

Legal Services

Outside Counsel Contracts & Billing

The Minister of Justice, being responsible for providing legal services to the Government of Yukon, ensures that procedures are in place to ensure financial accountability of Outside Counsel¹ contracts and the payment of the resultant invoices. The procedures described in this internal finance unit process document have been adopted to ensure that the administration of outside counsel contracts meet the business objective of the Legal Services Branch with respect to solicitor/client privilege, while balancing the department's responsibility to account for the expenditure of public funds.²

Overview

This process applies to contracts entered into for the provision of Legal Services for Outside Counsel and subsequent invoices. There are the two types of Legal Service contracts administered by the Department of Justice Legal Services which are entered into in accordance with Outside Counsel Policy (*Appendix A*), Legal Services Branch, and Department of Justice:

- **Services on behalf of Government of Yukon.** These contracts are done on behalf of the Yukon government departments³ and are billed back to the client department in the form of a JV. The invoices for these contracts are subject to the same financial scrutiny as any other contract entered into on behalf of the Government of Yukon. (see *Appendix B -Retainer Letter Template – 318020 Hourly*)
- **Services on behalf of Department of Justice.** These contracts are done on behalf of the Yukon government departments. The invoices for these contracts are subject to the same financial scrutiny as any other contract entered into on behalf of the Government of Yukon. (see *Appendix B -Retainer Letter Template – 318010 Hourly*)

Both retainer letters contain the following clause under General Conditions:

- Where there is a conflict between a provision of this letter and the Government of Yukon standard form Government Contract, this letter governs.

¹ Legal Counsel retained by Legal Services Branch to provide legal services as defined in the Legal Professions Act for individual matters, which Legal Services requires on an a case-by-case basis, where Legal Services Branch is unable to supply legal service required through in-house lawyers who is a Department of Justice employee.

² The authority for this policy is section 6 and 7 of the *Department of Justice Act*, and the *Legal Profession Act* and section 5(c) of the *Contracting and Procurement Regulation and Contracting and Procurement Directive*.

³ "Department" includes the Yukon Housing Corporation, the Yukon Liquor Corporation, Lotteries Yukon and Occupational Health and Safety Branch, Yukon Workers Compensation Health and Safety Board.

Purpose and Principles

Outside Counsel Contracts aren't standard Government of Yukon contracts even though some of the terms and conditions are the same. These contracts are classified as *Legal Confidential* and are subject to solicitor/client privilege and any legislation that governs contracts for legal services. This process document sets out how the Department of Justice applies:

- appropriate section 29 and 30 signing authorities to pay outside counsel invoices while still safeguarding solicitor/client privilege, and the *ATIPP act*;
- appropriate levels of financial accountability with regards to the *Financial Administration Act*, the *Financial Administration Manual* and the Contracting and Procurement Regulation and Contracting and Procurement Directive are met.

Invoices provided against Outside Counsel Contracts are reviewed and approved to be paid based on the principles set forth in the *Legal Professions Act* 73(1)' Factors for review of bills'⁴.

Roles and Responsibilities

Legal Services:

Ensures an established set of procedures and practices are in place to provide oversight of both sets of outside counsel contracts, and that each outside counsel contract has an in-house counsel immediately appointed to oversee the work performed.

In the administration of contracts where Yukon government is the client:

- oversight is provided by the appointed in-house counsel. Outside counsel keep the in-house counsel apprised of developments within the contract work on a regular basis. All fees and disbursements detailed on invoices relating to an outside counsel contract are reviewed by both in-house counsel and the client department contact. Approval to pay is given if the invoices align with the work performed and are considered reasonable given the factors for review of bills outlined in the retainer letter which forms part of the contract. The ADM, Legal Services or a delegate then signs Section 29 payment authority.⁵

⁴ 73(1) On any review of a bill or an agreement under this Part, the reviewing officer shall have power to determine what are the reasonable fees and disbursements for the services rendered and whether the person charged with the bill is liable to pay all or any part of the bill, and in making that determination the reviewing officer shall take into account all relevant factors including:

- (a) any agreement between the member and their client in respect of the services, and the circumstances of the making of that agreement;
- (b) the extent and character of the services rendered;
- (c) the labour exerted and the time spent;
- (d) the character and importance of the matter in respect of which the services were rendered;
- (e) the amount of money or the value of the property involved;
- (f) the skill and experience of the member rendering the service;
- (g) the reason the disbursement was incurred;
- (h) the results achieved.

