



# Terms and Conditions of Fixed-Term Agreements of Agents



April 2010

## 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.

Agents act as prosecutors and administrators of justice. 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.

Agents of the Director of Public Prosecutions carry out the same duties and are subject to the same policies as prosecutors employed by the Public Prosecution Service of Canada. 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 *FPS Deskbook*.

The relationship between Agents and the Director is governed by the Terms and Conditions of Fixed-Term Agreements. 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

# Terms and Conditions of Fixed-Term Agreements of Agents

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# Terms and Conditions of Fixed-Term Agreements of Agents

## Quick Reference Guide

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

### counsel

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- have more than one Agent appear before the same court at the same time [6.13]
- have new personnel work on a file [3.5]
- use an articling student, student-at-law, or paralegal [6.14; 10.2]

### costs and disbursements

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- 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]
- take any step in respect to a witness, if significant witness costs are anticipated [10.9]
- incur expert-witness costs, escort costs or any other extraordinary costs [10.9]
- incur costs for ordering a transcript [10.8.5]
- incur travel costs for travel outside the designated judicial district [10.7; 10.8.7]

### appeals

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- launch or discontinue an appeal [6.8]

### authority to act

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- continue to work when the court orders a change of venue outside your designated judicial district [6.2]

### the media

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- initiate contact with the media [8.4]

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

### authority to act

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- an enforcement agency or federal government department refers a case to you involving a judicial district or statute not set out in Appendix A of your Agreement [6.1.1]
- 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

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- there are significant legal issues [6.6.3]

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### 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]

### appeals

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- 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]

### information requests

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

### conflict of interest

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- 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 another 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]

### personal situation

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- 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

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- you cannot provide services and communication in the official language as required [6.10.2]



# Terms and Conditions of Fixed-Term Agreements of Agents

## Part One: Terms and Conditions

### 1.1 Principle

*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

*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*

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

*ad hoc agent*

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

*agent firm*

“**Agent Firm**” refers to the legal entity, consisting of one or more Agents who have entered into an Agreement to conduct federal prosecutions. An Agent Firm may include any articling student, student-at-law, or paralegal authorized to assist Agents practicing in an association, a corporation, a partnership, or limited partnership.

Throughout this document, the term “Agent Firm” may refer to “Agent” if the circumstances dictate.

*agent supervisor*

“**Agent Supervisor**” refers to the Public Prosecution Service of Canada 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*

“**Agreement**” refers to the Fixed-Term Agreement between the Agent and the Director of Public Prosecutions, together with the Acknowledgment signed by the Agent or all Agents within the Agent Firm, and Appendix A which sets out the

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*articling student*

statutes and judicial districts for which the Agent is responsible.

**"Articling Student"** refers to a graduate from a Canadian university law school program, authorized to assist an Agent or *Ad Hoc* Agent.

*chief federal prosecutor*

**"Chief Federal Prosecutor"** refers to the head federal prosecutor within the Public Prosecution Service of Canada regional office for a province or provinces.

*contact agent*

**"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*

**"Director"** refers to the Director of Public Prosecutions.

*iCase*

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

*iCase administrator*

**"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*

**"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*

**"Legal assistance"** includes the cost of the services of the Department of Justice Canada, a Crown agent or private counsel, as well as paralegal services and includes necessary travel costs, incidental costs, and the use of essential expert witnesses.

*paralegal*

**"Paralegal"** refers to paralegals, certified or qualified, authorized to assist an Agent.

*principal*

**"Principal"** or "Articling Principal" where applicable, refers to the Agent within an Agent Firm responsible for the direct supervision of articling students, students-at-law, and paralegals.

*student-at-law*

**"Student-at-Law"** refers to a student enrolled in a Canadian university law school program, authorized to assist an Agent.

*application*

## 1.4 Application of Terms and Conditions

The Terms and Conditions (T&C's) set out the nature of the Agent's relationship with the Public Prosecution Service of Canada (PPSC) as well as with other federal government departments or enforcement agencies that refer matters for

# Terms and Conditions of Fixed-Term Agreements of Agents

prosecution. These Terms and Conditions also provide 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 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 of any changes and the timeframe in which the Agent Firm must comply with the changes. These documents, and their amendments, are available at the PPSC website: <http://www.ppsc-sppc.gc.ca> under "Publications".

## 1.5 FPS Deskbook

The *FPS Deskbook*, as amended, 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 any individual within the Agent Firm is:

- subject to any prosecutions or convictions under federal statutes, including the *Criminal Code*, or subject to personal or professional bankruptcy or insolvency, to any disciplinary proceedings before a law society or Bar, or is the subject of an investigation by any federal agency;
- in default of a court order or decision, or a family support obligation; and
- in contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act.

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:

- 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 federal statutes under that Agency's authority; and

FPS Deskbook

personal conduct

verification of compliance

# Terms and Conditions of Fixed-Term Agreements of Agents

- the law society or Bar of his or her province or territory to verify the Agent's status to practise law.

## 1.8 Employment Equity Requirements

The PPSC encourages a commitment to and implementation of the broad principles of employment equity in the workplace. Specific requirements differ depending on the size of the Agent Firm.

Consult Schedule A for further information on the PPSC's "Work Equity Policy for Agents".

## 1.9 Sanctions

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

- reduction or disallowance of accounts;
- initiation of a complaint before the appropriate professional disciplinary body;
- initiation of a civil action against the Agent;
- suspension or termination as Agent or *Ad Hoc* Agent; and
- suspension or termination of the Agreement as an Agent Firm of the Director.

*employment equity*

*failure to comply*

## Part Two: Conflict of Interest

conflict-principle

### 2.1 Principle

In their role as prosecutors acting on behalf of the Director, Agents are advocates and administrators of justice. They serve the public interest. Agent Firms must not engage in legal 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 a conflict of interest.

Agent Firms must be aware of and comply with:

- the provisions of the *FPS Deskbook*, as amended, that apply, regarding conflict of interest;
- these Terms and Conditions;
- All applicable case law, including the Supreme Court of Canada's decision in *Martin v. Gray*, [1990] 3 S.C.R. 1235;
- the Bar or their law society's rules concerning conflict;
- the provisions of the Conflict of Interest and Post-Employment Code for Public Servants;
- the provisions of the Conflict of Interest and Post-Employment Code for Public Office Holders;
- the *Parliament of Canada Act*, R.S.C. 1985, c. P-1;
- 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); and
- the *Federal Accountability Act*.

