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## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is dated for reference April 1, 2005.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, represented by the Attorney General

(the "Attorney General")

AND:

**THE LEGAL SERVICES SOCIETY**, a corporation continued under the *Legal Services Society Act*, S.B.C. 2002, c. 30, and having an office at Suite 400 – 510 Burrard Street Vancouver BC V6C 3A8

(the "Society")

### WHEREAS:

- A. The Attorney General is responsible for all matters connected with the administration of justice in British Columbia, including the funding of a provincial legal aid system.
- B. The Society is a non-profit corporation continued by the *Legal Services Society Act*, S.B.C. 2002 Ch. 30 (the "*Act*") to provide legal aid to low income individuals in British Columbia, with a statutory mandate to
  - (a) assist low income individuals to resolve their legal problems and facilitate access to justice for low income individuals,
  - (b) establish and administer an effective and efficient system for providing legal aid to low income individuals in British Columbia, and
  - (c) to provide advice to the Attorney General respecting legal aid.
- C. Section 10 of the *Act* provides the Society with the power and capacity to determine the kinds of legal aid it will provide, the types of legal matters and classes of persons for which it will provide legal aid, the methods by which it will provide legal aid, and levels and extent to which legal aid will be provided, all within the framework of a memorandum of understanding (the "Memorandum") negotiated by the Society and the Attorney General under section 21 of the *Act*.
- D. While the Attorney General is the Society's primary source of funding, the Society is not an agent of the Province or the Law Society of British Columbia, and operates at arm's length from the Province, under the direction of an independent Board of Directors within the Memorandum framework requiring accountability for the funding it receives from the Province.

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THEREFORE the parties agree as follows:

## DEFINITIONS

- 1.01 In the Memorandum, unless the context otherwise requires, the following definitions will apply:
- (a) all terms used or defined in the Act and used in this Memorandum will have the meanings ascribed to them in the *Act*;
  - (b) “Canada” means the government of Canada;
  - (c) “Cost-Sharing Agreement” means the Agreement respecting Legal Aid in Criminal Law, Youth Criminal Justice Act, and Immigration and Refugee Law Matters between the Province and Canada for the years 2003-04 to 2005-06;
  - (d) “charter-required counsel case” means a legal matter in which a court or the government authority with conduct of the matter determines, or the Society reasonably determines, that a low income individual who does not otherwise qualify to become an eligible individual requires representation by a lawyer to meet the requirements of sections 7 or 11 of the *Charter*;
  - (e) “court-ordered enhanced funding case” means a legal matter involving an eligible individual in which a court has directed, or the government authority with conduct of the matter has agreed to, payment in excess of the standard fees and disbursements established by the Society in its policies, including the Guide to Legal Aid Tariffs;
  - (f) “eligible individual” means a low income individual whom the Society determines to be qualified to receive legal aid according to criteria the Society establishes pursuant to section 10(1)(d) of the *Act*;
  - (g) “enhanced fee case” means a criminal matter prosecuted by the Province involving an eligible individual in which the Society reasonably determines that the complexity of the legal matter and the necessity for the services of senior legal counsel require the payment of fees in excess of the standard fees established by the Society in its policies, including the Guide to Legal Aid Tariffs;
  - (h) “exceptional matter” means a legal proceeding within the Society’s mandate, including an appeal or application for judicial review, that falls into any one or more of the following types of legal matters:
    - (i) a charter-required counsel case;
    - (ii) an enhanced fee case;
    - (iii) a court-ordered enhanced funding case;
    - (iv) a high cost case;
    - (i) a multiple client case;

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- (i) "Executive Director" means the person appointed under section 6 of the *Act*;
- (j) "Federal Immigration and Refugee Funding" means Canada's contribution under the Cost-Sharing Agreement towards the costs of the Society providing the services in respect of immigration and refugee matters described in Schedule A, to a maximum of \$0.9 million;
- (k) "high cost case" means a legal matter involving an eligible individual in which the aggregate of fees or the aggregate of disbursements, or both, have exceeded \$50,000;
- (l) "Investment Fund" means the Investment in Legal Aid Renewal Fund established under the Cost-Sharing Agreement;
- (m) "Investment Fund Business Plan" or "IFBP" means the plan referred to in paragraphs 12.05 and 12.06 prepared by the Society and submitted to Canada covering the period of fiscal years 2003-04 through 2005-06 inclusive;
- (n) "Investment Fund Funding" means funding that the Province receives from Canada under the Cost-Sharing Agreement in respect of the Investment Fund Services provided by the Society;
- (o) "Investment Fund Services" means the services and initiatives that the Society will provide or deliver, as described in the Investment Fund Business Plan submitted by the Society to Canada;
- (p) "low income individual" means a low income individual referred to in section 9 of the *Act*;
- (q) "Ministry" means the Ministry of Attorney General;
- (r) "multiple client case" means a legal matter in which several eligible individuals are involved in a significant number of similar or related legal proceedings and the resulting increase in demand for legal aid is likely to materially and adversely affect the Society's ability to fulfill its statutory objects;
- (s) "Province" means the government of the Province of British Columbia;
- (t) "Provincial Grant Funding" means the amount of government funding that the Attorney General will provide to the Society in a fiscal year for the Provincial Grant Services to be delivered by the Society in that fiscal year, including the infrastructure and support costs attributable to the delivery of the Provincial Grant Services, and for greater certainty excludes
- (i) any separate or additional funding referred to in Article 5;
  - (ii) the federal high cost case funding referred to in Article 11;
  - (iii) the Investment Fund Funding;
  - (iv) any funding referred to in Article 13; and

