



Legal Aid Online Billing
Portal Review
Addendum to
April 13, 2010 Report
Legal Aid Ontario



December 10, 2010
DRAFT – FOR DISCUSSION PURPOSES
Private and Confidential

Table of contents

1	Addendum to Report	1
1.1	Introduction	2
1.2	Scope of lawyer billings reviewed	3
1.3	Lawyer billing insights: Match Exceptions	5
1.4	Lawyer billing insights: Requests for discretionary increase	6
1.5	Lawyer billings at risk	7
1.6	Lawyer billing risks: Frequent billing near certificate 'end of life'	8
1.7	Lawyer billing risks: Frequent issuance of small account values	9
1.8	Lawyer billing risks: Potential Abuse of Enhancers	10
1.9	Lawyer billing risks: Average use of enhancers per certificate	12
1.10	Lawyer billing risks: Timing of billing for each enhancer type	13
1.11	Lawyer billing risks: Minor charges proceeding by indictment (MCI)	14
1.12	Lawyer billing risks: Charges heard separately (CHS)	15
1.13	Lawyer billing risks: Contested trials (CCT)	16
1.14	Lawyer billing risks: Heavy weighting of non-lawyer hours	17
1.15	Lawyer billing breach #6: Services Completed 30+ days before certificate date	18
1.16	Lawyer billing breach #7: Services completed after the cancellation of the certificate	18
1.17	Lawyer billing breach #8: Billed same services more than once	19

1 Addendum to Report

1.1 Introduction

1. On April 13, 2010, we issued a report entitled 'A review of the Legal Aid Online Lawyer Billing Portal'. This report was aimed at identifying opportunities for improvements in the online lawyer billing adjudication process, and identifying potential excess payments made to the lawyer panel. We adopted a statistically based analytic approach aimed at identifying potential billing anomalies within accounts submitted to LAO by the lawyer panel.
2. Subsequent to the analytic review which encompassed FY07-FY09, LAO requested that we update our analysis by incorporating additional data from FY10. A primary objective was to observe changes, if any, in the various billing anomaly typologies previously identified in our April 13, 2010 report.
3. We requested data in a similar format as previously provided by LAO for the time period extending to the end of fiscal year 2010 (FY10). We re-executed the analytic tests run for the prior report and compared the FY07-FY09 results to those obtained in FY10. We have provided comparison tables within this report that illustrate the variances between the FY07-FY09 and FY07-FY10 observations.
4. Our April 13, 2010 report identified background rates of activity across the 3 year period of review. From these background rates certain statistical thresholds defining 'anomalous' transactional activities were determined. In conducting the analysis for FY10, new statistical thresholds were determined for the 4 year period (FY07-FY10). In some cases, exception thresholds varied between the comparison periods because what constituted an anomalous transaction for FY07-FY09, differed from the definition of an anomaly for FY07-FY10 due to the expanded dataset. To facilitate a standard base of comparison, net changes in the average occurrences between the three year and the four year period are provided in the tests that follow.
5. The information in this reports should be interpreted in conjunction with information in our report dated April 13, 2010.

1.2 Scope of lawyer billings reviewed

1. LAO provided data related specifically to payments for four fiscal years, commencing April 1, 2006 (the start of FY07) and ending March 31, 2010.
2. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
3. This table maps to table 7.3.1 in the April 13, 2010 Report:

Lawyer billings Key statistics	All Areas of Law			Criminal Law			Civil Law			Family Law			Immigration Law		
	FY07 - FY09 (3yr. average)	FY07 - FY10 (4yr. average)	Change (% change between 3 and 4 year avg)	FY07 - FY09 (3yr. average)	FY07 - FY10 (4yr. average)	Change (% change between 3 and 4 year avg)	FY07 - FY09 (3yr. average)	FY07 - FY10 (4yr. average)	Change (% change between 3 and 4 year avg)	FY07 - FY09 (3yr. average)	FY07 - FY10 (4yr. average)	Change (% change between 3 and 4 year avg)	FY07 - FY09 (3yr. average)	FY07 - FY10 (4yr. average)	Change (% change between 3 and 4 year avg)
Total number of certificates provided (includes legacy data, inactive and active certificates)	311,663 (103,888)	407,288 (101,822)	95,625 (+1.99%)	179,119 (59,706)	236,120 (59,030)	57,001 (+1.13%)	16,756 (5,585)	21,987 (5,497)	5,231 (+1.59%)	81,305 (27,102)	104,263 (26,066)	22,958 (+3.82%)	34,846 (11,615)	45,400 (11,350)	10,554 (+2.28%)
Total number of certificates provided (active during the payment review period) (Observation a)	309,472 (103,157)	361,385 (90,346)	51,913 (+12.42%)	178,531 (59,510)	218,349 (54,587)	39,818 (+8.27%)	16,486 (5,495)	20,905 (5,226)	4,419 (+4.90%)	80,229 (26,743)	82,463 (20,616)	2,234 (+2.91%)	34,223 (11,408)	40,092 (10,023)	5,869 (+12.14%)
Average certificate life (in months)	32	33	1 (+3.13%)	33	33	0 (0.00%)	34	34	0 (0.00%)	30	30	0 (0.00%)	32	33	1 (+3.13%)
Average certificate billed value (Observation b)	\$1,418.14	\$1,473.88	\$56 (+3.93%)	\$1,291.58	\$1,329.61	\$38.03 (+2.94%)	\$1,114.01	\$1,126.99	\$12.98 (+1.16%)	\$1,761.43	\$1,857.3%	\$95.92 (+5.45%)	\$1,413.98	\$1,495.89	\$81.92 (+5.79%)
Total number of accounts issued against these certificates (Observation c)	497,541 (165,847)	672,517 (168,129)	174,976 (+1.38%)	231,654 (77,218)	309,374 (77,344)	77,720 (+0.16%)	22,097 (7,366)	29,213 (7,303)	7,116 (+0.85%)	189,563 (63,188)	258,121 (64,530)	68,558 (+2.12%)	54,805 (18,268)	76,560 (19,140)	21,755 (4.77%)
Average number of accounts per certificate (all certificates) (Observation c)	1.60	1.65	0.05 (+3.12%)	1.29	1.34	0.05	1.32	1.31	(0.01) (+0.76%)	2.33	2.48	0.15 (+6.44%)	1.57	1.69	0.12 (+7.64%)

