

MEMORANDUM OF UNDERSTANDING

Between

THE ATTORNEY GENERAL

And

CHAIR OF LEGAL AID ONTARIO

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The parties to this memorandum of understanding agree to the following:

1. PURPOSE

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

- Establish the accountability relationships between the Minister and the chair of Legal Aid Ontario (LAO) on behalf of the agency.
 - Clarify the roles and responsibilities of the Minister, the chair, the Deputy Minister, the agency, the CEO of LAO, and the board.
 - Clarify the operational, administrative, financial, staffing, auditing, and reporting arrangements between Legal Aid Ontario and the Ministry of the Attorney General.
- a. This MOU should be read together with the *Legal Aid Services Act, 2020* (LASA, 2020). This MOU does not affect, modify, or limit the powers of the agency as set out under the LASA, 2020, or interfere with the responsibilities of any of its parties as established by law. This MOU also does not affect or interfere with LAO's independence from the Government of Ontario, including in relation to decisions respecting the provision of legal aid services to individuals and the exercise of its discretion to determine how legal aid services are provided. 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 or perceived to be involved in decisions respecting the provision of legal aid services to individuals or how legal aid services are provided, other than as may be provided for in LASA, 2020 or in regulations made pursuant to LASA, 2020. In case of a conflict between this MOU and any act or regulation, the act or regulation prevails.
- b. This MOU replaces the Memorandum of Understanding between the parties dated November 12, 2014.

2. DEFINITIONS

In this MOU:

- a. "AAD" means the Treasury Board/Management Board of Cabinet Agencies & Appointments Directive;
- b. "Act" means the *Legal Aid Services Act, 2020*, S.O. 2020, c. 11, Sched. 15 (LASA, 2020) that governs the agency;
- c. "Agency" or "provincial agency" means Legal Aid Ontario (LAO);
- d. "Annual Business Plan" means the annual business plan described under article 10.1 of this MOU;
- e. "Annual Report" means the annual report referred to in article 10.2 of this MOU;

- f. “Applicable Government Directives” means the government directives, policies, standards and guidelines that apply to the agency, as may be amended or replaced from time to time, which are listed in Appendix 2 to this MOU;
- g. “Appointee” means a member appointed to the agency by the Lieutenant Governor in Council (LGIC), but does not mean an individual employed or appointed by the agency as staff;
- h. “Board” means the board of directors of Legal Aid Ontario;
- i. “CEO” (as appropriate) means the Chief Executive Officer of the agency;
- j. “Chair” means the chair of the board of directors of Legal Aid Ontario;
- k. “Constituting instrument” means the *Legal Aid Services Act, 2020* that continued the agency;
- l. “Deputy Minister” means the Deputy Minister of the Ministry of the Attorney General;
- m. “*Executive Council Act*” means the *Executive Council Act*, R.S.O. 1990, c. E. 25, as amended;
- n. “FIPPA” means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended;
- o. “Fiscal Year” means the period from April 1 to March 31;
- p. “Government” means the Government of Ontario;
- q. “MBC” means the Management Board of Cabinet;
- r. “Member” means a member of the board of directors of Legal Aid Ontario;
- s. “Minister” means the Minister of the Attorney General of Ontario or such other person who may be designated from time to time as the responsible minister in relation to this MOU in accordance with the *Executive Council Act*, R.S.O. 1990, c.E.25, as amended;
- t. “Minister of Finance” means the Minister of Finance of Ontario, or such other person who may be designated from time to time under the *Executive Council Act*;
- u. “Ministry” means the Ministry of the Attorney General or any successor to the ministry;
- v. “MOU” means this memorandum of understanding signed by the minister and the chair;
- w. “President of the Treasury Board” means this President of the Treasury Board of such other person who may be designated from time to time under the *Executive Council Act*;
- x. “PSC” means the Public Service Commission;
- y. “PSOA” means the *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, Sched. A, as amended;

- z. “TBS” means the Treasury Board Secretariat;
- aa. “TB/MBC” means the Treasury Board/Management Board of Cabinet;

3. AGENCY’S LEGAL AUTHORITY AND MANDATE

- a. The legal authority of Legal Aid Ontario is set out in the *Legal Aid Services Act, 2020* (LASA, 2020).
- b. The provincial agency’s mandate is set out in the LASA, 2020, which states that the agency’s objects are to:
 - Establish and administer a flexible and sustainable system for providing legal aid services to individuals in Ontario;
 - Establish policies and priorities for the provision of legal aid services based on its financial resources;
 - Facilitate co-ordination among the different legal aid services that are provided and the manners in which they are provided;
 - Monitor and supervise the provision of legal aid services in Ontario; and
 - 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. AGENCY TYPE AND PUBLIC BODY STATUS

- a. Legal Aid Ontario is designated as an independent board governed provincial agency under the AAD.
- b. The agency is prescribed as a public body in accordance with Ontario Regulation 146/10 under PSOA.

5. CORPORATE STATUS AND CROWN AGENCY STATUS

- a. The agency is not a Crown agency within the meaning of the *Crown Agency Act*.
- b. The provincial agency has the capacity, rights, power and privileges of a natural person for carrying out its objects, subject to the limitations placed upon it under the LASA, 2020 and/or limitations imposed by TB/MBC.

6. GUIDING PRINCIPLES

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 LASA, 2020.

The parties agree to the follow principles:

- a. The Minister recognizes that the agency exercises powers and performs duties in accordance with its legal mandate under the LASA, 2020.
- b. 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.
- c. The Minister acknowledges the agency's unique role within the justice system and the agency's obligations in carrying out that role, including the protection of constitutional rights. Accordingly, the Minister acknowledges that there is a need for Legal Aid Ontario to maintain its independence to be fully capable of carrying out its unique role and to function as required.
- d. The Minister recognizes that the agency plays a meaningful role in the development of the legal aid policies and programs of the Government of Ontario, as well as in the implementation of those policies and delivery of legal aid programs.
- e. The board acknowledges that it is accountable, through the Minister, to the Legislative Assembly in exercising its mandate. Accountability is a fundamental principle to be observed in the management, administration, and operations of the agency. The board acknowledges that it is accountable to the Minister, through the chair, for governance and oversight of the agency.
- f. As an agency of the Government, the agency conducts itself according to the management principles of the Government. These principles include ethical behaviour; prudent, effective, and lawful use of public resources; fairness; high quality service to the public; and openness and transparency to the extent allowed under the law.
- g. The Minister and the board, through the chair, are committed to an agency that is empowered to fulfill its statutory mandate efficiently and effectively. They share the goal of establishing and maintaining a co-operative relationship that facilitates the efficient administration of the agency and fulfillment of its statutory responsibilities. The Minister acknowledges that Legal Aid Ontario, as one of several independent, but interdependent, components of the justice system, relies on others within the justice system for such coordination, cooperation and information-sharing as may be required for it to manage, modernize, and fulfil its oversight obligations efficiently.
- h. If the Minister and the agency agree, Legal Aid Ontario may from time to time provide some additional services and justice system supports which are not included in its eligibility policies established under the LASA. The parties agree that any additional services to support the justice system should not impact Legal Aid Ontario's sustainability and financial capacity to provide core legal aid services.
- i. The agency and the Ministry will work together in a mutually respectful manner.
- j. Legal Aid Ontario has obligations under both the LASA and the MOU to ensure that it consults with and considers the views of the public and service providers. Legal Aid Ontario's Public Consultation Policy established under the LASA and its Consultation Registry ensures this

commitment to public engagement on matters for which LAO is responsible.

7. ACCOUNTABILITY RELATIONSHIPS

7.1 MINISTER

The Minister is accountable:

- a. To Cabinet and the Legislative Assembly for the agency's fulfilment of its mandate and its compliance with government policies, and for reporting to the Legislative Assembly on the agency's affairs.
- b. For reporting and responding to TB/MBC on the agency's performance and compliance with government's applicable directives and operational policies.
- c. To Cabinet for the performance of the agency and its compliance with the government's operational policies and broad policy directions.

