

The Legal Services Board of Nunavut

Criminal Choice of Counsel Policy



2014



LEGAL SERVICES BOARD OF NUNAVUT

P.O. Box 125, Gjoa Haven, Nunavut X0B-1J0
(867) 360-4600 Telephone (867) 360-6112 Fax

Choice of Counsel Policy

1.0 Policy Statement

The Legal Services Board (the “LSB”) will develop and maintain a choice of counsel list to accord with Section 40 of the *Legal Service Act*, R.S.N.W.T (Nu.) 1988, c. L-4 (the “Act”).

1.1 Policy Objectives

- To clarify any confusion for eligible persons, defense counsel, the Nunavut Court of Justice, the Public Prosecution Service of Canada, the Nunavut Court of Justice and the public with respect to the choice of counsel provisions as found in the *Act*, its regulations and the case law.
- To provide an interpretation of the *Act* and *Regulation 3(1.1)* to foster an understanding of who is considered to be resident counsel in Nunavut. Eligible persons may look to this policy to aid in the exercising of their Section 40 right to choose defence counsel from the choice of counsel list.
- To fulfill the Legislature’s intent to give eligible persons a choice of counsel who are resident in Nunavut. Further, to provide preferential consideration to resident counsel to provide representation in such matters, and compensate resident counsel at a higher tariff rate than non-resident counsel in order to reflect “the higher costs of maintaining

an office and practicing in Nunavut and the savings that result from legal services being provided by lawyers based in Nunavut and the higher costs of living in Nunavut.”

2.0 Background

Legislation

2.1 Section 40 of the *Act* states:

“where an eligible person is charged with an offence, other than a prescribed offence, for which the maximum penalty is life imprisonment, the eligible person may for his or her defence select any lawyer who is resident in the Territories (Nunavut) and prepared to act on behalf of the eligible person.”

Regulation

2.2 Regulation 3 (1.1) states:

“The rates set out in Part 1 of Table 1 of this schedule apply only with respect to a lawyer who maintains an office in Nunavut and primarily practices in Nunavut to reflect:

- (a) the higher costs of maintaining an office and practicing in Nunavut and the savings that result from legal services being provided by lawyers based in Nunavut, and
- (b) the higher costs of living in Nunavut.

Case Law

2.3 In the case of *R. v. Bishop*, 2008 NUCJ 10 (CanLii)(hereinafter “Bishop”), the Nunavut Court of Justice ruled that in relation to Section 40 of the *Act*, an eligible individual’s choice of counsel has to be made from “*a solid list containing alternatives and a reasonable number or variety of lawyers who are qualified and prepared to act as senior counsel on murder cases or other cases of a similarly serious nature*”.

3.0 Application

To assist in meeting the requirements of the *Act*, the regulations and case law, and the enhanced value of having resident counsel provide representation in these types of cases, the Tariff Rate schedule reflects that resident lawyers who are committed to living in the jurisdiction will be paid at a higher rate due to the higher costs of living in Nunavut. In order to specifically follow the requirements of *Bishop*, the choice of counsel list now includes criminal lawyers who are resident in Nunavut, are members in good standing with the Law Society of Nunavut and are deemed qualified to act by the LSB.

4.0 Definitions

“Resident” someone who ordinarily resides in Nunavut and meets the residency requirements of the *Income Tax Act of Canada* R.S.C. 1985.

“Resident Lawyer” a lawyer, in good standing with the Law Society of Nunavut, who is ordinarily resident in Nunavut and can provide proof of residency in accordance with the

Nunavut residency requirements as stipulated in the *Income Tax Act of Canada* R.S.C. 1985, c. 1. Proof, in the form of the previous year's tax designation of residency, may be requested by the Chief Executive Officer (CEO) at the time a lawyer submits an application to be included on the Nunavut Panel.

A lawyer, newly resident to Nunavut, who is unable to provide the requisite tax designation due to recent relocation, may satisfy the residency requirements by, 1) submitting to the CEO for consideration a valid Nunavut driver's license or Nunavut health card, and 2) providing proof of operating a law office in Nunavut or being employed as a lawyer in a law office in Nunavut.

