

## 3. Criminal Tariff

# Chapter 3: Criminal Tariff

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Chapter 3: Criminal Tariff  
**Author:** Lawyer Service & Payments  
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# Chapter 3: Criminal Tariff

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## 1. Introduction

A criminal certificate authorizes you:

- To represent your client only on the charges named on the certificate, and
- To take all necessary steps within the proceeding, including:
  - conduct a first instance bail hearing;
  - bring a Charter motion;
  - elect trial by judge alone or judge and jury;
  - conduct a YCJA transfer hearing;
  - bring a motion for additional disclosure or disclosure of third party records;
  - attend judicial pretrial;
  - conduct a preliminary hearing and/or contested trial, or negotiate resolution of the charges;
  - attendance on sentencing; and
  - conduct a second judicial pretrial in the Superior Court of Justice in Indictable II proceedings.

As of June 8, 2015, a criminal certificate also authorizes you:

- to conduct a second bail hearing under s. 524(4) CCC; and
- to prepare and file a bail variation under s. 515.1 CCC.

The following matters are not included in a criminal certificate and additional authorization must be obtained from the District Office for:

- Travel;
- Bail review;
- Youth bail de novo;
- Junior counsel, senior counsel or co-counsel;
- Big Case Management;
- Dangerous or Long-Term Offender application;
- Serious Violent Offence application.

## 1.1 Ontario Review Board Hearing

Additional authorization is also required from the District Office for the following:

- To add additional charges to the certificate or to have a new certificate issued if additional services are required by your client;
- To pursue any appellate remedy;
- To pursue any prerogative remedy, for example, an application to quash the committal for trial.

### Caution

All requests for additional authorization must be made in a timely fashion. Delay in making your request to the area office may result in authorization being refused.

### Tip

Authorization for disbursements is obtained from the Lawyer Services and Payments Department.

Getting all necessary disbursement authorizations and certificate authorizations in advance speeds up the processing of your account.

## **2. Tariff Maximums**

All services are subject to a tariff maximum which is a limit on the number of hours you are permitted to bill for a set of services. The tariff maximum depends on the type of charges authorized, on the progress of the case and how the charges are disposed of.

From time to time, the tariff rates or hourly maximums are changed by legislation. The issue date of the certificate determines the tariff rates or hourly maximum that applies. If the certificate is amended, the original issue date of the certificate still determines the tariff that applies.

### **2.1 Determining the tariff maximum**

Follow the instructions below to determine the tariff maximum.

Check the certificate to determine which charges are authorized.

- 1.** Check the list of offences at the end of this chapter to determine the Legal Aid tariff category of the most serious charge that was disposed of. Different tariff maximums apply to each of these four Legal Aid tariff categories:
  - summary conviction offences;
  - indictable Type I offences;
  - indictable Type II offences;
  - provincial offences and federal summary conviction offences.
  
- 2.** Consult the table, based on the category of the charge, to determine the tariff maximum. The tariff maximum in each category can vary according to a number of factors. For example:
  - Did the client plead guilty to none, some or all of the charges? For some categories, the maximum is different for a guilty plea than for a trial or withdrawal;
  - Were any charges withdrawn?
  - Was there a contested trial? Additional hours are added to the maximum if a contested trial is held;
  - How many days did the trial continue? Additional hours are available for additional trial days for most categories of offence;
  - Were there any services that generate additional tariff maximums, such as a bail hearing or a judicial pretrial?

### **3. Table A: Summary conviction offences or Crown election offences where the matter proceeds summarily (except sexual assault)**

<b>Service</b>	<b>Maximum</b>
Guilty plea	6 hours
Withdrawal of one or more charges	8.5 hours
Contested trial	10.5 hours
Continuation – not guilty plea (each additional day after first day)	5 hours/day
Continuation – not guilty plea (each additional day after first day) for certificates issued on or after November 26, 2012	4 hours plus court attendance
Continuation – guilty plea (each additional half-day after first day)	2.5 hours/half-day
Bail hearing (one maximum per trial) (see <a href="#">Bail Hearings</a> , page 3-16)	2 hours
Second bail hearing under s.524(4) CCC for certificates issued on or after June 8, 2015	3 hours
Bail Variation	Included
Bail Variation for certificates issued on or after June 8, 2015	1 hour
Pretrial hearings with a judge (one maximum per trial) (see <a href="#">Judicial pre-trials</a> , page 3-22)	2 hours
Pretrial hearing with a Crown	Included
Bail review or youth bail de novo, including preparation and attendance at hearing (requires Director-General's prior authorization) (see <a href="#">Bail reviews and youth bail de novo application</a> , page 3-17)	10 hours  (5 hours for certificates issued prior to June 8, 2015)
Multiple charges (see <a href="#">Multiple Charges</a> , page 3-24)	
Charter motions (one maximum per trial)	2 hours
DNA databank application by Crown	2 hours

» *Certificates issued on or after June 8, 2015*

- If the Crown elects to proceed summarily, or does not elect on a hybrid offence, the charge is treated as a summary conviction offence, and the summary conviction tariff maximums apply.

- For summary conviction matters, preparation time and all court attendances are included in the maximum. The maximum is a “capped hourly limit” which includes all services billable under the certificate.
- Continuation of trial days after the first day on which a trial is heard, generate additional tariff maximums as set out below.
- In this Table, "half-day" means an attendance either before or after the luncheon recess during which evidence is led or submissions made.
- For certificates issued on or after November 26, 2012 a summary conviction contested trial continuation is eligible for:
  - Continuation subsequent contested court day at 4 hours preparation time for each half or full day plus court attendance

## Exceptions:

### Extrajudicial Sanctions

Where youth charges are withdrawn after a successful application for extrajudicial sanctions, the maximum for a guilty plea for the same type of offence applies, and includes all preparation, correspondence and communication, adjournments and remands.

