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# Accounts and Activity Reporting

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## Introduction

Pursuant to section 95(1) of the [Legal Aid Services Act, 1998](#):

“Except in accordance with this Act, no person shall take or receive any payment or other benefit in respect of any legal services provided by the person under this Act.”

Duty counsel cannot accept any fee, gratuity or other compensation of any kind over and above the fees and disbursements provided in the Act or Regulations. Duty counsel cannot hold money or chattels in trust for a client or any other person.

Reg 106/99 to LASA governs the submission of duty counsel accounts:

41. (1) A lawyer who acts as duty counsel shall, promptly after performing his or her duties, submit to the president,

- an account, in the form specified by the legal accounts officer, showing the times during which and the places at which he or she was engaged as duty counsel; and
- any claim for expenses.

The account shall be submitted within six months after the services to which it relates were completed.

(1) If an account does not comply with subsection 40(1) or 41(2), as the case may be,

- the Corporation is not required to pay the account; and
- the account shall be returned to the lawyer with an appropriate reference to this section.

(2) Despite subsection (1), the president has discretion, on the lawyer's application, to extend the time during which the account may be submitted; in exercising the discretion, the president shall take into account whether or not the Corporation (or the applicant, if subsection 40 (1) applies) has been prejudiced by the delay.

The application for an extension shall be made to the president and shall explain why the extension is necessary.

The factors resulting in a time extension must generally be beyond the control of duty counsel.

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## Hourly Rates

The hourly rate for duty counsel work performed after August 1, 2002 is \$70.35. There is no experience increase. If more than five hours are required, some area directors require duty counsel to obtain his/her authorization. Often authorization is granted retroactively unless the services were unnecessary. Work must be performed at court or in assigned interview areas unless otherwise authorized by the area director.

→ NOTE

A lawyers may only bill for a maximum of ten hours per day of combined duty counsel and certificate work.

### Special northern rates

Lawyers who provide services in one of five designated areas (Cochrane, Kenora, Rainy River, Temiskaming and communities served by Nishnawbe-Aski Legal Services Corporation (NALSC)) will receive the following incentives on all duty counsel work performed after August 1, 2002:

- Duty counsel rates will be paid at the new hourly rate of \$77.39 (no tier level increase). Duty counsel appearance fee remains at \$40.00.
- Travel time in these areas is paid at \$47.30 (10 per cent above the normal travel rates).
- For fly-in courts and to destinations 200 km or more one way from the lawyer's offices, the tariff provides a minimum guaranteed daily rate (GDR) of \$800.00 on both certificate and duty counsel assignments. Prior authorization from the area director is required.
- The GDR does not apply if the destination is to the location of an area office, e.g.: Sioux Lookout to Kenora.

Lawyers authorized to provide duty counsel services in fly-in courts in Northern Ontario submit their accounts on their letterhead (attaching the back of a Form 12 to record the services provided and the names of clients served) and submit them to the area director for approval. The solicitor number must be included.

Full details on how the GDR is being implemented are being worked out. Check the [LAO Web site](#) for more details on how to bill for these special northern rates.

### Family violence services (Form 13-FV)

Duty counsel acting on a special 2-hour duty counsel assignment (Form FV-13) in family violence situations may bill up to a maximum of two hours. The lawyer's name and number must be included, along with client name, date service was rendered and the time the interview commenced and terminated.

The form 13-FV cannot be used to circumvent the certificate application process or as a means of supplementing hours allowed on a family law certificate.

### Travel time

Travel time may be claimed only if the distance from office (not home) to court is 50 kilometres or more one way, and the travel time has been previously authorized by the area director. Duty counsel may claim travel time at \$43.00 per hour (\$47.30 for one of the five designated area of the north – see [Special northern rates](#) above).

Duty counsel cannot claim travel time in the following circumstances:

- When travelling to or from a location less than 50 km one way;

- When travelling within the Greater Toronto Area (GTA), including the Regional Municipalities of Durham, York, Peel and Halton.

