

**MEMORANDUM OF UNDERSTANDING**

**Between**

**LEGAL AID ONTARIO**

**And**

**THE MINISTRY OF THE ATTORNEY GENERAL**

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## 1. PURPOSE OF MEMORANDUM OF UNDERSTANDING

The purpose of this Memorandum of Understanding (MOU) is to:

- (a) Clarify the independent nature of Legal Aid Ontario, which has a statutory mandate to provide high quality legal aid services to low-income individuals throughout Ontario, operating independently from the Government of Ontario but within a framework of accountability to the Government of Ontario for the expenditure of public funds;
- (b) Clarify the reason, which has its roots in the adversarial nature of Canada's legal system, why Legal Aid Ontario must operate independently from the Ministry of the Attorney General, which has responsibility for the prosecution service in the province of Ontario;
- (c) Confirm the accountability relationships between the Minister of the Attorney General (MAG) and the Chair of Legal Aid Ontario (LAO) on behalf of the agency pursuant to Management Board's *Agency Establishment and Accountability Directive*, including the expectations for the operational, administrative, financial, staffing, auditing, information exchange and reporting arrangements between LAO and MAG.
- (d) Clarify the roles and responsibilities of the Minister, the Chair, the Deputy Minister, the agency, the President and the Board.
- (e) Establish the mutual expectations of information exchange, consultation and transparency; and
- (f) Comply with the requirement that an MOU be established under section 71 of the *Legal Aid Services Act, 1998 (LASA)*.

This MOU shall not affect, modify or interfere with the responsibilities of either party under law. In the event of a conflict between the provisions of this MOU or between government or Ministry directives or policy and the statutes or regulations of Ontario, including LASA and regulations made pursuant to LASA, the applicable statute or regulations shall prevail.

This MOU reinforces LAO's accountability to the government for the expenditure of public funds and conducting its operation with high standards in ethical behaviour, excellence in management, wise use of public funds, high-quality service to the public and fairness in the delivery of legal aid services.

This MOU shall not affect or interfere with the LAO's sole authority for decisions respecting the entitlements of individuals to legal aid. The Ministry is responsible for the administration of justice in Ontario. In particular, the Ministry is responsible for conducting criminal proceedings throughout Ontario and providing legal advice to, and

conducting litigation on behalf of, all government ministries and many agencies, boards and tribunals. For this reason, the government should not be involved in decisions respecting the entitlement of individuals to legal aid or the manner in which Legal Aid Ontario plans and administers the legal aid system and provides legal aid services, other than as provided for in LASA or in regulations made pursuant to LASA.

## 2. DEFINITIONS

In this MOU:

- a. **“Act”** means the *Legal Aid Services Act, S.O. 1998* (or LASA) Chapter 26, as amended.
- b. **“AEAD”** means the TB/MBC Agency Establishment and Accountability Directive
- c. **“Appointee”** means a director or member, etc. appointed to Legal Aid Ontario (LAO) by the Minister or by the Lieutenant Governor in Council (LGIC), but does not mean an individual appointed by Legal Aid Ontario as staff
- d. **“Attorney General”** means Attorney General of Ontario
- e. **“Board”** means the Board of Directors of Legal Aid Ontario
- f. **“Budget”** means the annual budget plan, as established in the printed estimates
- g. **“Chair”** means the Chair of the Board of Directors of LAO
- h. **“Corporation”** means Legal Aid Ontario
- i. **“Corporation regulations”** are regulations made pursuant to s.97(1) of the *Legal Aid Services Act, 1998*
- j. **“Deputy Minister”** means the Deputy Attorney General of Ontario or his/her delegate
- k. **“Directives”** includes directives, policies, guidelines, best practices, instructions and other official protocols issued by the Ontario government
- l. **“LAO”** means Legal Aid Ontario
- m. **“LGIC regulations”** are regulations made pursuant to s. 97(2) of the *Legal Aid Services Act, 1998*
- n. **“TB/MBC”** means Treasury Board/Management Board of Cabinet
- o. **“MBC”** means Management Board of Cabinet
- p. **“Members”** means the Members of the Board of Directors of Legal Aid Ontario

- q. **“Ministry”** means the Ministry of the Attorney General
- r. **“Minister”** means the Attorney General of Ontario
- s. **“MOU”** means this Memorandum of Understanding
- t. **“OIC”** means Order in Council
- u. **“President”** means the President and CEO of Legal Aid Ontario
- v. **“PSOA”** means *Public Service of Ontario Act, 2006*
- w. **“The agency”** means Legal Aid Ontario

### **3. LEGAL AUTHORITY AND MANDATE**

#### **1. Legal Authority**

- a. The legal authority of the Corporation is the *Legal Aid Services Act, 1998*, S.O. 1998, Chapter 26, as amended. The *Corporations Act* and the *Corporations Information Act* do not apply to LAO, except as specifically made applicable by regulations.
- b. The corporation has the capacity, rights, powers and privileges of a natural person for carrying out its objects subject to the limitations as set out in the Act.
- c. Sections 132 and 136 of the *Business Corporations Act* apply with necessary modifications to the Corporation, the members of its board of directors and its officers.
- d. The Corporation is independent, both from the Ministry and from the Law Society of Upper Canada.
- e. The Act gives the Corporation the authority to establish priorities, policies, and operational and administrative arrangements in furtherance of its mandate.
- f. The Corporation is empowered by statute to:
  - (i) Establish panels of lawyers and service providers to provide legal aid services, as set out in s.23 of the Act, and to make regulations to govern those panels, as set out in s.97.

- (ii) Agree to provide funding to clinics, imposing any terms and conditions on the funding of a clinic that it considers appropriate, as set out in ss. 33 and 34 of the Act.
  - (iii) Enter into agreements with Ontario law school deans to approve the establishment of student legal aid services societies, as provided for in s.21 of the Act.
  - (iv) Fund Aboriginal legal services corporations to provide legal aid services to Aboriginal individuals and communities, as indicated in s.14 of the Act.
- g. Under the Act, the Corporation is managed and controlled by a Board, which is appointed by the LGIC as described in s.5 of the Act.
  - h. The members of the Corporation are its Board of Directors.
  - i. The statutory powers, duties and responsibilities of the Board are as set out in s.60 of the Act.
  - j. The Corporation may enter into inter-jurisdictional agreements with the consent of the LGIC pursuant to s.58 of the Act.
  - k. The Corporation recognizes that it is subject to the *French Language Services Act* and will provide French language services in accordance with that act.
  - l. The Corporation recognizes that it is subject to the *Freedom of Information and Protection of Privacy Act* and will comply with that act and sections 84, 89, and 90 of the *Legal Aid Services Act, 1998*.
  - m. The Corporation recognizes that it is subject to the *Accessibility for Ontarians with Disabilities Act, 2005*.

## 2. **Mandate**

The Corporation's mandate is to carry out the following objects:

- a. establish and administer a cost-effective and efficient system for providing high quality legal aid services to low-income individuals in Ontario;
- b. establish policies and priorities for the provision of legal aid services based on its financial resources;
- c. facilitate co-ordination among the different methods by which legal aid services are provided;

- d. monitor and supervise legal aid services provided by clinics and other entities funded by the Corporation;
- e. co-ordinate services with other aspects of the justice system and with community services; and
- f. advise the Minister on all aspects of legal aid services in Ontario, including any features of the justice system that affect or may affect the demand for or quality of legal aid services.

#### **4. STATUS AND CLASSIFICATION**

- a. LAO is a corporation without share capital.
- b. LAO is classified as an Operational Service Agency under the *AEAD*.
- c. Section 3(3) of the Act specifies that the Corporation is not a Crown Agent for the purpose of the *Crown Agency Act*.

#### **5. GUIDING PRINCIPLES**

The parties agree to the following principles:

- a. The parties agree that Legal Aid is a service of fundamental public interest, and that a sustainable legal aid system, established and administered by Legal Aid Ontario, is essential to the provision of quality legal aid services.
- b. The Minister acknowledges that the Corporation must exercise powers and perform duties in accordance with its legal mandate. The Minister acknowledges that the Corporation plays a meaningful role in the development of the policies and programs of the government, as well as in the delivery of those policies and programs, and to that end commits to facilitate consultative practices and the sharing of information between the government and the Corporation such as may be necessary to enable the Corporation to act fully in accordance with its mandate.
- c. The Minister acknowledges the Corporation's unique role within the justice system and the Corporation's obligations in carrying out that role, including its facilitation of the protection of constitutional rights. Accordingly, the Minister acknowledges that there is a need for the Corporation to maintain its independence in order to be fully capable of carrying out its unique role and to function as required.



