Closing Files

Agent Firms using iCase are required to electronically close the file in iCase upon completion of work related to the matter within 30 days of the final outcome, which includes all applicable appeal periods.

File closing includes the completion of outcomes on all charges entered on a file against all accused, the recording of monetary amounts (e.g. fine, fine surcharge) and related fine recovery information, if applicable, and modification of the file status.

NOTE: The file must be reviewed to ensure that the information contained in iCase regarding the file is accurate and up-to-date.

## Schedule A: Agents' Reporting Requirements

### Significant Legal Issues Checklist

It is important to ensure consistency between in-house counsel and Agents when advising law enforcement agencies or when advancing legal arguments in the course of litigation. Accordingly, in addition to any other reporting requirements set out by the Agent Supervisors, Agents are required to report in a timely manner to Agent Supervisors verbally or in writing the following significant issues:

#### Nature of the Proceedings or Charges

- 1) the accused is charged with a conspiracy or importation offence
- 2) proceeds of crime issues (e.g. the use of special warrants, forfeiture applications, the enforcement agency wants to take action in respect of proceeds of crime)
- 3) seizures and restraint of offence related property
- 4) mutual legal assistance and extradition matters
- 5) *Firearms Act* proceedings
- 6) reliance on section 37, 38 or 39 of the *Canada Evidence Act*
- 7) *R. v. R.* prosecutions

#### Evidentiary issues

- 1) wiretap evidence is to be relied upon
- 2) search warrant issues arising where:
  - evidence was gathered pursuant to a s.231.3 *Income Tax Act* warrant; or
  - a warrant is used to “re-seize” material that has already been seized under another warrant.
- 3) *Charter* issues arising where:
  - a constitutional challenge to the use of common law police powers, including investigative detention on the basis of reasonable suspicion;
  - a case involving the use of drug detector dogs;
  - a case which raises the issue of the Crown’s duty to make reasonable inquiries pursuant to *R. v. McNeil* 2009 SCC 3 as part of the Crown’s disclosure obligation;
  - an application based on *O’Connor* or *McNeil* for the production of third-party records, including police misconduct and criminal investigation files;
  - a “medical marihuana” challenge to the prohibition against possession of marihuana and possession of marihuana for the purpose of trafficking;
  - a challenge to the statutory limitation on credit for pre-sentencing custody (*Criminal Code* s. 719(3));
  - a challenge to information sharing or the use of inspection powers to gather evidence in regulatory matters on the basis of *R. v. Jarvis*, [2002] 3 S.C.R. 757, *R. v. Ling*, [2002] 3 S.C.R. 814 and *Quebec (Attorney General) v. Laroche*, 2002 SCC 72, [2002] 3 S.C.R. 708;
  - a challenge where the right to silence is being advanced with respect to information that must be provided as part of an administrative scheme (e.g. income tax demands, fisheries catch reports);
  - a *Rowbotham/Fisher* application for state-funded defence counsel;
  - the Crown is required to justify a “reverse sting” operation;
  - an assertion of official languages rights in a prosecution;
  - a prosecution that involves Aboriginal rights claims;
  - a constitutional challenge to legislation or to federal government programs that is novel (i.e. that is neither routine nor recurring); or
  - a constitutional challenge to the use of novel or unusual investigative techniques.

#### Noteworthy Issues or Developments in a Case

- 1) significant costs will be incurred in prosecuting a matter (e.g., the need for out-of-province witnesses)
- 2) significant penalties will likely be imposed following a conviction (i.e., more than five years in jail)
- 3) threat or possibility of a civil suit against the agent arising out of a prosecution
- 4) application by defence counsel for costs against the Crown
- 5) *Rowbotham* application for funding of the defence at trial or on appeal
- 6) the Agent is served with a notice of appeal in a summary conviction matter
- 7) serious charges are to be stayed as a result of the accused’s cooperation with the police or Crown