All Areas of Law		Criminal Law		Civil Law		Family Law		Immigration Law	
Total Billings Paid		Total Billings Paid		Total Billings Paid		Total Billings Paid		Total Billings Paid	
Fiscal 2007 (04/06-03/07)	\$145,552,537.82	Fiscal 2007 (04/06-03/07)	\$74,862,966.75	Fiscal 2007 (04/06-03/07)	\$6,139,695.05	Fiscal 2007 (04/06-03/07)	\$48,102,840.14	Fiscal 2007 (04/06-03/07)	\$16,694,729.38
Fiscal 2008 (04/07-03/08)	\$142,369,315.57	Fiscal 2008 (04/07-03/08)	\$76,073,307.07	Fiscal 2008 (04/07-03/08)	\$6,021,754.76	Fiscal 2008 (04/07-03/08)	\$45,472,090.23	Fiscal 2008 (04/07-03/08)	\$14,929,933.66
Fiscal 2009 (04/08-03/09)	\$153,730,794.85	Fiscal 2009 (04/08-03/09)	\$80,405,834.66	Fiscal 2009 (04/08-03/09)	\$6,247,471.01	Fiscal 2009 (04/08-03/09)	\$49,590,810.81	Fiscal 2009 (04/08-03/09)	\$17,640,345.84
Fiscal 2010(04/09-03/10)	\$157,480,512.05	Fiscal 2010(04/09-03/10)	\$82,561,741.81	Fiscal 2010(04/09-03/10)	\$5,952,551.79	Fiscal 2010(04/09-03/10)	\$50,504,795.05	Fiscal 2010(04/09-03/10)	\$18,620,922.21
	\$599,133,160.29		\$313,732,562.97		\$24,330,274.27		\$193,670,536.23		\$67,885,931.09

4. Observations of note are as follows, and are identified in the table above, by letter:

- a) The growth rate of open certificates in FY10 decreased relative to the 3 year average (FY07-FY09). This was particularly evident when looking at active certificates. While the FY07-FY09 three year average growth in active certificates was 103,157 per year, 2010 showed a net increase of only 51,913 active certificates. This demonstrates that certificates were being closed out faster than they were being created in 2010, and may be the result of LAO actively pressing for lawyers to complete and close older certificates.
- b) The value of average certificate billings increased by approximately 4% with Family Law and Immigration Law contributing the most substantial increases to the overall average. This may be partially reflective of recently implemented changes to the tariff, recent policy changes pertaining to small billings, in addition to larger final bills executed as part of the certificate completion and closure process.
- c) The growth in the number of accounts issued against certificates in FY10, also increased versus the FY07-FY09 three year average with Family Law and Immigration Law making up the bulk of the increase. Criminal Law remained largely unchanged, active billing activity leading up to certificate completion and closure.

1.3 Lawyer billing insights: Match Exceptions

1. During account submission a system based 'match exception' condition occurs when the total value of accounts submitted exceeds the tariff limit on a certificate. In this situation, payment to the lawyer is held in suspense until it is reviewed by a payment administrator in LAO's Lawyer Billing Services department.
2. Analysis of match exceptions is important as it helps LAO to understand the degree of adherence to the tariff on the part of the lawyer panel, and which lawyers are consistently billing for amounts in excess of the tariff. It also provides LAO with visibility to particular charges or services rendered by the lawyer panel, for which the existing tariff may not be appropriate.
3. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
4. This table maps to table 7.3.4 in the April 13, 2010 Report:

Match exceptions – Key statistics	(A) FY07 – FY09 (3yr. average)	(B) FY07 – FY10 (4yr. average)	Net difference between (A) and (B) (% change / % change between 3 and 4 year avg)
Total number of panel lawyers observed during the period of review	4,912	5,226	314 (+6.39%)
Lawyers raising at least one match exception through the issuance of an account (as a % of total solicitors on file)	3,875 (78.89 %)	4,043 (77.63 %)	n/a (-1.53%)
Lawyers raising match exceptions on at least 10 certificates during the period of review (as a % of total solicitors on file)	2,028 (41.29%)	2,270 (43.44%)	n/a (+2.15%)
Total Number of active certificates reviewed	309,472 (103,157)	361,385 (90,346)	51,913 (-12.42%)
Number of certificates where a match exception was raised (%of total certificates reviewed)	85,654 (27.68%)	109,105 (30.19%)	23,451 (+2.51%)
Total dollar amount over tariff for certificates that raised match exceptions (Observation a)	\$66,064,584 (\$22,021,528)	\$115,454,598 (\$28,863,650)	\$49,390,014 (+31.07%)
Total dollar value paid out by LAO (% of total dollars paid relative to match exception amount) (Observation b)	\$47,217,815 (71.47%)	\$66,630,341 (57.71%)	\$19,412,526 (-13.76%)
Residual not paid out by LAO (% of total dollars not paid relative to match exception amount) (Observation b)	\$18,846,769 (28.53%)	\$48,824,257 (42.29%)	\$29,977,488 (+13.70%)
Total dollar value of accounts paid to lawyers, raising match exceptions across 10 or more certificates (Observation c)	\$41,401,490 (62.67%)	\$59,728,881 (51.73%)	\$18,327,391 (+10.84%)
Average percentage over tariff maximum (i.e. how far over tariff max did billings applied to the certificate go?)	45.65%	47.54%	+1.89%