- d. The Chair and Board acknowledge that accountability is a fundamental principle to be observed in the management, administration and operations of the Corporation. The Chair and Board acknowledge that they are accountable to the government through the Minister, for governance and oversight of the agency. The Board acknowledges that accountability to the government means accountability to the Minister through the Chair.
- e. As a classified agency of the government, the Corporation conducts itself according to the management principles of the government of Ontario. These principles include ethical behaviour, prudent, efficient and lawful use of public resources, fairness, high quality service to the public, and openness and transparency to the extent allowed under law. These principles include a commitment to embracing diversity and inclusion.
- f. The Corporation and the Ministry agree to avoid duplication of services wherever possible.
- g. The Minister agrees to support the LAO in achieving its goal of a diverse and inclusive organization and service provider. This includes providing any strategic advice, guidance or expertise to the Corporation on the development of diversity and inclusion strategies and performance measures in support of the Corporation's development of those strategies and performance measures.
- h. The Deputy Minister and President are accountable for the proper operational relationship between the Ministry and the Corporation, including the establishment of a Working Group of senior officials of the Ministry and the Corporation.

## **6. LEGAL AID SERVICES**

- a. The Act specifies that the Corporation is required to provide legal aid services in the areas of criminal law, family law, clinic law and mental health law.
- b. The Act also specifies that the Corporation may provide legal aid services in other areas of civil law, subject to the LGIC's power to identify areas of civil law, types of civil cases and types of civil proceedings for which the Corporation shall not provide legal aid services. The Act also specifies proceedings for which legal aid services are not available.
- c. The Corporation is authorized to provide legal aid services by any method it considers appropriate, including, but not limited to, issuing certificates to lawyers and service providers, by funding clinics, Aboriginal legal services corporations, and student legal aid services societies, by operating staff offices, by entering into agreements with lawyers, groups of lawyers or law firms to provide legal services,

- d. by providing duty counsel, by public legal education, by summary assistance and by providing alternative dispute resolution services.
- e. The Corporation shall provide legal aid services in the areas of criminal and family law having regard to the fact that the private bar is the foundation for the provision of legal aid services in those areas.
- f. The Corporation shall provide legal aid services in the area of clinic law having regard to the fact that clinics are the foundation for the provision of legal aid services in that area.
- g. The Corporation is mandated to establish and administer a cost-effective, efficient system for providing high quality legal services to low income individuals within the financial resources available to it. Accordingly, the Corporation will:
  - establish a process for determining the legal needs of low-income individuals and disadvantaged communities;
  - within the requirements of the Act, establish priorities for areas of law, types of cases and types of proceedings for which it will provide legal aid services;
  - establish policies for the kinds of services to be provided in the different areas of law, types of cases and types of proceedings.
- h. The Corporation is required under section 92 of the Act to maintain a quality assurance program to ensure that it is providing high quality legal aid services in a cost-effective manner.
- i. The directives that apply to the Corporation are found in Schedule I.
- j. The Corporation also agrees to provide additional Special Services as identified in Schedule II.
- k. The Corporation and the Ministry have developed a protocol on court-ordered, publicly funded counsel and other proceedings in which the Corporation provides review and advice on accounts of Ministry funded counsel, which is attached as Schedule III.

## **7. PROCESS FOR AMENDING REGULATIONS**

### **1. Corporation Regulations**

- a. The Corporation shall be responsible for developing a process for reviewing, consulting on and approving regulations. Once the Board approves a regulation it must be submitted to the Minister for submission for LGIC approval.

- b. Ministry Counsel will meet with counsel from the Corporation to review regulation wording in consultation with legislative counsel.
- c. Legislative counsel will ensure that the regulation conforms to drafting requirements. Once agreement is reached between the parties the Minister will be responsible for taking the regulation through the necessary approval process.

## **2. LGIC Regulations**

- a. The Corporation shall assist counsel from the Ministry by providing relevant information to ensure that LGIC regulations are developed using all available information. The Corporation shall cooperate in providing input and the Ministry shall seek advice from the Corporation.

## **8. ACCOUNTABILITY RELATIONSHIPS**

### **1. Minister**

The Minister is accountable:

- a. to the Legislative Assembly for the Corporation's fulfillment of its mandate and its compliance with applicable government policies and, for these purposes, reports and responds to the Legislative Assembly on the affairs of the Corporation.
- b. The Minister is accountable for attesting, reporting and responding to TB/MBC on the Corporation's performance and compliance with government's applicable directives and operational policies.
- c. The Minister is accountable to the Cabinet for the performance of the Corporation and its compliance with the government's policies as applicable.
- d. The Minister is responsible for representing the Corporation in the Cabinet and its committees, the Legislative Assembly and before committees of the Legislative Assembly.
- e. The Minister is accountable for receiving and exercising due diligence in taking the steps necessary to ensure that the Corporation's annual report is tabled in the Legislative Assembly in a timely fashion.

### **2. Chair**

The Chair is accountable:

- a. To the Minister for the performance of the Corporation in fulfilling its mandate and for carrying out the roles and responsibilities assigned to the Chair by the Act and other applicable legislation, this MOU, applicable TB/MBC and Ministry of Finance directives, and Cabinet Office communication directives as applicable.
- b. For reporting to the Minister, as requested, on the Corporation's activities.
- c. For ensuring timely communications with the Minister regarding any issues that affects, or can reasonably be expected to affect, the Minister's responsibilities for the Corporation.

### **3. Board**

- a. The Board is accountable to the Minister, through the Chair, for the oversight and governance of the Corporation, setting the goals, objectives and strategic direction for the Corporation within its mandate, and for carrying out the roles and responsibilities assigned to it by the Act, applicable TB/MBC and Ministry of Finance directives, and this MOU.

### **4. Deputy Minister**

- a. The Deputy Minister is accountable to the Secretary of Cabinet and the Minister for the performance of the Ministry in providing administrative and organizational support to the Corporation and for carrying out the roles and responsibilities assigned by the Minister, the Act, applicable TB/MBC and Ministry of Finance directives and this MOU.

### **5. President**

- a. The President is accountable to the Board, through the Chair, for the management of the Corporation's operations and staff. The President works under the direction of the Chair to implement policy and operational decisions and reports the Corporation's performance results to the Board, through the Chair.
- b. The President is accountable to the Board, through the Chair, for complying with applicable TB/MBC and Ministry of Finance directives.

### **9. CONFLICT OF INTEREST**

- a. The Corporation shall have in place conflict of interest rules applicable to its staff and Order in Council appointees pursuant to s. 58 or ss. 59 and 60 of the PSOA.
- b. In accordance with s. 63 of the LASA, the board shall pass by-laws governing conflicts of interest of board members and of the Corporation's officers and

employees and shall forward copies of its by-laws, when they are made, to the Attorney General.

- c. The Chair is responsible for ensuring that all appointees, and the President is responsible for ensuring staff, of the Corporation are informed of the ethical rules to which they are subject, including the rules on conflict of interest, political activity and protected disclosure of wrongdoing that apply to the Corporation.
- d. The Chair is the ethics executive for Order-in-Council appointees and the President is the ethics executive for staff of the Corporation, for the purposes of the PSOA.
- e. The Ministry will ensure that the Corporation is advised of the post-service conflict of interest rules respecting restrictions placed on lobbying and post service employment activities for designated senior positions as defined in the PSOA O. Reg. 381/07. The Corporation will ensure that individuals currently holding or have previously held these positions are made aware of the conflict of interest rules and restrictions applicable to them.