## Disbursements

The most common disbursement is mileage which is paid at the rate of \$0.30 per kilometre (\$0.305 in northern Ontario). Reasonable parking expenses may also be claimed with mileage. These disbursements are not payable unless there is an allowance for travelling time (e.g.: 50 km plus authorization) and are therefore not payable in the GTA. Other disbursements must be incurred at court or the assigned interview area unless otherwise authorized by the area director.

The dividing line between northern Ontario and southern Ontario for mileage rates is as follows:

Healy Lake (Municipal) Road from Healy Lake easterly to its junction with Highway 612; Highway 612 to Highway 103; Highway 103 easterly to its junction with Highway 69; Highway 69 easterly to its junction with Highway 118; Highway 118 through Bracebridge to its junction with Highway 11; Highway 11 northerly to its junction with Highway 60 at Huntsville; Highway 60 easterly to its junction with Highway 62 at Killaloe Station; Highway 62 to Pembroke; the above-named highways to be included in southern Ontario.



- Any travel that takes place on or below the line shown in the map above is paid at southern Ontario rates.
- If travel encompasses travel in both the northern and the southern area, the travel rate is determined by where the majority of the distance is traveled.

### Appearance fees

Duty counsel are also entitled to the following appearance fees:

Service	Fee
Appearance in family court, criminal court or young offenders court	\$40 per day per court
Attendance at a jail, a mental hospital or a legal advice location	\$40 per day per location
Providing family violence advice up to a maximum of one authorization per account	\$40 per authorization
Acting as a special duty counsel up to a maximum of one authorization per day	\$40 per authorization

Appearance fees are not claimed on the Duty Counsel Account Form 12 or Form 13. They are calculated automatically when the account information is processed at provincial office.

- If you appear as duty counsel in criminal, youth and family court on the same day, you are entitled to three appearance fees, as you would be submitting three separate accounts for the three courts.

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## Payment of Accounts

Duty counsel accounts must be submitted on original forms obtained from the area office (Form 12 --Criminal Duty Counsel Statement of Account or Form 13 - Civil Duty Counsel Statement of Account).

- Accounts must be completed by the lawyer who performed the services.
- If the account includes disbursements, receipts must be included.
- If travel time and travel disbursements are included, send the account to the area director or supervisory duty counsel if applicable, for authorization.

### Billing deadlines

Accounts must be submitted within six months of the completion of the service. Billing deadlines are strictly enforced, and accounts that are not received by the billing deadlines are not eligible for payment.

You can apply to the President of LAO for an extension of the final date for submission when you submit the account. Your application must be in writing and with reasons. If

LAO has been prejudiced by the delay in submission of the account, an extension is not granted.

If you are submitting an account more than six months after the date of duty counsel service, you should include a letter explaining the delay. Accounts with letters that provide evidence of illness or incapacity are generally accepted; accounts with letters that explain inadvertence or office administrative difficulties are generally not accepted.

Send completed forms to:

Legal Aid Ontario  
Data Processing Department  
375 University Avenue, Suite 304  
Toronto ON M5G 2G1

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## Forms 12 and 13 – Criminal and Civil Duty Counsel Accounts

### Rules applicable to both forms 12 and 13

- Duty counsel must fully complete a Form 12 -- Criminal Duty Counsel Statement of Account or Form 13 -- Civil Duty Counsel Statement of Account.
- The lawyer's name and solicitor number must be entered on every account. It is important that the solicitor number be accurate to avoid a colleague being paid in error.
- Sections 1, 2, 5, 6, 7, and 8 of the form must be completed in full.
- Sections 3 and 4 need only be completed if applicable.
- All dates must be in year/month/day format. For example June 1, 2002 would be shown as 02/06/01.