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- (v) the Federal Immigration and Refugee Funding;
  - (u) "Provincial Grant Services" means any one or more of the services in respect of the legal aid matters, as described in Schedule A, which the Society will deliver using Provincial Grant Funding;
  - (v) "shortfall" means an actual or projected shortage of funds arising where the actual costs incurred or projected to be incurred by the Society to provide a Provincial Grant Service in any fiscal year are greater than the amount of Provincial Grant Funding allocated in Schedule C to that Provincial Grant Service for that fiscal year, plus any deferred revenue available for that Provincial Grant Service;
  - (w) "Standing Committee" means the Standing Committee established under Article 7;
  - (x) "surplus" means the actual or projected amount of Provincial Grant Funding remaining when the actual costs incurred or projected to be incurred by the Society to provide a Provincial Grant Service in any fiscal year are less than the amount allocated in Schedule C to that Provincial Grant Service for that fiscal year;
  - (y) "Term" means the term defined in Article 2.

## **TERM**

- 2.01 Notwithstanding the actual date of execution and delivery of this Memorandum, this Memorandum will be in effect for the period commencing on April 1, 2005 and ending on March 31, 2008.
- 2.02 The parties will amend the terms of the Memorandum from time to time
  - (a) in response to legislative changes or judicial decisions that materially affect the responsibility of either party respecting legal aid;
  - (b) to make the terms and conditions of the Memorandum consistent with the budget the Attorney General approves pursuant to section 18 of the *Act*;
  - (c) in response to changes in the appropriation received by the Attorney General; or
  - (d) to make the terms and conditions of the Memorandum consistent with the Cost-Sharing Agreement.
- 2.03 Any amendments to the Memorandum will be dated, signed by both parties and attached to the Memorandum at which time they will become part of the Memorandum.
- 2.04 The parties will begin the negotiations referred to in section 21(1)(b) of the *Act* not less than nine months prior to the expiry of the Term.

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## **PART 1 – PROVINCIAL GRANT SERVICES AND FUNDING**

### **ROLES AND RESPONSIBILITIES**

#### 3.01 The Attorney General will

- (a) subject to the Attorney General's approval of the Society's budget for a fiscal year pursuant to section 18 of the Act, provide the Society with Provincial Grant Funding in the amount set out in Schedule C for the provision of Provincial Grant Services by the Society during that fiscal year;
- (b) pay the Provincial Grant Funding to the Society in equal monthly installments;
- (c) deliver the first and last monthly installments of the Provincial Grant Funding to the Society no more than five business days after the beginning of each fiscal year;
- (d) consult with the Society on matters relating to legal aid, including changes in applicable law and policy that affect the Society's mandate under the Act;
- (e) acknowledge the Society as a key partner in the justice system and consider the advice of the Society regarding legal aid matters;
- (f) work with the Society to coordinate efforts to achieve objectives shared by the Ministry and the Society, including, but not limited to, the shared objectives specifically identified in Schedule B;
- (g) cooperate with the Society, pursuant to section 21(2)(f) of the Act, in the annual review of the Society's budget and the measures taken, and to be taken, by the Society to implement the terms of the Memorandum;

#### 3.02 The Society will:

- (a) subject to the Attorney General's continuing compliance with paragraphs 3.01 (a) to (d), act reasonably and diligently to deliver the Provincial Grant Services within the funding limits set out in Schedule C;
- (b) subject to the priorities and surplus rules contained in Article 4
  - (i) apply the Provincial Grant Funding only for and towards the provision of the Provincial Grant Services, and
  - (ii) allocate the Provincial Grant Funding towards the Provincial Grant Services in the manner and the amounts set out in Schedule C;
- (c) provide the administrative infrastructure necessary to

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- (i) deliver the Provincial Grant Services,
  - (ii) maintain an effective and efficient system for providing legal aid to low income individuals in British Columbia, and
  - (iii) generally fulfill its statutory objects;
- (d) advise the Attorney General in a timely manner of any matters relating to the Society's objects that significantly affect the Attorney General's responsibility for legal aid and access to justice;
  - (e) establish and monitor appropriate conduct, planning or performance objectives for the Society, its members, employees, and the service providers with whom it contracts;
  - (f) report to the Attorney General in accordance with requirements of the *Act* and other applicable legislation and respond to specific requests for information from the Attorney General pursuant to section 19 of the *Act*;
  - (g) cooperate with the Attorney General, pursuant to section 21(2)(f) of the *Act*, in the annual review of the Society's budget and the measures taken, and to be taken, by the Society to implement the terms of the Memorandum;
  - (h) work with the Attorney General and Ministry officials to coordinate efforts to achieve objectives shared by the Ministry and the Society including, but not limited to, the shared objectives specifically identified in Schedule B;
  - (i) cooperate and coordinate with other justice system partners and participate in justice reform initiatives in furtherance of its objects;
  - (j) explore opportunities, as appropriate, to recover financial obligations to the Society and obtain funds from any source for the pursuit of its objects;
  - (k) ensure that information about the knowledge, skills and experience of the board required under section 4(5) of the *Act* is available to the Attorney General and the Law Society to assist them in meeting their appointment responsibilities;
  - (l) provide information to the Attorney General that will assist with the effective administration of justice in British Columbia.

