

NOTICE OF APPEAL

Karen Smith, Barrister and Solicitor, APPEALS to an Assessment Officer from the decision of the Legal Aid Accounts Officer Review, Legal Aid Ontario, dated _____, Settlement of Account dated January 10, 2013. Pursuant to Legal Aid Services Act, 1998, and Section 90 of the Courts of Justice Act.

THE APPELLANT ASKS that the judgment be set aside and a judgment be granted as follows:

1. Set aside the decision of the Legal Accounts Officer, dated _____, 201 .
2. Legal Aid Ontario shall pay the solicitor's account, dated January 10, 2013, in full.
3. Costs on a full indemnity basis.

THE GROUNDS OF APPEAL are as follows:

1. Legal Aid Ontario considered the wrong principle in the exercise of its discretion by applying a person of modest means test.
2. Legal Aid Ontario considered the wrong principle in the exercise of its discretion based on a test to reasonably allocate the limited legal aid resources.
3. Legal Aid Ontario failed to consider the relevant principles in exercising its discretion, by not considering the results obtained on behalf of the client in this particular child protection proceeds. In particular:
 - ♦ As a result of the services provided and after the argument of a Contested Motion, the Court expanded the client's access from supervised to unsupervised access. This is an exceptional result in a Child Protection matter and the first step in the children being returned home to their mother.

4. Legal Aid Ontario failed to consider the relevant principles in exercising its discretion by not considering the complexity of this matter in this particular child protection proceeding.
 - ◆ Contested Child Protection proceedings are inherently complex. Resistance of the expansion of a parent's access in the face of Society opposition creates this complexity and thus results in parent's counsel producing the necessary Affidavit evidence to advance their case. In this particular case, mother was successful in arguing before the Court the expansion of her access to the children.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Section 41 of Regulation 181 / 04, Legal Aid Services Act, 1998.
2. Section 90 of the Courts of Justice Act.

The appellant requests that this appeal be heard at:

Superior Court of Justice of Ontario
7th Floor - 330 University Avenue
Toronto, ON M5G 1R7

Karen Smith
Barrister and Solicitor

Toronto, ON
Tel: 416-
Fax: 416-

Solicitor for Jean Black

TO: **J. Stanley Jenkins**
Legal Aid Ontario
#200 - 40 Dundas Street West
Toronto, ON M5G 2H1

SUPERIOR COURT OF JUSTICE

at Toronto

NOTICE OF APPEAL

Karen Smith
Barristers and Solicitors

Toronto, ON

Tel: 416-
Fax: 416-

**Materials to be Filed with the
Notice of Appeal to the Assessment Officer**

1. Accounts submitted to Legal Aid Ontario
2. Documents received from Legal Aid Ontario which demonstrates how the accounts were settled and the Deposit Advice received.
3. Letter to Legal Aid Ontario requesting consideration of the Settlement of the Account.
4. Response received from Legal Aid Ontario for your request for reconsideration.

**Steps to Initiate Appeal
to an Assessment Officer**

1. Serve Notice of Appeal and Supporting documentation on Legal Aid Ontario (Legal Department).
2. File Notice of Appeal, Supporting documentation together with an Affidavit of Service with the Assessment Office.
3. Pay \$104.00 filing fee.
4. Obtain date for Hearing of Appeal.
5. Serve Notice of Hearing on Legal Aid Ontario.

**Case Law and Other Authorities
Appeal to Assessment Officer**

1. Legal Aid Services Act, 1998, S.O. 1998, Chapter 26
2. Legal Aid Services Act, 1998, O.Reg. 106/99
3. Re: Whealy & Director of Legal Aid [1974] O.J. No. 2059,
Ontario High Court of Justice, Keith, J.
4. Re: Fox and Ontario Legal Aid Plan [1977], O.J. No. 2138, 14 O.R. (2d)
668, Ontario High Court of Justice, Morden, J.
5. Oakley v. Newfoundland (Newfoundland Legal Aid Commission) [1987]
N.J. No. 327, 66 Nfld. & P.E.I. R.356, Supreme Court of Newfoundland,
Trial Division, Cameron J.
6. Gittens v. Newfoundland (Newfoundland Legal Aid Commission) [1989]
N.J. No. 320, 80 Nfld. & P.E.I. R.7, Newfoundland Supreme Court - Trial
Division

Ontario Court of Justice

(Name of court)

at 47 Sheppard Ave. E., North York, ON M2N 5N1

(Court office address)