### Charges of Theft/Possession and Impaired/Over 80

- Where the accused pleads guilty to theft or possession and the alternate charge arising out of the same set of circumstances is withdrawn, the capped hourly limit is equivalent to a guilty plea.
- Where the accused pleads guilty to one charge of impaired and the alternate charge arising out of the same set of circumstances is withdrawn, the capped hourly limit is equivalent to a guilty plea.



## 4. Table B: Indictable Type 1 offences, Crown Election offences where the matter proceeds by indictment, and all charges of sexual assault regardless of Crown elections

Service	Maximum
Guilty plea to any charge (half-day court and less than 5 hours preparation)	8.5 hours
Guilty plea to any charge (2 half-days court or more than 5 hours preparation)	13 hours
Withdrawal of all charges	13 hours
Contested trial	15 hours
Continuation – guilty plea (each additional half-day after first full day or 2 half days)	2.5 hours / half-day
Bail hearing (one maximum per trial) (see <a href="#">Bail hearings</a> , page 3-16)	2 hours
Second bail hearing under s.524(4) CCC for certificates issued on or after June 8, 2015	3 hours
Bail variation	Included
Bail Variation for certificates issued on or after June 8, 2015	1 hour
Pretrial hearing with a judge (one maximum per trial) (see <a href="#">Judicial pre-trials</a> , page 3-22)	2 hours
Pretrial hearing with a Crown	Included
Bail review or youth bail de novo including preparation and attendance at hearing (requires Director-General's prior authorization) (see <a href="#">Bail reviews and youth bail de novo applications</a> , page 3-17)	10 hours  (5 hours for certificates issued prior to June 8, 2015)
Multiple charges (see <a href="#">Multiple Charges</a> , page 3-24)	
Charter motions (one maximum per trial)	2 hours
DNA databank application by Crown	2 hours

» *Certificates issued on or after June 8, 2015*

- If the Crown elects to proceed summarily, or does not elect on a hybrid offence, the charge is treated as a summary conviction offence, and the summary conviction tariff maximums apply.

- A withdrawal without an election on a Crown elective offence is treated as a summary conviction offence and the summary conviction tariff maximums apply.
- If a hearing lasts more than one full day or two half-days, and the client does not plead guilty during the full day or two half-days, the charge becomes a Type II – see [Table C: Indictable Type II](#), page 3-8 for maximums. The change applies retroactively to the first day of trial or preliminary hearing.
- Preparation time and court attendance are included in the maximum.
- Continuation of trial after the first full day on which a trial is heard, generates additional tariff maximums as set out below.
- In this Table, "half-day" means an attendance either before or after the luncheon recess during which evidence is led or submissions made.
- In calculating whether there has been more than five hours of preparation, for the purposes of Table B items, attendances on adjournments are not counted. Items that generate their own tariff maximum, such as bail hearings and judicial pretrials, are also excluded for the purpose of calculating whether you have performed five hours of preparation.

## Exceptions:

### Alternative Measures

Where youth charges are withdrawn after a successful application for extrajudicial sanctions, the maximum for a guilty plea by an adult for the same type of offence applies, including all preparation, correspondence and communication, adjournments and remands, for withdrawal of charges.

## 5. Table C: Indictable Type 2

Service	Maximum
Preparation – guilty plea	13 hours
Preparation – withdrawal	13 hours
Preparation time – contested trial or preliminary inquiry (up to end of first day if it runs for 10 days or less)	15 hours
Preparation time – contested trial or preliminary inquiry (up to end of the first day if it runs for more than 10 days)	22 hours
Preparation time – continuation (attendance on additional days after the first day)	4 hours / day
Preparation time total	Maximum 64 hours
Attendance at a preliminary hearing or trial	Actual time (no limit)
Bail hearing (one maximum per trial) (see <a href="#">Bail Hearings</a> , page 3-16)	2 hours
Second bail hearing under s.524(4) CCC for certificates issued on or after June 8, 2015	3 hours
Bail variation	Included
Bail Variation for certificates issued on or after June 8, 2015	1 hour
Pretrial hearing with a judge (one maximum per trial) (see <a href="#">Judicial pretrials</a> , page 3-22)	2 hours
Second Judicial pretrial in the Superior Court of Justice	2 hours
Pretrial hearing with a Crown	Included
Bail review or youth bail de novo including preparation and attendance at hearing (requires Director-General's prior authorization) (See <a href="#">Bail reviews and youth bail de novo applications</a> , page 3-17)	10 hours  (5 hours for certificates issued prior to June 8, 2015)
Multiple charges (see <a href="#">Multiple Charges</a> , page 3-24)	
Charter motions (one maximum per trial)	2 hours
DNA databank application by Crown	2 hours

» *Certificates issued on or after June 8, 2015*

- Actual time in court for preliminary inquiry and trial is paid in addition to the preparation maximums.
- Preparation time accrues based on an allowance per day of trial or preliminary hearing, up to an overall maximum, as set out below.

- Additional trial days after the first day on which a trial is heard, generate additional tariff maximums: The additional maximums are an additional allowance of preparation time, as well as the additional time spent in court on the subsequent hearing dates, up to a fixed amount of preparation time.
- Preparation time as described below includes all time spent other than attendance at court during preliminary hearing or trial. Adjournments, bail hearings, pretrials, etc. are considered preparation time when applying tariff maximums for Type II indictable offences.
- The initial block of preparation hours is available only once. If a preliminary hearing is followed by a trial, the initial block of 15 hours applies to the preliminary hearing and 4 hours per day is available for subsequent days of preliminary hearing and for the trial.

See notes for dangerous offender applications on page 3-19 and 15-year reviews of parole eligibility on page 3-20.