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

prohibited work

Agents must not act for the defence anywhere in Canada in matters relating to the statute(s) under which the Agent has been authorized to conduct prosecutions, as set out in Appendix A of their Agreement.

### 2.3 Deemed Conflicts

deemed conflicts

An Agent Firm will be deemed to be in a conflict of interest when the Agent Firm engages in legal work that is directly or indirectly contrary to the interests of the

## Terms and Conditions of Fixed-Term Agreements of Agents

Director and/or of the Attorney General of Canada, including, but not limited to:

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

The Contact Agent must 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 immediately advise the Agent Supervisor 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.

notification of  
conflict

alleged conflict

## Part Three: Fixed-Term Agreement

### 3.1 Status and Authority of an Agent

status and authority  
of agent

An Agent is an Agent of the Director retained pursuant to ss. 7(2) of the *Director of Public Prosecutions Act* and authorized to act under ss. 9(1) of the Act.

An Agent's services are not retained by any individual federal government department or enforcement agency. The Agent is not an employee of the Crown or of any individual department or agency of the Government of Canada which refers matters for prosecution.

It is prohibited for any member of an Agent Firm to hold himself or herself out as an employee of the PPSC, or of the Crown.

The Agent's authority to prosecute is limited to the services, designated judicial district(s), and statute(s) stipulated in the Agreement's Appendix A.

### 3.2 Tenure of Fixed-Term Agreement

tenure

An Agent's Agreement entered into under to ss. 7(2) of the *Director of Public Prosecutions Act* can be terminated at any time for convenience or default. Consult section 3.7 for further information.

#### 3.2.1 Written Communications

written  
communication

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

### 3.3 Effective Date of Fixed-Term Agreement

effective date

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

### 3.4 Acceptance of Fixed-Term Agreement

acceptance of  
agreement

The Agent or Agents within an Agent Firm must return a signed copy of the Acknowledgment to the Agent Supervisor within 10 days of receipt of their Agreement. By signing the Acknowledgment, the Agent attests that he or she has read these Terms and Conditions, agrees to be bound by them, and accepts the Agreement. No accounts will be accepted or paid before the signed copy is returned.

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additional resources

## 3.5 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 a new member of the Agent Firm access to files held on behalf of the Director.

Approvals are obtained via the Agent Supervisor and confirmed in writing by the Chief Federal Prosecutor. Sections 6.14 and 10.2 provide further information and requirements.

profile of practice

## 3.6 Practice Profile

At the time of submission, an applicant must give a general outline of the firm's practice as it involves criminal defence or other adversarial legal work relating to any enforcement agency for which the prospective Agent may conduct prosecutions.

The applicant is also required to define the type of legal entity he or she practices with to ensure proper Agreement status. Please consult the definition of "Agent Firm" in section 1.3.

The applicant must notify the Agent Supervisor of any possible conflict of interest situations that may exist at the time of the application process, as stipulated in Part Two, "Conflict of Interest".

agreement termination

## 3.7 Termination of Agent Firm Fixed-Term Agreement

When their Agreement terminates, Agent Firms must return to the Agent Supervisor all copies of the *FPS Deskbook*, the Terms and Conditions, all delegations issued to Agents 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 provided by, or relating to, the PPSC or other federal departments or agencies.

The Agent Supervisor will give instructions concerning the return of the original designation certificate to an Agent who has been designated by the Minister of Public Safety and Emergency Preparedness to apply for authorizations to intercept private communications pursuant to Part VI of the *Criminal Code*.

The date the Fixed-Term Agreement is terminated will be stipulated in the Agreement, unless one of the following circumstances arise:

### 3.7.1 Termination for Convenience

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 of



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termination for convenience 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 termination notice. The termination will take effect immediately or, as the case may be, at the time specified in the termination 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 cure period specified in the notice if the Agent has not resolved the default to the satisfaction of the Director within the specified period.

If the Agent becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, 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.

If the Agent receives written notice as described above, the Agent will have no claim for further payment except as provided in this section.

### 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 exceptional circumstances apply, such as an appointment to the Bench.

## 3.8 Individual Agent Resignation

Upon the resignation of an Agent within an Agent Firm, the Contact Agent is required to advise the Agent Supervisor without delay, and return the Agent's delegation. The Agent Firm must complete all invoicing for or on behalf of the Agent Firm within 60 days of their resignation.

*termination for  
default*

*resignation*

*individual  
resignation*

# Terms and Conditions of Fixed-Term Agreements of Agents

*political activity*

## 3.9 Political Activity

An Agent's Agreement will be suspended or terminated under section 3.7, if an Agent:

- (a) acts in the capacity of an official agent for a candidate, or
- (b) is a candidate for election as a member of the House of Commons, a member of the legislature of a province, a member of the Council of the Yukon Territory or the Northwest Territories, or a member of the Legislative Assembly of Nunavut

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

An agent who is declared elected as a member of the House of Commons, of the legislature of a province, of the Council of the Yukon Territory or the Northwest Territories or of the Legislative Assembly of Nunavut thereupon ceases to be an Agent.

## 3.10 Proof of Agent Status

*proof of status*

Every Agent is provided with a delegation pursuant to ss. 9(1) of the *Director of Public Prosecutions 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.

## Part Four: Requirements

### 4.1 Conditions of Agreement

#### 4.1.1 Security Clearance Requirement

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

#### 4.1.2 Human Resources Requirements

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

### 4.2 Insurance

Agents must carry law-practice insurance in the province or territory in which they practice in compliance with the requirements of 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.

At a minimum, Agent Firms must meet the computer hardware and software standards stated in the PPSC Desktop/Laptop Hardware and Software Requirements. A copy of these requirements can be obtained from the Agent Supervisor.

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

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

Agent Firms registered with iCase must consult Part Twelve for further requirements and information.

### 4.4 Reference Materials

Agent Firms must have and maintain an up-to-date version of the *Criminal Code*

security requirement

hr requirement

insurance

technology requirements

reference materials

## Terms and Conditions of Fixed-Term Agreements of Agents

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.

Agents who are designated by the Minister of Public Safety and Emergency Preparedness to apply for authorizations to intercept private communications pursuant to Part VI of the *Criminal Code* must have current legal texts on wiretap law.