Form 14: Notice of Motion**Applicant(s)***Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Children's Aid Society of Toronto****30 Isabella Street****Toronto, ON M4Y 1N1****Tel: 416-924-4646****Fax: 416-324-2550***Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Sara White****Children's Aid Society of Toronto****30 Isabella Street****Toronto, ON M4Y 1N1****Tel: 416-924-4640 ext.****Fax: 416-324-2550****Respondent(s)***Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Jean Black (Mother)****Kevin Black (Father)****Legal Aid Ontario****Susan McCaffery, Chief Counsel****#200 - 40 Dundas Street West****Toronto, ON M5G 2H1****Tel: 416-979-1446 / Fax: 416-979-8669****The Attorney General of Ontario****Crown Law Civil****Vanessa Glasser, Counsel****8th Floor - 720 Bay Street****Toronto, ON M5G 2K1****Tel: 416-326-2220****Fax 416-326-4015***Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Karen Smith****Barrister and Solicitor****Jeff Red**

The person making this motion or the person's lawyer must contact the clerk of the court by telephone or otherwise to choose a time and date when the court could hear this motion.

TO THE PARTIES:**THE COURT WILL HEAR A MOTION on (date) February 15, 2014****at (time) 10:00 a.m., or as soon as possible after that time at: (place of hearing)****47 Sheppard Ave. E., North York, ON M2N 5N1**

This motion will be made by (name of person making the motion) **Jean Black (Mother)** who will be asking the court for an order for the item(s) listed on the back of this notice.



A copy of the affidavit(s) in support of this motion is served with this notice.



A notice of a case conference is served with this notice to change an order.

If this material is missing, you should talk to the court office immediately.

The person making this motion is also relying on the following documents in the continuing record: (List documents.)

If you want to oppose this motion or to give your own views, you should talk to your own lawyer and prepare your own affidavit, serve it on all other parties not later than 4 days before the date above and file it at the court office not later than 2 days before that date. Only written and affidavit evidence will be allowed at a motion unless the court gives permission for oral testimony. You may bring your lawyer to the motion.

IF YOU DO NOT COME TO THE MOTION, THE COURT MAY MAKE AN ORDER WITHOUT YOU AND ENFORCE IT AGAINST YOU.

Date of signature

Signature of person making this motion or of person's lawyer

Karen Smith
Barrister and Solicitor

Typed or printed name of person or of person's lawyer, address for service, telephone & fax numbers and e-mail address (if any).

NOTE TO PERSON MAKING THIS MOTION: You **MUST** file a confirmation (Form 14C) not later than 2:00 p.m. two days before the date set out above.

If this is a motion to change past and future support payments under an order that has been assigned to a government agency, you must also serve this notice on that agency. If you do not, the agency can ask the court to set aside any order that you may get in this motion and can ask for costs against you.

State the order(s) requested on this motion.

1. That Legal Aid Ontario attend at the Ontario Court of Justice, 47 Sheppard Avenue East, Toronto, Ontario on a date to be fixed by this Honourable Court to explain Legal Aid Ontario's assistance to Jean Black to have and continue to have the assistance of a lawyer to represent her in the within child protection matter currently before this Honourable Court.
2. That Legal Aid Ontario, or the Ministry of the Attorney General of Ontario, provide Ms. Black with sufficient funds to cover reasonable fees and disbursements of counsel in order to continue to represent her in the current Protection Application presently before this Honourable Court.
3. Costs on a full indemnity basis.

Ontario Court of Justice*(Name of court)***at 47 Sheppard Ave. E., North York, ON M2N 5N1***(Court office address)***Form 14A: Affidavit
(general) dated
January 1, 2014****Applicant(s)***Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Children's Aid Society of Toronto
30 Isabella Street
Toronto, ON M4Y 1N1
Tel: 416-924-4646
Fax: 416-324-2550***Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Sara White
Children's Aid Society of Toronto
30 Isabella Street
Toronto, ON M4Y 1N1
Tel: 416-924-4640 ext.
Fax: 416-324-2550****Respondent(s)***Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Jean Black (Mother)****Kevin Black (Father)****Legal Aid Ontario
Susan McCaffery, Chief Counsel
#200 - 40 Dundas Street West
Toronto, ON M5G 2H1
Tel: 416-979-1446 / Fax: 416-979-8669****Legal Aid Ontario
Susan McCaffrey, Chief Counsel
#200 - 40 Dundas Street West
Toronto, ON M5G 2H1
Tel: 416-979-1446 / Fax: 416-979-8669****The Attorney General of Ontario
Constitutional Law Branch
4th Floor - 720 Bay Street
Toronto, ON M5G 2K1****Attorney General for Canada
Department of Justice
The Exchange Tower
#3400 - 130 King Street West
Toronto, ON M5X 1K6
Tel: 416-326-4460 / Fax 416-326-4015***Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Karen Smith
Barrister and Solicitor****Jeff Red**

dated January 1, 2014

My name is (full legal name) Jean Black (Mother)

I live in (municipality and province) City of Toronto, Province of Ontario

and I swear/affirm that the following is true:

Set out the statements of fact in consecutively numbered paragraphs. Where possible, each numbered paragraph should consist of one complete sentence and be limited to a particular statement of fact. If you learned a fact from someone else, you must give that person's name and state that you believe that fact to be true.