7.2 CHAIR

The chair, acting on behalf of the board, is accountable:

- a. To the Minister for the agency's performance in fulfilling its mandate, and for carrying out the roles and responsibilities assigned to the chair by the LASA, 2020, this MOU, and applicable TB/MBC, PSC, and other government directives.
- b. For reporting to the Minister, as requested, on the agency's activities.
- c. For ensuring timely communications with the Minister regarding any issue that affects, or can reasonably be expected to affect, the Minister's responsibilities for the agency.
- d. To the Minister to confirm the agency's compliance with legislation, directives, accounting, and financial policies.

7.3 BOARD OF DIRECTORS

The board is accountable, through the chair, to the Minister for the oversight and governance of the agency; setting goals, objectives, and strategic direction for the agency within its mandate; and for carrying out the roles and responsibilities assigned to it by the LASA, 2020, this MOU, and applicable TB/MBC, PSC, and other government directives.

7.4 DEPUTY MINISTER

The Deputy Minister is accountable to the Secretary of the Cabinet and the Minister for the performance of the ministry in providing administrative and organizational support to the agency and for carrying out the roles and responsibilities assigned by the Minister, the LASA, 2020, this MOU, and applicable TB/MBC, PSC, and other government directives.

The Deputy Minister is also accountable for attesting to TB/MBC on the agency's compliance with applicable TB/MBC directives.

7.5 CHIEF EXECUTIVE OFFICER

The CEO is accountable to the board for the management and administration of the agency, the supervision of agency staff, and carrying out the roles and responsibilities assigned by the board, the agency's constituting instrument, this MOU and government directives. The CEO works under the direction of the chair to implement policy and operational decisions. The CEO reports the agency's performance results to the board, through the chair.

8. ROLES AND RESPONSIBILITIES

8.1 MINISTER

The Minister is responsible for:

- a. Reporting and responding to the Legislative Assembly on the affairs of Legal Aid Ontario.
- b. Reporting and responding to TB/MBC on the agency's performance and compliance with applicable TB/MBC directives, the government's operational policies and policy directions.
- c. Recommending to TB/MBC, where required, the merger, any change to the mandate, or dissolution of Legal Aid Ontario.
- d. Recommending to TB/MBC the powers to be given to, or revoked from, Legal Aid Ontario when a change to the agency's mandate is being proposed.
- e. Meeting with the chair to discuss issues relating to the fulfilment of the agency's mandate.
- f. Working with the chair to develop appropriate measures and mechanisms related to the performance of Legal Aid Ontario.
- g. Reviewing the advice of the chair on candidates for appointment or re-appointment to the board.
- h. Making recommendations to Cabinet and the LGIC for appointments and reappointments to the Board, pursuant to the process for agency appointments established by legislation and/or by MBC through the AAD.
- i. Determining at any time the need for a review or audit of Legal Aid Ontario, directing the chair to undertake reviews of the agency on a periodic basis, and recommending to TB/MBC any change(s) to the governance or administration of the agency resulting from any such review or audit.
- j. When appropriate or necessary, taking action or directing that Legal Aid Ontario take corrective action with respect to the agency's administration or operations.

- k. Receiving Legal Aid Ontario's annual report and approving the report within 60 calendar days of receiving it.
- l. Tabling the annual report within 30 calendar days of approving it.
- m. Ensuring that the agency's annual report is made available to the public after it is tabled and within 30 calendar days of approving it.
- n. Informing the chair of the government's priorities and broad policy directions for Legal Aid Ontario.
- o. Consulting, as appropriate, with the chair (and others) on significant new directions relating to legal aid or when the government is considering regulatory or legislative changes for the agency.
- p. Developing Legal Aid Ontario's MOU with the chair, as well as any amendments to it, and signing the MOU into effect after it has been signed by the chair.
- q. Reviewing and approving the agency's annual business plan.
- r. Recommending to TB/MBC any provincial funding to be allocated to the agency.
- s. Outlines the high-level expectations, key commitments, and performance priorities for Legal Aid Ontario at the beginning of the annual business planning cycle through the agency mandate letter.

8.2 CHAIR

The chair is responsible for:

- a. Providing leadership to Legal Aid Ontario by working with the board to set the goals, objectives, and strategic directions within its mandate.
- b. Providing leadership to the board and ensuring that the board carries out its responsibilities for decisions regarding the agency.
- c. Chairing board meetings, including the management of the board's agenda.
- d. Reviewing and approving claims for per diems and travel expenses for appointees to the board.
- e. Seeking broad policy direction for Legal Aid Ontario from the Minister.
- f. 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 their responsibilities relating to the agency.
- g. 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 Legal Aid Ontario's mandate, powers or responsibilities as set out in the LASA, 2020.

- h. Reporting to the Minister as requested on the agency's activities within agreed upon timelines, including an annual letter confirming the agency's compliance with all applicable legislation, directives, and accounting and financial policies.
- i. Ensuring that the agency operates within its approved budget allocation in fulfilling its mandate, and that public funds are used for the purpose intended with integrity and honesty.
- j. Developing the agency's MOU with the Minister, as authorized by the board, and signing it on behalf of the board.
- k. Submitting the agency's business plan, budget, annual report, and financial reports, on behalf of the board, to the Minister in accordance with the timelines specified in the applicable TB/MBC and government directives, and Appendix 1 of this MOU.
- l. Providing the Minister, the Minister of Finance and the President of Treasury Board with a copy of every audit report, a copy of the agency's response to each report, and any recommendation in the report.
- m. Advising the Minister annually on any outstanding audit recommendations per direction of the board.
- n. Ensuring that board members are informed of their responsibilities under the PSOA with regard to the rules of ethical conduct, including the political activity rules.
- o. Ensuring appropriate management systems are in place (financial, information technology, human resources) for the effective administration of the agency.
- p. Carrying out effective public communications and relations for the agency as its chief spokesperson.
- q. Cooperating with any review or audit of the agency directed by the Minister or TB/MBC.
- r. Fulfilling the role of ethics executive for public servants who are government appointees to Legal Aid Ontario, promoting ethical conduct and ensuring that all members of the board are familiar with the ethical requirements of the PSOA, and the regulations and the directives made under that Act, including in respect of conflict of interest, political activity, and the protected disclosure of wrongdoing.
- s. Keeping the Minister informed of upcoming appointment vacancies and providing recommendations for appointments or re-appointments.
- t. Ensuring compliance with legislative and TB/MBC policy obligations.
- u. Evaluating the performance of the CEO in consultation with the board and pursuant to performance criteria established by the board and the Chair.

8.3 BOARD OF DIRECTORS

The board of directors is responsible for:

- a. Establishing the goals, objectives, and strategic directions for the agency within its mandate as set out in the LASA, 2020, government policies as appropriate and this MOU.
- b. Making rules under the LASA, 2020 respecting the provision of legal aid services.
- c. Governing the affairs of the agency within its mandate as set out in the LASA, 2020, its approved business plan as described in section 10.1 of this MOU, and the policy parameters established and communicated in writing by the Minister.
- d. Directing the development of and approving the agency's business plans for submission to the Minister within the timelines agreed upon with the ministry or this MOU.
- e. Directing the preparation of and approving the agency's annual reports for submission to the Minister for approval and tabling in the Legislative Assembly, within the timelines established by the agency's constituting instrument or the AAD as applicable.
- f. Making decisions consistent with the business plan approved for the agency and ensuring that Legal Aid Ontario operates within its budget allocation.
- g. Ensuring that Legal Aid Ontario uses public funds with integrity and honesty, and only for the business of the agency based on the principle of value for money, and in compliance with applicable legislation and TB/MBC directives.
- h. Ensuring that Legal Aid Ontario is governed in an effective and efficient manner according to accepted business and financial practices, and in accordance with applicable TB/MBC directives.
- i. Establishing such board committees or oversight mechanisms as may be required to advise the board on effective management, governance, or accountability procedures for the agency.
- j. Approving the agency's MOU, and any amendments to the MOU, in a timely manner and authorizing the chair to sign the MOU, or any amendments to the MOU, on behalf of the agency.
- k. Approving Legal Aid Ontario's reports and reviews that may be requested by the Minister from time to time for submissions to the Minister within agreed upon timelines.
- l. Directing the development of an appropriate risk management framework and a risk management plan and arranging for risk-based reviews and audits of the agency as needed.
- m. Where applicable, ensuring that conflict of interest rules that the agency 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 on the Commissioner's website), are in place for the members of the board and employees of the agency.
- n. Establishing performance measures, targets and management systems for monitoring and

assessing the agency's performance.

