

March 1996

Notice to the Profession

HOLDBACK

The Legal Aid Board at its meeting on February 20, 1996 determined that our financial circumstances are such that Legal Aid will have to impose a holdback of 12% (same as last year) on criminal certificates issued on or after April 1, 1996.

1. **Lawyers' fees on costs actually recovered on legally aided matters.** Legal Aid has been paying a fee to lawyers of 25% of costs actually recovered. After discussions with the Bar Association, the Legal Aid Board has agreed to try an experiment of increasing those fees to 50% of any costs recovered. This takes effect immediately and continues until further notice.
2. **Services of Documents in Winnipeg and the surrounding area.** Until now, we have had an agreement with Gotcha! Process servers providing them with an exclusive contract for services on legally aided matters. After a further tender, we have awarded a new exclusive contract to:

Icon Legal Services
12 - 53 Carlton St
Winnipeg MB R3C 1N7

931-0430

This change will take effect on April 1, 1996. Until then, we will continue using Gotcha!

3. **Government Air.** This is a reminder that anyone flying on a government airplane will have to provide a certificate number or be providing formal duty counsel services in the target community to be permitted to board the plane. This is not a new requirement. We have, however, tightened up the procedures so that failure to provide the appropriate information may well mean that the lawyer will not be permitted to take the flight.
4. **Disbursements.** This is a reminder that for ease of service and for quicker response, when requesting authorization for a disbursement from the Area Director, you should:
 - a. Provide a factual and legal basis for the request
 - b. Provide a cost quotation for the disbursement
 - c. Use the forms whenever possible [They are available from Sonia at our Administration Office at 985-8537].

- d. If you are seeking an authorization for an assessment in a domestic matter where Family Conciliation may be available, please provide the Area Director with a statement that you have requested a judge to request an assessment from Family Conciliation and the judge has refused or, (alternatively) reasons why it would not be practical to try to use Family Conciliation in this matter. We have been assured by Family Conciliation that they can do the report in a timely manner.

5. **Reminders**

- a. Lawyers are expected to provide the Area Director with a status report on CFS matters before proceeding to trial. Failure to do so in a timely fashion risks not getting a response in time for the trial with the concomitant risk of not being paid for that trial. Lawyers should also remember that they are obligated to tell Legal Aid if their client's or their opponent's case has no merit and should not go to trial.
- b. Regulation 25 places an onus on lawyers providing legally aided services to keep Legal Aid informed of the financial status of the client. If it comes to our attention that a lawyer has had relevant material in hand and not notified Legal Aid, that lawyer's certificate may be cancelled retroactively.
- c. If you are forwarding a reciprocal application to Legal Aid, remember that, in custody or access cases, we have to be able to tell the receiving jurisdiction whether or not our applicant can travel to the other jurisdiction for a hearing.

May 28, 1996

NOTICE TO PROFESSION

RE: \$25.00 APPLICATION FEE

General:

Pursuant to a recent government Budget Initiative, Legal Aid Manitoba will require a \$25.00 application fee be submitted with each Legal Aid application effective June 1, 1996 (this will be applicable to all applications dated on or after June 1, 1996). This is an application processing fee and will not be refunded in the event a certificate does not issue. Any application which will result in a separate certificate or an amendment to extend coverage for a separate tariff matter will be subject to the \$25.00 application fee. Applications to appeal conviction and/or sentence will be subject to the \$25.00 application fee (i.e. the fee applies to each request for a certificate even where multiple requests are included in one application).

The following exemptions will apply:

1. Persons in receipt of municipal, provincial or band social assistance benefits.
2. Women applying from Women's Shelters.
3. Persons applying from Mental Health Facilities.
4. Wards of a Child and Family Service Agency (including children subject to a Voluntary Placement Agreement).
5. Young Offenders whose parents (or parent) are in receipt of social assistance benefits, and Young Offenders who are sentenced to custody. (Young Offenders who are unsentenced prisoners are not exempt.)
6. Unsentenced prisoners who were dependent on social assistance at the time of arrest. All other unsentenced prisoners must pay using income or assets outside of the institution or must sign a direction to the institution to release the fee amount to Legal Aid. A duplicate of this direction must accompany the application*.

7. Sentenced prisoners must pay using income or assets outside of the institution or must sign a direction to the institution to release the fee amount to Legal Aid. A duplicate of this direction must accompany the application*.

A waiver form is enclosed. Please make copies and use for applicants who are declaring an exemption.

Payment:

The \$25.00 application fee must be submitted in the form of cash, certified cheque, or money order or lawyer's trust cheque. Personal cheques of applicants will not be accepted.

Applications submitted without the proper application fee or proof of exemption will be returned to the sender and will not be recorded on our system.

1. **Full service duty counsel:** Legal Aid has decided to extend its full service duty counsel program to the entire province. This program has been tested for the last year and a half to two years in Winnipeg and has received a very positive evaluation from the federal government. We are asking all duty counsel to provide ongoing service to clients as if a certificate had been issued for them including adjourning a matter from time to time to make appropriate release arrangements or negotiating an appropriate plea bargain with the Crown based upon a thorough review of the particulars with the client. This is true even if the matter is to be remanded to a date other than a regular duty counsel sitting. The full service duty counsel will not proceed to preliminary hearing or trial where currently a certificate is required.

Out of courtesy to the private bar, we are asking duty counsel to get a general idea of the financial circumstances of the person assisted and, if it is apparent that the client would not qualify for legal aid, direct the person to a private bar lawyer to become a fee paying client.

We will no longer issue certificates on UALs, ELCs or breaches where these are the principle charges. Applications for those matters will be refused with a referral to duty counsel. Only if the duty counsel certifies to the area director that all possible steps have been taken to resolve the matter, the client has a legitimate defence (and setting out what that defence is) and a trial is the only way that justice can be done will the area director consider issuing a certificate. At that point, Legal Aid will respect choice of counsel. Given the nature of these offences, I don't see that we should ever be referring these out because of a conflict of interest.

You should also note that any person can choose to apply for a specific lawyer rather than go through the full service duty counsel program, with the exception of the three offences noted above. Those persons will have to submit the \$25 application fee, if they are not on welfare.

2. **Travel Time and Expenses**: If we issue two certificates to the same firm, to two different lawyers, but to the same community, and if we authorize travel time and expenses because there are no other resources, and if those two lawyers go there on the same day, Legal Aid will not allow travel time and expenses for both. Our intent with our policy would be to send only one lawyer from one firm at any given time.
3. **Likelihood of incarceration**: There has been some confusion about Legal Aid's policy of issuing where there is a likelihood of incarceration. This means jail upon conviction. A person who is in custody with special reasons—transience, etc.—does not trigger this policy. For this purpose, time in custody is a sentence of convenience, not a sentence of incarceration. Furthermore, Legal Aid will treat duty counsel as part of the “background noise”, that is, a circumstance to be considered by an area director in determining whether or not a certificate is required. This is important in the area of contested bails on minor matters where the matter for which a person is in custody can be disposed of by a guilty plea with **no further jail** and is not appropriately set for trial. Where duty counsel is not available, will deal with this by authorizing an hour of duty counsel time: f.i., Boissevain.
4. **Split Fee Tariff**: There seems to be some misunderstanding about the split fee tariff rule. Only that part of the tariff which the previous lawyer has started to work but not completed is subject to reduced fees. For example, if the first lawyer has not completed a matter and received half the tariff (100 in criminal, 180 in domestic), and the second lawyer takes the matter to trial, then the second lawyer gets the trial tariff less the \$100 or \$180 that the first lawyer received.

*** A more informal direction may have to be obtained until the institutions have forms available.**

August 1996

Notice to the Profession

1. **Legal Aid Case Management:** Starting immediately, all civil legal aid certificates (that is, all certificates other than defending criminal and youth charges) are subject to the restriction that counsel must seek case manager approval before proceeding to trial. This is similar to the requirement that now exists in CFS matters. This applies to all certificates, whenever issued, with respect to any trials scheduled after 15 August 1996. It is the date that the trial is set, not the trial date that we are referring to.

The case manager will take the steps that are necessary to review the matter and to ensure that cases are taken to trial only if they are in accord with Legal Aid policy. A similar procedure will be invoked where Legal Aid receives a complaint from one party about the conduct of the case by the other party. In the Area Offices outside of Winnipeg, the case manager will generally be the area director.

If a lawyer requests a report at Legal Aid's expense, Legal Aid will expect that lawyer not to impeach the contents of that report without special authorization from the area director. In a case where multiple parties seek a common expert opinion, Legal Aid will expect that they will in effect, treat that report as determinative of the issues properly covered in that report.

2. **Courier Services:** We are providing the following schedule of courier prices that Legal Aid is prepared to pay effective immediately for services within Winnipeg:

Downtown Delivery	\$2.00
Beyond Downtown	\$3.00
Direct service	an additional \$1.00

If your firm is outside the downtown area, this scale will apply *mutatis mutandis*. The area referred to as "downtown" extends from Logan to the River and from Sherbrook to the other River.

If you have difficulty finding a courier service to provide this service to you, you may wish to approach Aries (586-8251), Broadway (661-3110) or Early Bird (925-2473) as they have all agreed to provide service pursuant to this schedule.

3. **Increases on the tariff:** We receive requests from private bar lawyers for increases over what the tariff provides. However, the Regulations require “extremely unusual circumstances” to justify such an increase. Legal Aid considers that to mean more than a lot of time. It means events that one would not anticipate as occurring within the course of an action and which both caused significant additional work and resulted in tangible benefits to the client. If a request for an increase comes to the executive director and does not satisfy those criteria, no increase will be considered.
4. **Legal Aid Policy on Who Will Cover the Cost of Paternity Tests**

Paternity testing occurs and is requested in a number of different cases under the Family Maintenance Act. Section 23 of the Family Maintenance Act sets out the presumptions of paternity.

The following is Legal Aid’s policy as to who will cover the cost of the blood test:

When a Presumption of Paternity exists: The general rule is that where a presumption of paternity exists the man shall be responsible for covering the entire cost of the test.

- a. If the man is not on Legal Aid then he shall cover the entire cost of the blood test.
- b. When the man is on an expanded eligibility contract or agreement to pay with Legal Aid then he shall cover the entire cost of the blood test and he will reimburse Legal Aid for the entire amount. Therefore when the man requests authorization for the blood test the authorization is given along with a new agreement to pay or an increase in the monthly payments.
- c. Where the man qualifies for Legal Aid with no contributions to Legal Aid then the man shall enter into a contract with Legal Aid that he will reimburse Legal Aid for the entire cost of the blood test when he is able to do so.

When there is no presumption of paternity: The general policy is that the parties will share equally the cost of the test.

There shall be a cost sharing between the man and the woman but if the man is the father the woman will seek her share of the test in costs. In the cases where the man is not the father he would have the opportunity to seek costs from the woman for his share of the test.

5. **Duty counselable Offences:** Our previous memo referred to a number of offences and concluded with “. . . and breaches”. This memo was not as clear as it should have been. In general terms, we were interested in “breach probation” but worded it more broadly in order to cover YOA breaches and breaches of court orders generally. It is not intended that this phrase include offences created by subsections 2,3.4 and 5 of section 145 of the *Code* which will be considered as an adjunct of the offence relative to which the failure to appear, etc., arose. Whether a certificate will issue or there will be an amendment will depend on the circumstances and no change is anticipated with respect to that from earlier policy. Example, a breach of recognizance on a charge of breach probation will be dealt with by duty counsel. A breach on a break and enter will be dealt with as has been the case till now.
6. **Application Fee and Prisoners:** Attached you will find two forms to be used when taking applications from prisoners. One is for use at Stony Mountain Institute and the other is for provincial institutions. In the case of SMI, once the form is filled in, it can be given to V and C for transmission to their finance department. In the case of the provincial institutions, you will have to fill in the name of the institution and hand it to whoever is available from the institution to take it. A prisoner who has filled it in will generally be considered to have “paid” the application fee.

In both cases, you will have to make a note on the application that the form has been signed and delivered to the institution. There is no special form for that (yet) and we require only that the notation be clear and unequivocal.

December 1996

Notice to the Profession

1. **Holdback:** The Legal Aid Board has determined that there was a surplus of \$86,700 in the fund on 31/3/96. As the Regulations provide, this money will go towards repaying part of the holdback for that year. In line with discussions with the private bar, we will be paying back the money *pro rata* on the monies actually held back on cheques issued during the 1995/6 fiscal year. We expect to make the payments by 15 December 1996.
2. **Flat Fee Tariff:** We are proposing to go to a new, simplified tariff. It would replace the current domestic tariff. Our Board has approved this tariff in principle subject to feedback from the private bar. Please provide any comments you might have to us within three weeks. Under the proposal the tariff will read:

Part 4

Fees in Domestic Matters

Fees provided in this part for all inclusive items do not apply if the services furnished are for three hours or less. In those circumstances, the solicitor shall claim for time expended at a rate of \$45 an hour. Except for item 3, fees provided include preparation and appearances. Items 3 and 4 may be paid in addition to another tariff item in the same matter.

If a matter is not concluded, whether by action of the client or the lawyer, and the lawyer has furnished more than three hours of service, the fee shall be one-half the amount provided in this part. Where there has been a change of counsel, the area director may issue a certificate to a new lawyer in the matter subject to a reduction in fees equal to the amount paid the first lawyer.

1. Divorce (without corollary relief) or maintenance enforcement (including all proceedings before the Master and the Hearing Officer), where there are no other tariff items payable. **\$250**
2. Completed service in a case not referred to in #1 above, including all interim proceedings, examinations for discovery and preparations therefor, preparation for trial, case management conferences and pre-trial conferences, whether terminated by a written agreement, a consent order, or a trial: **\$500**
3. Examination for discovery or on an affidavit, where permission is obtained to go to trial and where the exams are specifically approved by the Area Office:
 - a. Itemized preparation at \$45 an hour to a maximum of **\$150**
 - b. Attendance, itemized at **\$45 an hour**.
4. Trial, at which witnesses are called, and there is a contest, per half day, provided authorization to proceed to trial has been obtained from the Area Office: **\$250**

End of New Tariff

The appeal tariff is unchanged.

The parallel taxation.

Over a period of some months, our taxation department provided management with a parallel taxation. They taxed each file using the existing tariff as well as this proposed tariff. One thousand of these double taxations were done and tabulated.

This is a revenue neutral proposal from the lawyer's perspective. Note 5 requests have not been considered in this context and the test and the procedure relating to them would continue to be the same as heretofore.

The split fee tariff is set out in the new regulation. There is one change in it. Now, if a client reconciles or fails to maintain contact with the lawyer, but the lawyer has put in more than five hours, the lawyer may itemize the time to a maximum of \$380. In our taxation run, we found that this itemization represented about 1% of the total amounts paid. In order to keep things simple, the new tariff will not allow for that. We think that the benefits of simplicity are greater than the loss of this provision.

Benefits to the Private Bar

We want the approval of the private bar. This is intended as an improvement to our delivery plan which will benefit the private bar, Legal Aid, and the Courts without having a negative effect on the clients. Obviously your understanding and support for this initiative is important to its success.

There are a number of benefits to the private bar, both immediate and potential. Our current rules are quite complicated and private bar lawyers are often quite frustrated by them. Your bills will become much simpler. Although we would still need to see copies of the orders obtained, almost all of your bills would suddenly become "fast track" bills. We would accept bills in that form for all cases that did not get approval to go to trial, with no limit on the approved disbursements billed. Also, we should be able to pay those bills within a very short time period. You would save the significant time and frustration you now lose preparing your bills and providing additional information to our taxation department.

The **average** cost per case will remain the same. There will be the horrendous case which will require a lot of work that the current tariff would pay more for, but that will be completely offset by the average case which will pay somewhat better than before. Overall, the result will be that you will generally experience that, for the same number of cases, you will be paid the same fees. There will now be a reward for early resolution, and many have suggested that this will give an important impetus to reasonable settlements.

In addition, there are some other features that may confer a hidden benefit on the lawyers. There were complaints before the Civil Justice Task Force to the effect that our tariff promoted litigation. We hear

anecdotal complaints that a number of lawyers generate interim orders and do exams for discovery simply as a way of maximizing their bills with Legal Aid. This forces the lawyer on the other side to do the additional work as well so we often pay for it twice. Under the new tariff, the lawyers will pocket the same amount of money without being put to this extra work.

There are also some external forces at work that promise to make this more attractive to the private bar. First of these is the QB case management program. Currently a pilot project receiving favourable comment, this would require every case to be case managed by a Judge of the Court at an early stage in the case. Lawyers have complained that we are not paying extra for this even though it requires extra work from them. If a lot of these cases are settled at that stage, then you will be able to bill your cases out for the same fees in a shorter time frame after having done less work on them. Thus your effective hourly rate will improve.

The recently released Task Force report is suggesting that the QB will require all cases to go to mandatory mediation at the inception of the case. This would be an excellent tool for a lawyer to achieve a quick and easy settlement of many cases, allowing you to bill early and often. The effect, again, is likely to be a better hourly return for the same total fees.

3. **Rescission of restraining orders.** Legal Aid will not provide counsel for the purpose of rescinding prohibition orders where the parties have reconciled and agree that the order should be rescinded. We will provide them with informal assistance to prepare their own documentation through our offices.
4. **Billing of Courier Service:** As you know, we have implemented a tariff for courier services. In order to be able to see whether or not the tariff is doing what we want it to, we are asking you to itemize courier services contracted for after 1 September. For instance, you could list them as "5 downtown couriers—\$10".
5. **Trials where the Client Does not Show:** In a recent situation, a lawyer appealed a taxation reduction where the lawyer had attended for four days at a CFS trial even though the client was not present and the lawyer was unable to contact her. The Board turned down the appeal, pointing out that the lawyer should have tried to withdraw, at least after giving the client a reasonable time to show up. While each case will be assessed on its own merits, Legal Aid will not consider the continued attendance in court in the absence of a client to give instructions to be a benefit to the client and, therefore, will not pay for such attendance. Please see Regulation 44.
6. **Client Recoveries:** Just a reminder that Regulation 36 imposes a duty on lawyers to pay money actually received on behalf of the client to Legal Aid. We believe that this provision requires, by implication, lawyers to structure recoveries so that they are available to Legal Aid. We expect lawyers to treat these similarly to the steps you would take with fee paying clients. If we find that you have not taken reasonable steps to protect Legal Aid's interest and that Legal Aid has suffered thereby, we may disallow your bill in that matter.

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March 1997

Notice to the Profession

HOLDBACK

The Legal Aid Board at its meeting on February 18, 1997 determined that our financial circumstances are such that Legal Aid will have to impose a holdback of 12% (same as last year) on criminal certificates issued on or after April 1, 1997.

1. **Application fee:**

- a. Do not have the assignment form directing the prison to pay the application fee out of the inmate's account executed unless your client will not get bail right away. If your client gets out and is not on welfare, we will want the application fee paid.
- b. An application to appeal conviction or sentence requires an application fee or a direction to the prison.
- c. We are enclosing a new application fee waiver form.

2. **Lawyers' fees on costs actually recovered on legally aided matters.** Since February 1996, as an experiment, Legal Aid has been paying a fee to lawyers of 50% of costs actually collected by the lawyers. The Board has decided to continue this practice.

However, Legal Aid continues ownership of any and all costs until actually collected and retains the discretion to waive costs at any stage of the proceedings, including after a lawyer has commenced action to recover those costs. Legal Aid will be guided by its general policy on waiver of costs in this regard.

3. **Split Fee Tariff**

- a. We are asking our area directors to include a time limit (generally 90 days) for the submission of a bill after a certificate has been cancelled for change of counsel. We have to know what we paid for the first case to be able to determine what to pay the second lawyer. We have discussed this with the domestic law subsection and they agree that this is a fair procedure.

- b. In the case of a contribution certificate where we cancel a certificate because of non-payment by the client the split fee tariff applies. However, if the client has paid us enough money to do so, we will increase the payment to the lawyer up to the amount of the tariff. Only after that will we make a refund to the defaulting client.
- 4. **Billing Amended Files:** Legal Aid has had a “three-month” rule requiring lawyers to wait three months from a disposition before sending a bill for fees for the completed part of an amended certificate. We are suspending that rule. We ask that lawyers try not to send a bill for fees on a certificate closely upon the heels of a previous bill for that same certificate.
- 5. **Payments in Criminal Matters:** The Regulations provide that Legal Aid will pay by analogy for cases where no entry is included in the tariff. We will pay:
 - a. Youth reviews as for a category “C” guilty plea;
 - b. Parole hearings as for a category “C” guilty plea; and
 - c. Dangerous Offender Proceedings as “extraordinary remedies” under the criminal tariff.

This continues our practice relating to payments for reviews. However, since parole hearings are generally analogous to reviews, we felt it was inequitable to pay them on a different basis and that constitutes an adjustment.

Legal Aid has been paying sexual assault with a weapon as a category “A” matter, despite the fact that the tariff classes this offence as a category “B”. Legal Aid is currently seeking a change to the Regulations to make them conform to our practice.

- 6. **Conditional Sentencing—Breaches:** On a trial basis, if the client returns to the lawyer who represented the client at the sentencing, we will accept an additional bill as for a category “C” guilty plea from that lawyer upon the receipt of the lawyer’s certification of service provided and information as to disposition. If the client chooses a different lawyer, Legal Aid will treat the new application as if it were for representation for a breach of probation.

7. **Junior Counsel Certificates:** Requests for these certificates have become more complex and Legal Aid advises that it will require a written request in each case. A junior counsel certificate will not be granted on the strength of a phone call. We remind you that such certificates are issued only for extremely complex cases and are very rare. The written request should, therefore, provide a solid justification for the request.

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Notice to the Profession

1. **Flat fee tariff:** Effective 1 February 1998, we expect the Legal Aid Regulations to be amended by replacing sections 1 to 5 of Part IV of the tariff with the following:

Part 4 Fees in Domestic Matters

The following fees do not apply in respect of legal aid furnished in three hours or less. In that circumstance, the solicitor may claim at the rate of \$45 per hour.

