

TARIFF AND BILLING POLICY

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General Information

This policy is intended for lawyers and their staff to outline the policies and procedures for legal aid billing and the legal aid tariff. This policy is for lawyers already on a legal aid panel (duty counsel and/or certificate). If you have not yet registered for panel membership, please contact your local Legal Aid office.

This document should be read in conjunction with the *Legal Aid Act* and Regulations.

Guiding Principles

The management and provision of legal aid services in the Province shall be guided by the following principles:

- (a) legal aid services should be provided in an effective manner so as to ensure that those in need of legal aid services obtain the legal aid services required to resolve their legal problems;
- (b) legal aid services should be integrated with services delivered by other government and community agencies to address the underlying issues that result in legal problems;
- (c) legal aid services should be accessible so that those in need of the services may make use of them with ease;
- (d) legal aid services should be provided in a manner that is fair and grounded in respect for the rule of law and the rights of those in need of the services;
- (e) legal aid services provided should be appropriate to the circumstances so that legal problems are resolved through the most efficient route throughout the process;
- (f) legal aid services should be delivered in a timely fashion to allow for the early resolution of legal issues; and
- (g) the provision of legal aid services should be administered in a cost-effective and efficient manner, while respecting the other principles referred to in this section.

Hourly Rates, Flat Rate Services, Disbursements and Allowances

Hourly rates:

\$70.00 per hour for two or more years at the bar.
 \$58.00 per hour for less than two years at the bar.
 \$42.00 per hour for travel if required (must be pre-approved by Director if for non-court appearances). The distance travelled must exceed 16 kilometers one-way.

Flat rate services:

Phone calls (unless approved by Director as a meeting), e-mail, faxes and letters are paid at \$8.00 per item.

Photocopies are paid at \$0.20 per copy.

Meals allowances during trial of matter must be pre-approved:

Meal	Current Rates	New Rates (May 1, 2024)	
	Include Tax	Include Tax	Exclude Tax
Breakfast	\$10.88	\$11.62	\$10.10
Lunch	\$15.23	\$16.27	\$14.15
Dinner	\$28.22	\$30.14	\$26.21
Daily Allowance	\$54.33	\$58.03	\$50.46

Travel allowances:

Effective May 1, 2024, the kilometric allowance rate is \$0.58 per kilometer travelled (HST included) (\$0.5043 HST excluded). Travel prior to May 1, 2024 is \$0.57 per kilometer (HST included). The distance travelled must exceed 16 kilometers one-way.

Major disbursements:

Service of documents by private processor or other major disbursements such as hotel, experts, witness fees must be pre-approved by Director and receipts provided. Sheriff's office serves documents for legal aid matters at no costs – however on occasion the Sheriff cannot accommodate when it is abridgment of time or out of

Province. The Director's approval must be obtained prior to incurring the costs and the approval must accompany the invoice.

Other matters:

Any work that is charged as being deemed to be administrative work will not be paid – ex. opening files, closing files; copying documents; emails or telephone calls with legal aid staff regarding the issuance of the certificate or issues related to the certificate; etc.

If a solicitor is excessively litigious – filing multiple motions prior to a final hearing, the work deemed to be excessive may be reduced and not paid.

Submitting Accounts

Final invoices:

A final account shall be sent and received to our office of payment within 60 days of the last service on a final invoice. After 60 days, a final account will be out of time and not paid. The Executive Director has discretion to extend time for filing following an appeal by the solicitor.

Interim invoices:

An interim account forwarded for year-end accounts will be out of time if filed after 15 days of the end of the fiscal year. The end of fiscal year on March 31st.

Interim invoices can also be submitted at the option of the lawyer:

- (a) When the fees and disbursements before HST reach \$500.00 or more; and
- (b) At the end of September and December of each year.

Where to send invoices:

Private bar practitioners are encouraged to submit their SIGNED accounts electronically to LAinvoices.facturesAJ@gnb.ca.

Alternatively, accounts may be submitted via:

Facsimile: (506) 462-2290

Mail: NB Legal Aid Services Commission
500 Beaverbrook Court, Suite 501
Fredericton NB E3B 5X4

Duty Counsel accounts may alternatively be dropped off at your regional office.

Certificate, Ministerial Court Appointment, and Family Advice Lawyer accounts must be submitted directly to Head Office.

Auditing Accounts

Following a review, the employee responsible for auditing accounts may disallow in whole or in part fees for:

- (a) proceedings that are:
 - (i) unreasonably taken or prolonged,
 - (ii) not calculated to advance the interests of the holder of the legal aid certificate, or
 - (iii) incurred through negligence.
- (b) the preparation of any document that is improper, unnecessary or of unreasonable length,
- (c) preparation that is unreasonable in its nature, scope or with respect to the time spent, or
- (d) work left in an incomplete state owing to circumstances which, in the opinion of the employee, are primarily the responsibility of the lawyer.

