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Press Release For Immediate Distribution

Ontario still short-changing Legal Aid Plan lawyers association says– Calls on AG to present a serious strategy for Legal Aid

Toronto, ON, September 8, 2009 – The Government's proposed new funding for the legal aid system is an incomplete solution to the two decade-long erosion of access to justice. It will not solve the crisis for the most disadvantaged members of the Ontario community facing serious criminal, family and immigration law issues.

“Unfortunately, there does not seem to be a vision of restoring access to justice for everyone in Ontario”, said Frank Addario, President of the CLA. “There is no commitment to make up for the cuts and freezes that have destroyed the legal aid program. There is no firm commitment to a funding review mechanism. There is no plan to take into account population growth or increased demand on the system – all of which have eroded the program in the past. In real terms, the proposed increase to the budget might be as little as 10%, zero or even zero.”

The compensation paid to lawyers for legal aid work has risen by only 15 per cent over the last 22 years, while the CPI (consumer price index) has risen more than 75%. Judges and Crown Attorneys have received increases of almost exceeding 100% in the same period. Underfunding has forced service cuts and unreasonable time limits on legal services. The low level of funding has also resulted in an exodus of experienced criminal defence lawyers, deterioration in the expertise and quality of legal aid counsel, and an increasing risk of wrongful convictions. Today's announcement does not reverse that trend.

The Criminal Lawyers' Association has called upon the Ontario government to make a concrete commitment to fixing the legal aid system, including a stable and adequate level of funding to restore the system, and a regular review

mechanism to prevent future crises. Mr. Addario said: “My members embrace the public service entailed in participating in the legal aid program. But they are no longer willing to subsidize the program with donated services so that government can continue to neglect the program. Every time there is a crisis the government of the day responds with a patchwork solution”, added Mr. Addario. “Temporary bumps in funding to address a perceived crisis are a blueprint for long-term decline. They don’t solve the problem.”

“Portraying this as the largest funding increase in legal aid’s history obscures the critical issue, namely, what amount of funding is required to fix the crisis once and for all? According to the government’s own hand-picked advisors, the system needs to be restored to 1987 levels adjusted for inflation. The Attorney General’s announcement of only a 5 percent increase in funding to Legal Aid Ontario for four years falls far short of what is needed to fix the problem.”

Mr Addario added that the CLA board unanimously decided this past weekend that the boycott of serious cases begun on June first will continue until the program is fixed. “We intend to send a clear and unmistakable message that the system is broken and the government has to fix it”.

The CLA will continue to work constructively with government to solve the crisis in access to justice.

The Criminal Lawyers' Association (CLA) is one of the largest specialty legal organizations in Canada, with more than 1,000 members. We are a voice for criminal justice and civil liberties in Canada. Our advice and perspective is sought by all levels of government and the judiciary on issues relating to legislation and the administration of criminal justice. We also assist our members in every aspect of the practice of criminal litigation. The Association is governed by an executive and board of directors elected by the membership.

A list of our membership and a more detailed description of our organization is located at <http://www.criminallawyers.ca>

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Backgrounder

Legal Aid Ontario Funding Crisis A Brief History of Cuts Freezes and Advice Not Followed

Numerous independent and expert reviews have consistently recognized the critical and urgent need for substantial increases in the legal aid tariff:

In 1974, the Osler Task Force recommended substantial increases. There was no adjustment until 1979 and, even then, the adjustment was significantly less than what had been recommended.

1982: Law Society recommended 30% tariff increase to reflect an increase of 31.7 percent in the CPI between 1979 and 1982. The tariff was adjusted by only 5% effective July 1, 1982, and a further 5% for certificates issued after July 1, 1983.

1983: Law Society and an All Party Standing Committee of the Legislature recommended that the tariff be significantly increased, emphasizing that between 1967 (when the Plan was introduced) and 1981, the average weekly wage rose by some 350%, the CPI by 225%, while Legal Aid fees rose by only 50%. However, this resulted only in a further 5% increase.

1985: a government-appointed fact finder (Graeme McKechnie), concluded that the tariff had failed to keep pace with any objective economic, professional income and cost indicators, and that the tariff was inadequate to meet the purposes of the legal aid system in Ontario. He recommended a significant increase to the tariff. The Government responded to the fact finder's report by making some adjustments to the tariff albeit significantly more modest than McKechnie recommended. Beginning in 1992, notwithstanding McKechnie's recommendations, a series of unilateral reductions and adjustments were made to the criminal tariff, including a 5% reduction in the hourly rate, and caps and reductions on total fee payments to individual lawyers.

1994 to 1996: there were a series of substantial criminal law tariff cuts, maximum hourly caps and service reductions made to the criminal legal aid system.

In 1998, minor adjustments were made to service coverage but hourly rates were not re-adjusted.

In 2000, the Holden and Kaufman Tariff Review Task Force Report conducted a comprehensive examination of various benchmark comparisons (e.g. cost of living, effective maximum fees, the declining number of lawyers paid by legal aid,

the incomes of legal professionals, income paid to other professionals, and a market research survey of fees charged by legal professionals). Holden and Kauffman recommended that to prevent continued erosion in the quality and accessibility of services the tariff's hourly rate should range from \$105 to \$140 (based on the level of the lawyer's experience).

Adjusted for inflation, the tariff rate today would be \$120 to \$160. Despite these recommendations, following an unsuccessful boycott by criminal defence lawyers, in 2002, 2004 and 2007, only 5% across-the-board increases were implemented by the provincial government. These increases still leave the tariff at less than half the rate paid by Ontario to outside counsel in routine matters (\$77, \$87 and \$97). Ontario pays outside counsel \$192 per hour.

In 2008, the Trebilcock Report was released documenting the flight of senior counsel from the program and identified a return of those counsel as a high government priority. "The anger within the private bar at what they regard as grossly inadequate hourly rates. ...[is] palpable, and the sense of alienation...ubiquitous. They are...voting with their feet in exiting the system in increasing numbers....The certificate system is in tenuous condition....this issue is one that requires urgent and immediate attention."

Professor Trebilcock pointed out that the rates recommended by Holden and Kaufman were more consistent with a true market rate for public law services. He endorsed the Holden-Kaufman view that if the government fails to act it will ensure that the number and quality of lawyers providing legal aid services will deteriorate further. His recommendations have never been implemented.

In 2008, the Goudge Report recommended that compensation for lawyers who accept certificates in criminal paediatric homicide cases be "significantly increased". This recommendation has not been implemented.

In 2008, the LeSage and Code Report recommended a tariff increase for lawyers taking on serious complex cases. This increase was recommended because Code and Lesage properly concluded that due to the low legal aid tariff, many senior experienced counsel have stopped taking on legal aid work. The result is that junior, inexperienced lawyers are handling the vast majority of the long complex trials. The traditional method of mentoring junior counsel has withered. Code and Lesage said that underfunding has created a vicious cycle of inefficiency in the justice system. In order to reduce delay and increase productivity, Code and Lesage recommended increasing the legal aid tariff for long complex cases as a way to induce senior, experienced counsel to take on these difficult cases.

In 2009, the County and District Law Presidents Association Report also recommended that the legal aid tariff be increased, as it has "remained relatively unchanged for 20 years".