

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN:**

**THE CRIMINAL LAWYERS' ASSOCIATION ("CLA")**

**- and –**

**LEGAL AID ONTARIO ("LAO")**

**- and –**

**THE CROWN IN RIGHT OF ONTARIO as represented by the  
ATTORNEY GENERAL ("MAG")**

WHEREAS the parties have entered into discussions on the sustainability of Legal Aid and access to justice, and;

WHEREAS the CLA is one of the largest specialty legal organizations in Canada with more than 1,000 members, and is committed to a strong, independent and well funded legal aid program; and

WHEREAS MAG and LAO recognize that a vibrant, independent, private-sector defence bar is necessary and important to the delivery of high quality and highly effective criminal defence services; and

WHEREAS LAO is an independent but publicly funded and publicly accountable non-profit corporation, responsible for administering the province's legal aid program, with a mandate as set out in the *Legal Aid Services Act, 1998* to "promote access to justice throughout Ontario for low-income individuals by means of providing consistently high quality legal aid services in a cost-effective and efficient manner;" and,

WHEREAS MAG is accountable for a fair and accessible justice system which reflects the needs of the diverse communities across the province, and strives to manage the justice system in an equitable, affordable and accessible manner throughout the province; and

WHEREAS the parties wish to continue to work together in a relationship based upon mutual respect, trust and cooperation in order to improve legal aid services in the Province of Ontario and recognize the certificate and duty counsel programs require the support and commitment of Ontario's private-sector lawyers;

AND CONSIDERING the following principles of the Parties that support this Agreement and the delivery of legal aid services:

- LAO is a service of fundamental public interest
- LAO services must be provided in a cost effective and efficient manner
- A sustainable legal aid system is fundamental for the provision of quality legal aid services
- LAO is responsible for the management of the province's legal aid plan and will continue to adjust service delivery models both as provided herein and as required
- LAO must continue to modernize and provide ongoing flexibility to meet public needs
- Accountability and a focus on results, quality and access to services are essential to legal aid services
- LAO and CLA support Justice on Target (JOT) goals
- LAO is accountable to the taxpayers
- Legal aid has a public service component
- Clients and the justice system have an important interest in clients receiving continuous and effective legal services

THEREFORE the parties hereby agree as follows:

1. 1.0 Ministry of the Attorney General

- 1.1 The Attorney General will recommend to Cabinet that Ontario Regulation 107/99 be amended to include revised tariff rates, and the establishment of an enhanced tier for complex cases, as attached in Appendix A.

1.2

It is the intention of the parties that the provisions of Appendix A remain in effect through March 31, 2016.

2. 2.0 Legal Aid Ontario

2.1. LAO is entitled to conduct its normal business and service delivery mandate while at the same time effecting its responsibilities under this Agreement. Further, the parties will endeavour to assist LAO to achieve their reasonable Modernization targets.

2.2 LAO will establish a block fee model, in consultation with CLA and MAG, to be implemented in 2010/2011. Block fees will:

- Promote high quality client services
- Promote early resolution and systemic efficiency
- Reward high quality lawyers

- Reduce red tape
- Improve predictability and timing of LAO payments

Incorporate into the block fees the hourly tariff rates as revised by the amended regulation as set out above

Further details on Block fees are provided in Appendix B.

2.3 LAO, in consultation with the CLA and such other Associations of Lawyers who bill LAO, will develop and establish revised requirements to panel membership including but not limited to the following:

- (i) Compliance with the LAO regulations, policies and administrative arrangements;
- (ii) Justice on Target polices, measures and objectives;
- (iii) Quality assurance and practice review audit including after case review;
- (iv) Meaningful consequences for non-compliance;
- (v) Developing measures and codes of conduct to apply to the legal aid community that would ensure integrity of the system.

2.4 LAO will consult with CLA on the development of an LAO Junior Lawyer Mentoring Program to encourage junior lawyer participation in legal aid and enhance the quality of their work.

2.5 LAO will establish a pool of funds, effective 1 April 2010 and implemented over the course of this agreement, to effect increased legal aid fees for expert defence witnesses. The increase will take into consideration the current rates paid by Legal Aid Ontario and the average rates paid by the provincial Crown in like circumstances.

### 3. CLA

3.1 In consideration of the terms of this Agreement and on the understanding that MAG and LAO implement its terms, the CLA agrees:

- (i) cease any and all boycott(s) or litigation with respect to the acknowledgement and/or acceptance of Legal Aid Certificates, and not engage in same during the term of this agreement;
- (ii) actively encourage its members to provide legal aid services

- (iii) continue to provide and enhance wherever possible meaningful and effective participation at the local, regional and provincial levels, with other justice partners, to achieve MAG's Justice on Target goals and objectives to create a faster, more effective criminal justice system in Ontario and, specifically, to help reach the target of a 30 percent reduction by June 2012 in the provincial average number of days and court appearances needed to complete a criminal case; and
- (iv) co-operate with LAO to ensure accountability of the defence bar in the use of public funds;
- (v) to support LAO in meeting reasonable modernization targets.
- (vi) Identify senior leaders and encourage them to "champion" JOT benefits/outcomes with the membership within their local constituencies as well as key outreach events; and
- (vii) appoint local CLA members to Local Leadership Teams (LLTs) and encourage them to actively communicate with and secure the support/input of local defence counsel colleagues.

