

General Terms and Conditions



Legal
Services
Society

British Columbia
www.lss.bc.ca

Revision history (July 2009)

Date issued	Replaced pages	Effective date
07/09	all pages	07/09
03/09	ii, iii, 2 – 13	04/09
07/08	all pages	07/08
11/07	ii, iii, 2, 4	11/07
11/06	all pages	11/06
01/06	all pages	01/06
02/05	ii, iii, 4, 7 – 8	02/05
06/04	all pages	06/04
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11/02	all pages	01/99
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04/01	all pages	01/99
05/99	iii, 5/6, 7/8	01/99

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1. Introduction (November 2006)

The following **General Terms and Conditions** section provides the framework for the contractual arrangements between the Legal Services Society and lawyers who take legal aid cases.

2. Definitions (July 2009)

Additional preparation: the legal fees in excess of the tariff allowance that referral lawyers may request at the outset or during the course of a referral.

Applicant: a person who applies to LSS for legal services.

Articled student: a person enrolled in the Law Society of British Columbia's admission program for articling students administered by the Law Society or its agents, including the period that the student is articled to a principal or registered in the training course. Where the tariff references lawyers, the terms also apply to articled students, except where expressly indicated otherwise.

Attendance: the time spent at a court or tribunal hearing, or a mediation session, from the scheduled start time to its conclusion, including waiting time (if counsel is not handling other matters), but excluding meal breaks.

Billing form(s): the LSS form(s) provided to referral lawyers for billing LSS for legal fees and disbursements.

Block fees: the flat legal fees LSS pays for certain legal services regardless of the time spent providing the service.

Case: one or more related legal problems arising for a client.

Case cost caps: a limit on the total legal costs LSS will pay for a case, calculated by combining, for all referral lawyers who have acted in that case, the aggregate legal fees paid or billable, *or* the aggregate disbursements paid or billable, not including applicable taxes.

Case type: the categories of legal problems for which LSS has created separate tariffs (e.g., criminal, family, immigration).

Client: an applicant LSS considers eligible to receive legal services after determining he or she meets LSS coverage and eligibility criteria.

Conversion to private retainer: the LSS decision to terminate a referral and authorize a referral lawyer to bill a client privately for legal fees and disbursements.

Counsel agent: a lawyer who performs legal services on the referral lawyer's behalf.

Coverage: the range of legal problems for which LSS makes legal services available, or the range of legal services LSS may fund, as determined by LSS.

Date of assignment: the date a client applies to LSS for legal services as specified on the referral form.

Disbursements: the expenses referral lawyers incur on behalf of clients while providing legal services.

E-billing: the secure LSS website application that allows referral lawyers to bill LSS electronically for legal fees and disbursements.

Eligibility: the LSS decision that an applicant is financially qualified for legal aid.

Enhanced fees: the legal fees LSS pays to senior counsel in [enhanced fee](#) cases.

Enhanced fee case: means an enhanced fee case as defined in the Memorandum of Understanding between LSS and the Attorney General.

Exceptional matter: means an exceptional matter as defined in the Memorandum of Understanding between LSS and the Attorney General.

Extra legal fees: the legal fees in excess of the tariff rate that referral lawyers request from LSS at the conclusion of the case.

Final account: the completed billing form(s) a referral lawyer submits to LSS, when he or she ceases acting in a case, as a full and final statement of all legal fees and disbursements he or she is entitled to recover from LSS.

General preparation: the preparation for a referral that is not specifically covered by another tariff item. It includes such things as taking instructions, preparing correspondence and court documents, negotiating with an opposing party, and the time spent waiting to see a client at a detention facility. It does not include time spent travelling to and from court or a detention facility.

Half day: a court sitting either before or after the lunch adjournment.

Hourly rate: the [hourly rate](#) set by LSS, to be billed in 10ths of hours.

Interim accounts: the accounts referral lawyers submit to LSS before the final account.

Last service date: the date a referral lawyer last performed a legal service billable according to the tariff contract.

Legal aid: the services and information provided under the Legal Services Society Act, S.B.C. 2002, c.30.

Legal fees: the [fees referral lawyers bill](#) LSS for legal services provided to clients.

Legal services: the services ordinarily provided by a lawyer that are billable according to the tariff contract and provided to clients by referral lawyers pursuant to a referral.

LSS: the Legal Services Society; continued under the Legal Services Society Act, S.B.C. 2002, c.30.