1. A contempt proceeding, a maintenance enforcement proceeding, or a divorce in which no corollary relief is sought or in which corollary relief has been settled in previous proceedings, including all preparation and appearances:
\$250
2. A domestic matter other than a matter referred to in paragraph 1, including all preparation and appearances in respect of interim proceedings, case management conferences, pre-trial conferences and, subject to paragraph 3, examinations for discovery and examinations on affidavits:
\$500
3. An examination for discovery or an examination on an affidavit, when authorized by the Area Director in contemplation of trial:
 - a. preparation: \$45 per hour to a maximum of **\$150**
 - b. attendance: \$45 an hour.
4. Trial, when authorized by the Area Director and witnesses testify, per ½ day:
\$250

Interpretation: This is a radical simplification of the legal aid tariff. This tariff will apply to all domestic matters. Overall, it will pay private bar lawyers the same amount as the current tariff does, but it will require less paperwork in order to obtain

payment. At the same time we are making some changes to our split fee tariff policy to loosen it up a little. Those changes are talked about below in section 2.

Legal Aid has moved the separation agreement to paragraph 2. However, that amount will be paid only if the agreement truly concluded the case. This will require, of course, the lawyer to form the opinion that the relationship between the parties and the nature of the agreement are such as to make an order unnecessary. This will generally mean that any agreement for maintenance has to be in a form that can be registered in the Enforcement Branch. Note also that if a lawyer obtains an agreement and an order in the same matter, there will be only one payment.

All domestic matters will now be billed using the "fast track" form. If the task authorized in the certificate is completed without a trial, then it will be paid at \$250 or \$500, provided the lawyer put in more than three hours of time. This will be the same amount whether there are interim proceedings, case management conferences, pre-trial conferences, examinations on affidavits or for discovery. The only exceptions are the split fee tariff, "extremely unusual circumstances" and cases of less than three hours.

The amounts payable under paragraphs 1 and 2 are considered to include preparation and will still be paid where the matter goes to trial. However, if the matter is set for trial but does not proceed, the trial tariff will generally not be paid. Remember also that Legal Aid's case management program still requires the lawyer to obtain authorization to proceed to trial before setting a matter down for a hearing.

Examples:

1. A certificate authorizes separation, custody and maintenance. After four hours of work, the parties enter into an agreement through the Family Conciliation Mediation Service. Legal Aid pays \$500.
2. A certificate authorizes separation, custody and maintenance. After considerable negotiations, examinations for discovery and a couple of interim orders, the parties agree on a final order. Legal Aid pays \$500.
3. A certificate authorizes separation, custody and maintenance. As the matter cannot be resolved, Legal Aid authorizes a trial which

proceeds for two days. Counsel will bill Legal Aid for \$500 preparation and \$1000 counsel fees for a total of \$1500.

How to Bill: We are enclosing fast track forms to be used for billing flat fee tariff cases. We have discontinued the limit on disbursements. You should continue to use the old forms for certificates issued before the flat fee tariff came into effect.

All bills to Legal Aid must include a copy of the concluding document (usually an order), copies of all orders that include maintenance or costs awards, as well as a statement that the service set out in the certificate has been completed. Legal Aid needs these documents to collect costs awards or to be reimbursed by social assistance where a welfare recipient receives a maintenance award.

Lawyers are still able to seek extra payment for "extremely unusual circumstances". That means more than a lot of time. These circumstances are events that one would not anticipate within the course of an action and which both caused significant additional work and resulted in tangible benefits to the client. If a request for an increase comes to the executive director and does not satisfy those criteria, no increase will be considered and the block tariff will be paid. Examples of "extremely unusual circumstances" could include an agreement in addition to an *Family Maintenance Act* action in which the client recovers significant cash due to special efforts of the lawyer, Hague Convention applications, or an opposing party that is not legally aided and is willing to return to court over and over and over and over again.

The split fee tariff and the flat fee tariff

2. **Split Fee Tariff:** The split fee tariff will continue to apply to legal aid certificates under the flat fee tariff. We are making some changes to soften its effect. **These changes apply only to certificates issued after the flat fee tariff comes into effect.**

The Regulations provide:

10(1) Fees that are otherwise payable to a solicitor for furnishing legal aid under a certificate may be reduced by 50% where the services of the solicitor to the client are for any reason discontinued or not completed.

10(2) Fees that are otherwise payable to a solicitor for furnishing legal aid under a certificate may be reduced by 50% where service in respect of the matter has previously been provided to the client under a certificate issued to another solicitor.

Legal Aid Tariff Part I

1. Except for the “non-returning-client” rule, there will be no exceptions to the split fee tariff except for the general discretion to raise the bar for “extremely unusual circumstances”.
2. The **non-returning-client** rule: Legal Aid will, despite the split fee tariff rule, pay the full block tariff where:
 - a. Counsel has obtained any interim order on behalf of the client, and
 - b. The client has disappeared, reconciled or instructed the lawyer not to proceed or has failed to maintain her standing with Legal Aid as a result of which Legal Aid has cancelled the certificate **and nine months have gone by without Legal Aid receiving a further request for service from that client for substantially the same matter.** The time shall be counted from the last date of contact between the lawyer and the client or the date the certificate was cancelled by Legal Aid, whichever is earlier.
 - i. To benefit from the non-returning client rule, the lawyer has to hold the bill until the end of the nine-month period.

- ii. This time can be abridged upon our being persuaded that the client will not return: this could include the completion of the matter by **another** law firm on a fee-paying basis or the client's permanent move to another country. If the move is only to another province, the matter could be the subject of a reciprocal application for legal aid.
3. The non-returning-client rule will not apply where the client has ceased to be financially eligible and the same law firm continues to provide services to the client on a fee-paying basis.
4. We will not pay twice to the same lawyer for the same client under this rule. That is, a subsequent certificate for substantially the same relief will attract a full payment only if actually completed.
5. "Substantially the same relief" will be understood to include any domestic certificate with issues of custody, access and/or support where at least some of the children are the same from one application to the next.
6. This policy will be adopted on a trial basis after which it will be discussed again between the private bar and the Policy and Initiatives Committee of the Board.

EXAMPLES

HOW TO BILL INCOMPLETE CASES

All examples assume that the lawyer has put in at least three hours of work. The general principle is that we will pay one block fee for each case, even if more than one lawyer takes it through to conclusion.

1. A client is being represented by a lawyer on a divorce and custody but changes counsel. The new counsel obtains an uncontested order of divorce. Each lawyer is paid \$250 for a total of \$500, the same payment as if one lawyer acted throughout.
2. A client retains a lawyer for a separation and the lawyer obtains an interim uncontested restraining order before the client disappears or reconciles. The lawyer waits nine months and bills the full tariff and is paid \$500.

3. A lawyer has obtained some relief for the client (an interim order, etc.) and a *status quo* has developed. The client instructs the lawyer, orally or in writing, that that is satisfactory. We will pay full tariff immediately upon receipt of information distinguishing this from a loss of contact, etc. This information will be relevant to the area director's decision to issue should there be another request for coverage in the future.
4. A client retains a lawyer for a separation and the lawyer obtains an interim uncontested restraining order and a second interim order, uncontested, for financial disclosure before the client disappears or reconciles. Some time later, let's say four months, the area director grants the client a new certificate for a divorce, otherwise the same relief. The first lawyer is paid \$250 and is notified that there is no point in further holding the bill. The new lawyer receives a certificate subject to the split fee tariff.
5. A client retains a lawyer for a separation and the lawyer obtains an interim uncontested restraining order and a second interim order, uncontested, for financial disclosure before the client disappears or reconciles. More than nine months later the area director grants the client a new certificate for any domestic matter. The lawyer waits nine months and bills the full tariff and is paid \$500. If the client retains the same lawyer or firm, the new certificate will be paid \$250 if not completed, \$500 if completed. If the client requests a new lawyer and firm, the new certificate is issued without any reference to the previous certificate. In either case, the area director may refuse a new certificate on the grounds of abuse of legal aid.
6. A client obtains a change of counsel. The second lawyer takes the matter to trial. The split fee tariff applies to the \$500 fee only: counsel fees are not subject to the split fee tariff.
7. A lawyer acting for a client in separation proceedings develops a conflict of interest as a result of a new lawyer joining the firm. The lawyer is paid \$250. Similarly, Legal Aid will only pay half the tariff if the lawyer ceases to practice in Manitoba.
8. A lawyer defending a paternity action obtains a negative blood test. The case has been completely and successfully defended and a full tariff is payable.

9. Where CFS withdraws its apprehension, Legal Aid treats it as a completed case.
10. A lawyer is defending an application and, as a result of the lawyer's efforts, the application has been discontinued or abandoned in a fashion that makes it very unlikely that the applicant will re-apply. Legal Aid will make a full payment to the successful lawyer.
11. A lawyer has been authorized to pursue relief on behalf of the client and then discontinues the matter, on the client's instructions, on the basis that the lawyer has discovered that the matter is without further merit. Unless a lawyer has been abusing this provision, the lawyer will be able to bill the full amount.
12. A lawyer obtains an order dismissing or discontinuing the action without prejudice to the applicant's right to re-apply. Since the order points out to all parties that the issue has not been resolved, Legal Aid will not treat the matter as concluded. However, after waiting the nine months, the lawyer may bill full tariff.

General Notices relating to Domestic and Civil Practice

3. **Interim proceedings: ("Old" Tariff)** Our Regulations define an interim proceeding as:

"interim proceeding" means a proceeding initiated by notice of motion and affidavit resulting in a hearing.

There is still some confusion surrounding the definition of an interim proceeding. The definition does not refer to an "order". The order is useful evidence that there was an interim proceeding, nothing more. For instance, if we get the Family Disposition Sheet which shows that our client's lawyer succeeded in having the motion dismissed, the contested interim proceeding is payable without an order unless costs are ordered. We will accept disposition sheets only where no order was taken out.

Also the fact that the lawyer has obtained several orders as part of one interim proceeding (that is on the same notice of motion) does not create several interim proceedings. If a proceeding is contested, there is provision for payment of subsequent half days at \$125. To get paid the "subsequent" half-day in a contested interim proceeding, the original and subsequent half-days all have to be contested and must provide new, substantive relief to the client. See tariff IV 3 (d).

Note: As a result of concerns expressed by the private bar, Legal Aid will immediately resume payments for expungement motions.

4. **Case Management at Legal Aid:** This is not to be confused with the Queen's Bench case management program. Legal Aid announced a policy in the summer of 1996 that lawyers would be expected to seek authorization to go to trial on all domestic and civil matters **before** setting the matter down for a hearing. Our experience is that we are not getting requests for approval in a timely fashion. A lawyer who makes the request less than 30 days before the trial starts may well not be able to get authorization and may subsequently have her bill for the hearing disallowed.

The case manager who receives the authorization request needs to have enough information to make a proper decision. The requests should include a description of the outstanding issues, the significance of those issues to the client, the position of both parties and the evidence that you will rely on to obtain a favourable outcome for your client.

If there are several legally aided clients in the same matter, each of the lawyers must seek authorization to proceed to trial. If one side is being patently unreasonable, it is quite possible that Legal Aid will authorize the other side to proceed to trial but not the unreasonable client. Please note that this requirement exists for staff lawyers as well as private bar lawyers.

5. **Costs:** Legal Aid continues to allow lawyers to keep 50% of any costs actually recovered from the other party by the lawyer and paid to Legal Aid. However, when presenting your bill to Legal Aid in a matter, it is important for you to tell us whether or not you are planning to collect the costs that have been ordered. The fast track for the flat fee tariff has boxes to check off to tell us what you are intending to do.
6. **Domestic Contingency List:** Legal Aid Manitoba considers the potential of a case to generate fees in determining eligibility for legal aid. To help us in dealing with this point, we have asked lawyers to tell us if they are willing to let their names appear on a list of lawyers we give to clients where we refuse domestic cases because we believe them to be fee generating. If you are interested in being on that list, please let us know. We are making a new list because our existing list is out of date. By putting your name on the list you are agreeing that you will take domestic cases on a fee generating basis in the appropriate cases.
7. **Immigration tariff:** As of 1 February 1998, we expect Legal Aid's new immigration tariff to come into effect. A copy of it is attached to this notice.

Notices relating to Criminal Practice

8. **Split fee tariff and Criminal Cases:** The split fee tariff applies any time there has been a previous provision of legal aid. The definition of "provision of legal aid" includes situations where no certificate has issued. Where significant service is provided under the full service duty counsel program before the client changes counsel, the split fee tariff applies. Payment on the certificate will be reduced by the cost of the previous service or by 50% of the tariff, whichever is less. The split fee tariff will only apply in those cases where it is so stated on the face of the certificate.
9. **Payments in Criminal Matters:** The Regulations provide that Legal Aid will pay by analogy for cases where no entry is included in the tariff. We will pay:
- a. Youth reviews as category "C" guilty pleas;
 - b. Parole hearings as category "C" preliminary hearings; and
 - c. Dangerous Offender Proceedings as "extraordinary remedies" under the criminal tariff.

This constitutes a change to our earlier decision as the bar has indicated that the work for a parole hearing is intensive and extensive and the guilty plea category seemed inappropriate.

10. **Legal Aid application fees and clients in custody:** The Winnipeg Remand Centre asks lawyers who present the assignment forms for the application fee to ensure that they use the authorized form and that their name (or their firm's name) is clearly legible on the form in order to permit the Centre to be able to provide fuller information to the inmate in case of an enquiry about the account.
11. **Youths in Custody and Application Fees:** The Manitoba Youth Centre will not accept assignment forms. If the parents do not qualify for an exemption to the application fee, then we expect them to pay the fee to have the application processed. However, the area director has discretion to make exceptions where the youth's bail has been denied and where the parents are not involved with the youth.

General Notices

- 12. Four Seasons Contract:** We have renewed our contract with Four Seasons for court reporting services from 1/5/97 to 30/4/99. We ask all lawyers in Winnipeg, Selkirk, Beausejour, Steinbach and Portage la Prairie to make use of them. Brandon lawyers are expected to use their local service providers.
- 13. Portage la Prairie contract:** We have renewed our contract with Ken Greenhalgh and Leandre Buisse to provide certain legal aid services in Portage la Prairie from 1/7/97 to 30/6/98. This contract enables Legal Aid to provide drop in and duty counsel services in Portage even though we have no staff lawyers in the area.
- 14. Cashing Legal Aid Cheques:** From time to time a lawyer comments that they have not cashed a cheque because they are unhappy with the taxation made by Legal Aid. They do not wish to prejudice their right to appeal from that taxation. If Legal Aid sends you a cheque, you may cash it without prejudicing a future appeal as Legal Aid will deal with each matter on its substance and not on such technicalities.
- 15. Disbursements and Fax charges.** There still seems to be some confusion in this area. Legal Aid does not pay for using a fax machine to send or receive faxes. A bill that claims fax charges as a disbursement will be disallowed. If the fax is a long distance fax, bill it as a telephone charge. Legal Aid pays for telephone long distance charges in the amount billed by the phone company less the GST.
- 16. Courier Services:** This is a reminder that Legal Aid has a schedule of payment for courier services in the City of Winnipeg. We pay as follows:

Downtown Delivery	\$2.00
Beyond Downtown	\$3.00
Direct service	an additional \$1.00

If your firm is outside the downtown area, this scale will apply *mutatis mutandis*. The area referred to as "downtown" extends from Logan to the River and from Sherbrook to the other River.

We are asking you to itemize courier services contracted for after 1 September 1996. For instance, you could list them as “5 downtown couriers—\$10”.

If you have difficulty finding a courier service to provide this service to you, you may wish to approach Ace (956-2630), Aries (586-8251), Broadway (661-3110) or Early Bird (925-2473) as they all agreed to provide service pursuant to this schedule when advised that legal aid rates apply.

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Notice to the Profession

Legal Aid Manitoba
January 1998

Notice to the Profession

HOLDBACK

The Legal Aid Board at its meeting on February 24, 1998 determined that our financial circumstances are such that Legal Aid will have to impose a holdback of 12% (same as last year) on criminal certificates issued on or after April 1, 1998.

* * * * *

1. **Where the Non-custodial Parent cannot be found:** Acting upon the advice of both private bar and staff lawyers, Legal Aid will start issuing certificates to seek maintenance payments where the non-custodial parent cannot be found. We will do so under the *Divorce Act* regardless of where the payor lives provided that there is **some** likelihood that maintenance will sooner or later be collected. We will do so under the *Family Maintenance Act* where the payor is believed to be living in Manitoba and likely has some ability to pay maintenance. We will expect lawyers to obtain maintenance orders based upon of substitutional service and deemed income. Deemed income is, of course, provided for in the Child Support Guidelines (both federal and the soon-to-be-proclaimed provincial) and judges have generally been prepared to award maintenance in the past in these cases as well.

This policy change will result in quite a few new certificates being issued but will be viable only if lawyers, staff and private bar, advise their clients aggressively that the client's interest lies in pursuing the maintenance order.

The increased powers granted to the Maintenance Enforcement Program to withhold licences and to execute the judgments in many different ways enable them to find a significant number of these payors once an order is obtained, regardless of how modest. As the order is effective over a long period of time, even collection in a fairly low percentage of cases will likely prove cost effective. We will assess the effectiveness of this policy by reviewing the reports of the lawyers upon closing the files.

2. **Flat fee tariff and exams for discovery:** There seems to be continuing confusion about the reference in the flat fee tariff to exams for discovery. The majority of exams that are done on legally aided domestic cases relate

to challenging the content of an affidavit that has been filed to support an interim proceeding or else to complement financial disclosure. These examinations **will not be paid for** under the flat fee tariff. They are considered as part of the case that leads to the \$500 payment and payment for them was included in the calculation that determined that a \$500 flat fee would pay lawyers the same amount overall as the tariff we had until now.

However, after the case manager has authorized a lawyer to take a matter to trial, which will be done only after all the normal interim procedures, discoveries, reports and assessments have been tried, the lawyer may request authorization from the case manager for an examination for discovery to provide the lawyer with material for cross-examination at the trial. It is only the cross-examination that is in explicit preparation for a trial that will be approved and then only after the lawyer has convinced the case manager that no option short of trial will suffice to resolve the issues.

We do not expect to have more than a few of these in a year province-wide.

3. **Disbursements:** Some service suppliers have expressed a concern that lawyers who are acting on legal aid certificates do not always pay the supplier promptly. Those lawyers frequently suggest that they have not been paid by Legal Aid and are, therefore, unable to make the payment promptly. Legal Aid would like to remind lawyers that it is the lawyer, not Legal Aid, that contracts with the service supplier and it is up to the lawyer to pay the bills in a timely fashion based upon their commitment as professionals. An interim bill can be forwarded to Legal Aid once the cumulative disbursements in a case reach \$50. The interim billing, according to Reg 42(2) requires the lawyer to certify that "the interim disbursements itemized were paid by me".
4. **French Language Forms:** Legal Aid would like to remind all practitioners that we have application forms in French and are prepared to produce the certificates, the refusal notices, etc., in French for those applicants whose language of preference is French.
5. **Agreed Fees:** A practice developed under Allan Fineblit of meeting with lawyers from time to time to agree on fees in cases where the tariff seemed inappropriate. This practice gives an unfair advantage to those who are

aware of it and to those who practice in the City of Winnipeg. I have also found that these agreements are sometimes based upon a paucity of information that results in decisions that are hard to justify. In the future, the procedure will be that a lawyer who is not content with the tariff may write to request a payment in excess of the tariff on the basis that "extremely unusual circumstances" exist. This letter should set out the tariff amount and proceed to make the case why additional money should be paid above that amount. The executive director is prepared to meet with the lawyer after the letter has been received, at the lawyer's request. An itemization of time may be provided at the lawyer's discretion but will not, standing alone, constitute a justification of the request.

Notice to the Profession

1. **Payment Delays:** Our legal accounts department has been subject to a number of unforeseen mishaps in the last six months. Automobile accidents, illness and staff relocations have slowed down our taxation process significantly and we apologize for that. We are doing what we can to rectify the situation and hope to be current once again by the end of September. In the meantime, please note that fast track accounts are still being paid with our usual promptness and we encourage you to use that process if you can.
2. **Interim Billing of Disbursements:** The \$50 threshold for interim bills for disbursements has been in place for a number of years. Effective 1 July 1998, we are raising that threshold to \$75. We have consulted with a number of you and have been told that this would not pose a serious inconvenience.
3. **Lawyer Discretion to Authorize Expenditures:** In order to keep this amount in line with the interim billing amount, we will be increasing your discretion to incur expenditures for individual disbursements on a legal aid certificate to \$75. Please note that you should continue to use service suppliers specifically authorized by Legal Aid such as the Sheriff's Department for routine services, Icon Legal Services for other services, Four Seasons Transcription Services, etc.
4. **Bail Revocation Hearings:** We have been receiving authorization requests and bills for bail revocation hearings as a separate tariff item. An authorization to oppose a bail revocation hearing is not required. The tariff does not provide a separate heading for a revocation hearing and Legal Aid will not pay for them unless the hearing takes place by way of a review to the Queen's Bench.
5. **Conditional Sentence Revocation Hearings:** In those cases where the conditional sentence revocation hearing proceeds on the basis of documents, Legal Aid will pay for them as if they were a speak to sentence in a category "C" matter. Please note that this is just a restatement of our policy set out in the Notice to the Profession of March 1997.
6. **Withdrawal on Criminal Matters:** Please do not bill cases in which you report the outcome with the simple statement "withdrew". Legal Aid will almost

certainly get a new application from the client and we need to know the reasons for the withdrawal to be able to deal with the new application.

7. **Amendments:** In order to clarify our procedure and to make billing easier, all Legal Aid amendments will contain one of the three words: “read”, “include” or “add”.

If a certificate authorizes certain activity, an amendment may substitute a new activity for the old one, may declare that the original activity encompasses certain additional activity or may intend to add a new, complete block fee to the certificate.

If the area director intends to substitute a new activity for the original one, the amendment will stipulate that the certificate will now **read**.

