

**June 2009**

**#5 - 2009**

**NOTICE TO THE PROFESSION**

**Correction to Notice to Profession #4 - 2009**

In Notice to the Profession #4 - 2009, we erroneously stated that “we have made an application for supplemental funding from Government”. The accurate statement is that “we will be making an application for supplemental funding from Government”. We are in the costing and discussion stage of that process and there has not been a formal request at this point.

**June 2009**

**#4 - 2009**

### **NOTICE TO THE PROFESSION**

Despite earlier assurances from The Law Foundation that funding for this year would not be seriously affected, we have now been notified of a dramatic reduction (\$3.7M in 2008/09 reduced to \$1.8M this year and projected at approximately \$500,000 in 2010/11). The Law Foundation revenues derive largely from interest accrued on lawyers' trust accounts. Interest rates have been cut to the point of some of the larger institutions paying 0% on lawyers' trust accounts. Legal Aid Manitoba is therefore projecting a substantial deficit.

In response to this situation, we have made an application for supplemental funding from Government. We have also imposed a tightening of all non-essential spending for Legal Aid Manitoba staff, including the elimination or reduction of seminars, professional development and travel.

We will make every effort to preserve the integrity of the tariff. Discretionary increases will be awarded in "extremely unusual circumstances" and through the Big Case Management process as contemplated in the tariff. Our funding level will of necessity impact on the quantum of these awards.

Legal Aid Manitoba is hopeful that taking these steps will allow us to ride out this storm without resorting to the more drastic measures used in the past, such as holdbacks and service cuts.

#3 - 2009

**NOTICE TO THE PROFESSION**

Legal Aid Manitoba (LAM) has a mandate to provide quality legal services to eligible low-income Manitobans. Historically, LAM has excelled at meeting this mandate using a dual service delivery model with a roughly equal balance between staff and private bar representation. Legal Aid Manitoba is committed to continuing this balanced approach which has served the people of Manitoba well, compared with provinces that deliver services primarily through either private bar or staff alone.

Management Council gratefully acknowledges the valued participation of private bar in meeting LAM's mandate. The balance of criminal certificates in Winnipeg, however, has shifted significantly towards private bar, following the recent tariff increases. Recognizing the importance of having choice of counsel considered in the application process, the following measured response to address this imbalance has been approved and will be implemented over the next 3 months.

**1. S.25 Appointments for Financially Ineligible Applicants**

The parents of young persons have an obligation to provide counsel for their children where they are financially able to do so. LAM strongly believes that such applicants should be hiring private bar of their choice to represent them on a fee-paying basis. Where applicants can easily get private bar counsel of their choice through the s.25 process, hiring of private bar on a fee-paying basis is undermined. A significant number of parents who are financially ineligible for legal aid are using the s.25 process in this way.

In these circumstances, LAM considers that parents/legal guardians have effectively exercised their choice by deciding not to retain counsel privately. Accordingly, LAM has determined that financially ineligible applicants who decide not to hire counsel of choice privately, and rely on s.25 appointments, will be directed to a staff lawyer. LAM hopes and expects that, as a result of this change, parents of financially ineligible children will be encouraged to hire choice of counsel privately. To the extent that this does not occur, more legal matters will be directed to LAM staff.

*This change will take effect June 1, 2009.*

## **2. Change of Counsel Requests**

Historically, both private bar and staff lawyers have identified unjustifiable requests for change of counsel. In some cases, it appears lawyers may be enticing clients away from their initial choice of counsel, particularly in cases where fees may be substantial. As a result of “jailhouse talk”, clients also frequently request change from their initial choice of counsel to a lawyer they have heard is “better”. Finally, some clients use choice of counsel as a way of delaying their case. These changes of counsel are extremely costly to LAM and are disruptive to the court process.

As resources permit, all requests for change of counsel in criminal matters will result in the appointment of a staff lawyer. We expect this will reduce unjustifiable requests for change of counsel. It will reduce any perceived benefit to undermining confidence in a client's first choice of counsel. It will also help to reduce delays in the court system and excess costs to LAM. While this does emphasize one consideration in deciding whether to grant choice of counsel to some extent, it reinforces the client's first choice of counsel. To the extent that changes of counsel continue to be requested and granted, more legal matters will be directed to LAM staff.

