

# Block Fees

## Compendium of Rules

DRAFT: Rules subject to further consultation. April 18, 2011

# Block Fee Information Modules

- Module 1 – Introduction
- Module 2 – Case Categories, Charges and Schedule
- Module 3 – Compendium of Rules
- Module 4 – Block Fee Process
- Module 5 – Block Fee Systems (Portal)



# Module 3 – Compendium of Rules

## Module 1

- Provided a brief introduction to Block Fees, its history, some of its benefits, and how block fees will work at a very high level.



## Module 2

- Provided details regarding the types of cases (example: Summary Conviction 1) and types of charges (example: theft under) included in Block Fees Phase 2.
- Discussed charges and processes excluded from block fees.
- Defined the types of block fees (example: guilty pleas) and what is included in that type of block fee (example: preparation).



## Module 3

- **Captures the most significant rules related to block fee certificates, billing, and payments.**



# When do they apply: Block Fees vs. Hourly Tariff

\*The **most serious charge** and **type of proceeding** determines whether a block fee or hourly tariff applies:

## Block Fee

- If the most serious charge falls within the list of Summary I, Summary II, or Indictable case categories

Example: Assault + Fail to Comply  
= Block Fee

## Hourly Tariff

- If the most serious charge falls in the Excluded Charges category or is an Excluded Proceeding

Example: Assault + Murder  
= Hourly Tariff



# Who can bill block fee services?

While lawyers may continue to utilize the service of students and law clerks where appropriate...



Only LAO panel members can represent clients at court on block fee matters

- LAO will not pay a Block Fee if the client was represented at the time of the standard or authorized Block Fee service by:
  - Lawyers who are not LAO Panel Members
  - Duty Counsel
  - Non-Lawyer Agents
  - Law Students/Law Clerks
  - Self (Client Self Represented)

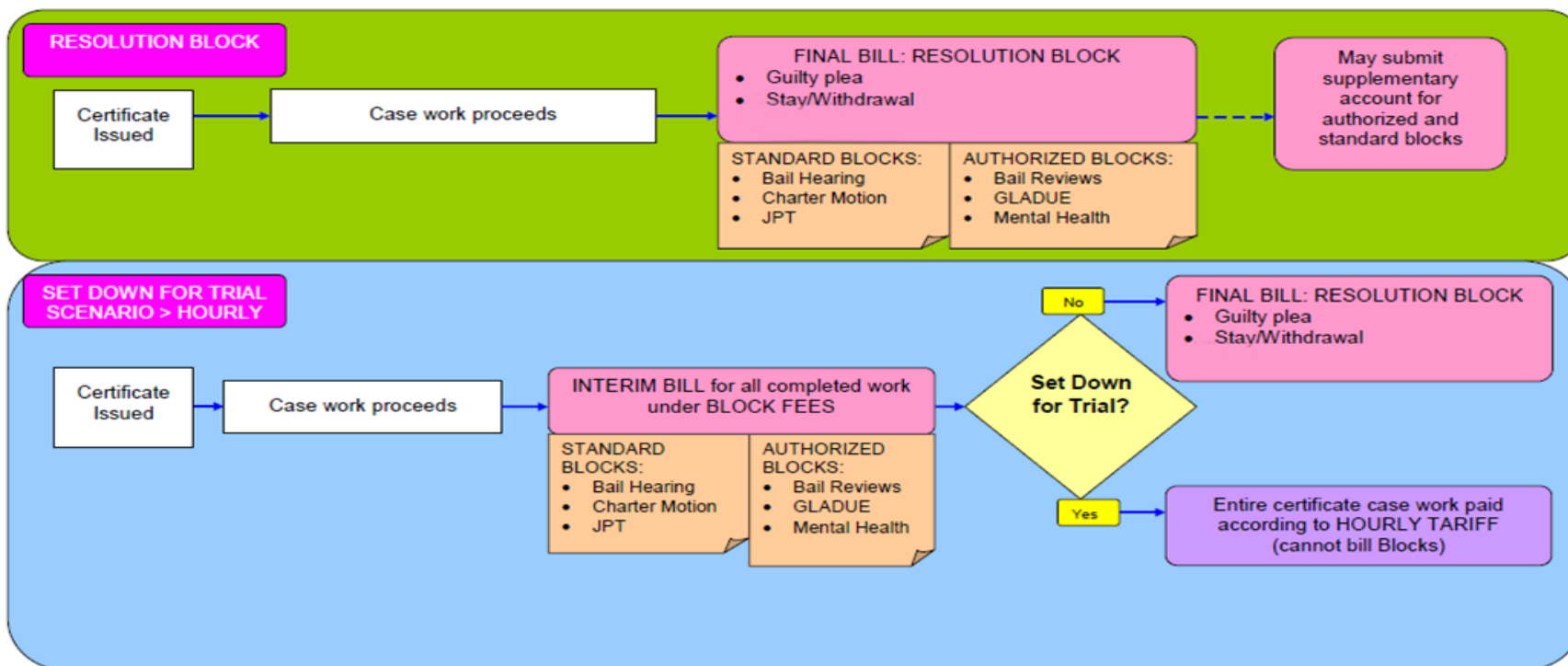


# What happens when a matter is set down for trial?

- Once the matter is set for trial, all work must be billed under the hourly tariff.
- Counsel may bill interim accounts for bail hearing blocks, Judicial Pretrial blocks and Charter blocks completed prior to setting the matter for trial, if the interim accounts are billed prior to the matter being set for trial.