Negative Account: an account representing a portion, or the full amount, of the repayment amount. The negative account is deducted from any money payable by LSS to the referral lawyer.

Notice to Counsel: a notice LSS issues periodically to inform lawyers about changes to the tariff contract.

Post-payment review: the process of reviewing a referral lawyer's paid account(s).

Reduction: a permanent reduction to legal fees payable to referral lawyers, as determined by LSS.

Referral: the LSS authorization for a lawyer to provide legal services to a client and to bill LSS for legal fees and disbursements for the case according to the tariff contract.

Referral lawyer: a lawyer who is a member in good standing of the Law Society of British Columbia, holds a Law Society of British Columbia practising certificate, and who LSS deems eligible to accept referrals.

Referral form(s): the form(s) issued by LSS to referral lawyers confirming LSS authorization to provide legal services to a client in a specified case according to the tariff contract.

Referring office: the LSS office that issues a referral to the referral lawyer.

Repayment amount: the amount of money LSS determines a referral lawyer must reimburse LSS for money paid by LSS to the referral lawyer which was not properly payable according to the tariff.

Service start date: the date from which LSS authorizes referral lawyers to bill LSS for legal services provided to a client.

Service stop date: the date LSS specifies for automatic termination of a referral.

Society, the: another name for LSS.

Strategic Case Assessment Program (SCAP): the case management program LSS uses to manage the allocation of funds to lengthy criminal matters.

Submittal: the LSS term for an account submitted to LSS by a referral lawyer.

Tariff(s): the schedule(s) of legal fees and disbursements payable by LSS for legal services provided or expenses incurred on a client's behalf.

Tariff items: the individual provisions within each tariff describing the nature of a legal service or disbursement and its specific terms and conditions, including the amount payable or the maximum billable hours allotted.

Tariff contract: the retainer agreement between LSS and referral lawyers, as modified from time to time by LSS, including the contents of the *Guide to Legal Aid Tariffs (Introduction, General Terms and Conditions, applicable Tariffs, Guides to Billing)*, and **Notices to Counsel** and other written instructions that LSS may provide to referral lawyers directly or through the LSS website.

Tariff rate: the [rate LSS pays](#) for legal services, in the form of block fees or an hourly rate, as set out in the tariff contract.

Tiered rates: the LSS system of [differential tariff rates](#) for lawyers based on their years of call to the bar. Years of call is the period beginning on the first day of the month and year in which the lawyer was called to the bar in Canada, and ending on the service start date of the referral in respect of which a lawyer claims legal fees. There are three tiers:

Tier 1	Less than 4 years call
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Tier 2 4 or more years and
less than 10 years call

Tier 3 10 or more years call

Time-keeping record: A record, identified by client, of itemized services performed, in chronological order, with a detailed description of the services, including date and time spent on services.

Vendor number: LSS provides this permanent identification number to lawyers and other service providers, enabling them to do business with LSS.

3. General Terms and Conditions (July 2009)

General (July 2008)

1. LSS may modify the terms and conditions of the tariff contract at any time, and such modifications take effect upon reasonable notice.
2. A referral lawyer's acceptance of a referral is considered his or her conclusive agreement to represent a client in the case specified on the referral form and bill LSS according to the tariff contract.
3. LSS has sole authority to determine all matters related to legal aid, including clients' coverage and eligibility and appropriate compensation of lawyers.
4. Referral lawyers may ask LSS to review a decision regarding eligibility, coverage, or any other matter related to the interpretation and administration of the tariff contract.
5. LSS may refuse to pay all or part of a referral lawyer's account if the referral lawyer fails to comply with the terms and conditions of the tariff contract.
6. LSS may refuse to pay referral lawyers for legal fees and disbursements related to legal or other services that were:
 - (1) not reasonable and necessary to advance the client's best interests;
 - (2) performed inadequately;
 - (3) performed by a lawyer who was not then a member in good standing of the Law Society of British Columbia and who did not hold a Law Society of British Columbia practising certificate; or
 - (4) performed by a lawyer contrary to the terms of an LSS decision under the Referral Eligibility Policy (for more information on the policy, see the Lawyers page of the LSS website).
7. Referral lawyers must, within 30 days:
 - (1) respond to LSS inquiries about a referral;
 - (2) respond to an LSS inquiry regarding a client complaint;
 - (3) provide information requested by LSS regarding a complaint; and
 - (4) inform LSS of any changes to their business or e-mail addresses and telephone or fax numbers.
8. LSS may release correspondence between a referral lawyer and LSS about an applicant's or client's case, including billing information, upon the applicant's or client's request.
9. LSS is not responsible for any disputes relating to a referral that may arise between referral lawyers and third parties.
10. It is the responsibility of the referral lawyer to be registered with WorkSafeBC pursuant to legislation.
11. LSS may, at its discretion, and upon reasonable notice to lawyers, impose reductions at rates set by LSS.