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

### 4.5 Training Materials

The PPSC will provide Agent Firms with a copy of any relevant policies, and training materials developed by the PPSC relating to the statute(s) under which they exercise responsibilities as an Agent 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'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 registered with iCase must also consult Part Twelve.

training materials

training

## Part Five: The Working Relationship

*point of contact*

### 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.

*roles and responsibilities*

### 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.

The Agent Supervisor has authority to verify an Agent's accounts with respect to the reasonableness of fees and disbursements.

*agent supervisor approval*

### 5.3 Approval of the Agent Supervisor

Where, in accordance with these Terms and Conditions and the *FPS 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.

*communication*

### 5.4 Communication with the PPSC

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

*correspondence*

### 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 number where available. Sensitive or confidential correspondence or other similar material must not be sent by 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-at-law, and paralegals, to ensure that such tasks are carried out competently and in accordance with the terms of the *FPS Deskbook* and these Terms and Conditions.

If for reasons which are beyond the Agent Firm's control, the Contact Agent 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 judicial districts and statutes, as set out in Appendix A of their Agreement.

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

Agents are not authorized to accept files involving judicial districts or statutes which are not listed in Appendix A of 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.

Agents who are requested to act under statutes or in judicial districts which are not set out in Appendix A of their Agreement will be assigned such matters on a case-by-case basis by way of *Ad Hoc* assignment from the Agent Supervisor.

#### 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 form (FAR) and submit it to the Agent Affairs Unit Accounting Operations (AAU-AO) within three days of receipt of a file.

Schedule F provides a sample of the FAR form. Electronic copies of the FAR are available by contacting the Agent Supervisor.

#### 6.1.3 *Criminal Code* charges only

An Agent's authority to act is limited to the statutes listed in Appendix A of their Agreement. 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, or expressly provided in the Agent's Appendix A.

#### 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 Appendix A.

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

agents' authority to act

reporting responsibility

criminal code only

legal advice

# Terms and Conditions of Fixed-Term Agreements of Agents

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 Appendix A. The Agent must submit a FAR to obtain the case and billing numbers for each instance of training.

## 6.2 Change of Venue

If a court orders a change of venue outside the judicial district set out in Appendix A of their Agreement, the Agent must receive written approval from the Agent Supervisor before continuing to work on the file.

## 6.3 Travel Outside Designated Judicial District

For travel costs to be reimbursed, an Agent must receive the written approval of the Agent Supervisor before travelling outside the judicial district provided in Appendix A of their Agreement.

Consult sections 10.8 concerning travel allowances and disbursements.

## 6.4 Waivers of Charges

The *FPS Deskbook* provides that only the Chief Federal Prosecutor may consent to the request for a transfer of a charge to another judicial district for purposes of a guilty plea. If there is a request to waive a charge to another judicial district, 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 10.10.5 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 and finalized, the Agent Firm must immediately inform the enforcement agency or agencies, responsible for enforcing the statute(s) for which the Agent Firm has authority to act, of the Agreement and of the Agent Firm's designated judicial district(s).

training of agencies

change of venue

travel outside judicial district

waivers

file transfers

notification to agencies



# Terms and Conditions of Fixed-Term Agreements of Agents

*duty to report and consult*

## 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.

*significant legal issues*

## 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 Supervisors, in writing, any “significant legal issues” set out in Schedule B.

*finer*

## 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.

*legal opinions, documents*

## 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.

*appeals*

## 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 7 days of the impugned ruling or result, outlining the nature of the charge, the evidence, the Crown’s position, the defence 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 FAR forms for appeal matters.

# Terms and Conditions of Fixed-Term Agreements of Agents

## 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 FPS Deskbook.

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

### 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 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*.

Forms, such as information and summons, employed by Agent Firms must be printed in a bilingual format in accordance with subsection 841(3) of the *Criminal Code*.

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 Part XVIII of the *Criminal Code* and the *Official Languages Act*, R.S.C. 1985 4th Suppl., c.31.

*Duty not to disclose*

*Canada Evidence Act*

*official languages*

# Terms and Conditions of Fixed-Term Agreements of Agents

public  
communications

## 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 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 the "[Official Languages in Prosecutions](#)" in the *FPS Deskbook*.

## 6.11 Gender Equality Analysis

gender equality

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

## 6.12 Supervision and Assignment of Files

supervision and  
assignment

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-at-law, and paralegals, and must ensure that their work is carried out competently and in accordance with the terms of the *FPS Deskbook* and these Terms and Conditions.

## 6.13 Additional Court Counsel

additional agent

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.

## 6.14 Articling Students, Students-at-law, and Paralegals

students and  
paralegals

The Contact Agent must obtain approval before an articling student, a student-at-law, or a paralegal is allowed to perform certain tasks on the Agent Firm's behalf. If

## Terms and Conditions of Fixed-Term Agreements of Agents

approved, the use of articling students, students-at-law, and paralegals is governed by the rules of the applicable law society or Bar.

Articling students, students-at-law, 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 *Director of Public Prosecutions 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, students-at-law, 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(s), student(s)-at-law, and paralegal(s).

### 6.15 Access to Information Matters

#### 6.15.1 Legal Opinions

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

#### 6.15.2 Processing requests filed under the *Access to Information Act* and the *Privacy Act*

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

Agent Firms’ records relating to PPSC matters are deemed to be under the “control” of the PPSC for the purposes of ATIA and PA. Agent Firms must submit all requested records to the PPSC Access to Information and Privacy 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 or Pa requests. Requests for such records should be directed immediately to the Agent Supervisor.

access to  
information  
legal opinions

processing  
information requests

## 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 Twelve 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 consult and comply with the [Policy on Government Security](#). Furthermore, Agent Firms must comply with section 4.1.1 on Security Clearance Requirements.

### 7.3 File Closure

A file is considered closed when the accused is convicted or acquitted and there is no further action to take.

The Agent Firm must advise the Agent Affairs Unit - Accounting Operations of all file closures. The file closure is to be noted on the monthly Statement of Account by including the name of the file, the case and billing numbers and the date on which the file was closed.

Transferring a file to another Agent Firm does not constitute closure. Agent Firms registered with iCase must consult section 12.8 for applicable instructions.