## **10. ROLES AND RESPONSIBILITIES**

### **1. Minister**

**The Minister is responsible for:**

- a. Being accountable to the Legislature for the Corporation's fulfillment of its mandate and reporting and responding to the Legislature concerning the activities of the Corporation.
- b. Representing the Corporation to the Government of Ontario, including Cabinet and its committees, the Legislative Assembly and before committees of the Legislature, and ensuring that the Corporation's statutory role and mandate are understood, upheld and respected within the broader Ontario government.
- c. Monitoring the activities of the Corporation to ensure that its mandate is being fulfilled, and discussing with the Corporation the applicability of government administrative policies.
- d. Subject to Cabinet confidentiality, ensuring that the Corporation is advised about provincial government initiatives or priorities which may affect the Corporation's mandate, operations, service delivery or the demand for legal aid services.
- e. Subject to Cabinet confidentiality, ensuring that the Corporation is advised and/or consulted whenever possible, about new Ministry initiatives and/or changes to existing Ministry or provincial government initiatives, policies and

decisions that may affect the Corporation's mandate, operations, service delivery, reporting obligations or the demand for legal aid services, including:

- (i) Ministry priorities which may affect the Corporation.
  - (ii) Proposed amendments to Ministry legislation or regulations which govern the Corporation's activities or which otherwise have a significant impact on the Corporation.
  - (iii) Any review of the Corporation's mandate or assessment of the evolving public need for legal aid services.
  - (iv) Government directives and guidelines, as appropriate.
- f. Reviewing and approving the Corporation's budget, upon which its business plans and operational plan are based.
  - g. Presenting, for TB/MBC's approval, the estimates/ recommended annual allocation for the Corporation as part of the Ministry's Results-based Plan.
  - h. Recommending appointments and/or reappointments to the Board in a timely manner, pursuant to s. 5 of the Act, in consultation with the Corporation's Chair.
  - i. Seeking the approval of the LGIC for the Corporation's regulations made pursuant to s. 97(1) of the Act.
  - j. Seeking the approval of the LGIC for the Corporation to acquire, hold or dispose of real property for its own purposes in accordance with s. 53 of the Act.
  - k. Liaison with the Corporation to discuss how the mandate of the Corporation is being fulfilled.
  - l. Presenting to LGIC for approval any inter-jurisdictional contract proposed pursuant to s. 58 of the Act.
  - m. Making best efforts to meet regularly with the Board.
  - n. Meeting regularly with the Chair including making best efforts to meet early in the business planning process, to discuss priorities, directions and fundamental objectives for the Corporation's business plan and other matters as necessary, including Board appointments.
  - o. Ensuring that the Ministry fulfills its responsibilities under the Act and this MOU.
  - p. Developing the Corporation's MOU with the Chair and signing it into effect.
  - q. Reviewing and approving the Corporation's annual business plan, as approved by the Corporation's Board.

- r.** Directing that a periodic review of the Corporation be conducted as necessary and making subsequent recommendations to TB/MBC.
- s.** Evaluating the performance of the Chair.
- t.** Ensuring that the Board develops an evaluation process of its performance.
- u.** Communicating concerns respecting performance under the MOU to the Chair.
- v.** Determining the need for any review and recommending to TB/MBC on the elimination or consolidation of the Corporation, or any change to the Corporation's mandate.
- w.** Recommending to TB/MBC the powers to be given to the Corporation when a change in the mandate of the Corporation is being proposed.
- x.** Reporting and responding to the Cabinet on the Corporation's performance and compliance with the government's applicable operational policies and broad policy directions.
- y.** When appropriate or necessary, taking action or directing that corrective action be taken in respect of the Corporation's mandate or operations.
- z.** Informing the Chair of the government's priorities and broad policy directions for the Corporation.
- aa.** Subject to Cabinet confidentiality and other circumstances in which the Minister has an obligation to maintain confidentiality, consulting as appropriate with the Chair or designate on significant new directions or when the government is considering regulatory or legislative changes for the Corporation.
- bb.** Recommending to TB/MBC any provincial funding to be given to the Corporation.
- cc.** Reviewing the advice of the Chair regarding candidates eligible for appointment or reappointment to the Board, and supporting timely appointment of Board members to avoid vacancies on the Board and ensure a full complement of Board members.
- dd.** Attesting, reporting and responding to TB/MBC on the Corporation's performance, compliance with applicable TB/MBC directives, the government's operational policies and policy directions.
- ee.** The parties agree to adhere to the Communications Protocol set out in Schedule IV to this MOU.

## **2. Chair**

### **The Chair is responsible for:**

- a.** Providing leadership to the Board, monitoring the Board's performance, and performing annual evaluations.
- b.** Developing the Corporation's MOU with the Minister and signing it as authorized by the Board.
- c.** Ensuring that public funds are used effectively, with integrity and honesty;
- d.** Convening and chairing meetings of the Board.
- e.** With the Board, providing policy direction and developing and monitoring performance objectives for the President.
- f.** Recommending policies to the Minister that are relevant to legal aid and all matters that may reasonably be expected to have an impact on the Corporation's delivery of legal aid services.
- g.** Reporting to the Minister regularly on the Corporation's activities and on the practices of the Corporation by which the Corporation's overall priorities are set.
- h.** Forwarding to the Minister the multi-year and annual plans and reports or any other reports required pursuant to s. 71(2) (h) of the Act.
- i.** Ensuring that any significant additions, deletions or amendments to the Corporation's business and operating plans are communicated appropriately to the Minister; advising the Minister of any significant in-year change prior to implementation, including any which could cause a material change to the approved budget or affect the administration of justice in Ontario.
- j.** Advising the Minister on the skills and knowledge required for the Corporation's Board appointments and reviewing, with the Minister, potential/proposed candidates for timely appointment or re-appointment to the Board to ensure a full complement of Board members.
- k.** Notifying the Minister of all vacancies of the Board and providing recommendations for appointments or re-appointments.
- l.** Reviewing and approving claims for *per diems* and expenses of Board members.
- m.** Keeping the Minister informed of issues or events that may concern the Minister in the exercise of the Minister's responsibilities.



- n. Ensuring that the members of the Board are informed of their roles, responsibilities and obligations and that all Board and committee members receive necessary training to carry out their responsibilities.
- o. Reviewing and approving, on an annual basis, the LAO's diversity and inclusion plan or strategy, including reporting obligations.
- p. Ensuring that the Corporation conforms to applicable TB/MBC directives and guidelines.
- q. Communicating concerns respecting performance under the MOU to the Minister.
- r. Ensuring that all appointees of the Corporation are made aware of their conflict of interest obligations under the PSOA, section 52(2) of the Act and the conflict of interest by-laws required under section 63 of the Act.
- s. Providing leadership to the Corporation and monitoring the performance of the Corporation.
- t. Ensuring that the Corporation operates within its approved budget allocation in fulfilling its mandate.
- u. Reviewing and approving the Corporation's business plan, budget, annual report and financial reports, and submitting them to the Minister in accordance with the time lines specified in the Act and any applicable TB/MBC and Ministry of Finance directives and this MOU.
- v. Translating the goals, objectives and strategic directions of the Board into operational plans and activities in accordance with the Corporation's approved business plan and diversity and inclusion plans/strategies.
- w. Submitting the Corporation's business plan to the Minister as authorized by the Board for submission to TB/MBC once every three years.
- x. Providing the Minister with a copy of every audit report and a copy of the Corporation's response to each report and any recommendations in the report.
- y. Advising the Minister annually on any outstanding audit recommendations.
- z. Ensuring that Board members are informed of their responsibilities under the PSOA, including the political activity rules (Part IV of the PSOA).
- aa. Recording any declared or apparent conflicts of interest and advising the Minister of these conflicts promptly.
- bb. Implementing administrative policies for appointees to the Corporation concerning a code of conduct or conflict of interest framework and post-

service conduct (lobbying, appearing before the Corporation, etc.) including time periods for restrictions.

- cc.** Ensuring that appropriate management systems are in place (financial, information technology, human resources) for the effective administration of the Corporation.
  - dd.** Ensuring that an appropriate framework is in place for Corporation staff to receive adequate orientation and training, including training on diversity, inclusion and current environmental influences to better serve the people of Ontario.
  - ee.** Ensuring that Corporation staff and appointees are aware of and comply with applicable TB/MBC and Ministry of Finance directives.
  - ff.** Ensuring a process for responding to and resolving complaints from the public and Corporation clients is in place.
  - gg.** Carrying out effective public communications and relations for the Corporation as its chief spokesperson.
  - hh.** Cooperating with any periodic review of the Corporation directed by the Minister or TB/MBC.
  - ii.** Ensuring timely communications with the Minister regarding any issues or events that may concern, or can reasonably be expected to concern the Minister in the exercise of his/her responsibilities relating to the Corporation.
  - jj.** Meeting regularly with the Minister including making best efforts to meet early in the business planning process, to discuss to discuss priorities, directions and fundamental objectives for the Corporation's business plan and other matters as necessary, including Board appointments.
  - kk.** Consulting with the Minister in advance regarding any activity which may have an impact on the government and ministry's policies, directives or procedures, or on the Corporation's mandate, powers or responsibilities as set out in the Act.
- II.** Reporting to the Minister as requested on the Corporation's activities within agreed upon timelines.