Example: The certificate allowed for a separation. Client decided to go for a divorce instead. The certificate is amended to read divorce. Legal Accounts pays as if issued for a divorce in the first place.

If the area director intends to allow certain activity within the terms of the original certificate without changing the purpose of the certificate, the amendment will stipulate that the certificate will **include**.

Example: The certificate allowed for a separation. The lawyer will wrap up marital property issues as part of the certificate. The certificate is amended to include MPA issues. Legal Accounts pays block fee for the separation, but interim proceedings on the MPA can be billed. An amendment that provides that a certificate **includes** an activity will generally not result in the payment of a separate final tariff item.

If the area director intends to authorize activity in addition to the task originally assigned, a new block fee will kick in. The amendment will **add** to the certificate. Area directors will do so only when the new activity is sufficiently unrelated or sufficiently new as to justify separate payment and important enough on its own that a certificate would issue if there were none already in existence.

Example: The certificate allows for a separation. The children are seized by CFS. The certificate is amended to add the CFS case. Legal Accounts will pay a block fee on the separation and on the CFS case.

March 1999
Gerry McNeilly, Executive Director

Notice to the Profession

HOLDBACK

The Legal Aid Board at its meeting on Wednesday, March 17, 1999, determined that our financial circumstances are such that Legal Aid will impose a holdback of 5% at this time until further notice. This holdback will be effective on all criminal applications dated April 1, 1999 or later.

MEMO

TO: THE PROFESSION

FROM: GERRY MCNEILLY - EXECUTIVE DIRECTOR

DATE: April 16, 1999

RE: NOTICES AND UPDATES RE: POLICY CHANGES

In order to ensure that lawyers are kept up to date on procedural or policy changes at Legal Aid Manitoba, we will send out memoranda quarterly.

These memoranda will provide information, updates and clarify policies and procedures. Additionally, I invite the Bar to pass on to me your concerns or queries and I will deal with those concerns or queries in these memoranda.

1. Holdback

By now everyone should be aware that effective April 1, 1999, the holdback on all criminal applications dated April 1, 1999 or later, will be only 5%. (This 5% holdback is instead of the 12% holdback).

2. Expiry of Certificates

Be advised that at the end of 1999, numerous certificates will expire. Any certificates issued more than six (6) years ago, which are not yet concluded, will expire unless the time is extended by the Area Director. You are advised to review old certificates which may be affected, namely where the file is not completed and act upon them accordingly. An extension can be obtained upon written request to the Area Director. Section 30 of the Regulations (L105 - R.M. 225/91), states as follows:

A certificate is discharged when ...

(e) six years expire from the date on which the certificate is issued, or on December 31, 1999, whichever is the later, unless the time is extended by the area director.

3. Duty Counsel Circuits

(a) Roseau Circuit:

Applications are being requested from interested counsel to provide duty counsel services on a set fee basis contract. All interested lawyers should contact Legal Aid to obtain more specific and detailed information. Please contact Ronn Klassen in this regard, within the next 15 days.

4. On-Call Duty Counsel List

Be advised that effective April 1, 1999, the bi-weekly rate paid to on-call duty counsel (Brydges counsel) has been increased to \$175.00.

Legal Aid Manitoba is also inviting lawyers to submit an application to Joan Crowe, at 985-8536 for inclusion on the on-call list.

On-call assignments are from Monday noon to Friday noon and Friday noon to Monday noon. The on-call lawyer provides advice as required by the Brydges decision.

5. Immigration Reports - Personal Information Forms (PIF)

_____ Be advised that Legal Aid Manitoba has entered into an agreement with the International Centre that it will pay \$125.00 for these reports, as a disbursement on certificates issued for refugee claimants upon confirmation by counsel of its necessity. Counsel should include the report fee as a disbursement and may use the fast track disbursement request form on these matters.

6. Parental Education Program and Mediation - Domestic Matters

_____ Legal Aid Manitoba wants to encourage its clients to utilize both the For the Sake of the Children program and the mediation program through Family Conciliation as resources. As a result, our policy will require that lawyers encourage clients to use these resources. It is expected that clients will take part in the For the Sake of the Children and mediation programs run through Family Conciliation. Failure to do so will be considered as a relevant factor in our case management program for trial approval.

We will send brochures on the For the Sake of the Children program with all certificates where children are involved or are at issue. In the event that this is not a successful initiative, attendance at this program may, at the discretion of the case manager or the Area Director, become a condition of the certificate.

We also ask counsel to encourage clients to consider mediation as an

alternative to court. Legal Aid will be prepared to consider, as a favourable step in our case management program, attendance for mediation.

7. Regulation 36 - Charges on Land

_____ The Regulation of Legal Aid Manitoba provides that a lawyer shall register a charge in favour of the Legal Aid Society on any property that is transferred into a client's name.

Counsel are reminded that this is an obligation upon you in accepting a certificate to ensure that this is done. However, if counsel informs us as soon as property is being transferred to the client, Legal Aid will prepare the necessary documents for filing as quickly as possible.

Your assistance in ensuring that this is done concurrently to the transfer is requested.

8. Changes of Counsel

Counsel should be reminded that changes of counsel are not an automatic process or right. The first request from a client may in most instances be generally approved. Subsequent changes may be granted only after considering information received from both the outgoing and incoming counsel. These changes will be generally subject to the reduced tariff of fees, but there may be rare instances where an exception may be considered.

9. Taxation/Fee Matters

(i) Quick Law as a Disbursement

- Counsel is advised that Legal Aid will not pay for a lawyer's access to an electronic research tool such as Quick Law. Legal Aid sees this as an office cost, similar to having a library. Therefore, charges for Quick Law will not be paid for as a disbursement, unless the research has been addressed with the Area Director and prior approval given.

(ii) Examination on Affidavits

- Counsel are reminded that the cost for reporters and transcripts can be covered as a disbursement where there is an examination on an affidavit. The cost for attendance though is not recoverable as it is already included in the flat fee of \$500 as per the domestic tariff.

In certain circumstances where the subject matter of the examination was not originally contemplated when counsel submitted the application for Legal Aid,

and attendance thus is necessary, the Area Director may exercise discretion to pay an enhanced fee on the tariff amount.

(iii) Show Cause Proceedings

- Counsel is notified that where there are several show cause hearings in one proceeding (same matter), that the first hearing will attract a fee of \$250 and \$150 for each subsequent hearing.

(iv) Flat Fee Domestic Tariff Item 1 - Additional Matter Undertaken

- Counsel is advised that where it becomes necessary to take some type of additional proceeding (such as seeking an order for substitutional service for instance), Legal Aid would be prepared to treat this matter as additional work. As a result, Legal Aid Manitoba will be prepared to pay authorized work up to a maximum of three (3) hours of extra time at \$45 per hour, or alternatively, an additional \$150 for this work done under tariff item 1, thereby increasing tariff item 1 by \$150 to \$400, providing it is clearly itemized and the necessary copy of the said order(s) included with your accounts.

If new substantive issues arise, you may request the Area Director to convert the matter to tariff item 2.

(v) Stays under the Criminal Tariff

- Where a lawyer has, in good faith, tried to negotiate with the Crown to have a matter stayed or withdrawn prior to a trial being set or prior to the trial date as per criminal tariff item 1, but the Crown has chosen to proceed despite information provided by the defence lawyer, Legal Aid is of the view that counsel should be reasonably compensated. Thus, where Legal Aid is informed by counsel that she has made reasonable efforts to persuade the Crown to stay or reduce a charge for the purpose of a plea but the Crown insists on proceeding, only to stay or reduce the charge and accept a guilty plea at the hearing, Legal Aid will pay a discretionary increase over and above the guilty plea fee in recognition of trial preparation work done, as follows: \$200 on Category C matters, \$225 on Category B and \$325 on Category A matters.

Counsel are reminded that their account must refer to the fact that prior negotiation with the Crown was unsuccessful and the stay or reduced charge was done at the hearing.

This increase will not be allowed where it appears that the trial date was set in the hope that witnesses for the Crown will not show or will refuse to testify.

Legal Aid expects to continue to work with the private bar in a very cooperative manner, to provide the best legal services for all our clients. We appreciate the work and efforts of the members of the private bar. Thank you. Enjoy your summer!

MEMO TO: THE PROFESSION

FROM: GERRY MCNEILLY

DATE: July 22, 1999

RE: NOTICES AND UPDATES

As indicated in my April 16, 1999 Notice to the Profession, I agreed to update the profession on procedural or policy changes at Legal Aid Manitoba.

1. Expiry of Certificates

Be advised that at the end of 1999, numerous certificates will expire. Any certificates issued more than six years ago, which are not yet concluded, will expire unless the time is extended by the Area Director. You are advised to review old certificates which may be affected, namely where the file is not completed and act upon them accordingly. An extension can be obtained upon written request to the Area Director. Any request for an extension must proceed the expiry date. Section 30 of the Regulations (L105-R.M. 225/91), states as follows:

A certificate is discharged when ...

(e) six years expire from the date on which the certificate is issued, or on December 31, 1999, whichever is the later, unless the time is extended by the area director.

2. Domestic Matters

Please be advised that the domestic tariff has been amended;

(a) in item 1, by striking out \$250 and substituting \$270; and

(b) in item 2, by striking out \$500 and substituting \$540;

This regulation came into force on July 1, 1999.

*Note: this tariff amendment is effective on applications taken after July 1, 1999.

3. Certificates subject to Expanded Eligibility or Charges on Land Recoveries

We would like to remind lawyers who are representing contributing clients under the expanded eligibility program or charge on land conditional files, that the client will ultimately be responsible for any and all expenditures made under the said certificate.

Therefore, when you are making a disbursement or expenditure, you should always ensure that the client is made aware and approves the expense. This also follows where authorization for an expenditure is being requested from case managers.

4. Application Fees

Please be advised that it is not prudent to send cash in the mail. This has happened in a few instances recently and problems were encountered. It is more appropriate to send firm cheques.

5. Portage la Prairie Contract

Be advised the Portage la Prairie contract performed by Ken Greenhalgh has expired. We thank him for his years of service in performing this service.

We have entered into a new contract with Heather Thomas to provide services under a general domestic contract including services to the shelter and drop-in services. She can be reached at 284-7940.

Criminal service will be provided out of our Broadway office by Bill Malcolm. He may be contacted at 985-8591.

6. Process Server (Winnipeg and environs)

We have completed a competition for process servings and have awarded a further contract to Icon Legal services. Although the price has changed, you can continue to access the service as you have in the past.

There is an addition to the service on a trial basis. Icon Legal Services will trace persons where the address is unknown and the lawyer's reasonable efforts have not been able to locate the person. This is not intended to replace checks at the Motor Vehicles Branch or other such efforts to find addresses that law firms are expected to do in the course of providing services.

On the other hand, where you would be considering a skip tracing service, or where you have leads that could be followed up with a bit of footwork, it may be appropriate to use Icon Legal Services to find the respondent. This is a disbursement that will require Area Director approval and is only available in and around Winnipeg where Icon has been providing service.

7. Flat Fee Tariff

There remains confusion regarding when to apply the new flat fee tariff. As always, the legal aid application date (not the issuing date) determines which tariff applies. The flat

fee tariff only applies to application/amendment dates of February 1, 1998 and later. All previous tariffs are determined by their application/amendment dates as well.

8. Fast Track Account forms

All fast track account forms are for billing of one-tariff matters only. This means you do not send two or more separate fast track accounts to bill on the same file. You would instead do a regular account with all of those applicable tariff items for that file thereon.

FAMILY LAW SUBSECTION, MANITOBA BAR ASSOCIATION NEWSLETTER NOVEMBER 1999

- **COMMUNICATING BY E-MAIL WITH LEGAL AID:** Ron Klassen has indicated that all Legal Aid staff have e-mail addresses which can be determined by taking the first two initials of the first name and first three of the last name with the domain name (e.g. Ron A. Klassen's is rokla@legalaid.mb.ca. Ron has indicated that Legal Aid will respond by e-mail when requested by counsel but will not initiate contact by e-mail because of security concerns
- Gerry McNeilly gemcn@legalaid.mb.ca.would like the Bar's view on making Legal Aid Certificates conditional upon the parents attendance at For the Sake of the Children. This raises numerous issues with respect to how the lawyer would get off the record and gets paid if the client does not attend etc. It may be a condition of the domestic certificates in the new year. At the present moment, attendance at the program is a relevant factor Legal Aid considers in case management.

The following are some other matters which Gerry would like us to bring to your attention:

- *Amicus*—given the increased number of appointments in custody and access matters, Legal Aid is putting together a proposal to ensure proper service to the court is provided. Private bar lawyers prepared to have their names placed on a panel of lawyers to provide this work should contact Gerry McNeilly. It is hoped that training and other issues will be addressed.
- Domestic certificates are usually issued with limited coverage. Counsel therefore, should be aware that unless it is expressly stated on the certificate, authorization to do other things on their client's behalf must receive prior approval from Legal Aid. Counsel must ensure that authorized coverage is provided for before undertaking the task. Legal Aid cannot be expected to pay for work done that it did not authorize.
- Taxation matters - to ensure prompt payment of accounts, counsel are reminded that any information needed to justify an account, including copies of orders, additional information, etc., must be included with your account.
- Legal Aid continues to pursue an enhancement to the domestic tariff.
- Mediation: Legal Aid intends in the new year to introduce a type of mediation process on files where the parties are legally-aided. Invitations will also be extended to the non-legally aided party, where the other party is on legal aid, to participate in the mediation process. More on this later.

March 2000
Gerry McNeilly, Executive Director

NOTICE TO THE PROFESSION

MARCH 2000

1. Holdback:

The Legal Aid Board of Directors at a special meeting on Monday, March 13, 2000, determined that our financial circumstances are such that Legal Aid will continue to impose a holdback of 5% at this time until further notice. This holdback will be effective on all criminal and youth applications dated April 1, 2000 or later. The Board favours eventual removal of the holdback in its entirety.

2. YOA Section 11 Block Contracts:

These matters will not be tendered again. They have all now expired. Henceforth, Section 11 appointments will not allow for choice of counsel. All appointments will be handled by staff youth lawyers. Only under extenuating circumstances will choice of counsel be approved or where staff is not available or where there is conflict.

3. Disbursements:

Legal Aid would like to remind lawyers who are representing clients who are contributing to their legal aid through expanded eligibility, charge on land or cost recovery, that the client will ultimately be responsible for any expenditures made as disbursements under their Legal Aid certificate. When you are making a disbursement you should always ensure that the client approves what their money is being spent on. This is so even where you are requesting authorization for the expenditure from the legal aid case manager.

4. Tariff Increases:

Legal Aid continues to be optimistic that additional funding may be forthcoming to allow for some tariff increases in the coming year.

5. Uncontested Guardianships:

Assessments in uncontested guardianship matters will not be ordinarily funded, except in exceptional circumstances, as Legal Aid continues to operate on the understanding with the Court of Queen's Bench that assessments will not be routinely ordered by Queen's Bench judiciary. Where required, payment will not exceed \$350 per case.

6. Assessments Generally:

Legal Aid continues to be concerned by the escalating numbers and costs for assessments. Counsel is reminded that such assessments require a specific cost quote, with appropriate foundation for the assessment being essential. Approval from Legal Aid must be obtained before incurring said cost.

MEMO TO THE PROFESSION

May 31st, 2000

1. Effective August 1, 2000, the Legal Aid Manitoba tariff will be increased by 6.7% in all tariff areas. Copies of the new tariff, once placed in the Manitoba Gazette, will be provided.
2. Also effective August 1, 2000, eligibility guidelines are being increased to reflect the 1994 Federal low-income cut-offs (LICO) levels. This is the first change or increase in these guidelines since 1990 which reflected the 1987 (LICO) levels. Copies will also be available after June 30, 2000.
3. Attendance at "For the Sake of the Children" program or the 'parental education' program is expected of all Legal Aid clients for whom certificates have been approved that involves custody and access issues. Failure to attend will be a factor considered in trial approval through Legal Aid case management process.

Note that rural staff of Family Conciliation are now fully trained and will be able to provide this service in rural areas of the Province, namely Brandon, Dauphin, Flin Flon and Thompson.

4. Facilitated Settlement Meetings:

Legal Aid Manitoba is undertaking a project commencing October 1, 2000, of conducting facilitated settlement meetings in domestic matters.

Staff trained in mediation and negotiation techniques will be providing this service.

Clients who are legally aided and their lawyers will be invited to attend these meetings early in the process to pursue settlement of some or all issues.

In matters where one party is non-legally aided, an invitation to participate, at no charge, will be made. It is hoped that counsel of both non-legally aided and legally aided clients will encourage attendances at these meetings.

Lawyers representing the parties will be required to attend these meetings to participate fully in the settlement process.

While the process will be voluntary and the procedure flexible, failure to attend or participate will be a factor considered by a Legal Aid case manager when trial approval is being sought. Trial approval requests will have to be accompanied by an opinion that a trial is necessary, showing that a reasonable client of modest means would pay privately to continue these proceedings.

The meetings will be without prejudice and anything said will remain confidential and cannot be used in court.

This process is not to replace or circumvent the processes used by the Court of Queen's Bench. It is to achieve cost savings for Legal Aid while at the same time attempt to assist the parties to try to settle their matters early and economically.

Further information as to the process, procedures and guidelines will be circulated as we make progress on the development of this program.

Legal Aid Manitoba believes that the success of this initiative depends greatly on the support and role of counsel. There will be no reduction in the current block fee tariff. Cost-benefit to both counsel and Legal Aid Manitoba will be achieved through early settlement or a narrowing of issues.

It is recognized that increased attendances may be one of the results of this initiative. As such, where depending upon totality of use of this process in effecting a negotiated consent order, Note 5 enhancements may be looked upon positively.

5. Offer to Domestic Bar:

Given the recent increase in the issuance of domestic certificates, resulting in difficulties placing them with private bar practitioners, Legal Aid is proposing for those interested the following offer:

- Legal Aid Manitoba is seeking 10 contracts with family law practitioners to whom we will issue up to 60 domestic certificates (5 per month) starting immediately until the contract expires on July 31, 2001. These certificates will be subject to the usual rules relating to authorizations and case management.
- Legal Aid will pay \$2875 on the first of each month as an advance on five certificates, whether they are issued or not.
- The lawyer will bill the certificates upon completion in the usual way but the fees for the certificates will be offset against the amounts paid in advance. When the contract expires then, unless it is renewed, counsel and Legal Aid Manitoba will enter into an accounting to determine outstanding obligations and how they will be regulated.
- Certificates issued to the practitioner within the year in excess of the sixty (60) are to be dealt with in the usual manner with no up front payment. Counsel would not be obligated to take more than the sixty (60) certificates and would be entitled to bill disbursements on certificate files pursuant to our usual policy.

Depending on responses to this offer, Legal Aid Manitoba may not be able to accommodate all requests.

A one (1) year contract between Legal Aid Manitoba and the private bar practitioner will be entered into to formalize this arrangement.

6. Holdback:

Legal Aid Manitoba continues to be optimistic that we will be able to repay most of the holdback for the last fiscal year.

7. Legal Aid Manitoba reminds counsel that billing disbursements regarding courier services for filing documents is not an allowable item. This disbursement is part of the firm's overhead and is not billable to Legal Aid.

8. Members of the criminal bar have been expressing some uncertainty as to what constitutes a "trial" for the purposes of the Legal Aid tariff. The tariff provides a payment for "trial at which the judge decides the matter based on evidence adduced".

In order to resolve the confusion, Legal Aid will go to the plain meaning of "trial" and consider it to mean that a witness was called to give evidence about the case and sworn in. If something less than that happened, it will not be a trial and will not justify a payment for a trial, although it may be the basis for a request for more money on account of "extremely unusual circumstances".

This may be a bit more restrictive than the definition that we have recently been using. However, the definition that we were using was not working. In addition, with the reduction in the holdback and with the increase in the tariff announced elsewhere in this notice, we feel that now is a good time to return to this simpler definition, effective on any matter completed after the date of this notice.

Therefore, unless a case can be made out for "extremely unusual circumstances", the tariff fee will be applicable to guilty pleas, stay of proceedings and withdrawal of charges.

NOTICE TO THE PROFESSION

March 2001

1. **Assessments for Consent and Simple Unopposed Guardianship Matters**

Legal Aid will not generally approve disbursements for assessments in these cases unless there are extraordinary circumstances justifying the disbursement. We suggest that the Court's requirement for third party evidence in these cases be met by attempting to obtain evidence from independent sources such as guidance counselors, school teachers, pastors, school social workers, Child and Family Services workers, child care providers and medical doctors.

2. **Assessments**

There has been a dramatic increase in the number of requests for assessments and a resulting increase in expenditures.

(i) Cost:

As a reminder, counsel must provide a proper factual and legal foundation when requesting any assessment, along with a specific prior cost quote.

While Legal Aid had previously given a range for cost of these matters, given the ever increasing demand and escalating cost, such a request will not be automatically accommodated.

Assessments will only be considered in circumstances where they are deemed to be absolutely essential. Every request will be assessed on its merits.

Legal Aid will very seldom approve more than one assessment in the same matter.

(ii) Missed Appointment:

Missed appointment is one factor attributing to the cost increase of assessments. Counsel is being requested to stress to clients that Legal Aid will be monitoring these matters closely. To assist counsel, the following is suggested:

- Once counsel is approved for the cost of a disbursement, counsel must advise both her client and the assessor, in writing, that should the client miss any appointment with the assessor in furtherance of the preparation of the assessment, that the assessor must reconfirm with counsel before continuing to conduct the assessment and counsel must then re-contact Legal Aid to confirm that the assessment can continue.

- When seeking such reconfirmation from Legal Aid, counsel should provide a written explanation as provided by the client as to the reasons for the missed appointment.

- If there is more than one missed appointment without a reasonable explanation from the client, Legal Aid would rescind any approval for continuing the assessment.

3. Amicus Curiae

Effective May 31, 2001, Legal Aid Manitoba will no longer provide funding for *amicus curiae* appointments made by the courts. Private bar lawyers appointed by the courts are advised to inquire of the court how they will be compensated. Legal Aid staff lawyers will not be available to undertake any of these appointments either.