### 7.4 Retaining, Archiving and Returning Records

The Agent Firm must retain the files 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 compliancy with the *Library and Archives of Canada Act*, the *Security of Information Act*, and the *Access to Information Act* and

information  
management

security  
requirements

file closure

records

## Terms and Conditions of Fixed-Term Agreements of Agents

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*Privacy Act.* Consult section 10.3 for invoicing information.

## Part Eight: Media Relations

*media inquiries*

### 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 *FPS Deskbook* relating to communications with the media.

*duty to report*

### 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.

*appeal inquiries*

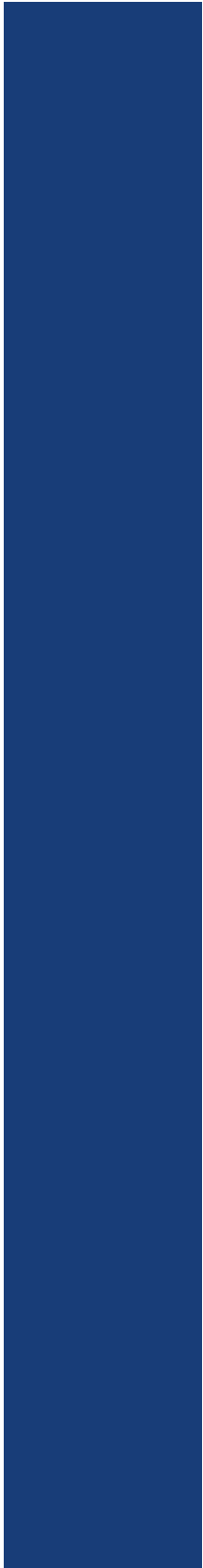
### 8.3 Inquiries Related to Appeals

Agents must not speculate to the media about whether or not the Crown will bring an appeal or an application for leave to appeal. That decision will be made within the PPSC after consultation with the concerned federal government department. Agents may indicate only that the matter will be studied and a decision taken in due course.

*media contact*

### 8.4 Initiating Media Contact

Other than on routine matters 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 review may have an influence on the continuation of an Agent's Agreement. 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 mechanisms.

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

*performance criteria*

*records audit*



## Part Ten: Billing

### 10.1 Agent Remuneration

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 Articling Student, Students-at-law, and Paralegal Remuneration

students, paralegals

Further to section 6.14, Agent Firms may employ articling students, students-at-law, and paralegals in accordance with applicable law society or Bar rules. The rate of pay for articling students, students-at-law, and paralegals is set out in the Criminal Prosecutions Fee Schedule.

Articling students, students-at-law, and paralegals are restricted to performing tasks or activities that require, under the supervision of the Principal, 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, students-at-law, and paralegals student 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, and seek their approval as an Agent, it is the Contact Agent's obligation to advise the Agent Supervisor 60 days prior to the approved articling student's call to the Bar. Pending approval, they can continue working and billing at the student rate. Once approved by the Director, their fee rate and status will be amended when the Agent Coordinator's office has received the counsel's signed Agreement and Acknowledgement, which will stipulate the effective date.

### 10.3 Billable Legal Services

billable 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 for the purpose of returning a file, as per section 7.4. Agent Firms registered with iCase are to consult section 12.4 for additional instructions.

Agent Firms are expected to be efficient and cost-conscious, keeping in mind the need to balance the importance of the case to the PPSC or to the concerned federal government department with their professional responsibilities.

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approvals

## 10.4 Approvals

Copies of all written approvals obtained from the Agent Supervisor must be provided when submitting a Statement of Account. Agent Firms registered with iCase should consult section 12.6 for further information.

daily limit

## 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 approval in writing from the Agent Supervisor.

research and preparation

## 10.6 Legal Research and Case Preparation

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

Legal research does not include legal analysis and case preparation, as described below. Legal research refers to the identification and location of appropriate legislation, case law, and legal theory.

Legal analysis and case preparation refers to time spent reviewing relevant laws regarding an anticipated trial issue or any *Charter of Rights and Freedoms* issue on which the accused has given notice or any issue which arises for the first time after the trial. A review of facts and laws, including reading pertinent cases to write or revise briefs or facta, is considered case preparation or legal analysis work.

The following activities are also considered to be legal analysis on a file:

- actions taken to analyze the file to consider whether or not to prosecute;
- actions taken to assess the potential success of anticipated *Charter*-based defences; and
- if the case is to be prosecuted, actions taken to assess the likely sentence on conviction.

transit time

## 10.7 Billable Transit Time

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

disbursements

## 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

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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 color)

The Agent Firm will be reimbursed for in-house photocopy charges not exceeding \$0.25 per copy, to a maximum of \$250 per photocopying order. Any amount exceeding the maximum must be pre-approved by the Agent Supervisor.

## 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

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 kilometre, as well as meals, in accordance with the rates 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

*supporting  
information*

*telephone charges*

*facsimiles*

*photocopies*

*transcripts*

*taxis, parking*

*travel claims*

# Terms and Conditions of Fixed-Term Agreements of Agents

circumstances, the Agent must provide justification when submitting the claim.

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

## 10.9 Witness Costs

An Agent Firm must obtain prior written approval of the Agent Supervisor for any anticipated witness costs. An Agent Firm must reimburse witnesses and submit the expense as a disbursement together with a detailed breakdown and applicable supporting documents, subject to the following:

### 10.9.1 RCMP-Initiated Investigations

If a prosecution under the *Controlled Drugs and Substance Act* or *Food and Drugs Act* is initiated by the RCMP, or by a joint force investigation in which the RCMP has the lead, civilian witness costs for the prosecution are paid by the RCMP. The witness must submit a claim for his or her costs directly to the officer in charge of the investigation.

### 10.9.2 Police Officer Witness

The costs for police officer witnesses are the responsibility of the investigating police force. The witness must submit a claim for the costs directly to the officer in charge of the investigation.

### 10.9.3 Police Officer Witness - Exception

Witness expenses for a police officer witness who is no longer employed by the investigating police force at the time of giving testimony should be included as a disbursement when submitting accounts.

### 10.9.4 Expert Witness Cost

The Agent Firms must obtain the written approval of the Agent Supervisor before engaging an expert witness.

### 10.9.5 Escort Costs

The written approval of the Agent Supervisor is required before incurring the costs of executing a warrant to escort an accused from the place of arrest to the place of trial.

