

<p><b>Legal Aid Negotiations</b></p> <p><b>Government of the Province of British Columbia and Association of Legal Aid Lawyers</b></p>	<p><b>Agreed at 12:00pm on August 30, 2019</b></p>
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**Tariff Agreement**

*The parties agree to make the following recommendation to Treasury Board:*

The term of this Tariff Agreement is from November 4, 2019 to March 31, 2022.

**Effective November 4, 2019**

The bargaining incentive bonus provided for in the March 28, 2019 interim agreement will continue for services rendered to clients between November 4, 2019 and March 31, 2020 on the same basis as outlined in paragraph 3 of Appendix A of the interim agreement, with the exception that the bonus will be treated as a permanent percentage increase to regular tariff rates and it will be administered by the Legal Services Society.

For greater clarity, paragraph 7 of Appendix A of the March 28, 2019, interim agreement does not apply to the paragraph above.

**Effective April 1, 2020:**

1. The hourly tariff rates paid by the Legal Services Society to lawyers for legal fees will be increased to the following for services rendered to clients on or after April 1, 2020:

Year of Call	Hourly Tariff
Less than 4 years	\$111.17
4 or more and less than 10	\$116.73
10 or more years	\$122.28

All other tariff rates paid by the Legal Services Society to lawyers for legal fees, including the enhanced fee rate for complex criminal matters, will increase by the same percentages used to determine the rates listed above and will apply to services rendered on or after the dates listed above.

2. Notwithstanding the rates listed above, the tariff rate for Junior Counsel will increase to \$95.18 on April 1, 2020. This will not apply to articling students.

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**Effective April 1, 2021:**

The hourly tariff rates paid by the Legal Services Society to lawyers for legal fees will be increased to the following for services rendered to clients on or after April 1, 2021:

<b>Year of Call</b>	<b>Hourly Tariff</b>
Less than 4 years	\$113.39
4 or more and less than 10	\$119.07
10 or more years	\$124.73

All other tariff rates paid by the Legal Services Society to lawyers for legal fees, including the tariff rate for Junior Counsel and the enhanced fee rate for complex criminal matters, will increase by the same percentages used to determine the rates listed above and will apply to services rendered on or after the dates listed above.

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## Negotiation Framework Agreement

In this Agreement:

“legal aid lawyer” means a lawyer in good standing with the Law Society whom LSS deems eligible to accept tariff contracts to perform legal services under the LSS Tariffs – General Terms and Conditions.

“tariff agreement” means an agreement between ALL and the Province relating to tariff rates and other compensation-related terms and conditions under which legal aid lawyers provide services to clients under contract with LSS.

### Negotiating framework

1. The Province commits to future negotiations with ALL respecting tariff rates and other compensation-related terms and conditions existing at the time of negotiations under which legal aid lawyers provide services to clients under contract with LSS in advance of each tariff agreement.
2. The Province will consult with ALL prior to determining the negotiating agent that will negotiate with ALL under the terms of this Agreement.
3. The Province recognizes ALL as the exclusive agent for negotiating the matters identified in paragraph 1 on behalf of legal aid lawyers.

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Process for negotiating the renewal of tariff agreements

4. No less than three months prior to expiry of an existing tariff agreement, unless otherwise agreed, the parties will begin negotiations on a renewal tariff agreement. The parties will make every reasonable effort to agree to a renewal tariff agreement prior to the date of expiry of the existing tariff agreement.
5. If the parties have not reached agreement by the expiry of the existing tariff agreement, the parties will engage in a mediation process, of no more than one month, with a mutually agreeable mediator to assist with the renegotiations at the request of either party. Mediation can take place earlier by mutual agreement.
6. No withdrawal of services and no reduction to tariff rates or other compensation-related existing terms and conditions related to the negotiation process, can commence without the parties first engaging in mediation.
7. If the parties cannot reach agreement with assistance of the mediator, the mediator may, with the consent of both parties, provide a report on the status of negotiations, which can include recommendations at their discretion. Such a report, and the parties' stances in relation to making the report public, shall remain confidential between the parties unless otherwise agreed.
8. A withdrawal of services or reduction to tariff rates or other compensation-related existing terms and conditions, related to the negotiation process, cannot take place prior to the expiry of the tariff

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agreement and without a full essential services agreement or order in place.

