



## **LEAD FAMILY DUTY COUNSEL FUNDING AGREEMENT**

**Victoria**

**Month Date, 2010 to Month Date, 2011**

### **BETWEEN:**

**LEGAL SERVICES SOCIETY** a Corporation continued under the *Legal Services Society Act*, S.B.C. 2002, c 30

("LSS")

### **AND:**

**Name, (Barrister & Solicitor)**

("Lead Family Duty Counsel" Victoria, B.C.)

### **RECITALS:**

- A. Legal Services Society (**LSS**) is an independent society with a mandate to provide legal aid services under the *Legal Services Society Act* (the "**Act**").
- B. The Lead Family Duty Counsel is a lawyer in good standing under the *Legal Professions Act (British Columbia)* (the "**Legal Professions Act**") and the Rules of the Law Society of British Columbia (the "**Law Society**").
- C. LSS and the Lead Family Duty Counsel acknowledge that the Lead Family Duty Counsel is an independent contractor who will not be an employee of LSS and who has been requested by LSS to provide the Services defined below.
- D. Nothing in this agreement shall be construed to create an employer/employee relationship between LSS and the Lead Family Duty Counsel.

### **THE PARTIES AGREE FOR CONSIDERATION AS FOLLOWS:**

#### **1. DEFINITIONS**

- 1.1 Definitions created in the Title, Recitals, Schedules, and body of this Agreement will apply to this entire Agreement.

#### **2. LEGAL STATUS OF LEAD DUTY COUNSEL**

- 2.1 The Lead Family Duty Counsel represents that:



- 2.1.1 if an individual, he or she is a lawyer in good standing under the *Legal Professions Act* and the Rules of the Law Society; or
- 2.1.2 if a law corporation, it is in good standing under the *Company Act* of British Columbia and employs only lawyers who meet the description in subparagraph 2.1.1.

- 2.2 The Lead Family Duty Counsel represents that he/she has authority to enter into this Agreement and to be bound by all of its provisions.
- 2.3 The Lead Family Duty Counsel shall immediately advise LSS of any change in status under the *Legal Profession Act* or the Rules of the Law Society.

### **3. SERVICES**

- 3.1 The Lead Family Duty Counsel shall provide services as set out in Schedule "A" (the "**Services**") in the area of the Province of British Columbia described as Victoria ("**Location**").
- 3.2 In providing the Services, the Lead Family Duty Counsel shall adhere to all applicable LSS policies and procedures delivered by LSS to the Lead Family Duty Counsel and as may be amended or added to from time to time by LSS ("**Policies**").
- 3.3 The Lead Family Duty Counsel shall cooperate with all LSS departments, offices and other Lead Family Duty Counsel to enhance the delivery and efficiency of the Services.
- 3.4 The Lead Family Duty Counsel acknowledges that, in providing the Services, it is acting in the place of LSS, and that, during the Term of this Agreement, the Lead Family Duty Counsel shall take all reasonable steps necessary to present LSS in a positive light and shall refrain from taking any action or making any comments likely to detract from LSS' reputation.

### **4. TERM AND CONTRACT RENEWAL**

- 4.1 Unless terminated earlier by one of the parties under the terms and conditions of this Agreement or unless extended by paragraphs 4.2 to 4.4, this Agreement will remain in force for **12** months from date of execution (the "**Term**").
- 4.2 LSS may make a funding commitment offer to the Lead Family Duty Counsel to extend the Services beyond the end of the Term.
- 4.3 Where that funding commitment offer is accepted by the Lead Family Duty Counsel, the Lead Family Duty Counsel shall be deemed to be operating under the terms and conditions of this Agreement for the duration of the commitment period.



- 4.4 If neither LSS nor the Lead Family Duty Counsel has terminated this Agreement in accordance with Clause 8, and if LSS does not make a funding commitment offer before or at the end of the Term, LSS shall continue to provide the Lead Family Duty Counsel with funding on a monthly basis at the same level and in accordance with the same terms and conditions as set out in this Agreement.

## **5. FUNDING BY LSS**

- 5.1 During the Term, LSS shall fund the Lead Family Duty Counsel in the amount of \$92.29 per hour (ninety two dollars and twenty nine cents) for Services in Victoria, (inclusive of disbursements) to a maximum of 21 hours per week 48 weeks per year payable through LSS Lawyer E-Services in accordance with the billing guidelines for Family Duty Counsel referrals contained in the General Terms and Conditions of the LSS tariffs for provision of the Services.