### **3. Board**

#### **The Board is responsible for:**

- a.** Ensuring that the Corporation carries out the responsibilities assigned to it under the Act and the MOU, including setting the goals, objectives and strategic directions for the Corporation.

- b.** Recommending policies to the Minister on matters that affect the Corporation and its ability to provide high quality legal aid services, and advising the Minister on all aspects of legal aid services in Ontario.
- c.** Keeping the Minister advised, through the Chair, of issues or events that concern or can reasonably be expected to concern the Minister and advising and/or consulting the Ministry on those which may affect the Ministry's mandate, operations or service delivery.
- d.** Acting in a financially responsible and accountable manner in exercising its powers and performing its duties.
- e.** Providing the Minister with information, material or advice, through the Chair, when requested.
- f.** With the Chair, developing performance objectives for the President and reviewing the performance of the President in relation to the objectives.
- g.** Establishing performance measures and targets for the Corporation, management systems for monitoring and assessing the Corporation's performance, and a performance review system for staff.
- h.** Passing by-laws governing the operations of the Corporation, including conflict of interest matters.
- i.** Developing a policy for the Corporation on conflicts of interest pursuant to s. 63 and s. 52 (2) of the Act, in accordance with s. 58 or ss. 59 and 60 of the PSOA.
- j.** Monitoring the use of funds to ensure that they are used appropriately and responsibly.
- k.** Establishing advisory committees in each of criminal law, family law and clinic law, and any others they deem appropriate, and in any other prescribed area of law.
- l.** Establishing an audit committee and a clinic committee and any other committees of the Board as it considers appropriate.
- m.** Arranging for audits as needed and taking corrective action, if needed.
- n.** Developing appropriate policies regarding the acceptance and usage of gifts and bequests which are consistent with objects of the Corporation and which ensure that funds received in this manner are spent on assisting the Corporation in fulfilling its mandate under the Act.
- o.** Entering into agreements with the government of Canada or a province or territory of Canada in matters relating to the provision of legal aid services

and submitting same to the Minister for recommendation and for approval by LGIC, as appropriate.

- p.** Establishing an approval process for fees imposed by the Corporation which is consistent with the legislation and which includes directions with regard to delegation of authority.
- q.** Approving the MOU in a timely manner and authorizing the Chair to sign it on behalf of the Corporation.
- r.** Directing the preparation of the Corporation's annual business plan, annual report and other reports in keeping with TB/MBC's requirements, as appropriate, the Act and this MOU.
- s.** Consulting, as appropriate, with stakeholders on the Corporation's goals, objectives, strategic directions, rules and procedures.
- t.** Directing the affairs of the Corporation and setting overall priorities so as to fulfill its mandate.
- u.** Making decisions consistent with the business plan approved by the Board of the Corporation, and ensuring that the Corporation operates within its allocations.
- v.** Approving the Corporation's plans, reports and reviews for submission to the Minister in a timely manner.
- w.** Cooperating with any periodic review directed by the Minister or TB/MBC.
- x.** Ensuring that the Corporation manages its affairs in compliance with applicable TB/MBC directives.
- y.** Ensuring that the Corporation uses public funds prudently and only for the business of the Corporation based on the principle of value for money, and in compliance with applicable legislation and TB/MBC directives
- z.** Ensuring that Corporation funds are used with integrity, honesty, fairness and effective controllership.
- aa.** Directing the development of an appropriate risk management framework and a risk management plan and arranging for risk-based reviews and audits of the Corporation as needed.
- bb.** Where applicable, ensuring that conflict of interest rules that the Corporation is required to follow, as set out in Ontario Regulation 381/07 (or as have been approved and published by the Conflict of Interest Commissioner), are in place for the members of the board and employees of the Corporation.
- cc.** Cooperating with and sharing any relevant information on any risk-based or periodic review directed by the minister or TB/MBC.

#### **4. Deputy Minister**

##### **The Deputy Minister is responsible for:**

- a. Providing support and assistance to the Minister under the Act and the MOU, in the execution of the Minister's duties with regard to the Corporation.
- b. Providing support and advice to the Corporation, in relation to applicable TB/MBC directives and requirements.
- c. The performance of the Ministry in supporting the Corporation and for carrying out the roles and responsibilities assigned to him or her by the Minister, the Act and this MOU.
- d. Meeting with the President of the Corporation as needed or as directed by the Minister, to discuss matters of mutual importance to the Ministry and the Corporation.
- e. Advising the Minister on the requirements of the AEAD and other directives that apply to the Corporation.
- f. Advising the Minister on the operation of the Corporation.
- g. Establishing a framework for reviewing and assessing the Corporation's business plans and other reports.
- h. Advising the Minister on documents submitted by the Corporation to the Minister for review or approval, or both.
- i. Monitoring the Corporation on behalf of the Minister, while respecting the Corporation's authority and independence and, where warranted, identifying needs for corrective action and recommending to the Minister ways of resolving issues.
- j. Negotiating a draft MOU with the President of the Corporation as directed by and on behalf of the Minister.
- k. Arranging for administrative, financial, and other support to the Corporation as specified in this MOU.
- l. Advising and assisting the Minister on meeting assigned ministerial responsibilities with respect to the Corporation.
- m. Undertaking reviews of the Corporation on behalf of and as directed by the Minister or TB/MBC.
- n. Cooperating with any review of the Corporation as directed by the Minister or TB/MBC.

- o. Consulting with the Corporation's President, as needed, on matters of mutual importance, including services provided by the Ministry, and on TB/MBC directives and Ministry Policies, and ensuring that the LAO incorporates diversity and inclusion into its business plan to promote an open and accessible regulatory system.
- p. Recommending to the Minister, as may be necessary, the evaluation or review, including a risk-based review, of the Corporation or any of its programs, or changes to the management framework or operations of the Corporation.
- q. Facilitating briefings and consultations between the Chair and Minister, and between Ministry staff and Corporation staff.
- r. Attesting to TB/MBC as required, to the Corporation's compliance with the mandatory accountability requirements set out in the AEAD.
- s. Ensuring that the ministry and the Corporation have the capacity and systems in place for on-going risk-based management, including appropriate oversight of the Corporation, and working cooperatively with the Corporation in accordance with the responsibilities that the parties respectively bear for risk assessment and risk management in relation to the development and delivery of legal aid services and the broader justice sector.
- t. Acknowledging the Corporation's responsibility for developing risk assessments and risk management plans in accordance with its statutory mandate, and ensuring that the Corporation has an appropriate risk management framework and a risk management plan in place for managing risks that the Corporation may encounter in meeting its program or service delivery objectives.
- u. Supporting the Minister in reviewing the Corporation's performance targets, measures and results.
- v. Submitting to the Minister, as part of the annual planning process, a risk assessment and management plan for each risk category.
- w. Informing the President, in writing, of new government directives and any exceptions to or exemptions in whole or in part from TB/MBC directives or Ministry administrative policies.

## **5. President**

Section 5(3) of the Act specifies that the President of the Corporation shall be a non-voting member of the Board.