5. Observations of note are as follows, and are identified in the table above, by letter:
 - a) The total dollar amount billed over tariff for certificates raising match exceptions increased over FY10. The prior three-year average was \$22,021,528, however, once FY10 data was included the new four-year average increased to \$28,863,650, an increase of 31.07%.
 - b) The proportion of billings in match exception paid out by LAO, however, decreased from 71.47% to 57.71%. This indicates that while lawyers billed additional amounts, the amounts

were not paid due either to being rejected by the adjuster or they remain in adjudication. To further substantiate our observations around increases to match exception amounts, we identified some examples of individual lawyer match exception statistics for the two periods. They are presented below:

Lawyer Example (not vendor IDs)	(A) Match Exceptions FY07-FY09	(B) Match Exceptions FY07-FY10	Net difference between (A) and (B)	Total additional dollars billed in match exception	Total dollars paid	Percentage of Total paid versus requested
1	51	107	56	\$62,554	\$36,003	58%
2	132	304	172	\$129,416	\$30,142	23%
3	66	176	110	\$100,871	\$28,520	28%
4	1	13	12	\$9,771	\$6,862	70%
5	1	10	9	\$19,630	\$6,003	31%

- c) Amounts paid to lawyers triggering 10 or more match exceptions throughout their billing history also increased by 10.84% over the prior FY07-FY09 three-year average. While this might be attributed to increased tenure of the vast majority of panel lawyers, and therefore their higher likelihood to trigger a match exception over their longer period of association with LAO, of the 3,875 of 4,043 total lawyers common to both periods of analysis (raising at least one match exception), we noted the following in FY10;
- i) 1,182 exceeded their previous FY07-FY09 three year match exception average;
 - ii) 695 exceeded their FY07-FY09 average by more than 50%, and
 - iii) 290 exceeded their FY07-FY09 average by over 100%.

1.4 **Lawyer billing insights: Requests for discretionary increase**

- 1. The analysis below compares average days to pay an account triggering a match exception where discretionary increase is requested, and average days to pay an account where no match exception has been triggered.
- 2. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
- 3. This table maps to table 7.3.8 in the April 13, 2010 Report:

Area of Law	(A) FY07 – FY09		(B) FY07 – FY10		Net difference between (A) and (B)	
	Discretionary increase was requested	No discretionary increase was requested	Discretionary increase was requested	No discretionary increase was requested	Discretionary increase was requested	No discretionary increase was requested
					(Observation a)	(Observation b)
Criminal	70 days	9 days	72 days	9 days	+2 days	0 days
Civil	69 days	9 days	71 days	8 days	+2 days	0 days
Family	68 days	11 days	70 days	10 days	+ 2 days	-1 day
Immigration	67 days	7 days	68 days	6 days	+1 day	- 1 day

- 4. Observations of note are as follows, and are identified in the table above, by letter:
 - a) There was an observed increase in the amount of time required to process accounts triggering match exceptions accompanied by discretionary requests which appears to have pulled the four year payment period average up by 2 days versus the prior three year average. This may support the presence of a billing adjudication backlog particularly where discretionary requests are involved.
 - b) Time required to process bills triggering match exceptions where no request for discretion was observed, remained relatively unchanged.

1.5 Lawyer billings at risk

1. The following table provides an aggregate comparison between billings at risk between FY07-FY09 and FY07-FY10.
2. This table maps to table 7.4 in the April 13, 2010 Report:

Data Analytic Test	(A) FY07-FY09 (3yr. average)	(B) FY07-FY10 (4yr. average)	Net difference between (A) and (B)	% change between 3 and 4 year averages (Observation a)
Frequent billing near certificate end of life	\$ 267,146 (\$89,049)	\$408,075 (\$102,019)	\$140,929	+14.6%
Frequent issuance of small account values	\$ 565,003 (\$188,334)	\$576,791 (\$144,198)	\$11,788 (Observation b)	-23.4%
Potential abuse of enhancers (frequency)	\$1,029,558 (\$343,186)	\$1,406,208 (\$351,552)	\$376,650	+2.4%
Potential abuse of enhancers (billing timing)	\$ 762,048 (\$254,016)	\$931,259 (\$232,815)	\$169,211	-8.3%
Minor charges proceeding by indictment	\$ 1,581,141 (\$527,047)	\$3,042,311 (\$760,578)	\$1,461,170	+44.3%
Charges heard separately	\$ 7,187,218 (\$2,395,739)	\$7,096,590 (\$1,774,148)	-\$90,628	-25.9%
Contested trials	\$ 5,564,401 (\$1,854,800)	\$ 6,584,442 (\$1,646,111)	\$1,020,041	-11.3%
Election of a co accused	\$ 414,241 (\$138,080)	\$583,883 (\$145,971)	\$169,642	+5.7%
Heavy weighting of non-lawyer hours	\$ 60,477 (\$20,159)	\$66,672 (\$16,668)	\$6,194 (Observation c)	-17.3%
Total 'risk' identified through analytic tests	\$17,431,233 (\$5,810,411)	\$20,696,231 (\$5,174,058)	-\$3,264,998	-10.95%

3. Observations of note are as follows, and are identified in the table above, by letter:
 - a) Lawyer billings determined to be 'at risk' in the tests were found on average to be growing at a slower pace in FY10 versus the 3 year average observed between FY07 and FY09. This appears to be attributed to much lower growth in the 'Charges Heard Separately', and 'Contested Trials' billing typologies. While higher than average increases were observed in 'Minor charges proceeding by indictment' and 'Frequent billing near certificate end of life', in general, increases in dollars at risk were observed across tests with lower absolute dollar amounts.
 - b) Frequent issuance of small account values, appears to have declined significantly. We understand this can be attributed to a change in policy relative to LAO's willingness to process smaller 'nuisance' bills.
 - c) Heavy weighting of non-lawyer hours also appears to have declined significantly. While the absolute dollar amounts in this test are quite small, this may be indicative of generally lighter case load on the lawyer panel. This is further supported by the reduction in growth rate of new certificates.

