

Appendix B

A quantitative analysis of LAO's billing risks, performed by Deloitte found \$17.5 million or 3.95% of \$441.7M in total lawyer billings that required further review. As noted by Deloitte these findings were "not specifically indicative of fraud" and LAO had "minimal financial exposure" with respect to potential anomalous billing practices. As a result of the review, LAO has undertaken a number of initiatives and plans to continue work and revisit its risk exposure in 18 to 24 months. The following chart reflects LAO's progress to-date.

	Projected risk over 3 yrs	Projected Risk on Average/Yr
<p>Risk #1 Frequent billing near certificate end of life <i>Risk of lawyer billing accounts to `top up` to their tariff max</i></p>	<p>\$ 267,146.23 0.06% of total billings examined</p>	<p>\$ 89,048.74</p>
<p>Background LAO wants to make sure it receives bills from lawyers on a timely basis. As a result, LAO created a billing rule requiring lawyers to submit accounts on an annual basis. The consequence of this rule is that accounts late billed may result in non-payment. This rule encourages lawyers to submit accounts at the annual anniversary dates, at potentially greater frequency than they would otherwise.</p> <p>Risk Mitigation</p> <p>This is an historical issue pre-dating the portal. Having accounts submitted electronically provides the data necessary to identify and monitor potential risks.</p> <p>To ensure accounts near the certificate end of life are appropriate:</p> <ul style="list-style-type: none"> • LAO is incorporating components of this risk into its analytical tool • LAO implemented an initiative to close 2007 and prior years' purchase orders and is developing a strategy to regularly close purchase orders. This prevents the submission of future accounts. • LAO adopted a late billing rule to limit up to 3 late billed accounts per lawyer due to "inadvertence". Accounts exceeding three may not be paid. <p>Risk Assessment LAO perceives this to be a low risk as we believe the accounts are valid. This is an administrative issue primarily and not inappropriate billing.</p>		
<p>Risk #2 Frequent issuance of small account values <i>Risk of lawyer billing accounts to `top up` to their tariff max</i></p>	<p>\$ 565,003.16 0.13% of total billings examined</p>	<p>\$ 188,334.33</p>
<p>Background LAO wants to make sure it receives bills from lawyers on a timely basis. As a result we created a billing rule requiring lawyers to submit accounts on an annual basis. The consequence of this rule is accounts late billed may result in non-payment. This rule encourages lawyers to submit accounts at the annual anniversary dates which may have a smaller account value.</p> <p>Risk Mitigation</p> <p>This is an historical issue pre-dating the portal. Having accounts submitted electronically provides the data necessary to identify and monitor potential risks.</p> <p>To ensure accounts near the certificate end of life are appropriate:</p> <ul style="list-style-type: none"> • LAO is incorporating components of this risk into its analytical tool 		

- LAO adopted a late billing rule to allow up to 3 late billed accounts per lawyer due to inadvertence. Accounts exceeding three may not be paid.
- LSP uses payment messages to ask lawyers to refrain from submitting accounts for fees less than \$500 and disbursements less than \$50 except on final account or where necessary to meet billing deadlines.

Risk Assessment

LAO perceives this to be a low risk as we believe the accounts are valid. This is an administrative issue primarily and not inappropriate billing.

Risk #3 Potential abuse of enhancers (frequency)	Projected Risk over 3 yrs \$ 1,029,558.00 0.23% of total billings examined	Projected Risk on Average/Yr \$ 343,186
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Background

Enhancers are additional available hours in criminal matters for: Bail hearings, DNA applications, Charter Motions, Gladue submissions, Judicial Pre-Trial, Judicial-Pre-Trial SCJ. Through the portal, a lawyer may select more than one enhancer on a certificate per charge.

Risk mitigation

This is an historical issue pre-dating the portal. Having accounts submitted electronically provides the data necessary to identify and monitor potential risks.

80% of criminal matters are resolved as block fee accounts. Block fee accounts limit the number of enhancers available and has removed DNA applications as a potential enhancer. Block fee accounts require the disposition details for each enhancer billed.

Enhancers for Gladue submissions are specific to Aboriginal clients and the system controls require that the certificate be acknowledged by a lawyer who is pre-approved for the Gladue panel.

Charter enhancers on block fee matters are being monitored and to-date have not been significant.

LAO has an Error Prevention initiative to eliminate inadvertent data entry errors and control the number of enhancers that can be billed.