4. Expanded Eligibility Contracts, Charges on Land and Agreements to Pay

It is Legal Aid's policy that payments to the private bar will not be made where the expanded eligibility contract, charge on land and agreement to pay has not been signed by the client except under unusual circumstances. Counsel are to ensure the client signs the respective contract before commencing work on the file.

The expanded eligibility contract, charge on land and agreement to pay is a condition precedent to the activity of the certificate.

5. Criminal Matters - Alternative Remedies

Given the increase of alternative remedies and procedures in criminal matters, many of which are not accounted for in the Legal Aid tariff and for which compensation is not otherwise available, counsel is advised that Legal Aid Manitoba will not generally pay for participation in criminal diversion programs or alternative remedy procedures, such as sentencing circles, family case conferences, community justice committees, etc., unless prior authorization has been received from the Area Director's office.

6. Holdback

- I. Continuation of the Holdback: The Legal Aid Board of Directors, at a special meeting on Tuesday, March 13, 2001, determined that our funding level is such that Legal Aid will continue to impose a holdback of 5% at this time until further notice. This holdback will be effective on all criminal and youth applications dated April 1, 2001 or later. The Board favours eventual removal of the holdback in its entirety and continues to pursue that goal.
- II. Holdback Repayment - 2000/01: Given the increase in demand for services, the resulting increase in expenditures and other financial pressures presently being faced by Legal Aid Manitoba, we are not optimistic that there will be any holdback repayment for the fiscal year 2000/01.

III. Domestic Contracts

There was a good response from the private bar to Legal Aid's call to provide work in the domestic area. There were eleven (11) contracts entered into and by last count the process was working very effectively. We will continue to monitor and assess this situation.

Thanks to all counsel who responded to our request for assistance and commitment. It is greatly appreciated.

NOTICE TO THE PROFESSION

HOLDBACK "HOLIDAY"

June 2001

As a result of additional funding from the Manitoba Law Foundation this fiscal year, the Board of Directors of Legal Aid Manitoba and the administration are pleased to announce that there will be a holdback "holiday" for the fiscal year 2001/02, effective April 1, 2001.

All fees processed from July 1, 2001, will not be subject to any holdback reduction.

Note: certificates issued in this fiscal year 2001/02 but billed in subsequent years will still be subject to the 5% holdback.

Holdback deducted on fees processed from April 1, 2001 to June 30, 2001, will be refunded. These refund cheques will be sent out in the fall of 2001.

The Board and administration of Legal Aid continue to favour eventual removal of the holdback in its entirety.

November 2001

MEMO TO THE PROFESSION

It's that time again, another memorandum from Legal Aid to welcome in the winter of 2001.

These memorandums are intended to inform and advise counsel of new initiatives, changes or clarification of matters. Hopefully, they will make practising under a legal aid certificate simple. It is also to open a dialogue with counsel to improve our ongoing relationship.

IV. Increase in Mileage Rate:

The Board of Directors and the Administration of Legal Aid Manitoba are pleased to announce that effective October 1, 2001, mileage paid to the private bar will be increased. The new rates are:

\$.34/km south of the 53rd; and
\$.38/km north of the 53rd.

These rates apply to travel undertaken on or after October 1, 2001. We continue to pay travel time at \$25 an hour.

Legal Aid Manitoba pays travel time and mileage from one city or town to another where the area director has pre-authorized such payment. To determine the distance between any two places in Manitoba, we use the mileage charts as published yearly in the Manitoba Highways and Transportation map (available at any Manitoba tourist bureau). We determine the time required to travel such distances by assuming an average speed of 80 km/h.

Example of how this would work (one way):

From	To	Distance	Mileage	Time
Beausejour	Lac du Bonnet	48 km	\$16.32	.625 hours
	Pine Falls	79 km	\$26.86	1.00 hours
	Steinbach	68 km	\$23.12	.85 hours

Here are some points that do not appear on the chart for which Legal Aid Manitoba has determined the following distances:

MILEAGE AND TRAVEL TIMES

FROM WINNIPEG TO:		KILOMETRES (one way)
AMARANTH		167
ARBORG		103
ASHERN		163
FISHER BRANCH		137
GLADSTONE		127
GYPSUMVILLE		236
HEADINGLEY		13
LUNDAR		100
MILNER RIDGE		79
ROCKWOOD		11
ROSEAU RIVER		75
ST. PIERRE		41
STONY MOUNTAIN		11
TEULON		45
FROM:	TO:	KM. (one way)
BRANDON	GLADSTONE	82
	STONY MOUNTAIN	208
DAUPHIN	ASHERN	154
NEEPAWA	GLADSTONE	37
PORTAGE	AMARANTH	97
	FISHER BRANCH	215
	GLADSTONE	63
	LANGRUTH	62
	TEULON	46
THOMPSON	GOD'S LAKE	Fly In
VIRDEN	BIRTLE	65

5. Brydges On-call Rate Increase:

- a) We continue to experience a high demand for our on-call service on weekends and holidays. Effective October 1, 2001, Legal Aid Manitoba will pay counsel who provide a Brydges on-call service on weekends (Sat and Sun) and holidays an additional 50% over the regular rate. That is, the payment will go from \$175 a weekend to \$262.50. Weekday service will continue to be paid at \$175 for the three days but if one of the three days happens to be a holiday, there will be an additional payment of \$30 for that day.
- b) Sometimes Legal Aid is unable to have the rural on-call serviced by our own articling students. This may be due to the shortage of articling students in the Province, to Bar Admission demands, or for other reasons. We will then check with the private bar lawyer who is providing the Winnipeg on-call service to see if he or she is prepared to provide the rural service as well. We will pay the private bar lawyer who provides this additional coverage an additional \$25 for each day the service is provided.

If you are interested in joining Legal Aid on-call panel, please contact Joan Crowe at 985-8536 (email: jocro@legalaid.mb.ca) to register.

6. *Amicus Curiae*

In order to clear up any misunderstanding about Legal Aid's role with the appointment of *amicus curiae*, the following is a reminder:

Legal Aid Manitoba now only appoints and pays for counsel on behalf of children who are the subject of an application under *The Child and Family Services Act*, section 34(2). Specifically, upon receipt of a formal notification of an appointment made under Section 34(2), for a child of 12 years of age and over who can instruct counsel, the necessary appointment will be processed.

7. Case Management:

In keeping with the streamlining of administrative procedures, the assigned case manager, for trial approval, etc., will become the file manager and will be responsible for dealing with all matters on a file requiring any type of approval. For example, the file manager will deal with all requests for approval for disbursements, experts, expert reports, trial approval, etc.

8. Tariff Review Committee:

Acknowledging that the Legal Aid tariff needs to be revised and improved, Legal Aid Manitoba will in the near future be establishing a joint committee comprised of legal staff and private bar lawyers (criminal, family, immigration and civil), administrative staff and senior administrators to do a complete review of the tariff of fees and disbursements and the preparation of a report. It is hoped that once this task is completed, the report will be submitted to government for consideration. Expressions of interest from the private bar are requested.

9. Courier Services:

Legal Aid Manitoba has a schedule of fees for courier services which have been consented to by a number of courier companies. The bill for courier disbursements should specify whether the courier was downtown, beyond downtown or was a direct service. These different services attract the following disbursement fee:

Downtown	\$2.50
Beyond downtown	\$3.50
Direct service - an additional	\$1.00

10. Collaborative Family Law - A new Initiative Project:

Legal Aid Manitoba has implemented a Collaborative Family Law Project. This is a one year project and relates only to the City of Winnipeg at this time.

We will be steering as many applicants as possible to the collaborative process. Five Legal Aid staff lawyers and several private bar lawyers have been trained in the technics necessary to practice collaborative law.

The Collaborative Law Association incorporated in Winnipeg now has a referral list of 25 members, 16 of whom have committed to taking collaborative cases on the legal aid tariff. The legal aid tariff will pay the same amount on these cases as it will on the often more time consuming and complex litigation cases.

For anyone wishing more information on the concept, we attach for your information a short article from a recent Canadian Lawyer magazine.

The collaborative process has as its basic tenet, an agreement by all four participants (the lawyers and the parties) that the lawyers retained are settlement lawyers only, and that none of the parties will go to court or threaten to go to court during the collaborative process.

We encourage family lawyers to become involved in this new and emerging process. Statistics will be kept to allow for an assessment of the project. This project is presently underway.

Gil Clifford has agreed to be the contact person for Legal Aid. He can be reached at 985-8551 (e-mail address - gclifford@legalaid.mb.ca).

11. Child Protection Full Service Duty Counsel Project:

With funding from Justice Canada, Legal Aid Manitoba will be undertaking a full service duty counsel project through the Child Protection office.

The service will consist of Legal Aid Manitoba providing full coverage as duty counsel to the Child and Family Services Courts in Winnipeg. Legal Aid Manitoba will restrict certificate eligibility until the duty counsel has had an opportunity to screen all cases. That is to say, all parties at the docket courts will be offered duty counsel services. There will be no choice of counsel at that stage, save for conflicts or for fee paying parties who appear with their counsel.

Duty counsel will deal with all matters and provide representation to the point of pre-trial. If no agreement can be reached at pre-trial, the matter will be set for trial and counsel will be appointed through the certificate system. The appointed counsel can be either staff or private bar lawyers.

We believe that this project will have a number of benefits to the system, inter alia: expedited court proceedings; improved parental involvement in the process; reduced or controlled costs; early intervention by counsel; earlier resolution of cases and fewer unrepresented parents or families.

It is anticipated that this project will commence December 1, 2001. Additional staff will be assigned to this project.

12. Office Amalgamation - Criminal Law Office:

We continue to amalgamate some of our offices. The Broadway office (adult, youth and duty counsel) will be amalgamated with the Criminal Trial office. The new name will be the Criminal Law Office. This combined office will provide a full range of criminal law services and will be located at 276 Colony Street, Winnipeg.

January 2002

NOTICE TO THE LEGAL AID PANEL DISCRETIONARY FEE INCREASES

The following notice is in recognition of budget and budgetary restraints under which we have to operate. While this present budget year has been somewhat positive, we already know that we will be under budget reduction and restraints in the next budget year or years.

The *Legal Aid Services Society of Manitoba Act* permits discretionary fee increases in, as stipulated in regulation 40(2), “extremely unusual circumstances”.

Lately, the practice of practitioners requesting such increases has been inconsistent. Some counsel forward their statements of account accompanied by a written explanation. Others request meetings with the Executive Director or the Deputy Executive Director. These requests for meetings are becoming more frequent and more time difficult to accommodate .

We would like to streamline the process and introduce as much fairness and consistency as possible.

Please use the following procedure:

1. Submit a statement of account to our taxation department.
2. In those cases where there are circumstances where you feel compelled to seek a tariff increase, request that taxation refer the account to the Executive Director for a discretionary increase.
3. In those cases where an increase is sought, include a written explanation justifying said increase. The explanation should indicate the amount payable in accordance with the tariff and the amount of the increase being requested.

A great deal of time is now being expended in taxation meetings. We would like to discourage this practice except in the high profile complicated matters involving several weeks or months of litigation.

We also acknowledge and recognize that special circumstances occur from time to time, where discretion and flexibility will have to be employed especially with high volume certificate service providers.

In order to assess a request for an increase from the tariff, we must first consider what the tariff would otherwise provide. Much of the time at meetings is directed to establishing the tariff prior to directing attention to the increases. The same time is expended when counsel sends in a narrative which must be reviewed in detail to determine the tariff.

Using the procedure proposed in this memo, the tariff will be clearly established prior to directing our attention to discretionary increases.

The Legal Aid Board of Directors is sympathetic to the plight of private lawyers where the tariff is strictly applied to unusually complex matters. We will continue to work with the Bar to improve the tariff situation. In this regard, a tariff review committee is being created to develop recommendations on the tariff. Some of you will be requested to participate.

We will deal with requests for discretionary increases with consistency, fairness and compassion insofar as budget restraints allow.

We ask for your co-operation and compliance with the proposed procedure.

SHERIFF'S OFFICE (DOCUMENT OF SERVICE)

The Manitoba Sheriff's office (Document Service) has announced a reduction. Lawyers acting on legal aid certificates will continue to be able to request the service of documents by the Sheriff's office, but we are asking counsel to limit those requests to situations where personal service is absolutely required. We have been told that requests for personal service are being made where Queen's Bench Rule 16 would allow service by ordinary mail, delivery to residence, or by fax. We are in some danger of losing this valuable service and request cooperation.

NOTICE TO THE PROFESSION

March 2002

4. Holdback:

The Legal Aid Board of Directors at a special meeting on March 8, 2002, determined that our financial circumstances are such that Legal Aid will impose a holdback at a reduced rate of 4% on criminal and youth applications dated April 1, 2002 and later.

The holdback holiday for the fiscal year April 2001 to March 2002, will end March 28, 2002.

Remember that certificates (criminal and youth) issued for the fiscal year April 2001 to March 2002, will be subject to the 5% holdback. All previous years certificates will also be still subject to a holdback at that years' respective established percentage level as follows:

2002 - 2003 4%

2001 - 2002 Legal Aid implemented a "holdback" holiday for criminal files billed during the fiscal year. **Certificates issued during the year are still subject to the holdback if billed after the end of the fiscal year.**

2000 - 2001 5%

1999 - 2000 5%

1992 - 1999 12%

The Board favours eventual removal of the holdback in its entirety and continues to work with government to achieve this goal.

The Board and management thank the private bar for its understanding and cooperation in this matter.

5. Deficit:

Legal Aid Manitoba is facing a substantial accumulated deficit for fiscal year 2002/03. We will be undertaking a number of initiatives to reduce and eventually retire this deficit over the next two years. Some of these initiatives are:

- cut backs;
- service reductions;
- reducing cost expenditures on files by restricting on file disbursements, for matters such as; assessments, homestudies, experts and experts' reports, investigations, etc.;
- restrictions on certificates;

- limiting choice of counsel on certain matters;
- issuing certificates to deal with matters in a particular manner, such as, issuing certificates in domestic matters for matters to proceed as collaborative law matters only;
- administrative reductions;
- staff workload increase;
- applying the financial guidelines more strictly.

We anticipate that by doing some or many of the above plus other innovative actions, we will be able to reduce the deficit. We have to keep expenditures in check.

We request your support and understanding as we undertake this very sobering process. We continue to depend upon the private bar and wish to maintain our excellent working relationship.

15. **DNA Testing:**

DNA paternity testing has, over the past few years, become a very competitive field. The price for a triad test at this time, including blood draw and transportation, has dropped to a new low of \$425.00.

Legal Aid formerly encouraged lawyers to use Helix Bio Tech based in Vancouver as that company offered a preferential rate and was prepared to bill the Legal Aid administration office directly and not the individual lawyers. For the past year, certain lawyers have been using Gene Track, also based in Vancouver, which has been offering essentially the same service at the same price and is also prepared to bill Legal Aid directly. Both of those firms are prepared to offer the \$425 price but you should know that Helix has been acquired by an American firm called Orchid Genescreen and will henceforth be performing cheek swab sample analysis at its lab in Michigan. We have been promised continued consistent turnaround time as currently being provided.

We are prepared to consider other vendors who are willing to provide similar quality of testing and prices.

16. **Collaborative Law:**

Legal Aid's collaborative law pilot project has been in operation for approximately five months. There are now 5 staff lawyers and 22 private bar lawyers in Winnipeg who have indicated a desire to take on legal aid collaborative cases. One prolific staff lawyer has over 50 collaborative matters pending and has settled 18. None of the collaborative cases taken on by staff or private bar have

failed such that new counsel had to be appointed. Many of the private bar lawyers on the Winnipeg list are senior counsel who are recent additions to our panel. There is growing interest in collaborative law in a number of rural centres throughout Manitoba. Staff and private bar lawyers in Dauphin, Brandon, The Pas and Thompson are looking at training and at establishing their own collaborative law associations. The application of the Legal Aid tariff to a collaborative case produces results which are attracting lawyers to our panel who have otherwise chosen not to take on legal aid matters.

17. **Update:**

Child Protection Full Service Duty Counsel Project: This project is now up and running. The project is a joint undertaking between Justice Canada (funding) and Legal Aid Manitoba (in kind services).

As mentioned in my memorandum of November 2001, this service will consist of legal aid and staff duty counsel dealing with all matters in the first instance through to pre-trial, save for conflicts and parties not on legal aid. Choice of counsel will be available only for matters going to trial.

We are of the view that this project will have many benefits to the system and the clients we serve.

APRIL 2002

**NOTICE TO THE PROFESSION
Process Serving Contracts**

Effective April 22, 2002, Legal Aid Manitoba has entered into process serving contracts with the following two firms:

18. OYA - Oliver, Yaskiw & Associates Inc.
Contact: Bob Fowle - Phone: (204) 942-8002
Fax: (204) 942-8220
19. Alex LaRocque
Phone: (204) 943-5202
Fax: (204) 237-9169

Icon (Russell Wood) has given notice effective April 22, 2002. Where process serving by the Sheriff's Office is not available, law firms serving documents on legal aid matters should use the services of either of the above.

Please call Marilyn Bousquet of our Admin office at (204) 985-8526 to have a fee schedule faxed to you.

January 6, 2003

NOTICE TO THE PROFESSION

Adjustments to our Program:

Effective January 6, 2003, Legal Aid Manitoba will be making adjustments to its program in order to deal with the increasing pressures on our resources.

Government has provided some additional funding to address our deficit.

We have made additional requests for further funding which if obtained will provide us with some ability to hopefully address the tariff in the next fiscal year.

We must, however, make some adjustments to live within our funding levels and to avoid the accrual of future deficits.

As of January 6, 2003, the following adjustment will be implemented:

- application of the tariff on all matters;
- coverage for support variations only for custodial parent or where in extreme instances there is an imminent likelihood of jail;
- elimination of coverage for all civil matters;
- elimination of coverage for non-urgent guardianship matters; and,
- elimination of coverage for non-corollary relief divorces;
- elimination of initiating adoptions.

These adjustments will affect all matters including requests for fee increases received but not yet approved and processed.

Legal Aid Manitoba is committed to working with government, the legal profession and the public to continue to provide the best service coverage possible. Your continued cooperation will be appreciated.

Gerry McNeilly
Executive Director

MEMO TO THE PROFESSION

January 23, 2003

Legal Aid Policy

Further to our memo of January 6, 2003, the Board of Legal Aid continues to have discussions with government and with our other funding partners with respect to Legal Aid's long-term funding requirements. The Board wishes to take every step possible to mitigate the impact of the January 6, 2003 policy at least until the February Federal budget can be analysed to determine whether there might be an increase in Legal Aid's long-term funding.

The Board also wishes to clarify any possible misunderstandings with respect to commitments made by Legal Aid prior to December 31, 2002. In this regard, we advise that any and all undertakings made with counsel prior to December 31, 2002 relating to enhanced fees in complex matters, both domestic and criminal, will be honoured.

Furthermore, during this interim period, the Board is prepared to modify its policy as follows:

- In future, where there are criminal matters that are particularly long or complex and where it is necessary to assure a fair trial, counsel may approach the Executive Director at the outset of the case to discuss in principle the possibility of fees in excess of tariff at the conclusion of the case. The Executive Director will employ similar criteria as in the past in determining the level to which fees may be augmented above the strict application of the tariff.
- As in the past, when complex criminal or domestic matters settle on the eve of trial or shortly after trial commences, consideration will be given for enhanced fees. Specifically, counsel can approach the Executive Director to seek an increase in fees in those cases which settle on the eve of trial where counsel can demonstrate that they have put in extraordinary work in preparation.

Legal Aid will be monitoring its financial situation closely. The policy changes in this memo will be in effect until further notice while we await the February Federal budget and decisions concerning increased funding from all of our funding partners, including the Province.

All other aspects of the January 6 memo will remain in effect as the policy of Legal Aid Manitoba.

Legal Aid Manitoba provides legal assistance to Manitobans through a combination of staff lawyers and lawyers who are in the private Bar. The Board of Legal Aid is committed to this "mixed model" of serving the public. We will continue to provide one of the most comprehensive programs in Canada to the citizens of this province as we go through this difficult period of adjustment.

March 5, 2003

NOTICE TO THE PROFESSION

As a result of increased funding commitments to Legal Aid Manitoba by the Provincial and Federal Governments, the Board is pleased to announce the following:

- the directive in the January 6, 2003 Notice to the Profession “requiring application of the tariff on all matters” be revoked;
- the directive in the January 6, 2003 Notice to the Profession that “coverage for support variations only for custodial parent or where in extreme instances there is an imminent likelihood of jail” be revoked; and
- the January 23, 2003 Notice to the Profession be revoked;

The other service reductions in the January 6, 2003 memo remain in effect; as follows:

- elimination of coverage for all civil matters;
- elimination of coverage for non-urgent guardianship matters; and,
- elimination of coverage for non-corollary relief divorces;
- elimination of initiating adoptions.

A committee has been struck to restructure the tariff. This committee includes 3 members of the criminal bar and 3 members of the family bar, Board members and staff of Legal Aid. The target date for implementation of a new tariff is April 1, 2003.

The removal of the tariff directive in the January 6, 2003 memo restores the discretion of the Executive Director to consider fee enhancements in appropriate circumstances. This discretion will be exercised as it was prior to January 6, 2003.

The procedure to be followed in seeking a fee increase was set out in our memo to the profession dated January 2002 which stated:

1. Submit a statement of account to our taxation department.
2. In those cases where there are circumstances where you feel compelled to seek a tariff increase, request that taxation refer the account to the Executive Director for a discretionary increase.
3. In those cases where an increase is sought, include a written explanation justifying said increase. The explanation should indicate the complexity of the matter; the nature of the work done; the preparation done; the length of the matter or the hearing; the number of charges against the client (in criminal matters); the amount payable in accordance with the tariff and the amount of the increase being requested.
4. Signed Form 6

There is now, more than ever, a need for transparency and accountability in

circumstances where fee enhancements are requested. We must therefore insist that the “written submissions” procedure set out in the January 2002 memo be utilized for all fee enhancement requests effective immediately.