⁵ Chapter 5 Accounting and Control of Expenditures, Section 5.5 Signing Authorities Amended: 04/2013, 5.5.2 Policy

1. No payment out of the consolidated revenue fund shall be made without the certification by appropriate public officers pursuant to Sections 24 (certification prerequisite for contracts), 23 (contracting), 29 (certificate of performance) and 30 (requisition for payment) of the *Financial Administration Act*.

- Travel by outside counsel is at the request of the client as needed or for court appearances and travel disbursement will be charged against the contract, copies of receipts for travel will not be required.

Department of Justice Finance Unit:

Facilitates payment of invoices against outside counsel contracts:

- as per Outside Counsel contracts, services ("fees") provided are not subject to sales tax⁶. Disbursements on detailed invoices which reflect the expenditure of sales tax are paid.
- by section 30 (Payment Authority) as defined in the *Financial Administration Act* for invoices issued against contracts issued for the practice of law as defined by the *Legal Professions Act* without requiring invoices for 3rd party disbursements being provided to the finance unit, with respect to the solicitor/client privilege
- through maintenance of sub ledger coding to identify in the financial system the two distinct types of Outside counsel contracts.

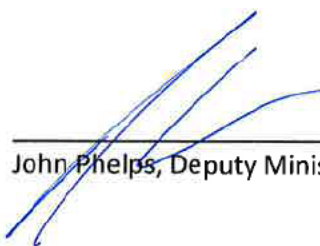
The processes and procedures described in this document have been adopted on March 3, 2020 by Legal Services and the Department of Justice Finance unit.



Mark Pindera, ADM Legal Services



Luda Ayzenberg, Director Finance, Systems, Administration and Records



John Phelps, Deputy Minister, Justice

⁶ "Please note that the legal services purchased through this retainer are being obtained for a public purpose and paid for with public funds. I hereby certify that the services supplied to Government of Yukon are not subject to sales tax (GST or HST). The exemption is provided by section 5 of the Canada – Yukon Reciprocal Taxation Agreement and can be viewed at: <http://www.finance.gov.yk.ca/faq.html>."

Legal Services

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The Minister of Justice, being responsible for providing legal services to the Government of Yukon, ensures that procedures are in place to ensure financial accountability of Outside Counsel¹ contracts and the payment of the resultant invoices. The procedures described in this internal finance unit process document have been adopted to ensure that the administration of outside counsel contracts meet the business objective of the Legal Services Branch with respect to solicitor/client privilege, while balancing the department's responsibility to account for the expenditure of public funds.²

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- **Services on behalf of Government of Yukon.** These contracts are done on behalf of the Yukon government departments³ and are billed back to the client department in the form of a JV. The invoices for these contracts are subject to the same financial scrutiny as any other contract entered into on behalf of the Government of Yukon. (see *Appendix B - Retainer Letter Template – 318020 Hourly*)
- **“Third Party Client” contracts.** These contracts are issued when the court directs that an individual before the court be provided with court-appointed counsel. These contracts are managed based on individual agreements that Legal Services enters into with the Government of Canada to provide unbiased legal services to a third party. The funds to provide these services are invoiced back to Canada based on the terms and conditions of the individual agreements with Canada and can vary from case to case. Oversight of the invoices for the subsequent outside counsel contracts are governed by the terms of the agreement with Canada in order to ensure the state does not interfere with the ability of counsel to defend its client and client privilege. A second retainer letter template is used for this type of contract (*Appendix C - Retainer Letter Template – Court Appointed Counsel*)

Both retainer letters contain the following clause under General Conditions:

¹ Legal Counsel retained by Legal Services Branch to provide legal services as defined in the Legal Professions Act for individual matters, which Legal Services requires on an a case-by-case basis, where Legal Services Branch is unable to supply legal service required through in-house lawyers who is a Department of Justice employee.