9. If the parties cannot reach agreement on which services are essential, the parties will engage the BC Labour Relations Board or a mutually agreeable arbitrator to provide a binding decision on essential services on an expedited basis.
10. ALL will not encourage, endorse or condone any withdrawal of services, in relation to the negotiation process, until such time as essential services are agreed between the parties or there has been a final ruling and in any event not before the expiry of the tariff agreement.
11. Notwithstanding the essential services clauses above, the parties will reach an agreement prior to August 31, 2019, and subsequently during each future round of negotiations, on the minimum legal aid services identified as essential services in the event of an impasse in the next round of negotiations. This agreement, and the limited circumstances in which it may be amended, are attached in Appendix A and will be updated after each round of bargaining.
12. The agreement reached by the parties pursuant to paragraph 11 shall not prejudice the positions the parties may take before the BCLRB or an arbitrator with regard to the full essential services that should apply in the event of an impasse in the next round of bargaining.
13. ALL will not encourage, endorse or condone the withdrawal of services, in relation to the negotiation process, that are identified as essential. In the context of the withdrawal of services, related to the

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- negotiation process, individual lawyers may use their own judgement in determining whether their professional ethical obligations permit them to withdraw from any existing retainer to provide services not identified as essential.
14. Once either party is in an authorized position to withdraw services or reduce tariff rates or other compensation-related existing terms and conditions related to the negotiation process, it must provide the other party with 72 hours written notice of that intention.
15. Notwithstanding paragraph #1 above, the parties in any given round of negotiations may agree to also negotiate additional matters beyond those identified in paragraph #1. Such additional matters may only be negotiated by mutual agreement each round and cannot be the subject of a withdrawal of services or reduction in tariff rates or other compensation-related existing terms and conditions related to the negotiating process.
16. All legal aid lawyers shall be prohibited from withdrawing services to press for improved contract conditions during or after the term of a tariff agreement unless authorized by this “Process for negotiating the renewal of tariff agreements” section and the applicable essential services agreement or order. The Province and/or LSS will take the necessary steps to ensure this clause is legally enforceable for legal aid lawyers that are not members of ALL.
17. If a significant withdrawal of services that is prohibited under paragraph #16 above occurs, the Province will review the efficacy of the negotiating framework. Such a review may make recommendations for changes to the negotiating framework.

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18. In the event of a withdrawal of services or reduction in tariff rates or other compensation-related existing terms and conditions, related to the negotiation process, LSS will continue to perform its ongoing work with its own employees and/or by non-tariff contracted lawyers. However, the scope of work performed by it will not be expanded to replace the services withdrawn by tariff legal aid lawyers. Should any difficulties arise in this regard, the parties will meet to attempt to resolve and, failing resolution, will ask for the assistance of the BC Labour Relations Board or a mutually agreeable arbitrator.

### **Other terms**

19. The tariff agreement shall apply to all legal aid lawyers that are members of ALL, and the LSS Tariffs and *General Terms and Conditions* for all tariff legal aid lawyers who provide services to LSS under contract, including the standard tariff and block fee schedules, will be amended accordingly to reflect the tariff agreement.

20. The tariff agreement shall remain in force and be binding on the parties until the expiry of the tariff agreement and continue thereafter until a new tariff agreement has been concluded, subject to the rights of the parties listed in the “Process for negotiating the renewal of tariff agreements” section above.

21. Except as provided for above, if a dispute arises during the term of a tariff agreement regarding the interpretation or application of any of the provisions contained in it and the matter has not been resolved within 30 days after written notice has been provided to the other party, the dispute may be referred to arbitration by a mutually agreed

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upon arbitrator, which decision shall be binding upon the parties in accordance with the *Arbitration Act*.

