



Agent Agreement Terms and Conditions



February 2016

PREFACE

As the Director of Public Prosecutions, I thank you for taking on the challenge of providing legal services on behalf of the federal Crown.

In acting as federal prosecutors, you serve the public interest. While vigorously discharging your responsibilities, you must always act with fairness and impartiality. More importantly, your integrity must be, and be seen to be, impeccable.

In discharging your responsibilities, you can draw upon the assistance of experienced supervisors dedicated to providing you with support.

In conducting prosecutions you will be called upon to exercise discretion on a regular basis, including, for example, the decision to prosecute. The exercise of discretionary powers is accompanied by significant responsibilities. The policies governing the use of these powers are included in the *PPSC Deskbook*.

The relationship between Agents and the Director is governed by the Agent Agreement - Terms and Conditions. Should you have any questions regarding them, please do not hesitate to contact your Agent Supervisor for guidance.

I thank you for agreeing to serve Canadians and am confident you will meet the challenges of conducting prosecutions while acting in the finest traditions of federal prosecutors.



Brian Saunders
Director of Public Prosecutions

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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 [6.14]
- have new personnel work on a file [3.6]
- use an Articling Student, Student, or Paralegal [6.15; 10.2]

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 [6.8]
- a decision is appealed and the federal Crown is the respondent [6.8]
- you believe that an appeal by the federal Crown is warranted [6.8]

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 [6.5]
- you are asked to provide training to enforcement agencies [6.1.5]

significant legal issues

- there are significant legal issues [6.6.3]

confidential information

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- information falls, or might fall, within the protection of sections 37 to 39 of the *Canada Evidence Act* [6.9.2]

information requests

- a law enforcement agency or a federal government department requests a legal opinion on an access to information matter [6.16.1]
- there is a request for records or information under the *Access to Information Act* or the *Privacy Act* [6.16.2]
- members of the media request information other than the date of trial or similar routine matters [8.2]

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 [3.9]

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 [6.10.2]

Part One: Terms and Conditions

1.1 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.

1.2 Where no Provisions

The Director may adopt a new administrative and/or management policy or process should a situation or event occur that is not covered by these Terms and Conditions. However, such a new policy or process must not be inconsistent with the current Terms and Conditions.

1.3 Terminology

In these Terms and Conditions,

“Agent” refers to any private-sector lawyer, being an active member of a provincial bar, who has entered into an Agreement to conduct federal prosecutions, pursuant to ss. 7(2) of the *Director of Public Prosecutions Act* and who is authorized to act under ss. 9(1) of the Act.

“Ad Hoc Agent” refers to any Agent who has entered into an Agreement to work on one specific matter or one specific set of cases.

“Agent Firm” refers to the legal entity, consisting of one or more Agents who have entered into an Agreement. An Agent Firm may include any articling student, student, or paralegal authorized to assist Agents practicing in an association, a corporation, a partnership, or limited liability partnership. Throughout this document, the term “Agent Firm” may refer to “Agent” if the circumstances dictate.

“Agent Supervisor” refers to the Public Prosecution Service of Canada (PPSC) counsel assigned as the Agent’s point of contact with respect to policy, legal, procedural, financial, or billing issues, and advice arising during the course of the Agreement.

“Agreement” refers to an Agreement entered into by an Agent Firm 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, registered in a licensing process with a Canadian law society, authorized to assist an Agent.

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“**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.

“**iCase**” refers to a web-based national application used to support the practice of law and the management and delivery of legal services to the Government. It includes the following functions: case management, time management, document management, and billing and operational reports.

“**iCase Administrator**” refers to a non-lawyer employed by an Agent Firm who has responsibility for entering and maintaining file and billing information in the iCase application.

“**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, authorized to assist an Agent in accordance with the rules of the 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.

“**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.

1.4 Application of Terms and Conditions

The Terms and Conditions set out the nature of the Agent’s relationship with the 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 Agent Supervisor may provide specific protocols or instructions from time-to-time. The Agent must, at all times, act within the

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scope of this Agreement and follow protocols and instructions provided by the Agent Supervisor.

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: <http://www.ppsc-sppc.gc.ca> under “Publications”.

1.5 PPSC Deskbook

Part 1 of the *PPSC Deskbook* contains the directives and guidelines that govern the conduct of federal prosecutions by all Agents.