Risk assessment: LAO identifies this as a low-medium risk which will be further monitored through data analytics. It is noted that the dollar value of the risk may duplicate the value of risk #4.

Risk #4 Potential abuse of enhancers (billing timing)	Projected Risk over 3 yrs \$ 762,048.00 0.17% of total billings examined	Projected Risk on Average/Yr \$ 254,016
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Background /Discussion

The analysis did not address the fact the certificate life cycle is not a standard linear process due to LAO's certificate amendment policies which allow for charges to be added within 12 months of the certificate issuance. The consequence is that billing time for an enhancer does not always align with the normal progression of the initial criminal proceeding on the certificate.

Risk mitigation

This is an historical issue pre-dating the portal. Having accounts submitted electronically provides the data necessary to identify and monitor potential risks.

The introduction of block fee certificates ties matters to the natural proceedings and reduces the certificate

<p>amendment process. Also, block fee accounts require the disposition details for each enhancer billed, which can be used for further data analytics.</p> <p>Business logic on the portal is being tightened to reduce the potential abuse of enhancers through the Error Prevention initiative.</p> <p>Risk assessment LAO identifies this as a low risk</p>		
<p>Risk #5 Minor charges proceeding by indictment <i>Risk of lawyer inflating tariff max</i></p>	<p>Projected risk over 3 yrs \$ 1,581,141.07 0.36% of total billings examined</p>	<p>Projected Risk on Average/Yr \$ 527,047.03</p>
<p>Background Crown electable or hybrid charges usually proceed summarily, however, proceeding by indictment increases the tariff fee.</p> <p>Risk mitigation Of the lawyers identified in the study who billed highest on minor charges as proceeding by indictment, 1 retired; 1 was removed from the panel; 1 was served with panel removal notice; 3 are under investigation and 11 are pending further investigation.</p> <p>LAO is also investigating the solicitor described in the study, who billed “Minor Charges Proceeding by Indictment” 93% of the time when the average was 7%.</p> <p>Block fee certificates have mitigated the risk as the indictment choice can be confirmed with ICON data. For Tariff accounts, LAO may requires the solicitor to provide supporting Court records to verify.</p> <p>Of the majority of criminal certificates, LAO currently targets accounts on this risk and eliminates those confirmed accurate using court data from the Ministry of the Attorney General’s ICON database. Those lawyers whose accounts are not confirmed may be required to verify their billings by providing Court Informations.</p> <p>LAO is implementing enhancements to the portal to provide messages and requirements for the lawyer to confirm if a single minor offence is proceeding by indictment, as recommended by Deloitte.</p> <p>Risk assessment LAO identifies this as a low risk which has been mitigated</p>		
<p>Risk #6 Charges heard separately <i>Risk of lawyer inflating tariff max</i></p>	<p>Projected risk over 3 yrs \$ 7,187,217.57 1.63% of total billings examined</p>	<p>Projected Risk on Average/Yr \$2,395,739.10</p>
<p>Background Charges heard separately result when more than one criminal proceeding or charge is included in one certificate, but are concluded on different days before different judges. LAO’s practice of amending certificates resulted in multiple proceedings on one certificate. In addition, the Gladue enhancer requires the lawyer to bill Charges Heard Separately on the portal.</p> <p>Resolving charges separately or together is a practice management and professional obligation issue for lawyers to properly represent their clients.</p> <p>Risk mitigation This is an historical issue pre-dating the portal. Having accounts submitted electronically provides the data necessary to identify and monitor potential risks.</p> <p>Introduction of Block Fee billing has resolved this business process and potential inappropriate billing issue, since</p>		

criminal matters are now issued and tracked on separate Block Fee certificates, with disposition details confirmed with ICON.

LAO is introducing mid-level case management on more serious criminal charges which will increase the monitoring of a case. LAO will be implementing enhancements to the portal to provide messages and requirements for the lawyer to confirm if charges proceeded separately.

Risk assessment

This is a historical and ongoing medium risk which requires continued monitoring and panel management.

Risk #7 Contested trials <i>Risk of lawyer inflating tariff max</i>	Projected risk over 3 yrs \$ 5,564,400.67 1.26 % of total billings examined	Projected Risk on Average/Yr \$1,854,800.23
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Background

A contested trial is when a client pleads not guilty to the charge(s) and proceeds with a trial before a Judge alone or Judge and Jury in which evidence/witnesses is called by the Crown.

