

# Big Case Management: Preliminary hearing opinion guideline

Application form can be used for any type of hearing, i.e. a preliminary hearing, sentencing hearing, dangerous offender hearing, etc.

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## Section 1: General information

### Client information

Client name:

Certificate #:

Charges subject to this budget:

Date of the offence:

Location of town//city and court  
where this case is proceeding:

Does this case involve any of these considerations?

- |   |     |    |         |
|---|-----|----|---------|
| • Does your client have any mental health issues?               | Yes | No | Unknown |
| • Does your client have immigration issues?                     | Yes | No | Unknown |
| • Does your client require the use on an interpreter?           | Yes | No | Unknown |
| • Does your client's case have broader public interest aspects? | Yes | No | Unknown |

If yes to any of the above, please provide details:

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### Counsel information

Name:

Solicitor #:

Tier level:

Complex Case Rate (CCR):      Yes      No

Contact:      Address:      Unit #:

Town/City:      Province:      Postal code:

Phone:

Email:

Was there a private retainer?      Yes      No

If yes, for what amount \$:

If yes, for what services?

Please provide the dates of service covered by the private retainer and attach private account when billing:

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### Co-accused information

Are there any co-accused?                      Yes              No

If yes, enter the name(s) of co-accused and lawyer(s):

Adverse interest?              Yes              No

Has counsel or counsel's firm ever represented any of the co-accused or potential Crown / Defence witnesses?    Yes              No

Is yes, is this an issue?              Yes              No

Have all appropriate parties consented to ongoing representation?              Yes              No

Name(s) of assigned Crown attorney(s):

Project name (if any):

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## Section 2: Case details

Please provide the following:

- Statement of issues and witnesses filed for focus hearing (s.536.3)
- Strategies of defence counsel for prelim

What are the strengths and weaknesses of the case against your client?

1) Theory of Crown and evidence in support:

## 2) Theory of defence and evidence in support

### **Witnesses**

How many witnesses are expected to be called?

Please provide a brief summary of the witnesses (if possible):

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### Section 3: Judicial interim releases

Date of arrest or apprehension:

Date of incarceration in respect to offences alleged:

|  |     |    |
|--|-----|----|
| Has the accused been released from custody in respect to the offence(s) alleged in the information/indictment? | Yes | No |
|--|-----|----|

If yes, what are the terms of release?

|  |     |    |
|--|-----|----|
| Is the accused detained in respect of any other matters? | Yes | No |
|--|-----|----|

If yes, please provide details:

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## Section 4: Hearing budget

### Status of proceeding

Date of offence:

Date of original information:

Was a judicial pre-trial held?                      Yes                      No

Have the dates for the focus hearing been set by the court?                      Yes                      No

If yes, what are the dates?

Have the date for the preliminary hearing been set by the court?                      Yes                      No

Is yes, what are the dates?

### Disclosure

Please provide concise details of the volume and type of disclosure materials received to date:

Audio recordings

- Length or recordings (hours/minutes):
- Transcribed?                      Yes                      No

Video recordings

- Number of recordings (tapes, DVDs, files):
- Length or recordings (hours/minutes):
- File size of recordings (MB / GB)
- Transcribed?                      Yes                      No

Crown expert reports

- Number of expert reports:
- Please provide some detail with respect to the findings of the reports

Hard copy pages

- Number of hard copy pages:

Other (please provide details)

Is further disclosure required?            Yes            No

If yes, please specify:

Has it been requested?            Yes            No



Have there been any challenges with disclosure?      Yes      No

If yes, please provide details (select all that apply):

Searchability

Availability

Transcription

Other

If other, please specify:

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## Section 5: Preparation required

How many preparation hours have been docketed to date but not yet billed to LAO?

How many preparation hours have been authorized to date?

### Motions or legal issues

Please provide details of any motions or legal issues that you expect will be raised at the preliminary hearing? For example:

Hearsay

Respond to Crown motion(s) - Similar Fact Evidence

*Dawson* applications

Voluntariness (voir dire)

Other (please specify)

Pre-trial motion #1:

In counsel's opinion does the motion have a reasonable prospect of success?

Yes    No

How does the motion materially advance the client's defence?

Hours:

x Rate \$

= Total \$

Pre-trial motion #2:

In counsel's opinion does the motion have a reasonable prospect of success?

Yes No

How does the motion materially advance the client's defence?

