

## BIG CASE MANAGEMENT TRIAL OPINION GUIDELINE

### TERMS & CONDITIONS FOR COUNSEL IN BIG CASES

As counsel conducting big cases you are required to comply with the following terms and conditions. A breach of any of these provisions may result in the non payment of an account, or the delay in payment of a account.

1. To provide the Case Manager/ Area Director with a comprehensive letter of opinion setting out all of the relevant facts and legal issues before the budget is established as well as periodic updates with respect to the proceeding.
2. To inform the Case Manager/ Area Director in a timely manner of:
  - new issues or significant events that will or could impact on the budget;
  - all planned pre-trial motions;
  - Judicial Pre-trials and whether counsel thinks it would be beneficial for the Case Manager/ Area Director to attend a JPT;
  - When pre-trial negotiations and plea negotiations are underway;
  - when 80% of the budget has been expended;
3. To complete and submit all budget forms requested by LAO throughout the proceeding and in a timely manner;
4. To request a reasonable budget;
5. To manage the authorized budget efficiently, effectively and in accordance with the highest professional standards;
6. To provide the client with reasonable and prudent advice on all matters including, where relevant, advice on plea negotiations;
7. To properly use preparation time in relation to trial date;
8. To properly allocate authorized preparation time between yourself and second counsel;
9. To submit monthly accounts and a complete account for all work done to date within 30 days of the end of the preliminary inquiry and/or trial.
10. To provide the Case Manager/ Area Director, when requested, with a copy of all accounts re: BCM billing;
11. To immediately advise of any requests for a change of solicitor. Counsel shall not apply to get off the record before first advising the Case Manager/ Area Director, and before the change request is granted. Counsel may be required by the Case Manager/ Area Director to meet with the client to discuss the potential for resolving any

issues between them;

12. To provide the Case Manager/ Area Director with estimates for disbursements;

13. In order to most effectively use preparation time, to canvass LAO LAW as to the availability of research support for the case, and to use LAO LAW general memoranda wherever possible on the various issues that arise in the client's case including, but not limited to, pre-trial motions;

14. To ensure that a meaningful and usable work product is transferred to another lawyer in the event of a successful change of solicitor application (failure to provide meaningful and usable work product may result in non-payment for work done on the file);

15. To advise LAO in advance if there is a risk that the case will cost more than the amount of the allocated budget;

16. To advise LAO of any change in circumstances that may result in less than the full amount of the allocated budget being expended.

17. To avoid conflicts of interest that could result in an order removing counsel i.e. representation of co-accused or crown/defence witnesses in the past or present case.

**GENERAL MATTERS**

Certificate Number:

Client Name:

Charge(s) subject to this budget:


Date of offences(s)


Date of original information. Please attach a copy:

Counsel Name:

Tier Level:

Counsel Contact Information:

Are you original counsel?

Yes:  No:

Was there a private retainer?

Yes:  No:

If yes, please provide specific details including your hourly rate and the total amount billed. Please also attach copies of all accounts with your opinion.

LAO Case Manager / Area Director Name:						
Names of co-accused and their counsel:						
To the best of your knowledge, please indicate which co-accused are legally aided:						
Have counsel or associates ever represented any of the co-accused or crown/defence witnesses?		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
If yes, is there consent from the crown/client/witnesses?		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
Location (Town/City) and Court this matter is proceeding in:						
Name(s) of assigned Crown Attorney(s):						
<b>Next court date:</b>		Last Court Date:				
Stage of proceedings:						
Project name (if any):						
Is it a retrial? If so, please include a copy of judgement and reasons.			Yes:	<input type="checkbox"/>	No	<input type="checkbox"/>
Is the case high profile in your area?		Yes:	<input type="checkbox"/>	No:	<input type="checkbox"/>	
<b>CASE DETAILS</b>						
Please provide a reasonably detailed description of the events surrounding the charges against your client. Also, please attach a copy of the crown/police synopsis if it provides a reasonable outline of the allegations.						

What are the strengths and weaknesses of the case against your client?

If your client has one or more co-accused please indicate in reasonable detail how, and why, your client fits in relation to them according to the Crown's theory of criminal liability:

**POSITION OF THE PARTIES**

**POSITION OF THE CROWN**

Upon what legal basis does the Crown seek to establish the liability of the accused (principal, party, conspirator or other)?

**POSITION OF THE DEFENCE**

What is the position of the defence?