The Legal Aid tariff is intended to approximate a fee that might customarily be paid by a client of modest means. These fees apply for all legal aid services except in exceptional cases. Discretionary increases are mainly allowed for necessary preparation and work done that falls into the category of “extremely unusual circumstances”. Therefore, if your matter meets the criteria and you are of the view that a discretionary fee increase is merited, you must provide written detailed reasons explaining why such a discretionary increase is justified in the circumstances.

It is our view that with the restructuring and implementation of a new tariff, substantially fewer discretionary increases will be requested.

MEMO

TO: LEGAL PROFESSION

FROM: GERRY MCNEILLY

DATE: April 1, 2003

RE: NOTICE TO PROFESSION

Further to the meeting of the Board of Directors of Legal Aid on March 25, 2003, I am pleased to advise that the Board has approved a new tariff which will be effective April 1, 2003. The new tariff will be applicable to all certificates issued from April 1, 2003.

The new tariff has been forwarded on to government to be put into regulation in accordance with the Society's legislation.

I am also pleased to advise that the Board has declared a holdback holiday on all accounts submitted for payment commencing April 1, 2003 to the end of the fiscal year ending March 31, 2004, subject to reinstating the holdback if circumstances require.

Further, the Board has also approved the formation of a committee with representatives from both the family and criminal bars and Legal Aid administrators for the purposes of a periodic review of the tariff. This committee will be composed of the members who participated in the tariff review committee who created this new tariff. Further, this committee will undertake the task over the next year of a full review of the tariff with a view to the creation of a tariff which will be presented to government for consideration at the appropriate time.

Be further advised that once regulations have been passed regarding the new tariff, copies will be circulated to members of the profession.

The Board of Directors and the management of Legal Aid Manitoba, wish to convey our continued cooperation and commitment to working with members of the profession to ensure that our clients are well served. We also wish to express our appreciation for the cooperation which we have recently received which have allowed us to overcome the difficulties which had arisen. We are by no means free from the financial pressures which confront us but we hope that the new tariff will be viewed as a positive step in improving our relationship with the Bar.

/gm

NOTICE TO THE PROFESSION

APRIL 2003

The current taxation practice for stays of proceedings on the first day of trial is:

“- Where a lawyer has, in good faith, tried to negotiate with the Crown to have a matter stayed or withdrawn prior to a trial being set or prior to the trial date as per criminal tariff item 1, but the Crown has chosen to proceed despite information provided by the defence lawyer, Legal Aid is of the view that counsel should be reasonably compensated. Thus, where Legal Aid is informed by counsel that she has made reasonable efforts to persuade the Crown to stay or reduce a charge for the purpose of a plea but the Crown insists on proceeding, only to stay or reduce the charge and accept a guilty plea at the hearing, Legal Aid will pay a discretionary increase over and above the guilty plea fee in recognition of trial preparation work done, as follows:

As of the August 1, 2000 tariff

- for Category C:* guilty plea \$215 plus an additional \$215 for the stay for a total of \$430.
- for Category B: guilty plea of \$480 plus an additional \$240 for a total of \$720.

Under the new April 1, 2003 tariff, the practice of adding fee enhancements for stays at trial will continue with the following amounts:

- for Category C:* guilty plea \$290 plus an additional \$210 for the stay for a total of \$500.
- for Category B: guilty plea \$575 plus an additional \$225 for the stay for a total of \$800.

*Domestic violence assault matters will be excluded from these automatic enhancements.

Note: When seeking this automatic enhancement, the trial must have been fully prepared for and counsel should state, on the account, that: “the trial was fully prepared for”.

NOTICE TO THE PROFESSION

APRIL 2003

Clarification of April 17, 2003 Notice to the Profession

The April 17, 2003 Notice to the Profession removed domestic violence assault matters from the automatic enhancement policy. We are hereby reversing that decision and domestic violence assault matters will continue to be subject to the automatic enhancement policy.

We thought this to be a relatively minor adjustment based on advice from some private bar and staff counsel that very little preparation for trial is occasioned on these matters. We were advised these matters are often set for trial to see if the complainant will attend. There is, in our view, a distinction in the complexity of these matters and other “C” category offences. Much of the domestic violence work is done by staff counsel and we did not realize that some lawyers were applying the enhanced tariff policy to these cases. The reaction of some of the bar to this “tinkering” with policy has been negative and we are therefore allowing the policy to apply to all matters, including domestic violence. The April 17, 2003 Notice stands as written with the asterisks removed.

RECENT COVERAGE CHANGES

May 12, 2003

There has been some confusion as to current coverage in certain areas. Two meetings have been held by certificate issuers in Winnipeg and all what follows is an interpretation of the policy to be followed as a result of the coverage restrictions announced on 6 January 2003 and the subsequent revision to those changes announced 5 March 2003.

If you are in doubt, take an application and submit it. There has been no limitation of area director discretion and exceptions will be made where necessary. Note also that changes may yet occur given the uncertainty of our financial circumstances.

Divorces:

- the application will be refused where there is no corollary relief sought.
- the application will be refused where the corollary relief has been already been obtained by FMA or other proceedings and there is no significant issue requiring variation. (**Please note** that clients who want only to proceed for a separation should be warned that we will not necessarily issue another certificate for the subsequent divorce.)
- the application will be refused where marital property is the only issue to be resolved.
- the application will be refused where the only issue is a pension to be divided, unless the pension funds are to be paid to our applicant immediately or in the very near future and can be characterized as akin to spousal support.
- the application may be refused where the only issue to be resolved is spousal support, but the area director shall consider the strength of the claim, including such factors as the length of the marriage, whether children were raised, where there is a significant disparity in income, whether there are health issues, and may issue if the case for spousal support is clear and not to do so would cause hardship to the applicant, and the applicant, not an assignee, will benefit.

Non-Urgent Guardianships:

- the application will be refused where there is consent by all parties. In such cases staff lawyers or paralegals will assist the clients by preparing a guardianship agreement.
- the application will be approved where the guardianship is akin to a custody trial. Merit will be a consideration upon application and upon request for trial.
- the application will be approved where the applicant wishes to intervene in CFS proceedings. Merit will be a consideration upon application and upon request for trial.

Adoptions:

- the application will be refused where the applicant wishes to initiate an adoption.
- the application may be approved if the applicant wishes to oppose an adoption and there is merit to doing so, which will usually involve a claim for custody or access.

Civil Coverage:

- the application will be refused where the applicant is the plaintiff or the defendant in a law suit over a lump sum. However, the area director will retain discretion to issue a certificate where the matter concerns the defence of a suit by the crown for a significant overpayment.
- the application will be refused if the applicant is requesting the removal of the Public Trustee as committee.
- the application will be refused if the case concerns the estate of a deceased.
- the application may be approved if the law suit is with respect to the entitlement of disability benefits from a private insurance company. Any lump sum retroactive payment will be subject to holdback.
- the application may be approved by the area director after consultation with the executive director if there is an exceptional situation of public interest. An opinion from counsel will be required before approval to proceed is granted.
- the application may be approved in the following administrative law situations:
 - Residential Tenancies at the Commission level where there is merit
 - WCB where the Workers Advisor can no longer assist and there is merit
 - MPI at the Review office level or above
 - CPP at the Reconsideration level or above
 - LERA where the commissioner determines that there is a triable issue
 - SA at any level where in the opinion of the area director coverage is required.

Support Variations:

- NO CHANGE. Coverage is - as a result of the Notice to the Profession of 5 March 2003 - back to the full service provided in the past.

NOTICE TO THE PROFESSION

June 2003

CRIMINAL TARIFF

This notice is a clarification of the taxation policy for the billing of multiple charges.

As set out in our Notice of June 2002, each set of charges to be dealt with together, and related amendments, will be listed numerically on a certificate. That is, each set will be designated by a separate number with the understanding that each set will attract a separate fee, except when they are dealt with together. For example, a number of summary offences which would not attract coverage on their own will often be bundled with an indictable offence as one set of charges. If in the opinion of counsel any of the charges bundled in one set of charges should be separated from the set, it is incumbent on counsel to correspond with the Area Director's office to request a restructuring of the sets so that the charge in question will stand as a separate set and potentially attract a separate fee.

When several sets of charges are dealt with at the same time, one set of charges will be paid at full tariff and the remaining sets of charges will be paid at 50% of tariff for each set, as stated in the June 2002 Notice to the Profession.

If charges are not dealt with together, a full tariff can be billed for each set by itemizing your accounts to show that the charges were dealt with separately. Please take note that the purpose of itemizing your account in this context is to clearly show that the charges were in fact not dealt with together and were dealt with separately on different dates or in different courts.

This notice is not a change in policy it is simply a reiteration of our existing policy. Several lawyers continue to bill for only one tariff when several sets are billed together which is consistent with the tariff prior to June 2002. There are as well some lawyers who are billing a full tariff for each set of charges even when they are dealt with together.

Prior to June of 2002, Section 8 of the Tariff governed:

- "8. If 2 or more certificates are issued for the same client and the matters covered by the certificates are dealt with together, the solicitor shall advise the executive director that the matters have been dealt with together and the solicitor shall be entitled to fees for only one matter, but the executive director may allow additional fees for separate services furnished for each matter.
- 8.1 If a certificate is amended to add a matter and the matters are dealt with together, the solicitor is entitled to fees for only one matter, but the executive director may allow additional fees for separate services furnished for each matter."

In other words, where several sets of charges were dealt with together only one tariff amount was payable unless the Executive Director exercised his discretion to allow additional fees.

In the June 2002 Notice to the Profession, the Executive Director pursuant to his exercise of discretion under Section 8 of the Tariff, announced that where more than one set of charges are dealt with together, one full tariff is payable on one set and an additional 50% of tariff will be paid on each additional set. This policy change was adopted to be fair to counsel and to be consistent to the entire Bar in the taxation of accounts where multiple sets of charges are dealt with together.

This notice is sent to promote consistency in billing practice.

July 9, 2003

MEMO TO THE PROFESSION

Please be advised that the most recent memorandum sent out June 2003, is being revoked.

We have been working to simplify and clarify the taxation policy for billing and identification of charges. This is a work in progress and the June 2003 memorandum went out prematurely.

It is our hope to clarify this matter from everyone's perspective. Therefore, in order to do so, we want to obtain input from your liaison committee. A meeting will be set up to work with your representatives to develop a very clear detailed document on this issue endeavouring to attain resolution.

Your cooperation is required as we go through this period of transition.

Thank you.

Notice to the Profession

September 5, 2003

Criminal Matters Certificate Issuing, Tariff Billings and Discretionary Increases

Given the financial circumstances of Legal Aid Manitoba and to ensure the continued viability of the Plan and to promote consistency in the fairness in the payment of fees to the private bar, the following changes will take place effective immediately and will affect all accounts received for payment after September 15, 2003.

Therefore, this memorandum cancels; replaces; supercedes and clarifies all previously issued memoranda, that dealt with:

1. Certificate issuing
2. Tariff Billings
3. Discretionary Increases

At the outset let me advise that the process of itemization when necessary in accordance with section 8 of the tariff is still applicable.

Be advised that this memo therefore revokes the practice of billing out matters in accordance with the memo of June 2003 which provided for billing 100% on the first set of charges and an additional 50% on the additional sets of charges dealt with at the same time.

This practice was intended to be fair and efficient and to simplify administrative procedures and was projected to be revenue neutral but subsequent analysis has shown that we are paying out substantially more than was budgeted for, therefore, it is necessary to go back to our previous policy.

Additionally, the option of requesting in writing consideration for an increase in fees where the matter is "extremely unusual circumstances" or "complex" is still available as contemplated by section 40(2) of the regulations. But in the immediate future, the Executive Director discretion in this regard will be exercised very strictly.

The new negotiated tariff remains in effect for files with applications dated April 1, 2003 and later. There continues to be no holdback imposed.

Further, the Executive Director reserves the discretion to tax bills submitted in accordance with the tariff and the regulations.

Certificates:

Henceforth, certificates will be coded and issued as was previously done before the numbering system was introduced. Henceforth, all accounts submitted will be paid on the basis of services actually performed in accordance with the tariff and this memorandum.

Where charges are dealt with together, sections 8 and 8(i) of the tariff will be applied. Section 8 states as follows:

“If 2 or more certificates are issued for the same client and the matters covered by the certificates are dealt with together, the solicitor shall advise the executive director that the matters have been dealt with together and the solicitor shall be entitled to fees for only one matter, but the executive director may allow additional fees for separate services furnished for each matter (by way of itemization) [emphasis my own].

8(1) If a certificate is amended to add a matter and the matters are dealt with together, the solicitor is entitled to fees for only one matter, but the executive director may allow additional fees for separate services furnished for each matter (by way of itemization) [emphasis my own].

Where requests are made and approvals given, Legal Aid will continue the practise of compensating for bail reviews, special motions and extraordinary remedies.

Separate Services: Where counsel is making a claim under section 8 of the tariff for separate services performed, **counsel must indicate the date the charges were joined together.**

**NOTICE TO THE PROFESSION
PROCESS SERVING**

October 20, 2003

We again have in place two process serving firms that will complete services at the negotiated legal aid rates.

These firms should be used for services in the Winnipeg area. The two firms are:

CK Legal Services
305-267 Edmonton Street
Winnipeg MB R2S 1R2
Phone: (204) 943-5202
Fax: (204) 943-5202

D.L. Legal Services
56 Alex Taylor Drive
Winnipeg MB R2C 4R1
Cell: 299-9303

Effective for invoices dated November 1, 2003 and after, we will establish a process for payment to the two authorized process servers.

The process server will provide you with an invoice in triplicate on completion of the service. You will sign the invoice acknowledging the service. The invoice must note the applicable certificate number. The process server will present the invoice directly to Legal Aid Manitoba for payment. Law firms in the Winnipeg area should not be billing Legal Aid directly for process serving dated after October 31, 2003.

LEGAL AID PRACTICE DIRECTIVE #1-2004

REGARDING BILLING PRACTICES

One of the topics of discussion at a recent meeting of the Criminal Tariff Review Committee was the confusion and dissatisfaction regarding the billing of multiple matters which are dealt with together. This Practice Directive is intended to remedy some of the perceived unfairness and clarify what billing practices will be accepted by Legal Aid Manitoba.

We are now paying one tariff amount where multiple charges are dealt with together with the exception that services can be itemized to that tariff amount for a **subsequent charge**. The extra services which are normally accepted are:

1. Separate bail application for the subsequent charge;
2. The initial interview related to the subsequent charge;
3. The initial review of particulars for the subsequent charge.

These additional services are usually an extra two or three hours at \$53 per hour.

We will now recognize three types of distinct matters.

1. A subsequent charge is a charge which arises after the initial certificate has issued and results in the extra services listed above; half tariff billing will be allowed for a subsequent charge.
2. Distinct charges that have been in the same prosecutorial stream from start to finish; one hour of block fee will be allowed for each additional distinct set of charges;
3. Distinct charges that have been in separate prosecutorial streams that are joined at the end; two hours of block fees per distinct item that is from a separate stream.

We have been pressed to expand the above practice to include all distinct sets of charges **into the half tariff category listed in number 1 above**. However, it would be cost prohibitive to do that at this time.

Please note that **in order for Legal Aid to recognize matters as distinct at the billing stage they** must be designated as distinct on the certificate (or amendment). Where you are seeking to have a matter designated on the certificate as distinct, all information must be submitted to the Area Director. In addition, because there are different rules that apply to distinct matters which are handled by different departments, you should indicate as such on your application (i.e. Assault - domestic; Break enter theft - non-domestic - aggravated assault gang unit) or as soon as this comes to your attention.

We point out that this directive deals with charges (or sets of charges) which are dealt with together. If charges are dealt separately in separate courts or at separate times, they can, of course, be billed as separate tariff items.

What is allowed:

#1) As indicated above, we will **now allow for a half tariff to be billed for subsequent charges**. We have drawn a distinction between Subsequent and Distinct matters. In all cases

where subsequent matters are dealt with together, you may apply the half tariff rule OR itemize for up to 3 hours.

#2) **Secondly**, on a trial basis, we have decided to allow some extra compensation for distinct sets of charges which are not subsequent charges. Where cases enter the system and exit the system at the same time, but the matters are distinct because they emanate from different investigations and are appropriate for separate coverage (as noted on the certificate), you are entitled to bill one matter at tariff and one hour of work per distinct matter. The half tariff rule does not apply to these matters as there is typically no separate court work done. Legal Aid will recognize that there is separate work that has been expended on distinct matters for the administration of the file. These matters are matters that are handled by the same stream of the prosecutions branch.

#3) **Thirdly**, there are matters where the charges are going to be split up into different streams of prosecution as a result of different units or departments assuming conduct of the matters. These charges sometimes get joined together at the end. In the event that this occurs, Legal Aid is prepared to recognize that there will have been distinct court work done in respect to each matter. Legal Aid will simplify the billing process by allowing a block fee of two hours per distinct set of charges that are from different streams. Some examples (which are not necessarily exhaustive) where extra services can be billed on this basis are:

1. Where two separate provincial crowns are assigned to two sets of charges, which are brought together after you have worked out a deal with the two crowns. (i.e., with the gang unit and non-gang unit)
2. Where non-domestic and domestic violence charges are split into different court streams prior to being joined and dealt with together.
3. Where there are federal drug charges and provincial charges that are joined together at the end and one department obtains a fiat to deal with both sets of charges.

While these charges are in different streams, **either the block amount of two hours of work or an itemization of extra services will be accepted. The itemization of services will still be subject to taxation by Legal Aid.**

** Note as well that you may, in every case, seek an increase in the tariff if there are extremely unusual circumstances.

What is not allowed

Some examples of charges or sets of charges which will not be considered distinct:

1. Any charges on the same information comprise only one distinct set of charges. For example, client is charged with break and enter (x3) and possess goods over and all matters are on the same information. All matters are dealt with at the same time. These matters will comprise one distinct set of charges and where dealt with together, would attract only one fee.
2. Any charges arising out of the same incident, whether on the same information or not, form only one distinct set of charges.
3. Client is charged with a break, enter and theft under and possess goods (which would not

yield separate coverage) with a designation that summary conviction matters be dealt with at the same time as indictable proceedings. These 2 charges are one distinct set of charges and attract one tariff item.

Trial Basis

Legal Aid will allow billing in this manner until the completion of the Perozzo report. This will allow us the opportunity to analyze the financial impact of this directive. If that impact is not unreasonably negative, the Tariff Review Committee can consider an upward adjustment.

**LEGAL AID PRACTICE DIRECTIVE
#2 - 2004**

COLLABORATIVE LAW PROJECT

March 2004

Legal Aid Manitoba is implementing a two year Collaborative Law Project. Some Federal funding has been received in support. Effective April 1, 2004, where it is determined that both parties will qualify for legal aid all domestic certificates will be designated as collaborative law matters dealing with all relevant family issues. These certificates will be issued as "restricted to collaborative law only". Certificates will be issued firstly to two separate collaborative law offices which will be in place effective April 5, 2004. One office is located within the current Family Law office, staffed with two lawyers and the other will be established as a separate independent office called the Collaborative Law Centre, staffed with two lawyers. The two offices will handle one or the other side of these matters.

Certificates issued for collaborative law will firstly be sent to these two specialized offices. When these two offices are saturated with certificates, overflow certificates will be sent to members of the private bar who have collaborative law training and have indicated a willingness to take on such matters on legal aid.

Our experience is that these matters are resolved on average in five to eight hours. Our tariff pays fees of \$760 for uncontested family matters and that fee would be payable for collaborative matters. We encourage members of the Family bar to obtain the necessary training and to sign-up for acceptance of these certificates to practice collaborative law by notifying the Intake department.

Certificates will continue to issue in the normal way for those matters where only one party is in receipt of legal aid coverage. These matters can issue as collaborative or not depending on the wishes of the parties.

We encourage counsel in receipt of legal aid matters to utilize the collaborative law process wherever possible.

**LEGAL AID PRACTICE DIRECTIVE
#3 - 2004**

COLLABORATIVE LAW

March 2004

We are in the process of compiling two referral lists for collaborative law matters.

Firstly, a list of private bar lawyers who have received collaborative law and conflict resolution training and are willing to take on collaborative law project overflow cases. These are cases where both sides will qualify for legal aid and “collaborative law only certificates” will issue.

Secondly, a list which we will send out on applications for a collaborative lawyer which are being refused because applicants do not qualify financially. In our refusal letter, we will be giving notice of the availability of the collaborative process and providing a list of collaborative lawyers willing to do collaborative law on a private retainer.

In order to have your name entered on one or both of these lists, please call Evelyn Haas at (204) 985-8528.

**LEGAL AID PRACTICE DIRECTIVE
#4 - 2004**

CRIMINAL MATTERS

April 2004

When seeking additional coverage by way of amendment to an open certificate, please use the attached amendment form along with the usual covering letter.

The form is attached in both word and WordPerfect format.

If you can't open the attachment, please call Joan Crowe at 985-8536 for a paper copy.

Attachment

AMENDMENT FORM

Active Certificate to be Amended: _____

Counsel: _____ Date: _____

Assignment: _____ Application Fee: _____ Waiver Form: _____

Client Name: _____

Updated Address: _____

Current Phone: _____

* * *

Charges (include particulars & record): _____

Court Date/Time/Place: _____

Custody: In _____ Out _____ If in, Where? _____

Has Bail been attempted: _____ Result: _____

Status of Pending Charges: _____

* * *

Current Financial/Living Arrangements

Names and ages of persons residing with client: _____

Current Gross Income: _____

(Proof of income will be required if differs from previous formal application)

Spouse's Gross Income: _____

(Proof of income will be required if differs from previous formal application)

Rent: _____ House/mortgage: _____

**LEGAL AID PRACTICE DIRECTIVE
#5 - 2004**

On Call Brydges Service

May 6, 2004

Legal Aid Manitoba announces an increase in fees for on call service providers, effective June 28, 2004. This increase in fees is offered to encourage and promote delivery of high quality service. We have received complaints from time to time and we are doing everything possible to high quality and error-free legal advice at this crucial point in a criminal case. Fees will be increased as follows:

Monday to Wednesday Shift	\$225.00
Thursday to Friday Shift	\$300.00
Saturday to Sunday Shift	\$300.00

Statutory holidays will be paid at 1.5 times these rates.