**The President is responsible for:**

- a.** Providing leadership, guidance and management to the Corporation in fulfillment of its mandate, including financial resources management.
- b.** Managing the day-to-day operations of the Corporation under the supervision of the Board, in accordance with applicable TB/MBC and Ministry of Finance directives, accepted business and financial practices, and this MOU.
- c.** Managing human resources for the Corporation.
- d.** Fulfilling the program's performance measures as approved by the Board.
- e.** Fulfilling the policy and strategic direction of the Board in operational plans and activities, including diversity and inclusion plans and strategies.
- f.** Overseeing the development of the Corporation's annual business and operational plans.
- g.** Implementing the policies established by the Board and performing such other functions as are assigned to him or her by the Board.
- h.** Keeping the Board informed of the implementation of its policy directions and the operations of the Corporation.
- i.** Providing the Board with advice and assistance in meeting its responsibilities.
- j.** Undertaking reviews, evaluations and reports of the Corporation's activities at the request of the Board and advising the Board of the results.
- k.** Maintaining effective communication with the Deputy Minister as required, including meetings with the Deputy Minister.
- l.** Ensuring that the Minister is provided with such information regarding the Corporation as the Minister may require or request pursuant to s. 71(2) (h) of the Act.
- m.** Maintaining an internal audit and risk management capacity for the Corporation and ensuring that the Corporation has an appropriate risk management framework and risk management plan in place, as directed by the Board.
- n.** Applying policies so that public funds are used with integrity and honesty.
- o.** Establishing and applying a financial management framework for the Corporation, to support decision-making, in accordance with applicable Minister of Finance controllership directives, policies and guidelines.
- p.** Establishing systems to ensure that the Corporation operates within its approved business plan.

- q.** Supporting the Chair and Board in meeting their responsibilities.
- r.** Carrying out in-year monitoring of the Corporation's operational performance and reporting on it to the Chair and to the Board.
- s.** Advising the Board through the Chair on compliance with applicable TB/MBC and Ministry of Finance directives and Ministry policies and procedures.
- t.** Seeking support and advice from the Ministry, as appropriate, on day-to-day management issues.
- u.** Consulting with the Deputy Minister, as needed, on matters of mutual importance, including services provided by the Ministry, and on TB/MBC and Ministry of Finance directives and Ministry policies.
- v.** Cooperating with a periodic review directed by the Minister or TB/MBC.
- w.** Establishing a system for the retention of formal Corporation documents and making such documents publicly available, as appropriate.
- x.** Preparing annual reports and business plans for the Corporation as directed by the Board.
- y.** Preparing financial reports for approval by the Board.
- z.** Ensuring that the Corporation's annual report is prepared for public release and posting it on the Corporation's website after submission to the Minister and tabling in the legislature
- aa.** Preparing, for approval by the Board, a performance review system for staff and implementing that system.
- bb.** Ensuring that the Corporation has the oversight capacity and an effective oversight framework in place for monitoring its management and operations
- cc.** Keeping the Ministry and the Chair advised on issues or events that may concern the Minister, the Deputy Minister and the Chair in the exercise of their responsibilities
- dd.** Fulfilling the role of ethics executive for public servants, other than government appointees, who work in the Corporation. Promoting ethical conduct and ensuring that all members of the Corporation are familiar with the ethical requirements of the PSOA and the regulations and directives made under that Act, including in respect of conflict of interest, political activity, and the protected disclosure of wrongdoing.



## **6. Working Group**

- a.** The Working Group established by the Deputy Minister and the Corporation will meet regularly to exchange information relevant to the operations and policies of each.
- b.** The role of the Working Group is to improve communications between the Corporation and the Ministry and review issues of mutual concern that could have an impact on the efficiency and effectiveness of the delivery of legal aid services.
- c.** Sub-groups of the Working Group may be established, from time to time, as deemed necessary.

## **11. REPORTING REQUIREMENTS**

### **General**

- a.** The Corporation shall submit the following documents on time, as set out in a Schedule to the MOU or otherwise arranged in writing, to enable the Minister to meet his or her annual estimates and other requirements and the Minister shall provide advance notice of deadlines, as far as possible:
  - Business Plan and Annual Report
  - Financial Statements
  - Operational Plan/Budget
  - Performance Measures
  - Promotional and Informational Materials
  - Monthly / Quarterly Financial Statements
  - Quarterly Service Level Statistics
  - Certificate Management Report / Legal Aid Services Report
  - Schedule of Investments and Income Earned
  - Audited Financial Statements
  - Monthly Cash Flow Requirements
  - Monthly Invoices for Transfer Payment
  - Certificate of Assurance (COA) Reports
  - Report on New Investment Expenditures
- b.** The Ministry shall provide annually to the Corporation in writing a summary of the standard reporting requirements and the timelines associated with each report required by the Ministry.
- c.** The Chair is responsible for ensuring that reports and documents are submitted for review or approval to the Minister according to the prescribed time lines.

## **Business Plan**

The Minister will endeavor to keep the Chair apprised in a timely manner of Ministry priorities and directions that are relevant to the development of the Corporation's business plan.

- a. The Chair will ensure that the Minister is provided annually with the Corporation's business plan covering a minimum of three years from the current fiscal year for approval of its direction and fundamentals, within the timelines established by the Minister for this purpose.
- b. The business plan will include the vision, mandate, goals, objectives and targets of the Corporation. Additionally, the plan will cover the Corporation's financial budget, an operational plan outlining objectives that the Corporation expects to achieve for the upcoming fiscal year, a 3 year operating budget and a system of performance measures tied to the Corporation's mandate. The plan will also include performance measures related to the diversity and inclusion plans and strategies.
- c. The Chair will further ensure that the business plan includes a risk assessment and risk management plan to assist the Ministry in developing its risk assessment and risk management plan information in accordance with the requirement of the *AEAD*, to assess risks, develop and maintain necessary records and report to TB/MBC.
- d. The Minister will review the Corporation's annual business plan and will promptly advise the chair whether or not he/she concurs with the directions proposed by the Corporation.
- e. The Chair is responsible for ensuring that the Corporation's annual business plan meets the requirements of the *Agency Establishment and Accountability Directive*.
- f. In addition, the Chair of TB/MBC may require the Minister to submit the Corporation's business plan to TB/MBC at any time.
- g. The Corporation shall inform the Minister of any intended in-year activities that may result in significant additions, deletions or amendments to the business plan before the Corporation enters into any binding financial or operational commitments with respect thereto.
- h. The Minister shall inform the Corporation of any intended in-year activities that may result in or require significant additions, deletions or amendments to the Corporation's business plan.
- i. The Minister shall provide the Corporation with documentation outlining aspects of the Ministry's business planning, priorities and policies as may be relevant to the Corporation's own planning processes. The Minister shall

provide regular feedback to the Corporation on how its business plan was used in the Ministry's overall planning process.

- j. The Corporation is responsible for preparing a summary of its business plan, and the summary shall be made available to the Corporation's stakeholders and to the general public.

## **Annual Report**

- a. Pursuant to s. 72 of the Act, within 120 days of the end of the Corporation's fiscal year, the Corporation shall submit an annual report upon the affairs of the Corporation to the Minister for submission to the LGIC and tabling in the Legislative Assembly.
- b. The annual report shall contain:
  - (i). The audited financial statements of the Corporation and of its subsidiaries, if any.
  - (ii). A statement of the nature and amount of legal aid services provided during the year.
  - (iii). A statement as to how the Corporation has met its performance standards.
  - (iv). General information as to the working of the Act and the regulations and advice, if any, on the need for amendments to the Act and the regulations in order to improve the provision and efficiency of legal aid services.
  - (v). Any information that the Corporation considers necessary to advise the Attorney General about the provision of legal services, including any features of the justice system that affect or may affect the demand for or quality of legal aid services.
  - (vi). Such other information as the Attorney General may request.
- c. The Chair is responsible for ensuring that the annual report fulfills the requirements of the AEAD, and the Act.

## **Other Reports**

In addition to the business plan and annual report, the Corporation shall submit to the Minister the following:

- a. Monthly / Quarterly financial reports on an accrual basis setting out the following:
  - (i). Year-to-date actual expenditures of the Corporation for its operating budget and program funding.
  - (ii). The fiscal year-end financial forecast of the Corporation's expenditures and revenues.

- (iii). An explanation regarding any major variances from the approved operating budget or program funding.

b. Any promotional and informational materials;

c. Any other reports as required pursuant to s. 72(2) of the Act.

At the request of the Minister or Deputy Minister, or their delegate, and, where possible, with appropriate notice, the President will supply appropriate data and other information that may be required from time-to-time for the purpose of Ministry administration.

## **12. COMMUNICATIONS**

### **1. Public Communications Protocol**

a. The Corporation regularly receives requests for information and interviews from the media about issues affecting access to justice for low-income people in Ontario. The Corporation will follow a “no surprises” policy by:

- Informing the Ministry about all significant media requests in a timely manner.
- When possible, seeking input from the Ministry prior to following up with media requests.
- Advising the Ministry of the information that has been provided to the media.