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

Alibi	<input type="checkbox"/>
Automatism	<input type="checkbox"/>
▪ Intoxication	<input type="checkbox"/>
▪ Drugs	<input type="checkbox"/>
Alcohol	<input type="checkbox"/>
Diminished Capacity	<input type="checkbox"/>
Accident	<input type="checkbox"/>
Identity	<input type="checkbox"/>
Private defence	<input type="checkbox"/>
▪ Self	<input type="checkbox"/>
▪ Others	<input type="checkbox"/>
▪ Property	<input type="checkbox"/>
▪ Justification	<input type="checkbox"/>
Insanity (N.C.R)	<input type="checkbox"/>
Necessity	<input type="checkbox"/>
Duress	<input type="checkbox"/>
Compulsion	<input type="checkbox"/>
Provocation	<input type="checkbox"/>

Will the character of the victim be the subject matter of the evidence? Yes:  No:

Will an application for a third party records be made by:

▪ the Crown	Yes:	<input type="checkbox"/>	No:	<input type="checkbox"/>
▪ the Defence:	Yes:	<input type="checkbox"/>	No:	<input type="checkbox"/>

**JUDICIAL INTERIM RELEASE**

Date of arrest or apprehension:

Date of incarceration in respect of offences alleged:

Is the accused required to be detained in custody in respect of any other matters? Yes:  No:

**RELEASE FROM CUSTODY**

<ul style="list-style-type: none"> <li>Has the accused been released from custody in respect of the offence(s) alleged in the information / indictment?</li> </ul>		Yes:	<input type="checkbox"/>	No:	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Upon what form of release?</li> </ul>					
<ul style="list-style-type: none"> <li>If released, has the accused been re-incarcerated in respect of these or other offence(s)?</li> </ul>		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, please provide details:					
<b>PROCEDURAL INFORMATION</b>					
<b><u>PRELIMINARY HEARING</u></b>					
a. Length of preliminary hearing (in court days):					
<ul style="list-style-type: none"> <li>Was the hearing of any or all evidence at the preliminary hearing waived pursuant to subsection 549(1)?</li> </ul>		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, please provide details:					
<ul style="list-style-type: none"> <li>Was the accused ordered to stand trial in respect of the offence charged in the information or in respect of another or additional indictable offence in respect of the same transaction?</li> </ul>		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, please provide details:					
<ul style="list-style-type: none"> <li>Is the transcript of the preliminary hearing available?</li> </ul>		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b. Is the Crown conducting the trial also the preliminary inquiry Crown?		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<b><u>RESOLUTION</u></b>					
a. Likelihood of early resolution; Has an offer of resolution been discussed/negotiated? If so what were the terms and what were the client's instructions?					
<b><u>MODE OF TRIAL</u></b>					
a. Do(es) offence(s) fall within Section 469 of the Criminal Code:					
<ul style="list-style-type: none"> <li>(...Courts of criminal jurisdiction)</li> </ul>		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b. Will there be an application under subsection 473(1) of the Criminal Code to try the matter without a jury?					
<ul style="list-style-type: none"> <li>(...trial without a jury)</li> </ul>		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Has the accused elected trial:	Judge alone	<input type="checkbox"/>			
	Judge and Jury	<input type="checkbox"/>			
Is a re-election for trial:	Likely	<input type="checkbox"/>			
	Possible	<input type="checkbox"/>			
	Unlikely	<input type="checkbox"/>			

<b><u>SPECIAL PLEAS</u></b>				
a. Will any of the special pleas be raised?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, please provide details:				
<b><u>COMPOSITION OF THE JURY/COURT</u></b>				
a. Will there be a challenge to the array of jurors?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, upon what basis?				
b. Will prospective jurors be challenged for cause?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, upon what basis?				
<b><u>ISSUE OF FITNESS</u></b>				
a. Will the issue of fitness of an accused to stand trial be raised in these proceedings by:				
The Crown	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
The Defence	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, please provide details?				
Was the issue of fitness raised at the preliminary inquiry in this matter?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, upon what basis?				
<b><u>DISCLOSURE</u></b>				
a. Please describe the volume, format and nature of the disclosure:				
b. Is further disclosure required? Please provide details:				
c. Are there any problems with disclosure? Please provide details:				
<b><u>EVIDENCE TO BE CALLED</u></b>				
▪ By the Crown	Police: <input type="checkbox"/> #:	Civilian: <input type="checkbox"/> #:	Expert: <input type="checkbox"/> #:	
If expert, provide details:				
▪ By the defence	Police: <input type="checkbox"/> #:	Civilian: <input type="checkbox"/> #:	Expert: <input type="checkbox"/> #:	