## 6. Table D: Provincial offences and federal summary convictions

Service	Maximum
Guilty plea	5 hours
Withdrawal	7 hours
Contested trial (to the end of the first day)	9 hours
Additional trial days after a not guilty plea	5 hours
Additional half-days after a guilty plea	2.5 hours
Bail hearing (one maximum per trial) (see <a href="#">Bail Hearings</a> , page 3-16)	2 hours
Second bail hearing under s.524(4) CCC for certificates issued on or after June 8, 2015	3 hours
Bail variation	Included
Bail Variation for certificates issued on or after June 8, 2015	1 hour
Pretrial hearing with a judge (one maximum per trial) (see <a href="#">Judicial pre-trials</a> , page 3-22)	2 hours
Pretrial hearing with a Crown	Included
Bail review or youth bail de novo including preparation and attendance at hearing (requires Director-General's prior authorization) (See <a href="#">Bail reviews and youth bail de novo applications</a> , page 3-17)	10 hours  (5 hours for certificates issued prior to June 8, 2015)
Multiple charges (see <a href="#">Multiple Charges</a> , page 3-24)	
Charter motions (one maximum per trial) (see <a href="#">Charter applications</a> , page 3-17)	2 hours

» *Certificates issued on or after June 8, 2015*

Additional trial days after the first day on which a trial is heard, generate additional tariff maximums. The additional maximums are an additional allowance of preparation time, as well as the additional time spent in court on the subsequent hearing dates, up to a fixed amount of preparation time.

## **7. Table E: Summary conviction appeals (in the Superior Court of Justice)**

<b>Service</b>	<b>Maximum</b>
Application for bail pending appeal	5 hours
Extension of bail pending appeal	3 hours
Appeal sentence or respond to Crown appeal of sentence (preparation)	14 hours
Appeal conviction or conviction and sentence or respond to Crown appeal of acquittal (opinion and preparation)	16 hours
Attendance at an appeal	Actual time (no limit)

» *Certificates issued on or after April 1, 1998*

- Actual time in court is paid in addition to the preparation maximums.
- Additional days of hearing after the first day on which the appeal is argued, generate additional tariff maximums

## **8. Table F: Appeals to the Ontario Court of Appeal**

<b>Service</b>	<b>Maximum</b>
Application for bail pending appeal	5 hours
Extension of bail pending appeal	3 hours
Appeal sentence (preparation) (after plea of guilty) or respond to Crown sentence appeal	14 hours
Appeal sentence (preparation) (after not guilty plea) or respond to Crown sentence appeal	16 hours
Appeal conviction or conviction and sentence, or respond to Crown appeal of acquittal (preparation)	37 hours
Attendance at the argument	Actual time (no limit)

» *Certificates issued on or after April 1, 1998*

- Actual time in court for the appeal hearing is paid in addition to preparation time.
- Additional days of hearing after the first day on which an appeal is argued, generate additional tariff maximums. The additional maximums are an additional allowance of preparation time, as well as the additional time spent in court on the subsequent hearing dates, up to a fixed amount of preparation time.

## 9. Table G: Appeals to Supreme Court of Canada

Service	Maximum
Application for bail pending appeal	5 hours
Extension of bail pending appeal	3 hours
Application for leave to appeal – preparation	12 hours
Application for leave to appeal – attendance	Actual time (no limit)
Appeal – preparation	37 hours
Appeal – attendance to receive judgment	2 hours
Attendance at an appeal	Actual time (no limit)

» Certificates issued on or after April 1, 1998

- Actual time in court for the appeal hearing is paid in addition to specified preparation time.
- Additional days of hearing after the first day on which an appeal is argued, generate additional tariff maximums. The additional maximums are an additional allowance of preparation time, as well as the additional time spent in court on the subsequent hearing dates, up to a fixed amount of preparation time.



## 10. Table H: Maximum Hours Table – Other Matters

Service	Maximum
Application for prerogative writ – preparation	16 hours
Application for prerogative writ – attendance	Actual time (no limit)
Ontario Review Board hearings – preparation for first day	10 hours
Ontario Review Board hearings – preparation for second day (Note: if hearing goes to third or subsequent day, no additional preparation allowance is added – total maximum for preparation is 18 hours)	8 hours
Ontario Review Board hearings – attendance	Actual time (no limit)
Breach of conditional sentence – first day (including preparation and hearing)	8.5 hours
Breach of conditional sentence – additional half-days (including preparation and hearing)	2.5 hours / half-day
Young person – for withdrawal of summary conviction charges after a successful application for extrajudicial sanctions	6 hours
Young person – for withdrawal of Type I indictable charges after a successful application for extrajudicial sanctions	8.5 hours
Young person – review of youth sentence where original charges were summary conviction or Type I indictable	8.5 hours
Young person – review of youth sentence where original charges were Type II indictable	13 hours plus actual time a hearing
Young person – respond to application for s Serious Violent Offence determination under YCJA	10 hours
DNA databank application by Crown, where a certificate is issued which covers only that application	8.5 hours, + 2.5 hours each additional half day after the first day of hearing

# **11. Additional Information**

## **11.1 Adjournments**

No additional hours are allowed for remands and adjournments. They are treated as preparation time and are included in the capped hourly limit or preparation maximum for the offence.

Court attendances are treated as remands or adjournments unless your account indicates otherwise.

LAO encourages counsel to provide a letter to the client or use the services of duty counsel where possible rather than attend personally on set-date appearances.

## **11.2 Appeals**

- A certificate for the defence of criminal charges does not include authorization to perform additional services after conviction such as writing an opinion concerning an appeal or filing a notice of appeal.
- After conviction, the client can apply for coverage for an appeal. The area office issues an opinion certificate, which is usually sent to the lawyer who conducted the trial. An opinion certificate specifies how many hours are allowed for the lawyer to prepare the opinion. The number of hours varies depending on whether the charges were summary or indictable, and whether additional steps are authorized to preserve the client's rights, such as filing the notice of appeal.
- If you want to bring an application for bail pending appeal, ask the area office to amend the opinion certificate to include that service.
- If you acknowledge an opinion certificate, you should provide your opinion to the area office as soon as possible. It is considered by the area committee, which makes a decision as to whether or not there is sufficient merit to the appeal that a certificate should issue for the appeal.
- An appeal from the area committee's decision is available through the office of LAO's General Counsel at the Provincial Office.
- If you do not wish to accept the certificate, it is essential that you return it to the area office as soon as possible, so that it can be made available to another lawyer.