## **6. NON-FINANCIAL ASSISTANCE**

- 6.1 LSS shall provide the Lead Family Duty Counsel with non-financial assistance as set out in Schedule "B".

## **7. ASSIGNMENT AND LEAVES OF ABSENCE**

- 7.1 The Lead Family Duty Counsel shall not assign or sub-contract provision of the Services to other persons without the prior written consent of LSS; LSS shall not unreasonably withhold its consent provided that the delegate chosen by the Lead Family Duty Counsel meets the qualification standards required by LSS.
- 7.2 The Lead Family Duty Counsel may take planned leaves of absence for up to 4 weeks in any given year and must assign lawyers from the approved Family Duty Counsel roster to replace him/her during any leave of absence.
- 7.3 Thirty (30) days notice must be given to LSS of any leave of absence planned for more than 2 weeks and the Lead Family Duty Counsel must advise LSS who has been booked to replace him/her.
- 7.4 The Lead Family Duty Counsel shall record all administration (mentorship, coordination, roster scheduling and related duties) time separately from advice services and provide a monthly report to LSS.
- 7.5 The Lead Family Duty Counsel shall inform LSS of any absences due to illness which prevent performance of the Services which exceed 5 days in duration.
- 7.6 The Lead Family Duty Counsel shall provide replacement duty counsel from the approved roster of lawyers for all leaves of absence and where



practicable shall arrange for alternate duty counsel for any scheduled days when either the Lead or alternate roster lawyers are absent due to illness or other emergencies.

## **8. TERMINATION**

- 8.1 Whether or not either party is in default of this Agreement, either LSS or the Lead Family Duty Counsel may terminate it for any reason upon 60 days notice.
- 8.2 If the Lead Family Duty Counsel commits a breach of this Agreement that is not a Major Breach, LSS may serve the Lead Duty Counsel with a Default Notice.

**"Default Notice"** means written notice of a breach of this Agreement, in which the non-breaching party identifies the breach and specifies ways in which to remedy it.

**"Major Breach"** means:

- (a) any unauthorized assignment of this Agreement or delegation of the Services by the Lead Family Duty Counsel;
  - (b) refusal or failure to deliver the Services;
  - (c) refusal or failure to follow the Policies;
  - (d) breach of the Confidentiality Agreement set out in Schedule "C" to this Agreement;
  - (e) refusal or failure to deliver an adequate quality of service in a timely manner; or
  - (f) refusal or failure to remedy the breach(es) described in a Default Notice.
- 8.3 If the Lead Family Duty Counsel commits a Major Breach, LSS may, at its option, do any one or more of the following:
- (a) serve a Default Notice;
  - (b) withhold payment of funding to the Lead Family Duty Counsel until the Lead Family Duty Counsel remedies the breach;
  - (c) on 10 days notice, assume all authority to deliver the Services on terms and conditions set by LSS;



- (d) where options (a) through (c) have been attempted or are not practical in the circumstances, on notice, terminate this Agreement immediately; or
- (e) take such other reasonable action as may be necessary to ensure that the Services continue to be provided.

## **9. EFFECTS OF TERMINATION**

- 9.1 If either party terminates this Agreement, in accordance with the provisions of Clause 8, LSS shall not indemnify the Lead Family Duty Counsel for liabilities incurred after delivery of written notice of termination, save and except for outstanding payments under this Agreement for providing the Services.
- 9.2 Upon termination of this Agreement for any reason, the Lead Family Duty Counsel shall deliver and transfer ownership of all disposable assets belonging to LSS as directed by LSS.

## **10. ACTIONS OR CLAIMS**

- 10.1 The Lead Family Duty Counsel shall immediately notify LSS of any claim, action or other proceeding made, brought, prosecuted or threatened in writing to be brought or prosecuted against the Lead Family Duty Counsel or LSS, or both, as a result of performance or non-performance of any term or condition of this Agreement.

