

B3: Better Billing Bulletin

Issue #53 | May 1, 2017 (updated March 1, 2021)

Transcripts

LAO's policy with respect to minimum transcript fees is to pay for one original certified transcript at \$4.30 per page or minimum fee at \$20.00 for the original (whichever is greater) and where required, copies of the transcript at up to \$0.55 per page each. Where the minimum fee applies, LAO will authorize only one \$20 minimum fee per court date regardless of when the transcripts are ordered.

Transcripts for the Court Of Appeal and Divisional Court

In cases where original transcripts or portions of transcripts were prepared prior to an appeal, LAO will pay for one copy of the previously prepared transcripts at the copy rate of \$0.55 per page. The transcriptionist will notify the Queen's Printer who will provide the remaining copies free of charge. Portions of the transcript not prepared previously will be paid at the original rate of \$4.30 per page. The Queen's Printer will provide the remaining copies free of charge pursuant to section 6.1.1 of Court Transcript Standards and Procedures Manual.

Requests for Transcripts to Support Compliance Reviews

At times, the Audit and Compliance Unit or the Investigations Department may request counsel to obtain and submit transcripts or portions of transcripts to support billings submitted to LAO. Counsel will be reimbursed for the transcript cost, provided the transcript confirms the accuracy of billing in question.

Hearing Time Billing Reminder

This is a reminder of LAO's regulations on billing hearing time on IRB certificates. LAO appreciates the challenges the regulations pose for practitioners, particularly in the current environment of delays and adjournments at the IRB, but is required to apply the regulations.

Hearing Attendance Time

For IRB matters, counsel can bill hearing attendance time when the member arrives in the hearing room and goes on record to commence the hearing or to discuss pre-hearing matters. Attendance time concludes when the member goes off record at the end of the hearing.

Breaks taken during a hearing may be included in attendance time with the exception of a lunch break; a lunch break during a full day hearing may not be included as hearing attendance time.

Activity	Bill as
Attendance at hearing (board member opens hearing, evidence heard)	Hearing attendance time
Hearing breaks	Hearing attendance time
Lunch breaks	N/A

Wait Time

Time spent at the IRB prior to the start of the hearing for any purpose (e.g. reviewing the file, preparing the client, speaking with an interpreter, interacting with IRB staff) is considered preparation time and is included in the tariff maximum. Counsel can bill time spent prior to the start of the hearing only as preparation time, not hearing attendance time. Time spent waiting for the member or interpreter to arrive after the scheduled start time is not billable as hearing attendance time; this is considered preparation time to be billed within the preparation tariff maximum.

Activity	Bill as
Wait time prior to hearing	Preparation time
Wait time after scheduled hearing start time	Preparation time

Adjournments

Attendances where the matter does not proceed may not be billed as Hearing Time even where preparation was conducted in anticipation of and understanding that the matter would proceed on the scheduled hearing date. Hearing time may only be billed “if the matter is reached, evidence led and/or submissions made, which does not include submissions in support of or opposing an adjournment” This is a longstanding and foundational principle of LAO policy across all areas of law. If a hearing does not proceed on the scheduled day because an interpreter is not available or the member is ill, for

example, no hearing time is billable. No additional hours are allowed for adjournments. They are treated as preparation time and are included in the capped hourly limit or tariff maximum. The 2-hour “subsequent IRB-RPD attendance” authorization should not be requested or billed for an attendance where the matter did not proceed and was postponed/adjourned.

Activity	Bill as
Attendance at adjournment	Preparation time

Discretion

If excessive wait time or adjournments result in counsel billing preparation time above the tariff maximum, a request to Lawyer Services and Payments for a discretionary increase to the tariff maximum can be made. Such requests would be considered according to LAO policy.

Please note that the above approach is consistent with other areas of law, including family and criminal legal aid matters.

Hearing Attendance Time – Billing Validation

LAO now has access to data from the Immigration and Refugee Board on the length of hearings and this may be used to validate lawyer accounts. In situations where the data that LAO has access to does not support what was billed, LAO may request the CD of the audio recording of the hearing or other means of verification from the lawyer.

RPD Certificates for Multiple Family Members

Under LAO policy, counsel is issued a single seven hour Basis of Claim (BOC) preparation certificate for all family members making a refugee claim where the claims will be joined pursuant to RPD Rule 55, even if the family members arrive separately.

LAO acknowledges that seven hours may not be sufficient to prepare multiple Basis of Claim forms from the same family where the claims are distinct. If the basis of the refugee claim is substantially different for different family members, and two or more separate narratives are required, LAO may issue additional certificates of seven hours for each distinct claim. Lawyers who encounter this situation should contact their LAO refugee panel officer and explain in detail why each claim is distinct such that additional certificates are required. If LAO initially issues two certificates for different family members, counsel should not bill for separate narratives unless authorized to do so by their panel officer. If authorization was not obtained LAO may recover the funds billed on the second certificate.