# Fig 9. Billing Scenarios under the Block Fee Model



QSO -04/04/2011



# What happens when there are multiple block fee charges on the same certificate?

- **The most serious charge determines the block fee**
  - Example: Indictable and Summary I block charges on same certificate, the highest paying applicable resolution block is paid
    - » Summary I Guilty Plea \$600 + Indictable Guilty Plea \$800 = \$800
- Where the charges on one block certificate are heard together, only one set of blocks under the case category for the most serious charge is paid
  - Example: An Indictable and a Summary II block charge resolved together will be paid one set of Indictable blocks





# What happens with private retainer block fee accounts?

- Policies and procedures on private retainers remain unchanged
- Block Fee accounts with private retainers will be paid within 25 days
- Block Fee accounts with private retainers will be examined post-payment
- Lawyers must produce their private dockets for post-payment review



# Can I interim bill or submit a supplementary account?

## “Interim” Billing

All blocks can be billed when the legal services for the applicable block are completed

example: a bail block can be billed before a guilty plea resolution block

## Supplementary Accounts

Supplementary accounts may be submitted after the billing of a resolution block (example: guilty plea) for:

- Standard and authorized blocks (Bail Hearing, Bail Review)
- Vulnerable client blocks (Gladue, Mental Health)
- Excluded disbursements



# Which disbursements are included in the block fee?

- The block fees include the most commonly charged and least expensive disbursements.
  - » fax charges
  - » photocopies (other than out-of-office photocopies)
  - » process servers - service and filing of documents within Ontario
- LAO has calculated average costs for these disbursements and included them in block fees
- Lawyers are not permitted to bill separately for included disbursements incurred before the certificate is issued
- When a certificate is cancelled, no included disbursements will be paid

# Am I required to submit my dockets with block fee accounts?

- Dockets are not required to be attached *Online* when billing block fee accounts
- Dockets must be attached if the matter is set down for trial and is subject to the hourly tariff
- Lawyers are under a duty to maintain dockets necessarily required by:
  - I. The lawyer's duty to his/her client
  - II. The Law Society of Upper Canada
  - III. The *Legal Aid Services Act* and Regulations thereto
  - IV. LAO's policies and proceduresLawyers are required to produce these dockets upon request of LAO.



# What about Northern Compensation, GDR, hard cap and daily caps?

- Northern Compensation and Guaranteed Daily Rate (GDR)
  - LAO is reviewing its Northern Compensation/GDR policy relative to block fees
  - LAO will pay Northern Compensation and GDR on block fees
- Current Hard Cap and Daily Cap policies
  - LAO is reviewing its current hard cap and daily cap policies
  - The current policies remain in place pending that review
  - Block fees will be included in the hard cap



# What are standard and authorized blocks?

## Standard Blocks

Appear on all block fee certificates at issuance:

- Guilty Pleas
- Stay/Withdrawal
- Bail Hearing
- Charter Motion
- JPT

## Authorized Blocks

Require a solicitor request to add the block to the certificate:

- Bail Reviews
- Gladue Submissions
- Mental Health



# How does one obtain block fee authorizations?

- **Bail Reviews:** Authorizations for bail reviews are obtained from the District Area Office in accordance with LAO's current policies and procedures.
- **Gladue Submissions:** Authorization for Gladue submissions is provided upon the issuance of the block fee certificate if the accused self-identifies. This block fee is paid upon the preparation and/or delivery of Gladue submissions if applicable. Lawyers who are members of the Gladue Panel may also request that LAO add the Gladue authorization. Counsel is required to keep detailed dockets of the work done preparing Gladue Submission.
- **Mental Health:** The mental health block is authorized upon the issuance of the block fee certificate for accused that have an identifiable history of mental health issues (prior certificate issuance for Consent and Capacity (CCB) hearings, Ontario Review Board (ORB) hearings and certificates issued pursuant to section 82.5 of *LASA*).
- If the mental health block was not authorized upon the issuance of the block fee certificate, lawyers may request the mental health block be authorized if a list of criteria is met.