The escort costs may include expenditures for meals, accommodation, and transportation.

Municipal police forces may be reimbursed for escort costs for an accused arrested 16 kilometres or more outside of the relevant municipal jurisdiction. Provincial police forces may be reimbursed where the accused is arrested 16 kilometres

witness costs

RCMP investigations

police witness

exception

expert witness

escort cost

# Terms and Conditions of Fixed-Term Agreements of Agents

outside the relevant provincial jurisdiction.

Where approval has been granted, the Agent Firm must pay escort costs and submit the expense as a disbursement together with a detailed breakdown and applicable supporting documents.

## 10.10 Submission of Accounts

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

### 10.10.1 General

The fiscal year end of the Government of Canada is March 31. All accounts for work performed up to and including this date, must be submitted by April 15.

### 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 File Assignment Report (FAR) for all matters assigned under the statutes and in the locations set out in their Appendix A. Upon receipt of the FAR, Agent Affairs Unit-Accounting Operations will notify the Agent Firm of the case and billing numbers by facsimile. For *ad hoc* assignments, the case and billing numbers will be conveyed to the Agent Firm by the Agent Coordinator's Office via email, unless the situation dictates otherwise.

Where the Agent Supervisor's approval is required prior to obtaining the case and billing numbers, (i.e. charge approval, etc.), the approval must be included with the request.

The case and billing numbers must be indicated in the appropriate sections on both the "Statement of Account" and the "Details of Work Performed" 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 "Docket Court" Case Number

Agents may be required to appear in court to speak to routine matters concerning 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.

The Agent must provide a breakdown of activities performed and actual time spent

*submitting accounts*

*fiscal year end*

*case and billing numbers*

*docket court numbers*

# Terms and Conditions of Fixed-Term Agreements of Agents

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” 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 Transferring a File

The case number must accompany the file when a file is transferred from one Agent to another. The recipient of the file must complete a FAR to request a new billing number. The Agent receiving the file must ensure that his or her authority to prosecute is stated in Appendix A of their Agreement.

Matters that do not fall within their designated statutes or judicial districts are assigned by the Agent Supervisor, as stated in section 6.1.1.

## 10.10.6 Statement of Account Form

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

## 10.10.7 Endorsement of Statement of Account

The Agent Firm must endorse the “Statement of Account” 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.”

Consult Schedule D for the “Statement of Account” form and Schedule C for the “Guide to the Preparation and Review of Accounts”.

## 10.10.8 Routing of Accounts

The following instructions on the routing of accounts are subject to instructions from the Agent Supervisor.

If a regulatory prosecution file was received directly from a federal government department, RCMP, municipal or provincial police agency, the “Statement of

*general numbers*

*file transfer*

*statement of account form*

*endorsement*

*routing of accounts*



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Account” form must bear an endorsement from the investigating officer, unless otherwise instructed by your Agent Supervisor.

Once endorsed, the “Statement of Account” form must be submitted to the Agent Affairs Unit-Accounting Operations by the person that endorsed it, unless otherwise instructed by the Agent Supervisor.

### 10.10.9 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 Agent Supervisor has authority to verify an Agent Firm’s accounts with respect to the reasonableness of fees and disbursements. The Agent Affairs Unit-Accounting Operation assists in this process.

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

### 10.12 Goods and Services Tax (GST) and Harmonization Sales Tax (HST)

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

It is the PPSC’s position that an Agent Firm’s treatment of GST, in its bill for legal services, is based on fact and subject to the principles of law. 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:

payment and  
recovery

verification of  
accounts

GST/HST

## Terms and Conditions of Fixed-Term Agreements of Agents

- 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; and
- 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 following address:

Agent Affairs Unit – Accounting Operations  
Public Prosecution Service of Canada  
East Memorial Building  
284 Wellington Street, 1st floor  
Ottawa, Ontario K1A 0H8  
Tel: (613) 957-7474  
Fax: (613) 957-4616

*inquiries*

## Part Eleven: Legal Assistance and Indemnification for Agents

### 11.1 Legal Assistance and Indemnification

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 assessing requests originating from Agents, the Director will assume, initially, that they have met the basic eligibility criteria as described in 11.3.3 unless or until there is information to the contrary.

#### 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 11.3.3 ; or
- the exceptional circumstances as described in 11.3.6; or
- the two qualifying criteria pertaining to parliamentary proceedings, commissions of inquiry, inquests or other similar proceedings as described in 11.3.7; and
- the requirements set out in Schedule G.

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.

*legal assistance and indemnification*

*application*

*initial presumption*

*eligibility*

# Terms and Conditions of Fixed-Term Agreements of Agents

*basic eligibility  
criteria*

## 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/of the Crown; and
- acted within the scope of their duties or functions with respect to the acts or omissions giving rise to the request.

*legal assistance*

## 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.

*indemnification*

## 11.3.5 Indemnification

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

*monetary settlement*

### 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.

*no claim for recovery*

### 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 11.3.3 were met.

*exceptional  
circumstances*

## 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 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 Policy on Legal Assistance and Indemnification.

*proceedings*

### 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.

*retroactive approval*

### 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.

*ineligible requests*

### 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.

*termination and recovery*

### 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.

*reconsideration*

### 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 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.

*private counsel*

## Part Twelve: iCase

Additional Requirements for Agent Firms registered with the iCase Application:

### 12.1 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.

### 12.2 Hardware Requirements

Agent Firms will be provided with the minimum required hardware in order to efficiently utilize the iCase application. The Agent Firm is 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.

### 12.3 iCase Training

Agent Firms using iCase 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 iCase Coordinator will be the point of contact for all administrative issues regarding the business and technical functioning of iCase.

### 12.4 Billing for Administrative Work in iCase

Agent Firms using iCase must designate one or more iCase Administrators.

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

All work related to creating and closing files in iCase must be billed to a *Controlled Drug and Substances Act* (CDSA) file. Whereas drug files can either be billed to the specific file or to a CDSA general file, non-drug files work must be billed to the CDSA general file. Agent Firms using iCase who do not have a CDSA general file

*iCase criteria*

*iCase hardware requirements*

*iCase training*

*iCase administrative billing*

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must create one and obtain a case number and billing number.