### Section 1

- Only one type of criminal court can be entered per Form 12 criminal account -- Youth or Adult. Even if one youth court matter were dealt with on an otherwise adult criminal day, a separate form is required.
- On the Form 13 civil account, the appropriate court or service must be circled (e.g.: Family Court, Advice Lawyer, Mental Health, FLIC or Other). CAS matters are included as family court. Each type of service must be on a separate form. For example, a lawyer acting as family court duty counsel in the morning would complete one Form 13 for those services, and a second Form 13 if he/she then acted as the advice lawyer in a FLIC in the afternoon. Similarly, acting as the advice lawyer in the FLIC must be billed separately from acting as a general advice lawyer.
- Duty counsel must identify the times of services provided and ensure that time entries do not overlap if more than one account is being submitted per day.

### *Section 2*

- Enter the times of day when services began and ended.
- If duty counsel services are not completed until mid to late afternoon, it is expected that duty counsel take a lunch break and record the morning and afternoon sessions separately.
- Duty counsel are not paid for lunch breaks or meals. If duty counsel do not break for lunch and continue to assist clients over the lunch hour, there may only be one time entry for that day, starting in the morning and ending in the afternoon.
- The total time billed for duty counsel services must be recorded in tenths of hours (e.g.: 4 hours, 30 minutes is shown as "4.5 hours").
- As a general rule, duty counsel are expected to be at their assigned location a half-hour before court is scheduled to start (for court-related services) and are paid for that time. This rule may be varied by an area director and duty counsel should confirm the local policy with the local area director.

### *Section 5*

- The first time a lawyer submits an account to LAO showing his/her GST Registration Number, the GST number goes on file and does not have to be entered on any subsequent accounts.
- On each account, the amount of GST being billed must be calculated.

### *Section 6*

- Each account must be signed and dated by the duty counsel.

### *Section 7*

- Duty counsel are required to report all services provided to each person assisted. This information is used by LAO to manage the duty counsel program.
- All persons assisted must be named.

### *Section 8*

- Enter the total number of each type of service at the bottom of each column.
- The total number of clients assisted must also be totalled at the bottom of the form. As more than one service may be provided to a client, the total services and the total number of clients are not likely to coincide.

### **Service definitions on Form 12 - Criminal Account Form**

The general rule is that every service provided by duty counsel to a client must be checked off. See below for more information on specific services. An example of a fully completed Form 12 - Criminal Duty Counsel Account is included in Chapter 7: Appendices and Forms - Appendix 13 - Sample Form 12 - Criminal Duty Counsel Account, page 7-21.

#### *Statute*

Record "F", for federal legislation and "P" for provincial offences. Most people assisted by duty counsel have been charged under federal legislation. If a client has been charged with both a federal and a provincial offence, the more serious offence ("F") is indicated. The number of federal and provincial cases must also be totalled at the bottom of the "F" and "P" columns.

#### *Summary Advice*

Since all substantive services provided by duty counsel contain an advice component, the category of "Summary Advice" should only be checked as a service if no other services are rendered other than "Financial Eligibility Test" or "Referral".

#### *Adjournment*

A "Contested Bail Hearing" or "Consent Release/Variation" always involves an adjournment, so "Adjournment" should not be checked if a bail hearing or consent release/variation is done for that same client. "Contested Bail Hearing" is recorded as a service once a hearing is commenced, even if the Crown later consents to a release.

#### *Sureties, lawyers and others contacted*

Only requires a check mark rather than a number.

### **Service definitions on Form 13 - Civil Account Form**

Included in Chapter 7: Appendices and Forms - Appendix 14 - Service Definitions - Form 13 Civil Account, page 7-23, is a full list of the civil service definitions. An example of a fully completed Form 13 - Civil Duty Counsel Account is included in Appendix 15 - Sample Form 13 - Civil Duty Counsel Account, page 7-25.

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## **Special Duty Counsel**

Special duty counsel submit a Form 12 in criminal matters and a Form 13 in civil matters. However a Special Duty Counsel Authorization form signed by the area director must be attached to the completed account form. The area director's authorization includes an upper limit on the number of hours or service to be provided.