² The authority for this policy is section 6 and 7 of the *Department of Justice Act*, and the *Legal Profession Act* and section 5(c) of the Contracting and Procurement Regulation and Contracting and Procurement Directive.

³ “Department” includes the Yukon Housing Corporation, the Yukon Liquor Corporation, Lotteries Yukon and Occupational Health and Safety Branch, Yukon Workers Compensation Health and Safety Board.

- Where there is a conflict between a provision of this letter and the Government of Yukon standard form Government Contract, this letter governs.

Purpose and Principles

Neither Outside Counsel Contracts are standard Government of Yukon contracts even though some of the terms and conditions are the same. These contracts are classified as *Legal Confidential* and are subject to solicitor/client privilege and any legislation that governs contracts for legal services. This process document sets out how the Department of Justice applies:

- appropriate section 29 and 30 signing authorities to pay outside counsel invoices while still safeguarding solicitor/client privilege, and the *ATIPP act*;
- appropriate levels of financial accountability with regards to the *Financial Administration Act*, the *Financial Administration Manual* and the Contracting and Procurement Regulation and Contracting and Procurement Directive are met.

Invoices provided against Outside Counsel Contracts are reviewed and approved to be paid based on the principles set forth in the *Legal Professions Act 73(1)*⁴ Factors for review of bills⁴.

Roles and Responsibilities

Legal Services:

Ensures an established set of procedures and practices are in place to provide oversight of both sets of outside counsel contracts, and that each outside counsel contract has an in-house counsel immediately appointed to oversee the work performed.

In the administration of contracts where Yukon government is the client:

- oversight is provided by the appointed in-house counsel. Outside counsel keep the in-house counsel apprised of developments within the contract work on a regular basis. All fees and disbursements detailed on invoices relating to an outside counsel contract are reviewed by both in-house counsel and the client department contact. Approval to pay is given if the invoices align with the work performed and are considered reasonable given the factors for

⁴ 73(1) On any review of a bill or an agreement under this Part, the reviewing officer shall have power to determine what are the reasonable fees and disbursements for the services rendered and whether the person charged with the bill is liable to pay all or any part of the bill, and in making that determination the reviewing officer shall take into account all relevant factors including:

(a) any agreement between the member and their client in respect of the services, and the circumstances of the making of that agreement;

(b) the extent and character of the services rendered;

(c) the labour exerted and the time spent;

(d) the character and importance of the matter in respect of which the services were rendered;

(e) the amount of money or the value of the property involved;

(f) the skill and experience of the member rendering the service;

(g) the reason the disbursement was incurred;

(h) the results achieved.

review of bills outlined in the retainer letter which forms part of the contract. The ADM, Legal Services or the Manager, Branch Operations then signs Section 29 payment authority.⁵

- Documentation for all other third party disbursement will require supporting documentation exceeding the amount identified in the retainer letter. (*Appendix B*)
- Travel by outside counsel is at the request of the client as needed or for court appearances and travel disbursement will be charged against the contract, copies of receipts for travel will not be required.

In the administration of "Third Party Client" contracts (including contracts for Court Appointed Council):

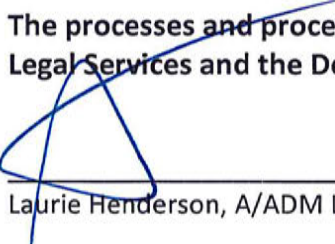
- in-house counsel is appointed to ensure that invoices received are reasonable according to the nature of the case, bearing in mind the discretion not to interfere with the outside counsel's ability to defend his/her client. Once an invoice is approved by the in-house counsel, the ADM, Legal Services or the Manager, Branch Operations will signs Section 29 authority.
- Documentation for all other third party disbursement will require supporting documentation exceeding the amount identified in the retainer letter. (*Appendix C*)


Department of Justice Finance Unit:

Facilitates payment of invoices against outside counsel contracts:

- as per Outside Counsel contracts, services ("fees") provided are not subject to sales tax⁶. Disbursements on detailed invoices which reflect the expenditure of sales tax are paid.
- by section 30 (Payment Authority) as defined in the *Financial Administration Act* for invoices issued against contracts issued for the practice of law as defined by the *Legal Professions Act* without requiring invoices for 3rd party disbursements being provided to the finance unit, with respect to the solicitor/client privilege
- through maintenance of sub ledger coding to identify in the financial system the two distinct types of Outside counsel contracts.

