

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING is dated for reference April 1, 2020

BETWEEN:

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

(the "Attorney General")

AND

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

(the "Society")

WHEREAS:

- A. The Attorney General is responsible for the administration of justice in British Columbia, including the funding of a provincial legal aid system.
- B. The Society is a non-profit corporation continued by the *Legal Services Society Act*, S.B.C. 2002, c. 30 (the "Act"), the objects of which are:
 - a. subject to s. 10(3), to assist individuals to resolve their legal problems and facilitate their access to justice;
 - b. subject to s. 10(3), to establish and administer an effective and efficient system for providing legal aid to individuals in British Columbia; and
 - c. to provide advice to the Attorney General respecting legal aid and access to justice for individuals in British Columbia.
- C. Section 21(1) of the *Act* provides that the Attorney General and the Society are to enter into negotiations in an attempt to arrive at a Memorandum of Understanding.
- D. Section 21(2) of the *Act* provides that the matters that may be negotiated as part of the Memorandum of Understanding include:
 - a. an estimate of the government funding that the Attorney General anticipates will be provided to the Society in each of the 3 fiscal years to which the Memorandum of Understanding is to apply;
 - b. the types of legal matters in relation to which the Society may provide legal aid, and those in relation to which the Society must not provide legal aid, with government funding;

- c. the priority to be accorded to the types of legal matters in relation to which the Society may provide legal aid with government funding;
 - d. how, if at all, the Society is to be able to provide, with government funding, legal aid in circumstances that are not contemplated by, or do not accord with, the terms and conditions established under paragraphs (b) and (c);
 - e. the Society's participation in justice reform initiatives; and
 - f. an annual review with the Attorney General of the budget of the Society and the measures taken and to be taken by the Society to implement the terms of the Memorandum of Understanding.
- E. The Attorney General and the Society acknowledge the mutual benefit derived from working cooperatively to enhance the delivery of innovative Legal Aid services that promote early solutions and faster justice.
- F. The *Legal Services Society Act*, the Memorandum of Understanding, the Mandate Letter and any successor document, the Service Plan, and the Approved Budget provide the accountability framework for Legal Aid service delivery.

THEREFORE the parties agree as follows:

DEFINITIONS

1. In this Memorandum, unless the context otherwise requires, the following definitions will apply:
- a. all terms used or defined in the *Act* and used in this Memorandum will have the meanings ascribed to them in the *Act*;
 - b. "Accumulated Surplus" means the net amount of annual surpluses and deficits of the Society from previous fiscal years, as reported in the Society's annual Statement of Operations and Accumulated Surplus;
 - c. "Approved Budget" means the budget approved by the Attorney General pursuant to s. 18 of the *Act* for a fiscal year;
 - d. "Canada" means the Government of Canada;
 - e. "Case Management Fee" means a fee to be paid by the Government of Canada to the Society for the management of Federal Court-Ordered Counsel Cases;
 - f. "Category A" means the category within the Approved Budget within which cases will be accounted for where the total of the fees and disbursements are less than or equal to \$75,000.
 - g. "Category B" means the category within the Approved Budget within which a case will be accounted for where the total of the fees and disbursements exceed \$75,000 and are less than or equal to \$175,000, or where it is a Court Appointed Counsel Case, or a Charter Required Counsel Case.