“Office” a physical premise from which a resident lawyer conducts his or her practice of law and can ordinarily be reached during regular business hours, Monday to Friday.

5.0 What you need to know if you are eligible to a Choice of Counsel

5.1 If you are eligible under section 40 of the *Act* you have the right to choose a lawyer from the list of qualified resident counsel. If you wish to consider and/or decide to exercise this right, you will be provided with the most current LSB choice of counsel list.

5.2 You must inform the LSB of your choice of counsel, providing your first and second choice of lawyers from that list.

- 5.3 Choosing your preferred lawyer from the provided list does not automatically guarantee that you will be represented by that lawyer. The LSB, through the CEO or their designate, will first verify that the selected lawyer is prepared to be retained to represent you on your matter.
- 5.4 You will be informed in writing whether the requested lawyer will act on your behalf.
- 5.5 If the lawyer you selected is not prepared to act on your behalf, LSB will inform you of this and contact your second choice of counsel.

6.0 Administration of the Choice of Counsel List

- 6.1 The CEO has the primary responsibility for administering the choice of counsel policy.
- 6.2 Resident counsel at any time may request to be on the choice of counsel list.
- 6.3 Only resident counsel deemed eligible and qualified by LSB will have their names added to the choice of counsel list.
- 6.4 The LSB may request or require any lawyer who holds himself or herself out as resident and qualified counsel to provide proof of residency and requisite qualifications in order to be on the choice of counsel list. Proof of Nunavut residency may be in the form prescribed by the Board or its designate. An example of proof of residency would be the previous year's tax designation of residency.

A lawyer, newly resident to Nunavut, who is unable to provide the requisite tax designation due to recent relocation, may satisfy the residency requirements by submitting to the CEO for consideration a valid Nunavut driver's license or Nunavut health card and proof of residency in the form of a rental lease or mortgage papers and proof of operating a law office or being employed as a lawyer in a law office in Nunavut.

- 6.5 Any lawyer on the choice of counsel list may ask to have her/his name removed from the list at any time. The LSB will remove the lawyer's name as soon as is reasonably possible.
- 6.6 The choice of counsel list will be updated regularly to adequately identify resident lawyers who are deemed eligible, qualified and prepared to act on behalf of eligible persons under Section 40 of the Act.
- 6.7 The choice of counsel list will be dated so as to reasonably ascertain the currency of the list.
- 6.8 The LSB will provide new choice of counsel lists to senior criminal counsel, who will then provide it to all LSB criminal defense lawyers, Regional Legal Aid Clinic Directors, the Nunavut RCMP "V" Division, the Nunavut Court of Justice and the Nunavut Court of Appeal.



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Choice of Counsel Form

If, as a result of the charge(s) you are facing, you could be sentenced to life in prison, you may choose any resident lawyer on the Legal Services Board's Choice of Counsel List.

You do not have the right to choose any lawyer who is not resident in Nunavut if you wish your defence to be paid for by the Legal Services Board.

The lawyers on the LSB choice of counsel list meet the legal requirements of Section 40 of the Legal Services Act, R.S.N.W.T. 1988, c. L-4.

If you choose not to select a lawyer from the LSB choice of counsel list a qualified lawyer will be chosen for you by the Legal Services Board.

To help you choose, the Legal Services Board provides this list of Nunavut lawyers.

Choice:

I, _____, reviewed the below list of
(accused name)

lawyers with _____, on _____, 201__
(lawyer's name) (date)

Waiver:

I do not wish to make a selection from the lawyers on the list. I want the Chief Executive Officer of the Legal Services Board to choose a lawyer for me.

Even though _____ is not on the list, I would like him/her to defend me. *This list is for your information. It is the right of an accused person under Section 40 of the Legal Services Act, R.S.N.W.T. 1988, c. L-4. to pick any lawyer, resident in Nunavut who is prepared to act on their behalf.

Signed on _____, 201_

Witness

Signature