Hours:                      x Rate \$                      = Total \$

Pre-trial motion #3:

In counsel's opinion does the motion have a reasonable prospect of success?

Yes No

How does the motion materially advance the client's defence?

Hours:                      x Rate \$                      = Total \$



## Second counsel

If you are seeking second counsel please provide the proposed co-counsel's name, tier rate and number of expected days in court.

For what reason(s):

Level of expert evidence

Length of proceedings

Mentorship opportunity

Previous relationship with client

Volume of disclosure

Other (please specify)

## Totals

| Estimate   | Hours | Cost |
|--|-------|------|
| <b>Estimated total preparation for preliminary motions</b>   |       | \$   |
| <b>Estimated total preparation for preliminary proper</b>  |       | \$   |
| <b>Estimated number of per-diem hours</b><br>Estimate 4 hours per day at respective tier rate<br><ul style="list-style-type: none"> <li>4 hours per day or 3 hours per day if co-counsel is requested</li> </ul> |       | \$   |
| <b>Second counsel estimated number of per-diem hours</b><br>Estimate 3 hours per day at respective tier rate   |       | \$   |
| <b>Estimated total court time for preliminary motions and hearing proper</b><br>Estimate 5 hours per day at your respective tier rate  |       | \$   |
| <b>Second counsel estimated total court time for preliminary motions and hearing proper</b><br>Estimate 5 hours per day at their tier rate   |       | \$   |
| <b>TOTAL estimated cost (fees)</b>   |       | \$   |

## Other information and disbursements

| Estimate   | Cost |
|--|------|
| <b>Estimated cost of private investigators</b>                         | \$   |
| <b>Estimated costs of expert witness(es)</b>                           | \$   |
| <b>Estimated cost of expert reports</b>                                | \$   |
| <b>Estimated costs of travel and milage (including witness travel)</b> | \$   |
| <b>Other costs (please specify)</b>                                    | \$   |
| <b>TOTAL estimated costs of disbursements</b>                          | \$   |

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## Billing requirements

Before submitting an account, please familiarize yourself with our BCM Billing Tips, the revised Tariff and Billing Handbook and the Disbursements Handbook which is located in the *For legal professionals* section of the Legal Aid Ontario [website](#).

### Entering your Account Online

As of October 2009, it is mandatory for you to submit your account in electronic format through LAO's Online billing system, and attach your dockets and disbursement invoices. Should you have any questions regarding the appropriate way to enter your account online, please do not hesitate to contact the LAO Lawyer Service Centre at Telephone: (416) 979-9934 Toll free: 1-866-979-9934. The Lawyer Service Centre Staff will assist you in entering your online accounts accurately.

### Accurate Court Time

A budget on a BCM Case sets a number of hours counsel may bill as preparation time. Generally counsel is also allocated some hours of preparation time for every day in court. This budget is inclusive and not in addition to the tariff. Court time means court time spent in a contested preliminary inquiry or court time spent in a contested trial or guilty plea through to the sentencing phase. Please see the Tariff and Billing Handbook to determine what appearances are considered court time.

At a minimum, we would ask you to provide, in your dockets, the proceeding, the level of Court, the address of the Court, the Courtroom Number and the name of the Judge before whom the matter is heard. It is helpful to provide a description of the evidence heard or the legal argument made on the Court day. We also ask you to summarize the total preparation hours and the total court hours at the end of the detailed account.

### Detailed Preparation Time

With respect to preparation time, we would ask you to provide us with a description of work billed. Simply indicating that your hours were used for "Preparation" or "Research" is not adequate. Your dockets must contain sufficient detail to allow LAO to ascertain what work was done on the date docketed. Detailed dockets are necessary for fiscal accountability and statistical purposes, to allow comparison between work done on BCM files and files where counsel is requesting discretion. This information assists in future budget setting.

### Billing For Second Counsel

You, as the acknowledging solicitor, are responsible to pay co-counsel or agents regardless of whether or not you bill over the set BCM budget.

The budget allows for shared preparation time. You must co-ordinate billing with co-counsel. When you submit your own account for work done during a calendar time period, you must also submit the co-counsel's account for work done during the same calendar time period. When billing court days where co-counsel attended with you, you must submit one account for yourself and for co-counsel. Indicate the number of calendar court days and the total number of court hours (counsel and co counsel).

For instance, if both counsel attended court on May 1, 2020 and May 2, 2020, and each counsel billed 5 hours of court on each day, the number of court days would be 2 days and the amount of court time would be 20 hours, as there were 2 calendar days and 2 persons in court for 10 hours.