### **2. Exchange of Information**

a. The Minister and the Chair will advise and/or consult with each other as appropriate on significant public communications strategies and publications. They will keep each other informed, as appropriate, on the results of stakeholder and other public consultations and discussions.

b. Both parties agree that the main contact point between the Ministry and the Corporation will be the Agency Relations Division. Staff from the Agency Relations Division and appropriate staff at the Corporation shall try to ensure effective day-to-day communication is maintained.

c. The Agency Relations Division, as the operating agent of the Deputy Minister, has monitoring, research and analysis roles in carrying out the day to day activities that result from the reporting and accountability responsibilities of the Corporation. These include:

#### **i. Governance**

- Processing and tracking transfer payments to the Corporation.

- Performing research and analysis to determine appropriate content of reports to meet Ministry and central agency reporting requirements.
- Developing financial models with complex variables and justifying forecasts to central agencies.
- Responding to ad hoc questions from central agencies, the Minister, Deputy Minister, program areas, and the Corporate Services Management Division regarding funding/other issues related to specific submissions.
- Advising the Corporation regarding directives and guidelines and Ministry news releases impacting the organization's planning processes and the delivery of legal aid services.
- Reviewing and analyzing the Corporation's Annual Report, Business Plan and other reports.
- Assessing compliance with the AEAD and *Transfer Payment Accountability Directive*.

## **ii. Transfer Payment Accountability**

- Ensuring the Ministry and the Corporation have capacity to confirm the corporation is providing the services for which the funds were intended, including its ability to administer the program, assessing risk, devising a regular communication plan and monitoring results;
- Ensuring that the Corporation establishes a risk-based review process to assist in identifying and assessing potential risks and developing appropriate action plans; and
- Confirming outcome-reporting expectations for the annual reporting by the Corporation, in consultation with the Corporation.

## **iii. Strategic Business Planning Coordination**

- Providing strategic business planning support and advice relating to the Corporation.
- Preparing Management Board submissions and Results-Based Planning notes, in consultation with the Corporation where possible.
- Analyzing in-year quarterly financial reports including (i) year-to-date actual expenditures of operating budget and program funding; (ii) fiscal year-end financial forecast of expenditures and revenues; and (iii) any major variances from the approved operating budget or program funding.

- d.** The parties to the MOU recognize that the timely exchange of information on the operations and administration of the Corporation and of the Ministry is essential for the Minister and Chair to meet their respective responsibilities

- e. The parties also recognize that it is essential for the Chair and the President to be kept informed of the government initiatives and broad policy directions that may affect the Corporation's mandate and functions, subject to Cabinet confidentiality.
- f. Legal Aid Ontario will keep the Ministry advised, in a timely manner, of all planned events and issues that concern or can be reasonably expected to concern the Minister in the exercise of the Minister's responsibilities. In a reciprocal fashion, the Ministry will keep Legal Aid Ontario advised of planned events or issues that concern or can be reasonably expected to concern the Corporation in meeting its responsibilities and carrying out its mandate.
- g. Subject to Cabinet confidentiality, the Minister will consult with the Chair, as appropriate, on broad government policy initiatives or legislation being considered by the government that may impact on the Corporation's mandate or functions.
- h. The Ministry and Legal Aid Ontario will consult with each other on public communications strategies and publications. They will keep each other informed of the results of stakeholder and other public consultations and discussions.
- i. The Minister and the Chair will meet regularly, or as requested by either party, to discuss issues relating to the fulfillment of the Corporation's mandate.
- j. The Deputy Minister and the President will meet regularly to discuss issues relating to the efficient operation of the Corporation and to discuss how the Ministry can assist the Corporation in delivering its mandate.
- k. The Minister will be invited to meet with the Corporation's Board, and shall make best efforts to meet regularly with the Board.
- l. The parties agree to adhere to the Communication Protocol set out in Schedule IV to this MOU.

### **13. ADMINISTRATIVE ARRANGEMENTS**

#### **1. Applicable TB/MBC and Ministry of Finance Directives**

- a. The Chair is responsible for ensuring that the Corporation operates in accordance with all applicable TB/MBC and Ministry of Finance directives, as well as applicable Ministry financial and administrative policies and procedures. Schedule I of this MOU provides a list of applicable directives and policies.
- b. The Chair is responsible for ensuring that clear expectations are established for transfer payment recipients, and for ensuring effective diligence when setting up and monitoring transfer payment contracts to ensure public

services are delivered, commitments are fulfilled and the right controls are in place to ensure the prudent use of taxpayers' money.

- c. The Chair is responsible for ensuring that the legal, financial and other interests of the government in intellectual property are protected in any contract that the Corporation may enter into with a third party that involves the creation of intellectual property.
- d. The Corporation shall also abide by the Ministry's financial and administrative policies, procedures and timelines that are determined by the Ministry to be appropriate, in consultation with the Corporation.

## **2. Freedom of Information and Protection of Privacy**

- a. The Corporation shall be subject to all requirements under the *Freedom of Information and Protection of Privacy Act* (FIPPA) and shall respond to access requests and privacy investigations directed to it by the Ministry's Freedom of Information and Protection of Privacy Office.
- b. The President of the Corporation is the institution head for the purposes of the *Freedom of Information and Protection of Privacy Act*.

## **3. Records Management**

- a. The Chair is responsible for ensuring that a system is in place for the creation, collection, maintenance and disposal of records.
- b. The Chair is responsible for ensuring that the Corporation complies with the TB/MBC Management of Recorded Information Directive.

## **4. Client Service**

- a. The Corporation has in place a formal process for responding to complaints about the quality of services received by clients of the Corporation consistent with the government's service quality standards.
- b. The Corporation's annual business plan will include performance measures and targets for client service and the Corporation's response to complaints.

## **5. Administrative and Organizational Support Services**

- a. The Corporation will be responsible for all administrative services including human resource support services, financial, administration and payroll processing, training, staff development and information technology development and operations support.
- b. The LAO may participate in any government-wide shared services arrangements, where applicable.

## **6. Client/Customer Service**

- a.** The Chair will ensure that the Corporation delivers its services at a quality standard reflecting the principles and requirements of the OPS Service Directive.
- b.** The Corporation has in place a formal process for responding to complaints about the quality of services received by clients of the Corporation that are consistent with OPS service quality standards.
- c.** LAO shall ensure that services are provided in accordance with the *French Language Services Act*.
- d.** The Corporation's annual business plan will include performance measures and targets for customer service, as well as the Corporation's response to complaints.

## **14. FINANCIAL ARRANGEMENTS**

### **1. Funding**

- a.** The Corporation is funded principally from the Consolidated Revenue Fund pursuant to an appropriation authorized by the legislative assembly. This funding is based on the annual Ministry Results-based Planning process and is subject to adjustments made by TB/MBC or the Minister.
- b.** The Corporation also receives funding from several other sources which does not form part of the Consolidated Revenue Fund.
- c.** Section 69(1) of the Act specifies that the Corporation's funds, including money paid to the Corporation under s.67 of the Act, which includes the annual budget approved by the Attorney General, do not form part of the Consolidated Revenue Fund.
- d.** Section 70 of the Act specifies that the *Financial Administration Act* does not apply to the Corporation except to the extent prescribed by regulation to the Act.
- e.** The Minister reserves the right to review administrative expenditures of the Corporation during the government's Results-based Planning process.
- f.** The Chair shall submit to the Minister for approval the Corporation's budget, upon which its business plan and operational plan are based.
- g.** In reviewing the Corporation's business plan, the Minister agrees to consider the impact of any government initiatives that increase the legal aid caseload or cost per case.