1. I am the Respondent mother in the Child Protection Application currently being heard at the Ontario Court of Justice, 47 Sheppard Sheppard Avenue East, Toronto, Ontario, Court file # . I am the mother of the children, namely, Sue Black, born July 1, 2002 and John Black, born December 24, 2006 and as such have knowledge of the matters herein deposed to.
2. ***Outline in the Affidavit the facts of the case, what steps were taken in the proceeding to date and the results obtained.***
3. Attached hereto and marked as **Exhibit "B"** to this my Affidavit are true copies of the accounts submitted to Legal Aid Ontario since I retained Karen Smith to represent me in this proceeding together with Confirmation of Submission to Legal Aid Ontario.
4. I am advised by my solicitor, Karen Smith, and verily believe that Legal Aid Ontario instituted new criteria for discretion on November 26, 2012. Attached hereto and marked as **Exhibit "C"** to this my Affidavit is a true copy of the Discretion Guidelines posted on Legal Aid Ontario's website which outlines the specific criteria adopted by the Plan in the area of Child Protection as at November 26, 2012.
5. I am advised by Ms. Smith and verily believe that she contacted Legal Aid Ontario on December 15, 2013 and asked the following questions and received the following answers:
 - a) When accounts are under consideration how long does it take the Plan to make a decision?

The answer was 60 days or longer.
 - b) When a lawyer submits an Appeal of Refusal of Discretion how long does the Plan take to make a decision?

The answer was 30 to 60 days.

dated January 1, 2014

6. I am advised by Ms. Smith and verily believe that she submitted to the Plan a letter of Appeal of the Settlement of her January 10, 2013 account. This appeal was refused. I am advised by my solicitor, Karen Smith, she appealed this decision. to an Assessment Officer and on November 30, 2013 her Appeal was dismissed. All further accounts submitted to the Plan are under consideration and it is unknown how the Plan intends to settle these further accounts.
7. I am a person of modest means as my sole source of income is Social Assistance. All the work expended on my behalf has resulted in my access to Sue and John from being fully supervised , to unsupervised day visits to overnight visits. It is my aim to have my children returned to my care and custody as soon as possible.
8. I make this Affidavit in support of the relief sought in my Notice of Motion and for no improper purpose.

Put a line through any blank space on this page.

Sworn/Affirmed before me at:
the City of Toronto

(municipality)

in Province of Ontario

(province, state or country)

on

January 1, 2014

(date)

Commissioner for taking affidavits (Type or print name below if signature illegible.)

"Karen Smith"

Signature

(This form is to be signed in front of a lawyer,
justice of the peace, notary public, or
commissioner for taking affidavits.)

Ontario Court of Justice

(Name of court)

at 47 Sheppard Ave. E., North York, ON M2N 5N1

(Court office address)

**Form 14A: Affidavit
(general) dated****January 1, 2014****Applicant(s)***Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).*

Children's Aid Society of Toronto
30 Isabella Street
Toronto, ON M4Y 1N1
Tel: 416-924-4646
Fax: 416-324-2550

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Sara White
Children's Aid Society of Toronto
30 Isabella Street
Toronto, ON M4Y 1N1
Tel: 416-924-4640 ext.
Fax: 416-324-2550

Respondent(s)*Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Jean Black (Mother)****Kevin Black (Father)**

Legal Aid Ontario
J. Stanley Jenkins, Counsel
#200 - 40 Dundas Street West
Toronto, ON M5G 2H1
Tel: 416-979-1446 / Fax: 416-979-8669

The Attorney General of Ontario
Crown Law Civil
Vanessa Glasser, Counsel
8th Floor - 720 Bay Street
Toronto, ON M5G 2K1
Tel: 416-326-2220 / Fax 416-326-4015

Attorney General for Canada
Department of Justice
The Exchange Tower
#3400 - 130 King Street West
Toronto, ON M5X 1K6
Tel: 416-326-4460 / Fax 416-326-4015

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Karen Smith
Barrister and Solicitor

Jeff Red
Barrister and Solicitor

My name is (full legal name) Anthony William James Sullivan**I live in (municipality and province)** City of Toronto, Province of Ontario**and I swear/affirm that the following is true:**

Set out the statements of fact in consecutively numbered paragraphs. Where possible, each numbered paragraph should consist of one complete sentence and be limited to a particular statement of fact. If you learned a fact from someone else, you must give that person's name and state that you believe that fact to be true.