## **Billing Schedule**

BCM accounts are not currently matched by the system. All BCM accounts have to be prepared by a BCM adjuster and reviewed by a staff lawyer. Therefore, the fewer accounts that you submit, the faster all accounts will be settled. It is preferable that counsel bills one account for the preliminary hearing and one account for the trial, for matters concluded within 30 days.

For lengthy matters, please bill monthly. Please do not bill more frequently than once a month. Frequent interim accounts slows down processing of all accounts.

Please note submission of all accounts including those of your agent(s) and disbursement accounts must be billed within the billing deadlines of the certificate (“18 month rule” based on anniversary date of certificate). Check the cover page of each certificate to review and record each billing deadline.

Further information regarding LAO billing deadlines is available at LAO’s website.

## **Payment of accounts**

BCM accounts submitted will be paid within budget and within 60 days provided none of the billing rules are breached.



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## Terms and conditions for counsel

As counsel conducting cases you are required to comply with the following terms and conditions. A breach of any of these provisions may result in the non payment of an account, or the delay in payment of an account or the delay or denial of entry to the relevant program. Counsel hereby agrees:

1. To provide LAO with a comprehensive opinion guideline setting out all of the relevant facts and legal issues before the budget is established as well as periodic updates with respect to the proceeding.
2. To inform the Case Manager in a timely manner of:
  - New issues or significant events that will or could impact on the budget;
  - All planned or anticipated pre-trial motions;
  - Judicial pre-trials and whether counsel thinks it would be beneficial for the Case Manager to attend.
3. To complete and submit all budget forms and supporting materials in a timely matter as requested by LAO.
4. To request a reasonable budget.
5. To manage the authorized budget efficiently, effectively and in accordance with the highest professional standards.
6. To provide the client with reasonable and prudent advice on all matters including, where relevant, advice on plea negotiations.
7. To properly align preparation time close to the trial date to avoid unnecessary re-preparation.
8. To properly allocate authorized preparation time between yourself and second counsel (if authorized).
9. To submit accounts within LAO's policy and procedure guidelines, including compliance with LAO's Tariff & Billing Handbook and Disbursements Handbook.
10. To provide the Case Manager, when requested, with a copy of all accounts.
11. To immediately advise the Case Manager of any intention to be removed from the record or any request by the client for a change of lawyer. Counsel may be required by the Case Manager to meet with the client and a representative of LAO to discuss the potential for resolving any issues between them if possible.
12. To ensure a meaningful and usable work product is transferred to counsel in the event of an approved change of solicitor application.
13. To avoid conflicts of interest that could result in an order removing counsel i.e. representation of co-accused or crown/defence witnesses in the past or present case.
14. To provide the Case Manager with estimates for disbursements not inherent in the tariff.

15. To canvass LAO LAW as to the availability of research support for the case, and to use LAO LAW general memoranda wherever possible on the various issues that arise in the client's case including, but not limited to pretrial motions.
16. To advise the case manager in advance if there is a likelihood that the case will cost more or less than the amount of the allocated budget.

I have read and agree to abide by the Terms and Conditions.

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## Submitting the form

Please submit the completed Case Management Assessment Form to Legal Aid Ontario using any of the following options:

- Attach the completed form online by using *Legal Aid Online*.
- Fax the completed form to 1-877-750-2009 (toll free outside the GTA) or 647-260-0550 (within the GTA)

For support regarding these options, contact the Lawyer Service Centre at 416-979-9934 or toll free 1-866-979-9934.

I certify that the information included in this form is complete, true, and accurate

I agree that I will not bill LAO for any removal application for conflict brought by the crown or the court or counsel for another co-accused as a result of my previous representation of a co-accused. I agree that I will indemnify LAO for the cost of my trial (or preliminary inquiry) preparation time should I be removed from the record for conflict as a result of my previous representation of a co-accused.

Name:

Date:

Signature:

|  |  |  |
|--|--|--|
|  |  |  |
|--|--|--|

Personal information contained on this form is collected under the authority of the *Legal Aid Services Act, 2020* and will be used for the purpose of delivering legal aid services under the *Legal Aid Services Act*.

Questions about this collection should be directed to the Privacy and Access to Information Officer at [fippa@lao.on.ca](mailto:fippa@lao.on.ca) or 1-800-668-8258.



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**AIDE JURIDIQUE ONTARIO**