1.00 The Attorney General and the Society acknowledge that the Memorandum is based on the expected Provincial Grant Funding for Provincial Grant Services set out in Schedule C for fiscal years 2005/2006 through 2007/2008.

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## **PRIORITIES, SURPLUSES AND SHORTFALLS**

- 4.01 During the Term, the Society will deal with surpluses and shortfalls within a fiscal year for any of the Provincial Grant Services in the following manner:
- (a) if a surplus pertains to the services in respect of criminal law matters described in Schedule A, the Society will apply the surplus in the following order of priority:
    - (i) firstly, if the Society has a shortfall relating to services in respect of exceptional matters described in that Schedule, the Society will reallocate and apply the surplus to that shortfall for that fiscal year,
    - (ii) secondly, if the Society has no shortfall relating to services in respect of exceptional matters described in that Schedule, the Society will reallocate and apply the surplus or its remainder, as the case may be, to any shortfall relating to any of the Provincial Grant Services described in that Schedule other than the services in respect of immigration and refugee matters, and
    - (iii) thirdly, the Society may apply the surplus, or its remainder, as the case may be, in any manner it considers appropriate in order to fulfill its statutory objects;
  - (b) if the surplus pertains to the services in respect of exceptional matters described in Schedule A, the Society will carry forward the surplus as deferred revenue to be applied to the costs of services in respect of exceptional matters in future fiscal years; and
  - (c) if the surplus pertains to any one of the Provincial Grant Services other than the services in respect of criminal law matters or services in respect of exceptional matters described in Schedule A, the Society will apply the surplus in the following order of priority:
    - (i) firstly, the Society will reallocate and apply the surplus to any shortfall relating to any other of the Provincial Grant Services described in that Schedule other than services in respect of immigration and refugee matters, services in respect of criminal matters, or services in respect of exceptional matters, and
    - (ii) secondly, the Society may apply the surplus, or its remainder, as the case may be, in any manner it considers appropriate in order to fulfill its statutory objects.
- 4.02 If, during the Term, the Society determines that for a future fiscal year
- (a) it will be able to provide a Provincial Grant Service for less than the Provincial Grant Funding allocated in Schedule C to that Provincial Grant Service, and

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- (b) that surplus will not be required to meet a shortfall relating to the cost of providing any other Provincial Grant Services during that fiscal year according to the priorities specified in subparagraphs 4.01(a)(i) and (ii) and 4.01(c)(i).

then the Society will refer the issue of the use of that projected surplus to the Standing Committee to be addressed in the context of the budget review process.

- 4.03 The Standing Committee, in determining the appropriate use and allocation of the surplus referred to in paragraph 4.02, will consider the Attorney General's core services priorities and the Society's independence and expertise in addressing the needs of low income individuals.
- 4.04 If the Society cannot provide the Provincial Grant Services for the amounts specified and allocated in Schedule C, the Standing Committee will, as soon as these circumstances become apparent, meet and negotiate options.

#### **SOCIETY REVENUES OUTSIDE THE MEMORANDUM**

- 5.01 Nothing in this Memorandum precludes the Society from receiving separate or additional funding from the Province for the purpose of providing specific services, provided that it does so in accordance with the Act.
- 5.02 The Society may utilize funds it obtains from sources other than the Province in any manner it deems appropriate to fulfill its objects.

#### **ASSISTANCE WITH CASES OUTSIDE THE SOCIETY'S MANDATE**

- 1.01 Where the Attorney General is constitutionally required to provide legal aid to an individual who is not a low income individual or is otherwise outside the Society's mandate:
  - (a) the Attorney General and the Society will work cooperatively to avoid disruption of legal proceedings and promote the effective and efficient administration of justice;
  - (b) the Society may charge, and the Attorney General may pay, a reasonable, separate and additional fee, in return for which the Society will provide its expertise and administrative assistance to the Attorney General.

#### **STANDING COMMITTEE**

- 7.01 The Attorney General and the Society acknowledge the mutual benefit derived from joint consultation and its value in maintaining and improving the delivery of legal aid, and the administration of the justice system, in a fair, effective and efficient manner.
- 7.02 The Attorney General and the Society will establish for the Term of the Memorandum a Standing Committee composed of the Assistant Deputy Minister

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responsible for the Society, or such other official as the Attorney General may designate, and the Executive Director of the Society.