1. I am making this Affidavit to provide to this court the following information.
2. My audit/opinion on the accounts to Legal Aid Ontario (LAO) from Ms. Karen Smith on behalf of Ms. Jean Black as set out in Exhibit "B" to Ms. Jean Black's Affidavit of January 1, 2014 specifically:

◆ ***Outline accounts in question.***

3. Secondly this Affidavit outlines further information for this Court's consideration on the need to reform/modernize the Legal Aid Ontario Tariff for child protection cases and the discretion process for payment of lawyers account.
4. Both the audit of Ms. Smith's accounts as noted and the proposed recommendations to Legal Aid Ontario for tariff reform are presented to this court as some minimum thresholds level of funding required to a lawyer willing to take on a child welfare matter to make counsel's representation meaningful and effective.

Legal Experience Historical Background of William A. Sullivan:

5. I am a member of the Law Society of Upper Canada, called to the Bar in Ontario in February 1989. I am a member of the Law Society of Upper Canada in good standing and I practice Family Law since 1989.
6. I participated in my first child welfare trial CAS matter while in my senior year of law school at Dalhousie Law School in Nova Scotia in 1986 along with Mr. Rollie Thompson who had carriage of the trial Chief Counsel at that time and director of the Dalhousie Legal Aid Program Rollie Thompson.
7. In 1987 I articulated at Parkdale Community Legal Services Toronto Ontario where I worked primarily in poverty law areas as well as refugee claims. At Parkdale I also had carriage of three child welfare files and began to work in this field in Ontario in 1987 with these files.
8. In 1989 with my call to the Bar I opened my own practice in Toronto, Ontario handling refugee claims and family law domestic files and child welfare files.
9. Since 1999 I have concentrated my practice entirely on domestic family law files and child welfare files.

10. For the first six years of my practice, I also maintained a role as a supervising lawyer with Parkdale Community Legal Services supervisor the students taking that clinic program.
11. Over the course of my practice I have had five articling students, two of whom have continued to practice in the area of family law, one in criminal law, one in immigration and one in community (LAO) based advocacy.
12. For the past 10 years I have averaged about 30 legally aided files per year, 90% of which are representing parents as parents' counsel in child welfare matters. The balance would be in domestic matters.
13. Since 1999 to the present I have also been a Children's Lawyer representing children whose families are involved in the child welfare system before the court and/or representing young parents whose children are before the courts in the child welfare system. When representing Minor Parents before the Courts, the Office of the Children's Lawyer allows Panel Members 40 hours during the first year of the file and 20 hours during the second and each subsequent year. If, however, and prior to exceeding those time allotments, the Panel Member is able to write to their Regional Supervisor for additional hours, provide an explanation as to why you require those hours. My experience as a Panel Member is when I have requested additional hours the Office of the Children's Lawyer has granted the same.
14. Over the course of my practice I have argued on average one and a half Motions per month, argued eighteen Summary Judgments Motion trials and averaged one trial a year since 1999 primarily in the child welfare area.
15. I have given presentations to lawyers, principally at the 311 Jarvis Family Open Bar Series, in the following areas of work dealing with the child welfare system.
 - ◆ Representing parents who have mental health and other disabilities,
 - ◆ Representing parents who have drug and alcohol difficulties,
 - ◆ Representing parents whose children have suffered unexplained physical injuries,
 - ◆ Representing parents involved with immigration and family law.

16. Attached and marked Exhibit "A" is part of my CV with community presentations from 1999 through to 2012.

Audit of Ms. Karen Smith's accounts:

17. I have reviewed the Affidavit of Ms. Jean Black with Ms. Black's permission and the attached Exhibits found in Exhibit "B" to Ms. Black's Affidavit of January 1, 2014. In my opinion the work conducted on behalf of Ms. Black was reasonable and necessary to provide Ms. Black with meaningful and effective counsel to assure that her matter would be dealt with by any Court in Ontario in a fair and reasonable manner. This is based on my experiences noted above in representing parents in child welfare matters and in the review of the situation that Ms. Black and Ms. Smith in turn found herself in while beginning to represent her.
18. It is my opinion that the steps taken by Ms. Smith were necessary and proactive for the proper representation of Ms. Black by Ms. Smith to move this child welfare matter forward and to advocate on behalf of Ms. Black with the Society as well as be in a position to argue the facts and law before the Court to achieve meaningful results and avoid litigation drift.
19. I underline the following important procedural facts that Ms. Smith had to deal with when she took over in August 2012. These were provided to me through Ms. Smith's office which I believe to be true and my review of Ms. Black's January 1, 2014 Affidavit.
20. Ms. Smith's accounts submitted to Legal Aid Ontario cover the work needed to respond to the multiple Affidavits that were never responded to initially when Ms. Smith has taken over the file and Affidavits that she was confronted with after being retained.
21. The response and work conducted were necessary for adequate and meaningful and effective representation for Ms. Black and necessary to provide the evidence for the court to make the decisions as it did. Ms. Smith's actions achieved positive and meaningful results for the mother and the children and moved the file out of litigation drift into a meaningful direction.