# Will discretion be available on block fees?

- Discretion has been rolled into the block fee price – no discretion request is required
- Additional discretion is not available on block fee certificates
- Discretion remains available for matters paid under the hourly tariff
- DADs will have authority in exceptional circumstances to exempt a charge from block fees and to permit the matter to proceed hourly





# Can I act for a co-accused on a block fee certificate?

- Policies and procedures regarding conflicts of interest and acting for co-accused are unchanged
- The lawyer must identify if he/she has acted for a co-accused when billing block fee accounts
- The account will go into match exceptions and be subject to a review by LAO staff prior to payment



# What do I bill when charges are heard separately under multiple block certificates for the same client?

- Charges under multiple block certificates for the same client are resolved separately when the charges for each block certificate are resolved in different courtrooms, on different days or different times
- Where multiple block certificates for the same client are resolved separately, lawyers may bill LAO separately under each of the multiple block certificates
- Example:
  - 1<sup>st</sup> set of charges heard June 2, 2010: Assault + Fail to Comply = Block 1 charges withdrawn
  - 2<sup>nd</sup> set of charges heard September 3, 2010: Breach of Probation + Fail to Comply = Block 2 guilty plea
  - 3<sup>rd</sup> set of charges heard October 8, 2010: Fail to Comply x4 = Block 3 guilty plea

# What do I bill when charges are heard separately under a single block certificate for the same client?

- Charges heard separately may not be billed under a block certificate. Only one resolution block (guilty plea/withdrawal) may be billed on a block certificate. Likewise, only one of each standard and authorized block may be billed on a block certificate
- Charges heard separately must be grouped according to the date on which the charge(s) were resolved
- Services relating to one group of charge(s) can be billed under the current certificate
- A new certificate is required and will be issued for each additional group of charges heard separately

# What can I bill when I have multiple block certificates resolved together for the same client?

- If separate block certificates for the same client are resolved together (i.e. on the same day, at the same time, in front of the same judge), lawyers can bill LAO under the separate block certificates for legal services rendered under the applicable blocks
- Only one resolution block (guilty plea/withdrawal) for the resolution appearance may be billed.
- Only one JPT, Bail hearing, or other applicable block can be billed when multiple block fee matters are resolved together
- Example Resolved together on the same day at same time in front of same judge
  - Certificate 1: Assault + Possession Under = Guilty Resolution
  - Certificate 2: Breach Probationx2 + Theft Under = Withdrawn Resolution + JPT
  - Bill on the 2<sup>nd</sup> certificate only – Withdrawn ( 1 Resolution block only) + JPT

# How will matters on an excluded certificate be paid?

- All charges and proceedings on excluded certificates will be paid under the hourly tariff, even if the certificate includes multiple, lesser charges
- Unrelated criminal charges will be issued another certificate
  - Example: Murder + Assault + Assault Resist Arrest = Hourly Tariff



# What happens when there is an excluded charge certificate and a separate block certificate for the same client with matters proceeding separately?

- Charge(s) are resolved separately when they are resolved in different courtrooms, on different days or different times
- Where charge(s) under an excluded certificate and separate charge(s) under a block certificate for the same client are resolved separately, lawyers can bill separately under the hourly tariff for the excluded charge(s) and under the block fee program for the block charge(s) under the block certificate
  - Example: Certificates authorized the following charges:
  - Certificate 1 - 1<sup>st</sup> proceeding: Certificate 1 Assault x2, Possession Prohibited Firearm Knowing Unauthorized = Block Fee
  - Certificate 2 - 2<sup>nd</sup> proceeding: Discharge firearm with intent = Hourly Tariff

# What happens when there is an excluded charge certificate and a separate block certificate for the same client with matters resolved together?

- Where excluded charge(s) under the hourly tariff and block fee charge(s) for the same client are resolved together (i.e. on the same day, in the same courtroom, before the same judge), lawyers can bill under the hourly tariff for the excluded charges and bill LAO for the block charge(s) under the block certificate for only JPT, Charter Motion, bail hearing, and bail review (if authorized).
- The resolution blocks (guilty plea/withdrawal) and the *Gladue* Submissions block may not be billed where there is an excluded certificate for the same client on matters resolved together
- If the JPTs, Charter Motion and bail hearing or bail review on excluded and block fee charges are heard together, the lawyer may not bill these blocks. These ancillary proceedings ought to be billed solely on the excluded certificate

# When will certificates be amended or new certificates issued?

- Certificates will continue to be amended under the existing 12 month amendment rule with a new guiding principle:
- Certificates will only be amended to include charges on the same information/indictment where the client's lawyer has confirmed that the charges are being heard together
- Counsel will be required to request the amendment via the portal or website using an Amendment/New Certificate Form and through a series of validating questions that will confirm that the matters are being heard together. If all parameters are met for amending, the certificate will be amended and the lawyer will be notified
- If the parameters for an amendment are not met, LAO will issue a new certificate