The processes and procedures described in this document have been adopted on January 12, 2016 by Legal Services and the Department of Justice Finance unit.


Laurie Henderson, A/ADM Legal Services


Verena Hardtke, Director Finance, Systems,
Administration and Records

⁵ Chapter 5 Accounting and Control of Expenditures, Section 5.5 Signing Authorities Amended: 04/2013, 5.5.2 Policy

1. No payment out of the consolidated revenue fund shall be made without the certification by appropriate public officers pursuant to Sections 24 (certification prerequisite for contracts), 23 (contracting), 29 (certificate of performance) and 30 (requisition for payment) of the *Financial Administration Act*.

⁶ "Please note that the legal services purchased through this retainer are being obtained for a public purpose and paid for with public funds. I hereby certify that the services supplied to Government of Yukon are not subject to sales tax (GST or HST). The exemption is provided by section 5 of the Canada – Yukon Reciprocal Taxation Agreement and can be viewed at: <http://www.finance.gov.yk.ca/faq.html>."



Justice

Legal Services Branch

- Aboriginal Law Group
- Legislative Counsel Office
- Litigation Group
- Natural Resources and Environmental Law Group
- Solicitors Group

PRIVILEGED AND CONFIDENTIAL

Dear _____ :

RE: YUKON GOVERNMENT CONTRACT –

This is to confirm that we are retaining you as counsel to provide legal services and advice with respect to _____. Your client is Government of Yukon.

General Conditions:

It is understood that this letter is attached to, and forms part of, the enclosed Government of Yukon standard form Government Contract. We require that you sign the enclosed Government of Yukon standard form Government Contract and return it to our office. We will provide you with a fully signed copy of the Government of Yukon standard form Government Contract in due course.

Please note that paragraphs 1 and 2 of the attached standard form Government Contract do not apply to this retainer. As well, paragraph 8, in both the English and French versions of the standard form Government Contract, should be read as if the words ", in the opinion of the government," and in the French version, ", de l'opinion du gouvernement," have been struck.

It is understood that this Government Contract is subject to the provisions of the *Financial Administration Act*. In that regard, your attention is particularly drawn to ss. 24(2) and 26 of that Act.

Where there is a conflict between a provision of this letter and the Government of Yukon standard form Government Contract, this letter governs.

[**alternate 1:** We have your assurance that you and your firm have no conflicts of interest concerning the matters involved in this retainer.] [**if necessary:** In addition we confirm that your firm may represent other parties in an adverse position except to the extent prevented from doing so by professional rules of conduct.]

[**alternate 2:** You have advised us that you or your firm may be acting against the interests of Government of Yukon in an unrelated matter, or matters. Government of Yukon waives the conflict on the understandings that:

1. you will not act against the interests of Government of Yukon on a matter related to this specific retainer; and
2. that neither you, nor your firm, will use information obtained by you through this retainer against Government of Yukon.]

We recognize that in the interest of efficiency, you may delegate aspects of this matter to your associates and/or staff members. Nonetheless, we selected you because of your expertise and we expect that you will personally retain overall responsibility for the conduct of this matter.

You should be aware that, to the extent the performance of this retainer involves practicing law in Yukon, you may need to obtain permission to act on this matter from the Law Society of Yukon. You should be aware that Law Society of Yukon is **not** signatory to the National Mobility Agreement. Accordingly, you may have to become a member of the Yukon Bar, or you may have to obtain a Certificate to Act. Information about the Law Society of Yukon and its requirements can be found online at: <http://www.lawsocietyyukon.com/>.

Please note that we cannot pay you for your services if you fail to comply with the requirements of the *Legal Profession Act* or the Rules of the Law Society of Yukon regarding the practice of law in Yukon.