- h. "Category C" means the category within the Approved Budget within which a case will be accounted for, where the total of the fees and disbursements exceed \$175,000, or where the case is one in which the rate payable to counsel exceeds the Society's enhanced fee rate.
- i. "Charter Required Counsel Case" means a legal matter in which a court or the government authority with conduct of the matter determines, or the Society reasonably determines, that an individual who does not otherwise qualify to become an Eligible Individual requires representation by a lawyer to meet the requirements of s. 7 or 11 of the *Charter*;
- j. "Contribution Agreement" means the Agreement Respecting Legal Aid in Criminal Law, *Youth Criminal Justice Act* and Immigration and Refugee Matters between the Province and Canada;
- k. "Court Appointed Counsel Case" means a legal matter involving an individual who does not otherwise qualify to become an Eligible Individual in which:
 - i. a court appoints counsel as *amicus curiae* in a criminal matter; or
 - ii. a court or the Review Board, as the case may be, appoints counsel under any of the following sections of the *Criminal Code*:
 1. s. 486.3 (appointment of counsel in cases involving cross-examination of vulnerable witnesses);
 2. s. 672.24(1) (appointment of counsel where a court has reasonable grounds to believe that an unrepresented accused is unfit to stand trial);
 3. s. 672.5(8) (appointment of counsel where an accused is unrepresented at a disposition hearing);
 4. s. 684 (appointment of appeal counsel by Court of Appeal); or
 5. s. 694.1 (appointment of appeal counsel by Supreme Court of Canada);
- l. "Deferred Contribution Fund" means the net amount of surpluses and deficits from prior years' Category B as reported in the notes to the Society's annual audited financial statements.
- m. "Deficit" means a situation where the Society's overall expenditures exceed the Society's overall revenues in a fiscal year.
- n. "Disbursements" means costs incurred by Society staff, tariff lawyers or a person otherwise authorized by law, to provide legal advice and representation;
- o. "Eligible Individual" means an individual whom the Society determines to be qualified to receive legal aid according to the criteria the Society establishes pursuant to the *Act*;
- p. "Federal Court-Ordered Counsel case" means a Charter-Required Counsel Case prosecuted by Canada pursuant to the *Controlled Drugs and Substances Act* or such other proceeding as Canada and the Society may agree;

- q. "Federal High Cost Case" means a case prosecuted by or falling within the legislative authority of Canada in relation to an Eligible Individual in which the aggregate of fees and disbursements exceeds \$50,000;
- r. "Fees" means the cost of legal representation by Society staff, tariff lawyers or a person otherwise authorized by law to provide legal advice and representation.
- s. "Legal Aid" means legal and other services provided under the Act;
- t. "Ministry" means Ministry of Justice;
- u. "Province" means the Government of the Province of British Columbia;
- v. "Provincial Transfer" means funding provided to the Society by the Attorney General in a fiscal year, as approved pursuant to s. 18 of the Act, to enable the Society to satisfy the objects defined in s. 9 of the Act;
- w. "Provincially Funded Services" means any one or more of the services in respect of the Legal Aid matters, as described in Article 9, which the Society will deliver using the Provincial Transfer;
- x. "Special Funding Agreement" means an agreement between the Attorney General and the Society pursuant to which the Society will provide Legal Aid in a particular case and the Attorney General will reimburse the Society for Fees and Disbursements where the definition of Category C is met;
- y. "Standing Committee" means the Standing Committee continued under Article 14 of the Memorandum of Understanding;
- z. "Surplus" means the excess of actual or projected amount of revenue over the actual or projected costs to be incurred by the Society in any fiscal year;
- aa. "Tariff Rates" means the Society's published rates payable to counsel for fees and disbursements as set out, in the General Terms and Conditions, and the tariff policies.
- bb. "Working Group" is the Working Group continued under Article 12.

TERM

2. Notwithstanding the actual date of execution and delivery of this Memorandum, this Memorandum will be in effect for the period commencing on April 1, 2020 and ending on March 31, 2023.
3. The parties will begin negotiating a successor Memorandum of Understanding not less than nine months prior to the expiry of the Term.

BUDGET REVIEW

4. The Attorney General and the Society agree to cooperate in an annual review of the Society's budget and the measures taken to implement the terms of the Memorandum of Understanding.
5. The Attorney General and the Society also agree to discuss the application of any Accumulated Surplus.

PART 1 – PROvincially FUNDED SERVICES

RESPONSIBILITIES

6. Subject to the Attorney General's approval of the Society's budget for a fiscal year pursuant to s. 18 of the Act, the Attorney General will pay the Provincial Transfer to the Society monthly in a mutually agreeable manner to be confirmed at the beginning of each fiscal year and will deliver the first and last monthly instalments no later than five business days after the beginning of each fiscal year.
7. The Society will apply the Provincial Transfer to:
 - a. provide an efficient and cost-effective administrative infrastructure necessary to deliver the Provincially Funded Services, provide Legal Aid to Eligible Individuals in British Columbia giving priority to low income individuals, and generally fulfil its statutory objects; and
 - b. provide Provincially Funded Services, including Legal Aid and other services to Eligible Individuals in British Columbia, giving priority to low income individuals.
8. Subject to the priorities and surplus rules set out in this Memorandum, the Society will apply the Provincial Transfer in the manner and the amounts set out in the Approved Budget.