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### **Appendix A**

Pursuant to paragraph 11 of this Negotiation Framework Agreement, the following is the list of the minimum legal aid services identified as essential services in the event of an impasse in the negotiations to renew the 2019 Tariff Agreement:

- i. Family law applications for protection orders and any required steps to give effect to the protection order, both bringing and defending (using family duty counsel or an issue specific referral)
- ii. Criminal court bail hearings if Crown showing cause for detention (using criminal in-custody duty counsel or an issue specific referral)
- iii. Immigration hearings where there is a potential for removal from the country and detention reviews conducted by immigration duty counsel
- iv. Contested CFCSA presentation hearings where the Director is seeking removal
- v. Urgent Hague Convention matters and FLA matters where there is a serious risk that a child will be removed from BC

In addition, the parties agree that the following are the circumstances referred to in paragraph 11 which could permit the list of services identified above to be amended in advance of the next round of negotiations:

- a) Binding and material court decisions
- b) Material statutory amendments
- c) Material Amendments to the Code of Professional Conduct or other binding Law Society publications addressing a lawyer's ethical obligations in respect of withdrawing from representation of a client

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## **Memorandum of Agreement**

*Between:*

*HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH  
COLUMBIA,*

*represented by the Ministry of the Attorney General*

*("The Ministry")*

*and*

*A.L.L. - ASSOCIATION OF LEGAL AID LAWYERS,*

*a society incorporated under the Societies Act, S.B.C. 2015 c. 18*

*("ALL")*

*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 400 - 510 Burrard Street, Vancouver, V6C 3A8

*("LSS")*

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Whereas:

- A. A strong and sustainable legal aid program is an essential component of an accessible justice system.
- B. The parties recognize that there is a need for improvements to the legal aid program in BC and that legal aid improvements will not be effective if undertaken in isolation, without the investment of sufficient time, or without the engagement of appropriate stakeholders.
- C. The Ministry is developing a comprehensive Legal Assistance Strategy to ensure that people are able to access services that are appropriate and proportionate to their needs and capabilities.

Therefore:

The parties agree to make the following recommendations to the Lieutenant Governor in Council (“LGinC”):

- 1. The Ministry will consult with ALL in good faith on legal aid policy matters as part of the Ministry’s development of its overall Legal Assistance Strategy.

### **Ministry - ALL Legal Aid Policy Consultation**

- 2. Although the Ministry will be consulting with a broad group of stakeholders as part of the development of the Legal Assistance Strategy, the following represents the agreement between the parties in relation the Ministry’s consultation with ALL:
  - a. The Ministry with the support of LSS will consult with ALL in good faith on legal aid policy matters, including issues related to coverage, eligibility, scope and quality of legal aid services, as well as access to justice initiatives that relate to delivery of

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legal aid services, as part of the Ministry's development of its overall Legal Assistance Strategy or otherwise.

- b. The matters that were raised by ALL and not concluded during the negotiations leading up to the Negotiation Framework Agreement shall be the subject of consultation under this Memorandum of Agreement and are appended as Appendix A.
  - c. The parties recognize that the subjects of consultation will not be restricted to the list itemized in Appendix A.
3. ALL and the Province agree to the following timetable in relation to the above consultation process:
- a. The parties will meet no fewer than 3 times by June 30, 2020 and any items that are agreed upon between ALL and the Province by that date will be included in a submission to the LGinC for the purpose of informing the 2021/22 budget cycle;
  - b. The parties recognize that the most likely matters to be included in the 2021/22 budget cycle are those that are focused primarily on legal aid and are more easily achieved within that time frame, including as priorities:
    - i. Legal Aid Eligibility;
    - ii. Legal Aid Coverage;
    - iii. Assignment of Junior Counsel; and
    - iv. Authorizations for Expert Witnesses;
  - c. The parties shall meet no fewer than 4 additional times prior to June 30, 2021 with respect to any unresolved policy matters and any issues related to the broader Legal Assistance Strategy. Two of the additional meetings may include other stakeholder groups; and
  - d. Any items that are agreed upon between the parties by June 30, 2021 will be included in a submission to the LGinC for the purpose of informing the 2022/2023 budget cycle.