### 11.3 Bail hearings

- Up to a maximum of 2 hours for a completed bail hearing for each trial.
- Only one bail hearing per trial is allowed, provided a completed bail hearing takes place, unless the charges proceed entirely independent of one another and are disposed of on a different day in a different court from one another. In that case, two separate trials have occurred, and you can bill for one bail hearing in connection with each trial. As of June 8, 2015 a second bail hearing under s.524(4) of the Criminal Code is authorized for up to three hours. The 2<sup>nd</sup> bail hearing is billable if the Crown brings a s.524(4) hearing regardless of whether or not a first bail hearing was billed.
- A first and second bail hearing cannot be billed for the same proceeding, absent a 524(4) application brought by the Crown.
- If a second certificate has been issued, the 2<sup>nd</sup> bail hearing may be billed against either the first or second certificate for which the s 524(4) applies.

### 11.4 Bail reviews and youth *bail de novo* applications

- Require prior authorization from the Director-General.
- For certificates issued before June 8, 2015, bail reviews and youth bail de novo applications are billable up to 5 hours for the certificate, including preparation and attendance at the hearing, if you appear in court and argue for the review of bail.
- For certificates issued on or after June 8, 2015, bail reviews and youth bail de novo application are billable up to 10 hours for the certificate including preparation and attendance at the hearing, if you appear in court and argue for the review of bail.
- The Director-General may authorize more than one bail review.

## 11.5 Bail Variations

- For certificates issued on or after June 8, 2015, up to one (1) hour is billable for filing a bail variation in accordance with s. 515.1 CCC.
- A bail variation is billable on the certificate for charges related to the bail variation, regardless of who conducted the original bail hearing (e.g. original bail hearing by duty counsel)

## 11.6 Charter applications

- Maximum of two hours when you or the Crown attorney files an application for remedy pursuant to the *Charter of Rights and Freedoms*.
- Only one per trial is allowed, provided a Charter application is filed, unless the charges proceed entirely independent of one another and are disposed of on a different day in a different court from one another. In that case, two separate trials have occurred, and you can bill for one Charter application in connection with each trial.
- A court day spent arguing a Charter motion adds to the tariff maximums just as does a day of trial during which argument is made and/or evidence led.

## 11.7 Co-accused

When you act for two or more persons charged with the same offence or a similar offence arising out of the same occurrence, and the proceedings are heard in the same court at approximately the same time, you are entitled to bill up to the tariff maximum for one client, plus an additional 40%.

See [Chapter 2: Billing](#) for information on how to bill for co-accused.

### Caution

There is no additional 40% allowance for representing additional clients beyond the first two, in respect of the same occurrence.

The additional 40% applies only to tariff maximums. It does not apply to discretionary increase allowances. If you have exceeded tariff maximums, include a discretionary increase request with your account.

#### Note

- If you do a bail hearing, you are entitled to one separate two-hour maximum for each client for whom you conduct a hearing. The time spent on the client's bail hearing should be billed only on that client's certificate, and is additional to the basic amount plus 40% otherwise payable. Likewise, if you do an authorized bail review for a client, you should bill for that service only on that client's certificate.
- Travel time is paid only as for one client. You are not entitled to bill an additional 40% on travel time because you are travelling on behalf of more than one client.
- If one client pleads guilty and the charge against the co-accused is withdrawn, you are entitled to bill up to the higher tariff maximum, plus 40%.
- In lengthy trials, where there are a number of co-accused represented on legal aid certificates, and you are absent for all or part of a trial day, the extra 40% fee is not paid to another lawyer to represent a co-accused and cover for you, unless evidence was heard that directly involves your client.

## 11.8 Co-counsel

- Authorization is rarely granted for co-counsel.
- If authorization is granted, fees on behalf of both the acknowledging lawyer and the co-counsel are paid to the acknowledging lawyer.
- If co-counsel is authorized, both the acknowledging lawyer and the co-counsel are entitled to bill their applicable experience increase for both preparation time and preliminary hearing/trial attendance.

## 11.9 Contempt of court

- Criminal contempt of court prosecuted under the common law is either a Type I or summary offence, depending on the nature of the proceeding.
- If the procedure adopted is summary, requiring the client to show cause why they should not be in contempt (often done on the court's own motion), then the matter is treated like a summary conviction proceeding.
- If the prosecution is begun by a notice of motion brought in the Superior Court of Justice, then the matter is treated like an indictable Type I offence.

## 11.10 Correspondence

- Correspondence is allowed as part of preparation time, and may not be allowed if maximum preparation limits are exceeded.
- Correspondence should be billed at the rate of one-tenth of an hour for both incoming and outgoing mail.
- The correspondence fee for a letter is based upon the average amount of your time involved in dictating and approving a letter sent, and reading and acting on a letter received.
- The fee for a letter sent is not increased if a number of copies of that letter are sent, nor is the fee increased if the client or the District Office are copied.

## 11.11 Court day

A court day of preliminary hearing or trial is one on which the matter is reached, evidence is led and/or submissions are made, other than submissions in support of or opposing an adjournment. If you are billing for a full day, you must deduct at least one half hour for lunch.

## 11.12 Dangerous and long-term offender applications

- Billable when you are appointed to represent a client in a dangerous offender or long-term offender proceeding and attend to make representations at the hearing.
- Bill the tariff maximum equivalent to trial for a Type II indictable offence.

**Tip**

A separate certificate is required from the Director-General.

### 11.13 Discretionary increases

The legal aid tariff reflects the fees customarily paid by a client of modest means and except in exceptional circumstances, the fees provided in the tariff normally apply. In exceptional circumstances, LAO has discretion to grant increases in addition to the fees set out in the tariff. The onus is on you to establish the exceptional circumstances.

See [Chapter 2: Billing](#) for more information on discretionary increases.

### 11.14 DNA genetic databank applications

Responding to Application by crown to collect and keep on file DNA samples from persons convicted of specified types of offences.