## 12.5 Storing specific information in iCase

Agent Firms using iCase 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 in iCase as Participants to the file.
- All charges must be entered against the files, at the completion of the matter all dispositions 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 jurisdiction; 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 both complexity and risk evaluation completed. Risk and complexity must be periodically re-evaluated through the life of the file.
- Files which attract significant national media attention must be flagged with the appropriate “Potential Client Impact” on the “Risk Evaluation” page in iCase, in accordance with section 8.2;
- The fine information (Fine, Fine in Lieu, Fine Surcharge) on the “Monetary” page in iCase as an ordered fine;
- If Prosecution Code Set items 34, 435, or 54 are used, the specific issue must be entered on the “Issues” page of the file;
- Agents are required to add the Agent Firm’s vendor number to the case number for the transferred/waived file in iCase. A new billing number can be requested by submitting a FAR which includes the case number of the transferred/waived file.

## 12.6 Billing/ Billing Forms

Billing the PPSC for services rendered and recoverable expenses is done using two forms - the “Statement of Account” and “Details of Work Performed”.

### 12.6.1 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.

### 12.6.2 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 Unit – Accounting Operations will only process the account upon receipt of the certified copy, together with the original invoices and proof of

*iCase information storage*

*iCase billings and forms*



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payment for all disbursement over \$25.

### 12.7 File for Timekeeping of under one hour

*iCase timekeeping*

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.

### 12.8 Closing Files

*iCase file closure*

Agent Firms using iCase are required to electronically close the file in iCase upon completion of work related to the matter.

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) 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: Workplace Equity Policy For Agents

### Background

Employment equity, as a broad principle, ensures the fair representation and full participation in the workplace of women, aboriginal peoples, members of visible minority groups, and persons with disabilities. Employment equity is achieved by employment practices that prevent and correct disadvantages in employment for these designated groups through special measures, accommodation of differences, and programs to remove barriers to equitable employment opportunities.

Employment equity in the federal context is governed by the *Employment Equity Act*. The purpose of the Act is "to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities in Canada by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences".

### Policy Statement

It is the policy of the Public Prosecution Service to provide equal access to employment and career opportunities to members of the designated groups *i.e.*, women, aboriginal peoples, persons with disabilities and members of visible minority groups and to ensure their equitable representation and full participation in all occupational groups and levels within the Department.

The Public Prosecution Service fully supports employment equity and is committed to undertaking special measures where necessary, to eliminate any disadvantages that may be experienced directly or indirectly by designated group members.

It is also the policy of the PPSC to encourage respect for, commitment to, and implementation of the principles of employment equity by Agents and Agent Firms of the Director of Public Prosecutions. To this end, Agents must, as a condition of their Agreement, comply with the requirements set out in this policy.

### Scope of the Policy: Workplace Equity Principles

This policy embraces the concept of employment equity in its broadest sense and includes the following principles:

1. **employment equity** - *i.e.*, achieving a fair and representative workplace through the elimination of employment barriers and the adoption of positive policies and practices designed to improve representation of the four designated groups: women, Aboriginal peoples, persons with disabilities and visible minorities;

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2. **anti-discrimination** - *i.e.*, eliminating discrimination in the workplace, including harassment on the basis of prohibited grounds of discrimination (including sexual harassment); and
3. **reasonable accommodation** - *i.e.*, taking reasonable steps to accommodate the special needs of members of the designated groups in the workplace (for example, improving accessibility to the workplace, religious observance, parental leave and alternative work arrangements). "Reasonable" imports a duty to accommodate unless it would impose undue hardship on the employer.

This policy will be referred to as the ***Workplace Equity Policy for Agents***.

### Application

This policy applies to Agents and Agent Firms of the Director of Public Prosecutions.

### Policy Requirements

It is recognised that the ability to implement a workplace equity policy is greater in larger firms than in small firms. Therefore, the requirements imposed on Agent Firms under this policy differ according to the size of the firm.

#### I. Firms of 1-20 Lawyers

Law firms or lawyers practising in law firms, of 1-20 lawyers are required as a condition of their Agreement as Agents:

1. to make a commitment in writing to respect the workplace equity principles set out above;
2. to communicate their commitment to all staff within the law firm; and
3. to report on the representation of designated group members among lawyers within the firm at the request of the Agent Supervisor or the Public Prosecution Service.

#### II. Firms of 21 or more Lawyers

Law firms or lawyers practising in law firms, of 21 or more lawyers are required as a condition of their Agreement as Agents:

1. to make a commitment in writing to respect the workplace equity principles set out above;
2. to communicate their commitment to all staff within the law firm;
3. to have and implement a workplace equity policy and action plan that meet the departmental criteria;
4. to collect and record information on the representation and employment status of designated group members within the firm in terms of hiring, promotion, termination and designation as legal agents in relation to other employees, and to collect and record information on the measures taken by the firm to achieve workplace equity goals; and
5. to report such information to the Agent Supervisor or the Public Prosecution

Service upon request.

### Criteria for Workplace Equity Policy and Action Plan

(For Agent Firms with 21 Lawyers or more)

1. Communication by the Contact Agent to all staff of the commitment to achieve equality in employment through the design and implementation of a workplace equity policy and action plan;
2. Collection and maintenance of information on the employment status of designated group employees, by occupation and level and in terms of hiring, promotion, termination and designation as legal agents in relation to all other employees;
3. The requirement for recording this data is to give the firm sufficient information with which to establish objectives and priorities for a workplace equity action plan, and give both the firm and the Department an indication of the results of the firm's subsequent workplace equity initiatives;
4. Analysis of the representation of members of the designated groups within the firm in relation to their representation in the labour force in general or in the supply of qualified workers in the geographic area from which the firm may reasonably be expected to draw staff;
5. Elimination or modification of those human resource policies, practices and systems, whether formal or informal, shown to have an unfavourable effect on members of designated groups;
6. Establishment of a workplace equity action plan setting out:
  - (i) measurable goals and timetables for the hiring, training and promotion of designated group members; and
  - (ii) special measures where necessary to ensure that goals are achieved, including reasonable accommodation as required.
7. Establishment of a climate favourable to the successful integration of designated group members within the organisation; and
8. Adoption of procedures to monitor the progress and results achieved in implementing workplace equity.