22. If Ms. Smith had not taken the steps necessary she would not be living up to the standards required by the court of counsel representing parents in these matters from my experience over the years as well Ms. Smith would have been negligent in her representation of a family law client as expected of each and every one of us as family law lawyers by the Law Society of Upper Canada.

Needed Legal Aid Tariff Reform in Child Protection Files:

23. Ms. Smith as most, if not all family law lawyers in Ontario who are willing to take up a file and represent a parent on a legal aid retainer (certificate) face the difficulty of doing so within the context or confines of a tariff (block of hours) that are inadequate for conducting child protection litigation file in 2014.
24. These hourly tariffs have not been revised and updated for many years.
25. Litigation in 2014 in child protection matters present multiple issues, multiple problems, a well founded litigant in the child welfare agency as well as standard and expectations of the Courts for the proper evidentiary base from all sides in a file on which a court must make decisions that have a significant impact on the future of a family and the childrens' relationship to the family.
26. I have been a part of discussions and made recommendations to Legal Aid Ontario for the reform of the structure of the legal aid tariff in child protection matters and the discretion process for payment of accounts when a lawyer exceeds the block of hours. In 2009 I along with others presented the following recommendations found in Exhibit "B" to this my Affidavit to Legal Aid Ontario for consideration in improving and modernize the tariff hours or blocks.
27. Although changes have been made to the delivery of legal services through Legal Aid Ontario the tariff, in terms of hours, have not been reformed in a comprehensive fashion. Further the method and exercise of discretion in terms of reviewing lawyers accounts that exceed the current tariff have been tightened leaving many family law lawyers wondering why their accounts are not being paid in full for work that is necessary for meaningful and effective representation to assure the process is fair to all.

28. I make this Affidavit to provide to the court the above noted and for no other improper purpose.

Put a line through any blank space on this page.

Sworn/Affirmed before me at:

the City of Toronto

(municipality)

in Province of Ontario

(province, state or country)

on

January 1, 2014

(date)

Commissioner for taking affidavits (Type or print name below if signature illegible.)

"Karen Smith"

Signature

(This form is to be signed in front of a lawyer,
justice of the peace, notary public, or
commissioner for taking affidavits.)

Ontario Court of Justice

(Name of court)

Court File Number

at 47 Sheppard Ave. E., North York, ON M2N 5N1

(Court office address)

**Form 14A: Affidavit
(general) dated****January 1, 2014****Applicant(s)***Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).*

Children's Aid Society of Toronto
30 Isabella Street
Toronto, ON M4Y 1N1
Tel: 416-924-4646
Fax: 416-324-2550

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Sara White
Children's Aid Society of Toronto
30 Isabella Street
Toronto, ON M4Y 1N1
Tel: 416-924-4640 ext.
Fax: 416-324-2550

Respondent(s)*Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Jean Black (Mother)****Kevin Black (Father)**

Legal Aid Ontario
J. Stanley Jenkins, Counsel
#200 - 40 Dundas Street West
Toronto, ON M5G 2H1
Tel: 416-979-1446 / Fax: 416-979-8669

The Attorney General of Ontario
Crown Law Civil
Vanessa Glasser, Counsel
8th Floor - 720 Bay Street
Toronto, ON M5G 2K1
Tel: 416-326-2220 / Fax 416-326-4015

Attorney General for Canada
Department of Justice
The Exchange Tower
#3400 - 130 King Street West
Toronto, ON M5X 1K6
Tel: 416-326-4460 / Fax 416-326-4015

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Karen Smith
Barrister and Solicitor

Jeff Red
Barrister and Solicitor

My name is (full legal name)Jean Hyndman**I live in (municipality and province)**City of Toronto, Province of Ontario**and I swear/affirm that the following is true:**

Set out the statements of fact in consecutively numbered paragraphs. Where possible, each numbered paragraph should consist of one complete sentence and be limited to a particular statement of fact. If you learned a fact from someone else, you must give that person's name and state that you believe that fact to be true.