Department of Justice Role:

By s. 6 of the *Department of Justice Act*, all legal services to Government of Yukon must be provided through the Minister of Justice. Accordingly, your retainer is to provide legal services as an agent of the Minister of Justice. Your retainer is subject to the provisions of the Outside Counsel Policy. A copy of same will be provided to you on request.

Instructing Department:

This retainer has been made on behalf of [department]. The person at [department] from whom you will take instructions is:

[name], [position]
Tel: (867) ; Email: @gov.yk.ca.

If that changes, we will let you know.

Monitoring In-House Lawyer:

The in-house lawyer at the Department of Justice who will be monitoring this matter will be .

can be reached at: (867) or @gov.yk.ca.

In the event that your in-house lawyer contact at the Department of Justice changes, we will let you know.

Including In-House Lawyer on Communications:

All communications and advice given to any employees of the Government of Yukon, or its agents, **must** be copied to your in-house lawyer contact at the Department of Justice. Please be advised that the in-house lawyer will be assessing your performance on this retainer on an on-going basis.

Please note that the in-house lawyer must receive copies of all communications/documents and advice referred to in an invoice provided by you on this retainer before that invoice will be paid.

Oral advice or opinions relevant to this retainer given to any person employed by Government of Yukon, or its agencies, where the in-house lawyer was not present or on the call, must be followed up with a summary e-mail from you to the in-house lawyer, and to any other Government of Yukon persons involved.

Billings:

This is a retainer based on the time spent by you working on this matter. As discussed, we are retaining your services in this contract at the billing rate of \$ per hour.

In the event that other lawyers in your firm also work on this matter, in no event shall their billing rate exceed yours, or the amount set out in the Outside Counsel Policy, except with my written consent.

The sum total to be billed under this retainer on account of fees and disbursements cannot exceed the maximum amount of \$_____, except with my approval given in writing. The amount for disbursements **must not** exceed \$_____ without my agreement in writing. **Any amount in excess that I have not approved will not be paid.**

In general, you will bill us monthly for fees and disbursements. Your invoices should include a detailed daily account of the number of hours that you, your partners, or your associates have worked on this matter and your invoices should set out the billing rate of each person who has worked on this matter. We do **not** pay hourly rates for paralegals, secretaries, or other support personnel.

Disbursements **must not** include overhead costs such as expenses from overtime work, secretarial services, word-processing services, training services, or other similar items.

Large, or unusual disbursements, **must** be approved in writing by the in-house lawyer, or me, prior to them being incurred.

Photocopying costs **must not** exceed \$.30/page.

It is understood that any travel related disbursements can only be charged if travel occurred on request of the client department, in-house lawyer or me. Court dates are considered on request.

If there are any questions in relation to disbursement amounts, they should be addressed in advance with the in-house lawyer or with me.

Please note that the legal services purchased through this retainer are being obtained for a public purpose and paid for with public funds. I hereby certify that the services supplied to Government of Yukon are not subject to sales tax (GST or HST). The exemption is provided by section 5 of the Canada – Yukon Reciprocal Taxation Agreement and can be viewed at: <http://www.finance.gov.yk.ca/faq.html>.

Please submit your invoices on this retainer to the attention Heike Fraser, Manager, Branch Operations, Legal Services Branch. We also accept invoices by fax (867-393-6379) and by e-mail (heike.fraser@gov.yk.ca)

Please quote the contract number referenced above on all invoices.

Deadline for Billings:

This contract ends on March 31, 2016. No services should be rendered by you, nor should any disbursements be incurred by you, after that date under this contract as they will not be paid.

We will require your final invoice for services rendered up to March 31, 2016 no later than April 4, 2016. Invoices covering services rendered, or disbursements incurred, before March 31, 2016 that are received after April 4, 2016 will not be paid.

If you have any questions about this contract, please feel free to contact our office.

Yours truly,

Mark Pindera
Assistant Deputy Minister, Legal Services
Yukon Department of Justice

MP/hf

Encl. (1)

c. [Client]
c. [In-House Counsel]

OUTSIDE COUNSEL POLICY

Legal Services Branch
Department of Justice

STATEMENT OF POLICY

The Minister of Justice is responsible for providing legal services to the Government of Yukon. This includes retaining, monitoring and assessing the work of outside counsel.