1.6 Personal Conduct

The Contact Agent must notify the Agent Supervisor in writing if:

- 1) any individual within the Agent Firm is:
 - a) 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;
 - b) in default of any Court order or decision, or of a family support obligation; or
 - c) 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 s. 1.1, including but not limited to conduct by a member of the Agent Firm or his/her 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.

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 his or her 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 Agent Supervisor may result in sanctions including:

- formal note to file;
- reduction or disallowance of accounts;
- suspension or termination of the Agreement with a firm;
- suspension or termination of the individual agent;
- 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 (DPP Act)*. 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*; 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 the Agent Supervisor.

2.2 Prohibited work

An Agent must not act for the defence in matters relating to the statute(s) under which the Agent has been authorized to conduct prosecutions, as set out in his or her Agreement.

2.3 Deemed Conflicts

An Agent Firm will be deemed to be in a conflict of interest when 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.

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The Contact Agent must advise the Agent Supervisor of any situation in which an Agent or Agent Firm is deemed to be in a conflict of interest.

2.4 Conflict, Real or Apparent - Duty to Notify

In a situation where there may be a conflict of interest, or the appearance of a conflict of interest, the Contact Agent must advise the Agent Supervisor immediately. The Agent Supervisor will assess and recommend to the Director whether it is necessary to suspend or terminate 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 the Agent Supervisor immediately when 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
- 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 the Agent Supervisor without delay 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 to another agent.

Part Three: Fixed-Term Agreement

3.1 General

Candidates 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 who fail to submit an application for the location(s) in which they currently provide prosecutorial services will be deemed to have resigned.

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 member of an Agent Firm to hold himself or herself out as such.

The Agent's contractual relationship is with the PPSC and not with any enforcement agency.

3.3 Tenure of Agreement

An Agent's Agreement entered into under to ss. 7(2) of the *DPP Act* is valid until its end date; however, it can be terminated at any time for convenience or default. Consult section 3.7 for further information.

3.3.1 Written Communications

Written communications relating to an Agent Firm's Agreement, including the acceptance or termination, and amendments such as the addition or removal of personnel, must be confirmed in writing by the Chief Federal Prosecutor.

3.4 Effective Date of Agreement

The date the Agent's mandate becomes effective will be stipulated in the Agent's Agreement.

3.5 Acceptance of Agreement

All Agents within an Agent Firm must return a signed copy of the Acknowledgement to the Agent Supervisor within 10 days of receipt of the Agreement. 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.

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3.6 Additional Resources within an Agent Firm

During the course of their Agreement, Agent Firms may be required to replace Agents or obtain additional resources. The Contact Agent must obtain approval prior to authorizing any new member of the Agent Firm access to files held on behalf of the Director.

3.7 Termination of Agent Firm Agreement

When their Agreement concludes, Agent Firms must return to the Agent Supervisor all iCase tokens issued to members of the Agent Firm, and 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, within 90 days of the termination.

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

3.7.1 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 or part of the Agreement. Once such a notice is given, the Agent must comply with the requirements of the termination notice. If the Agreement is terminated in part only, the Agent 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 will be entitled to be paid for costs that have been reasonably and properly incurred to perform the Agreement until the date of termination.

3.7.2 Termination for Default

If the Agent is in default in carrying out any of its obligations under the Agreement, the Director may, on recommendation by the Agent Supervisor and by providing written notice to the Agent, terminate for default the Agreement or any part of the Agreement. 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.

If the 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 or part of the Agreement.

3.7.3 Agent Firm Resignation

An Agreement terminates when the Agent Firm resigns, confirmed by way of letter to the Agent Supervisor from the Contact Agent. 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.

As indicated in section 3.7, the Agent Firm has 90 days to return any documentation and files, active or closed, and provide an updated inventory of all outstanding matters.

3.8 Individual Agent Resignation

Upon the resignation of an individual Agent, the Contact Agent is required to advise the Agent Supervisor without delay; the Agent's iCase token (if any) will be cancelled. The Agent Firm must complete all invoicing for or on behalf of the Agent within 60 days of his or her resignation and return the cancelled iCase token.

3.9 Political Activity

An Agent's Agreement will be suspended or terminated under section 3.7 if the Agent engages in a political activity that undermines the impartiality or the appearance of impartiality of the prosecution function.

A political activity includes any activity in support of, within or in opposition to a political party; carrying on any activity in support of, or in opposition to, a candidate before or during an election period; or seeking nomination as or being a candidate in an election before or during the election period.