- o. Directing corrective action on the functioning or operations of the agency, if needed.
- p. Cooperating with and sharing any relevant information on any risk-based or periodic review directed by the minister or TB/MBC.
- q. Consulting, as appropriate, with stakeholders on the agency's goals, objectives, and strategic directions.
- r. Providing advice to the government, through the Minister, on issues within or affecting the agency's mandate and operations.
- s. Setting and reporting on the strategic direction for Legal Aid Ontario according to the Minister's agency mandate letter, the agency's proposed business plan, and the agency's annual report.

8.4 DEPUTY MINISTER

The Deputy Minister is responsible for:

- a. Advising and assisting the Minister regarding the Minister's responsibilities for Legal Aid Ontario, including informing the Minister of policy direction, policies, and priorities of relevance to the agency's mandate.
- b. Advising the Minister on the requirements of the AAD, and other directives that apply to Legal Aid Ontario.
- c. Recommending to the Minister, as may be necessary, the evaluation or review, including a risk-based review, of Legal Aid Ontario or any of its programs, or changes to the management framework or operations of Legal Aid Ontario.
- d. Facilitating regular briefings and consultations between the chair and the Minister, and between the Ministry staff and the agency staff as needed.
- e. Attesting to TB/MBC on the provincial agency's compliance with the mandatory accountability requirements set out in the AAD and other applicable TB/MBC directives, the government's operational policies and policy directions based on the annual letter of compliance from the agency chair to the Minister.
- f. Ensuring that the Ministry and the agency have the capacity and systems in place for on-going risk-based management, including appropriate oversight of the agency.
- g. Ensuring that Legal Aid Ontario has an appropriate risk management framework and a risk management plan in place for managing risks that the agency may encounter in meeting its program or service delivery objectives.
- h. Undertaking timely risk-based reviews of Legal Aid Ontario, its management or operations, as may be directed by the Minister or TB/MBC.

- i. Establishing a framework for reviewing and assessing the agency's business plans and other reports.
- j. Supporting the Minister in reviewing the performance targets, measures, and results of the agency.
- k. Advising the Minister on documents submitted by the agency to the Minister for review or approval, or both.
- l. Submitting to the Minister, as part of the annual planning process, a risk assessment and management plan for each risk category.
- m. Undertaking reviews of the agency as may be directed by the Minister.
- n. Cooperating with any review of the agency as directed by the Minister or TB/MBC.
- o. Monitoring Legal Aid Ontario on behalf of the Minister while respecting the agency's authority and independence, identifying needs for corrective action where warranted, and recommending to the Minister ways of resolving any issues that might arise from time to time.
- p. Negotiating a draft MOU with the chair of the agency, as well as any amendments to the MOU, as directed by the Minister.
- q. Consulting with the agency's chair, as needed, on matters of mutual importance including services provided by the ministry and compliance with TB/MBC directives and ministry policies.
- r. Meeting with the chair as needed or as directed by the Minister, or on the request of the chair.
- s. Arranging for administrative, financial, and other support to Legal Aid Ontario, as specified in this MOU.
- t. Reporting to TBS on the agency and ministry's compliance with the AAD, as required.
- u. Informing the chair (or CEO), in writing, of new government directives and any exceptions to, or exemptions in whole or in part from TB/MBC directives, government policies, or ministry administrative policies.
- v. When required, submitting a report to the Secretary of TB/MBC on the wind-up of the agency, following the disposition of any assets, completion of any outstanding responsibilities by the agency, and the termination of any appointments.

8.5 CHIEF EXECUTIVE OFFICER

The CEO is responsible for:

- a. Managing the day-to-day operational, financial, analytical, procurement, and administrative affairs of Legal Aid Ontario in accordance with the mandate of the agency, TB/MBC, and

government directives, accepted business and financial practices, and this MOU.

- b. Advising the chair on the requirements of and the agency's compliance with the AAD, as well as other TB/MBC and government directives and policies, and agency by-laws and policies, including annually attesting to the chair on the agency's compliance with mandatory requirements.
- c. Applying policies and procedures so that public funds are used with integrity and honesty.
- d. Providing leadership and management to Legal Aid Ontario staff, including human and financial resources management, in accordance with the approved business plan, accepted business and financial practices and standards, the agency's constituting instrument, and government directives.
- e. Establishing and applying a financial management framework for Legal Aid Ontario in accordance with applicable Minister of Finance/Treasury Board controllership directives, policies, and guidelines.
- f. Translating the goals, objectives, and strategic directions of the board into operational plans and activities in accordance with the agency's approved business plan.
- g. Ensuring that Legal Aid Ontario has the oversight capacity and an effective oversight framework in place for monitoring its management and operations.
- h. Keeping the board, through the chair, informed with respect to implementation of policy and the operations of the agency.
- i. Establishing and applying systems to ensure that Legal Aid Ontario operates within its approved business plan.
- j. Establishing and applying the agency's risk management framework and risk management plan in place.
- k. Supporting the chair and board in meeting its responsibilities, including compliance with all applicable legislation, directives, policies, procedures, and guidelines.
- l. Carrying out in-year monitoring of the agency's performance and reporting on results to the chair.
- m. 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.
- n. Seeking support and advice from the Ministry, as appropriate, on agency management issues.
- o. Establishing and applying a system for the retention of agency documents and for making such documents publicly available when appropriate, for complying with the *Freedom of Information and Protection of Privacy Act* (FIPPA) where applicable; and ensuring that the responsibilities for the institution head are carried out as set out in Regulation 460 for the purposes of the FIPPA.

- p. Undertaking timely risk-based reviews of the agency's management and operations.
- q. Consulting with the Deputy Minister as needed, on matters of mutual importance, including services providing by the ministry, and on TB/MBC and government directives and ministry policies.
- r. Cooperating with a periodic review directed by the minister or TB/MBC.
- s. Fulfilling the role of ethics executive for public servants, other than government appointees, who work in the agency.
- t. Promoting ethical conduct and ensuring that all members of Legal Aid Ontario 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.
- u. Keeping the board, through the chair, informed about operational matters.
- v. Preparing the agency's annual reports and business plans as directed by the board.
- w. Preparing financial reports for approval by the board.
- x. Preparing, for approval by the board, a performance review system for staff and implementing the system.
- y. Attesting to the compliance of the agency to applicable directives and policies and support the board of directors to provide the statement of compliance of the agency.

9. ETHICAL FRAMEWORK

The members of the board who are appointed by the LGIC are subject to the conflict of interest provisions of the AAD and the conflict of interest provisions of the PSOA and its regulations.

Board members shall not use any information gained as a result of their appointment to or membership on the board for personal gain or benefit. A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter before the board, or a committee of the board, shall disclose the nature of the conflict to the chair at the first opportunity and shall refrain from further participation in the consideration of the matter. The chair shall cause to be recorded in the minutes of the meeting of the board any declared conflicts of interest.

The chair, as the ethics executive for the provincial agency, is responsible for ensuring that appointees and staff of the agency 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 agency.

10. REPORTING REQUIREMENTS

10.1 BUSINESS PLAN

- a. The chair will ensure that the Minister is provided annually with Legal Aid Ontario's business plan covering a minimum of three (3) years from the upcoming fiscal year, which includes a financial budget and a risk assessment and management plan, for approval by the Minister. The annual business plan shall be in accordance with the requirements set out in the AAD.
- b. The annual business plan is to be submitted to the Ministry's chief administrative officer or designated equivalent within three months prior to the agency's fiscal year start.
- c. The chair is responsible for ensuring that Legal Aid Ontario's business plan includes a system of performance measures and reporting on the achievement of the objectives set out in the business plan. The system must include performance goals, how they will be achieved, and targeted results and timeframes.
- d. The chair will 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 requirements of the AAD to assess risks, develop and maintain necessary records, and report to TB/MBC.
- e. The chair will ensure that publicly posted business plans do not disclose: personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets, information that would prejudice the financial or commercial interests of the agency in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the agency.
- f. The Minister will review Legal Aid Ontario's annual business plan and will promptly advise the chair whether or not they concur with the directions proposed by the agency. The Minister may advise the chair where and in what manner the agency's plan varies from government or Ministry policy or priorities as may be required, and the chair, on behalf of the board, will revise the agency's plan accordingly. Business plans are only to be considered valid once the responsible Minister has approved the plan and the approval has been expressed in writing.
- g. In addition, TB/MBC may require the Minister to submit the agency's business plan to TB/MBC for review at any time.
- h. The chair, through the CEO, will ensure that the Minister approved business plan is made available to the public in an accessible format, in both official languages, on the provincial agency website within 30 calendar days of Minister's approval of the plan.