Those of you who prefer to use your own cell phone, Legal Aid will continue to reimburse you at the rate of \$20.00 per shift.

The next rotation commences June 28, 2004 and runs to January 8, 2005.

**LEGAL AID PRACTICE DIRECTIVE
#6 - 2004**

July 2004

1. BIG CASE MANAGEMENT PROGRAM

Legal Aid Manitoba will be commencing a Big Case Management (BCM) program effective July 2004.

A Big Case Management program is necessary to allow Legal Aid Manitoba to operate within the confines of its fixed budget and yet be able to effectively fund cases which exceed the limits of a standard criminal certificate, to ensure fair and equitable representation of accused persons of modest means and to allow for full answer and defence of matters.

The BCM is a program through which Legal Aid Manitoba will identify, budget and monitor cases that exceed the limits of a standard criminal certificate.

What is Big Case Management (BCM)

BCM is a process by which big cases are funded through the establishment of a case budget. It is a process which will monitor the case and its budget with a view to controlling case costs. A big case is one that exceeds the tariff limits of a standard criminal or family case and where the cost for fees is anticipated to exceed \$ 5,000.

The goals of the program are to:

- monitor and control cases in accordance with the standard of a reasonable client of modest means;
- provide counsel with a fee and disbursement estimate upfront;
- provide counsel with appropriate resources for high quality, effective service delivery;
- ensure the criminal and family bar continue to participate and accept certificates for big cases;
- develop and maintain a framework of accountability and consistency, while operating within a fixed budget, and
- allow for transparency.

The BCM program establishes a framework, standards, guidelines, data collection and mechanisms to ensure these cases are properly funded and defended.

Inter alia, cases that will attract mandatory BCM are:

- homicides and other high profile cases;
- complex multi-accused cases;
- complex gang related cases;
- dangerous or long term offender cases;
- Faint Hope cases;
- complex conspiracy cases;
- complex fraud cases;
- long and complex cases;

- complex and lengthy contested custody and access cases and support and enforcement matters.

Legal Aid Manitoba in partnership with the private bar on a volunteer basis will establish a committee composed of senior practitioners and senior managers of Legal Aid Manitoba, who after reviewing material submitted by counsel or after an in-person attendance and presentation by counsel, will determine an appropriate fee and disbursement estimate on a matter, in advance of counsel fully committing to accept the case.

BCM will follow a two phase process:

Phase One: Will involve cases that are between \$5,000 and \$10,000. These cases will be considered by a committee (at least two) of case manager(s) from senior legal aid management.

Phase Two: Will involve cases that are expected to exceed \$10,000. These cases will be considered by a committee composed of senior legal aid managers and one or two senior members of the private bar on a voluntary basis.

Legal Aid Manitoba will provide counsel with materials called the Case Management Opinion Form, which must be completed and submitted by counsel in a timely manner once a case is identified as a big case for BCM by either the Area Director or counsel.

Upon receipt of the completed Case Management Opinion Form, an assigned case manager will review same to determine if the matter is a Phase One or a Phase Two case. Once the matter is considered and a fee established, through the BCM committee process, counsel will be notified. Counsel will then have the ability very early in the process to determine whether to accept the case or not.

Legal Aid Manitoba recognizes that budgets set pursuant to the BCM program have to be set with flexibility in order to accommodate new or changed circumstances. In this regard, all cases in the BCM program will be assigned a case manager to allow for the monitoring, reviewing and approval for expenditures.

Budget for BCM cases will always use the existing tariff as the starting point. Case managers will consider numerous factors in assessing a budget. These factors are all identified in the Case Management Opinion form.

Preparation time will be determined by using a ratio of 1:3 for trial and 1:4 for preliminary hearings. This ratio may at times be altered to 1:2 or 1:5 depending on the complexity or not of a particular matter. Additionally, a formula developed of a comparison between the cost of a staff lawyer and a private bar lawyer doing the same case will be utilized to arrive at a reasonable fee or disbursement for a case.

We expect cases between \$1000 and \$5,000, will be billed out in accordance with the tariff and will continue to be case managed. However, where “extremely unusual circumstances” are established, the tariff provides that a discretionary increase may be requested by counsel providing a letter or summary stating why a discretionary increase should be considered (see memorandum to profession dated January 2002).

Legal Aid Manitoba requests the cooperation of the private bar in this BCM initiative. We are of the view that this program will allow Legal Aid Manitoba to continue to provide the most effective and efficient services to Manitobans in need of legal aid coverage, through the mixed delivery system of staff and private bar, all the while keeping within our fixed budget parameters.

LEGAL AID PRACTICE DIRECTIVE

#6 (a) - 2004

July 2004

1. BIG CASE MANAGEMENT PROGRAM

Legal Aid Manitoba will be commencing a Big Case Management (BCM) program effective July 2004.

A Big Case Management program is necessary to allow Legal Aid Manitoba to operate within the confines of its fixed budget and yet be able to effectively fund cases which exceed the limits of a standard criminal certificate, to ensure fair and equitable representation of accused persons of modest means and to allow for full answer and defence of matters.

The BCM is a program through which Legal Aid Manitoba will identify, budget and monitor cases that exceed the limits of a standard criminal certificate.

The attached pdf document explains the program in detail. This document may also be accessed under "Information for Lawyers" on our website at: www.legalaid.mb.ca and there is a link to Adobe Acrobat Reader, should you need it.

2. DISCRETIONARY FEE INCREASES

Please be advised that all written submissions for discretionary fee increases are now being referred to a committee delegated by the Executive Director.

The decisions of this committee may be appealed to the Board of Directors in accordance with past practices.

3. LUMP SUM AWARDS

The Board of Directors of Legal Aid have established additional policy in regard to the collection of lump sum awards in family matters. That policy is as follows:

- (a) Where spousal support arrears are paid by lump sum, Legal Aid will collect nothing up to the sum of \$2500. For sums over the "deductible" of \$2500, Legal Aid will collect its fees and disbursements in total unless there are strong mitigating factors which would cause it to reduce or waive entirely.
- (b) In the case of child support arrears paid by lump sum, Legal Aid will allow a "deductible" of \$2500 for the first child, \$2500 for the second child and \$1000 for each child thereafter, unless there are strong mitigating factors which would cause it to reduce or waive entirely.
- (c) In the case of clients who are on an Expanded Eligibility contract with Legal Aid or who have allowed a Charge on Land to be filed, the amount payable to Legal Aid will be collected from the lump sum payment in order to eliminate that obligation.

LEGAL AID MANITOBA

CASE MANAGEMENT OPINION

TRIAL OR PRELIMINARY HEARING PROCEEDINGS

1. GENERAL MATTERS

- (a) Certificate Number
- (b) Charges
- (c) Client Name:
- (d) Counsel Name
- (e) Legal Aid Manitoba Case Manager/Area Director Name:
- (f) Names and counsel for co-accused:
- (g) Name(s) of Crown Attorney(s):
- (h) Next Court Date:
- (i) State of Proceeding
- (j) Is it a retrial, if so, please include copy of judgement and reasons:
- (k) Project Name (if any):
- (l) Last court date:
- (m) Date of filing of sworn information or indictment:
- (n) Is the case high profile in your area:
- (o) A brief description of your clients' alleged involvement and the extent of the Crown's case against him/her:
- (p) Please indicate the degree to which evidence provided relates to your client:
- (q) Are there proceeds of crime available and has counsel contemplated the bringing of an application under Section 462.34(4) of the Code:

2. JUDICIAL INTERIM RELEASE

- (a) Date of arrest or apprehension:
- (b) Date of incarceration in respect of offences alleged:
- (c) Is accused required to be detained in custody in respect of any other matters:
- (d) Release from custody:
 - Has the accused been released from custody in respect of the offence(s) alleged in the information/indictment?
 - When was the accused released from the custody in respect of the offence(s) alleged in the information/indictment?
 - Upon what form of release?
 - Since release has the accused been re-incarcerated in respect of the offence(s) alleged in the information/indictment? Give details:

3. PROCEDURAL INFORMATION

Trial Budget/Preliminary Hearing Budget

- (a) Charges proceeding/charges being case managed:
- (b) Date of offence(s)
- (c) Date of original information:
- (d) Was a judicial pre-trial held:
 - (i) Length of preliminary hearing (in court days)
 - (ii) Was the hearing of any or all evidence at the Preliminary Hearing waived pursuant to subsection 549(1)? If so, give details:
 - (iii) Was the accused ordered to stand trial in respect of the offence charged in the information or in respect of another or additional indictable offence in respect of the same transaction? Specify:
 - (iv) is the transcript of evidence available?
 - (v) dates of preliminary hearing set for:
- (e) Likelihood of early resolution before preliminary hearing:
 - (i) Likelihood of early resolution before trial:

- (f) Likely consequences of conviction:
- (g) Is the Crown conducting the trial also the preliminary inquiry Crown:
- (h) Outstanding disclosure issues? Give details:
 - (i) Volume and type of disclosure material:
 - hard copy pages
 - CD ROM
 - Video Tapes
 - Transcripts available?
 - Expert reports
 - Other (please specify)
 - (ii) Unusual motions prior to preliminary hearing (re: excluding motions to exclude witnesses and bans on publication?) Give details and anticipated length of such motions:
- (i) Number of witnesses likely to be called:
- (j) Expert evidence to be called
 - (i) - By the Crown
 - (ii) - By the Defence
- (k) Requests for co-counsel, junior counsel or law student? Give details:
 - (i) Preparation time expended to date:
 - Give details of any partial budget set by Case Manager, including co-counsel, junior counsel or student:
- (l) Estimated number of hours requested by counsel for preparation for preliminary/trial including, co-counsel, junior counsel or student:
- (m) Number of days set or estimated for pre-trial motions? Give details:
- (n) Estimated or set number of days for trial proper:
- (o) Number of days of trial attended to date, (if any):

- (p) Estimated number of hours requested by counsel for preparation during trial, including co-counsel, junior counsel or student:

Disbursements

- (a) Estimated costs of evidence transcription, translation or interpretation;
- (b) Estimated costs of investigations:
- (c) Estimated costs of expert witness(es):
- (d) Estimated costs of travel and mileage, (including witness travel):
- (e) Estimate costs for reports:
- (f) Total estimated costs of disbursements:

Validity of Committal Proceedings

- (a) Will there be/has there been an application to quash the order to stand trial?
Give details:

The Institution or Continuance of Proceedings:

- (a) Will it be argued that proceedings ought to be stayed or otherwise disposed of prior to final adjudication upon the basis that their institution or continuance;
- Constitutes an abuse of process []
 - Contravenes any of the following provisions of the Charter
 - (i) Section 7 - (Life, liberty and security of the person) []
 - (ii) Section 8 - (Search or seizure) []
 - (iii) Sub-section 11(b) - (... tried within a reasonable time) []
 - (iv) Subsection 11(d) - (... innocent until proven guilty) []
 - (v) Subsection 11(g) - (... guilty under Canadian or Int'l law) []
 - (vi) Subsection 11(h) - (... double-jeopardy) []
 - (vii) Section 15 - (... equality under the law) []
 - (viii) Other (please specify) []

- (b) Will there be/has there been a motion to change the venue of trial?
Give details:

The Sufficiency of the Indictment

- (a) Is the indictment or [a] counts thereof alleged to be legally insufficient?
- (b) Are there any motions related to this?

Joinder and Severance

- (a) Will there be a motion to sever the trial of certain counts from the trial of others?
Upon what basis? ☐ ☐
- (b) Will there be a motion to sever the trial of certain accused from the trial of
another (others)? Upon what basis? ☐ ☐

The Special Pleas

- (a) Will any of the special pleas be raised? Give details: ☐ ☐

4. TRIAL PREPARATIONS

Mode of Trial

- (a) Do(es) offence(s) fall within Section 469 of the Criminal Code:
- (... Courts of criminal jurisdiction) ☐ ☐
- (b) Will there be an application under subsection 473(1) of the Criminal Code to try
the matter with a jury?
- (... trial without a jury) ☐ ☐
- (c) Has the accused elected trial by:
- Judge alone ☐
- Judge and Jury ☐
- (d) Will there be a re-election for trial by:
- Judge alone ☐
- Judge and Jury ☐
- (e) If consent is required to permit re-election to be made, will consent be
given? ☐ ☐

Composition of the Jury/Court

(a) Will there be a challenge to the array of jurors? Upon what basis?
[] []

(b) Will perspective jurors be challenged for cause? Upon what basis?
[] []

Disclosure

(a) Is further disclosure required: [] []

(b) Are there any problems with disclosure? If so, give details: [] []

The Issue of Fitness

(a) Is the issue of fitness of an accused to stand trial raised in these proceedings:
- by the prosecutor [] []
- by the defence [] []

(b) Has disclosure been made of any medical or other reports bearing on the issue of fitness:
- by the prosecutor [] []
- by the defence [] []

(c) Will copies of such reports be made available to the trial judge i.e., are they to be relied upon: [] []

(d) Was the issue of fitness raised at the preliminary inquiry in this matter?
Give details

(e) Will the issue of fitness be contested at trial: [] []
- by the prosecutor [] []
- by the defence [] []

(f) How long will it take to adduce the evidence on the fitness issue:

5. EVIDENTIARY MATTERS

Similar Acts

- (a) Will evidence of similar acts be tendered for admission by the prosecution? Give details. ☐ ☐
- (b) Upon what basis to be contested: ☐ ☐

Statements to Persons in Authority

- (a) Will evidence be adduced of statements alleged to have been made by an accused to a person in authority? ☐ ☐

Give details, including how many.

- (b) Is admissibility of the statement itself contested by the defence? ☐ ☐
- (c) Is admissibility of derivative evidence contested by defence: ☐ ☐
- (d) Upon what basis will a *voir dire* be requested:
- Voluntariness ☐ ☐
 - Non-compliance with Section 10 of the Charter ☐ ☐
 - (... rights upon arrest and detention) ☐ ☐
 - Non-compliance with section 146 of the Youth Criminal Justice Act ☐ ☐
 - (... admissibility of statements) ☐ ☐
 - Other (specify) ☐ ☐
- (e) How long will the *voir dire* likely take:

Hearsay

- (a) Is the admissibility of any evidence contested on the basis of the hearsay rule (KGB)? ☐ ☐
- (b) Will it be argued that evidence proposed for admission qualifies as an exception to the hearsay rule? Give details. ☐ ☐

Expert Evidence

- (a) Will the opinion of a duly qualified expert be tendered for admission
- by the prosecutor ☐ ☐
 - by the defence ☐ ☐
 - how many (please list):
- (b) Upon what issue(s) will such evidence be tendered
- (c) Upon what basis is the admissibility of the proposed evidence contested?

Privilege

- (a) Will any claim of privilege be asserted in respect of any evidence proposed for introduction:
- by the prosecutor ☐ ☐
 - by the defence ☐ ☐

Upon what basis:

Search and Seizure and/or Arbitrary Detention

- (a) Is the admissibility of any evidence alleged to constitute a search and seizure within Section 8 and/or 9 of the Charter contested: ☐ ☐

Intercepted Private Communications and Their Derivatives

- (a) Will evidence of intercepted private communication be tendered for admission ☐ ☐
- (b) Will a *voir dire* be required to determine admissibility: ☐ ☐
- (c) Is the evidence tendered for admission admissible pursuant to an authorization ☐ ☐
- (d) Is the adequacy of the subsection 189(5) notice contested? ☐ ☐

Upon what basis:

(e) Upon the *voir dire* admissibility, (Garafoli application) will any of the following applications be made, namely:

- (i) an application to open a sealed packet under sub-paragraph 187(1)(a)(ii) ☐ ☐
- (ii) an application for disclosure arising from (i) ☐ ☐
- (iii) an application to challenge the editing in the application ☐ ☐
- (iv) does the application allege fraud or material non-disclosure in the obtaining of the order (need to expand the record) ☐ ☐
- (vi) does the application allege that the requirement of investigative necessity has not been met (need to expand the record) ☐ ☐
- (vii) will there be an application to cross-examine the affiant or sub-affiant ☐ ☐

(f) Are there any admissions made in respect of the conduct of the *voir dire*? ☐ ☐

Give details.

(g) How long is the *voir dire* reasonably expected to take:

(h) Upon the trial, will there be any issues taken in respect of the following matters, namely,

- (i) voice identification ☐ ☐
- (ii) tape accuracy, integrity and continuity ☐ ☐
- (iii) the use of transcripts as an aid to understanding ☐ ☐
- (iv) the admissibility of transcripts as exhibits ☐ ☐

The Competency of Witnesses

(a) Will there be any allegations that a witness to be called by the prosecutor:

- is incompetent to testify on account of age or lack of mental capacity:

☐ ☐

is incapable only of giving evidence un-sworn. Give details.

☐ ☐

- (b) Will there be any allegations that a witness to be call by the defence:
- is incompetent to testify on account of age or lack of mental capacity
[] []
 - is incapable only of giving un-sworn testimony. Give details:
[] []

Any Application to Exclude Other Evidence

- (a) Under the Charter [] []
- (b) More prejudicial than probative [] []

6. **PROCEDURAL ISSUES**

Directed Verdict

- (a) Will an application likely be made at the conclusion of the prosecution's case for a directed verdict of acquittal? Upon what basis: [] []

Other Procedural Issues

- (a) Are there any other procedural matters upon which the trial judge will be asked to rule: [] []

7. **POSITION OF THE PARTIES**

Position of the Prosecutor

- (a) What is the position of the prosecutory in relation to each accused:
- (b) Upon what legal basis does the prosecutor seek to establish the liability of the accused?
- the definition of the offence: criminal code sections applicable: [Specify for example, 230(a), 230(d) etc.
 - the basis of liability: Criminal Code sections applicable: [Specify, for example, 21(1)(b), 21(2), etc.]

Position of the Defence

- (a) What is the position of the defence:

(b) Is it reasonably anticipated that any of the following defences will be raised:

- | | | | |
|--------|---------------------|--------------------------|--------------------------|
| (i) | Alibi | <input type="checkbox"/> | <input type="checkbox"/> |
| (ii) | Automatism | <input type="checkbox"/> | <input type="checkbox"/> |
| | - intoxication | <input type="checkbox"/> | <input type="checkbox"/> |
| | - drugs | <input type="checkbox"/> | <input type="checkbox"/> |
| (iii) | Alcohol | <input type="checkbox"/> | <input type="checkbox"/> |
| (iv) | Diminished capacity | <input type="checkbox"/> | <input type="checkbox"/> |
| (v) | Accident | <input type="checkbox"/> | <input type="checkbox"/> |
| (vi) | Identity | <input type="checkbox"/> | <input type="checkbox"/> |
| (vii) | Private defence | <input type="checkbox"/> | <input type="checkbox"/> |
| | - Self | <input type="checkbox"/> | <input type="checkbox"/> |
| | - Others | <input type="checkbox"/> | <input type="checkbox"/> |
| | - Property | <input type="checkbox"/> | <input type="checkbox"/> |
| | - Justification | <input type="checkbox"/> | <input type="checkbox"/> |
| (viii) | Insanity | <input type="checkbox"/> | <input type="checkbox"/> |
| (ix) | Necessity | <input type="checkbox"/> | <input type="checkbox"/> |
| (x) | Duress | <input type="checkbox"/> | <input type="checkbox"/> |
| (xi) | Compulsion | <input type="checkbox"/> | <input type="checkbox"/> |
| (xii) | Provocation | <input type="checkbox"/> | <input type="checkbox"/> |

(c) Will the character of the victim be subject matter of the evidence

(d) Will a third party application be made by:

- | | | |
|---------------------|--------------------------|--------------------------|
| - by the prosecutor | <input type="checkbox"/> | <input type="checkbox"/> |
| - by the defence | <input type="checkbox"/> | <input type="checkbox"/> |

8. **DANGEROUS OFFENDER SECTION/LONG TERM OFFENDER SECTION**

- (a) Is it likely that the Crown will proceed with this application upon conviction:
[] []
- (b) Nature and extent of additional disclosure:
- hard copy pages
 - CD ROM
 - Video Tapes
 - Expert Reports
- (c) If so, how much court time is known or estimated for this application:
- (d) Number of hours known or estimated for preparation for this application for counsel including co-counsel, junior counsel or student:
- (e) Number of hours known or estimated during this application for counsel including co-counsel, junior counsel or student:

LEGAL AID PRACTICE DIRECTIVE

#7 - 2004

September 2004

TRANSCRIPT SERVICES FEES

We have been working with the Transcription Services Unit (TSU) to determine the best way to handle the recent change regarding payment of transcripts requisitioned through the TSU.

Effective October 1, 2004, Legal Aid Fee Vouchers will no longer be accepted as payment for transcripts. TSU has developed a "Court Transcript Order Request" to replace the fee vouchers. Please ensure that the certificate number is included on the request form.

The expectation is that each law firm will pay for transcripts directly to the contractor providing the service. Legal Aid will reimburse the private bar for the cost of transcripts as is the current practice for other disbursements. We will continue to process interim billing for disbursements over \$75.00. The cost of transcripts will be passed on to fee paying Legal Aid clients.

Please note that transcript costs over \$75.00 must be pre-approved by Legal Aid before ordering.

COURT FEES

Court Services will continue accepting Legal Aid Fee Vouchers for court fees including new fees for setting down trial dates.

LEGAL AID PRACTICE DIRECTIVE

#8 - 2005

February 2005

1. EXPEDITED TRANSCRIPTS

Please take notice that disbursements for an expedited transcript on a legal aid matter must be authorized in advance. Disbursements for expedited transcripts are substantially more expensive and should only be considered in exceptional circumstances.