3.2 MAG, through JOT, is committed to ensuring that CLA has a place at the Local Leadership Teams (LLT), and that their input regarding barriers that need to be overcome and their suggestions and input on potential local initiatives to reduce the time to disposition and the number of appearances will play a meaningful role in the JOT process.

#### 4. Revised Tariff Rates and Block Fee Schedule Review


- (a) MAG, LAO, the CLA and organizations that represent private lawyers who provide fee-for-service legal aid will meet no later than April 1, 2015 to engage in discussions regarding matters of concern to any party including a sustainable legal aid system, annual tariff rates, and the block fee schedule.

The parties unanimously agree to recommend the terms of this agreement to their respective principals.

Signed this 25<sup>th</sup> day of January 2010.

For the Criminal Lawyers' Association


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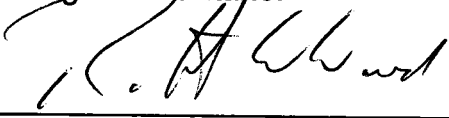
For the Ministry of Attorney General:



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For Legal Aid Ontario:



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**Appendix A**

**APPENDIX A**

<b>Effective</b>	<b>New Rates</b>						
	<i>1-Feb-10</i> <b>Year 1</b>	<i>1-Apr-10</i> <b>Year 2</b>	<i>1-Apr-11</i> <b>Year 3</b>	<i>1-Apr-12</i> <b>Year 4</b>	<i>1-Apr-13</i> <b>Year 5</b>	<i>1-Apr-14</i> <b>Year 6</b>	<i>1-Apr-15</i> <b>Year 7</b>
Lawyer Rate Tier 1	\$81.44	\$85.51	\$89.79	\$94.27	\$98.99	\$103.94	\$109.13
Lawyer Rate Tier 2	\$91.62	\$96.20	\$101.01	\$106.07	\$111.37	\$116.94	\$122.78
Lawyer Rate Tier 3	\$101.81	\$106.90	\$112.24	\$117.86	\$123.75	\$129.94	\$136.43
Complex Case Rate	\$120.02	\$124.82	\$129.81	\$135.00	\$141.75	\$148.84	\$161.05

The experience allowance requirements for Tiers 2 and 3 are set out in Item 14.1 and 14.2 of Ontario Regulation 107/99.

Lawyers assigned as junior counsel in complex criminal cases will receive full tariff compensation (rather than the current 75%).

## **APPENDIX B**

### **BLOCK FEES**

A block fee system will be designed and implemented to replace the hourly tariff system as follows:

- Block fees for the four most prevalent, less complex summary conviction offences will be implemented by 1 May 2010
- Block fees for the balance of standard criminal cases will be implemented by 31 December 2010
- Legal Aid Ontario will have the final decision on the design and implementation but will consult with the Criminal Lawyers Association and the Ministry of the Attorney General
- Lessons learned from the implementation of the first four block fees will be drawn upon to inform the balance
- Block fees will be set at levels higher than the current, comparable tariff compensation and will reflect:
  - Tariff increases contemplated by this agreement;
  - Attributing 50% of the average discretionary portion of the current tariff awards;
  - The incorporation of compensation for current, discrete items such as mandatory pre-trials or conferences.
- Block fee calculations will include all necessary procedural steps in a case up to and including the first day of trial
- Legal Aid Ontario will consider the feasibility of a block fee approach for the second and succeeding days of trial
- Legal Aid Ontario will make block payments to service providers more quickly and regularly, and to reduce the administrative burden on service providers
- Legal Aid Ontario will increase its monitoring and audit capacity to ensure the integrity of block fees
- The goals and objectives of creating a faster, more effective criminal justice system in Ontario and, specifically, to help reach the JOT targets will also inform the process of developing and implementing block fees.
- LAO will establish a committee composed of representatives of CLA and MAG to examine the feasibility of extending block fees to complex cases.

**DRAFT LETTER "A"**

This letter is to confirm our mutual commitment to collaborate on public announcements with respect to the Memorandum of Understanding entered into between the Ministry of Attorney General, Legal Aid Ontario, and the Criminal Law Association.

To that end, we agree that we will issue a joint communication, to be developed announcing the mutual resolution of issues.



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For the Ministry of  
the Attorney General



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For the Legal Aid Ontario

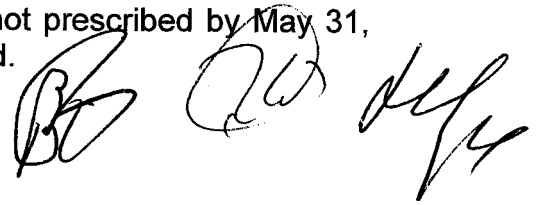


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For the Criminal  
Lawyers Association

**DRAFT LETTER "B"**

This letter is to confirm our mutual understanding that if the amendments to Regulation 107/99 as described in the Memorandum of Understanding and in Appendix A, namely, increases over the seven years as set out in Appendix A, the addition of a new rate for complex cases, and the revision to junior counsel fees are not prescribed by May 31, 2010, the Memorandum of Understanding will be null and void.

Three handwritten signatures in black ink, positioned to the right of the main text. The signatures are stylized and appear to be initials or names of the parties involved.

