



Process for Obtaining Legal Counsel in Child Protection Matters

*This document outlines the process that Health and Social Service Authorities must follow to obtain legal counsel in their contested Child Protection matters, and what legal services will be paid for by the Department of Health and Social Services. *This process is not necessary for engaging the Office of the Children's Lawyer.*

The acquisition of legal services through this process can only be requested for **contested child protection cases** unless otherwise supported by the Deputy Director of Practice. Legal counsel should be retained on contested cases immediately, in order to resolve matters promptly and to prevent proceeding to trial.

Services eligible for payment include:

- Pre-trials;
- Appearances on contested matters;
- Court hearing preparation;
- Preparation for trial, not including file organization;
- Preparation of witnesses (child protection workers or designates must provide witness contact numbers, addresses and summary of facts that the witness will testify to);
- Court time;
- Lawyer's issuing subpoenas to witnesses;
- O'Connor applications made during an active case (requests by the Crown for child protection file information to use in a criminal proceeding on closed and inactive files);
- Preparation of court orders, including adjournment orders;
- Negotiating contested cases as alternative to going to trial;
- Mediation or other form of Alternative Dispute Resolution; and
- Appeals on child protection hearings or matters.

Services ineligible for payment include:

- Preparation of court documents, including Originating Notice, Notice of Motion and Affidavit;
- Appearance on uncontested matters unless supported by the Deputy Director of Practice;
- Reviewing court documents prior to Supervisor/Manager completing;
- Service of court documents;
- Preparation of Affidavit of Service or Affidavit of Attempted Service;
- Organization of file prior to hearing;

- Legal research on child protection issues resulting from improper preparation/handling by the Authority; and
- Any other duties that are the responsibility of the Child Protection Worker, Supervisor/Manager or Region.

Note:

The Child Protection Worker/Designate and the Supervisor/Manager will continue to complete court work as outlined in Section 5 of the Child and Family Services Standards and Procedures Manual.

Obtaining Legal Counsel for Contested Child Protection Matters

Child Protection Worker/Designate:

1. The Child Protection Worker/Designate will consult with the Supervisor/Manager to determine if they need legal counsel to represent them in their **contested** child protection matter.
2. The Child Protection Worker/Designate will follow the ***Right of Refusal** process when it is determined that legal counsel is or may be required to represent them on their contested child protection matter. The process is to contact the first law firm on the list below. If the first law firm is unable or unwilling to accept the file, contact the second law firm on the list etc. until legal counsel is secured.

The legal counsel approved list is as follows:

1. **Shannon Gullberg** (Director's Legal Counsel) - telephone (867) 445-5543 or email shannong@theedge.ca
2. **Dragon Toner** - telephone (867) 873-6000/(867) 446-0265 or email sheldon@dragontoner.ca

Supervisor/Manager:

1. The Supervisor/Manager will forward the **Legal Counsel Request form** to the Deputy Director of Practice at NTHSSA_CFS@gov.nt.ca requesting approval to obtain legal counsel if a law firm is available to provide representation. The **Legal Counsel Request form** must answer the following:
 - Which law firm from the **Legal Counsel Approved List** is willing to accept the file;
 - Why legal counsel is requested;
 - Which child(ren) is included as part of the case, including their MatrixNT number;
 - Whether or not the child over 12 years of age is represented by legal counsel;
 - Whether or not the parent(s)/guardian(s) in the matter are represented by legal counsel;
 - What relief is being sought, e.g.; what type of order is being requested; and
 - Any other information that may be pertinent to making a decision about approval for obtaining legal counsel.

2. In emergency situations only, the Supervisor/Manager will contact the Director/Deputy Director at the Department at **(867) 445-6253** for approval to obtain legal counsel. The right of first refusal process still applies in these situations.
3. In non-contested child protection matters that require the services of legal counsel, the Supervisor/Manager will consult with the Deputy Director of Practice for approval. The right of first refusal process still applies in these situations.

Deputy Director – Practice:

1. The Deputy Director of Practice will respond to Supervisor/Manager’s requests to obtain legal counsel by the following business day with an email confirming that the Region’s request was forwarded to the Department for processing.
2. The Deputy Director of Practice will forward the ***Legal Counsel Request form*** on behalf of the Supervisor/Manager to the Director/Deputy Director at the Department at CFS_Director@gov.nt.ca for final approval.

Director/Deputy Director – Department:

1. The Director/Deputy Director at the Department will respond to the Deputy Director of Practice’s request by the following business day with an email confirming whether or not approval has been provided.
2. The Director/Deputy Director at the Department will forward the confirmation email to the law firm that has been approved to provide the service for their records.
3. The Deputy Director at the Department will maintain and monitor a database of all *Legal Services Requests and Approvals*.

Note:

The Child Protection Worker/Designate is to consult with the Supervisor/Manager for general legal inquiries and the services that are ineligible for payment. If they are unable to address the inquiries, consult with the NTHSSA’s Training and Practice Leads for further direction and support.

***Right of Refusal:** The “Right of Refusal” process is in place to ensure the Director’s Legal Counsel is provided first and foremost the opportunity to represent the Director in Child and Family Services matters. Workers seeking legal counsel must contact the Director’s Legal Counsel first and if they decline the matter (regardless of the reason) the worker can then contact the next Legal Counsel (Dragon Toner) on the list above.