SERVICES

9. The Society will provide the following Provincially Funded Services, to the maximum amount set out in the Approved Budget in each fiscal year and within the Society's capacity to deliver those services. The services listed below are indicative of the type of Legal Aid services the Society provides and are not indicative of relative priority.
 - a. **Service:** Representation of, and advice for, Eligible Individuals as well as individuals where a court or the Society has determined that counsel is required pursuant to sections 7 or 11 of the *Canadian Charter of Rights and Freedoms* or other legislation. Such services may include, but are not limited to:
 - i. Representation by a lawyer in adult criminal cases where the person is an Eligible Individual or the case is a Charter Required Counsel Case or a Court Appointed Counsel Case.
 - ii. Representation by a lawyer in proceedings under the *Youth Criminal Justice Act* where the person is an Eligible Individual or the case is a Charter Required Counsel Case or a Court Appointed Counsel Case.
 - iii. Twenty-four hour advice for individuals detained by police.
 - iv. Representation in proceedings under the *Child, Family and Community Services Act*.
 - v. Representation in appeals, applications for judicial review, and other matters as the Society deems appropriate.

- b. **Service:** Representation of Eligible Individuals in family law matters where a court order is required to ensure the safety or security of an individual. Such services may include, but are not limited to:
 - i. Representation by a lawyer where the client's safety or the safety of her or his children is at risk; the client has been denied access, contact or parenting time to her or his children on an ongoing basis; or there is a risk that a child will be permanently removed from the province.
 - ii. Attendance/Participation in alternative dispute resolution matters, appeals, applications for judicial review, and other matters as the Society deems appropriate.
- c. **Service:** Duty counsel for Eligible Individuals in criminal and family cases. Such services may include, but are not limited to:
 - i. Provincial Court family (including CFCSA matters) duty counsel.
 - ii. Supreme Court family duty counsel.
 - iii. Duty counsel for persons in custody.
 - iv. Duty counsel for persons not in custody.
- d. **Service:** Representation of Eligible Individuals who have a legal problem the disposition of which could affect their liberty or where representation is required to ensure a fair hearing. Such services may include, but are not limited to:
 - i. Representation in proceedings under the *Mental Health Act* in which an individual is detained or on leave from a hospital or designated facility.
 - ii. Representation in disciplinary proceedings within a prison.
 - iii. Representation in appeals, applications for judicial review, and other matters as the Society deems appropriate.
- e. **Service:** Information and advice to assist Eligible Individuals in resolving criminal, child protection, family and related legal problems. Such services may include, but are not limited to:
 - i. Publications, websites, and online services.
 - ii. Legal Information Outreach Workers.
 - iii. Advice services.
 - iv. Liaison with community organizations and others that the Society deems appropriate to better serve the legal needs of low-income people.
- f. **Service:** Continued representation of Eligible Individuals who have been provided with representation pursuant to paragraph (b) in matters where further proceedings are required to ensure the safety or security of an individual. Such services may include, but are not limited to:

- i. Representation in cases involving:
 1. significant contested issues involving sexual, mental, or physical abuse of the client or the client's children;
 2. the opposing party is using the justice system to continue a pattern of abuse;
 3. there is significant risk of the client being alienated from his/her children;
 4. the client or children may be left at physical or psychological risk if coverage of the case is discontinued;
 5. resolution of family issues will have a significant positive impact on the relationship between the client and his/her child or the environment in which the child lives.

- g. **Service:** Representation of Eligible Individuals to the limit of available federal and provincial funding where there is a federal-provincial contribution agreement in place to share costs. Such services may include, but are not limited to:
 - i. Representation for Immigration problems that could lead to removal from Canada to a country where the individual would be at risk (e.g., refugee claims, including responding to ancillary applications, Pre-removal Risk Assessment Humanitarian and Compassionate applications, and applications to remove long-term, permanent residents).
 - ii. Duty counsel for persons held in custody as a result of immigration proceedings.
 - iii. Representation in Federal High-Cost Cases and Federal Court-Ordered Counsel cases.
 - iv. Representation in appeals, applications for judicial review, and other matters as the Society deems appropriate.

- h. **Service:** Legal information and advice to assist individuals in resolving civil legal problems. Such services may include, but are not limited to:
 - i. Publications, websites, and online services.
 - ii. Legal Information Outreach Workers.
 - iii. Advice services.
 - iv. Liaison with community organizations and others that the Society deems appropriate to better serve the legal needs of low-income people.

- i. **Service:** Representation of eligible individuals in civil matters. Such services may include, but are not limited to:
 - i. Representation for civil issues such as foreclosure or bankruptcy that are related to a family law matter for which representation has been approved.