## Schedule B: 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*, and
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; and
  - 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;
  - a *McNeil* application for production of third party records, including police misconduct and criminal investigation files;
  - a "medical marijuana" challenge to the prohibition against possession of marijuana and possession of marijuana for the purpose of trafficking;
  - a challenge to the statutory limitation on credit for pre-sentencing custody (*Criminal Code* s. 719(3));
  - a challenge to information sharing or the use of inspection powers to gather evidence in regulatory matters on the basis of *R. v. Jarvis*, [2002] 3 S.C.R. 757, *R. v. Ling*, [2002] 3 S.C.R. 814 and *Quebec (Attorney*

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*General) v. Laroche*, 2002 SCC 72, [2002] 3 S.C.R. 708;

- a challenge where the right to silence is being advanced with respect to information that must be provided as part of an administrative scheme (e.g. income tax demands, fisheries catch reports);
- a *Rowbotham/Fisher* application for state-funded defence counsel;
- the Crown is required to justify a “reverse sting” operation;
- an assertion of official languages rights in a prosecution;
- a prosecution that involves Aboriginal rights’ claims;
- a constitutional challenge to legislation or to federal government programs that are novel (i.e. that is neither routine nor recurring); and
- a constitutional challenge to the use of novel or unusual investigative techniques.

### Noteworthy issues or developments in a case such as:

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. You are 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 agreements;
19. Unusual 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 on-going investigations;
  - materials held by courts in another jurisdiction (e.g., “wiretap” affidavits);

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- modern surveillance techniques (e.g., serial surveillance, videos, infrared devices); and
  - 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);
  - 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 of the *Fisheries Act* and Regulations on the basis of an existing Aboriginal or Treaty fishing right guaranteed by s.35 *Constitution Act, 1982*;
  - the actions of foreign investigators outside of Canada;
  - 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); and
  - other novel constitutional issues.

### Sample Significant Issues Report

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 C: Guide to the Preparation and Review of Accounts

### Part One: Preparation of Accounts

#### 1. General

These are the procedures for Agents not registered with iCase to follow when submitting accounts for prosecution services completed on behalf of the Director.

#### 2. Statement of Account forms

A "Statement of Account" form must be used when presenting an account for prosecution work for payment. The form has two parts: "Statement of Account" and "Details of Work Performed". The Statement of Account summarizes the information detailed in the Details of Work Performed, 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 Prosecution Code Set located in Part II of this section.

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

The purpose of the Statement of Account is to report the total amounts from the attached Details of Work Performed. This 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 Statement of Account 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.)



## Terms and Conditions of Fixed-Term Agreements of Agents

- e) "Firm Name": indicate the name of the Agent or 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 Details of Work Performed;
- i) "Amount Rendered": indicate the total (fees and disbursements) from the attached Details of Work Performed;
- j) "Total Payment": indicate the total amount of all files recorded; and
- k) "Agent, Signature, Date": this certifies that the services described in the attached Details of Work Performed were in fact rendered by the signee or by members of the Agent Firm.
- l) "Reviewed By": applicable to regulatory prosecution files, must be endorsed by the investigating officer. Consult section 10.10.8, Routing of Accounts, for further information.

Various client departments make payments of Agents' accounts. Therefore, when submitting the account forms, it is important to ensure that each Statement of Account refers to a file or files arising under the same statute.

### Part Two: Tasked-Based Billing -- Prosecution Code Set

These are the activity codes to be used by Agents in the "Details of Work Performed" form:

ITEM	Code
Legal Advice / Investigative Assistance *	01
Pre-Charge Preparation	
Ad-hoc Advice / Issues Review and Research	101
Pre-charge Review, Including Search Warrant Review *	11
Communications *	120
Preparation & Fact Review / Analysis *	15
Pre-Charge Disclosure *	16
Pre-Charge Hearings	
Travel to/from <sup>1</sup> / Waiting Time *	21
Attendance at Hearings / Conferences / Meetings*	23
Reporting *	29
Post Charge Preparation	
Post Charge Approval, Review Decision to Prosecute *	31
Preparation of charge approval documents	311
Communications – General *	320
Communications – with Investigation/Enforcement Agencies *	321
Communications – with PPSC (regional Office / Ottawa) *	322
Legal Research *	33
Issues Research / Preparation *	34
Court Preparation & Fact Review / Analysis *	35
Post-Charge Disclosure *	36
Case Disposition Report – completion of report (Billable by administrator at paralegal rate)	382
File Completion (Disposition) Report / work (Lawyer time)	39

## Terms and Conditions of Fixed-Term Agreements of Agents

Post Charge Hearings	
Travel to/from <sup>1</sup>	41
Waiting Time	42
Docket Remands and Scheduling Administration	431
Pleadings, Show Cause and Bail Review Hearings	432
Attendance at Conferences / Meetings	433
Attendance at Preliminary Enquiry	434
Attendance at Issues / Motions Argument	435
Attendance at Trial	436
Attendance at Sentencing	437
Attendance at 490 Application Hearings	438
Attendance at Asset Forfeiture / Destruction Applications	439
Reporting *	49
Appeals <sup>2</sup>	
Decision to Appeal / Preparation of Documents	51
Communications *	520
Legal Research *	53
Issues Preparation *	54
Preparation and Fact Review / Analysis *	55
Travel to/from Appeal <sup>1</sup> / Waiting Time *	56
Attendance at Appeal *	572
Reporting *	59
Post Case Completion work *	60
Fine Recovery <sup>3</sup> *	70

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

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

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

\* – All work using this Prosecution 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 Witness costs), and Court Reporter
- 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
- 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.
- Witness Costs
- Other - Must have details in the notes field including type of disbursement, costs and, if required, permission from the agent supervisor



# Terms and Conditions of Fixed-Term Agreements of Agents

## Schedule E: Details of Work Performed form



Public Prosecution Service  
of Canada

Service des poursuites pénales  
du Canada

Agent's reference no. No de dossier du mandataire
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### DETAILS OF WORK PERFORMED (DWP) – DESCRIPTIONS DÉTAILLÉES DU TRAVAIL ACCOMPLI (DDTA)

FEES-HONORAIRES					
Case No. – N° d'attribution de dossier		Billing No. – N° de facturation		Name of File or Name(s) of Accused – Titre du dossier ou Nom(s) de(s) l'accusé(s)	
File Charges – infraction du dossier				File Status – État du dossier on going / en cours <input type="checkbox"/> completed / terminé <input type="checkbox"/> Date completed / Dossier terminé <input type="checkbox"/>	
				D – J    M    Y – A	
Date (D-J / M / Y-A)	Counsel's Initials Initiales de l'avocat	Activity Activité	Hours Heures	Additional Detail as Required Détail tel que demandé	