10.2 ANNUAL REPORTS

- a. The chair is responsible for ensuring that the agency's annual report is prepared and submitted to the Minister for approval within 120 calendar days after the agency's fiscal year end. When the Auditor General is the auditor of record, the agency must submit its annual report to the minister

within 90 calendar days of completing the financial audit. The annual report shall be in accordance with the requirements set out in the AAD.

- b. The chair, through the CEO, will ensure that the annual report is prepared in the format specified in the AAD.
- c. The chair will ensure that publicly posted annual reports do not disclose: personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets, information that would prejudice the financial or commercial interests of the provincial agency in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the provincial agency.
- d. The Minister will receive and review the provincial agency's annual report to confirm adherence with AAD requirements, and will approve the report within 60 calendar days after the day of receipt.
- e. The Minister will, within 30 calendar days of approval, table the report in the Legislative Assembly.
- f. The chair, through the CEO, will ensure that its annual report is publicly posted in an accessible format, in both official languages, on the provincial agency website after the report has been tabled in the Legislature and within 30 calendar days of Minister approval.
- g. When distributing annual reports, digital formats and channels for distribution must be used unless otherwise required (e.g., by directive, legislation).

10.3 OTHER REPORTS

In addition to the business plan and annual report, Legal Aid Ontario 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 agency for its operating budget and program funding.
 - ii. The fiscal year-end financial forecast of the agency's expenditures and revenues.
 - iii. An explanation regarding any major variances from the approved operating budget or program funding.

The chair is responsible on behalf of the board for:

- a. Ensuring that the reports and documents set out in Appendix 1 to this MOU, which should include all reports required by the agency's constituting instrument, are submitted for review and approval by the Minister in accordance with the prescribed timelines.
- b. Supplying specific data and other information, at the request of the Minister or the Deputy Minister, that may be required from time-to-time for the purpose of the ministry's administration.

Under Section 32 of the LASA, 2020, the Minister may require Legal Aid Ontario to report, within the time and in the manner that the Minister may specify, on any aspect of its affairs, or to provide information on its activities, operations and financial affairs as the Minister may request.

11. PUBLIC POSTING REQUIREMENTS

- a. Legal Aid Ontario, through the chair on behalf of the board of directors, will ensure that the following approved governance documents are posted in an accessible format, in both official languages, on the provincial agency website within the specified timelines:
 - Memorandum of understanding and any letter of affirmation – 30 calendar days of signing by both parties
 - Agency mandate letter – no later than the corresponding annual business plan
 - Annual business plan – 30 calendar days of Minister’s approval
 - Annual report – 30 calendar days of Minister’s approval (the report must first be tabled in the Legislature).
- b. Posted governance documents should not disclose: personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets or scientific information, information that would prejudice the financial or commercial interests of the provincial agency in the marketplace, and information that would otherwise pose a risk to the security of the facilities and/or operations of the provincial agency.
- c. Legal Aid Ontario, through the chair on behalf of the board, will ensure that the expense information for appointees and senior management staff are posted on the agency or ministry website, in accordance with the requirements of the MBC Travel, Meal and Hospitality Expenses Directive.
- d. Legal Aid Ontario, through the chair on behalf of the board, will ensure that any other applicable public posting requirements are met.

12. COMMUNICATIONS AND ISSUES MANAGEMENT

The parties to this MOU recognize that the timely exchange of information on the operations and administration of the agency is essential for the Minister to meet their responsibilities for reporting and responding to the Legislative Assembly on the affairs of the agency. The parties also recognize that it is essential for the chair on behalf of the board to be kept informed of the government initiatives and broad policy directions that may affect the agency’s mandate and functions.

The Minister and the chair on behalf of the board, therefore, agree that:

- a. The chair will keep the Minister advised, in a timely manner, of all planned events or issues, including contentious matters, that concern or can be reasonably expected to concern the minister in the exercise of their responsibilities.
- b. The Minister will consult with the chair, in a timely manner and as appropriate, on broad government policy initiatives or legislation being considered by the government that may impact

on the agency's mandate or functions, or which otherwise will have a significant impact on the agency.

c. The Minister and the chair will consult with each other on public communication strategies and publications. They will keep each other informed of the results of stakeholder and other public consultations and discussions.

d. The Minister and the chair will meet at least annually, or as requested by either party, to discuss issues relating to the fulfillment of the agency's mandate, management, and operations.

e. The Deputy Minister and the chair will meet at least annually, or as requested by either party, to discuss issues relating to the delivery of the board's mandate and the efficient operation of the agency. The Deputy Minister and the CEO shall provide timely information and advice to each other concerning significant matters affecting the agency's management or operations.

f. The agency and ministry will adhere to the Public Communications Protocol set out in Appendix 3 to this MOU for ongoing issues management.

13. ADMINISTRATIVE ARRANGEMENTS

13.1 APPLICABLE GOVERNMENT DIRECTIVES

a. The chair, on behalf of the board, is responsible for ensuring that Legal Aid Ontario operates in accordance with all applicable TB/MBC, PSC, and other government directives, as well as applicable ministry financial and administrative policies and procedures. Appendix 2 to this MOU provides a list of applicable directives and policies.

b. The Ministry will inform Legal Aid Ontario of amendments or additions to directives, policies and guidelines that apply to the agency; however, the agency is responsible for complying with all directives, policies, and guidelines to which it is subject. The Ministry will support Legal Aid Ontario in meeting its compliance obligations as efficiently and effectively as possible by making compliance resources and tools that are available to other agencies available to Legal Aid Ontario.

c. In addition to its own legislation and/or regulations that set out its realty authority, the agency must comply with the MBC Realty Directive including its appendices. The Ministry of the Attorney General, as the oversight ministry, will ensure that the agency is notified of any future amendments made by the Management Board of Cabinet to the Directive and its appendices.

d. The chair, on behalf of the board, 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.

13.2 ADMINISTRATIVE AND ORGANIZATIONAL SUPPORT SERVICES

- a. Legal Aid Ontario 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. Legal Aid Ontario may participate in any government-wide shared services arrangements, where applicable.

13.3 AGREEMENTS WITH THIRD-PARTIES

Legal Aid Ontario may authorize service providers, including lawyers, community legal clinics, other community legal services organizations, student legal services organizations and Indigenous legal services organizations to provide legal aid services.

The power for Legal Aid Ontario to authorize service providers to provide legal aid services is set out in the LASA, 2020. The process for authorizing legal aid service providers and the rules for determining payment of service providers are set out in Legal Aid Ontario's Legal Aid Services Rules.

13.4 LEGAL SERVICES

N/A

13.5 CREATION, COLLECTION, MAINTENANCE AND DISPOSITION OF RECORDS

- a. The chair, on behalf of the board, is responsible for ensuring that a system is in place for the creation, collection, maintenance, and disposal of records.
- b. The board, through the chair, is responsible for ensuring that Legal Aid Ontario complies with all government legislation, directives and policies related to information and records management.
- c. The CEO, the chair and the board shall protect the legal, fiscal, and other interests of Legal Aid Ontario by implementing reasonable measures to ensure the ongoing viability, integrity, preservation, and security of all official records created, commissioned, or acquired by the agency. This includes, but is not limited to, all electronic records, such as emails, information posted on the agency's website(s), database data sets, and all records stored on personal computers and shared drives.
- d. The chair, on behalf of the board, is responsible for ensuring measures are implemented requiring the agency's employees to create full, accurate and reliable records that document and support significant business transactions, decisions, events, policies, and programs.