- j. **Service:** Information, advice and representation services that are part of a justice reform initiative. These services may include, but are not limited to:
 - i. Expanded Criminal Duty Counsel;
 - ii. The Parents Legal Centre;
 - iii. Expanded Family Duty Counsel; and
 - iv. Expanded Family LawLINE.

10. The Society will not apply Provincial Transfer funding to the following services:

- a. representation of individuals in proceedings relating to defamation; and,
- b. representation of individuals in private criminal prosecutions.

SOCIETY REVENUES OUTSIDE THE MEMORANDUM

11. Nothing in this Memorandum precludes the Society from receiving separate or additional funding from the Province for the purpose of providing specific services, provided that it does so in accordance with the Act.

WORKING GROUP AND STANDING COMMITTEE CONTINUED

12. The parties will continue a Working Group composed of members from the Ministry and the Society as designated by the Standing Committee.

13. The Working Group will promote cooperation and coordination between the Ministry and the Society and will:

- a. anticipate and address any issues that may affect the Society's mandate under the Act or the Ministry's responsibility for Legal Aid, including operational, administrative, policy, justice reform, program, and financial issues;
- b. identify and address potential budget pressures at the earliest possible opportunity;
- c. keep one another informed in a timely manner of both potentially contentious issues and issues that may have a significant impact on the operations of the Society and the Ministry;
- d. address justice transformation and innovation initiatives;
- e. consider and recommend amendments to the terms of this Memorandum as described in Article 16 and 17; and
- f. develop the successor Memorandum of Understanding.

14. The parties will continue a Standing Committee composed of the Chief Executive Officer of the Society or another person designated by the Chief Executive Officer and the Assistant Deputy Minister of Justice Services Branch of the Ministry or another person designated by the Assistant Deputy Minister.

15. The Standing Committee will promote cooperation, coordination and integration between the Attorney General, the Society, and other justice system partners with respect to the delivery of Legal Aid and the development of justice reform initiatives in order to promote:
- i. justice transformation and innovation initiatives;
 - ii. positive, lasting solutions to legal problems that benefit clients, communities, and the justice system; and
 - iii. an efficient and effective system for providing legal aid.

AMENDMENTS

16. The parties may agree to amend the terms of this Memorandum from time to time, including:
- a. in response to legislative changes or judicial decisions that materially affect either party's responsibilities respecting Legal Aid;
 - b. to ensure consistency with the budget approved by the Attorney General pursuant to s. 18 of the Act;
 - c. in response to changes in the appropriation received by the Attorney General; or
 - d. to make the terms and conditions of the Memorandum consistent with the Contribution Agreement.
17. An amendment becomes part of this Memorandum when it has been recorded in writing, dated, signed by both parties, and attached to this Memorandum.

DISPUTE RESOLUTION

18. In the event of a dispute between the parties regarding the interpretation or operation of this Memorandum or the obligations of the parties under it, they commit, time permitting, to the following procedure:
- a. the parties will promptly provide each other with written notice of the dispute, including full particulars of the nature of the dispute, any underlying interests, and proposed solutions;
 - b. the parties will attempt in good faith to resolve the dispute through direct negotiation;
 - c. the parties may agree to attempt to resolve the dispute with the assistance of a mediator;
 - d. if the parties agree to attempt to resolve the dispute with the assistance of a mediator, or if the parties fail to resolve the dispute through direct negotiation within 20 working days after the delivery of the notices of dispute, the parties will appoint a mediator;
 - e. if the parties are unable to agree on a mediator within 30 days after the delivery of the notices of dispute, the parties will ask the Mediate BC to appoint a mediator in consultation with the parties;

- f. the parties will meet with the mediator within 20 working days of the mediator's appointment and will attempt in good faith to resolve the dispute with the assistance of the mediator;
- g. the period of mediation of the dispute will not exceed 30 working days; and
- h. the parties will bear equally the costs of the mediation, including fees and expenses.

PART 2 – FEDERAL/PROVINCIAL CONTRIBUTION AGREEMENT

CONTRIBUTION AGREEMENT

- 19. The Contribution Agreement establishes a number of terms affecting the provision and funding of certain Legal Aid matters, and the Attorney General and the Society wish to ensure the continuing, effective delivery of Legal Aid by identifying those terms and the respective obligations pertaining to those terms within the Memorandum.