1. I am a Barrister and Solicitor licensed to practice law in the Province of Ontario.

2. I was called to the Bar of Ontario in 1984 and a Member in good standing with the Law Society of Upper Canada. From 1984 to the end of 1985, I was in private practice. From 1986 to November, 1989 I worked at a community legal clinic and was responsible for casework in the area of Landlord and Tenant Law. I have been in private practice since November 1989. Since that time the vast majority of my practice concentrates in the area of Family Law (Domestic and Child Protection).
3. Attached hereto and marked as Exhibit "A" to this my Affidavit is a true copy of my up-dated Curriculum Vitae.
4. I have been a Board member of the Family Lawyers Association (F.L.A.) since 2008. I am the current Co-Chair and I am the Chair of the Legal Aid Sub-Committee of the Family Lawyers Association.
5. The Family Lawyers Association was established in the mid-1990's in response to the crisis in lack of funding and the inadequacies of the tariff at that time. Issues relating to Legal Aid have remained a major focus of the Family Lawyers Association.
6. The Family Lawyers Association Board raised the issue of the inadequacy of the tariff hours in both family law and child protection matters during the consultation session between L.A.O. and our Board about the proposed discretion guidelines. Many of our members raised the same issues during the broader consultation sessions. Our Board requested further consultation about improving the tariff to reduce the need for discretion and L.A.O. representatives indicated that they were open to that. Rather than wait for L.A.O. to initiate consultation, the Family Lawyers Association Legal Aid Sub-Committee developed proposed tariffs for family law and child protection matters and drafted a discussion paper. This discussion paper, which is attached as Exhibit "B" to this my Affidavit was approved by the Board in January, 2013.

This Discussion Paper was presented at an Open Bar Program, Ontario Court of Justice, 311 Jarvis St., Toronto, Ontario in January, 2013. The program title was "The Year in Review". Tom Kelsey, Director of Family Law Services, GTA Region, Legal Aid Ontario, was also a panelist for the program.

7. Attached hereto and marked as Exhibit "B" to this my Affidavit is a true copy of a letter, dated April 24, 2013, sent by Victoria Starr, Chair of the Family Lawyers Association enclosing the discussion paper approved by the Board on the issue of tariff reform to the present Attorney General of Ontario. This discussion paper dealt with tariff reform in domestic and Child Protection matters.
8. I am the Family Lawyers Association representative on the Operations Committee at the Ontario Court of Justice, 311 Jarvis St., Toronto, Ontario. At our January 23, 2013 meeting, Justice Ellen Murray advised that she was requesting Factums on Summary Judgment Motions. Justice Murray suggested at the meeting that parents' counsel might want to question the Society workers and she had been told that L.A.O. does not allow for such questioning and Factums. Tom Kelsey also attended that meeting and advised those in attendance that there were no additional tariff hours for questioning and the preparation of Factums. Mr. Kelsey advised the meeting that it was up to the individual lawyer to decide as to how to use the hours allotted so they can do Factums or questioning, and of course, there is always discretion. I debated that point with him and advised him that you cannot do all of the work necessary within the available hours and there was no guarantee that any discretion will be paid.
9. I make this Affidavit for no improper purpose.

Put a line through any blank space on this page.

Sworn/Affirmed before me at:
the City of Toronto

(municipality)

in Province of Ontario

(province, state or country)

on

(date)

Commissioner for taking affidavits (Type or print name below if signature illegible.)

Signature

(This form is to be signed in front of a lawyer,
justice of the peace, notary public, or
commissioner for taking affidavits.)

AUTHORITIES - MOTION FOR FUNDING

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[2003] O.J. 2095 (Ontario Court of Justice)
4. Legal Aid Services Act, 1998
Ontario Regulation 107/99
5. Legal Aid Ontario, Discretion Guideline, November 26, 2012
6. Winnipeg Child and Family Services v. K.L.W.
[2000] 2 S.C.R., 519 (Supreme Court of Canada)
7. Family and Children's Services of Guelph and Wellington County v. K.F.
[2001] O.J. No. 4548 (Ontario Court of Justice)
8. Huron-Perth Children's Aid Society v. J.J.
[2006] O.J. No. 5372 (Ontario Court of Justice)
9. Windsor-Essex Children's Aid Society, Applicant and Y.C. and D.V.B.
Respondents and Ministry of the Attorney General for Ontario,
Respondent party only on this motion
[2010] O.J. No. 1071 (Ontario Court of Justice)
10. Children's Aid Society of Halton v. K.C.M.
[2012] ONCJ 382 (CanLII) (Ontario Court of Justice)

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3. Tariff Review Task Force, Robert L. Holden and The Honourable Fred Kaufman, Submitted to the Board of Directors of Legal Aid Ontario, November 30, 2000

~ Volume 2 ~

4. Report of the Legal Aid Review 2008, Michael Trebilock, Professor of Law and Economics, Faculty of Law, University of Toronto, Submitted to the Attorney General of Ontario

(Name of court)

at 47 Sheppard Ave. E., North York, ON M2N 5N1

(Court office address)