If expert, provide details:			
<b>PROCEDURAL ISSUES</b>			
<u><b>DIRECTED VERDICT</b></u>			
Will an application likely be made at the conclusion of the prosecution's case for a directed verdict of acquittal?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
If yes, upon what basis?			
<u><b>OTHER PROCEDURAL ISSUES</b></u>			
Are there any other procedural matters upon which the trial judge will be asked to rule?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
If yes, provide details:			
<b>PREPARATION REQUIRED</b>			
a. What authorizations have you received to date from the Area Director (preliminary inquiry for example)?			
b. How many hours of preparation have you used to date, if any, since the end of the preliminary inquiry?			
c. What have you billed and been paid to date on this certificate? Have you billed for the preliminary hearing? Have you billed any interim accounts for trial preparation?			
d. Have trial dates been set by the court?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
If yes, please provide dates and total number of days:	For pre trial motions:		
	For trial proper:		
	Total number of days:		
<u><b>PRE-TRIAL MOTIONS</b></u>			
An application for pre-trial motions funding must satisfy LAO that the motion is a justifiable expenditure of public funds. In order to do this, LAO must consider both the individual application and the funding available for BCM cases generally. As a result, an application for pre-trial motion funding must address the following issues:			
<ul style="list-style-type: none"> <li>• Does the motion have a reasonable prospect of success?</li> <li>• How does the motion materially advance the client's defence?</li> <li>• What effect would the motion have on the overall length and cost of the proceedings?</li> <li>• Is the time and budget requested appropriate?</li> <li>• Would a reasonable private-paying client spend his or her own funds on this motion?</li> </ul>			
Please outline these issues and preparation requested for each application you intend to argue:			
#1:	Hrs	\$ (Hrs x Rate)	

#2:	Hrs	\$ (Hrs x Rate)
#3:	Hrs	\$ (Hrs x Rate)
#4:	Hrs	\$ (Hrs x Rate)
#5:	Hrs	\$ (Hrs x Rate)

**TRIAL PROPER**

e. How many more hours of preparation do you require before the commencement of the trial proper?	Hrs	\$ (Hrs x Rate)
f. Estimated number of hours requested by counsel <i>per diem</i> for preparation <b>during</b> trial?	Total Hrs Per Diem (Hrs Per Diem x Crt Days)	\$ (Hrs x Rate)

**SECOND COUNSEL**

g. If counsel is seeking a second counsel please provide the proposed co-counsel's name and tier rate and number of expected days in court:		
Second counsel preparation hours, if hours noted above for pre-trial motions and trial proper are not to be shared.	Hrs	\$ (Hrs x Rate)
Second counsel per diem hours, if hours noted above are not to be shared.	Total Hrs Per Diem (Hrs Per Diem x Crt Days)	\$ (Hrs x Rate)

<b><u>TOTALS</u></b>				
ESTIMATED TOTAL PREPARATION FOR PRE-TRIAL MOSTIONS AND TRIAL PROPER (INCLUDES ALL PREP BEFORE AND ALL PER DIEM PREP)	Hrs	\$		
ESTIMATED TOTAL COURT TIME FOR PRE-TRIAL MOTIONS AND TRIAL PROPER (ESTIMATE 5 HOURS/DAY)	Hrs	\$		
SECOND COUNSEL ESTIMATED TOTAL COURT TIME FOR PRE-TRIAL MOTIONS AND TRIAL PROPER (ESTIMATE 5 HOURS/DAY AND NOTE THAT JR PAID AT \$58.17/HOUR)	Hrs	\$		
TOTAL ESTIMATED COST (FEES)	Hrs	\$		
<b><u>OTHER INFORMATION AND DISBURSEMENTS</u></b>				
Can a student, paralegal or junior associate perform any of the pre-trial preparation?	Yes:	<input type="checkbox"/>	No:	<input type="checkbox"/>
Provide details:				
Can any of the pre-trial preparation be divided among counsel for co-accused?	Yes:	<input type="checkbox"/>	No:	<input type="checkbox"/>
Provide details:				
Estimated costs of preliminary hearing transcripts:	\$			
Estimated costs of private investigators:	\$			
Estimated costs of expert witness(es):	\$			
Estimated costs of travel and mileage (including witness travel):	\$			
Other (please specify):				
1.	\$			
2.	\$			
3.	\$			
4.	\$			
TOTAL ESTIMATED COSTS OF DISBURSMENTS:	\$			
<b>EXPECTED OUTCOME</b>				
a. Likelihood of conviction?				
b. Likely consequences if convicted:				

c. Is it likely that the Crown will bring a dangerous/long-term offender application if convicted?

## **BILLING REQUIREMENTS**

Before submitting an account we would ask you to please familiarize yourself with our BCM billing tips located on our website at [www.legalaid.on.ca](http://www.legalaid.on.ca) under Information for Lawyers and our revised Tariff and Billing Handbook which is located under Resources. Please note that we now require all accounts submitted to be typed.