2. PRIVATE BAR BILLINGS - 04/05 FISCAL YEAR

We note that some private bar lawyers are holding back on billing closed files. Our cash flow situation is such that we can guarantee a quick turn-a-round on accounts submitted prior to March 31, 2005 and we encourage the criminal and family bar to submit outstanding accounts. There are an unprecedented number of complex criminal matters which are ongoing and which are likely to be billed in the next fiscal year (April 1, 2005 to March 31, 2006). It would therefore be prudent for counsel to submit completed accounts before the end of this fiscal year.

3. HOLDBACK HOLIDAY

The Legal Aid Board of Directors is pleased to announce that the holdback holiday on all accounts will continue for the fiscal year April 1, 2005 to March 31, 2006.

LEGAL AID PRACTICE DIRECTIVE

#8 - 2005

February 2005

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Please take notice that disbursements for an expedited transcript on a legal aid matter must be authorized in advance. Disbursements for expedited transcripts are substantially more expensive and should only be considered in exceptional circumstances.

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LEGAL AID PRACTICE DIRECTIVE

#9 - 2005

June 2005

REINSTATEMENT OF DOMESTIC SERVICES

Legal Aid Manitoba is pleased to announce the reinstatement of some domestic coverage areas for the fiscal year 2005-06 to be reviewed on a year-to-year basis.

The reinstatement of services are intended to re-implement certain services that were reduced in fiscal year 2002-03.

We are also pleased to announce that coverage will now be provided to obtain Prevention Orders in meritorious cases where a woman has been unable to obtain a protection order.

The reinstated and new services are as follows:

1. Divorce and costs: these matters will be done internally using a paralegal with supervision by a family staff lawyer except for conflicts.
2. More extensive coverage for spousal support matters (not simply matters that meet the *Mogue* test). Area Directors are directed to be more generous in their exercise of discretion for approval of coverage for spousal support issues.
3. Contested Guardianships: non-contested guardianships will continue to be done by a paralegal wherein we provide guardianship agreements to parties.
4. More enforcements: child support enforcements at the Masters level (this will include show cause hearings and where there are extensive arrears or where there is a clear change in financial circumstances).
5. Prevention orders: Legal Aid Manitoba will now issue certificates for prevention orders that are stand alone in meritorious cases where protection orders have been refused for technical or jurisdictional reasons or to oppose the setting aside of prevention orders. That is to say that where a woman is unsuccessful in obtaining a protection order under the *Protection and Stalking Act*, Legal Aid Manitoba will consider covering stand alone prevention orders where there is a meritorious case. These matters will be handled by a paralegal supervised by a family staff lawyer.

LEGAL AID PRACTICE DIRECTIVE

#10 - 2005

September 2005

Legal Aid Manitoba through Memorandum to the Legal Aid Profession continues to provide up-to-date information, changes to policies or procedures and important information. This memorandum covers numerous matters such as: a tariff increase; update on the recent amendment to the Act and Regulations and changes to some policies and procedures.

1. Legal Aid Manitoba is pleased to announce that the new tariff increases will be effective October 1, 2005. This is the third such increase to the tariff by Government since 1999. The new tariff will be applicable to all certificates with applications dated on or after October 1, 2005. The new hourly rate is \$57 per hour up from \$53.
2. As you know, we reinstated some domestic services, please refer to Policy Directive #9 – 2005.
3. We also, via Policy Directive #7-2004, advised of changes made by Courts Transcription Services.
In this regard, we wish to remind counsel that it is still necessary to obtain prior authorization for any transcription cost over \$75. This also includes the obtaining of expedited or priority transcripts. Please ensure that the necessary prior authorization has been obtained in order to avoid difficulties when billing these disbursements.
4. Criminal Certificate Billing: there has been some confusion regarding the definition of subsequent matters. To be considered “subsequent” for billing purposes the charge must be laid after the initial representation has begun. For example, where counsel is representing an accused on one or more charges and the accused re-offends while out on bail. Where 2 or more charges exist at the stage of initial representation, or at the stage of initial entry to the court system, the fact that one of the charges was laid subsequent to the others does not make it “subsequent” for billing purposes. The final determination regarding whether a charge is “subsequent” or “distinct” or neither will be made at the taxation stage where all of the information should be made available. The definitions for “subsequent” and “distinct” apply whether matters are on separate certificates or on the same certificates.
5. Stays of Proceedings for Domestic Assaults: for certificates issued with application dates on or after October 1, 2005, there will not be an administrative increase in the tariff for stays of proceedings for charges of domestic assault.

6. Matters concluding with a Warrant Issuing: matters concluding with a warrant issuing shall, (and are currently) being paid at ½ tariff even where there is more than one distinct matter. Distinct charges will only attract the payment of an additional hour when they are exiting the system (for example on a guilty plea or stay of proceedings).
7. Breaches as Distinct Charges: effective for certificates with application dates on or after October 1, 2005, where more than one breach of condition charge enters the court system at the same time (i.e., the charges first appear on the same court date), they will be treated as one distinct matter for billing purposes.
8. Billing Domestic Matters: the block fee tariff for a completed matter involving corollary relief will be \$850 effective October 1, 2005. For certificates issued subject to this new tariff a “completed matter” will be defined as a matter which is concluded with an order, judgement or written agreement which resolves all of the issues referred to in the certificate. In addition, a matter will be considered to be incomplete where the petitioning party abandons the application for relief.

Incomplete matters which involve a change of counsel will be paid at ½ tariff (as they were in the prior tariff).

Incomplete matters which do not involve a change of counsel will be paid at \$250 if at least 3 hours of work has been done or in the alternative, may be billed at up to full tariff with a chronological itemized statement of account which details accurately the services provided.

Some examples of such incomplete matters are as follows:

- opposing party withdrawals, discontinues or abandons the application or petition;
- Client fails to keep contact with counsel;
- client directs counsel not to proceed further;
- paternity case discontinued or abandoned because blood testing determines the respondent is not the father. This applies to both the petitioner and the respondent;
- the parties reconcile.

9. Big Case Management: the early experience with Big Case Management has been generally positive. Lawyers dealing with lengthy, complex “A” matters now have a process to have some timely case management, disbursement approvals and to obtain a fee estimate at the onset of proceedings.

The volume of cases has been surprisingly high. We have, of late, had a

number of cases which have been improperly placed in the Big Case Management stream. Cases which should not be designated for Big Case Management include: cases which are not lengthy or unusually complex and cases which are already completed. Big Case Management should not be used as an alternative to the standard billing policy. Non “A” matters should be designated for Big Case Management only in exceptional circumstances.

We have, so far, managed to complete Big Case conferences in a timely manner, however, we are in danger of becoming backlogged if the cases proliferate into areas outside of our original definition.

In the Big Case Management process, we are assessing additional hours over and above the tariff where there are extremely unusual circumstances. When billing “Big Case” management matters, please keep in mind that we still must calculate the tariff amount before applying the additional hours. We require a statement with sufficient information to calculate the tariff including the court dates and specifying half days and full days and any other tariff items.

On Big Case Management matters, we allow interim billing after a preliminary hearing at the tariff amount. Again, we require a statement detailing court dates. Any additional hours will be awarded at the conclusion of a matter.

10. Important Legislation Changes: *The Legal Aid Services Society Amendment Act* has been passed and proclaimed. The proclamation date was August 10, 2005.

Governance Changes: A “management council” now replaces the board of directors. The management council consists of at least seven and not more than nine members for a period of three years. Three are appointed from a list recommended by the Law Society and three of the others must be lay people. The duties of the councillors are essentially the same as those of a board of directors. The council must also review the tariff at least once every two years.

Applying for Legal Aid: the Act now requires an applicant to provide a written consent and release authorizing third parties to provide LAM with such information as it may require. A new application form has been drafted to accomplish this. **Old application forms can no longer be used** unless you are prepared to provide a stand-alone third party release as well.

Some lawyers will be faced with a problem when taking an application from a young person who is dependent upon his or her parents. Please have the applicant youth sign the third party declaration. Legal Aid will

obtain additional signed approval from the parents before requesting any information relating to the parents from third party organizations.

Please point out to your clients that providing false information or failing to provide information about a change in financial circumstance is now a summary conviction offence with a fine up to \$10,000.

Choice of Counsel: there is no right to choose a lawyer, but the Area Director or Executive Director must consider any request for a specific lawyer.

The Appeal Process: An “appeal committee” is established. The internal appeal process has been streamlined.

The committee may consist of three people or one person only. At least one person shall be a lawyer. The decision of the committee is final.

Refusals of coverage and certificate cancellations are to go to the committee. But in the case of clients who fail to make payments or who fail to sign a charge on land, or the like, those clients will only have the right to appeal to the Executive Director.

Taxation appeals also go to the committee not the council.

Tariff Item Additions: criminal organization offences will be added to tariff category “A”.

Cause bodily harm by dangerous driving, trafficking in stolen weapons, child pornography offences and break and enter with home invasion will be added to tariff category “B”, for certificates with applications dated on or after October 1, 2005.

Where this practice directive is in conflict with or contradicts previous practice directives or notices to the profession, this directive takes precedence.

November 2005

#11 – 2005

PRACTICE DIRECTIVE

Legal Aid Manitoba through Practice Directives continues to provide up-to-date information on procedures. Therefore, this memorandum covers stays of proceedings for domestic assault and a fee for tracking account payments.

1. Stays of Proceedings for Domestic Assaults:

The decision to terminate administrative increases for stays of proceedings for domestic assault matters in paragraph 5 of Practice Directive #10 – 2005 has been reconsidered. Administrative increases will continue for domestic assault matters uninterrupted. We will review this decision in due course but commit to full consultation with the Tariff Review Committee prior to making any changes.

Note that the criteria set out in our April 2003 Notice to the Profession must be present to qualify for the administrative increase, namely:

There must have been a good faith effort to negotiate with the Crown for a stay of proceedings. The stay must occur at the start of the trial or very shortly before and after the trial was fully prepared for. Counsel must state that the “trial was fully prepared for”.

2. \$25 Fee for Tracking Account Payments:

We receive many requests from members of the private bar asking Legal Aid to track payment of their accounts. In most cases, we determine that payment was processed and mailed to the requesting lawyer's office or other designated address. These requests take resources away from processing your account in a timely manner.

Effective immediately, future requests for verification of payment will be assessed a service fee of \$25 per cheque where we find that payment has already been made. This service fee will be deducted from the next payment made to the person making the request. The service fee will cover the cost of staff time and disbursements related to researching your request.

#12 – 2005

PRACTICE DIRECTIVE

Half Tariff:

There has been some concern expressed regarding the issuance of “half tariff” certificates to the “second lawyer” in a case. There seems to be acceptance that the original lawyer who gets off the case early should be subject to a reduced fee. We generally agree that the “second lawyer” should receive full tariff. There are of course cases where a “half tariff” certificate should issue to the “second lawyer”. For example, where most of the work has already been done by previous counsel, the client is not difficult and previous counsel has discovered a conflict. We will try and assess only those obvious cases as “half tariff” matters at the issuing stage. Even where a “half tariff” certificate does issue and the “second lawyer” feels the circumstances justify a full tariff, a request for same can be made at the issuing stage or the taxation stage. We have generally been very accommodating with these requests.

#13 – 2006

PRACTICE DIRECTIVE

Conflict Offices:

Pursuant to Section 20(2) of *The Legal Aid Manitoba Act*, the Legal Aid Council has passed a policy directive declaring all Legal Aid Community offices to be independent for conflict purposes. Policies, procedures and governance for staff lawyers have been established to ensure that these offices operate independently and to ensure that file confidentiality between offices is maintained. The independent community offices are:

Family Law Office – Winnipeg
Criminal Law Office – Winnipeg
Aboriginal Law Centre – Winnipeg
Public Interest Law Centre – Winnipeg
Parklands Community Law Centre – Dauphin
Westman Community Law Centre – Brandon
Northlands Community Law Centre – The Pas
Thompson Community Law Centre – Thompson
Winnipeg Conflict Office/Collaborative Law Centre – Winnipeg

Collaborative Law Project: Winnipeg Area

The two-year project has proved to be an effective and efficient process for delivering services to clients where both sides receive legal aid. The project will be continued indefinitely in the Winnipeg Area.

We requested private bar lawyers to express an interest in becoming part of the process. Of those expressing an interest, four private bar lawyers have contracted to take project cases. Collaborative project cases are quite different from private collaborative cases in that all cases meeting a broad criteria are referred to the process.

The collaborative project has therefore developed a number of procedures which are not normally employed by private bar collaborative lawyers. We have found it to be necessary for lawyers to handle a sufficient volume of these matters to be effective and to develop an awareness and expertise in the unique process employed. We have also found that lawyers must have full training in the process employed and to receive ongoing training. The private bar lawyers who have contracted to be part of the project and to take on collaborative certificates have committed to our process. We will therefore refer all cases which meet the project criteria to trained staff lawyers or to one of the four lawyers contracted to take certificate cases. Requests for non-project counsel will not be honoured where the project criteria are met.

April 2006

**#14 – 2006
PRACTICE DIRECTIVE**

Process Serving

Effective June 12, 2006, C.K. Legal Services will no longer be providing process serving under contract with Legal Aid Manitoba.

Langford Legal Services will continue to provide process services under a Legal Aid contract. The contact information for Langford Legal Services is:

Langford Legal Services
56 Alex Taylor Drive
Winnipeg MB R2C 4R1
cell: 299-9303

It is our preference to have two process serving firms under contract and to that end we will be accepting offers from interested firms. If you know of such a firm, please have them submit an expression of interest to:

Joan Crowe
Legal Aid Manitoba
402 – 294 Portage Avenue
Winnipeg MB R3C 0B9
fax (944-8582)

All interested parties should contact us no later than May 5, 2006.

June 2006

**#15 – 2006
PRACTICE DIRECTIVE**

Private Bar Payments

As some firms may have noticed the Friday, June 23, 2006 cheque run did not go ahead. Our computer cheque issuing system has malfunctioned. Our IT team is working hard on a fix. It is possible that this Friday, June 30, 2006 the cheque run may also be affected. If the problem is not fixed within the next few days, we will keep you advised and will develop an alternate payment plan.

We ask for your understanding and patience.

July 2006

**#16 – 2006
PRACTICE DIRECTIVE**

Process Serving

Further to our Practice Directive #14, effective July 15, 2006 we will again have in place two process serving firms that will complete services at the negotiated legal aid rates.

The two firms are:

Langford Legal Services
56 Alex Taylor Drive
Winnipeg MB R2C 4R1
cell: 299-9303

and

LSC Consulting
601 – 1720 Pembina Hwy.
Winnipeg MB R3T 5T4
479-7244

Please keep these firms in mind when making arrangements for service.

December 2006

**#17 – 2006
Practice Directive**

New Technology System at Legal Aid Manitoba

This will serve as a reminder of my October 24, 2006 memo advising you that Legal Aid Manitoba will be implementing a new technology system effective January 2, 2007.

As indicated in my October 24, 2006 memorandum, some delays in processing cheques may occur. We hope that this will not be the situation and that things will move smoothly allowing us to process cheques in our usual manner.

Please note that for certificates issued starting January 2, 2007:

- a) The Form 6, the Legal Aid Solicitors report, will not be included. For billing we will require only your signed statement of account with court dates and an indication of how the matter was resolved.
- b) We will not require the return of the signed Form 5, the Legal Aid Certificate. These should be returned only if the certificate is not accepted.

Let me apologize in advance if in fact there is any delay.

Cc Mario Santos
Management Council
Legal Aid staff

January 12, 2007

**#18 – 2007
Practice Directive**

This will serve as a reminder to counsel applying for any increase in fees of the requirements of the Act and Regulations of Legal Aid Manitoba.

Specifically, the requirement as set out in Sections 40 and 41 of the Regulation states inter alia the following:

Section 40(3) A solicitor may apply in writing to the executive director to increase the fees provided in the Schedule by submitting an itemized account and an explanation of the circumstances that justify an increased fee.

And

Section 41 A solicitor who completes the furnishing of legal aid under a certificate or who ceases to act, shall submit without delay to the executive director

(a) an account setting out the services furnished, the date on which each item of service was performed and, where appropriate, the time spent in providing the service, together with the fees and disbursements sought for each service in accordance with the Schedule, and a certificate signed by the solicitor in the following form:

“I certify that the legal aid authorized by the certificate was rendered by me, or by such other named person, and that the disbursements set out herein were paid or liability therefor incurred, and were necessary and proper, and that I have not received reimbursement for any of them”:

(b) the account of any agent or counsel engaged, prepared and certified in accordance with clause (a).

Your cooperation and compliance with these sections of the legislation will assist us in processing any requests for increased fees in an expeditious manner.

Thank you.

March 2007

**#19 – 2007
Practice Directive**

Private Bar Billings – 06/07 Fiscal Year:

We note that some private bar lawyers are holding back on billing closed files. Our cash flow situation is such that we can guarantee payment on accounts submitted prior to March 31, 2007 and we encourage the criminal and family bar to submit outstanding accounts. There are an unprecedented number of complex criminal matters which are ongoing and which are likely to be billed in the next fiscal year (April 1, 2007 to March 31, 2008). It would therefore be prudent for counsel to submit completed accounts before the end of this fiscal year 2006/07.

DNA Testing:

For approved DNA testing, we are adding Maxxam Analytics Inc. as an option. Maxxam has undertaken to perform testing at a rate competitive with the other approved testers: Orchid Allmark and Genetrack Biolabs. The contact information for Maxxam Analytics Inc. is:

Toll Free phone: 1-877-706-7678
Toll Free fax: 1-866-675-2400
Website: www.thednalab.com or www.labadn.ca

Maxxam has 24 sample collection sites across the Province including many remote areas.

TigerTel Message Box:

NOTICE TO ALL RURAL AND CITY ON-CALL PROVIDERS

Effective Monday, March 12, 2007, Tiger-Tel is offering Legal Aid an introductory one month free voice mail service. As always, the expectation is that our on call providers respond immediately to all custody calls. However, the Tiger-Tel's voice mail system will allow for convenient checking of information for on call providers. This service has the ability to store, replay and delete messages from any location.

Voicemail Box – Message Retrieval Instructions

Dial 944-2929 – enter in Mailbox # 2043016 – City
2043291 – Rural

Options:

- 7 – to play message
- 9 – to disconnect
- 0 – for assistance

After entering #7 and listening to your messages, it will give you 6 more options

- 3 – to delete message
- 5 – to keep message
- 7 – to replay message
- 4 – to give to another mailbox
- 0 – for assistance
- 9 – to disconnect

NOTE: There is a hard copy of all messages if erased accidentally from the mailbox. Live operators are available 24/7 – just by pressing 0.

EACH ON CALL PROVIDER MUST CLEAR OUT THEIR MAILBOX DAILY TO ENSURE THAT IT IS EMPTY AND READY FOR THE NEXT ON CALL PERSON.

Legal Aid would like to hear from you during this introductory period to find out whether or not you find this worthwhile. Please contact Michael Swait at 985-5228 or email him at miswa@legalaid.mb.ca with your comments.

Legal Aid Manitoba has hired a Communications Officer, Diane Poulin, who is committed to strengthening our relationship with the private bar. She is interested in any feedback or ideas you might have to improve our communications with you. Diane can be reached at 985-8588 or dpoulin@legalaid.mb.ca

May 2007

**#20 – 2007
Practice Directive**

Legal Aid On-Call:

Legal Aid Manitoba is pleased to advise that effective May 1, 2007, rates for Legal Aid on-call will double for the three shifts as follows:

- | | |
|----------------------------------|-------|
| 1. Monday, Tuesday and Wednesday | \$450 |
| 2. Thursday and Friday | \$600 |
| 3. Saturday and Sunday | \$600 |

The rates are subject to change with notice depending on budget projections.

Anyone expressing an interest in doing Legal Aid on-call should contact Joan Crowe at 985-8536 for details.

We thank all those lawyers who have and continue to volunteer to handle on-call Brydges shifts.

Private Retainers:

Section 5(b) of Legal Aid's new certificate which became effective January 2, 2007, states:

Section 5:

"Solicitor's acknowledgement: You have been retained by the client named herein to provide the legal aid authorized by this Certificate and that prior to the issue of this Certificate:

b. you were employed by the client to perform some services with respect to the same matter and in connection therewith received from the client a total of funds on account of fees and disbursements."

A Note at the bottom of the certificate then states;

Only if condition 5(b) is applicable and you are willing to act for the person named above, are you required to sign and return a copy of this Certificate to the Area Office at the address below.

Therefore, Legal Aid is notifying the private bar that the certificate is to be signed where a retainer exists and has not been disclosed to Legal Aid Manitoba.

Taxation Appeals and Limitation Periods:

Please be reminded that there is a statutory 30 day requirement for filing taxation appeals. Section 45(2) of the Legal Aid Manitoba Regulations specifies:

“The solicitor shall apply for a review within 30 days after receiving payment of the account and the application shall set out the items to which objection is taken and the grounds of each objection”.

You may ask the Appeal Committee to extend the 30 day statutory deadline with reasons for the delay.

As you may know, Legal Aid receives finite annual funding to run operations. When counsel hold off on filing appeals for several months (and in some cases, years), there is a disruptive impact on our budgeting process. Many lawyers do comply in a timely way with the appeal process and we ask for everyone's cooperation in this regard.

Cc Mario Santos, Chair of Legal Aid Management Council
of Legal Aid Manitoba

May 2007

**#21 – 2007
Practice Directive**

Travel time, mileage and accommodation disbursements – Murder Charges:

On May 22, 2007, Legal Aid Management Council set the following policy:

“Pursuant to LAM Act 14(1), where local competent counsel is willing to take on a matter in accordance with LAM Act and Regulations, no disbursements for travel time, mileage and accommodations will be authorized to outside lawyers requested by clients to defend charges of 1st degree, 2nd degree, attempted murder and/or manslaughter.”

This is the same policy that applies to all other cases. The exception for murder cases arose historically because of a requirement in the Federal/Provincial Cost-share Agreement. This requirement no longer exists and Council has therefore set a standardized policy for all charges.