Applicant(s)*Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Children's Aid Society of Toronto****30 Isabella Street****Toronto, ON M4Y 1N1****Tel: 416-924-4646****Fax: 416-324-2550***Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Sara White****Children's Aid Society of Toronto****30 Isabella Street****Toronto, ON M4Y 1N1****Tel: 416-924-4640 ext. 2566, Fax: 416-324-2550****Respondent(s)***Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Jean Black (Mother)****Kevin Black (Father)****Legal Aid Ontario****Susan McCaffrey, Chief Counsel****#200 - 40 Dundas Street West****Toronto, ON M5G 2H1****Tel: 416-979-1446 / Fax: 416-979-8669****The Attorney General of Ontario****Crown Law Civil****Vanessa Glasser, Counsel****8th Floor - 720 Bay Street****Toronto, ON M5G 2K1****Tel: 416-326-2220 / Fax: 416-326-4015****Attorney General for Canada****Department of Justice****The Exchange Tower****#3400 - 130 King Street West****Toronto, ON M5X 1K6****Tel: 416-326-4460 / Fax 416-326-4015***Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Karen Smith****Barrister and Solicitor****Jeff Red****FACTUM****PART I: RELIEF SOUGHT**

1. That Legal Aid Ontario attend at the Ontario Court of Justice, 47 Sheppard Avenue East, Toronto, Ontario on a date to be fixed by this Honourable Court to explain Legal Aid Ontario's assistance to Jean Black to have and continue to have the assistance of a lawyer to represent her in the within child protection matter currently before this Honourable Court.

2. That Legal Aid Ontario, or the Ministry of the Attorney General of Ontario, provide Ms. Black with sufficient funds to cover reasonable fees and disbursements of counsel in order to continue to represent her in the current Protection Application presently before this Honourable Court.
3. Costs on a full indemnity basis.

PART II: THE FACTS

4. *Outline the Facts of your particular case.*

PART III: THE LAW

19. Every one has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principals of fundamental justice.
 - ▶ **Canadian Charter of Rights and Freedoms, Section 7.**
20. It is settled law that child protection proceedings attract for both parents and their children the protections of Section 7 of the Canadian Charter of Rights and Freedoms.
 - ▶ **New Brunswick (Minister of Health and Community Services) v. G.(J.)** [1993] 3. S.C.R. 46 (S.C.C.);
 - ▶ **Children's Aid Society of Toronto v. J.R.** [2003] O.J. No. 2095 (Ontario Court of Justice)
21. The Government of Ontario has not revised the Regulations to the Legal Services Act since 1999 to ensure proper hours are allotted to represent parents in contested Child Protection Proceedings.
 - ▶ **Legal Aid Services Act, 1998,**
Ontario Regulation 107/99
22. On November 26, 2012, Legal Aid Ontario instituted policies and procedures which in effect restrict the Plan's ability to pay lawyers for parents in a contested Child Protection proceeding.
 - ▶ **Discretion Guidelines, Legal Aid Ontario, November 26, 2012.**

23. Individual rights in the Charter such as Section 7 provide a basic legal protection that will be safe guarded in dealing with the State. These rights are designed to protect an individual (parents and children) and to ensure simple fairness should he or she be subject of legal proceedings involving the State.
- ▶ **Children's Aid Society of Toronto v. J.R.**
[2003] O.J., No. 2095, paragraphs 78, 79, 80, 81, 82
83, 34 and 85 (Ontario Court of Justice)
24. The Supreme Court of Canada has indicated that a parent's right is protected by Section 7 of the Charter to raise their children without interference from Child Protection authorities within limits to these rights. The limits and State intervention is to be considered as necessary to protect the well being of a child, but such intervention must take place in accordance with the principles of fundamental justice and imbedded in those principles is a duty of fairness.
- ▶ **Winnipeg Child and Family Services v. K.L.W.**
[2000] 2. S.C.R. 519
25. Canadian Courts have considered the issue of state funded legal representation since the Supreme Court of Canada's ruling in New Brunswick (Minister of Health and Community Services) v. G.(J.) [1999] 3 S.C.R. 46 (S.C.C.)
- ▶ **Family and Children's Services of Guelph and Wellington County v. K.F.** [2001] O.J. 4548 (Ontario Court of Justice);
 - ▶ **Huron-Perth Children's Aid Society v. J.J.**
[2006] O.J. No. 5372 (Ontario Court of Justice);
 - ▶ **Windsor-Essex Children's Aid Society, Applicant and Y.C. & D.V.B., Respondents, and Ministry of the Attorney General for Ontario, Respondent** party only on this Motion
[2010] O.J. No. 1071 (Ontario Court of Justice)
 - ▶ **Children's Aid Society, Region of Halton v. K.C.M., N.M. et al**
[2012] ONCJ 382 (Ontario Court of Justice)
26. Legal Aid Ontario has refused to provide counsel to a parent who is a litigant before the Child Protection Courts based on internal policies of the Plan. As stated by Justice O'Connell in Children's Aid Society, Region of Halton v. K.C.M., N.M. et al [2012] ONCJ 382 (Ontario Court of Justice). This refusal was based

on internal policies of Legal Aid Ontario and it is submitted on behalf of the Respondent mother that the current internal policies (length of time for Legal Aid Ontario to exercise its discretion, appeals of settlements of accounts) result in an infringement of the Respondent mother's Section 7 rights under the Canadian Charter of Rights and Freedoms. It is the Respondent mother's position that the existence of these internal policies at Legal Aid Ontario and the Government of Ontario's inaction on tariff reform hours allotted for Children Protection cases has resulted in an infringement of the Respondent mother's Section 7 rights under the Canadian Charter of Rights and Freedoms.