A budget sets a number of hours that counsel may bill as preparation time. Generally counsel is also allocated some hours of preparation time for every day in court. Court time means court time spent in a contested preliminary inquiry or court time spent in a contested trial or guilty plea through to the sentencing phase. Counsel should clearly indicate what time billed on the account was for preparation and what time was spent in court. Counsel should summarize the total preparation hours and the total court hours at the end of the detailed paper account.

### **Entering your Account Online**

When entering your account online, you must enter your court days and court time accurately in order for the account to be processed expeditiously. Failing to enter the account accurately will delay payment, as we are required to re-enter the account internally in order to re-process it correctly.

As of October 2009, it will be mandatory for you to submit your account in electronic format through our *Online* billing system, flag discretion and attach your dockets and disbursement invoices.

Should you have any questions regarding the appropriate way to enter your account online, please do not hesitate to contact our Lawyer Service Centre at **Telephone: (416) 979-9934 Toll free: 1-866-979-9934**. The Lawyer Service Centre Staff are here to assist you in entering your online accounts accurately.

### **Accurate Court Time**

Please note that for purposes of budget or tariff interpretation, court time commences when the court convenes. Counsel can bill court time from the time court is set to convene as counsel is required to be in court at that time. Court time means time where Court is actually in session and not waiting time prior to the Court commencing. Court time does not include lunch, or time spent unpacking materials at the beginning of the day or packing up materials at the end of the day. That time is calculated as preparation time.

At a minimum, we would ask you to provide, in your dockets, the proceeding, the level of Court, the address of the Court, the Courtroom Number and the name of the Judge before whom the matter is heard. It is helpful to provide a description of the evidence heard or the legal argument made on the Court day.

### **Detailed Preparation Time**

With respect to preparation time, we would ask you to provide us with a description of work billed. Simply indicating that your hours were used for "Preparation" or "Research" is not adequate. Your dockets must contain sufficient detail to allow LAO to ascertain what work was done on the date docketed. Detailed dockets are necessary for fiscal accountability and statistical purposes, to allow comparison between work done on BCM files and files where counsel is requesting discretion. This information assists in future budget setting.

### **Billing For Second Counsel**

You, as the acknowledging solicitor, are responsible to pay co-counsel or agents regardless of whether or not you bill over the set BCM budget.

The budget allows for shared preparation time. You must co-ordinate billing with co-counsel. When you submit your own account for work done during a calendar time period, you must also submit the co-counsel's account for work

done during the same calendar time period. When billing court days where co-counsel attended with you, you must submit one account for yourself and for co-counsel. Indicate the number of calendar court days and the total number of court hours (counsel and co counsel).

For instance, if both counsel attended court on May 1, 2008 and May 2, 2008, and each counsel billed 5 hours of court on each day, the number of court days would be 2 days and the amount of court time would be 20 hours, as there were 2 calendar days and 20 person hours in court.

**Billing Schedule**

All BCM accounts have to be prepared by a BCM adjuster and reviewed by a staff lawyer. Therefore, the fewer accounts that you submit, the faster all accounts will be settled. Counsel are expected to submit monthly accounts and to provide a complete account for all work done to date within 30 days of completing a preliminary hearing and/or trial. Please do not bill more frequently than one a month. To continue to accept frequent interim account operates to the detriment of compliant panel members as the processing of frequent interim accounts slows down the processing of all accounts.

**BCM Billing Tips are available at [http://www.legalaid.on.ca/en/info/bcm\\_forms.asp](http://www.legalaid.on.ca/en/info/bcm_forms.asp).**

**I CONFIRM THAT THIS APPLICATION HAS BEEN ACCURATELY COMPLETED TO THE BEST OF MY KNOWLEDGE. I HAVE READ AND AGREE TO ABIDE BY THE EXPECTATIONS OF COUNSEL AND BILLING REQUIREMENTS.**

**I AGREE THAT I WILL NOT BILL LAO FOR ANY REMOVAL APPLICATION FOR CONFLICT BROUGHT BY THE CROWN OR THE COURT OR COUNSEL FOR ANOTHER CO-ACCUSED AS A RESULT OF MY PREVIOUS REPRESENTATION OF A CO-ACCUSED. I AGREE THAT I WILL INDEMNIFY LAO FOR THE COST OF MY TRIAL (OR PRELIMINARY INQUIRE) PREPARATION TIME SHOULD I BE REMOVED FROM THE RECORD FOR CONFLICT AS A RESULT OF MY PREVIOUS REPRESENTATION OF A CO-ACCUSED.**

I AGREE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
COUNSEL SIGNATURE

\_\_\_\_\_  
PLEASE PRINT NAME

\_\_\_\_\_  
SOLICITOR NUMBER