1.6 Lawyer billing risks: Frequent billing near certificate ‘end of life’

- 1. Certificates issued by LAO have a maximum life span of three years. As lawyers issue accounts against a certificate throughout its life, the total remaining billable amount on the certificate is drawn down. Should the certificate expire prior to the tariff maximum being met or exceeded, this extra amount cannot be billed by the lawyer.
- 2. We identified a potential ‘topping up’ behaviour, where the lawyer billed frequently at the end of the certificate life in an attempt to capture a greater proportion of the remaining value of the certificate prior to its expiration.
- 3. This table maps to table 7.4.3 in the April 13, 2010 Report:

	All types of law			Criminal Law			Civil Law			Family Law			Immigration Law		
	(1) FY07-FY09 (3yr. average)	(2) FY07-FY10 (4yr. average)	Net difference between (1) and (2)	(3) FY07-FY09 (3yr. average)	(4) FY07-FY10 (4yr. average)	Net difference between (3) and (4)	(5) FY07-FY09 (3yr. average)	(6) FY07-FY10 (4yr. average)	Net difference between (5) and (6)	(7) FY07-FY09 (A) (3yr. average)	(8) FY07-FY10 (4yr. average)	Net difference between (7) and (8)	(9) FY07-FY09 (3yr. average)	(10) FY07-FY10 (B) (4yr. average)	Net difference between (9) and (10)
Number of accounts issued for a certificate in final 2 months constituting a statistical exception	n/a	n/a	n/a	2 or more Accounts			3 or more Accounts			3 or more Accounts			2 or more Accounts		
Excess billings paid by LAO (Observation a) (Observation c)	\$267,146 (\$89,049)	\$408,075 (\$102,019)	\$140,929	\$141,231 (\$47,077)	\$224,606 (\$56,152)	\$83,375	\$15,609 (\$5,203)	\$32,741 (\$8,185)	\$17,131	\$90,725 (\$30,242)	\$95,933 (\$23,983)	\$5,208	\$19,582.11 (\$6,527.37)	\$54,795.71 (\$13,699)	\$35,213.60
% change of 3 yr average versus 4 year average			+14.6%			+19.3%			+57.3% (Observation b)			-20.6%			+110.0% (Observation b)

4. Observations of note are as follows, and are identified in the table above, by letter:
- a) Overall in FY10, frequent billings of certificates in their final months appeared to increase across all areas of law with the exception of Family Law. This is largely consistent with the slowing growth rate of open certificates observed in FY10 prompting increased billing activity associated with certificate completion and closure.
 - b) The most significant percentage increases in frequent billings near end of life were observed in Civil (57.3%) and Immigration (110.0%). This is not consistent with the observed changes in the number of active certificates for these areas of law, where Civil and Immigration active certificate growth rates were the highest in the population.
 - c) Absolute value of payments made to lawyers as a result of frequent billings towards the end of certificate life remained very low after taking into account FY10, and did not appear to pose a significant risk to LAO.

1.7 **Lawyer billing risks: Frequent issuance of small account values**

- 1. We reviewed small accounts, where bills for lawyer hours and disbursements were below \$500 and \$50 respectively. This type of account was identified by LAO as high risk as it potentially reflects an attempt on the part of the billing lawyer to 'top up' the certificate in the final accounts. Further, from an operational perspective, the processing of many small accounts was observed to place an undue load on the adjudication process.
- 2. This table maps to table 7.4.6 in the April 13, 2010 Report:

Number of accounts issued by a solicitor per certificate reviewed	Number of certificates exhibiting this account frequency		
	FY07 – FY09	FY07 – FY10	FY10 only
2 - 5	1,737	1,900	163
5 - 10	196	245	49
11 - 15	21	27	6
16 - 20	6	10	4
20 +	2	2	0
Total certificates identified in 'Frequent billing of small accounts'	1,962 (3 yr average: 654)	2,184 (4 yr average: 546)	222 (Observation a)
Change in number of minor accounts submitted over previous period of analysis (% change, between 3 and 4 year averages)			-16.51%
Total dollar value of minor accounts	\$ 565,003 (\$188,334)	\$576,791 (\$144,198)	\$11,788 (Observation a)

- 3. Observations of note are as follows, and are identified in the table above, by letter:
 - a) Small account billings decreased substantially in FY10 relative to the previous FY07-FY09 three-year average. This may be attributed to the implementation of a minimum billing threshold policy by LAO limiting billing to a \$500 minimum for lawyer time, and a \$50 minimum for lawyer expenses.

1.8 Lawyer billing risks: Potential Abuse of Enhancers

- 1. The use of enhancers was identified by LAO as a potential problem area. Enhancers are representative of additional hours that can be used to increase the tariff maximum on a certificate.
- 2. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
- 3. This table maps to table 7.4.9 table 1 in the April 13, 2010 Report:

