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July 6, 2015

VIA EMAIL

Anthony Moustacalis
President, Criminal Law Association

Dear Anthony:

Thank you for the meeting on June 17, 2015 in connection with the CLA's "Discussion Points" document (copy attached). John and I appreciated the opportunity to listen to the CLA's point of view on the ten issues you raised.

I would like to suggest we set up a further meeting so LAO's perspective on the CLA's points can be outlined. My office will be in touch with yours to arrange the details.

There are several areas either in or implied by the CLA's document where there are opportunities for constructive dialogue. These would include:

- i) Addressing matters relating to tariff increases: For example, LAO is supportive of developing a way forward on designing an appropriate tariff review mechanism;
- ii) Consultations: LAO has ideas on how the discussion with the CLA and other justice system interests can be developed;
- iii) Block fee adjustments: LAO would like to hear more from the CLA and other service providers on what improvements are needed and why;
- iv) Payment frequency: LAO would like to explain in more detail its position on this and looks to the CLA and other service providers for more information from them on why improvements should be contemplated;
- v) The application of discretion: LAO would be pleased to discuss this issue and explain its position and entertain any reasonable alternatives to the present policy in this area.
- vi) Administration costs: LAO would be pleased to outline the nature and scope of the administration costs of the eligibility enhancement.

LAO would like to add several items for our upcoming discussion. For example:

- i) **Bail:** LAO would very much like to develop with the Bar an appropriate and uniform response to the systemic and wide-spread problems of bail. Much to the shame of the justice system as a whole, there are more legally innocent people incarcerated in Ontario than people who have been tried and found guilty. The surety requirements of the Ontario bail regime are abusive to LAO's clientele as are the multiple and onerous bail conditions that effectively, in the words of the Canadian Civil Liberties Association, "set them up to fail". LAO has already identified bail as the key area for its first wave of expanded eligibility for certificate services. We are expanding coverage for bail variations, second bail hearings, and bail reviews. We would like to continue this needed focus on bail with other initiatives. We would welcome the participation of the CLA and other stakeholders, in developing and implementing these initiatives and in the design of further ones in the future.
- ii) **Supports to the private Bar:** LAO would like to discuss what additional supports might be needed by the Bar as a result of increased financial eligibility. One area that comes to mind is expanding the capacity of LAO Law to provide additional services relating to lawyers' research needs.
- iii) **Improving the LAO/CLA relationship:** As mentioned at our meeting, LAO is quite concerned about public statements and actions by the CLA that appear to have as their objective, the undermining of public confidence in LAO. The CLA's rather regular, and in our view, unjustified criticism of LAO staff and management, as well as the absence of any positive comments by the CLA in respect of LAO's announcement on the expanded eligibility program (when so much of it directly speaks positively to what the CLA has long advocated) is disappointing to say the least. At the same time, our two organizations have worked well together on a number of issues. We believe it is important to build on the positive aspects of our relationship as we move forward.

As you mentioned in our meeting, there are obviously several points which the CLA has raised which LAO obviously cannot entertain for a variety of reasons. These range from LAO's requirement to maintain the client-oriented foundational principles of the *Legal Aid Services Act* to LAO's duty as a public institution to uphold the integrity of its decision-making processes as well as ensuring that LAO fully meets its obligations as a responsible partner in the justice system at large and its duties as an employer. It would be quite disruptive of our relationships with our staff and with members of the private Bar who have entered into Alternative Fee Arrangements (AFA's) to accede to your requests that staff be terminated and that the AFA program cease. Accordingly, we feel the need to clearly indicate the following at the outset of our discussions.

- a) LAO has no intention of reducing (i.e., laying off) its staff lawyers and replacing them with certificates. LAO's counsel are an integral part of the operation of the justice system and provide vital client services. Indeed, the new eligibility investment includes a component for increasing staff services as well as all other services and this will therefore be implemented by LAO as announced.
- b) LAO's staff lawyers and duty counsel will continue to serve clients in guilty pleas and all other areas where they are able and where they are so instructed. As you know, LAO staff conduct only a few trials in any given year and these are usually undertaken when the client does not qualify for certificate coverage or when the private Bar is unable or unwilling to take the case. Furthermore, LAO counsel are governed by the Martin rules with respect to undertaking trials and have been now for decades. There has been no change in this respect. As for guilty pleas, LAO lawyers have long been providing this service effectively, efficiently and with high quality and will continue to do so.

I must emphasize that the CLA criticism of LAO Duty Counsel is incorrect and misleading. LAO Duty Counsel are trained specifically on the issue of disclosure and what can and cannot be done with it in relation to pleas. Duty Counsel are subject to the same ethical rules regarding the voluntariness of guilty pleas as counsel in the private Bar. LAO provides specific training on this matter to its Duty Counsel. To ensure quality, all Duty Counsel operate under the accountability of a Supervisory Duty Counsel who is accountable for providing proper assistance and direction. It is important to note that LAO Duty Counsel are statistically pleading a lesser percentage of their clients guilty than the certificate Bar. In addition, client satisfaction levels for LAO Duty Counsel are higher than for the certificate Bar.

- c) LAO's Alternative Fee Arrangement program will continue and is expanding. It is a voluntary program with members of the private Bar and is becoming increasingly popular since it reduces red tape in payments, ensures client service and provides private Bar lawyers with a predictable stream of income and fosters a more direct relationship between LAO and these members of the private Bar. The CLA's comments about the Law Society having concerns about the program are exaggerated. Further, LAO and the Law Society are working very well together to resolve any outstanding issues.

I look forward to our next meeting.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Robert W. Ward', written over the 'Yours sincerely,' text.

Robert W. Ward

Appendix A

CLA's "Proposal for MOU – Discussion Points" Document

The CLA document lists ten "discussion points" that are listed verbatim below:

1. Cost of living percentage to tariff rates
2. Lengthy MOU with commitment to service without interruption
3. Mandatory requirement that LAO supply to CLA proposals to board for comment by CLA
4. End AFA
5. Immediate payment of approved accounts or within 3 days
6. Increases of prep to bail (8) and sexual assaults and other add ons or changes
7. No trials at all or guilty plea on certificate eligible matters by staff lawyers and duty counsel
8. Reduction of staff lawyers and replace with certificates (gone from 65 to 360+)
9. Application of 10 percent admin to certificates
10. Discretion
 - Revive for block fees
 - Broaden generally