

Tariff reform consultation

*Number of hours, hourly rates,
and block fee rates*

Consultation summary

September 2023



LEGAL AID ONTARIO

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Introduction

Legal Aid Ontario has completed its consultation on the proposed increases to the fees that private bar lawyers are paid for doing legal aid work. Upon implementation, the changes would:

- increase the hourly rates for roster lawyers and the amount paid for block fees
- increase the number of hours allocated under the hourly tariff
- allow per diem duty counsel to bill according to their tier rate.

Documents detailing the proposed increases are linked below on this page. The consultation period began June 9, 2023 and ended on July 9, 2023. Written submissions were received from 28 organizations and individuals.

Several participants welcomed the tariff increases and anticipate that they will make it easier for private bar lawyers to continue serving legal aid clients. Several, however, expressed concerns that the hourly increases would not provide enough hours to cover the work required for competent representation for many criminal or civil matters, and do not account for inflation. Several participants were also of the view that the increased hourly rates and allocated hours are unlikely to attract or retain private bar lawyers to perform legal aid work.

Many submissions recommended that additional hours or fees be allocated to some of the proposals, or to various other legal aid matters, or to cover services that are not covered by legal aid. These would require additional funding beyond what has been budgeted for these increases. Funding for immigration and refugee matters is also dependent on funds from the federal government.

Criminal Law Feedback

Feedback on the proposed increases to the criminal law tariff included several recommendations to provide additional hours or fees for specific matters. These included: further judicial pre-trials ordered by the court; retaining experts; waiting time; a block fee of \$500 minimum for drug treatment court; a block fee of \$500 minimum for mental health court; 10 hours for detention hearings; 10 hours for parole hearing preparation; additional hours for appeals (including Ontario Review Board appeals); and block fees or hourly fees of up to 15 hours for diversion to restorative justice proceedings.

It was requested that additional hours or funding be provided for several Ontario Review Board (ORB) matters, namely: second issues at the ORB; preparation between all hearing dates, Campbell information letters; written submissions; travel, pre-hearing conferences; and funding where no ORB hearing is scheduled or takes place.

Additional recommendations regarding the criminal law tariff included: making the mental health enhancer available where counsel believes the client is experiencing a mental health issue (with supporting facts provided); additional hours where the client is a victim of homelessness or trafficking; and reinstating LAO's domestic violence strategy lead.

Family/Child, Youth and Family Services Act (CYFSA) Law Feedback

With respect to the increased family law base tariff, one submission recommended increasing the base tariff for cases involving family violence. Another recommended increasing the base tariff to 24 hours prior to the first section 17 conference in cases where domestic violence and/or mental health issues for the client have been identified.

A reform that received multiple comments and recommendations was the proposal to change the compensation structure for case conferences. Recommendations to improve this change included: providing certificates for mediation; providing certificates for alternative dispute resolution or negotiation of separation agreements including child welfare (to help address the backlog of family law and child welfare matters); and providing hours to prepare for and attend family law mediations (citing *Divorce Act* and *Children's Law Reform Act* provisions that encourage alternative dispute resolution).

In responding to LAO's proposal to add a "third party involvement" enhancer to child protection matters, one submission offered that the additional four hours contemplated is insufficient. The new, two-hour authorization for use of interpreters was described as a step in the right direction but inadequate for the time required when an interpreter is necessary.

Feedback on the proposed increases to the tariff made various recommendations that LAO provide additional hours for certain matters. These included: increase the number of hours for CYFSA care and custody motions from six to eight hours; increase the hours for openness proceedings from 10 hours to 25; provide the same two-hour mental health enhancer that is being implemented in criminal matters; allot additional hours for “high needs” clients (such as those with unusually frequent/lengthy communications); increase the hours for status review applications (contested or uncontested); provide additional hours for matters involving additional parties (e.g. grandparent contact applications); shift funding to the beginning of appeals to compensate for the time needed to assess whether an appeal is feasible; increase the two-hour domestic violence certificates to six hours (while still allowing more than one yearly); consider implementing a system similar to that of the Children’s Lawyer, which does not limit lawyers’ requests for additional hours.