13.6 INTELLECTUAL PROPERTY

- a. The chair, on behalf of the board, is responsible for ensuring that the legal, financial, and other interests of the government related to intellectual property are protected in any contract that the agency may enter with a third party that involves the creation of intellectual property.

13.7 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- a. The chair and the Minister acknowledge that Legal Aid Ontario is bound to follow the requirements set out in the FIPPA in relation to the collection, retention, security, use, distribution, and disposal of records.
- b. The CEO of Legal Aid Ontario is the institution head for the purposes of the FIPPA.

13.8 SERVICE STANDARDS

- a. Legal Aid Ontario shall establish customer service and quality standards that are consistent with the appropriate standards of the government, the Ministry, and the Ontario Public Service.
- b. The chair will ensure that Legal Aid Ontario delivers its services at a quality standard that reflects the principles and requirements of the OPS Service Directive.
- c. Legal Aid Ontario has in place a formal process for responding to complaints about the quality of services received by clients of the agency consistent with the government's service quality standards.
- d. Legal Aid Ontario's annual business plan will include performance measures and targets for client service and the agency's response to complaints. Correspondingly, Legal Aid Ontario requires all authorized service providers to meet expectations including the provision of quality services to legal aid clients and authorized entity service providers must report on performance measures and have processes in place for responding to complaints made to them by individuals.
- e. Legal Aid Ontario shall comply with the *Accessibility for Ontarians with Disabilities Act, 2005*.

14. FINANCIAL ARRANGEMENTS

14.1 GENERAL

- a. All financial procedures for Legal Aid Ontario shall be in accordance with applicable TB/MBC and Ministry of Finance directives and guidelines, ministry corporate financial and administrative policies and procedures, and other government guidelines, directives, and policies, as set out in Appendix 2 of this MOU.
- b. When ordered to do so by the Minister of Finance and/or the President of the Treasury Board, pursuant to section 16.4 of the *Financial Administration Act*, Legal Aid Ontario shall pay into the Consolidated Revenue Fund any money that the Minister of Finance and/or the President of the Treasury Board determines is surplus to its requirements.
- c. Pursuant to section 28 of the *Financial Administration Act*, Legal Aid Ontario shall not enter into any financial arrangement or commitment, guarantee, indemnity or similar transaction that may increase, directly or indirectly, the indebtedness or contingent liabilities of the Government of Ontario without the written approval of the Minister of Finance and/or the President of the Treasury

Board. The Minister's approval is required before seeking statutory approval from the Minister of Finance.

d. Legal Aid Ontario's approved operating and capital allocations may be adjusted in a given year if in-year fiscal constraints are ordered by Cabinet or the Minister. Legal Aid Ontario will be provided with notice of changes to its allocation as soon as is reasonably possible. Where Legal Aid Ontario must reallocate resources as a result of its operating and/or capital allocations being adjusted, the agency shall inform and discuss the changes with the Ministry before making such changes. The CEO shall be responsible for providing the Ministry with the necessary documentation to support the agency's expenditures.

14.2 FUNDING

a. Legal Aid Ontario is funded by the Ontario Government, out of the Consolidated Revenue Fund pursuant to an appropriation authorized by the Legislative Assembly, and is subject to adjustments made by the Minister, TB/MBC, or the Legislative Assembly.

Appendix IV to the MOU, the Protocol for Management of Court-Ordered Publicly-Funded Counsel, may be continued, revised, or removed at such time as s. 15 of LASA, 2020, *Legal aid services where legally required*, is proclaimed in force. Either under the Appendix IV Protocol or under s. 15 of LASA, 2020, as the case may be, the Ministry acknowledges its responsibility to separately fund, directly as it does now or through specific funding to Legal Aid Ontario as the case may be, those matters in which individuals who are not eligible for legal aid services under s. 7 of LASA, 2020 receive services that are managed and administered by Legal Aid Ontario. Funding for such matters is not included in the Consolidated Revenue Fund appropriation for Legal Aid Ontario.

b. The CEO will prepare estimates of the agency's expenditures for inclusion in the Ministry's business plan for presentation to the Legislative Assembly. The chair will deliver these estimates to the Minister in sufficient time to be analyzed and approved by the Minister.

c. The estimates provided by the chair may, after appropriate consultation with the chair, be altered as required. The parties acknowledge that TB/MBC has final decision-making authority.

d. Financial procedures of the agency must be in accordance with TB/MBC and Ministry of Finance directives and guidelines and other applicable government direction.

e. Section 31 of LASA, 2020 specifies that, despite Part I of the *Financial Administration Act*, Legal Aid Ontario's money and investments do not form part of the Consolidated Revenue Fund.

f. Legal Aid Ontario also receives funding from several other sources which does not form part of the Consolidated Revenue Fund. As per subsection 30(1) of the LASA, 2020, the agency may enter into arrangements, as it considers appropriate, to receive additional funding from any person or organization.

g. Legal Aid Ontario is required to maintain a contingency reserve fund in accordance with the regulations under LASA, 2020.

14.3 FINANCIAL REPORTS

- a. The chair, on behalf of the board, will provide to the Minister audited annual financial statements, and will include them as part of the agency's annual report. The statements will be provided in a format that is in accordance with the province's stated accounting policies issued by the Office of the Provincial Controller Division.
- b. Legal Aid Ontario will submit its salary information to the Minister of Finance and/or the President of the Treasury Board, through the Ministry, in accordance with the *Public Sector Salary Disclosure Act, 1996*.

14.4 TAXATION STATUS: HARMONIZED SALES TAX (HST)

Collection/Remittance of HST

- a. Legal Aid Ontario is responsible for complying with its obligations as a supplier under the federal *Excise Tax Act* to collect and remit HST in respect of any taxable supplies made by it.

Payment/Recovery of HST

- b. Legal Aid Ontario is responsible for paying HST where applicable, in accordance with the *Excise Tax Act (Canada)*.
- c. The agency is not entitled to claim HST government rebates.
- d. The agency is expected to claim any refunds, input tax credits or other rebates under the *Excise Tax Act (Canada)* for which it is eligible.

15. AUDIT AND REVIEW ARRANGEMENTS

15.1 AUDITS

- a. Legal Aid Ontario is subject to periodic review and value-for-money audit by the Auditor General of Ontario under the *Auditor General Act* or by the Ontario Internal Audit Division of Treasury Board Secretariat.
- b. The Ontario Internal Audit Division may also carry out an internal audit, if approved to do so by the ministry's Audit Committee or by the Corporate Audit Committee.
- c. Regardless of any previous or annual external audit, the Minister may direct that the agency be audited at any time.
- d. The agency will promptly provide a copy of every report from an audit to the minister and the Minister of Finance/President of Treasury Board. The agency will also provide a copy of its response to the audit report and any recommendations therein. The agency will advise the Minister annually on any outstanding audit recommendations.

e. The chair, on behalf of the board, may request an external audit of the financial transactions or management controls of the agency, at the agency's expense.

15.2 OTHER REVIEWS

a. Legal Aid Ontario is subject to periodic review initiated at the discretion and direction of TB/MBC or the Minister. The review may cover such matters relating to the agency that are determined by TB/MBC or the Minister, and may include the mandate, powers, governance structure and/or operations of the agency.

b. In requiring a periodic review, the Minister or TB/MBC shall determine the timing and responsibility for conducting the review, the roles of the Chair, the board of directors, and the Minister, and how any other parties are involved.

c. A mandate review of the provincial agency will be conducted at least once every six years.

d. The Minister will consult the chair, on behalf of the board, as appropriate during any such review.

e. The chair, CEO, and board will cooperate in any review.

f. In the event of a review initiated at the direction of the Minister, the Minister shall submit any recommendations for change that are developed from the results of the review regarding the agency to TB/MBC for consideration.

16. STAFFING AND APPOINTMENTS

16.1 DELEGATION OF HUMAN RESOURCES MANAGEMENT AUTHORITY

N/A

16.2 STAFFING REQUIREMENTS

a. The board has full financial and administrative authority over the operations of Legal Aid Ontario, and may delegate such authority in writing to the CEO or other officers and employees of the agency as it sees fit, subject to LASA, 2020.