An Agent must inform his or her Agent Supervisor, without delay, of any involvement or proposed involvement in the activities enumerated below.

Non-Candidacy Political Activities

Political activities not related to candidacy include, but are not limited to:

- door-to-door canvassing on behalf of a political party or candidate;
- attending political party or candidate events, such as meetings, conventions, or rallies;
- using social media, blogs or displaying political material in support of, or in opposition to a political party or candidate;
- becoming president, vice-president, secretary or financial agent of a political party; and
- acting in the capacity of an official agent for a candidate

Non-candidacy political activities are assessed on a case-by-case basis to determine the impact on the Agent's ability to perform his or her duties as an Agent of the Director, which may result in the suspension or termination of the Agent's Agreement.

Seeking Nomination as a Candidate for Election or Appointed as a Senator

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.

An Agent who is seeking nomination as a candidate or running for a position in a municipal election will be required to provide information to the agent supervisor about the associated responsibilities of the position being sought; 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 as an Agent of the Director, which may result in the suspension or termination of the Agent's Agreement.

3.10 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

4.1.1 Security Clearance Requirement

Agents and personnel who have access to the Agent Firm's files pertaining to work for the Director must have a valid Reliability clearance in accordance with the Treasury Board Secretariat [Policy on Government Security](#), throughout the duration of their Agreement.

4.1.2 Human Resources Requirement

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

4.1.3 Canada Revenue Agency Requirement

An Agent must also be, and remain, in compliance with all tax legislation throughout the duration of the Agreement.

4.2 Insurance

As stated in section 3.2, an Agent is not an employee of the Crown. Agents must carry law-practice insurance in the province or territory in which they practice, as required by the relevant law society.

4.3 Standard Technology Requirements

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

Agent Firms must have a password protected business-only e-mail address accessible exclusively by authorized members of the Agent Firm with approval of the Contact Agent.

The PPSC may also require Agent Firms to have appropriate electronic legal research tools.

Agent Firms using iCase must consult Part Thirteen for further requirements and information.

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 texts on evidence, criminal procedure, and drug offences. Individual requirements may be determined by the Agent Supervisor.

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Agents may obtain additional reference materials at the PPSC website <http://www.ppsc-sppc.qc.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 Agent Supervisor upon request, or at the end of the Agent Firm's Agreement.

4.6 Training

From time to time, Agents 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 mandatory training. 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 iCase.

Section 10.8 provides further information on travel allowances and disbursements; Agent Firms using iCase must also consult Part Thirteen.

Part Five: The Working Relationship

5.1 Point of Contact with the PPSC

The Agent Supervisor is the Agent's point of contact with the PPSC with respect to policy, legal, procedural, financial, or billing issues, 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 Agent Supervisor will be identified in the Agreement and the Agent will be notified of any changes regarding the Agent Supervisor.

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 and Agent Firm comply 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's accounts with respect to the reasonableness of fees and disbursements.

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

All letters to the PPSC must quote the file number provided in connection with the particular matter, and the case and billing numbers where available. Sensitive or confidential correspondence related to a file (or files) or other similar material must not be sent by email or facsimile transmission except over secure lines approved by the PPSC.

5.6 Role and Responsibilities of the Contact Agent

The Contact Agent is responsible for maintaining compliance with the Agreement. He or she maintains the necessary level of supervision over tasks performed by other members of the Agent Firm, including articling students, students, paralegals, and support 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.

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 Supervisor immediately; failure to do so could result in the delay of account processing.

If the Contact Agent, for reasons which are 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 an acceptable replacement. The PPSC reserves the right to interview the proposed replacement.

Part Six: File Management

6.1 Authority to Act – Agent Firms

6.1.1 Agent Firms

Agents will be assigned files by the Agent Supervisor, 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 which 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, he or she must immediately advise the Agent Supervisor, and obtain written approval prior to proceeding.

6.1.2 Responsibility for Reporting

It is the responsibility of Agents to report to the Agent Supervisor those files assigned to them by sources other than the PPSC. The Agent must complete all sections of the [File Assignment Report \(FAR\)](#) and submit it to the Agent Affairs Division – Account Verification Section (AAU-AVS) within three days of receipt of a file.

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 unless directed to do so by the Agent Supervisor.