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- 8) witness immunity propositions
- 9) any entrapment scenarios (e.g. where the accused is seeking to rely on the fact that *someone else* was entrapped) (“derivative” entrapment)
- 10) any case in which defence counsel attempts to call Crown counsel as a witness
- 11) where an investigative agency requests legal advice respecting conduct that may constitute illegal activity and respecting general principles of Crown immunity stemming from the *Campbell & Shirose* decision in the context of non-drug matters, the request must be forwarded immediately to the Agent Supervisor, who will consult Department of Justice counsel before providing advice at the regional level
- 12) requests for disclosure of:
  - confidential information held by the investigative agency;
  - legal advice given by Department of Justice counsel or agents to an investigative agency;
  - the identity of an informer, or anything that would tend to reveal the identity of an informer;
  - materials that are in the possession of third parties (including government departments other than the investigating department);
  - materials that could reveal the existence of other ongoing investigations;
  - materials held by courts in another jurisdiction (e.g., “wiretap” affidavits);
  - modern surveillance techniques (e.g., serial surveillance, videos, infrared devices); or
  - any unusual disclosure request.
- 13) constitutional challenges (*Charter* or otherwise) respecting:
  - the authority or jurisdiction of the Attorney General of Canada to conduct a prosecution (e.g., conducting a *related* charge under the *Criminal Code* with the consent of the provincial Attorney General);
  - the manner in which the Crown has chosen to exercise its discretion (e.g., by proceeding by indictment, entering stays of proceedings, refusing to consent to waiver, to re-election or to diversion);
  - wiretap authorizations e.g. the “investigative necessity” requirement of s.186(1)(b) of the *Criminal Code* as raised in *Todoruk*);
  - the actions of an informer, as converting the informer into a “state agent”;
  - the application on the basis of an existing Aboriginal or Treaty fishing right guaranteed by s.35 *Constitution Act, 1982*;
  - any extra-territorial issues arising on a file;
  - the admissibility of electronic surveillance evidence obtained other than through normal “wiretaps” (e.g., dial number recorders, pager interceptions, and interception of cellular or radio communications);
  - the constitutionality of Canada’s drug laws (e.g., marijuana for medical use); or
  - other novel constitutional issues.

## Significant Issues Report Template

Agent's File No.: \_\_\_\_\_ AAD-AO No.: \_\_\_\_\_

Accused: \_\_\_\_\_

Charge(s): \_\_\_\_\_

Act/Section: \_\_\_\_\_

Offence Date: \_\_\_\_\_

Description of Offence: \_\_\_\_\_

Court: \_\_\_\_\_ Court File No: \_\_\_\_\_

Hearing Dates:

- 1) Pre-trial Conference
- 2) Preliminary Inquiry
- 3) Trial

Summarize how the significant issues arise in this case:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Agent

\_\_\_\_\_  
Date

## Schedule B: Guide to the Preparation and Review of Accounts

### Part One: Preparation of Accounts

#### 1. General

These procedures are to be followed by non-iCase Agents when submitting accounts for prosecution services conducted on behalf of the Director.

#### 2. Statement of Account (SOA)

The [SOA \(html\)](#) must be completed when submitting an account for prosecution work for payment. The form has two parts: the SOA and the [Details of Work Performed \(DWP\) \(html\)](#). The SOA summarizes the information detailed in the DWP, which should be completed first.

##### *2.1 Instructions for Completion Details for Work Performed*

The purpose of this form is to report in detail all services performed by all individuals (i.e. lawyer, Paralegal, or Articling Student) for one file. All services must be itemized in chronological order. Sufficient details of the work performed must be provided.

The data on this form will be transferred into an automated records system maintained by the Agents Affairs Division (AAD). Therefore, the format must not be altered.

Although the information boxes are self-explanatory, it should be noted that the term ‘Activity’ refers to the Litigation Code Set located in Part II of this section.

##### *2.2 Instructions for Completion of the Statement of Account*

The purpose of the SOA is to report the total amounts from the attached DWP. The following information will help to complete the form correctly.

1. “Date Prepared” (day-month-year): indicate the date the account was prepared.
2. “G.S.T. Registration No.”: indicate the G.S.T. registration number of the Agent Firm in order to claim the Goods and Services Tax.
3. “No. of File Records”: indicate the number of files attached to the SOA page. Limit the number to 25 per submission.
4. “Period from \_\_ to \_\_”: indicate the time period (day-month-year) in which the work was performed (e.g., 15.04.97–30.04.97). This period must not continue from one fiscal year to the next. (See Section 10.10 Submission of Accounts.)
5. “Firm Name”: indicate the name of the Agent Firm corresponding with the G.S.T. Registration Number.
6. “Address”: indicate the complete mailing address.
7. “Billing No.”: indicate the 10-digit Billing Number.
8. “File Name”: indicate the name(s) of the file(s) identified on the attached DWP.
9. “Amount Rendered”: indicate the total (fees and disbursements) from the attached DWP.
10. “Total Payment”: indicate the total amount of all files recorded.
11. “Agent, Signature, Date”: this certifies that the services described in the attached [DWP \(html\)](#) were in fact rendered by the signee or by members of the Agent Firm.
12. “Reviewed By”: applicable to regulatory prosecution files, must be signed by the investigating officer. Consult section 10.10.9, Routing of Accounts, for further information.