Primary practice area of submitting lawyer	Total Enhancers			Bail Hearing			Pre-trial Hearing			Pre-trial hearing (Superior court) (Observation b)			Charter Motion			DNA request (Observation c)		
	FY07 – FY09 (3 yr avg.)	FY07 – FY10 (4 yr avg.)	FY10 only (% change between 3 and 4 yr average)	FY07 – FY09 (3 yr avg.)	FY07 – FY10 (4 yr avg.)	FY10 only (% change between 3 and 4 yr average)	FY07 – FY09 (3 yr avg.)	FY07 – FY10 (4 yr avg.)	FY10 only (% change between 3 and 4 yr average)	FY07 – FY09 (3 yr avg.)	FY07 – FY10 (4 yr avg.)	FY10 only (% change between 3 and 4 yr average)	FY07 – FY09 (3 yr avg.)	FY07 – FY10 (4 yr avg.)	FY10 only (% change between 3 and 4 yr average)	FY07 – FY09 (3 yr avg.)	FY07 – FY10 (4 yr avg.)	FY10 only (% change between 3 and 4 yr average)
All (Observation a)	115,118 (38,373)	155,262 (38,816)	40,144 (+1.15%)	46,140 (15,380)	60,677 (15,169)	14,537 (-1.37%)	49,096 (16,365)	64,683 (16,171)	15,587 (-1.19%)	1,751 (584)	2,930 (733)	1,179 (25.50%)	5,650 (1,883)	7,250 (1,813)	1,600 (-3.76%)	12,481 (4160)	19,722 (4,931)	7,241 (18.51%)
Criminal	115,091	151,965	36,874	46,131	59,685	13,554	49,081	62,902	13,821	1,750	2,867	1,117	5,649	7,139	1,490	12,480	19,372	6,892
Civil	4	514	510	2	141	139	2	270	268	0	5	5	0	8	8	0	90	90
Family	23	2,456	2,433	7	733	726	13	1,351	1,338	1	56	55	1	91	90	1	225	224
Immigration	0	322	322	0	117	117	0	158	158	0	2	2	0	11	11	0	34	34

- 4. In interpreting the above result it is important to note that the areas of law represented in the table, indicate the practice areas in which the submitting lawyers predominantly participate. In FY07-FY09, for example, 23 enhancers were submitted against accounts by lawyers whose primary area of practice was Family Law; in FY10, this increased to 2,433 enhancers. Of interest in this representation of enhancer usage is that we can observe Family, Immigration, and Civil lawyers, taking Criminal cases in much greater numbers in FY10 than previously observed. We can infer this as enhancers are limited to Criminal accounts with a few minor exceptions.
- 5. Observations of note are as follows, and are identified in the table above, by letter:
 - a) Total use of enhancers in FY10 appears to remain constant when compared to the previous three-year average, and increased in alignment with the rise in total accounts submitted in FY10.
 - b) While demonstrating very low usage in absolute terms, Pre-trial hearings (Superior Court) increased disproportionately in FY10 versus the prior three-year average.
 - c) DNA requests also increased substantially; however, this is consistent with policy changes mandating the use of DNA requests in certain instances.

1.9 Lawyer billing risks: Average use of enhancers per certificate

- 1. The table below contains an analysis of potentially excessive use of enhancers based on observed frequency of enhancers billed per certificate issued.
- 2. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
- 3. This table maps to 7.4.9 table 2 in the April 13, 2010 Report:

Calculation	FY07 – FY09 (A)	Criminal law FY07 – FY10 (B)	Net difference between A and B (% change between 3 and 4 year average)
Average number of enhancers used by lawyers	0.55 / certificate	0.56 / certificate	+0.01 / certificate
Standard Deviation of number of enhancers used by lawyers (Observation a)	0.78 / certificate	0.53 / certificate	-0.25 / certificate
Exception threshold	2.11 (3 or more, as a fraction of an enhancer is not possible)	1.62 (2 or more, as a fraction of an enhancer is not possible)	-0.49
Total number of certificates demonstrating the use of a number of enhancers over the threshold amount	4,421	9,993	5,572 (however, note that the threshold amounts differ. This is not an equal comparison and is provided for information purposes only)
Total number of enhancers billed on these certificates	14,759	37,303	22,544 (however, note that the threshold amounts differ. This is not an equal comparison and is provided for information purposes only)
Total enhancers over the expected amount	5,917 (1,972)	7,324 (2,441)	1,804 (adjusted to the previous FY07-FY09 threshold of 3 or more enhancers per certificate)
Potential financial impact (Observation b)	\$1,029,558.00 (\$343,186)	\$1,406,208.00 (\$351,552)	\$376,650 (+2.44%)
Maximum number of enhancers used on a single certificate	15	45	n/a
Maximum number of a single type of enhancer used on a single certificate	5	33	n/a

4. Observations of note are as follows, and are identified in the table above, by letter:
- a) The average number of enhancers per certificate remained substantially unchanged while variation in the population decreased implying greater consistency in their usage. This might be partially attributed to mandated DNA requests for criminal cases driving less variation in the usage of these enhancers specifically.
 - b) Total dollars at risk stemming from potentially excessive enhancer usage in FY10 appeared to remain fairly consistent with the average at risk dollar figure increasing by 2.44% over the previous 3 year average. This statistic does not indicate either an improvement or worsening of the risk posed to LAO through excessive use of enhancers over the FY10 period.

5. We have further identified the total number of certificates exhibiting 3 or more enhancers during the life of the certificate.
6. This table maps to table 7.4.9 table 3 in the April 13, 2010 Report:

Number of enhancers selected on a single certificate	Number of certificates where this was observed		
	FY07 – FY09	FY07 – FY10	FY10 (Observation a,b)
3	3,439	6,448	3,009
4	709	2,075	1,366
5	154	727	573
6	69	335	266
7	19	132	113
8	18	99	81
9	4	46	42
10	3	32	29
11	2	22	20
12	1	21	20
13	0	12	12
14	0	7	7
15	3	5	2
16	n/a	6	6
17	n/a	5	5
18	n/a	3	3
19	n/a	1	1
20/20+	n/a	17	17