The number of hours allowed as tariff maximum depends on whether there is an active certificate for the charges that gave rise to the application.

<b>The Attorney General can apply to a court to get these samples if:</b>	<b>Certificate coverage</b>	<b>Tariff coverage</b>
The client was convicted before the proclamation date of the genetic databank legislation and is serving sentence.	Contact the Director-General for a new certificate that only covers the application for genetic databank samples	The tariff maximum is for a summary conviction matter (see <a href="#">Table E: Summary conviction appeals (in the Superior Court of Justice)</a> )
The Crown brings the application as part of the sentence hearing. In this case, the application is treated as a continuation of the sentence hearing for purposes of determining the tariff maximum	There is already an active certificate	If additional days of attendance are required, these are allowed as further attendances on the sentence hearing, in accordance with the tariff maximums for the offence.  As well, an additional 2 hours is added to the tariff maximum otherwise available

## 11.15 Extradition

- Billable when you appear in court and make representations at an extradition hearing.
- Use the type of charge involved to determine the tariff maximum. The tariff maximum is the same as would be allowed for the defence of the substantive charge.
- Provide the hearing date and any preparation time.

## 11.16 Fifteen-year reviews of parole eligibility

For a fifteen-year review of parole eligibility (under s. 745 of the Criminal Code) for preparation and attendance at hearing, bill the tariff maximum equivalent to trial for a Type II indictable offence:

- The same maximum in addition to full and actual court attendance for the hearing of the application.

A separate certificate is needed.

## 11.17 Fitness hearings

The following attendances at court are treated as part of the trial of a matter:

- Attendance at court to arrange for a fitness hearing or NCR assessment;
- Attendance at court to adjourn a case for a fitness hearing or NCR assessment;
- Attendance at court to arrange for a remand to a psychiatric facility;
- Address the court on results of remand to a psychiatric facility;
- Conduct a fitness hearing or NCR hearing.

Billable in accordance with the tariff maximum for the type of offence to which the attendance or hearing pertains (see [Chapter 2: Billing](#)).



## 11.18 Immigration/Deportation

All services in relation to immigration matters, except for offences, are paid under the civil tariff.

## 11.19 Incomplete matter

- Billable if you have interviewed your client or appeared in court on your client's behalf to be removed from the record and the solicitor-client relationship ends because of:
  - change of solicitor before charges have been disposed of;
  - client fails to appear and is not located within a reasonable period of time;
  - cancellation of the certificate;
  - breakdown of relationship.
- Bill up to the tariff maximum for a guilty plea for the charges.
- When you bill an interim account or when the case is incomplete, the whole account is considered discretionary. However, you are normally allowed a fee up to the tariff maximum for a guilty plea for the charges, without the requirement for a written discretionary increase request. If you are claiming more than the equivalent of the tariff maximum for a guilty plea, include a discretionary increase request setting out any exceptional circumstances.

## 11.20 Judicial pretrials

- Maximum of two hours, when you prepare for and attend a pretrial hearing before a judge and make substantive representations related to disclosure, the nature and particulars of applications, the admissibility of evidence, the simplification of issues, the possibility of admissions and/or the length of trial.
- Only one per trial is allowed, unless the charges proceed entirely independent of one another and are disposed of on a different day in a different court from one another. In that case, two separate trials have occurred, and you can bill for one judicial pretrial in connection with each trial.
- A pretrial with a crown does not generate this maximum.
- Preparation for a pretrial that does not take place does not generate this maximum.
- A focus or status hearing prior to the setting of a preliminary inquiry counts as a judicial pretrial.

## 11.21 Legal advice in domestic criminal matters

Legal advice on a domestic criminal matter is paid under the civil tariff.

## 11.22 Motions

- Substantive pretrial motions and motions conducted during the course of a trial are treated as part of the trial, and paid in accordance with the tariff maximum for the offence. A court day spent arguing a substantive motion adds to the tariff maximums just as does a day of preliminary hearing or trial during which argument is made and/or evidence led.
- Applications for adjournment are not considered substantive motions, and are treated as part of the preparation time for the case.
- Attendances on application for adjournment do not generate additional tariff maximums.
- Motions to quash a committal for trial and motions for other extraordinary remedies or prerogative writs are settled separately and must be authorized separately by the area committee.

## 11.23 Multiple charges

The following principles apply when the defence of multiple charges is authorized under the certificate.

When?	Same or different tariff maximums?	What happens in court?	What maximum applies?
A certificate authorizes the defence of several charges	Two or more offences with the same tariff maximums	The charges are disposed of in the same court on the same date	The hourly maximum is for one offence only
	Two or more offences with different tariff maximums	The charges are disposed of in the same court on the same date	One tariff maximum applies, the highest applicable
	Two or more offences with the same or different tariff maximums	If for valid reasons charges are disposed of separately such that the pleas, trials or withdrawals are heard in different court on different days	A separate tariff maximum applies for each set of charges

When a lawyer represents a person charged with two or more offences, and the charges are disposed of in the same court on the same date, the hourly maximum is for one offence only.

However, the number of charges is a factor considered in assessing a discretionary increase request.

## 11.24 Ontario Review Board hearings

Ontario Review Board hearings are paid under the criminal tariff.

### Tip

If you are entitled to an experience increase in civil matters, but not in criminal matters, you can apply for a discretionary increase.

## 11.25 Opinion certificates

- If the certificate does not specify the tariff maximum allowed, all fees for the opinion are at the discretion of a Legal Accounts Officer, including opinions prepared for or at the request of the area committee.
- Fees for opinions are paid based on the time spent and the difficulty of the work.
- Any discretionary increase requested for opinion letters that exceed the maximum allowed must include a copy of the opinion letter.

## 11.26 Parole hearings and penitentiary discipline hearings

Parole hearings and penitentiary discipline hearings are paid under the civil tariff. For more information, see [Chapter 4: Civil Tariff, Table G: Administrative Boards or Tribunals](#), page 4-20.