- 7.03 The Standing Committee will be responsible for
- (e) anticipating and addressing operational, administrative, policy, program or financial issues arising from the delivery of legal aid under the *Act* and from the implementation of the Memorandum;
  - (f) identifying, and communicating about, financial pressures and potential budget shortfalls at the earliest possible opportunity;
  - (c) developing plans for the memorandum of understanding that is to apply for the three-year period following the expiry of the Memorandum;
  - (d) promoting cooperation and coordination between the Ministry and the Society, and with other justice system partners, with respect to the delivery of legal aid and the development of justice reform initiatives; and
  - (a) amending the Schedules if and as required to reflect the annual budget approved by the Attorney General pursuant to section 18 of the *Act*.
- 7.04 To fulfill the purposes set out in paragraph 7.03, the Standing Committee:
- a) will prepare and submit to the Attorney General and the Society's Board of Directors, by September 30<sup>th</sup> of the fiscal year in which the Memorandum expires, detailed recommendations regarding the content of the subsequent memorandum of understanding;
  - c) may establish sub-committees as and when it deems appropriate; and
  - d) will make and retain minutes recording the discussion had and decisions made at its meetings.

## **BUDGET REVIEW PROCESS**

- 8.01 Pursuant to s. 21(2)(f) of the *Act*, the following process will govern the review of the budget required by s.18 of the *Act*.
- 1.00 The Society and the Attorney General recognize the importance of, and commit to, ongoing communication throughout the year regarding issues that are, or may be, significant to the parties or their common interests in legal aid or the justice system.
- 8.03 In order to ensure that the Attorney General is sufficiently informed of the Society's issues prior to central agency discussions about Ministry pressures and that the Society is informed of issues that will or may have a material impact on the Society, by August 5<sup>th</sup> of each year:

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- (a) the Society will inform the Attorney General of all ongoing or foreseeable pressures that it expects will have a material impact on the budget in the subsequent fiscal year; and
- (b) the Ministry will inform the Society of pressures it expects will have a material impact on the Society in the subsequent fiscal year.
- 8.04 In submitting its budget pursuant to s.18 of the *Act*, the Society will provide a sufficient level of detail to meet the informational requirements of Schedule C, and:
- (a) the Society will advise in writing if any of the underlying assumptions have changed since the previous year;
- (b) within 7 days of the Society providing a budget pursuant to s. 18 of the *Act*, the Standing Committee will meet in order to review the budget, and identify and discuss any issues of significant concern;
- (c) during the review and any necessary revisions of the budget, the Attorney General and the Society will communicate and meet as required in order to resolve outstanding issues as quickly as possible.

## **DISPUTE RESOLUTION**

- 9.01 The parties agree that in the event of any dispute arising in respect of the interpretation or operation of this Memorandum and the obligations of the parties under it, they commit, time permitting, to following the procedure set out below:
- (a) the parties will advise each other promptly in writing of a dispute arising from or in relation to this Memorandum, providing full particulars of the nature of the dispute, any underlying interests engaged by the dispute and one or more proposed solutions of the party delivering notice of the dispute, and both parties will attempt in good faith to negotiate their differences directly for a period of no less than 20 working days after delivery of such written notice;
- (b) if after 20 working days the dispute remains unresolved, the parties agree to select a mediator to work with them to resolve the dispute within 10 working days. If the parties are unable to agree on a mediator, one will be appointed by the British Columbia Mediator Roster Society, acting in consultation with the parties;
- (c) the mediator will meet with the parties within 20 working days of being appointed;
- (d) the period of mediation of the dispute will not exceed 30 working days; and
- (a) the costs of mediation including fees and expenses will be borne equally by the parties.

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## **PART 2 – FEDERAL/PROVINCIAL COST-SHARING AGREEMENT**

### **COST-SHARING AGREEMENT**

10. The Cost-Sharing Agreement establishes a number of terms affecting the provision and funding of certain legal aid matters, and the Attorney General and the Society wish to ensure the continuing, effective delivery of legal aid by identifying those terms and their respective obligations pertaining to those terms within the Memorandum.

### **FEDERAL HIGH COST CASES**

11.01 In this Article,

- (a) “federal high cost case” means a high cost case prosecuted by, or falling within the legislative authority of, Canada; and
- (b) “federal high cost case funding” means the total amount of funding that the Attorney General will pay to the Society as reimbursement for the Society’s costs of providing legal aid in respect of federal high cost cases, as described in this Article.

11.02 Subject to funding being available for reimbursement, the Society will use its best efforts, on behalf of the Attorney General, to provide legal aid in respect of federal high cost cases within the funding limits specified in Schedule D.

11.03 The Society, in providing legal aid for federal high cost cases, will apply the standard fees and disbursements established in its policies, including the Guide to Legal Aid Tariffs.

11.04 The Attorney General will reimburse the Society for the Society’s actual expenditures relating to the provision of legal aid in federal high cost cases, including fees, disbursements, and administration costs, to the maximum funding limits specified in Schedule D.

11.05 The Society will submit quarterly invoices to the Attorney General to claim reimbursement under paragraph 11.04.

11.06 The Attorney General will requisition payment within 21 days of receiving each invoice from the Society.

11.07 The Attorney General will promptly notify the Society if the Attorney General becomes aware of an anticipated inability to reimburse the Society in accordance with this Article, or of a delay in payment of such reimbursement, and the Society may terminate legal aid in respect of federal high cost cases upon receipt of such notice.