6.1.4 Legal Advice

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

The Agent must submit a FAR to request “general—advice” case and billing numbers. These numbers should be requested on an as-needed basis, and are assigned for a specific statute.

6.1.5 Training to Enforcement Agencies

An Agent must obtain approval from the Agent Supervisor prior to providing training to an enforcement agency concerning specific issues relating to the legislation provided in the Agent's Agreement. The Agent must submit a FAR to obtain the case and billing numbers for each instance of training.

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6.2 Change of Venue

If a court orders a change of venue outside the locations set out in his or her Agreement, the Agent must receive written approval from the Agent Supervisor before continuing to work on the file.

6.3 Travel outside Designated Locations

For travel costs to be reimbursed, an Agent must receive the written approval of the Agent Supervisor before travelling outside the locations provided in his or her Agreement.

Consult sections 10.8 concerning travel allowances and disbursements.

6.4 Waivers of Charges

Chapter 3.9 of the *PPSC Deskbook* provides that the DPP, or his or her 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.

6.5 File Transfers

If an Agent cannot, for whatever reason, continue to work on a file, he or she must contact the Agent Supervisor for instructions on transferring the file to another Agent. Section 10.10.6 should be consulted for further information.

6.6 Reporting and Consulting Requirements

6.6.1 Notifying Enforcement Agencies of Agreement

Once an Agreement has been confirmed, the Agent Firm must immediately inform the enforcement agency or agencies responsible for enforcing the statute(s) under which the Agent Firm has authority to act, of the Agreement and of the Agent Firm's designated location(s).

6.6.2 General Duty to Report and Consult

Agent Firms must comply with any reporting and consulting requirements (for example, financial, legal, administrative, or substantive requirements) established by the Agent Supervisor. These requirements may be itemized 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.

6.6.3 Significant Legal Issues

In addition to any other reporting requirements stipulated by the Agent Supervisor, Agent Firms must report in a timely manner to the Agent Supervisor, in writing, any "significant legal issues" set out in Schedule A.

6.6.4 Reporting of Fines

Where an accused is convicted and the Court imposes a fine, the Agent Firm is required to report the details to the Agent Supervisor within 30 days and provide the Agent Supervisor with a copy of the Fine Order, unless instructed otherwise by the Agent Supervisor.

6.7 Approval of Legal Opinions or Court Documents

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

6.8 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.

If the Agent believes that an appeal is warranted, he or she must provide recommendations in writing to the Agent Supervisor, within seven days of the impugned ruling or result, by outlining 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 may 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.

Carriage of an appeal may only be assigned to the Agent by the Agent Supervisor. Agents are not to submit a **FAR** for appeal matters.

6.9 Confidentiality

6.9.1 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*.

Agent Firms must take extra care not to disclose and to safeguard information that could reveal the identity of a police informer. Consult s. 7.2 for further information.

6.9.2 *Canada Evidence Act* Certificates

Information that falls, or might fall, within the protection of sections 37 to 39 of the *Canada Evidence Act* should be brought 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.

6.10 Official Languages

6.10.1 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 a federal prosecutor must also use the language of the accused.

If any legal notice is required to be published, it must be in bilingual format in accordance with the *Official Languages Act*.

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.

6.10.2 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, whether it is offered in English or French.

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

6.11 Gender Equality Analysis

Agent Firms must consider and advise the Agent Supervisor on the gender equality implications of any course of action, litigation strategy, or arguments, particularly in light of the incidence of poverty among women, the circumstances and needs of women in abusive situations, and women's disproportionate responsibility for family care. A course of action, litigation strategy, or argument that reinforces or compounds gender inequality must be

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reconsidered to prevent or remedy such discrimination. Agent Firms may contact their Agent Supervisor for guidance.

6.12 Victims Bill of Rights

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

6.13 Supervision and Assignment of Files

The Contact Agent is responsible for the proper assignment of files to Agents. Whenever possible, simple prosecutions must be assigned to a junior Agent and complex work to a more experienced Agent. The Contact Agent is also responsible for the direct supervision of Agents in their Agent Firms, as well as for articling students, students, and paralegals, 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.

6.14 Additional Court Counsel

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

6.15 Articling Students, Students, and Paralegals

The Contact Agent must obtain approval before an articling student or a paralegal is allowed to perform certain tasks on the Agent Firm's behalf. If approved, the use of Articling Students and Paralegals is governed by the rules of the applicable law society or Bar.