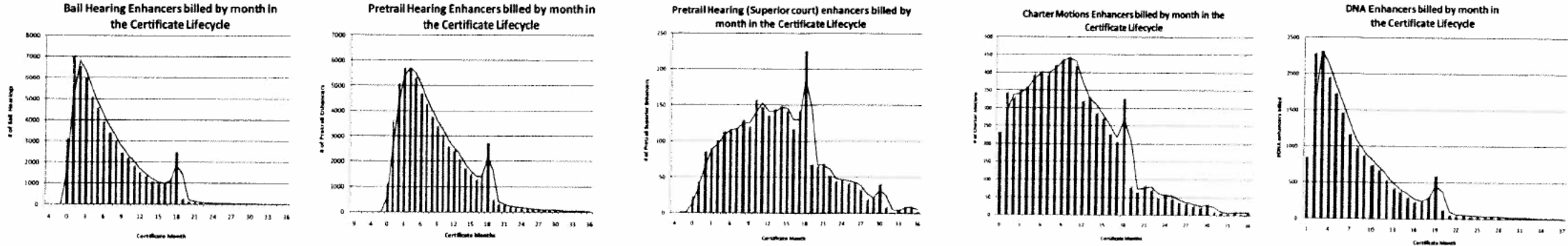
7. Observations of note are as follows, and are identified in the table above, by letter:
 - a) In the previous analysis (FY07-FY09) we observed a maximum of 15 enhancers billed on a single certificate. By contrast, in FY10 the maximum observation was 45. In looking at the entire population of certificates, we noted a limited number of certificates with much higher counts of billed enhancers than in the previous period as detailed above. These certificates have been referred to LAO for further review.
 - b) While this change in behaviour was noted, the associated financial impact is still very low due to the limited number of instances. This change in activity does not pose a material financial risk to LAO.

1.10 Lawyer billing risks: Timing of billing for each enhancer type

- 1. The use of various enhancers is logically incurred at certain points during the lifecycle of a certificate (or case). For example, a bail hearing is reasonably among the first activities conducted by a criminal lawyer on behalf of their client, and therefore it is reasonable to anticipate that this would be included among the first accounts submitted by the lawyer. This test identifies billing of enhancers at stages of the certificate lifecycle later than expected.
- 2. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
- 3. This table maps to table 7.4.10 in the April 13, 2010 Report:

Calculation	Bail Hearing			Pre-trial Hearing			Pre-trial hearing (Superior court)			Charter Motion			DNA request		
	FY07 – FY09 (3 yr average)	FY07 – FY10	FY10 only (% change between 3 and 4 year averages)	FY07 – FY09	FY07 – FY10	FY10 only (% change between 3 and 4 year averages)	FY07 – FY09	FY07 – FY10	FY10 only (% change between 3 and 4 year averages)	FY07 – FY09	FY07 – FY10	FY10 only (% change between 3 and 4 year averages)	FY07 – FY09	FY07 – FY10	FY10 only (% change between 3 and 4 year averages)
Number of accounts where 95% of total enhancers have been billed	2 nd account	2 nd account	n/a	3 rd account	3 rd account	n/a	5 th account	5 th account	n/a	3 rd account	4 th account	n/a	3 rd account	2 nd account	n/a
Account number where enhancer billing represents an exception	3 rd account or greater	3 rd account or greater	n/a	4 th account or greater	4 th account or greater	n/a	6 th account or greater	6 th account or greater	n/a	4 th account or greater	5 th account or greater	n/a	4 th account or greater	3 rd account or greater	n/a
Total number of enhancers billed on accounts later than the expected account number threshold	2,187 (729)	3,033 (758)	846 (+4.01%)	1,155 (385)	1,605 (401)	450 (+4.22%)	62 (21)	97 (24)	35 (+17.34%)	274 (91)	198 (50)	-76 (-45.80%)	291 (97)	469 (117)	178 (+20.88%)
(Observation a,b)															
Total per enhancer	\$419,904.00	\$522,311.25	\$102,407.25	\$221,760.00	\$276,830.00	\$55,070.00	\$11,904.00	\$16,817.50	\$4,913.50	\$52,608.00	\$34,022.50	\$(18,585.50)	\$55,872.00	\$81,278.13	\$25,406.13
Total value FY07-09	\$762,048.00														
Total value FY07-10	\$931,259.38														

4. Observations of note are as follows, and are identified in the table above, by letter:
- a) Enhancers appearing late in the certificate billing lifecycle increased somewhat during the FY07-FY10 billing period versus the prior three-year average.
 - b) The largest populations of enhancers (Bail Hearings, Pre-Trial Hearings) both increased by just over 4% over the previous three year average. This may be attributed to LAO communications during the FY09-FY10 timeframe to the lawyer panel requiring that older certificates be billed out, in addition that certificates not being billed within 18 months of their creation would be subject to closure. For reference, the timing of enhancers being billed are presented below by enhancer. It appears that in many cases lawyers are not billing against certificates until the risk of the certificate being closed is arises. This is demonstrated by a strong spike in billing activity at 18 months across many certificates:



1.11 **Lawyer billing risks: Minor charges proceeding by indictment (MCI)**

- 1. In submitting an account, lawyers are able to indicate that a charge proceeded by indictment regardless of the actual tact taken by the court. This presents a risk to LAO in that the lawyer is able to bill for additional time not worked, if the charges proceeded by a summary conviction.
- 2. This test looks for the incremental amount paid to lawyers indicating that a case proceeded by indictment versus summary conviction, with a frequency in excess of the observed population rate at the individual charge level.
- 3. This table maps to table 7.4.13 in the April 13, 2010 Report:

	Incremental payments made based on anomalous indictment elections		
	(A)	(B)	Net change
	FY07 – FY09 (3 yr. average)	FY07 – FY10 (4 yr. average)	between A and B (% change between 3 and 4 year averages)
Incremental amount paid to lawyers indicating that a case proceeded by indictment versus summary conviction, with a frequency in excess of the observed population rate at the individual charge level.	\$1,581,141.07 (\$527,047)	\$3,042,311.32 (\$760,578)	+\$1,461,170.25 (+44.31%)
<i>(Observation a)</i>			

- 4. Observations of note are as follows, and are identified in the table above, by letter:
 - a) The results for MCI indicate that a strong increase in indictment elections was observed in FY10 versus the FY07-FY09 period, with calculated dollars at risk nearly doubling in FY10 versus the previous three-year period. This may not only indicate changing lawyer billing practices but may suggest that courts are approaching certain minor charges more severely than they have historically.