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- 11.08 The Attorney General will reimburse the Society for any costs incurred in providing legal aid in respect of federal high cost cases up to the date of termination.
- 11.09 If the Society's actual or projected expenditures on legal aid in respect of federal high cost cases in a fiscal year will exceed the amount specified in Schedule D, the Standing Committee will, as soon as these circumstances become apparent, meet and negotiate options.

## **INVESTMENT FUND SERVICES AND FUNDING**

- 12.01 In this Article, "Investment Fund Eligible Expenditures" means all expenditures by the Society which are directly related or reasonably attributable to providing the Investment Fund Services, including but not limited to:
- (a) Fees and disbursements;
  - (b) Salaries, wages and honoraria for permanent or temporary professional, clerical, technical, and administrative services including contributions to the Employment Insurance Commission, the Canada Pension Plan, the Workers' Compensation, the Provincial Pension Plan or other Employee Benefit Plans;
  - (c) Law Society fees and professional liability insurance;
  - (d) Services for personnel administration, accounting and bookkeeping, processing lawyers' accounts and audit fees;
  - (e) Rent, normal utilities such as electricity, heat, water and telephone, maintenance of offices and other buildings, and taxes;
  - (f) Leasehold improvements;
  - (g) Office equipment and acquisitions net of disposal;
  - (h) Insurance on buildings, equipment and materials and fidelity bonds;
  - (i) Supplies and materials, shipping charges, stationary, postage, printing, licences and other fees;
  - (j) Travel and living expenses related to criminal and youth criminal justice legal aid;
  - (k) Training programs in relation to the *Youth Criminal Justice Act* and criminal law changes;
  - (l) Monitoring and evaluation costs associated with the Investment Fund;
  - (m) Database development in support of Investment Fund innovations;
  - (n) Advertising the availability of legal aid;
  - (o) Continuing legal education, training, and professional development;
  - (p) Any other categories of administrative expenses that are agreed to by the parties;
  - (q) Program costs (including the cost of staff) associated with the promotion or testing of innovations in criminal legal aid or youth criminal justice legal aid, including administrative efficiencies; and
  - (r) Ongoing innovations commenced during the period 2001-02 to 2002-03;
- 12.02 The goal of the Investment Fund is to address unmet needs in criminal legal aid through innovation.
- 12.03 The objectives of the Investment Fund are to develop and implement innovative approaches for the delivery of criminal legal aid that:

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- (a) improve access to legal aid particularly at the early stages of the criminal justice system;
  - (b) address the legal aid needs of federal priority groups (Aboriginal people, members of visible minority groups and members of official language minority groups);
  - (c) address other priorities such as, service diversification, rural and remote service delivery, public legal education and information and enhanced duty counsel service delivery; or
  - (d) address needs of legal aid clients with special needs (for example young persons; accused who have low literacy; accused who have drug or alcohol dependencies; mentally disordered accused).
- 12.04 Approaches for the delivery of criminal legal aid identified in the Investment Fund Business Plan should be linked to the objectives set out in paragraph 12.03 and may result in one or more of the following outcomes:
- (a) resolution of a current or anticipated legal aid service delivery problem (within the scope of the objectives set out in paragraph 12.03);
  - (b) improved capacity to provide legal aid;
  - (c) improved quality and effectiveness of service delivery;
  - (d) promotion of cost efficiencies; or
  - (e) facilitation of linkages and integrating services with non-governmental organizations and other community service agencies involved in providing legal aid.
- 12.05 The Society will prepare and submit to Canada an Investment Fund Business Plan for the period of fiscal years 2003-04 through 2005-06 inclusive.
- 12.06 The Investment Fund Business Plan will contain:
- (a) a monitoring, evaluation and reporting strategy;
  - (b) a provision relating to Official Languages;
  - (c) a description of the unmet legal aid needs that the IFBP will address;
  - (d) a description of how the unmet need will be addressed over the three-year period through the Investment Fund;
  - (e) identification of the beneficiaries of the IFBP, if implemented;
  - (f) a statement as to how the proposal addresses one or more of the objectives set out in paragraph 12.03;
  - (g) the identification of potential stakeholders, community partners and links to other justice and social service sectors;
  - (h) a description of the scope of the proposed investment (one site, multiple sites, or Province-wide);
  - (i) a detailed budget that includes projected Investment Fund Eligible Expenditures; and
  - (j) a work plan identifying Investment Fund milestones including a monitoring and evaluation schedule.
- 12.07 The Society will notify Canada in writing of any significant changes to the scope of the Investment Fund Business Plan or significant developments in its implementation (a "significant change" being something affecting ten per cent

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(10%) of the budget associated with a particular innovation contained in the Investment Fund Business Plan).