Appeal Process

A lawyer may apply for a review of the settlement of his or her account to the Executive Director within 30 days after receiving the settlement of the account.

An application referred to above shall be in writing and shall set out the items objected to and the grounds of the objection. Appeals may be submitted via:

Email: LAinvoices.facturesAJ@gnb.ca

Facsimile: (506) 462-2290

Mail: NB Legal Aid Services Commission
500 Beaverbrook Court, Suite 501
Fredericton NB E3B 5X4

The Executive Director shall review and confirm or vary the settlement of the account and shall notify the lawyer of his or her decision within 60 days after receiving the application for review.

A lawyer may appeal the decision of the Executive Director to the Appeals Committee on a form provided by the Executive Director within 60 days after receiving notice of the decision.

The Appeals Committee shall provide the lawyer with a decision on the appeal within 60 days of receiving the application for appeal.

Criminal Certificates

Taxation of a criminal certificate will be done based on the following principles:

1. Only the services authorized by the certificate are covered.
2. The invoice from the lawyer must be received within 60 days of the conclusion of the services.
3. The certificate only authorizes services in Provincial Court.
4. Preliminary Hearings and King's Bench matters must be pre-approved by Head Office in advance.
5. Several expenses and services must be pre-authorized such as:
 - (a) Travel other than that for court appearances;
 - (b) Over-night accommodations;
 - (c) Judge and Jury, or Judge alone King's Bench trials;
 - (d) Professional Services (Expert Witnesses, Medical Reports)
6. With respect to 5(c) above, Section 28(7) of the *Legal Aid Act* sets out the requirements to obtain approval to elect to King's Bench.
7. With respect to 5(d) above, estimates from the professional service provider must be obtained and forwarded to Head Office before the provider is retained. The estimate must include ALL costs including the report itself, travel, accommodations, and court time, if required to testify, etc.
8. Any additional expenses which are not pre-approved are not paid.

9. Multiple Offences - The Commission may issue one certificate covering multiple offences, with the terms of that certificate being based on the most serious criminal offence charged, when a person is charged with multiple offences in relation to a set of events that are similar on some or all of the following characteristics:
 - (a) Date of alleged offence;
 - (b) Type of alleged offence;
 - (c) Location of alleged offence;
 - (d) Common purpose;
 - (e) Involvement of the same parties.

10. Disclosure - The first priority of counsel should be to request disclosure from the client/Crown and review same. Summary conviction offences generally take on average 1-3 hours depending of course on the number of offences, and the relationship of the offences to the criminal acts. Separate occurrences including several break and enter offences; multiple shoplifting charges or assaults would take longer than one event leading to several charges.

11. The seriousness of the offence(s) increases the volume of disclosure. Complex files may require many hours to fully review.

12. The more details provided with regards to the services provided increases the likelihood of full payment. Fees with limited details are often reduced as the lack of information does not justify full payment of fees.

13. Meetings with clients – Meetings are expected to occur after the lawyers have completed a review of the available disclosure. Typically meetings are as long as 1-2 hours depending on the file complexity. Reviewing the disclosure with the client, obtaining the client's position, discussing possible resolution and possible outcomes as well as the possible defenses to advance would be considered at this time.

14. Research on file – it is anticipated that the lawyers taking certificates have the basic understanding and experience with offences as most files are very common as to the evidence tendered and should require little research preparation. The extent of any legal research would generally be expected from junior lawyers. Reasonable cost for inexperienced lawyers is often covered to the same extent. For experienced lawyers, legal research is only covered for individual or unique issues which may arise. The research should be identified on the invoice including a brief explanation for the reason for the research.

When files are approved to the Court of Appeal the level of research is often increased based on the number and nature of the grounds under appeal on each individual case.

15. Appearances in Court – All reasonable time in Court is paid. It is common for pleas and adjournments to take one hour. A sentencing hearing that occurs in Provincial Court would seldom take more than two hours. If reasonable explanations are provided for why appearances exceeded the typical time frame, it will be considered and possibly permitted. Unusually lengthy trial time is occasionally taxed but only when the explanation for extended time is not disclosed.

16. Preparation Time – As a general rule, criminal cases that go to trial should have two days of preparation for each full day of trial. Obviously the time spent on reviewing the disclosure with the client should be included in that time but items such as preparation for crown witnesses and cross-examination, motions to be made at trial and any required legal briefs are included in this preparation time. Some of the motions made prior to trial such as bail reviews, charter arguments, stay motions will be approved. Frivolous motions will not be paid and some motions require approval from head office in advance. If approval is not given, the fees will not be paid. Ordinary or common applications such as *voir dire*s and other motions requested by the Crown are paid as the defense has no control of the application.