LAO believes a portion of the projected risk represent lawyers who legitimately take on contested trials, which can be complex, as a part of their practice. This is not a risk to LAO.

When the analysis was performed one each charge to determine how likely each one was to go to trial, the other charges on the certificate were not taken into consideration. As a result, it is not clear whether the identified charge or another charge was the cause of the trial.

LAO also believes the occurrence of this risk can be partly attributed to user error on the billing portal. Confusing instructions related to the “more than” or “>” and “less than” or “<” symbols have been known to cause lawyers to select the wrong one. By selecting “>10 days” (more than 10 days) to report court days, the lawyer increases their tariff entitlement significantly.

Another example can occur where a trial is set but resolved on the trial day where a guilty plea is entered or charges are stayed or withdrawn and no evidence/witnesses are called. In such a situation, the solicitor incorrectly bills the matter as a Contested Trial instead of properly billing the matter as a guilty plea or withdrawal.

The lawyer identified as selecting contested trial for charge CRIM419 (Possession Under), 22 of 24 times, or 92% of the time, versus a population average of less than 1%, was already targeted by LAO and is no longer on the Panel. The solicitor has not billed LAO since early 2008.

Risk mitigation

Work is currently underway on the billing portal to reduce the frequency of user error. LAO is also linking the number of court hours entered to pre-determined, escalating tolerance thresholds that will generate notices to the lawyer requesting verification or even sequestration by LAO for manual review (match exceptions).

With LAO’s increasing ability to target lawyers, LAO is able to refine its targets to combine lawyers who have a high % of contested trials and also bill close to their tariff.

Risk assessment

LAO identifies this as a medium and ongoing issue which will be addressed through continued monitoring, panel management and data analytics.

Risk #8 Election of a co accused <i>Risk of lawyer being paid 100% on both accounts Instead of 40% on second account</i>	Projected risk over 3 yrs \$ 414,240.63 0.09% of total billings examined	Projected Risk on Average/Yr \$138,090.21
<p>Risk mitigation This is a historical issue pre-dating the portal. Having accounts submitted electronically provides the data necessary to identify and monitor potential risks.</p> <p>LAO investigated the example of the lawyer who on 196 occasions may have acknowledged co-accused certificates because of similar charges. It was determined that the data referred to 2 lawyers who acknowledged Criminal Code and Ontario Review Board certificates, which do not involve co-accused. For the nature of the work, the volume was reasonable.</p> <p>It is realistic that a lawyer who specializes in a particular area of law with a high number of certificates is more likely to have accepted 2 similar ones in close proximity to each other.</p> <p>This type of data targeting is being incorporated into Compliance's new analytical tool.</p> <p>Risk assessment LAO believes this projected risk is not significant.</p>		
Risk #9 Heavy weighting of non-lawyer hours <i>Risk of lawyer manipulating to exceed hard cap</i>	Projected risk over 3 yrs \$ 60,477.20 0.01 % of total billings examined	Projected Risk on Average/Yr \$20,159.07
<p>Background LAO acknowledges there was some risk in the past that lawyers would manipulate their billing hours by entering lawyer rates for work performed by students and law clerks.</p> <p>Risk mitigation This risk has been mitigated partly through the implementation of Block Fees and also through a change to the calculation of the lawyers' billing hard cap. Previously, LAO calculated lawyers' billing limits based on total hours. As of May 2012, LAO calculates the hard cap based on dollars paid.</p> <p>Risk assessment LAO does not believe that risk was significant, as the data has indicated.</p>		
Risk #10 Billing acceptance fees with no further work <i>Risk of paying needless acknowledgement fees</i>	Projected risk over 3 yrs \$ 22,212.66 0.005% of total billings examined	Projected Risk on Average/Yr \$7,404.22
<p>Background</p> <p>There are a number of legitimate circumstances where the acknowledgement fee is paid on a certificate that has no billable hours:</p> <ul style="list-style-type: none"> • Family certificates issued in order to cover disbursements only • Change of Solicitor requests • Client deemed ineligible after lawyer has acknowledge the certificate <p>Risk mitigation Although low, this risk is being included in LAO's analytical tool.</p>		

Risk assessment

LAO believes this risk was not significant and felt the cost-benefit of examining accounts further was not warranted.