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4. The parties commit to taking all steps necessary to put the terms of the above consultation plan into effect including making recommendations to the LGinC.
5. Final decisions respecting any such policy matters that are subject to the consultation process above and that are within the purview of government shall remain at the discretion of government.
6. ALL agrees to become a signatory to Access to Justice BC's Triple Aim.

#### **LSS-ALL Consultations**

7. ALL, LSS and the Province agree to discuss improvements to the advisory committee consultation process in consideration of ALL's August 6, 2019 proposal, the *Governance and Decision Making* discussion paper tabled by LSS on August 7, 2019, and the Options paper tabled by ALL on August 28, 2019. The discussions will include what involvement, if any, the Ministry should have in the committees, whether the committees should have a reduced meeting schedule while the broader consultation process referred to in this Memorandum of Agreement is taking place, and the process for selection of members of ALL to participate in the revised tariff committee consultation process.
8. This stand-alone Memorandum of Agreement expires on March 30, 2022 and, notwithstanding paragraph 20 in the Negotiation Framework Agreement between the parties, shall not continue past March 30, 2022.

Note: All policy proposals from ALL are withdrawn if agreement is reached on the above proposals.

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## **1. ADDITIONAL COVERAGE - FAMILY LAW**

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- 1.1** Family legal aid applicants no longer be required to establish “serious family problems”.
- 1.2** For Supreme Court matters, all family legal aid applicants who qualify financially be provided coverage for all processes up to the conclusion of the Judicial Case Conference, or other alternative dispute resolution process.
- 1.3** For Provincial Court matters, all family legal aid applicants who qualify financially be provided coverage for all processes up to the conclusion of the first Notice of Motion filed by the client or the conclusion of a Family Case Conference, whichever occurs first, or for other alternative dispute resolution processes.
- 1.4** If a matter is not resolved pursuant to 1.2 or 1.3, then LSS have the discretion to approve requests for continued services in appropriate cases on application by counsel.
- 1.5** Family coverage, including additional preparation time of 15 hours, be expanded to include new matters ancillary to family cases, including bankruptcy, foreclosure, and wills and estates.
- 1.6** Family duty counsel services be increased so as to be sufficient to make experienced assistance available to all parties who attend court on family remand days without counsel.
- 1.7** Extended family duty counsel services to be provided to those who qualify financially.
- 1.8** The participants will discuss expanding coverage for mediation and alternative dispute resolution processes at legal aid rates to a broader range of persons, in matters that are identified through a screening process, perhaps by duty counsel, as being amenable to settlement by way of a mediated agreement or consent order.

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## **2. ADDITIONAL IMMIGRATION LAW COVERAGE**

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- 2.1** Applicants who qualify financially be provided broader coverage for refugee claims assessed as meritorious whether in custody or not, based on a preliminary assessment by LSS, and all other immigration cases on which legal assistance is reasonably required and removal is a possibility.

## **3. ADDITIONAL PRISONER & MENTAL HEALTH REVIEW COVERAGE**

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- 3.1** Applicants who qualify financially or otherwise merit legal aid assistance be provided broader coverage for all institutional charges or disciplinary processes, parole or segregation hearings or reviews including Mental Health Act reviews and all hearings on which legal assistance is reasonably required.

## **4. ADDITIONAL CRIMINAL LAW COVERAGE**

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- 4.1** Coverage be extended for those who qualify financially to all charges under the Criminal Code of Canada or Controlled Drugs and Substances Act, without the requirement of a reasonable prospect of jail.
- 4.2** Coverage be extended on offences under other legislation where there is a potential for serious impact on a person's life, including but not limited to education, employment, immigration status, mental health or family, or where providing legal assistance is in the public interest or will enhance or facilitate the administration of justice.
- 4.3** Coverage be extended to the pre-charge phase following police contact for any offence involving a youthful first offender who qualifies financially, in order to facilitate negotiations with Crown Counsel as to whether to lay a charge and/or offer alternative measures.