Family Certificates

Taxation of family certificates will be done based on the following principles:

1. Service:

	Time allotted*
Preparation of Notice of Application (73AA or 81A)	0.5 hours
Preparation of Notice of Motion (37A or 72U)	0.5 hours
Preparation of Motion to Change under Rule 81	1-2 hours
Preparation of Affidavit (or Responding Document)	1-2 hours average
Preparation of Financial Statement (72J) (client should complete most of this in advance)	0.5 hours

Preparation of hearing briefs	2 – 4 hours
Preparation of Court records (record on motion or record on Application) this is mostly admin work	0.5 hours
Court appearances	Based on Court time required
Research (must specify subject researched)	Up to 2 hours

*** Time allotment can be adjusted based on experience of lawyer and complexity of file.**

2. Preparation for Court appearance:

Depending on complexity of case and time in Court. For a one-hour motion – should be no more than a few hours given the fact that by then, lawyer has already met the client a few times, prepared an affidavit(s) and brief so should be very familiar with case by time court is held. For a multiple day trial matter, up to a half day to a day for each day of trial for court preparation is more than sufficient. The assessment of this depends on the complexity of the matter and taking into consideration that the lawyer should already be familiar with the case when preparing affidavits, pleadings and briefs... etc.

3. Meetings with client in person:

In normal cases, this would require one meeting with client to gather all information for pleadings (about an hour for simple cases or 1-2 hours for complicated ones) – then about one or two more meetings along the way to sign affidavits and provide updates on files until trial but updates on files should only occur if material changes need to be reported to the lawyer. A first meeting is permitted to be charged for up to 2 hours on average, but subsequent meetings should not be more than half hour to an hour.

4. E-mail/ phone call communications – with client or other party’s solicitor:

It is recognized that a lawyer must communicate with their clients in a timely manner. This does not mean that the client or opposing counsel are to dictate the terms of those communications to the extent that a lawyer must immediately reply to excessive and unreasonable volumes of communications coming either from a client or opposing counsel. In such situations, it would be expected that counsel manage the expectations of the

client and/or opposing counsel in regard to when to expect returned calls-e-mails, etc.

Counsel who accept legal aid certificates are often directed to manage their client's expectations on a file both in regards to the merits and their conduct throughout the file. In the case of a frequent caller or communicator, clients must be advised that they are to gather their notes on the file and wait for a next meeting with their solicitor to discuss all developments that have occurred. It is expected that most of the relevant information regarding a file is gathered during a first and/or second meeting face to face with the client. All subsequent information required may be for the purpose of settlement negotiations or imminent hearings.

Other than if an emergency arises— all other communications must be controlled. If the use of emails/phone calls are judged to be excessive in a file, then taxation of these items may be assessed by allowing a time allotment for the work instead of permitting payment for each unit cost of the emails/phone calls charged.

Ex. if there are 150 emails charged at \$8.00 for a total of \$1,200.00 – then the taxation officer will consider how long it would reasonably take to deal with the various issues exchanged in these emails and give a time charge to replace all emails... ex- based on the information and the nature of the file – we would perhaps allow 5 hours in total of work to complete the work charged through the emails and therefore replace \$1,200.00 to (5 hours x \$70.00/hour) and allow only \$350.00.

If taxation is exercised just on phone calls on an item by item basis— we usually permit two to three exchanges between client-solicitor per day but if daily for several days then it falls into category of excessive communications and could be replaced by a time allotment.

5. Child Protection Matters:

Most of the work required is for review of disclosure, preparation of Responding Affidavit, Briefs and preparation for and attendance at Court.

The taxation officer will consider time charged based on the average lawyer's charge in these cases. The taxation officer will also consider whether it's a three month custody, a six month custody or guardianship matter. In reviewing disclosure, the taxation officer will, for the most part, allow 1 hour/per 100 pages of disclosure. Lawyers must provide number of pages reviewed when charging time for review of disclosure. For trial preparation, 1 to 2 days of trial preparation may be permitted for trial

depending on the length of the trial itself. Work related to preparation of Affidavits and briefs and meetings with clients and other management of the file will be assessed as provided above under legal services.

6. Disbursements:

Legal Aid will not cover the following disbursements as provided in the Mandate Letter to the client:

- (a) DNA tests to determine paternity
- (b) Psychological and/or social reports in child custody cases;
- (c) Medical reports
- (d) Any other expert reports or fees.

Photocopies will be limited to a max of 250 subjects to specific complex files in which case a higher number of copies may be approved.