- h.** The Chair shall advise the Minister of any significant in-year change including any which could cause a material change to the budget.
- i.** The Ministry shall review any in-year requests for funding from the Corporation and work with the Corporation to determine how to address these requests.
- j.** The Minister and the Corporation agree to work together to seek to improve federal funding for legal aid services.
- k.** The President will prepare estimates of the Corporation's expenditures for inclusion in the Ministry's Results-Based Plan. The Chair will ensure that these estimates are delivered to the Minister in sufficient time to be analyzed and approved by the Minister. These estimates may, after appropriate consultation with the Chair, be altered as required.
- l.** Financial procedures of the Corporation must be in accordance with TB/MBC and Ministry of Finance directives and guidelines and other applicable government direction.
- m.** The Corporation shall adopt prudent management policies for its financial activities, including leasing, investing, banking and management of cash, financial assets, and financial risks.
- n.** The Corporation shall acknowledge the financial support of the Government of Ontario in all of its educational and promotional materials.
- o.** The Corporation shall maintain a contingency reserve fund in accordance with the Act and the related regulation thereunder and shall provide the Minister with an annual statement of the balance in the fund as well as associated investment policies and procedures.
- p.** Where the Corporation has an operating surplus at its fiscal year end that results in it being placed in a net asset position, the Corporation is entitled, with the approval of the Minister in accordance with ss. 66 and 69 of the Act, to allocate the surplus to either or both of the two subsequent fiscal years, or to allocate the surplus in order to rebuild its contingency reserve fund to the level of \$20 million, as provided for in s.6 of O.Reg. 107/99.
- q.** When ordered to do so by the Minister of Finance under s. 69(2) of the Act, the Corporation shall pay into the Consolidated Revenue Fund any money that the Minister of Finance determines is surplus to its requirements.
- r.** The Minister will take into consideration the Corporation's liabilities including its contingent liabilities when reviewing and approving the Corporation's budgets under s. 66 of the Act and in making representations to the Minister of Finance when the latter is making a decision under s. 69 (2).

- s. In accordance with s. 67 (3) of the Act, the Ministry will provide funds to the Corporation, consistent with the Province's management policies.

## **2. Financial Reports**

- a. The Chair will provide to the Minister audited annual financial statements, and will include them as part of the Corporation's Annual Report.
- b. The Corporation will submit to the Ministry its salary information according to the *Public Sector Salary Disclosure Act*.

## **3. Harmonized Sales Tax (HST)**

- a. The Corporation shall remit HST in accordance with all applicable laws.

## **15. AUDITING ARRANGEMENTS**

- a. Pursuant to section 65 (3) of the Act, the accounts of the Corporation shall be audited annually by the Auditor General or its agent.
- b. The Corporation shall share with the Minister its financial statements once they are approved by the Auditor General.
- c. The Corporation shall conduct value for money audits, as the audit committee of the Corporation deems appropriate, and will provide the Ministry with copies of any reports tabled with the Audit Committee.
- d. The Corporation agrees to inform the Ministry of any comments made by the Auditor General in relation to any audit of the Corporation conducted by the Auditor General of Ontario.
- e. Regardless of any annual external audit, the Minister may direct that the Corporation be audited by the Auditor General of Ontario.
- f. The Auditor General of Ontario may, at any time, audit any aspect of the operations of the Corporation under the *Auditor General Act*.
- g. The Corporation will promptly provide a copy of every report from an auditor to the Minister. The Corporation will also provide a copy of its response to the audit report and any recommendations therein. The Corporation will advise the Minister annually on any outstanding audit recommendations.
- h. The Chair may request an external audit of the financial transactions or management controls of the Corporation at the Corporation's expense.

## **16. STAFFING AND APPOINTMENTS**

### **1. Staffing**

- a.** The Board has full financial and administrative authority over the operations of the Corporation, and may delegate such authority in writing to the President or other officers and employees of the Corporation as it sees fit.
- b.** Parts I, II, IV, V, VI and VII of the *Public Service of Ontario Act, 2006*, apply to employees of the Corporation.
- c.** The Corporation should, on request, provide details of staff numbers to the Ministry.
- d.** Under the Act, the Board may employ such persons as it considers necessary for its purposes. An employee of the Corporation is not an employee of the Crown.

### **2. Appointments**

- a.** The Chair and directors of the Board of the Corporation are appointed by the LGIC on the recommendation of the Minister pursuant to s. 5(2) of the Act.
- b.** The Chair is selected by the Minister from a list of persons recommended by a committee comprised of the Minister or a person designated by him or her, the Treasurer of the Law Society or a person designated by him or her, and a third party agreed upon by the Minister and the Treasurer of the Law Society or persons designated by them.
- c.** Five directors are selected by the Minister from a list of persons recommended by the Law Society.
- d.** Five directors are recommended by the Minister.
- e.** Appointments to the Board shall be made in a timely fashion, so as to ensure a full complement of Board members.

## **17. LIABILITY PROTECTION AND INSURANCE**

- a.** Pursuant to s. 86 of the Act, no action or other proceeding for damages shall be instituted against a member of the Board, an officer or employee of the Corporation, an area director, or a member of an area committee for any act or omission, neglect or default in the execution or intended execution of his or her duty under the Act. This provision does not relieve the Corporation of liability in respect of a torts committed by the above persons.

- b. Pursuant to s. 87 of the Act, the Corporation is not liable for any act or omission of any lawyer or student or service provider who provides legal aid services under the Act, unless the lawyer or service provider is an employee of the Corporation.
- c. The Corporation hereby agrees to put in effect and maintain for the duration of this Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Corporation would maintain including, but not limited to, the following:

#### **1. Commercial General Liability**

- a. Commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage. The policy is to include the following:
  - (i) The Indemnified Parties as additional insured with respect to liability arising in the course of performance of the Corporation's obligations under, or otherwise in connection with, the Agreement.
  - (ii) Contractual liability coverage.
  - (iii) Cross-liability clause.
  - (iv) Employer's liability coverage.
  - (v) 30 day written notice of cancellation, termination or material change.
  - (vi) Tenants legal liability coverage.
  - (vii) Non-owned automobile coverage with blanket contractual coverage for hired automobiles.

#### **2. Directors and Officers Liability Insurance**

- a. Directors and officers liability insurance coverage is to pay on behalf of the Insured all loss they are legally obligated to pay, which the Insurer is required or permitted to pay the Insured (meaning all persons who were, now are or shall be duly appointed directors or duly elected or appointed officers) as advancements or indemnity pursuant to law, common or statutory, by contract or under applicable corporate by-laws or corporate indemnity statutes, for a claim against any Insureds for a wrongful act, provided that the claim is first made against any Insureds during the policy period or during the discovery period, if exercised, subject to the policy terms, conditions and exclusions.

### **18. EFFECTIVE DATE, DURATION AND PERIODIC REVIEWS**

#### **1. Effective Date and Duration**


- a. This MOU becomes effective on the date it is signed by the parties.

- b. This MOU will continue in effect for not more than five years from the effective date.
- c. Other than in circumstances set out in subsection (d), this MOU will remain in force for six months after its expiry date unless a new signed MOU is provided to the Secretary, Management Board of Cabinet before that time. A new signed MOU must be provided to the Secretary, Management Board of Cabinet within six months after the expiry date of this MOU.
- d. Upon a change in the Minister or the Chair, the MOU must be affirmed by the new party to the MOU. If a new Minister or Chair takes office before this MOU expires, the Minister and Chair must affirm by letter that the MOU will continue in force without a review; or alternatively, they may agree to revise. A letter of affirmation must be provided to the Secretary, Management Board of Cabinet, within six months of the new party's commencement.
- e. Without affecting the effective date of this MOU, either the Minister or Chair may initiate a review of this MOU by written request to the other.
- f. A full review of this MOU will be conducted one year prior to its expiry, or immediately in the event of a significant change to the Corporation's mandate, powers or governance structure as a result of an amendment to the LASA.


**2. Periodic Reviews**

- a. LAO may be subject to a review at the discretion and direction of TB/MBC or the Minister. The review may cover such matters relating to the Corporation that are determined by TB/MBC or the Minister, and may include the mandate, powers, governance structure and/or operations of the Corporation.
- b. The Minister will consult with the Chair as appropriate during any such review, and the Chair and Board will cooperate fully in any review.