- 12.08 The Society will submit the following reports to Canada, as required by the terms of the Cost-Sharing Agreement:
- (a) Progress reports outlining the nature of Investment Fund Services and how they are linked to the funds expended, which reports will state any significant changes in the scope of the activities and the planned achievements on the dates scheduled in the Investment Fund Business Plan;
  - (b) An interim report to be submitted by no later than June 30<sup>th</sup>, 2005 that provides a comprehensive account of the Investment Fund Services and results to March 31, 2005; and
  - (c) A final evaluation report to be submitted by no later than June 30, 2006.
- 12.09 The Attorney General and the Society acknowledge that the expected funding from Canada for Investment Fund Services is set out in Schedule D.
- 12.10 The Attorney General will promptly remit Investment Fund Funding to the Society upon receiving those funds from Canada.
- 12.11 The Attorney General will promptly notify the Society when it becomes aware of an anticipated reduction, or a delay in payment, of the Investment Fund Funding.
- 12.12 The Society may adopt any measures it deems necessary to respond to an anticipated reduction, or a delay in payment, of the Investment Fund Funding, including termination, suspension or modification of Investment Fund Services.

#### **FEDERAL COURT ORDERED COUNSEL**

- 13.01 In this Article,
- (a) “disbursements” means costs incurred by counsel on behalf of a defendant in providing legal representation;
  - (b) “federal charter-required counsel case” means a charter-required counsel case prosecuted by Canada pursuant to the *Controlled Drugs and Substances Act*; and
  - (c) “fees” means the cost of legal representation by either staff, tariff lawyers or a person otherwise authorized by law to provide legal advice and representation;
- 13.02 Subject to paragraph 13.04, the Society will use its best efforts, on behalf of Canada, to provide the following administrative services in respect of federal charter-required counsel matters:
- (a) upon being notified by the Province or Canada, as the case may be, that the Department of Justice on behalf of the Attorney General of Canada agrees or is required by a ruling in a proceeding brought pursuant to the

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*Controlled Drugs and Substances Act* to provide funded counsel for a person who does not otherwise qualify for legal aid, the Society will

- (i) cooperate with the Department of Justice to prepare an estimate of the total of the fees and disbursements to be incurred in funding counsel for the person requiring the provision of funded counsel and remit that estimate to the Department of Justice, Canada, and
  - (ii) upon receiving confirmation from the Department of Justice, Canada, that the estimated fees and disbursements will be reimbursed, use its best efforts, on behalf of the Department of Justice, Canada, to appoint, administer and pay counsel for that person;
- (b) the Society will keep all records and financial accounts pertaining to a federal charter-required counsel matter for a period of three years following the expiration of the Cost-Sharing Agreement;
- (c) subject to applicable federal or provincial privacy legislation and to solicitor-client privilege, the Society will make all records and financial accounts pertaining to a federal charter-required counsel matter available to the Department of Justice, Canada, or to its designated auditors and evaluators, during normal business hours, upon request (for greater certainty, an audit or evaluation may only take place after the conclusion of the proceeding).

13.03 The Society will make appointments under sub-paragraph 13.02(a) in accordance with the Society's then current policies, procedures and rules and will pay counsel at rates not exceeding the standard fees established by the Society in its policies, including the Guide to Legal Aid Tariffs.

13.04 The Society will not be obligated to provide any of the administrative services described in paragraph 13.02 unless the Society is satisfied that Canada will:

- (a) reimburse the Society for all fees and disbursements incurred by the Society to fund counsel appointed by the Society under this Article;
- (b) pay the Society an administration fee equal to nine percent (9%) of the combined total of fees and disbursements incurred by the Society to fund counsel appointed under this Article; and

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- (c) requisition payment of the Society's invoices within 21 days.

**Canada's Contribution - Services in Respect of Immigration and Refugee Matters**

14.01 In this Article, "services in respect of immigration and refugee matters" means the services described in paragraph 8.1 of Schedule A.

14.02 The Attorney General and the Society acknowledge that:

- (a) the Attorney General and Canada are contributing funding towards the costs of the Society providing the Services in Respect of Immigration and Refugee Matters for fiscal year 2005/06;
- (b) The Attorney General's contribution towards the costs of the Society providing the Services in Respect of Immigration and Refugee Matters for fiscal year 2005/06 is limited to a maximum of \$0.8 million, as identified in Schedule C; and
- (c) Canada's contribution towards the costs of the Society providing the Services in Respect of Immigration and Refugee Matters for fiscal year 2005/06 is limited to a maximum of \$0.9 million;

14.03 The Attorney General will promptly remit to the Society the Federal Immigration and Refugee Funding received by the Attorney General from Canada in respect of fiscal year 2005/06.

14.04 If it appears to the Society that its actual or projected expenditures on Services in Respect of Immigration and Refugee Matters in fiscal year 2005/06 exceed or are forecast to exceed \$1.7 million, the Society will refer the matter to the Standing Committee, which will meet and negotiate options as soon as reasonably possible.