FEDERAL HIGH-COST CASES

- 20. Subject to funding being available for reimbursement, the Society will use its best efforts, on behalf of the Attorney General, to provide Legal Aid in respect of Federal High Cost Cases.
- 21. The Society will manage Federal High-Cost Cases in accordance with LSS Tariff Rates.
- 22. The Attorney General will reimburse the Society for the Society's expenditures relating to the provision of Legal Aid in Federal High Cost Cases, including fees and disbursements that exceed \$50,000, to the maximum funding limits specified in the Approved Budget. The Attorney General and the Society will confirm in writing the cases covered by this provision.
- 23. The Society will invoice the Attorney General on a monthly basis for these cases.
- 24. The Attorney General will make best efforts to provide payment within 30 days.
- 25. The Attorney General will promptly notify the Society if the Attorney General becomes aware of an anticipated inability to reimburse the Society in accordance with this Article, or of a delay in payment of such reimbursement, and the Society may terminate Legal Aid in respect of these cases upon receipt of such notice.
- 26. The Attorney General will reimburse the Society for any costs incurred in providing Legal Aid in respect of Federal High Cost Cases up to the date of termination.
- 27. If the Society's actual or projected expenditures on Legal Aid in respect of Federal High Cost Cases in a fiscal year will exceed the amount specified in the Approved Budget, the Working Group will, as soon as these circumstances become apparent, meet and negotiate options.

FEDERAL COURT-ORDERED COUNSEL CASES

- 28. Subject to Article 30 the Society will use its best efforts, on behalf of Canada, to provide the following administrative services in respect of Federal Court-Ordered Counsel Cases:

- a. Upon being notified by the Province or Canada, as the case may be, that the Department of Justice on behalf of the Attorney General of Canada agrees or is required by a ruling in a proceeding brought pursuant to the *Controlled Drugs and Substances Act*, or such other proceeding as Canada and the Society may agree, to provide funded counsel for a person who does not otherwise qualify for Legal Aid, the Society will:
 - i. cooperate with the Department of Justice to prepare an estimate of the total of the Fees and Disbursements to be incurred in funding counsel for the person requiring the provision of funded counsel and remit that estimate to the Department of Justice, Canada; and
 - ii. upon receiving confirmation from the Department of Justice, Canada, that the estimated Fees and Disbursements will be reimbursed, will use its best efforts, on behalf of the Department of Justice, Canada, to appoint, administer and pay counsel for that person.
 - b. The Society will keep all records and financial accounts pertaining to a Federal Court-Ordered Counsel Case for a period of three years following the expiration of the Contribution Agreement;
 - c. Subject to applicable federal or provincial privacy legislation and to solicitor-client privilege, the Society will make all records and financial accounts pertaining to a Federal Court-Ordered Counsel Case available to the Department of Justice, Canada, or to its designated auditors and evaluators, during normal business hours, upon request (for greater certainty, an audit or evaluation may only take place after the conclusion of the proceeding).
29. The Society in providing Legal Aid for Federal Court-Ordered Counsel Cases will apply the Tariff Rates.
30. The Society will not be obligated to provide any of the administrative services described in Article 28 unless Canada has confirmed in writing that it will:
- a. reimburse the Society for all Fees and Disbursements incurred by the Society to fund counsel appointed by the Society under this Article; and
 - b. pay the Society the Case Management Fee; and
 - c. make best efforts to provide payment within 30 days.

PART 3 – FUNDING FOR CASES

31. Fees and disbursements in relation to a case up to and including \$75,000 will be paid from Category A in the Approved Budget.
32. Fees and disbursements greater than \$75,000 up to and including \$175,000 in relation to a case, will be paid from Category B in the Approved Budget.
33. Fees and disbursements for a Charter Required Counsel Case or a Court Appointed Counsel Case up to and including \$175,000 will be paid from Category B in the Approved Budget.