12. LSS may, at its discretion, impose conditions on, or temporarily or permanently suspend, a lawyer's eligibility to receive referrals in accordance with its [Referral Eligibility Policy](#).

Client coverage and eligibility (July 2009)

13. Referral lawyers must immediately notify the referring office if they learn that a client has:
- (1) improved his or her financial situation;
 - (2) failed to disclose assets or income to LSS;
 - (3) unreasonably prolonged a case; or
 - (4) refused to give the referral lawyer reasonable instructions.
14. LSS may terminate a referral at any time if a client no longer meets LSS criteria for coverage and eligibility.
15. LSS may add to an existing referral any new matter of the same case type arising for a client within 90 days of the existing referral's date of assignment.
16. Upon receipt of any settlement funds, a referral lawyer must:
- (1) immediately notify the LSS Collections Audit Clerk in the Audit and Investigation Department that he or she has received such funds;
 - (2) pursuant to the client's instructions on the Legal Aid Representation Services — Approved form, hold sufficient funds in trust to pay LSS any money that LSS has paid or is obliged to pay to the referral lawyer or lawyers in the case; and
 - (3) pay those funds to LSS upon request, or to the client if authorized by LSS to do so.
17. If a referral lawyer believes that a client referred by LSS will receive a settlement that will not be processed through the referral lawyer's trust account, the lawyer must immediately notify the Collections Audit Clerk at helpdesk.cpr@lss.bc.ca.

Authorization for services (June 2004)

18. LSS will not pay referral lawyers for legal fees and disbursements arising *before* the service start date, unless the legal fees and disbursements:
- (1) relate to a bail hearing occurring within 20 days before the service start date; or
 - (2) were authorized in advance by LSS.
19. LSS may determine the service stop date for any referral.
20. LSS may refuse to pay legal fees and disbursements arising after the service stop date.

Billing for services (July 2009)

21. LSS contracts with the referral lawyer and not the referral lawyer's law firm. When a referral lawyer submits an electronic or paper billing form to LSS, the referral lawyer represents and warrants that he or she:
 - (1) reviewed the billing form before submitting it to LSS;
 - (2) performed, or supervised a counsel agent or articulated student to perform, the legal services billed for on the dates recorded on the billing form;
 - (3) made reasonable efforts to ensure legal fees and disbursements were reasonable and necessary; and
 - (4) is entitled to receive payment according to the tariff contract.
22. Referral lawyers must complete billing forms fully and accurately according to the terms of the tariff contract.
23. LSS may refuse to process for payment all or part of a referral lawyer's account if the referral lawyer submits a billing form that is inaccurate or incomplete. If all or part of a referral lawyer's account is not paid, a referral lawyer may seek to have the account reviewed by:
 - (1) requesting in writing a review by the Manager, Tariff Services or his or her designate; and
 - (2) providing LSS with further detailed account information.

There will be no further reviews after the final decision of the Manager.
24. Referral lawyers may submit interim accounts if:
 - (1) the legal fees total \$500 or more;
 - (2) the disbursements total \$300 or more;
 - (3) the referral lawyer has changed firms; or
 - (4) the preliminary inquiry in a criminal case has ended and the trial will not begin for three months or more.
25. LSS may refuse to pay any legal fees and disbursements not included on a referral lawyer's final account.
26. Referral lawyers must submit accounts to LSS:
 - (1) upon request by LSS;
 - (2) for duty counsel or circuit counsel, within two months of each service date;
 - (3) for all other referrals, not more than six months after the last service date, or when the referral lawyer ceased representing the client on that particular referral.
27. Referral lawyers must not bill LSS for the Provincial Sales Tax (PST) on legal fees. Pursuant to section 258.1 of the Excise Tax Act, legal fees are tax exempt where legal services are provided by legal aid. Where disbursements items have PST charged, the PST may be included.
28. Referral lawyers must not include the Goods and Services Tax (GST) when recording legal fees and disbursements on a billing form. Although GST does apply to the services provided, LSS will automatically calculate the amount of GST payable (if applicable) when processing an account.