Articling Students and Paralegals cannot have conduct of a prosecution on behalf of the federal Crown. This means that they cannot conduct summary conviction trials, bail hearings, or sign correspondence purporting to have carriage of a file on behalf of the PPSC. As they are not members of a provincial bar, they cannot receive delegations to act for the Director under s. 9 of the *DPP Act*. However, even without a delegation, they may, consistent with the rules and policies of the applicable law society, assist Agents in prosecutions. What this means in practice is that Articling Students and Paralegals may, for instance, do research on files, appear in court to set dates or speak to an adjournment on behalf of their Principal, and conduct examinations or cross-examinations under direct supervision of the Principal. The Contact Agent must provide the name of the Principal supervising the Articling Student and Paralegal. Tasks undertaken by Students are restricted to those of an administrative nature.

6.16 Access to Information Matters

6.16.1 Legal Opinions

Agents are not to provide legal opinions to law enforcement agencies or federal government departments regarding access to information requests. Any such request must be directed immediately to the Agent Supervisor.

6.16.2 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. Requests for such records should be directed immediately to the Agent Supervisor.

Part Seven: Information Management

7.1 General

Records created during the conduct of assigned files are the property of the Crown and are to be managed by the Agent Firm in accordance with governmental and PPSC policies.

Agent Firms billing in excess of 200 hours per annum are required to use iCase; Part Thirteen should be consulted for further information.

7.2 Security Requirements

Agent Firms must ensure that all PPSC files are properly secured at all times in accordance with governmental security guidelines. These files must be accessible only to personnel with appropriate federal government security clearance.

Agent Firms must comply with s. 4.1.1., and the [Policy on Government Security](#).

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

- 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 that comes to the Agent during the vetting process should be returned to the police for security;
- 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, destruction or other incidents that could damage PPSC case files.

In case of a breach of security or compromise of information, Agents must report it immediately to their Agent Supervisor.

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Prompt intervention is required to take appropriate measures to protect individuals who might be at risk, to conduct proper investigations, to disable equipment, to conduct damage/injury assessments, and to ascertain whether any personal information has been compromised.

7.3 File Closure

A file is considered closed when the accused has been sentenced, all appeals are complete or appeal periods have elapsed.

Transferring a file to another Agent Firm does not constitute closure. Agent Firms registered with iCase must consult section 13.8 for applicable instructions.

7.4 Retaining, Archiving and Returning Records

The Agent Firm must retain the prosecution file for one year after the file is closed. For audit purposes, the Agent Firm must retain financial information records, such as original timesheets and supporting disbursement documentation, for five years after closing the file.

Agent Firms must comply with written procedures given by the Agent Supervisor regarding the maintenance of active files and the return and archiving of closed files. These procedures enable compliance with the *Library and Archives of Canada Act*, the *Access to Information Act* and the *Privacy Act*. 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 trial 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: Performance Review

9.1 Performance Evaluation Criteria

In order to ensure and maintain the high standard of service expected of Agents of the Director, the PPSC may conduct periodic performance evaluations of Agents. The performance evaluations may have an influence on the continuation of the current Agreement or any subsequent application by the Agent. Performance 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 Audit of Records

The PPSC reserves the right to conduct periodic audits of all records created and maintained by an Agent Firm in the course of the Agreement in order to ensure compliance with PPSC and governmental policies and implementation of proper financial controls.

The Agent and Agent Firm are expected to comply fully with an audit. Part Seven, Information Management, should be consulted for further information.

Part Ten: Billing

10.1 Agent Remuneration

An Agent's fee rate is determined in accordance with the PPSC's [Criminal Prosecutions Fee Schedule](#). Where it has been determined that an Agent is entitled to be paid at the next higher rate, the new rate will be applied for services rendered by the Agent after July 1st of his or her anniversary year.

10.2 Personnel Remuneration

10.2.1 Articling Students and Paralegals

Further to section 6.15, 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 functions.

If it is the Agent Firm's intention to retain an Articling Student after 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 once approved by the Director, and confirmed by the counsel's signed Agreement, which will stipulate the effective date.

10.2.2 Students and iCase Administrators

Tasks performed by Students are limited to those of an administrative nature and therefore are not billable, except for the purpose of returning files as stated in s. 10.3. iCase Administrators 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 his or her Agreement. No fees may be claimed for the preparation of accounts or for administrative and secretarial work. However, an Agent Firm may bill 0.1 hours at the personnel rate for the purpose of returning a file, as per section 7.4. Agent Firms using iCase are to consult section 13.4 for instructions.