AUTHORITY

The authority for this policy is section 6 of the *Department of Justice Act*, which states that the Minister of Justice "... is the legal advisor of the Commissioner and the Government of the Yukon ..."

PURPOSE

The purpose of this policy is to maximise the value of legal services to the government and to ensure that legal services are provided within a consistent legal framework.

The "Guidelines for Retaining, Monitoring and Assessing Outside Counsel" attached as Appendix A forms a part of this policy.

POLICY OBJECTIVE

The objective of this policy is to ensure that the Government of Yukon's legal needs are met cost-effectively within a cohesive legal policy framework.

APPLICATION

This policy applies to each department¹ of the Government of Yukon that requires outside counsel to provide legal services.

APPROVAL AUTHORITY

The retention of outside counsel for the Government of Yukon requires the approval of the Department of Justice.

¹ "Department" includes the Yukon Housing Corporation, the Yukon Liquor Corporation, Lotteries Yukon and the Occupational Health and Safety Branch, Yukon Workers Compensation Health and Safety Board.

MONITORING THIS POLICY

This policy will be monitored for compliance and may be amended by the Legal Services Branch from time to time.

ENQUIRIES

For further information about this policy, please contact the Legal Services Branch at 667-5412. This policy is also available on the Legal Services Branch client website at <http://internal.gov.yk.ca/depts/jus/lbs.html>.

Appendix A

Guidelines for Retaining, Monitoring, and Assessing Outside Counsel

Background

The Minister of Justice is responsible for providing legal services to the Government of Yukon. This includes retaining, monitoring, and assessing the work of outside counsel.

The Department of Justice's Legal Services Branch ("Legal Services") provides a wide array of legal services to the government through an in-house legal team and outside counsel. As a result of the *Department of Justice Act*, outside counsel are retained by Legal Services in consultation with, and sometimes at the request of, a client department².

Purpose

The purpose of these Guidelines is to detail for Legal Services staff, and for our clients, Legal Services' role in retaining, monitoring, and assessing outside counsel.

These Guidelines will help to ensure that the process by which outside counsel are retained, monitored, and assessed is fair, efficient, well-documented, and known to all Legal Services staff and client departments.

These Guidelines are intended to apply to the hiring of outside counsel who are retained to provide legal services and engage in the practice of law (as defined in the *Legal Profession Act*) as opposed to other services such as acting as a policy advisor, a negotiator or mediator.

Prior to Retaining Outside Counsel

Client departments must contact Legal Services with respect to all their legal service needs. The client should contact Managing Counsel or the Assistant Deputy Minister responsible for Legal Services ("the ADM"). Please see the Legal Services Client website for a complete contact list: <http://internal.gov.yk.ca/depts/jus/lbs.html>.

After being contacted by a client, Managing Counsel will determine if there is a Legal Services lawyer in their group who is able to handle the matter or case. If not, then Managing Counsel will determine, in consultation with the Legal Services' management team, whether another practice group can provide counsel.

² "Client department" means a Government of Yukon department as well as the Yukon Housing Corporation, the Yukon Liquor Corporation, Lotteries Yukon and the Occupational Health and Safety Branch of the Yukon Workers Compensation Health and Safety Board.

April 1, 2012

If it is not possible to assign a Legal Services lawyer to the matter then the ADM or Managing Counsel will assist the client department to find a suitable outside counsel who will be retained by Legal Services on behalf of the client department.

Reasons for Retaining Outside Counsel

The typical reasons for retaining outside counsel are

- the situation is urgent and the requirements of the matter or case exceed Legal Services' resources;
- the matter is of such a magnitude that it would not be possible for Legal Services to provide services while continuing to meet the needs of other clients;
- the work requires expertise not available within Legal Services;
- the use of a Legal Services lawyer may cause a conflict of interest;
- it is more cost-effective to have outside counsel perform the work than Legal Services; or
- special circumstances exist that require a particular lawyer or law firm.