*This change will take effect June 1, 2009.*

## **3. LAM Staff representation on Duty Counsel Circuits**

Traditionally, LAM has had a commitment to give clients a choice between staff and private bar counsel on as many circuit points as possible. Over the past 10 years, this has been eroded to some extent. Because of the high volume of legal aid work on some circuit points, this erosion has been a significant contributing factor to the staff/private bar imbalance. LAM is renewing its commitment to provide services on circuit points through both staff and private bar, as resources permit.

LAM has identified high volume circuit points where we have lost staff presence. LAM will be sending staff lawyers to circuit points and redirecting sufficient certificate work to re-establish staff presence. Redirection of certificate work will be accomplished, insofar as possible, with an eye to minimizing the impact on established solicitor-client relationships. Circuit points which have been identified so far are:

1. Gypsumville/St. Martin
2. Berens/Bloodvein/Poplar River
3. Garden Hill/St. Teresa's Point
4. Little Grand Rapids/Pauingassi

*This change will be implemented over the next 3 months.*

#### **4. Domestic Violence Full Service Duty Counsel Project**

The advent of the Attorney General of Manitoba's Zero Tolerance policy in 1983 has profoundly impacted the volume of spousal abuse cases in the criminal justice system. The direction to police to lay charges in virtually all cases, and reduced prosecutorial discretion, have created a substantial imbalance in the justice system for accused persons. LAM is formally establishing a Full Service Duty Counsel Project to provide services to financially eligible accused in domestic violence cases. This Project will be restricted to financially eligible persons whose applications would be refused due to insufficient likelihood of jail. Because these applicants are financially eligible for legal aid, we expect the primary impact to be reduction of unrepresented accused in domestic violence cases. We do not expect this Project to have any significant effect on private bar retainers.

The project will provide some additional case work to LAM staff lawyers.

*This project will be implemented June 1, 2009.*

#### **5. Criminal Application Centre at Winnipeg Courts**

Private bar lawyers, judges and LAM staff lawyers have all indicated that difficulties exist in determining the status of Legal Aid Manitoba applications. Sometimes private bar lawyers have been reluctant to take an application because it is unclear whether the client will qualify.

In addition to the paralegals and duty counsel in the various courtrooms, LAM is in the process of establishing an Application Centre at the Winnipeg Law Courts. The Application Centre staff will be available during regular office hours to take applications and provide information about the status of outstanding LAM applications. We expect this will assist the Court in dealing with cases expeditiously by having a source of information readily available at the courthouse. The Court will also benefit by directing unrepresented accused who may qualify for legal aid to the Centre to make, or further, their application.

*This project will be implemented in coordination with Court Services. We hope to have it in place within the next 2 months.*

Any questions or concerns respecting these changes should be directed to the Executive Director, Gil Clifford, at [gicli@legalaid.mb.ca](mailto:gicli@legalaid.mb.ca).

**April 2009**

**#2 - 2009**

**NOTICE TO THE PROFESSION**

**APPOINTMENT OF LEGAL AID MANITOBA'S EXECUTIVE DIRECTOR**

After full consultation with Management Council and Manitoba Justice, Legal Aid Manitoba (LAM) is proud to announce Gil Clifford has successfully won the appointment of Executive Director.

“Mr. Clifford has been a member of the Legal Aid family in various capacities for over 20 years. He has an excellent understanding of the organization through the variety of positions he has assumed during this time, including articling student, staff attorney, Supervising Attorney and member of the senior management team,” says Mario Santos, Chair of LAM's Management Council. “Mr. Clifford has done great work as the Acting Executive Director and the Council and staff look forward to working with him to provide legal help to Manitobans with low incomes.”

Clifford has been a member in good standing of the Manitoba Bar since 1975 and has represented low income Manitobans in the area of family, criminal and child protection law for over 30 years. While practising as a private bar lawyer for 15 years, Clifford always took on legal aid matters, knowing the importance of the organization and its services.