29. Referral lawyers are not permitted to bill for two legal services provided at the same time or on the same half-day unless the applicable tariff explicitly permits this. If a lawyer is attending the same court on the same half day for more than one client or legal service, the time may be billed only once, notwithstanding that there are two or more separate referrals issued to the lawyer for different clients or legal services.
30. After paying an account, LSS may conduct a post-payment review of an account within two years from the date of payment, to ensure the account is valid and properly billed in accordance with the tariff contract.

Counsel agents and articulated students (July 2009)

31. A referral lawyer may, without prior LSS authorization, bill LSS for legal services performed by a counsel agent if:
 - (1) the counsel agent provided the legal services in British Columbia;
 - (2) the counsel agent provided the legal services in accordance with the tariff contract but did not assume conduct of the case; and
 - (3) the referral lawyer billed the legal services in accordance with the tariff contract and indicated on the billing form which legal services the counsel agent performed.
32. Referral lawyers may not, without prior LSS authorization, retain counsel agents to provide legal services:
 - (1) outside British Columbia, or
 - (2) where the counsel agent wishes to bill for travel fees.Please contact the Case Management Section for authorization.
33. Referral lawyers must ensure that the counsel agent:
 - (1) is a member in good standing of the Law Society of British Columbia and holds a Law Society of British Columbia practising certificate;
 - (2) has a valid LSS vendor number; and
 - (3) is not subject to an LSS decision under the Referral Eligibility Policy that affects his or her eligibility to receive referrals.
34. Referral lawyers may, without prior LSS authorization, bill LSS for legal services performed by an articulated student if:
 - (1) the articulated student acts according to Law Society rules and does not act in the following:
 - (a) the role of duty counsel,
 - (b) indictable offence trials,
 - (c) final separation agreements,
 - (d) any hearing, conference, mediation, or negotiation which would result in a final FRA order,
 - (e) committal hearings,
 - (f) any application for continuing custody,
 - (g) refugee hearings;

- (2) the client consents to the articulated student providing the legal services;
- (3) the referral lawyer bills the legal services for articulated students at the Tier 1 tariff rate (LSS will adjust the rate accordingly);
- (4) the referral lawyer indicates on the billing form which legal services the articulated student performed; and
- (5) the referral lawyer does not bill both the articulated student's time and the lawyer's time for the same services or appearances.

Junior and co-counsel (November 2006)

35. LSS may authorize the appointment of junior or co-counsel, on terms LSS may determine, if the referral lawyer submits a written request in advance to the Manager, Legal Services, indicating:
 - (1) the exceptional circumstances of the case, including complex legal and factual issues, that make junior or co-counsel necessary;
 - (2) the specific tasks junior or co-counsel will perform; and
 - (3) the name and LSS vendor number of the proposed junior or co-counsel.
36. Subject to any specific instructions LSS may provide, a lawyer authorized by LSS to act as [junior counsel may bill](#) LSS:
 - (1) in enhanced fee cases, at the Tier 1 hourly rate for hours authorized for preparation and attendance; and
 - (2) in all other cases,
 - (a) at 75% of the applicable tariff rate; or
 - (b) at 100% of the applicable tariff rate for legal services the junior counsel provided in court when senior counsel was not in attendance.
37. A lawyer authorized by LSS to act as co-counsel may bill LSS for legal services at the applicable tariff rate.
38. [deleted]

Change of lawyer (June 2004)

39. If a client changes lawyers or the referral lawyer initiates a change of lawyers, the newly appointed lawyer must:
 - (1) verify that LSS has authorized a change of lawyers;
 - (2) ask LSS to issue a new referral in his or her name and LSS vendor number; and
 - (3) advise the previous lawyer that he or she is representing the client.
40. If a client changes lawyers or the referral lawyer initiates a change of lawyers, LSS may refuse to pay the newly retained lawyer for legal fees and disbursements if:
 - (1) LSS did not authorize a change of lawyers; or
 - (2) the legal fees and disbursements arose before the service start date of the new referral.