34. The Approved Budget will include a designated amount for the management of Category B cases paid from category B, including staff resources, contracted resources, and associated costs. If the costs associated with the management of cases billed to Category B are projected to exceed the designated amount in the Approved Budget, the Working Group will meet to discuss the issue.
35. Fees and disbursements greater than \$175,000 in relation to a case or where the case is one in which the rate payable to counsel exceeds the Society's enhanced fee rate will be paid from Category C in the Approved Budget and will be subject to a Special Funding Agreement.
36. In the event that a court orders that counsel with conduct of a case be paid in excess of the Society's enhanced fee rate, the Attorney General will pay all costs incurred as a result of that case from the date such an order is made.
37. The Approved Budget will include a designated amount for the management of Category C cases paid from Category C including staff resources, contracted resources and associated costs. If the costs associated with the management of cases billed to Category C are projected to exceed the designated amount in the Approved Budget, the Working Group will meet to discuss the issue.
38. The Society will invoice the Attorney General on a monthly basis the cost of Category C cases.
39. The Attorney General will make best efforts to provide payment within 30 days.
40. The Attorney General will provide the Society with an advance on the costs expected to be billed to Category C in April of each fiscal year. This amount will be deducted from the final Provincial Transfer Payment. The amount of this advance will be determined in the budget development process for each fiscal year.
41. If the Society is subject to litigation as a result of the management of a case paid from Category C, the Attorney General will not require prior approval of legal expenses associated with that litigation and will indemnify the Society's expenses related to that litigation. The society will provide the Attorney General with notice of said litigation immediately upon being served. The parties agree to discuss a litigation plan to manage the litigation and the Attorney General will indemnify the Society for the resulting legal expenses related to the litigation.
42. Where the Attorney General is constitutionally required to provide Legal Aid to an individual who is not an Eligible Individual, the Attorney General and the Society will work cooperatively to avoid disruption of legal proceedings and to promote the effective and efficient administration of justice.

TARIFF PROCEEDINGS SURPLUSES AND DEFICITS

43. If, in any fiscal year, it appears that a Deficit or a Surplus is likely to result from the provision of Provincially Funded Services, the Society will inform the Attorney General through the Working Group as soon as the Society becomes aware of the possibility.
44. If the Society cannot provide the Provincially Funded Services for the amounts specified and allocated in the Approved Budget, the Working Group will, as soon as these circumstances become apparent, meet and negotiate options.

45. If, in any fiscal year, a Surplus results from the provision of Provincially Funded Services, other than criminal law services, the Society may apply that Surplus in the following order of priority:

- a. first to offset the sum of all surpluses and deficits for the society other than Category B, immigration and refugee proceedings, Federal Court-Ordered Counsel cases, and Federal High-Cost Cases.
- b. second, the Society will refer the use of any further Surplus to the Working Group to determine how that Surplus should be applied;
- c. third, if the Working Group cannot reach agreement, the matter will be referred to the Standing Committee.

In determining the appropriate use and allocation of the projected Surplus, the Working Group and Standing Committee will be guided by the Ministry core service policies and priorities, the Province's fiscal plan, and the Society's Board of Director's priorities.

46. In years when criminal Category A costs are less than the amount allocated for these cases in the Approved Budget, the Society will apply the surplus in criminal Category A in the order set out below:

- a. First, to offset the sum of all surpluses and deficits for the society other than Category B, immigration and refugee matters, Federal Court-Ordered Counsel cases and Federal High-Cost Cases.
- b. Any remaining surplus will then be used to offset any deficit in Category B.
- c. If there is any remaining surplus, the Society will enter into negotiations with the Attorney General to reach a common understanding as to the best use of the surplus including using the surplus to offset any Category C deficit.
- d. Any remaining surplus will be transferred to the Accumulated Surplus.

47. In years when Category B costs are less than the amount allocated for these cases in the Approved Budget the Society will:

- a. Enter in to negotiations with the Attorney General to reach a common understanding as to the best use of the surplus including using the surplus to offset any Category C deficit.
- b. Transfer any remaining surplus in Category B to the Deferred Contribution Fund.

48. In years when Category B costs exceed the amount allocated for these cases in the approved budget the Society will:

- a. Transfer funds from the Deferred Contribution Fund to offset the cost in excess of the approved budget
- b. If the excess cost is greater than the Deferred Contribution Fund, the Society will, as soon as these circumstances become apparent:
 1. Apply any Criminal Category A Surplus not required to cover any shortfall relating to any other Provincially Funded Services in Article 9 other than services in respect of immigration and refugee matters, Federal Court-Ordered Counsel cases. and Federal High-Cost Cases;
 2. Refer the issue to the Working Group to determine how the costs should be funded.
 3. If the Working Group cannot reach an agreement on the issue, the matter will be referred to the Standing Committee.

AGREEMENT made this 1st day of April, 2020

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



David Eby, QC
Attorney General

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



Jean P. Whittow, QC
Chair – Legal Services Society Board of Directors