## 11.27 Plea to lesser included offence

Provided that the more serious offence is authorized on the certificate, where the client pleads guilty to a lesser included offence you are entitled to the tariff maximum for withdrawal of the more serious offence.

## 11.28 Pre-trials

See Judicial pre-trials, page 3-22.

## 11.29 Waiting time

- Time spent in court waiting for a matter which is not reached has no separate tariff allowance and does not generate an additional tariff maximum.
- Waiting time is included in the capped hourly limit or preparation maximum for the offence and can be billed only up to the capped hourly limit or preparation maximum for the offence.
- If the charges are Type II indictable, time spent at court waiting to be reached on the date of trial or preliminary hearing is billable as court time provided that the matter is reached and commences on that date, and provided that no other services are billed for the same period of time to any other client, whether legally aided or on private retainer.

## 11.30 Withdrawal without Crown election

A withdrawal without an election on a Crown elective offence is paid at the summary conviction rate.

## 12. Criminal Case Management

On November 26, 2012, LAO introduced mid-level case management for complex criminal cases that routinely cost \$8,000 or more in fees, disbursements and discretion, but less than the BCM threshold (\$20,000 non-homicide, \$30,000 homicide). The objectives are to:

- Provide lawyers working on complex cases with the appropriate resources to deliver high quality legal services
- Increase predictability of case costs
- Implement pre-approved budgets for streamlined payment of accounts
- Monitor and control case costs, including discretion, in accordance with the standard of a reasonable client of modest means

Cases may be streamlined into case management under the following conditions:

- A certificate is issued on or after November 26, 2012 for a matter identified on a list of charges
- The matter is set down for preliminary hearing and/or trial
- The tariff will be insufficient to complete the proceedings

The decision to accept a case into case management lies with the Case Management and Litigation department or the District Office, depending on the charges.

A budget for tariff and additional blocks of hours is set by the case manager. Accounts submitted are matched and paid up to the tariff and budget maximum. Discretion is not available in addition to an approved budget.

For additional information on Criminal case management, refer to the [Mid-level Criminal Case Management](#) section of LAO's website

## 12.1. List of Eligible Charges

### List of criminal charges to be managed by Case Management and Litigation

Charge	Description
<b>Homicide</b>	<ul style="list-style-type: none"> <li>• Conspiracy to Commit Murder</li> <li>• Counseling to Commit Murder</li> <li>• Criminal Negligence Causing Death</li> <li>• Criminal Negligence Cause Death (Firearm)</li> <li>• Dangerous Driving Causing Death</li> <li>• Flight in Motor Vehicle Causing Death Impaired Driving Causing Death</li> <li>• Manslaughter</li> <li>• Manslaughter (Firearm)</li> <li>• Murder</li> </ul>
<b>Terrorism</b>	<ul style="list-style-type: none"> <li>• Commission of an offence for terrorist group</li> <li>• Instruct to carry out activity for terrorist group</li> </ul>
<b>Indictable II Appeals</b>	<ul style="list-style-type: none"> <li>• Appeal of Conspiracy to Commit Murder</li> <li>• Appeal of Counseling to Commit Murder</li> <li>• Appeal of Criminal Negligence Causing Death</li> <li>• Appeal of Criminal Negligence Causing Death (Firearm)</li> <li>• Appeal of Dangerous Driving Causing Death</li> <li>• Appeal of Flight in Motor Vehicle Causing Death</li> <li>• Appeal of Impaired Driving Causing Death</li> <li>• Appeal of Manslaughter</li> <li>• Appeal of Manslaughter (Firearm)</li> <li>• Appeal of Murder</li> <li>• Appeal of Commission of an offence for terrorist group</li> <li>• Appeal of Instruct to carry out activity for terrorist group</li> </ul>

### List of criminal charges to be managed by District Office

Charge	Description
<b>Non-homicide Extremely Serious Matters (ESM)</b>	<ul style="list-style-type: none"> <li>• Attempt Murder (Firearm)</li> <li>• Cause Bodily Harm with Intent</li> <li>• Sexual Assault (Firearm)</li> <li>• Aggravated Sexual Assault (Firearm)</li> <li>• Kidnapping (Firearm)</li> <li>• Hostage Taking (Firearm)</li> <li>• Robbery (Firearm)</li> <li>• Extortion (Firearm)</li> </ul>

Charge	Description
<b>Non-ESM Sexual Assault</b>	<ul style="list-style-type: none"> <li>• Accessory after the fact murder</li> <li>• Aggravated Sexual Assault</li> <li>• Anal Intercourse</li> <li>• Assault with intent to commit buggery (offence occurred prior to 01/01/1985)</li> <li>• Attempt Murder</li> <li>• Attempt Rape</li> <li>• Attempt Sexual Assault</li> <li>• Attempt Sexual Interference</li> <li>• Bestiality</li> <li>• Expose Genitals (under 14)</li> <li>• Fail to Provide the Necessities of Life</li> <li>• Fail to Remain Causing Bodily Harm/Death</li> <li>• Gross indecency (offence prior to 01/01/1988)</li> <li>• Incest</li> <li>• Invitation to sexual touching</li> <li>• Rape (offence occurred prior to 01/01/1985)</li> <li>• Sexual Assault</li> <li>• Sexual Assault Causing Bodily Harm</li> <li>• Sexual Assault with a weapon</li> <li>• Sexual Exploitation</li> <li>• Sexual Intercourse with female under 16</li> <li>• Sexual Interference</li> <li>• Fail to comply with order under <i>Sex Offender Information Registration Act</i></li> <li>• Knowingly provide false or misleading information under <i>Sex Offender Information Registration Act</i></li> <li>• Unauthorized person exercising function or performing duty under <i>Sex Offender Information Registration Act</i></li> <li>• Unauthorized consultation, matching, disclosure and use of information under <i>Sex Offender Information Registration Act</i></li> <li>• Sexual Assault with a Firearm</li> </ul>

## **13. Big Case Management**

The Big Case Management (BCM) program makes special provisions for large criminal cases.