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

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10.4 Approvals

Copies of all written approvals obtained from the Agent Supervisor must be provided when submitting a Statement of Account (SOA) and the FAR. Agent Firms using iCase should consult section 13.6 for further information.

10.5 Daily Limit on Billable Hours

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

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 Transit Time

The time spent travelling by the most reasonable and economical route is billable time.

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 of the Agent Supervisor for any disbursement over \$500.

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 any disbursement over \$25, 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 long distance telephone bill with the calls highlighted, or 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 long distance charges incurred in the transmission of a facsimile. All other activities involved in the transmission and receipt of facsimiles are not billable.

10.8.4 Photocopying (Including Colour)

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 order. Any amount surpassing the maximum must be pre-approved by the Agent Supervisor.

The printing and/or photocopying of accounts 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

As of April 1, 2014, all Agents must comply with the Government of Canada [Directive on Travel, Hospitality, Conference and Event Expenditure](#). As part of this directive, all travel including travel by non-government employees will require approval by the delegated authority 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 Supervisor.

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.

If an Agent is required to travel 16 kilometres 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 finalising travel arrangements for flights and train, 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.

Disbursement claims relating to travel must be made against the appropriate file.

10.8.8 Electronic Storage

The Agent Firm will be reimbursed the actual cost incurred for the purchase of CDs, DVDs, USB sticks, and thumb drives. Agents are expected to use the most economical option.

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10.8.9 Direct Deposit

Agent firms have the option of receiving payments from the PPSC by cheque or by electronic payment. Agent firms opting for electronic payment can obtain the necessary form from their Agent Supervisor.

Once payments are deposited, the PPSC will send the following information by e-mail: amount of payment, date of payment, invoice number, PPSC reference number, and brief description of the payment. This e-mail notification will act in lieu of a cheque stub.

10.9 Witness Costs

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

It is also the responsibility of the police 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

Agent Firms registered with iCase must consult Part Thirteen for applicable instructions.

10.10.1 General

Agent Firms are required to submit their accounts for work performed on a monthly basis, unless otherwise arranged with the Agent Supervisor.

10.10.2 Case and Billing Numbers

Each file is assigned a case and billing number; the case number tracks the case information and follows the file until completion. The billing number is specific to the Agent Firm and is assigned for payment purposes.

The Agent Firm must complete and provide a [FAR](#) for all matters assigned under the statutes and in the locations set out in their Agreement. Upon receipt of the FAR, Agent Affairs Division - Account Verification Section will notify the Agent Firm of the case and billing numbers by facsimile.

The case and billing numbers must be indicated in the appropriate sections on both the [SOA](#) and the [Details of Work Performed \(DWP\)](#) forms. If the case number or billing number is omitted or used incorrectly, the processing of the account will be delayed or the account returned to the Agent Firm for correction.

10.10.3 “Drug Docket Court” Case Number

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 and billing number to use to bill for actual time spent in court with respect to these types of matters.

Where it is practicable to record routine docket court time of less than one hour to a specific file, counsel are encouraged to do so. If the work for a file is in excess of one hour, the docket court file cannot be used.

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

Individual case and billing numbers must be requested once the Court proceeds with the charges on any particular matter.

10.10.4 “General” Case Number

Agent Firms are assigned, upon request, a one-time “General CDSA” (*Controlled Drug and Substances Act*) case and billing number for the purpose of invoicing for training, legal advice, etc. It is important to note that the General file number is not applicable to regulatory prosecution work. Agents must contact their Agent Supervisor for instructions if a request is received for training or general legal advice related to regulatory work.

10.10.5 Number Assigned for Recording of Travel Disbursements

To comply with the Travel Authority Directive as noted in 10.8.7, Agents are assigned a specific case and billing number for the recording of travel disbursements for drug matters. This number will be used by Agents for the recording of all costs related to their travel; fees are to be recorded against the specific file.

All non-drug 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 to another. The Agent receiving the file must submit a [FAR](#) to obtain a new billing number. 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 receiving the file must ensure that the authority to prosecute the file is stated in his or her Agreement.

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

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10.10.7 Statement of Account Form

For all Agent Firms not registered with iCase, consult Schedule B, “Guide to the Preparation and Review of Accounts”.