Signed at Toronto, Ontario

  
 \_\_\_\_\_  
 Madeleine Meilleur  
 Attorney General  
 Ministry of the Attorney General

6 novembre 2014  
 Date

  
 \_\_\_\_\_  
 John McCamus  
 Chair  
 Legal Aid Ontario

12 November 2014  
 Date

## **SCHEDULE I**

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### **Applicable Management Board and Ministry of Finance Directives**

The following TB/MBC and Ministry of Finance directives, guidelines and policies apply to the Corporation:

- Accountability Directive
- Advertising Content Directive
- Agency Establishment and Accountability Directive
- Delegation of Authority Key Directive
- Government Appointees Directive
- Transfer Payment Accountability Directive
- Procurement Directive – sections applicable to *“Other Included Entities”*
- Risk Management Policy
- Travel, Meal & Hospitality Expenses Directive
- Enhancing Privacy: Computer Matching of Personal Information Directive
- Visual Identity Directive

The Ministry will inform the Corporation of amendments or additions to directives, policies and guidelines that apply to the Corporation; however, the Corporation is responsible for complying with all directives, policies and guidelines to which it is subject.

## **SCHEDULE II**

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### **Special Services**

The Corporation is one agency among a number of interdependent agencies that make up the justice system of Ontario. In order to facilitate the effective and efficient operation of the justice system as a whole, the Corporation may from time to time agree to provide some additional services, including the following.

#### **1. Advice Lawyers at Family Law Information Centres (FLICs)**

The Corporation provides Advice Lawyers for specified days and times at every FLIC. Advice Lawyers provide up to twenty minutes, as time permits, of free general information about family law and the family court process to any person at a FLIC who does not have a matter scheduled for that day. Advice Lawyers will also, as time permits, draft documents and provide specific legal advice to people who qualify under Legal Aid Ontario's financial eligibility guidelines for this service.

#### **2. Administration of Legal Accounts for the Crown**

The Corporation administers the legal accounts of counsel who are appointed by the Court and paid for by the Crown.

#### **3. Telephone Duty Counsel**

The Corporation provides a telephone duty counsel service. The service is available to anyone who has been detained and is provided without financial eligibility testing.

#### **4. Legal Representation for Witnesses in Criminal Prosecutions**

As a general policy the Corporation does not provide legal representation for witnesses in a legal proceeding. However, the Corporation provides representation to complainants on the issue of access to medical and other records in criminal prosecutions where the defence is seeking to gain disclosure of and submit as evidence the witness' medical records and/or history.

The Corporation also promotes the effective and efficient operation of the justice system through various other services that it provides, including telephone summary legal advice and other services provided through its Client Service Centre, and mediation services.

## SCHEDULE III

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### Protocol for Management of Court-Ordered Publicly-Funded Counsel

The Ministry of the Attorney General (the “Ministry”) and Legal Aid Ontario have a shared duty to promote the public interest through improving the effectiveness of the administration of justice, and ensuring public funds are spent appropriately and prudently. The following principles will help the Ministry and Legal Aid Ontario achieve that shared duty. They are, as always, subject to an order made by a Court.

#### Principles

1. The Ministry is responsible for the Crown prosecution service and also responsible to the public for funds expended by the Ministry and by Legal Aid Ontario. The Crown prosecution service should act as prosecutor and should not be involved with issues related to the assessment of the accused's financial circumstances performed by Legal Aid Ontario or with payment of accounts by the Ministry. The prosecution service has an important role providing information to Legal Aid Ontario regarding the status and conduct of the proceeding. The Ministry must, however, be able to discharge its role regarding the expenditure of public funds, including necessary financial oversight.
2. The *Legal Aid Services Act*, 1998 mandates Legal Aid Ontario to provide legal aid services to low-income Ontarians through assessment and payment of public funds in criminal and civil proceedings.
3. In the rare circumstances of Court-ordered public funding (including Rowbotham or Fisher orders), there should be a consistent approach to ensure that an accused whose liberty is at stake receives support consistent with Legal Aid Ontario's prescribed mandate to fund a “reasonable applicant of modest means.”
4. Publicly-funded defence counsel should be paid at the same rate regardless of the source of funding and shall be subject to the required oversight to ensure that public funds are spent appropriately and prudently.
5. The Ministry and Legal Aid Ontario will jointly appear before the Court on public funding applications. The Ministry and Legal Aid Ontario recognize that there may be some situations where they may agree that joint appearance is not necessary.
6. Where the Court determines that an order should be made, the Ministry and Legal Aid Ontario will, wherever possible, present a joint draft order that will include the following:
  - o The Ministry would fund the defence.
  - o Legal Aid Ontario would manage the case in accordance with legal aid billing and payment rules and processes.
  - o Payment would usually depend on Legal Aid Ontario's assessment of the account according to its rules. However, the Ministry may require that an independent third-party with expertise in criminal proceedings review, monitor and assess invoices on an ongoing basis and/or at the conclusion of the proceedings.



- Where an account is not paid in full, counsel will have access to the review process available through Legal Aid Ontario.
7. The Ministry and Legal Aid Ontario will appear jointly, whenever possible, to seek directions from the Court on any necessary variations to, or compliance issues with, public funding orders made by the Court.
  8. The Ministry and Legal Aid Ontario will work together within their respective authority to recover any costs paid on behalf of an accused.
  9. The Ministry and Legal Aid Ontario are committed to ongoing monitoring, review and improvement of this protocol and related policies and procedures.
  10. The Ministry and Legal Aid Ontario will consult with the Bar as part of their continuing work to strengthen accountability for, and oversight of, public funds.

## **SCHEDULE IV**

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### **Communications Protocol**

#### **Purpose:**

1. To establish clear lines of communication between the Ministry (i.e. the Minister's Office, the Deputy Minister's Office, and Ministry staff) and LAO.
2. To establish a process for dealing with requests from Ministry staff for briefing material/issue notes.
3. To establish a process for the ministry to communicate with LAO.

#### **Principles:**

This supplements the MOU, which defines the specific roles, responsibilities and relationship between the Ministry and LAO.

LAO is an independent agency with a statutory mandate to provide high quality legal aid services to low-income individuals throughout Ontario, operating independently from the Government of Ontario but within a framework of accountability to the Government of Ontario for the expenditure of public funds as set out in *the Legal Aid Services Act, 1998* (LASA).

The commitment of the Government to independent agencies capable of efficiently and effectively fulfilling their mandates requires that the Minister, the Ministry and LAO establish communication relationships, which are respectful of:

- LAO's independent mandate; and
- The Minister's accountability to the Legislature for the fulfillment of LAO's mandate

#### **Lines of Communications/Protocols**

##### **1. Communication between the Ministry and LAO**

The Minister's office shall coordinate communication with LAO through the office of the Chair. The Deputy Minister shall communicate with the President.

##### **2. Questions or Complaints about individual cases**

The parties recognize and accept that it is inappropriate for LAO to discuss or communicate with the Minister or Ministry about specific cases that are before a court or tribunal.

### **3. Complaints**

Telephone or written inquiries from members of the public to the Minister's Office, or Ministry staff about LAO policies and procedures are to be directed to LAO's Complaints Department and dealt with in accordance to LAO's complaint policy.

### **4. Briefing Material/Issue Notes**

LAO will prepare briefing or issue notes for the Minister and Ministry upon the request of the Minister's office or the Ministry, so long as such requests do not deal with cases under consideration by a court or tribunal.

LAO will prepare and deliver to the Ministry background information on specific issues, within the timeframe suggested, in accordance with LAO's independent function.

### **5. Ministry's and LAO's Communication Materials**

Whenever possible, the ministry will advise LAO about provincial government initiatives or priorities which may affect the Corporation's mandate, operations, service delivery or the demand for legal aid services.

Whenever practical, the Ministry will give advance notice to the Chair of the general content of documents or messages regarding LAO's operations and mandates and permit the Chair a reasonable period to provide comments and suggestions.

In recognition of the necessity for LAO to maintain its independence in its relationships with stakeholders, the Minister/Ministry agrees whenever possible, to inform and consult with LAO when responding to inquiries or requests from the LAO stakeholders, which shall be defined as including:

- Individuals, groups or organizations that receive funding from LAO in exchange for the provision of legal aid services to clients; and
- Individuals or groups that speak for or represent individuals, groups or organizations that receive funding from LAO in exchange for the provision of legal aid services to clients.

Whenever practical, the Chair will give the Minister advance notice of the general content of documents or messages of a public nature and might reasonably be expected to be of interest to the Minister. The President will similarly advise the Deputy Minister.

LAO's public materials will comply with legal requirements for accessibility.

LAO will provide copies of their policies and procedures, and public information materials to the Ministry upon request.