In all instances where claims of family members are joined pursuant to the RPD Rules, only one authorization for RPD hearing preparation and attendance will be issued.

Expanding certificate authorizations for mandatory second judicial pre-trials

LAO is expanding its pilot project to implement the newly developed Ontario Court of Justice Judicial Pre-Trial (JPT) Best Practices. One of the best practices requires a follow-up case management event no later than ten weeks before a trial date.

Over the last ten months, LAO has worked with the Ontario Court of Justice, criminal defence bar and the Ministry of the Attorney General on a pilot project to fund matters in participating Ontario Court of Justice locations where a trial is set and a second JPT or substantially similar event has been scheduled.

This pilot has been successful in increasing the number of early resolutions and providing a more accurate estimate of the length of trials. It will now be expanded province-wide, effective March 1, 2017. Eligible matters at pilot sites will continue to receive the same coverage since the pilot started in April 2016.

Eligible matters shall receive an authorization for an additional tariff maximum of two hours.

What matters are eligible?

To be eligible for the second JPT authorization at all new sites, lawyers must have a legal aid certificate with a matter set down for either a preliminary inquiry or trial. Additionally, the following criteria must be met:

- The second JPT or substantially similar second event is set on or after March 1, 2017;
- Parties in attendance have authority and preparedness to make the key decisions on a file;
- A meaningful review of the file occurs;
- Charter applications are identified/confirmed etc.;
- Positions on possible resolution, where appropriate, have been communicated;
- Time estimates are reviewed and confirmed;
- Witness availability and attendance confirmed;
- Legal issues identified and any admissions agreed upon.

In assessing whether counsel has been required to attend a second JPT or a “substantially similar event”, LAO will rely on the definition of JPT in chapter three of the LAO Tariff and Billing Handbook and the related criteria identified above.

Definition for Articling Students

We are providing clarification with respect to our definition of Articling Student for billing purposes as there has been some confusion regarding who can be billed as an Articling Student. The definition also reflects changes made to the Law Society of Upper Canada’s licensing process.

Articled Student means:

1. A person who is a graduate of an Accredited Law School (Common Law) or has a Certificate of Qualification and who is a Candidate for Admission to the Bar currently enrolled in the LSUC Licensing Process as an Articled Student, or
2. a Student at Law in a Lawyer Placement Program during their 4 month placement, or
3. a person who had completed their Articles of Clerkship and continued to be employed and supervised by the lawyer under an approved formal LSUC Supervision Agreement.

If requested by LAO’s ACU or Investigations Department, the Supervising Lawyer would be required to provide either a copy of the articles/supervision agreement or obtain a consent from the student to allow LAO to verify the student’s status directly with the LSUC.

Changes to the Fee Waiver Regulation

Recently, the Ministry of the Attorney General announced changes to the Fee Waiver Regulation to allow Legal Aid Ontario clients receiving certain legal services to have their court fees waived under the Fee Waiver Regulation.

Counsel can apply for this waiver immediately on **family, civil and small claims court matters** where it is anticipated court fees will be incurred. It is recommended that clients be asked to sign the fee waivers early on as the waiver can not be applied retroactively. In the coming months, LAO will begin to require counsel to complete a fee waiver on all family and civil matters as eligible fees paid to the court will no longer be covered as a disbursement as of September 1, 2017.

The new fee waiver applies to fees that the court charges in civil, family and small claims

matters, except for:

- Fees you pay to an individual who is independent of the court (e.g. lawyers, authorized court transcriptionists, official examiners, witnesses and mediators)
- Fees relating to criminal matters
- Fees paid to the sheriff or small claims court bailiff to enforce an order (unless the order was made under subsection 31(3) of the *Residential Tenancies Act, 2006* ^[1])
- The federal Central Registry of Divorce Proceedings fee
- Fees for serving documents
- Fees for bankruptcy proceedings under the *Bankruptcy and Insolvency Act*
- Costs that you are ordered to pay to another party

In addition, once a fee waiver has been granted, Legal Aid Ontario clients and their witnesses will be eligible to receive the services of a courtinterpreter free of charge.

For additional information, please visit the website for the Ministry of the Attorney General for information on having your court fees waived.

^[1] Please note: On the Attorney General's website, the exemption criteria incorrectly states "subsection 35(3) of the *Tenant Protection Act, 1997*".

Questions?

Please let us know if you have questions or if there are topics you'd like to see us cover by contacting the Lawyer Service Centre at pl-lsc@lao.on.ca



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