“I am thankful to the Council and the provincial government for providing me with this opportunity and I look forward to continuing my work with Legal Aid Manitoba,” says Clifford. “I am dedicated to building positive relationships with key stakeholders, leading the Legal Aid senior management team and staff and overseeing positive changes to policy and practices.”

Legal Aid Manitoba became a legislated program in the province in 1971 and opened its doors to clients in 1972. The organization operates at arms length from the government.

Legal Aid Manitoba provides legal help to people with low incomes and strives to serve all clients with respect and dignity. Its services are fundamental to a fair and balanced justice system.

**April 2009**

**#1 - 2009**

**NOTICE TO THE PROFESSION  
NEW AREA DIRECTORS MANUAL**

1. The new Area Directors Manual (ADM) which governs the processing of Applications, Certificate issuances, refusals, and cancellations came into force on April 1, 2009. A copy of this Manual is available on-line at the Legal Aid Manitoba website under "Resources for Lawyers". Management Council will authorize revisions to the Manual from time to time; these will be announced through Notices to the Profession and will be reflected in the on-line Manual. All previous Practice Directives, Notices to the Profession, etc., governing the issues in the new ADM are no longer in force. The ADM is your, and our, guide; when Legal Aid policy changes, the ADM will also change.
2. As previously announced, the major changes that affect private counsel are the time lines for submitting applications (they must have been signed within the preceding 60 days) as well as the time lines for responding to requests for Information.
3. Counsel will receive a request for a status update at the beginning of the financial review process. The update consists of the current address for the client and the status of the Legal Matter. It is extremely important that you provide this Information immediately upon request, as the client's Certificate will be cancelled if we cannot contact them. Any further steps you take, such as a Preliminary Hearing or Trial, will not be compensated where you have not advised of these pending matters in your status update.
4. The Area Directors Manual is accompanied by a change in how Legal Aid compensates multiple criminal matters dealt together.

Certificates issued after April 1, 2009 will be assessed using the new system. This is not a change in the tariff and is revenue neutral. It simplifies both the certificate issuance and billing process as well as making certificates and the billing process more transparent.

As of April 1, 2009, all criminal certificates will issue with a separate paragraph for each Criminal Code Information. Common offence notices will be attached to the Criminal Code matter out of which they arise. If the charges on an Information warrant separate coverage (can proceed to trial by themselves), they will be a separate Legal Matter having a separate Legal Matter number. Each of these Legal Matters can be billed separately at disposition. They merit one tariff in total per set unless separation/severance is authorized in advance by the Area Director.

If a matter does not merit separate coverage, the Information will be attached to the Legal Matter where it least prejudices the defence of an accused and separated by the word “also” within that Legal Matter.

When several Informations are dealt with together, whether they are separate Legal Matters or “also” matters, the first (highest tariff) matter merits the tariff fee. Each other Information, whether an “also” or a separate Legal Matter, merits up to two hours for any contested bail done on that Information alone, plus one additional hour.

The date any bail was done must be indicated on the bill. The bail done on that date can only be billed on one Legal Matter (you do not get paid twice for the same bail if more than one Information was in court).

The distinct hour on each Information can simply be billed as “one hour (distinct)”.

5. Where Legal Matters of necessity proceed in a separate prosecutorial stream and are brought together for disposition at the end, the Legal Matter in the separate prosecutorial stream will continue to receive a two hour “distinct” payment rather than the usual one hour (i.e. Federal charges joined with Provincial for disposition; DV joined with non-DV for disposition). These Matters can be billed as “two hours (separate stream)”.
6. Where a Warrant issues on several Legal Matters and/or “also” Distinct Matters together, only a single half ( $\frac{1}{2}$ ) tariff is paid; the additional hour for other Legal Matters or an “also” Matter is not paid. The “distinct” hour can only be billed at final disposition. This is to prevent overpayment on Matters that are ultimately dealt with together.
7. It is extremely helpful, and therefore extremely important, that you forward copies of all Criminal Informations with our Application. This will speed up the processing of Applications and issuance of Certificates substantially.
8. The Area Directors Manual contains more detailed direction on these and other matters. Counsel who regularly deal with Legal Aid matters need to be completely familiar with the ADM.