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 Legal Aid Ontario is not an employee of the Crown.

16.3 APPOINTMENTS

- a. The chair is appointed by the LGIC on the recommendation of the Minister in consultation with the Law Society of Ontario pursuant to subsection 21(4) of the LASA, 2020, for a fixed, but unspecified term of appointment. The AAD provides that the term of appointment shall not exceed three years.
- b. The members of the board of Legal Aid Ontario are appointed by the LGIC on the recommendation of the Minister pursuant to section 21 of the LASA, 2020, for a fixed, but unspecified term of appointment. The AAD provides that the term of appointment shall not exceed three years.
- c. Five of the members appointed shall be selected by the Minister from a list of persons recommended by the Law Society of Ontario.
- d. The number of members of the board is 11, as set out in the LASA, 2020.

16.4 REMUNERATION

- a. Remuneration for board members is set by the LGIC.
- b. As set out in the AAD, the chair and the members are remunerated at a per diem rate set by the LGIC.
- c. Travel expenses of board members must comply with the MBC Travel, Meal and Hospitality Expenses Directives. Reasonable expenses shall be reimbursed.

17. RISK MANAGEMENT, LIABILITY PROTECTION AND INSURANCE

17.1 RISK MANAGEMENT

- a. The chair, on behalf of the board, is responsible for ensuring that a risk management strategy is developed for Legal Aid Ontario, in accordance with the OPS Risk Management process.
- b. Legal Aid Ontario shall ensure that the risks it faces are addressed in an appropriate manner.

17.2 LIABILITY PROTECTION AND INSURANCE

- a. Subsection 20 (2) of the LASA, 2020 provides that Section 136 of the *Business Corporations Act* applies to LAO, the members of its board, and its officers.
- b. Section 136 of the *Business Corporations Act* allows a corporation to indemnify a director or officer of the corporation against all costs, charges and expenses reasonably incurred by the individual in respect of any proceeding in which the individual is involved because of that

association with the corporation. As such, the Minister of Finance or the President of Treasury Board would need to approve the indemnity.

c. Section 37 of the LASA, 2020 protects board members, officers, and employees from legal action and damages. Section 38 protects LAO from liability for any action of a service provider who provides legal aid services. Section 39 protects board members, officers, and employees from being compelled as witnesses in proceedings in respect of information and/or documents received while acting in the scope of their appointment or employment.

d. As a board-governed agency, Legal Aid Ontario is required to purchase its own insurance. The agency is not covered under the General and Road Liability Protection Program. LAO should purchase insurance to cover its operations for General Liability and directors and officers (D&O) of no less than \$2 Million.

18. EFFECTIVE DATE, DURATION AND PERIODIC REVIEW OF THE MOU

a. This MOU becomes effective on the date it is signed by the Minister as the last party to execute it ("Original Effective Date") and continues in effect until it is revoked or replaced by a subsequent MOU signed by the parties.

b. A copy of the signed MOU and any successor MOU must be provided to the Secretary, TB/MBC.

c. Upon a change in the Minister or chair, both parties must affirm by letter that this MOU will continue in force without a review (and attach the signed letter to the MOU); or alternatively, they may agree to revise it and sign a new MOU within six (6) months of the change.

d. A copy of the letter of affirmation, or a new MOU between the Minister and chair must be provided to the Secretary, TB/MBC within six months of the new party or parties' commencement.

e. Either the Minister or the chair, on behalf of the board of directors, may initiate a review of this MOU by written request to the other.

f. If either of the parties deems it expedient to amend this MOU, they may do so only in writing. Any amendment shall only be effective after approval by the parties.

g. A full review and replacement of this MOU will be conducted immediately in the event of a significant change to the agency's mandate, powers, or governance structure as a result of an amendment to the LASA, 2020.

h. At a minimum, this MOU will be reviewed at least once every 5 years, or upon change in chair or Minister, to ensure it is current and consistent with government expectations.

Signatures

Doug Downey
Attorney General
Ministry of the Attorney General

Date

Steve Pengelly
Chair
Legal Aid Ontario

Date

APPENDIX 1: SUMMARY OF AGENCY REPORTING REQUIREMENTS

DUE DATE	REPORT/DOCUMENT	NAME OF RESPONSIBLE OFFICIALS
Submitted annually within three (3) months prior to the agency's fiscal year end.	Agency Business Plan a. Prepares b. Approves c. Provides to Minister	CEO/Chair/Board Board/Chair Chair
Submitted annually within 90 days of receiving agency financial audited statements from the Auditor General.	Annual Report a. Prepares b. Approves c. Provides to Minister	CEO/Chair/Board Board/Chair Chair
Annual, or as requested	Audits (and updates)	
Quarterly	Risk Reporting	
Reviewed at least once every 5 years or upon change in chair or minister.	Memorandum of Understanding	Agency Chair
Annually	Audited Financial Statements	
Quarterly	Invoices for Protocol cases	

APPENDIX 2: APPLICABLE GOVERNMENT OF ONTARIO DIRECTIVES

1. The following TB/MBC and government directives, guidelines and policies apply to the agency:
 - Agencies & Appointments Directive
 - Advertising Content Directive
 - Corporate Policy on Recordkeeping (will be known in future as the Corporate Policy on Recordkeeping, Access, and Privacy)
 - Governance and Management of Information and Data Assets Directive
 - Open Data Directive
 - Perquisites Directive
 - Procurement Directive, as it applies in whole or in part
 - Procurement Directive on Advertising, Public and Media Relations and Creative Communications Services
 - Realty Directive
 - Transfer Payment Accountability Directive (if applicable)
 - Transfer Payment Consolidation Operational Directive
 - Travel, Meal and Hospitality Expenses Directive
 - Visual Identity Directive

2. Legal Aid Ontario is responsible for complying with all directives, policies, and guidelines to which it is subject, irrespective of whether it is included on the list above.

3. The ministry will inform the agency of amendments or additions to directives, policies and guidelines that apply to the agency.

APPENDIX 3: PUBLIC COMMUNICATIONS PROTOCOL

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 on policy matters between the Ministry and the Policy Division (PD). Staff from the PD and appropriate staff at the Corporation shall try to ensure effective day-to-day communication is maintained. The main contact point on financial and controllership matter is the Ministry Corporate Services Management Division (CSMD).

c. The PD, 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.
- Responding to ad hoc questions from central agencies, the Minister, Deputy Minister, and other program areas 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 AAD and Transfer Payment Accountability Directive.

ii. Strategic Business Planning Coordination

- Providing strategic business planning support and advice relating to the Corporation.
 - Preparing Management Board submissions and Multi Year 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 CSMD, as the operating agent of the Deputy Minister, has monitoring, research, and analysis roles regarding financial and controllership activities of the Corporation. This includes:
- i. Developing financial models with complex variables in conjunction with PD and justifying forecasts to central agencies after they are approved by senior management of both divisions.

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.

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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.

k. The Deputy Minister and the CEO 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.

l. The Minister will be invited to meet with the Corporation's Board, and shall make best efforts to meet regularly with the Board.

m. The parties agree to adhere to the Communication Protocol set out in Schedule IV to this MOU.

3. Lines of Communications/Protocols

- The parties recognize and accept that it is inappropriate for Legal Aid Ontario to discuss or communicate with the Minister or Ministry about specific cases that are before a court or tribunal.
- Legal Aid Ontario 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 eligibility determinations in individual cases or cases under consideration by a court or tribunal.
- Legal Aid Ontario will prepare and deliver to the Ministry background information on specific issues, within the timeframe suggested, in accordance with Legal Aid Ontario's independent function. Legal Aid Ontario is limited in the information that it can provide to the Minister or Ministry regarding the application of its rules in specific matters.
- Whenever possible, the ministry will advise Legal Aid Ontario 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 Legal Aid Ontario's operations and mandates and permit the Chair a reasonable period to provide comments and suggestions.
- In recognition of the necessity for Legal Aid Ontario to maintain its independence in its interactions with the public and service providers, the Minister/Ministry agrees whenever possible, to inform and consult with Legal Aid Ontario when responding to inquiries or requests, including from:
 - Individuals, groups or organizations that receive funding from Legal Aid Ontario 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 Legal Aid Ontario in exchange for the provision of legal aid services to clients.
- Telephone or written inquiries from members of the public to the Minister's Office, or Ministry staff about Legal Aid Ontario policies and procedures are to be directed to Legal Aid Ontario's Complaints Department and dealt with in accordance with LAO's complaint policy.
- Inquiries to the Minister or Ministry regarding individual cases and matters that are being considered by Legal Aid Ontario under its rules must be re-directed to Legal Aid Ontario without comment, and any response by the Ministry to the inquiring party shall indicate that the inquiry has been forwarded to Legal Aid Ontario and that the Minister or Ministry are unable to comment on a regulatory decision of the agency.

