

ANNUAL BILLING LIMIT HARDCAP & EXEMPTION REQUESTS POLICY FRAMEWORK

1. PURPOSE

The Annual Billing Limit Policy Framework contains information regarding LAO's annual billing limit and requests for exemptions.

2. HARDCAP AUTHORITY

LAO's hardcap authority is found in s.3 (2) 7 and 9 of Regulation 107/99 to the *Legal Aid Services Act*:

7. Beginning in the fiscal year 2004-2005, no lawyer shall be paid for more than 2,350 hours of services in a fiscal year.

....

9. The president may authorize payment for more hours of services than paragraph 7 would otherwise allow if he or she considers it necessary to ensure the representation of an applicant. O. Reg. 107/99, s. 3 (2); O. Reg. 180/04, s. 1.

3. APPLICATION & SCOPE

The annual billing limit, regardless of tier level, is 2,350 hours a fiscal year. LAO's fiscal year runs from April 1 to March 31.

Only hours billed to LAO that are paid in a fiscal year are included in a lawyer's annual billing limit. And only the hours paid for work performed by an individual lawyer are included in his or her annual billing limit. Student or law clerk time is excluded from hours allocated to an annual billing limit. If a lawyer acknowledges a certificate, but another lawyer performs the work required by the client, the amount billed is included in the non-acknowledging lawyer's annual billing limit, even though the acknowledging lawyer is required to sign the account because he/she acknowledged the certificate.

Amounts billed in excess of the annual billing limit are disallowed and not paid, although disbursements and amounts billed by other lawyers on the same

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account are paid. Any unpaid fees cannot be resubmitted for reconsideration or payment at a later date.

Acknowledgement fees usually paid at the time the first account is submitted are disallowed and not paid if a lawyer reaches 100% of the annual billing limit.

4. ACCOUNTABILITY

The Regional Vice-Presidents and Area Directors are accountable for the certificate budget and responsible for ensuring panel members remain within their hardcap. The Lawyer Services and Payments Department provide Vice-Presidents and Area Directors with panel member hardcap reports to assist them with this responsibility.

5. EXEMPTIONS

LAO strictly applies the annual billing limit contained in the Regulations of the *Legal Aid Services Act*. In exceptional circumstances, LAO may consider a request for an exemption from the application of the annual billing limit in relation to a particular certificate. Your request must be in writing to the Director, Lawyer Services & Payments, with a copy to the Area Director, and must provide sufficient details to enable a decision to be made. The Director will review your request together with the Area Director and make a recommendation to the Regional Vice-President and President.

The President has authority to grant an exemption. Exemptions are rarely granted and only in one instance to ensure a reasonable limit is placed on annual billing and service quality is not compromised. The expectation is that lawyers will review their billings regularly and adjust their practice accordingly, including not acknowledging new certificates, to avoid exceeding hardcap. Failure to remain within your annual billing allocation may result in non-payment for work done.

The President may consider the following factors when determining whether to grant an exemption:

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- ✓ What is the solicitor's panel profile and the opinion of the panel manager, typically the area director, regarding the request? (A panel profile includes factors such as compliance with administrative billing requirements, history of volunteering with LAO, efforts to save LAO money)
- ✓ Is this the solicitor's first exemption request?
- ✓ Is the request a result of a lawyer's volume of practice or other factors?
- ✓ Does the solicitor provide services to a hard to serve client population (e.g., persons suffering from mental illness) where the number of service providers is small?
- ✓ How many hours are being requested?
- ✓ Is it necessary to ensure client representation?
- ✓ Did unforeseeable circumstances contribute to the lawyer exceeding hardcap? E.g. law partner becoming ill in the middle of long trial
- ✓ What efforts did the lawyer make to manage a high volume legal aid practice to avoid exceeding hardcap?
- ✓ Is there evidence of a written agreement or contract between LAO and the solicitor that allows for the hardcap to be exceeded?

6. APPEAL FROM AN EXEMPTION DECISION

There is no appeal from the President's decision.

7. REPORTING

The Lawyer Services and Payments Department will provide regular reports to the Regional VP's and the Area Director regarding lawyers approaching the annual billing limits.

The Lawyer Services and Payments Department provides an annual report to LAO's Executive Committee and the Board regarding the annual billing limit, including the number of lawyers that reach their hardcap and the number of requests for exemptions.



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8. SUPPORT

Notices are sent to lawyers who reach 50%, 75%, 90% and 100% of the annual billing limit. Lawyers are responsible for monitoring legal aid billings, being in the best position to know the amount billed and paid by LAO. Lawyers must take all necessary steps to ensure they do not exceed the annual billing limit.

Lawyers can check their annual billings *Online*. Please contact the Lawyer Service Centre for support and information regarding hardcap. *Lawyer Service Centre (416) 979-9934 or 1-866-979-9934*

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QUESTIONS & ANSWERS

1. Why did LAO introduce the hardcap?

LAO introduced an annual billing limit (hardcap) to ensure service quality to clients is not compromised and taxpayers' money is managed effectively. The 2350 limit equals approximately 45 billable hours per week over 52 weeks. 2350 at Tier 3 is equivalent to \$230,000.00.

2. How do I request a hardcap exemption?

You write to the Director, Lawyer Services and Payments, with a copy to the Area Director, outlining the following:

- ✓ the number of hours requested beyond your hardcap
- ✓ the number of times you have requested an exemption
- ✓ the reasons for your request

The Director will review your letter, consult with the area director, and make a recommendation to the Regional Vice-President and President who will decide whether the exemption will be granted. Exemptions are granted in rare circumstances.

3. How do I check my hardcap?

You can check your hardcap at Legal Aid *Online* by going to your Home-Welcome Page or from the menu to the left of your screen, click the link *Hardcap Information*, then enter the year for the data you wish to retrieve. For current fiscal year (April 2009 to March 2010) enter 2010 or press the magnifying glass next to the field to select a fiscal year then press enter.

In addition, Lawyer Services and Payments provides notifications when you reach 50%, 75%, 90% and 100% of the annual billing limit.

4. How can I avoid hitting my hardcap?

If you are close to your annual billing limit, you may want to consider at what point in time you will submit further accounts to LAO. You might also decide not to acknowledge certificates for a period of time.

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In considering when to bill your accounts, remember that time limits for submitting accounts are subject to strict enforcement. All accounts must be submitted in accordance with the applicable time limits, i.e. billing deadlines.

5. What happens when I hit my hardcap?

When you hit hardcap, Legal Aid will request that you not submit new accounts billing your own work until the new fiscal, i.e., after April 1. We suspend your privileges to use *Legal Aid Online* to submit accounts to prevent payment of amounts above the billing limit. With an undertaking from you not to bill your own hours, the portal can be reopened to allow you to submit accounts for disbursements or for work by agents or employees not affected by your hard cap.

All accounts must be submitted within the billing deadlines to be considered for payment. For more information on the billing deadlines, please see the Tariff and Billing Handbook.

6. Where can I find more information?

- ✓ Tariff & Billing Handbook [HANDBOOK](#)
- ✓ Better Billing Bulletin [BULLETIN](#)
- ✓ Lawyer Service Centre (416) 979-9934 or 1-866-979-9934