10.10.8 Endorsement of Statement of Account

The Agent Firm must endorse the [SOA](#) 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.”

10.10.9 Certification of Regulatory Accounts

If a regulatory prosecution file was received directly from a federal government department, the RCMP, or a municipal or provincial police agency, the SOA must be signed by the investigating officer.

Once signed, the SOA must be submitted to the Agent Affairs Division -- Account Verification Section by the person that endorsed it, unless otherwise instructed by the Agent Supervisor.

10.10.10 Payment and Recovery

Payments to Agent Firms 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 five 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 Goods and Services Tax (GST) and Harmonization Sales Tax (HST)

In this section, the term GST is interchangeable with the term HST.

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The *Excise Tax Act* and the concept of agency govern this particular area, both of which could dictate different GST applications on certain transactions charged to the PPSC depending upon the circumstances.

An Agent Firm submits an account according to the following guidelines:

Fees: The Agent Firm totals their fees and then adds the GST.

Disbursements: It is the PPSC's position that all disbursements form a part of the services rendered, and are therefore taxable according to the *Excise Tax Act* and the concept of agency. The specific types of disbursements and how to bill them are detailed below.

- Disbursements for which the Agent Firm will receive an Input Tax Credit (ITC): the Agent Firm claims the expense, subtracts the ITC, and adds the GST on the balance of the invoice.
- Disbursements which are based on set rates or allowances: the Agent Firm claims the expense and adds the GST, e.g. \$0.25 per photocopy, mileage, or meal rate.
- Disbursements for which the Agent Firm will not receive an ITC: the Agent Firm claims the amount paid and adds the GST.

10.13 Inquiries

Inquiries regarding account matters should be addressed to the Account Verification Section:

Agent Affairs Division – Account Verification Section
Public Prosecution Service of Canada
Place Bell Canada, 160 Elgin Street
Ottawa, Ontario K1A 0H8
Fax: (613) 957-4616

Part Eleven: Legal Assistance and Indemnification for Agents

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 federal prosecutors 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 federal prosecutors.

11.2 Application

This section applies to Agents as defined in section 1.3 of these Terms and Conditions.

11.3 Principles Applicable to Legal Assistance and Indemnification

11.3.1 Initial Presumption

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 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 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 the Agent or Crown is liable as a result of incidents involving Agents, no claims to recover such liability are to be made by the Crown against the Agent 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 in the situations enumerated in section 11.3.3 where the Agent does not meet one or more of the three basic eligibility criteria. Before approving the request, the Director may consult the Advisory Committee on Legal Assistance and Indemnification established under the Treasury Board Secretariat *Policy on Legal Assistance and Indemnification*.

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 his or her 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 is to 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 its 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 his or her 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

An Agent may bill, in accordance with the PPSC's [Criminal Prosecution Fee Schedule](#), the time they are required to attend discovery and court. The travel time related to these tasks and the disbursements incurred on the matter will be compensated in accordance with sections 10.7 and 10.8 of these Terms and Conditions. Other activities such as the time required for the preparation of the submission to the Director and the necessary preparation time for the judicial proceedings are not billable time, unless required by the Agent's Legal Counsel and prior approval has been obtained from the Agent Supervisor, in consultation with the PPSC's Corporate Counsel.

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.

12.2 Application

This section applies to Agents as defined in section 1.3 of these Terms and Conditions. For the purpose of this section, the scope of application includes Agents, employees of the Agent Firm, and the immediate members of their respective families.

The Director considers and determines on a case-by-case basis the appropriate measures for Agents who are subject to threats or intimidation.

12.3 Employee Protection Program

As a result of 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 management 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 EPP Incident Reporting Form, risk assessment tools and security protection measures.

Building on the success of an internal protection program offered to in-house counsel and staff, the PPSC has implemented a similar program for Agents that ensures readiness through advanced preparation (planning) in cases where potential threats and acts of intimidation may occur during litigation. 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.

12.4 Roles and Responsibilities

Agent Supervisors:

- provide training and guidance to Agents on EPP issues;
- report all incidents of threats, intimidation, or potential security problems to the Chief Federal Prosecutor (CFP) and Security Services;

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- 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 EPP training materials for Agents; and
- attend EPP training sessions facilitated by Agent Supervisor.

Security Services:

- address all EPP 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 s.423 or s. 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.