APPENDIX 4: PROTOCOL FOR MANAGEMENT OF COURT-ORDERED PUBLICLY-FUNDED COUNSEL

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 LAO achieve that shared duty. They are, as always, subject to an order made by a Court or a funding agreement as agreed by the parties (MAG, the client, and the lawyer). LAO is not a party.

Principles

1. The LASA, 2020 mandates Legal Aid Ontario to provide legal aid services to low-income Ontarians through assessment and payment of public funds in criminal and certain civil proceedings.
2. In circumstances of funding agreements or Court-ordered public funding including Rowbotham, Fisher, G(J), s.486.3 orders for cross examinations, s.684 orders for counsel at the Court of Appeal, s.672 fitness hearing orders, s.25 *Youth Criminal Justice Act* orders, Impact of Race and Culture Assessments, amicus orders and any other circumstances prescribed by s.15(1), there should be a consistent approach to ensure that a person whose liberty or security is at stake receives support consistent with Legal Aid Ontario's prescribed mandate to fund a "reasonable applicant of modest means."
3. All publicly funded court-ordered counsel should be paid within the same legislative framework applicable to counsel under legal aid certificates. This Protocol provides for greater financial oversight by having these cases managed and administered according to LAO's established budgeting, account review, and payment rules and practices.
4. MAG will continue to respond to all public funding applications in court.
5. Where the Court is contemplating making an order for state-funded counsel, the Ministry will, wherever possible, provide a draft order that will include the following:
 - The Ministry would fund the matter.
 - Legal Aid Ontario would manage the case in accordance with legal aid billing and payment rules and processes.
 - 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.
6. Where MAG and the applicant come to a confidential settlement agreement under a Pilot program, a standard funding agreement will be signed by the applicant and its counsel to confirm understanding that:
 - The Ministry would fund the matter.
 - Any stipulations on the funding, e.g., contribution by the applicant.
 - Legal Aid Ontario would manage the case in accordance with legal aid billing and

payment rules and processes.

7. Where the Court orders the funding of amicus counsel in a proceeding, the parties prepare an Order for the Court that acknowledges the acceptance of legal aid rates.
8. 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.
9. The Ministry and Legal Aid Ontario will work together within their respective authority to recover any costs paid on behalf of an accused.
10. The Ministry and Legal Aid Ontario are committed to ongoing monitoring, review and improvement of this protocol and related policies and procedures.
11. 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.

APPENDIX 5: DATA-SHARING AGREEMENT BETWEEN LEGAL AID ONTARIO AND MAG

Race-Based Data Collection Data Sharing Agreement

This Data Sharing Agreement (“Agreement”) is made by and among:

LEGAL AID ONTARIO (“Disclosing Party” or “LAO”)

With an address at:

Atrium on Bay
40 Dundas Street West, Suite 200
Toronto, Ontario, M5G 2H1

Contact information: Randall Ellsworth, Vice-President, Regional Services Division
Phone: 416-979-2352, ext. 5406
Fax: 416-979-2948
Email: ellsworr@lao.on.ca

And

THE MINISTRY OF THE ATTORNEY GENERAL (“Receiving Institution” or “MAG”)

With an address at:

McMurtry-Scott Building
720 Bay Street
Toronto, Ontario, M7A 2S9

Contact information: Mariela Orellana, Director, Agency and Tribunal Relations Branch
Phone: 647-680-5420
Email: mariela.orellana@ontario.ca

With respect to data that the Disclosing Party will provide to the Receiving Institution for the project entitled: Race-Based Data Collection (“The Project”)

1. Definitions and Interpretation

In this Agreement,

“**breach**” means the loss, theft or unauthorized and/or unlawful processing of the Disclosing Party’s personal information, including interference with information system operations or unauthorized and/or unlawful access to the Disclosing Party’s personal information, and damage or unauthorized and/or unlawful destruction of the Disclosing Party’s personal information.

“**coded information**” means the personal information from which direct identifiers have been removed and replaced with an internal code unique to the individual.

“**data**” is the raw recorded material represented as text and numbers.

“**de-identification**” means the process involving the creation of de-identified information. A dataset is considered de-identified when it has been stripped of all information that could reasonably identify an individual based on what is reasonably foreseeable in the circumstances.

“**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*.

“**notice**” means any communication given or required to be given pursuant to the Agreement. Notice must be provided in writing.

“**personal information**” has the same meaning as under FIPPA. See Appendix A for list of personal information to be collected by LAO and transferred to MAG.

“**process**” means any operation which is performed upon the Disclosing Party’s data or personal information, whether or not by automatic means, including the access, collection, recording, organization, storage, alteration, retrieval, consultation, use, disclosure, combination, transfer, return or destruction of the Disclosing Party’s data or personal information.

“**processed**” and “**processing**” shall be construed accordingly.

2. Term and Amendments

2.1 **Term.** This Agreement shall take effect on the date it is signed by the Assistant Deputy Attorney General, Policy Division as the last party to execute it and shall remain in force for three years. The term of the Agreement may be shortened or extended by joint agreement of the parties.

2.2 **Amendments.** The parties may make amendments to the Agreement at any time by joint agreement of the parties. Any amendments agreed upon by the parties shall be set out in writing and executed jointly by the parties to form part of this Agreement. The parties will address any budgetary impacts before such amendments are executed. For clarity, data collection and transfer will continue during any amendment discussions.

3. Background and Purpose

3.1 **Background.** Pursuant to Ontario Regulation 267/18: General (the “Regulation”), made under the *Anti-Racism Act, 2017* (“ARA”), MAG is required, as of July 1, 2021, to collect the Indigenous identity, race, religion, and ethnic origin (“race-based data”) of an individual who is charged with an offence and appears in bail court. The Anti-Racism Data Standards - Order in Council 897/2018 (ARDS) establish consistent, effective practices for producing reliable information to support evidence-based decision-making and public accountability to help eliminate systemic racism and promote racial equity.

LAO plays a significant role in assisting a high percentage of the people in the bail process,

which makes it uniquely situated to participate in and support MAG in fulfilling its obligation under the Regulation. While LAO is not bound by the ARA, LAO and MAG have agreed that LAO will collect race-based data from LAO's clients on MAG's behalf to assist MAG in fulfilling its collection requirements as mandated by the ARA. LAO and MAG have agreed on the manner in which LAO will collect this information. The parties will mutually agree on any changes to the manner of collection that may be required. LAO understands the relevant requirements of the ARA, the Regulation, and the ARDS.

3.2 Purpose. The sole purpose of this Agreement is to facilitate the sharing of data collected by LAO from its clients with MAG in order to assist MAG in fulfilling its obligations under the ARA to identify and monitor systemic racism and racial disparities for the purpose of eliminating systemic racism and advancing racial equity in the bail process.

4. Roles and Responsibilities

4.1 MAG and LAO will make available the necessary resources to implement, maintain and, if agreed to by the parties, update the collection of race-based data in accordance with the ARDS and this Agreement. Examples of such resources include Full Time Equivalents (FTEs), I & IT support (one-time costs and ongoing costs), and other ongoing costs.