## **11. CONFLICT OF INTEREST**

- 11.1 A director, officer or employee of the Lead Family Duty Counsel shall not be entitled to any Services from the Lead Family Duty Counsel for which that person is an officer, director or employee, but may apply for such Services from another Lead Family Duty Counsel or LSS Regional Office.
- 11.2 Notwithstanding paragraph 11.1, any director, officer or employee of the Lead Family Duty Counsel may receive any legal information or written material normally available from the Lead Duty Counsel.
- 11.3 The Lead Family Duty Counsel is required to contact LSS in writing
  - 11.3.1 Prior to entering into any contractual obligations with a crown corporation or provincial or federal government ministry; or
  - 11.3.2 Prior to accepting an appointment as a decision maker to a court, tribunal or administrative; or
  - 11.3.3 When there is a restriction on their ability to practice law and/or appear in court and where and where the obligation or restriction is in the same court location where they are acting as Lead Family



Duty Counsel. LSS may refuse to enter into an Agreement or may terminate a Lead Family Duty Counsel Agreement to protect the public perception or independence and confidence in LSS services.

## **12. CONFIDENTIALITY**

12.1 The Lead Family Duty Counsel shall ensure that:

12.1.1 He/she is aware of any statutory requirement and all LSS policies relating to confidentiality;

12.1.2 before providing the Services, he/she has executed a Confidentiality Agreement in the form set out in Schedule "C"; and

12.1.3 a copy of the executed Confidentiality Agreement is promptly forwarded to LSS.

## **13. QUALITY ASSURANCE**

13.1 The Lead Family Duty Counsel shall take steps to ensure that the quality of the Services is regularly monitored and that a high standard of service delivery is maintained.

13.2 To ensure a high standard of service to clients referred, pursuant to the Policies, LSS may, at its sole discretion, audit the delivery of the Services either through its management and supervisory staff or by contract with someone authorized to report to LSS on the quality of the Services provided by the Lead Duty Counsel (the "**Auditor**"). The Lead Family Duty Counsel shall cooperate fully with LSS during any audit of the Services and, if so requested, shall allow the Auditor access to any and all documentation pertaining to applications for the Services.

## **14. FINANCIAL REPORTING**

14.1 During the term of this Agreement and for a period of four (4) years after its expiry, the Lead Family Duty Counsel shall maintain proper and up-to-date financial books and records in accordance with generally accepted accounting principles.

14.2 The Lead Family Duty Counsel shall use all funds received from LSS to provide the Services and shall account for these funds separately from funds received from any other source.

14.3 The Lead Family Duty Counsel shall make available to LSS upon request, and explain as required, all financial books and records held by the Lead Family Duty Counsel to comply with this Agreement, and the Lead Family Duty Counsel shall allow LSS to make copies of all books and records.



## 15. INSURANCE

- 15.1 The Lead Family Duty Counsel shall maintain a policy of errors and omissions insurance as required by the Law Society of British Columbia.

## 16. NOTICES

- 16.1 Every notice, demand or other communication in connection with this Agreement shall be in writing and will be deemed to have been received:

- (a) immediately, if delivered in person;
- (b) one day after telecopier or telefax or e-mail transmission; or
- (c) 10 days after mailing if by registered mail to the following addresses:

- (i) If to LSS at:

Legal Services Society  
Suite 400 – 510 Burrard Street  
Vancouver, BC, V6C 3A8  
**Attention: Executive Director**

- (ii) If to the Lead Family Duty Counsel at:

Name  
Barrister and Solicitor  
Address  
City, BC Postal Code

- (d) If there is between the time of mailing and the actual receipt of the notice a mail strike, slow-down, or other labour dispute which might affect delivery of such notice by the mails, then such notice shall be effective only if and when it is actually delivered.

## 17. GENERAL

- 17.1 Amendments to this Agreement will be made in writing.
- 17.2 Notwithstanding the termination of this Agreement, all representations and covenants to be performed or observed by LSS or the Lead Family Duty Counsel after termination will survive any such termination.
- 17.3 This Agreement will be interpreted and governed by the laws of the Province of British Columbia and any dispute relating to this Agreement



will be resolved by arbitration using the procedures and rules set out in the *Commercial Arbitration Act of British Columbia*.