When accepting a certificate to defend a client in a criminal matter, you must notify the Area Director if you believe the preliminary hearing is likely to take more than two weeks or the case cost is likely to exceed \$20,000. For more information, go to [Big Case Management](#) at LAO's website.

The Lawyer Services and Payments department does not exercise discretion to pay amounts above the budget in a BCM case. Any change to a budget must be approved in advance by the Director General or Case Manager



## 14. List of Offences

Use the following lists of offences as a guide only as they are not exhaustive. For a full list of offences, please refer to the *Criminal Code*, the *Youth Criminal Justice Act*, or the *Controlled Drugs and Substances Act*. See bottom of page for more information about the governing tariff.

Table A	Summary conviction offences and hybrid offences proceeding summarily.
Table B	Indictable Type I offences, hybrid offences proceeding by indictment, all sexual assault
Table C	Indictable Type II

Charge	Section (1985) Amended	Governing Tariff See table:
Abandoning Child	218	A/B
Abduction	280,281	C
Acknowledge bail, False name	405	B
Administer Noxious Thing to aggrieve or annoy	245(a)	B
Administer Noxious Thing, endangering life	245(b)	C
Aggravated Assault	268	C
Aggravated Sexual Assault	273	C
Aircraft Offences	76, 77, 78	C
Animals, Cruelty	446	A
Arson (damage to property)	434	B
Assault	266	A/B
Assault, Peace Officer, Resting Arrest	270	A/B
Assault with a Weapon or Causing Bodily Harm	267	A/B
Assault, Sexual with a Weapon, Threats to Third Party or Causing Bodily harm	272	C
Assembly, Unlawful	66	A
Attempted Murder	239	C
Attempts and Accessories to summary conviction offences	463(c)	A
Attempts and Accessories to Type I indictable offences	463(b)	B
Attempts and Accessories to Type II indictable offences	463 (a)	C
Attempts and Accessories to crown election offences	436(d)	A/B
Bawdy House, Inmate, Found in, Permitting	210(2)	A
Bawdy House, Keeping	210(1)	B
Bets, Placing for Others	203	B
Betting or Gaming House, Found in, Permitting	201(2)	B
Betting or Gaming House, Keeping	210(1)	B
Bigamy	291	B
Breach of Contract, Criminal	422	A/B

Charge	Section (1985) Amended	Governing Tariff See table:
Breach of Probation	733.1	A/B
Breach of Recognizance	811	A/B
Break and Enter with Intent, or Breaking Out (not dwelling)	348(1)(e)	A/B
Break and Enter with Intent, or Breaking Out (dwelling)	348(1)(d)	B
Bribery of Officers	120	B
Burglary Tools, Possession	351	B
Cannabis, Possession	4(4) CDSA	A/B
Cannabis, Resin, Possession of less than 1 gram	4(5) CDSA	A
Cannabis resin, Trafficking, or Possession for the Purposes of Trafficking (less than 3 kg)	5(4) CDSA	B
Cannabis resin, Trafficking, or Possession for the Purposes of Trafficking	5(3)(a) CDSA	C
Cannabis resin, Importing/Exporting	6(3)(a) CDSA	C
Cannabis resin, Production	7(2)(a) CDSA	C
Careless Use of Firearm	86	A/B
Cause Disturbance	175	A
Cheating at Play	209	B
Choking	246	C
Cocaine, Possession	4(3) CDSA	A/B
Cocaine, Trafficking or Possession for the Purposes of Trafficking	5(3)(a) CDSA	C
Cocaine, Importing/Exporting	6(3)(a) CDSA	C
Cocaine, Production	7(2)(a) CDSA	C
Coins, Defacing Currency	456	A
Common Nuisance	180	B
Computer (Unauthorized Use of)	342.1	A/B
Computer Service (Possession of Device to Obtain)	342.2	A/B
Conspiracy	465	C
Conspiracy to Murder	465	C
Counseling Murder	22	C
Counseling Offence – summary conviction offences	22	A
Counseling Offence – Type I indictable offences	22	B
Counseling Offence – Type II indictable offences	22	C
Counseling Offence – Crown election offences	22	A/B
Counterfeit Money (filings)	451	B
Counterfeit Money, Possession	450	B
Counterfeit Money, Uttering	452	B
Credit Cards (Possession, Theft, Forgery, Use of)	342	A/B
Credit Cards (Making, Having or Dealing with instruments for Forging or Falsifying)	342	A/B

Charge	Section (1985) Amended	Governing Tariff See table:
Credit Cards (Making, Having or Dealing in Instruments for Forging or Falsifying)	342.01	A/B
Criminal Harassment	264	A/B
Criminal Negligence (Causing Bodily Harm)	221	C
Criminal Negligence (Causing Death)	220	C
Dangerous Driving of (Vehicle)	249(1)	A/B
Dangerous Driving Causing Death	249(4)	C
Dangerous Driving Causing Bodily Harm	249(3)	B
Dangerous Offender Applications	753	C
Dead Body, Indignity to	182	B
Disobey Order of Court	127	A/B
Double Doctoring, Seeking of Obtaining Controlled Substance	CDSA 4(2)	A/B
Driving Disqualified	259(4)	A/B
Dwelling, Unlawfully in	349	A/B
Escape Custody	145(1)(a)	A/B
Escape, Assist P.O.W.	148	B
Extortion by Libel	302	B
Extortion	346	C
Fabricating Evidence	137	C
Fail to Comply with Disposition	137 YCJA	A
Fail to Provide Sample	254(5)	A/B
Failure to Appear, to Comply	145(2-5)	A/B
Failure to Provide Necessities	215(1)	A/B
Failure to Stop Remain	252(1)	A/B
False Alarm of Fire	437	A/B
False Pretences Under \$5000	362(2)(b)	A/B
False Pretences over \$5000	362(2)(a)	B
Firearm (Careless Use, Pointing, Possession of, Prohibited or Restricted, Making Automatic)	86, 87, 95, 102	A/B
Firearm (Possession Unlicensed/Unregistered)	92	B
Firearm (Use During Commission of Offence)	85	B
<i>Food and Drug Act</i> where the Crown proceeds by indictment		C
<i>Food and Drug Act</i> where the Crown proceeds summarily		A
Forcible Confinement	279(2)	A/B
Forcible Entry	72(1)	A/B
Forgery	366	A
Fraud, Accommodation	364	A
Fraud, Transportation (re Obtaining)	393(3)	A
Fraud, Transportation (re Collections)	393 (1) & (2)	B
Fraud under \$5000	380(1)(b)	A/B
Fraud over \$5000	380(1)(a)	B