4.2 LAO's roles and responsibilities under this Agreement include:

- collection of personal information from LAO clients pursuant to ARDS Standards 5, 7, 8-17;
- assessing and planning, in partnership with MAG, for MAG's compliance with the ARA, the Regulation and the ARDS, pursuant to ARDS Standard 3;
- protection and management of personal information (including securing personal information, limiting access to personal information, accuracy of personal information, access to, and correction, retention, and disposal of personal information) pursuant to ARDS Standards 18-26;
- development and implementation of appropriate procedures and training pursuant to ARDS Standard 4;
- ongoing communication with MAG regarding LAO's data analysis and reporting; and
- secure data transfer to MAG, with support from Justice Technology Services (JTS).

4.3 MAG's roles and responsibilities under this Agreement include:

- assessing and planning for compliance with the ARA, the Regulation and the ARDS pursuant to ARDS Standard 1;
- community input and stakeholder engagement pursuant to ARDS Standard 1;
- conducting privacy impact assessments/threat risk assessments ("PIA/TRA") pursuant to ARDS Standard 1;
- collection and secure data transfer of personal information from LAO to MAG;
- protection and management of personal information (including securing personal information, limiting access to personal information, accuracy of personal information, access to, and correction, retention, and disposal of personal information) pursuant to ARDS Standards 18-26;
- analysis of personal information pursuant to ARDS Standards 27-32;
- public release and reporting of de-identified personal information pursuant to ARDS Standards 33-36;
- notifying the Minister responsible for the ARA on the date of public release of open data and/

or reporting of analyses, or within a reasonable time shortly thereafter pursuant to ARDS Standard 37;

- ongoing communication with LAO regarding MAG's data analysis and reporting; and
- providing 30 days' notice to LAO of any change in policy, regulations or legislation that is likely to affect the Project and discussing any funding or other implications of such changes with LAO.

For clarity, nothing in the above list alters or derogates from MAG's responsibilities under the ARA and ARDS.

4.4 Assessing new risks. If regulations made under the ARA require or authorize MAG to collect additional personal information or if a change is proposed to the secure transfer, storage, and disposal of personal information under this Agreement, MAG and LAO agree to update the PIA/TRA to identify, assess and address any new or increased privacy and security risks, as necessary.

5. Collection, Use and Disclosure of Personal Information

5.1 Statutory Authority. The data and personal information to which this Agreement relates is being collected under the authority of the *Anti-Racism Act, 2017*.

5.2 Confidentiality, Use and Disclosure.

a) MAG shall ensure that necessary steps are taken to protect the data and personal information it receives under this Agreement against theft, loss and unauthorized use or disclosure, as set out in the ARDS.

b) MAG will not use or disclose the personal information collected by LAO for any purpose other than the purpose outlined in section 3.2 of this Agreement or unless specifically required by law.

5.3 Transfer of Data. Data will be securely transferred from LAO to MAG on a monthly basis (see Appendix A: Data to be Disclosed), unless otherwise agreed by the parties. The transferred dataset will only contain data of clients who consent to their personal information being shared with MAG. The data will be transferred through the Vanguard platform, which is managed by JTS. Vanguard is a secure, high-sensitivity, electronic environment that provides MAG with a secure location to unify statistics and data analytics in order to better understand and analyze business programs utilizing their highly sensitive datasets.

5.4 Access to Data. Access to Vanguard is restricted to users that have existing and current Criminal Record and Judicial Matters Check security clearance. Approvals are restricted to participants for whom access to the platform is required in order to perform duties specifically requiring access to data stored in the platform. RBDC datasets stored in Vanguard will only be made available to named AEB staff as well as select JTS staff for administration purposes. The Analytics and Evidence Branch (AEB) at MAG will be the only branch of MAG permitted to access the personal information collected by LAO.

5.5 Management of Personal Information. After MAG receives the personal information transferred by LAO, MAG shall manage the personal information in accordance with the ARA and

the ARDS.

5.6 Access to and Correction of Personal Information. LAO and MAG will each have procedures in place to allow for individuals to request access to or correction of their personal information in the custody or control of both parties, as per Standard 22 of the ARDS. MAG will notify LAO as soon as reasonably practicable of any requests that it receives to access personal information that LAO has transferred to MAG.

5.7 Notice of and Response to Breach. MAG will notify LAO of any suspected privacy breach as soon as possible under the circumstances, and in any event, within two (2) days after the discovery of the suspected breach. MAG will take immediate action in accordance with MAG's privacy breach protocols as recommended by the Information and Privacy Commissioner of Ontario.

5.8 Retention. MAG will retain all personal information that LAO transfers for a maximum period of 180 calendar days after MAG fulfills its obligations with respect to public release and reporting under ARDS Standards 33-37, unless an individual requests removal of their personal information under ARDS Standard 23 during this period.

5.9 Disposal. MAG shall securely dispose of all personal information that LAO transfers to it 180 days after MAG fulfills its obligations with respect to public release and reporting under ARDS Standards 33-37.

6. Custody and Control

MAG shall have custody and control over the transferred data and personal information held in its secure, high-sensitivity, electronic environment, Vanguard, as well as any information and results arising out of its analysis, subject to the PIA/TRA.

7. Survival

The obligations set out in section 5 shall survive the conclusion or termination of this Agreement.

Appendix A: Data to be Disclosed

As of July 1, 2021, LAO has been collecting, under the ARA on MAG's behalf, the Indigenous identity, race, religion, and ethnic origin of all duty counsel clients who appear in bail court. Personal information is being collected directly from the client by either:

- a) LAO staff; or
- b) private bar lawyers who are on LAO's roster of lawyers authorized to provide legal aid services.

The personal information is being collected orally from the individual and entered electronically into an online worksheet. For purposes of transferring the personal information listed in the direct and indirect identifiers below to MAG, LAO will pull the personal information from the complete LAO record and create a copy to be shared with MAG.

Direct Identifiers

- First Name
- Last Name
- Date of Birth

Indirect Identifiers

- Race
- Indigenous Identity
- Ethnic Origin
- Religion
- Court
- Appearance Date
- Gender (male, female, other)

Appendix B: Anti-Racism Data Standards

The ARDS, referred to in this Agreement, are listed below for reference.

- Standard 1: Assess and Plan for Compliance with the ARA, the Regulations and the Standards
- Standard 2: Establish Organizational Roles and Responsibilities
- Standard 3: Third Party Service Providers Acting on Behalf of PSOs
- Standard 4: Training for Employees, Officers, Consultants and Agents to Perform their Duties
- Standard 5: Direct Collection
- Standard 6: Indirect Collection
- Standard 7: Obtain Express Consent
- Standard 8: Notices
- Standard 9: Collection Methods
- Standard 10: Identifying an Appropriate Time to Collect Personal Information
- Standard 11: Sequence of Indigenous Identity and Race-Related Questions
- Standard 12: Collecting Personal Information to Better Understand Systemic Racism
- Standard 13: Collecting Personal Information about Indigenous Identity
- Standard 14: Race Question
- Standard 15: Race Categories
- Standard 16: Collecting Personal Information about Religion
- Standard 17: Collecting Personal Information about Ethnic Origin
- Standard 18: Secure Personal Information and Manage Privacy Breaches
- Standard 19: Storage of Personal Information in Electronic Format
- Standard 20: Limit Access on a Need-to-Know Basis
- Standard 21: Accuracy of Personal Information
- Standard 22: Access to and Correction of Personal Information
- Standard 23: Removal of Personal Information
- Standard 24: Five-year Retention Period
- Standard 25: Secure Disposal
- Standard 26: Limiting Use of Personal Information
- Standard 27: Primary Units of Analysis
- Standard 28: Focus on Outcomes
- Standard 29: Racial Disproportionality and Disparity Indices
- Standard 30: Appropriate Benchmarks for Disproportionality Analyses
- Standard 31: Appropriate Reference Group for Disparity Analyses
- Standard 32: Setting Thresholds to Identify Notable Differences
- Standard 33: De-Identification for Public Release of Data
- Standard 34: De-Identification of Results of Analyses
- Standard 35: Open Data
- Standard 36: Public Reporting of Results
- Standard 37: Notify the Minister Responsible for Anti-Racism
- Standard 38: Plan for the Collection of POI
- Standard 39: Circumstances in which POI is permitted
- Standard 40: Mandatory POI Race Question and Categories
- Standard 41: Quality Assurance
- Standard 42: Accurate Entry and Storage of POI
- Standard 43: Access to and Disagreement with POI