- 17.4 Any waiver by either party of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach.
- 17.5 The headings appearing in this Agreement are inserted for convenience of reference only and will not affect the interpretation of this Agreement.
- 17.6 If a provision in this Agreement is wholly or partially invalid, this Agreement will be interpreted as if the invalid provision were not a part of this Agreement.
- 17.7 If there is a conflict between any term of this Agreement and any term contained in the Schedules or in the Policies, then the terms contained in this Agreement will prevail.
- 17.8 Neither of the parties to this Agreement will be responsible to the other party for the non-performance or delay in the performance of an obligation hereunder which is directly attributable to an act of God, lock-out, strike or other industrial dispute, legal restriction, riot, insurrection or war or another cause beyond the control of the parties.
- 17.9 Time will be of the essence in this Agreement.

**SIGNED AT Location, British Columbia**, this \_\_\_ day of \_\_\_\_\_, 2010

**Barrister & Solicitor**

\_\_\_\_\_

Lead Family Duty Counsel

**SIGNED AT Vancouver, British Columbia**, this \_\_\_ day of \_\_\_\_\_, 2010

**LEGAL SERVICES SOCIETY**

Per: \_\_\_\_\_

Heidi Mason  
Director, Legal Advice and Representation



**SCHEDULE A**

**SERVICES**

The Lead Family Duty Counsel shall provide the following services:

1. Assist with administrative oversight of family duty counsel services including maintaining the roster and maintaining quality duty counsel services;
2. Provide summary information and advice to litigants who are unable to retain counsel;
3. Assist clients with the preparation of court documents including financial statements;
4. Represent clients in court for adjournments, interim motions, case conferences, settlement conferences;
5. Promote and abide by the policy and objectives of the Family Duty Counsel Program and maintain a working knowledge with the Family Duty Counsel Procedure Manual as amended from time to time;
6. Provide mentorship to colleagues in the Family Duty Counsel program;
7. Coordinate the Family Duty Counsel service and liaise with the Court Registry, Court Users Committee and LSS;
8. Perform such other functions reasonably related to the above.

**HOURS**

The Lead Family Duty Counsel (FDC) shall make the services available during the following hours –

Proposed Schedule:

Mondays	Lead FDC	7 hours
Tuesdays	Lead FDC	7 hours
	1 Roster FDC	6 hours
Thursdays	Lead FDC	7 hours
	1 Roster FDC	7 hours

The distribution of hours and location of services may be changed by mutual agreement to improve access to services at any time during the contract term.



## **SCHEDULE B**

### **NON-FINANCIAL ASSISTANCE**

#### **A. MANAGEMENT SERVICES**

An LSS manager will be specifically designated as the contact person at the Vancouver Regional Centre to deal with all issues relating to delivery of the Services. At this time, the Coordinator, Civil Law Services & Projects is the contact person. The LSS manager will be assisted by other managers and staff, some legally trained.

#### **B. EVALUATION OF SERVICES**

As part of the Lead Family Duty Counsel's continuing evaluation of services delivered, LSS shall provide the Lead Family Duty Counsel with specific information relating to its services including, reports from LSS' electronic reporting systems.

#### **C. PUBLICATIONS AND FORMS**

LSS publications and self-help material are available to the Lead Family Duty Counsel through Crown Publications, usually without cost.

Information on materials available and how to order is provided on the LSS website.



**SCHEDULE C**

**CONFIDENTIALITY AGREEMENT**

**DECLARATION**

\_\_\_\_\_  
**(DATE)**

I, \_\_\_\_\_, **(PRINT NAME)** an employee of \_\_\_\_\_  
\_\_\_\_\_ **(Lead Family Duty Counsel)**, have read the Legal Services Society  
Client & Applicant Confidentiality Policy. I understand the policy and promise to fulfill my  
obligation to keep strictly confidential all information from or about legal aid clients and  
applicants I may acquire in the course of my employment. I will use any information so obtained  
for no other reason than to carry out my job duties and responsibilities. As well, I understand that  
should I violate this policy in any way, the contract between LSS and the Lead Family Duty  
Counsel, my employer, may be terminated without notice.

\_\_\_\_\_  
**Signature-Lead Family Duty Counsel**

\_\_\_\_\_  
**Print Name-Lead Family Duty Counsel**

\_\_\_\_\_  
**Signature-Employee**

\_\_\_\_\_  
**Print Name-Employee**

\_\_\_\_\_  
**Signature-Witness**

\_\_\_\_\_  
**Print Name-Witness**