Charge	Section (1985) Amended	Governing Tariff See table:
Gross Indecency	N/A	B
Harassing Telephone Calls	372(3)	A
Heroin, Possession	4(3) CDSA	A/B
Heroin, Trafficking, or Possession for the Purposes of Trafficking	5(3)(a) CDSA	C
Heroin, Importing/Exporting	6(3)(a) CDSA	C
Heroin, Production	7(2)(A) CDSA	C
Hostage Taking	279.1	C
Householder Permitting Sexual Activity	171	B
Illicit Sexual Intercourse	N/A	B
Immoral Theatrical Performance	167	A/B
Impaired Driving (or with more than 80 mg Alcohol)	255(1)	A/B
Impaired Driving Causing Bodily Harm	255(2)	B
Impaired Driving Causing Death	255(3)	C
Incest	155	C
Indecent Act	173	A
Indecent Exposure, Exhibition	175(1)(b)	A
Indecent Telephone Calls	372(2)	A
Infanticide	237	C
Intimidation (watch and Beset)	423(1)	A/B
Interception (Wiretapping)	184	B
Kidnapping	279(1)	C
Killing Unborn Child	238	C
LSD & Amphetamines, Possession	4(6) CDSA	A/B
LSD & Amphetamines, Trafficking or Possession for the Purpose of Trafficking	5(3)(b) CDSA	A/B
LSD & Amphetamines, Importing/Exporting	6(3)(b) CDSA	A/B
LSD & Amphetamines, Production	7(2)(c) CDSA	A/B
Libel	296, 300, 301	B
Long-Term Offender	753.1	C
Lotteries, Games of Chance	206(1)	B
Manslaughter	236	C
Marijuana, Possession	4(4) CDSA	A/B
Marijuana, Possession of less than 30 grams	4(5) CDSA	A
Marijuana, Trafficking or Possession for the Purposes of Trafficking (less than 3 kg)	5(4) CDSA	B
Marijuana, Trafficking of Possession for the Purposes of Trafficking	5(3)(a) CDSA	C
Marijuana, Importing/Exporting	6(2) CDSA	C
Marijuana, Production	7(2)(b) CDSA	B
Mischief, Causing Danger to Life	430(2)	B
Mischief, Property over \$5000	430(3)	A/B
Mischief, Property under \$5000	430(4)	A/B

Charge	Section (1985) Amended	Governing Tariff See table:
Mischief, Data	430(5)	A/B
Mischief, Wilful Act or Omission causing danger to life or mischief in relation to data	430(5.1)	A/B
Murder (1 <sup>st</sup> degree) (2 <sup>nd</sup> degree)	231	C
Nude in Public Place	174	A
Obscene Matter or Crime Comics	163	A/B
Obscene Matter, Mailing	168	A/B
Obstruct Justice (Indemnifying Surety, Surety Accepting Fee)	139(1)	A/B
Obstruct Justice	139(2)	B
Obstruct Police	129	A/B
Offensive Volatile Substance	178	A
Over 80	253	A/B
Peace Bond (Fear of Injury to Self or Damage to Property)	810	A
Peace Bond (regarding Criminal Organization Offence)	810.01	A
Peace Bond (Regarding Personal Injury to others)	810.2	A
Peace Bond (Regarding Sexual Offence)	810.1	A
Peace Bond (Offences relating to)	129	A/B
Perjury	132	C
Permitting Escape	146	B
Personate at Examination	404	A
Personate Police	130	A
Personate with Intent	403	A/B
Possession under \$5000	355(b)	A/B
Possession over \$5000	355(a)	B
Possession of Explosive	82	B
Prison Breach	144	B
Procuring, Living on Avails of Prostitution	212	B
Procuring Sexual Activity of Child	170	B
Prostitution, Communications for Purpose of	213	A
Public Mischief	140	A/B
Refuse Test	254(5)	A/B
Rescue from Custody	147	B
Robbery	343	C
Sexual Assault	271	B
Sexual Assault with Threats or Weapons	272	C
Sexual Exploitation	153	A/B
Sexual Intercourse (female 14-16)	N/A	C
Sexual Intercourse (Female under 14)	N/A	C
Sexual Interference	151	A/B
Slugs, Fraudulent Use of	454	A

Charge	Section (1985) Amended	Governing Tariff See table:
Soliciting	213	A
Taking Vehicle without Consent (Joy-riding)	335	A
Theft from Mail	356	B
Theft Under \$5000 (and attempt Theft)	334(b)	A
Theft over \$5000	334(a)	B
Threatening	264.1(1)(a),(b) or (c)	A/B
Treason	47(1) or (2)	C
Trespass at Night	177	A
Unlawfully at Large	145(1)(b)	A/B
Uttering	368	A/B
Uttering False Entries, Records	378	B
Vagrancy	179	A
Weapons Offences (Firearm/Prohibited/Restricted)	91, 93, 94, 96, 105, 106, 107, 117.01	A/B
Weapons, Carrying Concealed	90	A/B
Weapon, Dangerous	88	A/B
Weapon (Firearm/ Prohibited/ Restricted)	99, 100	B
Trafficking, Possession for the Purpose of Trafficking		
Wiretapping	184	B
Witchcraft	365	A
Wounding, Causing Bodily Harm with Intent	244	C