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## **5. FINANCIAL ELIGIBILITY**

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- 5.1** Persons applying for legal aid be considered to qualify financially for full coverage at incomes below the Market Basket Measure plus 25%.
- 5.2** Legal aid coverage be provided on a graduated basis for persons with incomes in excess of the Market Basket Measure plus 25%.
- 5.3** Similarly to the recent expansion of qualification for social assistance, ownership of assets not disqualify a person from obtaining legal aid if their income level qualifies them.
- 5.4** LSS be provided broader discretion to assess whether a person has a subjective need of legal aid or might qualify under the Rowbotham criteria and hence should be provided coverage.

## **6. ACCESS TO JUSTICE PROJECTS**

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- 6.1** ALL be an active participant in the creation and development of projects to enhance access to justice in the Province, including becoming a signatory to the Access to Justice Triple Aim.
- 6.2** ALL become an equal participant with LSS and the Province in planning and decision-making for pilot projects or other initiatives based on local community needs that are designed to improve access to justice and that include as a component the efficient or enhanced delivery of legal aid services.
- 6.3** ALL be funded to participate in partnership with Indigenous organizations and other justice stakeholders to examine and develop culturally appropriate approaches to indigenous matters for the justice system, including training for lawyers and other legal aid providers on cultural issues and to ensure cultural competency in the provision of legal aid services.
- 6.4** The participants will discuss the development and expansion of remote justice delivery models, including development of pilot projects for the delivery of legal services such as mediation by video or teleconference.
- 6.5** The participants will discuss the provision of funding to enable more lawyers to become qualified as mediators in exchange for their agreement to provide mediation at legal aid rates.

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**6.6** The participants will discuss filling gaps in providing assistance with applications for housing, social assistance, health services, and other poverty-related issues to persons in need of such assistance, through a clinic model, with the participation, assistance and support of ALL in planning, development and decision-making.

## **7. QUALITY ASSURANCE**

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**7.1** Additional funding be provided for the participation of ALL members in enhancing the quality of legal aid services, including:

**7.1.1** provision of and attendance at continuing education and training with payment at tariff or block rates for attending up to 12 hours per year or such greater number of minimum hours as may from time to time be required by the Law Society of BC;

**7.1.2** course programming;

**7.1.3** technology grants; and

**7.1.4** broader case file oversight.

**7.2** ALL be a participant with LSS in planning, development and decision-making in relation to programs for the enhancement of the quality of legal aid services.

## **8. JUNIOR COUNSEL**

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**8.1** One additional lawyer be assigned as junior counsel in all murder and manslaughter trials and all cases in the LCM category. Additional counsel be assigned as junior counsel in complex and lengthy criminal trials in all cases where Crown Counsel assigns two lawyers, and in other matters upon request by the assigned lawyer where in the opinion of the assigned lawyer in consultation with LSS junior counsel is necessary due to the complexity or length of the matter.

**8.2** Counsel assigned to a matter as junior counsel be paid at the tariff rate for the applicable tier.

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**8.3** An additional block tariff item be added for up to 10 hours for senior lawyers to mentor junior lawyers assigned to legal aid matters such as complicated or serious matters or appeals or other matters on which a junior lawyer may reasonably need assistance.

## **9. EXPERT WITNESS FEES AND OTHER DISBURSEMENTS**

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**9.1** The number of hours for an expert witness fee, interpreter or translator be increased to reflect the nature of the matter, volume of material, opinion requested, nature of the report and the qualifications of the expert, upon request of the assigned lawyer in consultation with LSS, and LSS be properly funded to provide for the necessary hours.

## **10. ADDITIONAL TARIFF ITEMS - CHILD PROTECTION**

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**10.1** General preparation be increased to 40 hours.

**10.2** Contract service dates be expanded from 2 years to 3 years.

**10.3** Travel Time to be paid in accordance with government guidelines.

**10.4** The participants will discuss further revisions to preparation hours to reflect reasonable time required for the nature of the matter at the applicable stage of the proceedings, such as where there is an indigenous component, or mental health issues are involved, and to encourage early resolution where appropriate.

**10.5** The participants will discuss funding for psychological or other assessments that may be required for any of the parties or children, when not covered by the Director.

**10.6** The participants will discuss the mechanisms for requesting increased hours in a particular matter.