### Part Two: Litigation Code Set

## AGENT AGREEMENT – TERMS AND CONDITIONS

These are the activity codes to be used by Agents in the DWP:

ITEM	Code
<b>Legal Advice / Investigative Assistance *</b> Time spent giving legal advice or assistance to enforcement agencies	01
<b>Pre-Charge Preparation</b> General preparation for attendance in court / work on file prior to charges being laid	10
<b>Pre-Charge Hearings</b> Attendance at pre-charge applications, hearings or related challenges whether in Chambers or in Court. This also includes applications where no charge is involved	20
<b>Post Charge Preparation</b> General preparation for attendance in court, other than for appeals, after charges have been laid – Includes all activities which occur at the Agent’s office	
Post Charge Approval, Review Decision to Prosecute * All time spent by the Agent in the approval of charges after they have been laid by the enforcement agencies and the time spent in review of the file as part of due diligence in applying the decision to prosecute policy of the PPSC	31
Preparation of charge approval documents The time spent in preparation of all documents related to the region’s charge approval process, if required by the Agent Supervisor	311
Communications – General * Telephone calls, faxes, emails not specifically identified by other codes	320
Communications – with Enforcement Agencies * Telephone calls, faxes, emails to the enforcement agencies not specifically identified by other codes	321
Communications – with PPSC (regional Office / Ottawa) * Telephone calls, faxes, emails to the PPSC not specifically identified by other codes	322
Legal Research * All time spent in researching of and identifying the specific legislation – limited to no more than 1 hr without prior approval of the Agent Supervisor	33
Issues Research / Preparation * Time spent in reviewing relevant issues raised during the matter, including research / review of case law, sentencing positions and time spent preparing for arguing those issues.	34
Court Preparation and Fact Review / Analysis * All other time spent preparing for court attendance, reviewing of facts, analysis of the file – not specifically identified by other codes	35
Post-Charge Disclosure * Time related to review and provision of disclosure to defense	36
FAR Preparation * (Billable by administrator at personnel rate .2 max – <b>for iCase users only</b> ) Time to create the file in iCase – the three main participants including all AFTs, all charges and other required fields including all locations, including recording the case and billing numbers.	37
File Closing in iCase * (Billable by administrator at personnel rate .1 max – <b>for iCase users only</b> ) Time to close a file in iCase – including the outcomes against all charges, fine information (if any) and status change, This includes the time entry for the closing of the file in iCase.	381
Case Disposition Report – completion of report (Billable by administrator at personnel rate) Time to complete the form / on-line report on the disposition of the case, if required by the Agent Supervisor	382
File Completion (Disposition) Report / work (Counsel time) The time spent by the lead counsel to complete a case disposition report – if required by the Agent Supervisor	39
<b>Post Charge Hearings</b>	