**DATED** this thirteenth day of September, 2005.

**SIGNED ON BEHALF OF THE  
ATTORNEY GENERAL BY:**

**SIGNED ON BEHALF OF THE  
LEGAL SERVICES SOCIETY BY:**

Hon. Wally Oppal

Bruce Hardy  
Chair – LSS Board of Directors

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## SCHEDULE A PROVINCIAL GRANT SERVICES

### 1. Services in Respect of Criminal Law Matters

- 1.1 The Society will provide legal aid in respect of criminal law matters that are not exceptional matters as follows:
- (a) representation by a lawyer, for eligible individuals in adult criminal cases, where counsel is required under sections 7 or 11 of the *Charter*;
  - (b) representation by a lawyer, for eligible individuals, or persons for whom a court appoints counsel, in proceedings where counsel is required under the *Young Offenders Act/Youth Criminal Justice Act*;
  - (c) representation by a lawyer, for eligible individuals, or persons for whom a court or tribunal appoints counsel, in proceedings where counsel is required under Part XX.1 of the *Criminal Code* (Mental Disorder);<sup>1</sup>
  - (d) representation by a lawyer for eligible individuals in appeals and applications for judicial review as the Society deems appropriate, having regard to merit and other relevant factors;
  - (e) duty counsel for persons in custody;
  - (f) duty counsel for persons not in custody;
  - (g) legal services, as appropriate, to assist persons in the arraignment court process in Provincial Court;
  - (h) 24-hour telephone advice (Brydges line) for persons detained by police.
- 1.2 The Society will fund the services described in paragraph 1.1 to a maximum cost to the Society as follows:
- (a) for fiscal year 2005/2006, \$25.540 million;
  - (b) for fiscal year 2006/2007, forecast to be \$25.540 million; and
  - (c) for fiscal year 2007/2008, forecast to be \$25.540 million.
- 1.3 Paragraph 1.1 does not include representation by a lawyer where counsel is appointed under provisions of the *Criminal Code* other than those in Part XX.1, for example, sections 486 (2.3) (appointment of counsel in cases involving minors as witnesses), 684 (appointment of appeal counsel by Court of Appeal) and 694.1 (appointment of appeal counsel by Supreme Court of Canada). Coverage of and payment for these matters may be addressed through a separate agreement.

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<sup>1</sup> Note that this service is also partially funded under Schedule F (Other Constitutionally Required Services).

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**2. Services in Respect of Family Law Matters – Domestic Violence**

2.1 The Society will provide representation by a lawyer to eligible individuals in respect of the following family law matters that are not exceptional matters only on the basis of a limited referral and where the applicant:

- (a) is a victim of domestic violence and likely needs a physical restraining order or other legal assistance to protect their safety;
- (b) has a child or children who are at risk and a supervised access order or restraining order is needed;
- (c) is in need of a change to the current custody or access order to ensure the safety of the applicant and/or the child or children;
- (d) requires a non-removal order to prevent the applicant's child or children from being permanently removed from the province;
- (e) is approved for coverage on an exceptional basis by an LSS Field Operations Manager due to exigent circumstances;
- (f) seeks to appeal a decision in relation to the matters described in (a) to (e) and the Society deems it appropriate to fund the appeal, having regard to merit and other relevant factors.

2.2 The Society will provide the services described in paragraph 2.1 to a maximum cost to the Society as follows:

- (a) for fiscal year 2005/2006, \$5.684 million;
- (b) for fiscal year 2006/2007, forecast to be \$5.684 million; and
- (c) for fiscal year 2007/2008, forecast to be \$5.684 million.

**3. Services in Respect of Family Law Matters – New family Services**

3.1 The Society will provide the following services by a lawyer to eligible individuals:

- ( ) Family Provincial Court Duty Counsel;
- ( ) Family Supreme Court Duty Counsel;
- ( ) Supreme Court Limited Scope Referrals; and
- ( ) Extended Family Services Referrals.

3.2 The Society will provide the services described in paragraph 3.1 to a maximum cost to the Society as follows:

- (a) for fiscal year 2005/2006, \$4.6 million;
- (b) for fiscal year 2006/2007, forecast to be \$4.6 million; and
- (c) for fiscal year 2007/2008, forecast to be \$ 4.6 million.

**4. Services in Respect of Child Protection Matters**

4.1 The Society will provide representation by a lawyer to eligible individuals in respect of the following child protection matters that are not exceptional matters:

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- (a) proceedings under the *Child, Family and Community Services Act* where counsel is required under s.7 of the *Charter*; and
  - (b) appeals in relation to the matters referred to in subparagraph (a), as the Society deems appropriate, having regard to merit and other relevant factors.

4.2 The Society will provide the services described in paragraph 4.1 to a maximum cost to the Society as follows:

- (a) for fiscal year 2005/2006, \$3.454 million;
- (b) for fiscal year 2006/2007, forecast to be \$3.454 million; and
- (c) for fiscal year 2007/2008, forecast to be \$3.454 million.

4.3 The Society will pursue, in conjunction with other interested parties, methods of reducing costs related to representation services described in paragraph 4.1 by encouraging alternative dispute resolution.

## **5. Services in Respect of Other Constitutionally Required Matters**

5.1 The Society will provide representation by a lawyer to eligible individuals in the following matters that are not exceptional matters where counsel is required under section 7 of the *Charter*:

- (a) proceedings under the *Mental Health Act* in which an individual is detained;
- (b) disciplinary proceedings within a prison; and
- (c) appeals and applications for judicial review in relation to the matters described in subparagraphs (a) and (b) as the Society deems appropriate, having regard to merit and other relevant factors.