Immigration and Refugee Law Feedback

LAO’s increases to lawyers’ compensation for immigration and refugee matters include an increase in the base tariff for Basis of Claim (BOC) preparation (non-expedited), from seven hours to nine. One submission stated that this is not enough hours to complete the work required to provide competent representation, and requested the base hours for BOC and Refugee Protection Division preparation be increased to 25 hours.

Another proposed increase would allow an additional three hours to prepare BOCs for additional family members who meet certain criteria. One submission recommended that there be an additional two hours for each adult claimant portal submission, and an additional three hours for each adult BOC.

Several comments were received regarding the proposal to add 10 hours for applications on humanitarian and compassionate grounds, after first-stage approval (which would remain at 16 hours). It was submitted that the additional hours would still not be enough for many applications. One participant recommended 25 hours to complete an application through the portal. Another recommended that 24 hours be allotted to reach first-stage approval, with another 3 hours afterward. This was the only recommendation received during the consultation that would not have required additional funding.

LAO’s proposals include increasing the tariff to prepare for Immigration Refugee Board (IRB) hearings, with an additional two hours of preparation for additional sittings in all IRB hearings. One participant recommended that the additional two hours given for preparing Refugee Protection Division hearings during Covid should remain.

Feedback on the proposed increases to the immigration and refugee law tariff included

several recommendations to provide additional hours or fees for certain matters. These included: implement block fees to save time and enhance payment certainty for lawyers; increase the hours for preparation of a stay of removal motion in federal court to 20 hours; payment for hearing waiting time (including hearings postponed when counsel attends); compensation for accompanying clients to Canada Border Services Agency or Canadian Security Intelligence Service interviews; implement a per diem system for immigration detention (similar to criminal and family per diems) and increase the number of hours for immigration detention matters.

Feedback regarding Other or All Areas of Law


Some of the feedback received applied to areas of law other than criminal, family or immigration/refugee, or applied to all areas of law eligible for legal aid services.

Several concerns were raised about the tariff as it applies to matters before mental health tribunals such as the Consent and Capacity Board (CCB) and Ontario Review Board (ORB). Recommendations included: three additional hours for preliminary motions that require a notice of motion; allowing up to five hours for each additional issue at a CCB hearing; eight hours for CCB hearings that go into a second or subsequent day (as is the case with the ORB); increase the hours of preparation time between hearing days from two hours to five hours; increase preparation time for additional CCB applications from three hours to six for each issue; reinstate funding for financially eligible substitute decision makers responding to Form G applications; review the tariff for Form 17/51 hearings, Form G hearings and Form B,C, D, and E hearings (one participant recommended 35 hours for Form G and Form 51 applications); 50 hours for CCB appeals to Superior Court; 50 hours for preparation and hearing (plus discretion) in *Substitute Decisions Act* proceedings involving the appointment of counsel under section 3; and future tariff reforms should consider mental health tribunal practice, especially the ORB and CCB and their appeals.

Although LAO recently increased the rates it pays interpreters funded by legal aid, several participants submitted that the rates are not sufficient. They recommended that the rate be raised to \$55/hour (same as ASL interpreters) or \$75/hour.

One submission recommended that LAO develop incentives and strategies to encourage lawyers and paralegals to locate in under-served, rural and remote areas, such as enhanced funding and tariff premiums.

In addition to general concerns about overall tariff hours and hourly rates noted above, there were some specific recommendations for compensating lawyers for additional



experience, including a suggestion that LAO consider implementing tier increases at 15 and 20 years of practice to recognize experience and retain lawyers in needed practice areas. Another submission recommended that LAO consider the Law Society of Ontario's fee schedule for paying outside counsel and the Ontario Judicial Council's fee schedule, which include incremental recognition of years of experience.

Conclusion

Legal Aid Ontario is grateful for all the feedback received on its proposed tariff reforms. The proposed changes are intended to address many of the issues and concerns that have been raised in written and verbal feedback from private bar lawyers and advocacy groups in recent years. The feedback received during this consultation will be retained for future discussion and consideration.

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