## AGENT AGREEMENT – TERMS AND CONDITIONS

Attendance at applications, pre-trials, trials, hearings or related challenges whether in Chambers or in Court – Includes all activities which occur away from the Agent’s office. Does not include any work at the appeal stage or any work done with respect to fine recovery.	
Travel to/from <sup>1</sup> Travel to and from Court – travel to and from other locations (investigator’s office)	41
Waiting Time All time waiting in court for the matter to proceed (if time spent in meeting/conferences or other activities the correct code should be used)	42
Docket Remands and Scheduling Administration Remands, appearances without election or plea, all appearances to determine dates of future proceedings, all other time in court not specifically identified in other codes	431
Pleadings, Show Cause and Bail Review Hearings All discussions regarding pleas, all discussions and hearings involving bail, all appearances with respect to election, all appearances with respect to accused pleading – if accused pleads guilty and sentence is not immediate, time for sentencing should be coded under 437	432
Attendance at Conferences / Meetings Non-court meetings and conferences which occur outside of the Agent’s office – include meetings at investigator’s offices or meetings with defense counsel	433
Attendance at Preliminary Enquiry	434
Attendance at Issues / Motions Argument Change of venue motions, abuse of process motions/applications, funding of defendant motions, charter applications to exclude evidence, review of wiretap orders and search warrants, ‘voir dire’, delay applications, review of subpoenas	435
Attendance at Trial Include jury selection hearings	436
Attendance at Sentencing Includes victim impact statements, restitution hearings, applications for delayed parole, long term offender applications and dangerous offender applications	437
Attendance at 490 Application Hearings Only the attendance at 490 application hearings – all other time related to asset forfeiture / proceeds of crime to be coded to 439	438
Attendance at Asset Forfeiture / Destruction Applications Includes applications for return of property and declarations of interest, however, not to include any attendance at 490 application hearings	439
Reporting * Reporting on the activities which occurred in court to the PPSC/Investigative agencies	49
<b>Appeals</b> <sup>2</sup> Preparation for and attendance on all appellate matters, including summary conviction appeals	50
<b>Post Case Completion work</b> * All time related to a file post completion – this could include inquiries about a file, review of a file for purpose of pardon, review of a file for preparation of a subsequent matter	60
<b>Archiving</b> *	391
<b>Fine Recovery</b> <sup>3</sup> * Time spent on all activities related to the collection and recovery of Court imposed fines	70

<sup>1</sup> All travel claims must detail the number of km travelled.

<sup>2</sup> An agent may only conduct work on an appeal after receiving approval from their Agent Supervisor.

<sup>3</sup> Agent is to only do fine recovery work upon instructions from the Agent Supervisor.

\* All work using this Litigation Code must provide additional details in the notes field.

Disbursement Types:

- courier
- court-related costs, including process server, registry costs (exception of interpretation services), and Court reporter
- long distance
- photocopies - notes filed must detail number of copies made
- postal
- printing - by commercial source

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- research services, e.g. QuickLaw
- transcripts - permission from the Agent Supervisor must be detailed in the notes field (**Particulars for iCase users only**)
- translation services, including Court interpreters
- travel / parking / mileage / taxis - mileage must detail number of km traveled and rate. Mileage claims must have corresponding details in the fees section.
- other - must have details in the notes field including type of disbursement, costs and, if required, approval from the Agent Supervisor

## Schedule C: Legal Assistance and Indemnification Process

In order to be considered for Legal Assistance and Indemnification, an Agent is required to:

- a) contact their errors and omissions insurance carrier for initial representation;
- b) inform the Agent Supervisor of the matter at the earliest reasonable opportunity after the Agent becomes aware of a possible or actual suit, action or charge as a result of any alleged act or omission within the scope of the Agent's duties or functions, so that the official has the opportunity to assist or guide the Agent;
- c) be willing to authorize as early as possible the Department of Justice Canada or any other counsel that the Director may retain to represent the Agent;
- d) submit a request for legal representation or Indemnification to the Agent Supervisor. The request should include how the Agent meets the applicable criteria and should specify if the request is for Legal Assistance, Indemnification, or both;
- e) where requesting to be represented by private counsel, the reasons for such a request should be detailed and the name and proposed fee schedule of the preferred counsel are to be provided;
- f) refrain from retaining private counsel until the Director has approved the request. An Agent who instructs counsel to begin work without the requisite approval may be personally responsible for payment of the resulting legal fees, costs and judgment;
- g) make a written factual report to the Director of the incident leading to the request for Legal Assistance or Indemnification; and
- h) authorize the Director, or such other person as may be designated by the Director, to defend his or her action, claim or charge using the required authorization form.

Failure of an Agent to meet the above requirements may result in denial of Legal Assistance and Indemnification and result in personal liability. An acquittal or dismissal of a civil suit does not automatically entitle the Agent to reimbursement of expenses that have been previously denied.

For each subsequent stage of the judicial process, including appeals, or for any significant change in the circumstances related to the case, a new request for payment of Legal Assistance and Indemnification must be submitted and will be assessed in accordance with the considerations set out in this Chapter.

### **Requirement for Prior Approval of Requests**

Agents who instruct counsel to begin work on a subsequent stage of the process without proper prior approval may not receive approval for legal Assistance or indemnification for the resulting expenses.