1.12 **Lawyer billing risks: Charges heard separately (CHS)**

- 1. Within the LAO billing portal environment, a lawyer can elect whether a charge listed on the certificate was heard separately. This election can cause the allowable tariff maximum on the certificate to increase to reflect the added work requirement. However, with no means of validating that the charge was actually heard separately, the risk exists where a lawyer can raise the tariff maximum and bill for work not performed.
- 2. This test looks for the incremental amount paid to lawyers indicating that charges were heard separately with a frequency statistically exceeding the observed population rate at the individual lawyer level.
- 3. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
- 4. This table maps to table 7.4.16 in the April 13, 2010 Report:

	Incremental payments made based on anomalous 'Charges Heard Separately' elections		
	(A)	(B)	Net change
	FY07 – FY09	FY07 – FY10	between A and B
	(3 yr. average)	(4 yr. average)	(% change between 3 and 4 year averages)
Incremental amount paid to lawyers indicating that charges were heard separately with a frequency statistically exceeding the observed population rate at the lawyer level.	\$7,187,218 (\$2,395,739)	\$7,096,590.00 (\$1,774,148)	-\$90,628.00 (-25.95%)
(Observation a)			

- 5. Observations of note are as follows, and are identified in the table above, by letter:
 - a) Individual lawyers indicating charges being heard separately would appear to have aligned more closely to the observed population rates in FY10 versus the prior three-year period. Over the four year period (FY07-FY10), lawyers deviating from overall CHS election rates decreased to the extent that the total 'exception' amount over the four-year period is not as high as it was for the previous three-year period. This does not necessarily indicate that the activity of concern is decreasing in frequency, but that individual lawyers deviating from the observed population rate is not as pronounced as previously noted.

1.13 Lawyer billing risks: Contested trials (CCT)

1. Another approach in which the tariff maximum can be increased is in the election of a contested trial versus a plea agreement. For each charge listed on a criminal certificate, the lawyer will indicate whether the defendant pleads guilty on a charge or whether the charge was contested, necessitating a trial. A risk exists that while the defendant may have agreed to a guilty plea, the lawyer indicates that a trial was required to settle the matter, thus increasing the tariff limit on the certificate. There is currently no automated or practical manual means of determining if a contested trial election is invalid.
2. This test looks for the incremental amount paid to lawyers indicating that a case proceeded with a contested trial versus a plea with a frequency statistically exceeding the observed population rate at the individual lawyer level.
3. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
4. This table maps to table 7.4.19 in the April 13, 2010 Report:

	Incremental payments made based on anomalous contested trial elections		
	(A)	(B)	Net change
	FY07 – FY09(FY07 – FY10(B)	between A and B
	(3 yr. average)	(4 yr. average)	(% change between 3 and 4 year averages)
Incremental amount paid to lawyers indicating that a case proceeded with a contested trial versus a plea with a frequency statistically exceeding the observed population rate at the individual lawyer level.	\$5,564,401 (\$1,854,800)	\$ 6,584,442 (\$1,646,111)	+\$1,020,041 (-11.25%)
<i>(Observation a)</i>			

5. Observations of note are as follows, and are identified in the table above, by letter:
 - a) The four-year average of potentially anomalous contested trial elections declined by 11.25% from the previous three-year average. This indicated greater alignment in FY10 between individual lawyer CCT elections and observed population election rates. Again, this does not indicate that the activity of concern is decreasing; only that individual lawyer deviation from the population average is decreasing.

1.14

Lawyer billing risks: Heavy weighting of non-lawyer hours

1. We reviewed the lawyer billing data to determine if there was extensive use and weighting of non-lawyer hours to lawyer hours. For the purposes of our analysis we reviewed all certificates where the non-lawyer hours accounted for 33% or more of total time billed to the certificate.
2. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
3. This table maps to table 7.4.23 in the April 13, 2010 Report:

Proportion of non-lawyer hours versus lawyer hours billed to a certificate	Number of certificates		Net change between Periods A and B (increase / decrease over previously observed 3 yr. average)
	(A) FY07 – FY09 (3 yr. average)	(B) FY07 – FY10 (4 yr. average)	
50% + (Observation a,b)	73 (24.33)	126 (31.50)	53 (+29.45%)
75% +	27 (9.00)	37 (9.25)	10 (+2.78%)
85% +	8 (2.67)	15 (3.75)	7 (+40.63%)
90% +	5 (1.67)	8 (2.00)	3 (+20.00%)

4. Observations of note are as follows, and are identified in the table above, by letter:
 - a) There was a significant increase in the number of certificates observed to hold in excess of 33% of non-lawyer billings over the prior three-year average, across the various defined thresholds (50%, 75%, 85%, and 90%).
 - b) Absolute numbers of certificates where this activity was observed still remained very limited. This appears to remain an area of low risk to LAO.

1.15 **Lawyer billing breach #6: Services Completed 30+ days before certificate date**

- 1. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
- 2. This table maps to table 7.5.1 in the April 13, 2010 Report:

Type of Law	Dollars paid for accounts with a start and end date prior to 30 days before the effective date of the certificate		
	(A) FY07 – FY09 (3 yr. average)	(B) FY07 – FY10 (4 yr. average)	Net difference between A and B (% change between 3 and 4 year averages)
Criminal (Observation a)	\$1,088,179 (\$362,726)	\$2,057,089 (\$514,272)	\$968,910 (+41.78%)
Civil	\$43,890 (\$14,630)	\$54,622 (\$13,655)	\$10,732 (-6.66%)
Family	\$122,191 (\$40,730)	\$155,008 (\$38,752)	\$32,818 (-4.86%)
Immigration	\$96,169 (\$32,056)	\$127,724 (\$31,931)	\$31,555 (-0.39%)
All	\$1,350,429 (\$450,143)	\$2,394,443 (\$598,611)	\$1,044,013 (+32.98%)

- 3. Observations of note are as follows, and are identified in the table above, by letter:
 - a) Average annual billing breach amounts noted for Services completed 30+ before the certificate creation date remained substantially unchanged between the two periods of review, with the exception of Criminal which recorded a significant increase. The reason for this increase it not immediately apparent, but is suggestive of lawyers attempting to recover costs for services rendered to clients potentially becoming incapable of paying subsequent to services being rendered.