As stated by Justice O'Connell in *Children's Aid Society, Region of Halton v. K.C.M., N.M. et al* [2012] ONCJ 382 (Ontario Court of Justice):

"K.C.M. needs counsel and she has a constitutional right to counsel in this proceeding. In my view, this Court has jurisdiction to make an Order appointing publically funded counsel in a child protection proceeding, in light of the Supreme Court of Canada's decision in *New Brunswick (Minister of Health and Community Services) v. J.G.* 1999 CANL11653 (S.C.C.)..... In that case, the Court held that the principles of fundamental justice entitle a parent involved in child protection proceedings to a fair hearing, which may include a right to be represented by publicly funded counsel where this is necessary for effective presentation of the parent's case..... "

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Signature

Date of signature

Karen Smith
Barrister and Solicitor

Ontario Court of Justice

(Name of court)

at 47 Sheppard Ave. E., North York, ON M2N 5N1

(Court office address)

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1. Charter rights are paramount in situations where the State intervenes in parties parenting of their children and this is the issue before the Court.
2. The mere fact that the Respondent mother is represented by counsel on a legal aid certificate is not a complete answer to the alleged Charter infringement. As stated by Meiklem J. in *J.W. v M.E.S.* [2000] B.C.J. No. 985 at paragraph 14:

“I do not accept the argument advanced by the Attorney General that, as a matter of principle, if there is legal aid coverage and, therefore, counsel available, that is the end of the inquiry. There is obviously some minimum threshold level of funding required to make the provision of counsel meaningful and effective to ensure the fairness of the hearing. For example, if there was no funding for preparation in a case which required extensive preparation, providing counsel at the hearing alone would be perfunctory and probably would not ensure fairness.”

J.W. v. M.E.S. [2000] B.C.J., No. 985, Supreme Court of British Columbia

3. Child Protection matters are complex cases, particularly where the Society (State) intervenes and apprehends children from their parents' care. Not only is there a risk to the parents' Section 7 rights but there is a risk to the children's Section 7 rights. In such cases there is the potential for the severance of the parent / child relationship.

New Brunswick Minister of Health and Community Services v. G.(J.) [1999]

3 S.C.R. 46, Supreme Court of Canada at paragraph 76

Letter from Caterina E. Tempesta, Counsel, Office of the Children's Lawyer, dated May 31, 2013.

4. All steps taken by Respondent mother's counsel (independent of the Respondent father) were necessary in order to ensure that the hearing of her case was presented to the Court in an effective manner. The steps taken were necessary to ensure that the file moved out of litigation drift and moved in a meaningful direction.

Affidavit of Anthony William James Sullivan, sworn January 1, 2014

5. All appeals have been exhausted by Respondent mother's counsel at Legal Aid Ontario of her interim account dated January 10, 2013.

Affidavit of Jean Black, sworn January 1, 2014

6. The Court has held that in order to establish a Charter breach it must be established that the cap on preparation would probably impede the effectiveness of counsel to the extent that a hearing would be rendered unfair due to the lack of adequate representation. There also needs to be some minimum threshold level of funding required to make the provision of counsel meaningful and effective to ensure the fairness of the proceeding.

R. v. G.L. [2002], O.J. No. 3898, Nicholas J., (O.C.J.) at paragraph 34

7. The issue before the Court is not whether the hourly rate paid to the Respondent mother's counsel is an adequate hourly rate. The issue before the Court is whether or not the cap on the hours allowable and the corresponding uncertainty of discretion will impede the effectiveness of Respondent mother's counsel that a hearing would be rendered unfair due to a lack of adequate representation. As stated in R.v. G.L., there also

needs to be a minimum threshold level of funding required to make the provision of counsel meaningful and effective to ensure the fairness of the proceeding.

R. v. G.L. [2002], O.J. No. 3898, Ontario Court of Justice.

8. The inadequacy of the hours allotted for preparation and representation in Child Protection matters has been the subject of several reports presented to Legal Aid Ontario and the Attorney General of Ontario.

Affidavit of Anthony William James Sullivan, sworn January 1, 2014.

Affidavit of Jean Hyndman, sworn January 1, 2014.

Tariff Review Task Force Report, Robert L. Holden and The Honourable Fred Kaufman,
Submitted to the Board of Direction of Legal Aid Ontario, November 30, 2000.

Report of the Legal Aid Review 2008, Professor Michael Trebilcock, Professor of Law
and Economics, Faculty of Law, University of Toronto.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Signature

Date of signature

Karen Smith
Barrister and Solicitor