Selecting Outside Counsel

Legal Services, in consultation with the client department, selects the most appropriate outside counsel to perform the legal services required.

There are a number of factors that are considered in determining which outside counsel or law firm should be selected by Legal Services for any particular matter or case, including

- the counsel or law firm's
 - expertise, experience and capability to do the work,
 - knowledge of government practices and procedures,
 - knowledge of Yukon legal practice and procedure;
 - willingness to provide a cost estimate of the work,
 - hourly rate including their willingness to offer a discounted rate;
- the absence of a conflict of interest by the counsel or law firm preventing them from acting for the Government of Yukon; and
- whether the counsel or law firm is currently involved in any proceedings or matters against the Government of Yukon.

Before the retainer letter is sent to the selected outside counsel, Managing Counsel or the ADM will have

- spoken with the client department about identifying a contact person within the client department and about the conditions of the retainer including the nature of the work, the term, the hourly rate and the financial limit;
- requested and received from the selected outside counsel a written cost estimate for the work, which will form part of the retained letter; and
- determined which Legal Services lawyer will monitor the file ("the contact lawyer").

April 1, 2012

Retaining Outside Counsel

Once outside counsel has been selected, and prior to outside counsel commencing work, Legal Services will send the most current form of our retainer letter to outside counsel setting out the terms and conditions of the retainer including the term, the hourly rate, the financial limits and the requirement Legal Services be provided with copies of all written opinions.

The retainer letter is sent to outside counsel by the ADM along with a standard government contract for signature by the ADM and outside counsel. The retainer letter will be copied to the client contact and will clearly identify the contact lawyer responsible for monitoring outside counsel's work.

The Government of Yukon's *Contracting Regulations* and associated Contracting Directive do not apply when retaining outside counsel.

Hourly Rates for Outside Counsel

The hourly rate for outside counsel will not exceed \$325 per hour unless the ADM and the relevant ADM in the client department agree that exceptional reasons exist to justify a higher hourly rate.

When deciding whether or not a higher hourly rate is appropriate, the ADMs will consider all the factors listed above under the heading "Reasons for Retaining Outside Counsel" as well as whether the work can be done by another law firm or outside counsel at \$325 per hour or less.

The maximum hourly rate will be reviewed annually by the Department of Justice.

Outside counsel's hourly rates must be established prior to the retainer and set out in the retainer letter.

Payment of Invoices

The client department is responsible for paying all fees associated with the retention of outside counsel.³ These fees include not just outside counsel's billings but also disbursements such as photocopying and courier fees, transportation costs and witness and expert fees.

The contact lawyer and the client department will, within 30 days of receiving an outside counsel invoice, review it to determine if the expenses are justified.

³ If the reason for hiring outside counsel is only due to a lack of Justice's capacity to do the work, then the ADMs will discuss whether there should be an apportionment of the costs as between the client department and the Department of Justice.

April 1, 2012

Legal Services will pay all outside counsel invoices according to the terms of the retainer agreement.⁴

Legal Services will charge the client department or agency for the cost of each invoice.

Any increase to the total value of an outside counsel retainer is subject to prior approval by the client department and the ADM, Legal Services.

Monitoring Outside Counsel

The role of the contact lawyer in monitoring outside counsel's work can range from reviewing invoices to working as co-counsel depending on the client department's instructions and Legal Services' resources. The scope of the monitoring will be decided on a case by case basis following the contact lawyer's discussion with the client department and outside counsel.

While outside counsel will in most cases have carriage of the file or matter, the contact lawyer can provide to outside counsel public sector legal expertise as well as background and contextual information respecting the client department's business and the government's strategic priorities.

Assessing Outside Counsel's Services

It is necessary at the conclusion of each outside counsel contract for the contact lawyer to work with the client department to assess the performance of outside counsel against the expectations set out in the retainer letter.

In most cases, the final assessment of outside counsel's performance can be done through the completion of a simple client satisfaction survey by the contact lawyer and client department.

⁴ The terms include the requirement that outside counsel provide Legal Services with copies of all opinions and relevant correspondence.