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Ms S Cox  
Director  
NTLAC  
Locked Bag 11  
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Dear Ms Cox

**RE: LEGAL AID – FAMILY LAW**

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As you are aware I am a Commissioner on the Northern Territory Legal Aid Commission..

My main area of practise is in Family Law. As such, over the years I have had the opportunity to speak with a majority of my colleagues about Legal Aid and Family Law.

A number of my colleagues have advised me that they no longer take on family law matters on grants of Legal Aid. They said that they are simply not able to do work because the fees paid by NTLAC for such work are too low to make it viable. You will be aware of those firms that have already decided not to do any more legal aid work, but it is the majority of firms in Darwin.

My concern is that a number of other colleagues, who have up to now, taken on legal aid matters are now saying that they either will not do it anymore or are giving very serious consideration to not doing it. I must say, that includes my firm.

On questioning other colleagues I believe that the lowest hourly rate that any private practitioner is charging private clients is about \$360 per hour plus GST but most are much higher than that. I understand that some people are charging \$460.00 per hour plus GST. The NTLAC hourly rate is \$149 and it has not changed for a number of years.

I have been practising in the Northern Territory for over 36 years. My previous employers took the view that to do Legal Aid work was a good way for a new solicitor to learn about the procedures in the Family Law without having to charge clients on the private scale. It was a good learning ground for them. I also took that view when

I employed inexperienced solicitors in years past. However, given the costs of running a legal practice in the Northern Territory I believe that most employers can no longer take that attitude. I believe it is recognised that we have an extremely high cost of living in the Northern Territory, particularly in regard to housing and other day to day necessary living expenses like petrol and food. Those costs also extend to running a legal practice for example, we have to pay our personal assistants considerably more than practitioners down south, despite the fact that the local personal assistants do not have legal experience.

The legal aid fees have not changed in many years, yet the cost of living has gone up substantially over the years.

Clients on legal aid are quite often very demanding: they will often ring the solicitor every other day and demand urgent attention, as it is not costing them anything. Private clients know that they have to pay for every phone call and letter and that every Application that want heard in court will cost them a lot in legal fees. That is another reason that private solicitors are refusing to take matters on legal aid grants: not only do they get paid very little, they have the most demanding clients.

The other difficulty is that the experienced practitioners are not doing legal aid work. This is becoming particularly concerning in relation to the appointment of Independent Children's Lawyers. I know from speaking to other experienced practitioners that still do ICL work that we simply take the attitude that when we are ICL's it is really doing the matters on a pro bono basis. Whilst most firms can afford to do one or two matters pro bono they cannot afford to do more than that. The difficulty with ICL work is that it is usually extremely litigious with numerous mentions in court, often court will put those on a separate date and separate time so you have to go down each time on each of those occasions, rather than being listed in the general duty list when you might have other matters which can balance out the fees.

Often the parties are represented by solicitors in other non private practices where the client is not paying for their services and the solicitors do not seem to have time costing limitations. Thus, numerous subpoenas will be issued which, of course, all have to be inspected. Numerous Applications for interim orders or procedural matters will be filed because they are not limited by the amount of money in the trust account or the fees that are being rendered.

From my experience and from the experience of others, ICL work has a lot more work involved in each matter as there are usually many more court appearances needed than in an ordinary children's matter. There are many more letters to be answered. ICL work is usually extremely difficult, particularly when one or both the parents are self represented. It can also be extremely difficult when one or both the parents are represented by very inexperienced lawyers. Unfortunately quite often very inexperienced lawyers in the family law jurisdiction take the side of their clients without looking at the facts on an impartial basis and, of course, this only complicates matters further. Also inexperienced lawyers do not know what they are doing and that means a lot more work is involved as the Applications they make to

the court often ask for Orders that the Court cannot make. They usually do not reality test their clients either, again making the ICL role very difficult.

I am seriously considering not taking on any more ICL work (and I do not take on clients on grants of aid except in exceptional circumstances) as I have simply lost a lot of money in the matters I have been involved over the past 3 years and I simply cannot afford to continue to do that. For matters where I have billed NTLAC say \$6000, I would have been able to charge a private client at least \$20,000 and that is on \$360 per hour plus GST. The fees paid simply do not cover my operating expenses, let alone provide any profit margin. Private practitioners have invested a lot of money into their businesses by way of buildings, equipment, continuing legal education, operating expenses, etc, and they are entitled to expect earn something for that personal outlay and the responsibilities that come with running your own firm, as opposed to being employed. A senior legal practitioner in NTLAC earns a lot more than a private practitioner could possibly do if they simply did legal aid work all the time.

I am also aware of at least two other senior practitioners who are also considering not doing any further legal aid work or ICL work for the same reasons. That will leave you with very few experienced practitioners to do ICL work, let alone legal aid referrals.

Yours faithfully  
TERRILL & ASSOCIATES

EILEEN TERRILL