Lawyer's Initials Initiales de l'avocat	Name of Counsel / Paralegal / Student Nom de l'avocat / parajuriste / étudiant	Total Hours Heures totales	Rate Taux	Amount Montant
TOTAL FEES - HONORAIRES				
GST/HST – TPS/TVH				
1 – TOTAL (FEES & GST/HST) – TOTAL (HONORAIRES ET TPS/TVH)				

DISBURSEMENTS - DÉCAISSEMENTS					
Date (D-J / M / Y-A)	Expense Dépense	Additional Details as required Détail tel que demandé	Taxable Amount Montant Taxable (A)	GST/HST TPS/TVH (B)	
TOTAL DISBURSEMENTS – DÉCAISSEMENT (A)					
TOTAL GST/HST – TPS/TVH (B)					
2 – TOTAL (DISBURSEMENT & GST/HST) – TOTAL (DÉCAISSEMENTS ET TPS/TVH)					
3 – TOTAL (FEES & DISBURSEMENTS) / TOTAL (HONORAIRES ET DÉCAISSEMENTS) (1 + 2)					

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# Terms and Conditions of Fixed-Term Agreements of Agents

## Schedule F: File Assignment Report form



Public Prosecution Service  
of Canada

Service des Poursuites Pénales  
du Canada

Agent File No. - N° du fichier :

### FILE ASSIGNMENT REPORT RAPPORT D'ATTRIBUTION DE DOSSIER

THIS FORM IS TO BE COMPLETED FOR CRIMINAL PROSECUTION STANDING AGENTS ONLY CE FORMULAIRE S'APPLIQUE AUX POURSUITES PÉNALES - REPRÉSENTANTS PERMANENTS SEULEMENT		Trial Location - Lieu du procès		Offence Location - Lieu de l'infraction	
File Assigned by Dossier attribué par		Date File Assigned Date d'attribution du dossier		D-J M Y-A	
Officer Type - Type d'officier		Officer Name - Nom d'officier		Telephone No. - N° de téléphone	
File Complexity Complexité du dossier		Police/Client/DOJ File # N° du dossier		Information Number N° d'information	
Risk Evaluation - Évaluation du risque					
Client Address - Adresse du client		** Transfer / Waiver from: - *Transfert / Retrait de : Location - Lieu			
		Previous Agent Mandataire précédent			
		Previously Assigned Case No. N° du dossier déjà attribué			
File Accused Names(s) - Nom(s) d'accusé(s) Last Name - Nom de famille Surname-Prénom		File Charges - Infraction(s) du dossier Statute - Loi Section Substance / Identification			
File Co-Accused Names(s) - Nom(s) d'accusé(s) Last Name - Nom de famille Surname-Prénom		File Charges - Infraction(s) du dossier Statute - Loi Section Substance / Identification			
Firm Vendor No. - N° de la firme		Firm Name - Nom de la firme			
<b>Agent - Mandataire</b>					
Address - Adresse:		City - Ville:			
		Province:			
		Phone Téléphone :			
Postal Code Code Postal:		Fax Télécopieur:			
Authorized Counsel Assigned to the File Mandataire autorisé au dossier:		No.		Name - Nom	
Completed By Complété par					
File Notes - Notes au dossier					

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### Schedule G: Legal Assistance and Indemnification Process

In order to be considered for legal assistance and indemnification, an Agent is required to:

- a) 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;
- b) 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;
- c) submit a request for legal representation or indemnification to the Director. The request should include how the Agent meets the applicable criteria and should specify if the request is for legal assistance, indemnification or both;
- d) 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;
- e) 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;
- f) make a written factual report to the Director of the incident leading to the request for legal assistance or indemnification; and
- g) 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 in offence cases, 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 is to be made and 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.

## Terms and Conditions of Fixed-Term Agreements of Agents

### Authorization for Legal Assistance and Indemnification Form

I, (agent's name), of the City of (city/town/township), in the (province/territory) of (name of province/territory), person acting as federal prosecutor pursuant to subsection 7(2) and 9(1) of the *Director of Public Prosecutions Act*, and in accordance with the *FPS Deskbook* and the Terms and Conditions of Fixed-Term Agreements of Agents, hereby authorize the Attorney General of Canada, and/or the Director or such other person as may be designated by the Attorney General, or the Director or a delegate thereof, to defend the action against me by \_\_\_\_\_ in the \_\_\_\_\_ Court, \_\_\_\_\_ Division (Court File No. \_\_\_\_\_) and to take such actions and conduct such proceedings as the Director or counsel designated to represent me may consider necessary to defend the action on my behalf and to protect the interests of the Director and/or of the Crown.

I have read and understood Part Eleven of the Terms and Conditions. If at any time during or after the proceedings it becomes apparent that I did not act in accordance with the eligibility criteria outlined in Part Eleven of the Terms and Conditions, the Director may terminate legal assistance and may initiate recovery action for an amount equal to the legal assistance provided or the indemnification paid, which shall constitute a debt owed to the Crown.

Should any judgment or decision result in an award of costs to me, I hereby authorize and direct the payment of any such amounts directly to the Director and/or the Crown.

In this regard, I expressly waive solicitor-client privilege in favour of the Crown and the following co-defendant(s) who is/are also represented by the Attorney General of Canada and/or the Director, (insert name(s)) and I agree to a mutual sharing of material information with the Crown (and between these co-defendants). I understand, however, that counsel representing me will treat all communications between us in confidence to the extent possible consistent with counsel's obligation to protect the interests of the Crown. Where information provided by me in confidence is disclosed in the interests of the Crown, it is subject to the condition that it shall not be used by the Crown in any disciplinary or civil action against me.

I have been informed, and I understand, that I have the right to terminate this retainer at any time and to retain and instruct private counsel at my own expense. I have further been informed, and I understand, that should a conflict arise between my interests and those of the Crown (or any of the co-defendant(s) named above) at any time during this litigation, it will be necessary for me to retain private counsel.

\_\_\_\_\_  
Requester's Signature

DATED at (location), this (date) day of (month), A.D., (year).