This policy change will apply to certificates which issue on or after May 24, 2007.

**#22 – 2007
Practice Directive**

Compensation for Weekend Bail Court:

Compensation for private bar lawyers doing weekend bail court will be increased as follows:

Existing rate: \$57 per hour with a minimum of 3 hours

New rate: \$57 per hour with a minimum of 6 hours

The new minimum will therefore be \$342. If the six hour minimum is exceeded an itemized account will be required. The new rate will be in effect starting June 1, 2007.

The rates are subject to change with notice depending on budget projections.

#23 – 2007

Practice Directive

Expiry of Certificates:

Be advised that as of March 31, 2008, numerous certificates will expire. Any certificates issued more than six (6) years prior to March 31, 2008, which are not yet concluded, will expire unless the time is extended by the Area Director. You are advised to review old certificates which may be affected, namely where the file is not completed and act upon them accordingly. An extension can be obtained upon written request to the Area Director. Section 30 of the Regulations (L105 – R.M. 225/91), states as follows:

A certificate is discharged when ...

(e) six years expire from the date on which the certificate is issued, or on March 31, 2008, whichever is the later, unless the time is extended by the area director.

We will be culling out expired files as at March 31, 2008. If you have not taken appropriate steps for an extension, you will be unable to bill on these expired files.

#24 – 2007

Practice Directive

Legal Aid Ontario (LAO Law) Research Memos

Legal Aid Manitoba is pleased to announce that we now have an agreement with Legal Aid Ontario for access to LAO Law memos. LAO Law memos are designed to help lawyers prepare cases for legal aid clients by providing detailed research on common legal issues. There are over 300 criminal law memos addressing Charter issues, common defences, evidentiary issues, common offences, criminal procedure and sentencing. There are also memos in family, child protection and immigration law. Legal Aid Manitoba staff lawyers and our private bar partners may request up to two memos per active legal aid certificate. The certificate number must be provided with your request as our contract requires that lawyers may use the memoranda only in connection with matters flowing from the certificate specified in the request.

To get a memo, complete a Request for LAO Law Memoranda form available on our website. Staff lawyers will find the Request form as well as a complete index of available memos under the “LAM Documents” link on our intranet site. Private bar lawyers will find the Request form as well as a complete index of available memos under the “Info for Lawyers” link on our website at www.legalaid.mb.ca. Please read the Conditions of Use contained within the Request form prior to submitting it. For those without internet access, please contact Corey La Berge by telephoning our Administration Office at 985-8500 (1-800-261-2960).

Transcript Disbursements:

Please be reminded that prior approval must be obtained before ordering a transcript in criminal matters. The exceptions to this are:

- a preliminary hearing where there is a committal and trial dates are set;
- approved appeals;
- and authorized bail reviews.

Expedited and Priority Transcripts:

A regular transcript cost is \$3 per page. Expedited transcripts cost \$4.50 per page and priority transcripts cost \$5.50 per page.

Legal Aid will not pay the increased rates for expedited or priority transcripts without prior approval being obtained. Requests for prior approval are to be sent to the Area Director for expedited or priority transcripts and should be accompanied with cogent and pressing reasons.

Expedited Birth and Marriage Requisitions:

Prior approval must be obtained before ordering an expedited certificate of birth registration or marriage registration.

Private Bar Cheques – Christmas:

Please note that there will not be a cheque run on Friday, December 28, 2007. Cheque runs will be done on Friday, December 21 and Friday, January 4, 2008.

#25 – 2007

Practice Directive

Winnipeg Drop-In Centre Update
Effective January 1, 2008

Legal Aid Manitoba is pleased to announce the following steps aimed at renewing and strengthening the Winnipeg Drop-In service:

- Hiring of a new, full-time Supervisor to oversee operations and scheduling at the Drop-In Centre.
- Increased training for paralegals and law students who staff the Drop-In Centre to provide consistency of service, thereby speeding up the Intake process for clients.
- Supervisor availability to take phone applications from persons unable to attend the Drop-In due to remoteness or incapacity.
- Supervisor availability to take emergency appointments with clients on Mondays and Fridays.
- Maintaining 5 staff dedicated to the Drop-In Centre (Supervisor, 3 paralegals, 1 law student).
- Creating efficiencies by relieving staff lawyers from Drop-In duties to concentrate on case work.
- Focusing legal advice provided to clients to the lawyer assigned to his or her case.

Winnipeg Drop-In Centre Facts:

- The principal function of the Drop-In Centre is to process applications for Legal Aid coverage.
- Staff also offer information and referrals to other agencies as appropriate.
- The Winnipeg Drop-In Centre services Winnipeg and the surrounding area.
- No appointments are necessary. People are seen on a first come, first served basis.
- It takes approximately 10 business days to process an application and assign a lawyer to eligible clients.

Winnipeg Drop-In Centre Hours:

Tuesday 1:30 to 6:00

Wednesday 1:30 to 6:00

Thursday 1:30 to 6:00

Winnipeg Drop-In Centre Location:

Somerset Building
 294 Portage Avenue, 3rd floor
 Winnipeg, MB R3C 0B9
 TFI • (204) 985-8500

DROP-IN CENTRE CHECKLIST

- There is a \$25 fee to apply for legal aid that must be paid in cash, money order or certified cheque at the time of application, with some exceptions: People do not have to pay the fee if they are:
 - ◆ receiving social assistance
 - ◆ a full time student
 - ◆ in a women's shelter and need immediate legal help
 - ◆ are in a mental health facility
 - ◆ are in custody and receiving social assistance at time of arrest
 - ◆ youth who lives with parents receiving social assistance
 - ◆ youth who is a ward of a child care agency
 - ◆ receiving or entitled to court-appointed counsel under the *Child and Family Services Act* or *Youth Criminal Justice Act*

To expedite service, people should:

- a) Bring all documents about their case to Drop-In
- b) Tell interviewers if they already have a court date and time
- c) Bring pay stubs from their employer, and/or a photocopy of tax returns with them or
- d) Bring their social assistance statement with them

December - 2007

#26 – 2007

Practice Directive

New website assists lawyers and clients

Legal Aid Manitoba is now offering a fully bilingual website at **www.legalaid.mb.ca**

Features include:

- A section called Resources for Lawyers which contains Notices to Profession dating back to 1982; A Guide to Tariffs; the Legal Aid Manitoba Act and other forms.
- A publications section with our Annual Report and Strategic Plan.
- A detailed section called Getting Legal Aid geared towards potential clients.
- A plain language dictionary of common legal terms geared towards potential clients and the general public.
- Fully bilingual (English and French).
- Large print option.

February 2008

#27 – 2008

Practice Directive

One Time Fast Fee Processing Opportunity

Legal Aid Manitoba is offering a one-time opportunity to meet with our Executive Director, Gerry McNeilly, to settle some of your outstanding certificate files. Mr. McNeilly will meet with you at your request up to March 28, 2008 to discuss your files. Files/accounts settled in this manner will be fast tracked for payment and must be submitted to Legal Aid Manitoba by March 31, 2008.

To access this opportunity, you will need to do a short synopsis on each file including disposition dates and the outcome of each proceeding along with a summary of the applicable tariff plus disbursements and the amount that you are requesting to be paid on the file. On certificates with more than one legal matter, please indicate the legal matter number you are billing for.

Please contact Cynthia Keller at 985-8534 to set up an appointment.

March 2008

#28 – 2008

PRACTICE DIRECTIVE

Legal Aid Ontario (LAO Law) research memoranda

This is a reminder to all lawyers that Legal Aid Manitoba has a subscription with Legal Aid Ontario for access to LAO Law memoranda. LAO Law memos are designed to help lawyers prepare cases for legal aid clients by providing detailed research on common legal issues. There are over 300 criminal law memos addressing Charter issues, common defences, evidentiary issues, common offences, criminal procedure, and sentencing. There are also memos in family, child protection, and immigration law. **Legal Aid Manitoba staff lawyers and our private bar partners may request up to two memos per active legal aid certificate.** The certificate number must be provided with your request as our contract requires that lawyers may use the memoranda only in connection with matters flowing from the certificate specified in the request.

To get a memo, complete a Request for LAO Law Memoranda form available on our website. Staff lawyers will find the Request form as well as a complete index of available memos under the "LAM Documents" link on our intranet site. Private bar lawyers will find the Request form as well as a complete index of available memos under the "Info for Lawyers" link on our website at www.legalaid.mb.ca. Please read the Conditions of Use contained within the Request form prior to submitting it. For those without internet access, please contact Corey La Berge by telephoning him at his direct line: 985-9741.

April 16, 2008

**#29 - 2008
PRACTICE DIRECTIVE
Tariff Increase**

Management Council of Legal Aid Manitoba is extremely pleased to announce that the tariff of fees has been increased from \$57 per hour to \$80 per hour effective April 1, 2008.

This is the fourth increase by the present government since 1999. Increases occurred in 2000, 2003 and 2005.

Prior to 2000, the last tariff increase was in 1988 by the then NDP government. Then there was an 11 year period without any increases. This lengthy period of no increase, resulted in fewer private bar lawyers doing legal aid work which put pressures on the justice system. This present government undertook to ensure that the justice system was adequately funded and provided these successive tariff increases.

We are pleased to say that the new \$80 per hour rate makes Legal Aid Manitoba's rate for fees competitive with other provinces.

We wish to acknowledge the work done by:

- The Tariff Review Committee, which is comprised of members of the private bar and Legal Aid administration;
- The Advisory Committee of Legal Aid Manitoba, comprised of persons from rural and northern Manitoba reflecting the cultural diversity of Manitoba and persons familiar with issues commonly faced by low income individuals. We also wish to acknowledge the work done by other members of this committee, namely members from the Family and Criminal private bar and Legal Aid Lawyers' Association.
- We specifically wish to acknowledge the work done by and support of the Management Council of Legal Aid Manitoba.

The recommendations from the Tariff Review Committee and the Advisory Committee were supported by Legal Aid Management Council which put forward a strong recommendation to the Minister of Justice of Manitoba to support this tariff adjustment.

We believe that this tariff adjustment will go a long way to ensuring that low-income Manitobans have access to legal representation relating to family and criminal law matters.

Implementation of these rates will be dependent on the passing of amended regulations and will be retroactive to applications dated on or after April 1, 2008.

Mario Santos, Chair, Legal Aid Management Council.

**LEGAL AID PRACTICE DIRECTIVE
#30 - 2008**

September 24, 2008

BIG CASE MANAGEMENT PROGRAM PROCEDURE

The Provincial Court of Manitoba has now finalized formal Practice Directives with a proposed implementation date of October 6, 2008.

Practice Directive 7.02 of the Provincial Court of Manitoba reads as follows:

Hearings to consider an application to withdraw as counsel of record or to have counsel of record removed shall be fixed for a date not less than 30 days prior to the scheduled trial or preliminary inquiry date.

In light of the implementation of the formal Practice Directives, Legal Aid Manitoba now requires that the following process be followed for BCM matters:

- Once a case is identified as a big case for BCM by either the Area Director or counsel, the Case Management Opinion Form must be completed and submitted by counsel in a timely manner;
- Legal Aid Manitoba will now require that counsel schedule a meeting with the BCM committee no later than 3 months prior to any scheduled preliminary inquiry, or trial, so that the matter can be considered, and a fee estimate proposed;
- Once a matter is considered and a fee proposed through the BCM committee process, counsel will be notified immediately, and will then have the ability very early in the process to determine whether to accept the case or not.
- If counsel do not schedule a meeting with the BCM committee at least 3 months prior to a scheduled preliminary inquiry, or trial, the matter must be billed out in accordance with the tariff. Where "extremely unusual circumstances" are established, the tariff provides that a discretionary increase may be requested by counsel providing a letter or summary stating why a discretionary increase should be considered (see memorandum to profession dated January 2002).

Where this practice directive is in conflict with or contradicts previous practice directives or notices to the profession, this directive takes precedence.

**LEGAL AID PRACTICE DIRECTIVE
#31 – 2008**

October 9, 2008

DISCHARGE OF LEGAL AID LIENS/CHARGES ON LAND

Legal Aid Manitoba files liens (“charges on land”) to secure fees paid on behalf of clients. These clients are not fully eligible for legal aid and are obliged, by virtue of their income and/or assets, to pay for a portion of their legal fees to Legal Aid Manitoba.

It has come to our attention that counsel have at times participated in a transfer of title to property still encumbered by one of these liens. This has apparently been done on the assumption that Legal Aid Manitoba will waive the debt and discharge the lien in certain set circumstances.

While Legal Aid has a liberal policy with respect to discharging liens in certain circumstances, Legal Aid does not, in any circumstance, delegate the authority to determine its interest or to decide whether or not to discharge a lien. Decisions about whether to discharge such a lien are made on a case by case basis and only by Legal Aid Manitoba. Counsel who transfer title without first securing the discharge of a lien held by Legal Aid Manitoba place themselves at risk of liability for not being able to fulfil an undertaking to provide clear title.

Liens, or charges on land, in favour of Legal Aid Manitoba should be dealt with in the same fashion as any encumbrance on title. Where a purchaser or transferee is not willing to assume liability for the fees secured by the lien, a discharge must be obtained from Legal Aid Manitoba prior to transferring title.

**LEGAL AID PRACTICE DIRECTIVE
#32 – 2008**

October 15, 2008

LAO RESEARCH MEMORANDA

In light of the very sparing use made of the Legal Aid Ontario (LAO) Research Memoranda service, Legal Aid Manitoba has not renewed our subscription to that service and these memoranda are no longer available.

CHANGES IN COUNSEL *

In light of several recent inquiries LAM practice respecting “changes in counsel”, most recently set out in the Practice Directive of April 16, 1999 is reproduced below.

8. Changes in Counsel

Counsel should be reminded that changes of counsel are not an automatic process or right. The first request from a client may in most instances be generally approved. Subsequent changes may be granted only after considering information received from both the outgoing and incoming counsel. These changes will be generally subject to the reduced tariff of fees, but there may be rare instances where an exception may be considered.

* This Directive addresses the issue of **entitlement to multiple changes of counsel not the fees paid on such certificates**. The directive of December 2005 continues to apply with respect to fees on such matters. Our payment policy on changes of counsel has not changed.

#34 - 2009

NOTICE TO THE PROFESSION

**CHANGES TO APPLICATION PROCESS OF LEGAL AID MANITOBA
EFFECTIVE APRIL 1, 2009**

1. Rationale

A new Area Director's Manual (ADM) is being implemented at Legal Aid Manitoba. It will be in place, and available on-line as of April 1, 2009. It is designed to be a complete scheme for the assessment and determination of Applications by each Area Director's office throughout the Province. The initial focus of the ADM is on receiving complete information in a timely fashion. It is also intended to improve the clarity and consistency of decisions respecting eligibility. The ADM will inaugurate a transparent process, accessible to clients, counsel, the judiciary, the public, and all other stakeholders in the judicial system. The basis on which Legal Aid assesses financial and legal merit should be clear enough to allow stakeholders to provide useful and accurate information to an Applicant respecting the process and requirements to perfect an application.

2. Applications

The ADM sets out a number of requirements for applications and the information needed to process and assess them. New requirements include:

1. The application (along with supporting documentation and fee or waiver) must be submitted to the Area Director within 60 days of signing the application or it will not be accepted.
2. Third Party verification of income is required for all applicants whose income is within \$2000.00 of the full eligibility guideline, or above.
3. Where required information/documentation is not included with an application the application can be designated as pending, or refused outright at the Area Director's discretion.
4. Applications designated as pending for longer than 30 days will be refused.
5. Refused Applications can only be reconsidered in the 60 days after refusal after which a new application is required.
6. Management Council is seized of any appeals where it has granted Legal Aid.

The focus is on receiving accurate and timely information. The policy reflects the fact that financial and contact information is often not valid beyond 6 months. Where no meaningful work can be accomplished within the 6 month period, an assessment is of limited use, and new information is required.

3. Court Appointed Counsel

Where a judge orders counsel to a person who falls outside the mandate of Legal Aid, granting coverage would decrease funds remaining for mandated coverage. The Government of Manitoba has an agreement with Legal Aid to provide coverage in certain of these circumstances. Where the court appoints counsel under section 25(4)(b) of the *Youth Criminal Justice Act*, Section 672.24 and 672.5(8) of the *Criminal Code*, or section 34 of the *Child and Family Services Act*, Legal Aid will appoint counsel immediately and paid at the Legal Aid tariff hourly rate. Where a judge otherwise purports to appoint counsel from Legal Aid, the matter will be referred to the Executive Director for consideration.

4. Financial Assessments

Financial Assessments are largely unchanged but a few clarifications are worthy of note:

1. All Financial resources reasonably available to a person to fund their legal matter are considered in the assessment. There are few exceptions.
2. Adult persons cohabiting for less than one year are only considered common law if they declare as such, or some other reliable evidence points to this finding. Adult persons cohabiting in excess of one year are considered common law and their joint income is considered in the assessment.
3. Money received as a foster parent and Residential School settlements retained in cash or cash equivalents are not considered in the assessment. Nor are Foster children included in family size.
4. There is a section on seized proceeds of crime. Legal Aid considers seized proceeds of crime available to fund a matter unless a court application has been denied, or where making the application will significantly prejudice the Applicant's defence.
5. There is a section that formalizes the Area Director's discretion to deny Legal Aid to applicants who are not cooperating with the financial assessment process.

(continued)

5. Merit Assessments

General Guidelines

There is a section that formalizes the Area Director's ability to deny Legal Aid where an applicant is abusing the court process. The Area Director's discretion to grant coverage in spite of deficiencies in the application process, where an injustice might otherwise occur, is also formalized. Each use of this discretion must be reported to the Executive Director.

Merit in Criminal Matters

The provisions largely reflect current practice.

Merit in Domestic Matters

Little is changed. There is a section permitting coverage for grandparent access where there is a significant pre-existing relationship.

Merit in Civil Matters

The matters for which civil coverage is currently available are listed. The Administrative Law matters are often carried forward by staff paralegals at Legal Aid and certificates to counsel are rarely provided.

6. Client Contributions

Agreements to pay and the Expanded Eligibility (EE) program sections largely reflect current practice. There is a 30 day time line for cancellation when a payment is missed, and an explicit time line is given for return of over-payments.

Charges on Land are now required, regardless of the amount of equity in property, whenever an Applicant has his/her name on title to real property.

Recovery from Court Awards reflects current practice.

A section on Unpaid Client Accounts clarifies the Area Director's limited discretion to forgive such arrears, or grant new coverage with an agreement to pay, where a previous account is unpaid.

(continued)

7. Certificate Issuance

The requirements for a certificate and the process for issuance has been laid out in some detail. A tariff category will appear on each certificate.

The definition and description of Legal Matters has changed. A Legal Matter now refers to a matter which is given coverage to proceed to trial on its own. All legal matters will be identified as such on the certificate. Matters that must be combined with another Legal Matter to merit coverage will be separated by the word “also”.

Billing of criminal matters dealt with together will change on April 1, 2009. There will be no more “subsequent matters”. All matters disposed of at the same time in the same courtroom will be paid a flat rate “per Information”.

8. Cancellations

A Financial Eligibility Review will begin with a request to a lawyer for a status update and current address. Where counsel fails to respond to a status update and a certificate is canceled no fees will be paid to the lawyer for further steps in the legal process. There will not be less than 21 days to respond to a status update prior to cancellation, unless the client is financially ineligible.

There are time lines governing the letters sent requesting information on financial review, and for the reactivation of certificates following cancellation. There is a 14 day letter and a 7 day letter. If no contact is made with the client during this time, the certificate is canceled. It may be reactivated within 30 days of cancellation but a new application and fee is required if a longer time intervenes.

New provisions require cancellations to be delayed where a status update advises that a Preliminary Hearing or Trial date is less than 60 days away and counsel cannot withdraw. In these cases the certificate is canceled immediately upon the conclusion of the hearing and no further steps will be covered by Legal Aid. In these cases where a client has become ineligible, Legal Aid will seek reimbursement of any fees paid for work done following the finding of ineligibility.

9. Billing Cap

Management Council has directed that a billing cap of \$250,000.00 per year be imposed on individual counsel billing as of April 1, 2010.

February 2009

NOTICE TO PROFESSION

Legal Aid Manitoba Office Re-Branding

Effective immediately, the Legal Aid Manitoba (LAM) law offices are being re-branded to highlight the individual office's name, with the secondary focus being that it is an independent office of Legal Aid Manitoba. This is to ease any confusion over conflict of interest between LAM offices.

LAM is also in the process of changing the name of the Drop-in Centre to the Application Centre. This change is to better address what the Centre does and does not do, making it more self-explanatory and easily recognizable to the public. This name change is expected to be completed by Summer 2009.

If you have any questions regarding these changes, please call Lea Gunner, Communications Officer at (204) 985-9741 or email legun@legalaid.mb.ca.

www.legalaid.mb.ca

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PRACTICE DIRECTIVE

Process Services & Billing Practice

Effective January 12, 2009, process services will be paid by Legal Aid Manitoba as per the schedule below for any private contractor.

Effective January 12, 2009, the billing practice respecting private law firms (consistent with Translation Services) will be to bill the firms directly.

1. Services within the City		
a) Where documents are served and an affidavit of services is provided	Up to two attempts	\$28.00
	Additional attempts	\$10.00
b) Where the documents are not served and an affidavit of attempt is provided	Up to two attempts	\$28.00
	Additional attempts	\$10.00
c) Where the documents are not served as in b) but the lawyer does not request an affidavit of attempt	Up to two attempts	\$18.00
	Additional attempts	\$10.00
d) In the case where an address is provided and the dwelling proves to be vacant there will be an attendance fee of		\$18.00
2. Tracing Fee		
Usually no fee unless extensive tracing is required. Fee per hour		\$45.00
3. Rushes		
	For two attempts	\$32.00
	Additional attempts	\$10.00
4. Mileage Charges outside City Limits		
For each kilometre, measured from downtown		\$0.45
Waiting time per hour		N/C
Travelling time per hour (under 3 hours)		N/C