5.2 The Society will provide the services described in paragraph 5.1 to a maximum cost to the Society as follows:

- (a) for fiscal year 2005/2006, \$1.325 million;
- (b) for fiscal year 2006/2007, forecast to be \$1.325 million; and
- (c) for fiscal year 2007/2008, forecast to be \$1.325 million.

## **6. Public Legal Education and Information Services**

6.1 The Society will provide public legal education and information services to a maximum cost to the Society as follows:

- (a) for fiscal year 2005/2006, \$2.025 million;
- (b) for fiscal year 2006/2007, forecast to be \$2.025 million; and
- (c) for fiscal year 2007/2008, forecast to be \$2.025 million.

## **7. Services in Respect of Exceptional Matters**

7.1 The Society will provide representation by a lawyer for exceptional matters only in respect of criminal proceedings prosecuted by the

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Province, to a maximum cost to the Society, for each fiscal year of the Term, of \$2.70 million, plus any deferred revenue available for exceptional matters.

- 7.2 For greater certainty, the Society will not use Provincial Grant Funding to provide representation by a lawyer for exceptional matters prosecuted, conducted or administered by Canada.

**8. Services in Respect of Immigration And Refugee Matters**

- 8.1 The Society will provide representation by a lawyer to eligible individuals in respect of the following immigration and refugee matters that are not exceptional matters:
- (a) proceedings before the Refugee Protection Division, as the Society deems appropriate, having regard to merit and other relevant factors;
  - (b) non-refugee proceedings before the Immigration Appeals Division as the Society deems appropriate, having regard to merit and other relevant factors;
  - (c) judicial review applications and appeals, as the Society deems appropriate, having regard to merit and other relevant factors; and
  - (d) duty counsel for persons detained by Canada Immigration.
- 8.2 The Society will provide the services described in paragraph 8.1 up to a maximum cost to the Society of \$1.7 million for fiscal year 2005/2006, comprised of Provincial Grant Funding to a maximum of \$0.8 million and Federal Immigration and Refugee Funding to a maximum of \$0.9 million.

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## **SCHEDULE B**

### **SHARED OBJECTIVES**

1. The Attorney General and the Society acknowledge the mutual benefit derived from working cooperatively together on a number of shared objectives and, to that end, will work collaboratively to do the following:
  - (a) attempt to avoid disruption of legal proceedings and promote the effective and efficient administration of justice by working together on funding issues relating to legal matters falling outside of the Society's mandate;
  - (b) to establish protocols for the early identification and costing of legal matters falling outside of the Society's mandate;
  - (c) to develop a workable definition of "low income individuals", as used in the Act;
  - (d) to promote early dispute resolution in child protection cases and family law cases, and to better define the role of the Society in that process;
  - (e) to develop protocols for liaison between the Society and the Province in relation to each area of law for which the Society provides legal aid; and
  - (f) to seek greater administrative and financial efficiency by better coordinating services among the Attorney General, the Society, and other justice system service providers.
  
2. The Society and the Attorney General will work cooperatively together to integrate their respective public legal education and information services with those of other service providers in the community with a view to meeting the education and information needs of low income individuals and enhancing the Society's prospects for obtaining public legal education and information service funding from other sources.

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## SCHEDULE C

### SUMMARY OF ALLOCATION OF PROVINCIAL GRANT FUNDING (in \$ millions)

	Approved 2005/06	Projected 2006/07	Projected 2007/08
<b>Total Provincial Grant Funding</b>	\$61.508	\$61.508	\$61.508
<b>Allocation of Provincial Grant Funding</b>			
Services in Respect of Criminal Law Matters	25.540	25.540	25.540
Services in Respect of Family Law Matters - Domestic Violence	5.684	5.684	5.684
Services in Respect of Family Law Matters – New Family Services	4.600	4.600	4.600
Services in Respect of Child Protection Matters	3.454	3.454	3.454
Services in Respect of Immigration and Refugee Matters <sup>2</sup>	0.800	0.800	0.800
Services in Respect of Other Constitutionally Required Matters	1.325	1.325	1.325
Public Legal Education and Information Services	2.025	2.025	2.025
Services in Respect of Exceptional Matters	2.700	2.700	2.700
Infrastructure and Support Costs	15.380	15.380	15.380
<b>Total Allocation of Provincial Grant Funding</b>	\$61.508	\$61.508	\$61.508

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<sup>2</sup> The Province provides Provincial Grant Funding to a maximum of \$0.8 million for services in respect of immigration and refugee matters; Canada contributes additional funding towards services in respect of immigration and refugee matters to a maximum of \$0.9 million.

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## **SCHEDULE D**

### **FEDERAL HIGH COST CASES**

1. The Society will provide representation by a lawyer in respect of federal high cost cases to a maximum cost of \$ 0.650 million for fiscal year 2005/2006.

### **INVESTMENT FUND SERVICES**

2. The Society's expected budget for Investment Fund Services is as follows:
  - (a) for fiscal year 2005/2006, \$2.647 million.