1.16 Lawyer billing breach #7: Services completed after the cancellation of the certificate

1. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
2. This table maps to table 7.5.2 in the April 13, 2010 Report:

Type of Law	Services completed after the cancellation or end of the certificate		
	FY07 – FY09 (A) (3 yr. average)	FY07 – FY10 (B) (4 yr. average)	Net difference between A and B (% change between 3 and 4 year averages)
Criminal (<i>Observation a</i>)	\$5,021,071 (\$1,673,690)	\$7,354,905 (\$1,838,726)	\$2,333,835 (+9.86%)
Civil	\$1,174,478 (\$391,493)	\$1,596,004 (\$399,001)	\$421,527 (+1.92%)
Family (<i>Observation b</i>)	\$8,475,043 (\$2,825,014)	\$11,873,755 (\$2,968,439)	\$3,398,712 (+5.08%)
Immigration (<i>Observation c</i>)	\$283,815.73 (\$94,605)	\$445,519 (\$111,380)	\$161,703 (+17.73%)
All	\$14,954,407 (\$4,984,802)	\$21,270,183 (\$5,317,546)	\$6,315,776 (+6.68%)

3. Observations of note are as follows, and are identified in the table above, by letter:
 - a) Services completed post certificate closure increased during FY10 for Criminal certificates, with the four year average, up almost 10% over the prior three-year average. Again, this may be indicative of an effort on behalf of lawyers to fully recover billings related to services provided, even after the 3 year certificate expiration.
 - b) Also of note is the high absolute dollar amount of family law billings issued after certificate expiration. Family law certificates made up only 25% of total certificates reviewed during the FY07-FY10 period.
 - c) This increase was also echoed for Immigration certificates, however, was reflected in much smaller absolute dollar amounts.

1.17 Lawyer billing breach #8: Billed same services more than once

1. The results of this analysis are detailed below with comparative statistics between the two time periods FY07-FY09, and FY07-FY10.
2. This table maps to table 7.5.3 in the April 13, 2010 Report:

Type of Law	Dollars paid on accounts for the same services more than once		
	FY07 – FY09 (A) (3 yr. average)	FY07 – FY10 (B) (4 yr. average)	Net difference between A and B (% change between 3 and 4 year averages)
Criminal (<i>Observation a</i>)	\$97,988 (\$32,663)	\$199,514 (\$49,879)	\$101,526 (+52.71%)
Civil	\$5,119 (\$1,706)	\$4,728 (\$1,182)	(\$391) (-30.73%)
Family	\$64,913 (\$21,638)	\$88,450 (\$22,113)	\$23,537 (+2.19%)
Immigration	\$16,659 (\$5,553)	\$21,716 (\$5,429)	\$5,057 (-2.23%)
All	\$184,680 (\$61,560)	\$314,409 (\$78,602)	\$129,729 (27.68%)

3. Observations of note are as follows, and are identified in the table above, by letter:
 - a) Billing for the same services more than once increased somewhat in FY10, but remained very low in relative absolute dollar amounts. The most pronounced increase was observed in regard to Criminal certificates, which also accounted for the largest portion of total dollars (78.26%). This activity appears to continue to pose minimal risk to LAO.

2 Restrictions

1. This report has been prepared to provide the LAO with our findings related to those analytic procedures discussed within this report against LAO lawyer billing transactional data across various time periods dependent on the availability of data, but not preceding LAO's fiscal year 2007. We also report our observations of the LAO's organizational structure to determine what changes may be required to become more proactive in the detection and investigation of inappropriate ticket transactions, including, theft and fraud in relation to lawyer billing activities.
2. The information contained herein is based on analysis of data provided by various parties within the LAO. The procedures performed by Deloitte do not constitute a financial audit and should not be taken to supplant any additional inquiries and procedures that the LAO may consider to undertake in continuing to enhance LAO's lawyer billing monitoring capability, nor the investigation of specific cases of potential inappropriate activities that were identified within the LAO data. We make no representations regarding the sufficiency of the procedures performed and no representations regarding questions of legal interpretation.
3. Our work was not designed to identify circumstances of fraudulent activity within the LAO. We conducted specific tests to detect potential inappropriate billing behaviour as identified within this report. For the purposes of this report, save where we have been able to corroborate information, we have had to assume that the data disclosed to us is reliable and complete. Our review was heavily dependent on the completeness and validity of the data that we received and analyzed, subject to the data validity observations provided in the data audit results accompanying this report.
4. Where we have identified individual lawyers that have been flagged based on the results of the identified tests noted within this report, the reader is cautioned that this does not constitute or prove that a fraudulent activity has occurred.
5. This report is based on information in our possession as at the date of this report. We reserve the right to review all findings, calculations and conclusions included or referred to in our report and, if we consider it necessary, to revise our report if any information is provided subsequent to the date of our report.
6. Our review was heavily dependent on the completeness and validity of the data and documentation that we reviewed. Our report is confidential to the LAO. We do not assume any responsibility or liability for losses incurred by the LAO, its directors, officers, employees and lottery players or by any other parties, as a result of the circulation, publication, reproduction or use of this report.

www.deloitte.ca

Deloitte, one of Canada's leading professional services firms, provides audit, tax, consulting, and financial advisory services through more than 7,600 people in 57 offices. Deloitte operates in Québec as Samson Bélair/Deloitte & Touche s.e.n.c.r.l. Deloitte & Touche LLP, an Ontario Limited Liability Partnership, is the Canadian member firm of Deloitte Touche Tohmatsu Limited.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

© Deloitte & Touche LLP and affiliated entities.