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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 EPP:

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

12.8 Post Incident Monitoring

While conducting the TRA, the EPP Coordinator 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.

12.9 Compliance

Agents are expected to follow the recommendations and advice provided by security specialists, the Agent Supervisor, and the CFP.

Part Thirteen: iCase

Additional Requirements for Agent Firms using the iCase Application:

13.1 Criteria

Agent Firms will be required to use the iCase application (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 iCase 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 a general *Controlled Drug and Substances Act* (CDSA) file. Although drug files can either be billed to the specific file or to the Agent Firm's General CDSA file, regulatory files can only be billed to the Agent Firm's CDSA file. Agent Firms who do not have a CDSA general file must create one and obtain a case number and billing number.

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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 [SOA](#) and [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 Non-Drug Accounts

In addition to submitting non-drug accounts electronically, the Agent Firm must provide a printed copy to the concerned agency for certification and endorsement. The Agent Affairs Division – Account Verification Section will only process the account upon receipt of the certified copy, together with the original invoices and proof of payment for all disbursements over \$25.

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.

Where it is practicable to record routine docket court time of less than one hour to a specific file, counsel are encouraged to do so. If the work for a specific file is in excess of one hour, the docket court file cannot be used.

13.8 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

8. wiretap evidence is to be relied upon
9. 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.
10. *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)) or to the Victim Fine Surcharge;
 - 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);

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- 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

11. significant costs will be incurred in prosecuting a matter (e.g., the need for out-of-province witnesses)
12. significant penalties will likely be imposed following a conviction (i.e., more than five years in jail)
13. threat or possibility of a civil suit against the agent arising out of a prosecution
14. application by defence counsel for costs against the Crown
15. *Rowbotham* application for funding of the defence at trial or on appeal
16. the Agent is served with a notice of appeal in a summary conviction matter
17. serious charges are to be stayed as a result of the accused’s cooperation with the police or Crown
18. witness immunity propositions
19. any entrapment scenarios (e.g. where the accused is seeking to rely on the fact that *someone else* was entrapped) (“derivative” entrapment)
20. any case in which defence counsel attempts to call Crown counsel as a witness
21. 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
22. 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.
23. 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);

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- 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.: __ AAU-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](#) 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 \(DWP\)](#). 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 Unit (AAU). 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.

- a) “Date Prepared” (day-month-year): indicate the date the account was prepared.
- b) “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.
- c) “No. of File Records”: indicate the number of files attached to the SOA page. Limit the number to 25 per submission.
- d) “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.)
- e) “Firm Name”: indicate the name of the Agent Firm corresponding with the G.S.T. Registration Number.
- f) “Address”: indicate the complete mailing address.
- g) “Billing No.”: indicate the 10-digit Billing Number.
- h) “File Name”: indicate the name(s) of the file(s) identified on the attached DWP.
- i) “Amount Rendered”: indicate the total (fees and disbursements) from the attached DWP.

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- j) “Total Payment”: indicate the total amount of all files recorded.
- k) “Agent, Signature, Date”: this certifies that the services described in the attached **DWP** were in fact rendered by the signee or by members of the Agent Firm.
- l) “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

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

| ITEM | Code |
|--|------|
| Legal Advice / Investigative Assistance * Time spent giving legal advice or assistance to enforcement agencies | 01 |
| Pre-Charge Preparation General preparation for attendance in court / work on file prior to charges being laid | 10 |
| Pre-Charge Hearings 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 |
| Post Charge Preparation 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 research of the specific legislation – limited to no more than 1 hr without prior approval of the Agent Supervisor | 33 |
| Issues Research / Preparation * Time spent in research relating to issues raised during the matter, including research 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 – for iCase users only) 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 – for iCase users only) 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. This also include the time entry for boxing and shipping the file(s). | 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 |

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| | |
|--|-----|
| 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 |
| Post Charge Hearings 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 ¹ 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 dices', 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 |
| Appeals ² Preparation for and attendance on all appellate matters, including summary conviction appeals | 50 |
| Post Case Completion work * 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 |
| Fine Recovery ³ * Time spent on all activities related to the collection and recovery of Court imposed fines | 70 |

¹ All travel claims must detail the number of km travelled.

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

³ 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

Agent Agreement – Terms and Conditions

- long distance
- photocopies - notes filed must detail number of copies made
- postal
- printing - by commercial source
- 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.