Extra legal fees and additional preparation (July 2008)

41. LSS may, at its discretion, pay further legal fees to referral lawyers. In reviewing requests for extra fees and additional preparation hours, LSS will consider factors such as the actual time expended, legal complexity, nature of legal services rendered, importance of the matter to a reasonable client of modest means, length of proceeding, amount of court time and/or LSS funding saved by the efforts of counsel, skill and efficiency of counsel, results achieved, and available tariff budget.
- (1) **Extra fees** may be requested at the conclusion of the case and require counsel to submit a final bill.
 - (2) **Additional preparation** may be requested if it is recognized at the outset of the case, or during the course of the referral, that substantially more hours than permitted under the applicable tariff will be required to complete the case. To request additional preparation, counsel must submit an up-to-date account.
42. For extra fees and additional preparation requests, submit your request in writing to the Case Management Section and include timesheets, documents, and additional information to facilitate the request. For appeal or judicial review cases, the request should be sent to the Appeals Section.

Case cost caps (June 2004)

43. LSS may, at its discretion and after reasonable notice to referral lawyers, impose case cost caps.
44. LSS may not pay any legal fees or disbursements arising after the total legal fees, or the total disbursements, paid or billable in a case exceed the applicable case cost cap.

Private billing (June 2004)

45. A referral lawyer must not bill a client privately on any matter related to the case specified in a referral without prior written authorization from LSS.
46. LSS may issue a conversion to a private retainer if income, assets, or other financial benefits a client receives make the client ineligible for legal aid.
47. If LSS issues a conversion to a private retainer in a case, the referral lawyer must:
- (1) confirm the terms of the private retainer with the client in writing; and
 - (2) reimburse LSS for legal fees and disbursements it previously paid, to the extent LSS requires.
48. LSS may determine the terms and conditions of any conversion to a private retainer.

Record keeping (July 2008)

49. Referral lawyers must maintain adequate accounting and **time-keeping records** for each referral and retain such records for at least two years from the date of payment. There is an example of a filled-in timesheet in Appendix 1 and a blank timesheet form provided for optional use in Appendix 2.
50. LSS may refuse to pay a referral lawyer's accounts if, upon request, the referral lawyer fails to provide, within 30 days, adequate documentation supporting the legal fees and disbursements claimed.
51. LSS may require repayment of any amounts paid to a referral lawyer if, upon request, the referral lawyer fails to provide, within 30 days, adequate documentation or explanation of legal fees or disbursements LSS paid. If the referral lawyer fails to provide reimbursement to LSS representing the repayment amount within 30 days from the date payment is requested, LSS may process one or more Negative Accounts (i.e., a deduction from a future payment).

Costs (July 2008)

52. Referral lawyers must claim costs in cases where the time spent to obtain the costs is justified by the amount recovered. This does not apply to cases where costs are waived to get a settlement. When claiming costs, referral lawyers should ensure that they include disbursements paid by LSS. Pursuant to s.24 of the *Legal Services Society Act*, all costs awarded are assigned to LSS and must be paid to LSS upon receipt. Time spent obtaining costs may be billed as general preparation. If additional time is required, referral lawyers must apply for authorization. Please contact the collections audit clerk in the Audit and Investigation Department. LSS will approve additional hours if they are justified by the amount of costs recoverable.
53. LSS does not pay costs awarded against legal aid clients.

4. LSS Tariff Rates Quick Reference (April 2009)

Tiered Rates (Important: Claim the Tier 1 rate and LSS will add any applicable increases when processing your account.)

Tier	Years of call	Tariff rate — Block fees	Hourly rate
1	Less than 4 years	Amount specified in tariff item	\$83.90
2	4 or more years and less than 10 years	Tier 1 rate plus 5 percent	\$88.10
3	10 or more years	Tier 1 rate plus 10 percent	\$92.29

Note: Tier 2 and 3 increases do not apply to legal fees relating to Criminal Tariff Category I and II offences, Criminal Duty Counsel, or enhanced fee cases.

Enhanced Fee Cases — Hourly rates for attendance and preparation

Senior counsel	\$125.00
Junior counsel	\$83.90

Co-Counsel	Applicable tiered rate based on co-counsel's year of call
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Counsel Agent	Applicable tiered rate based on counsel agent's year of call
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Junior Counsel (excluding enhanced fee cases) (Important: Claim the Tier 1 rate and LSS will add any applicable increases when processing your account.)

Tier	Years of experience	Tariff rate — Block fees	Hourly rate
1	Less than 4 years	75% of amount specified in tariff item	\$62.93
2	4 or more years and less than 10 years	Tier 1 rate plus 5 percent	\$66.07
3	10 or more years	Tier 1 rate plus 10 percent	\$69.22

Note: Tier 2 and 3 increases do not apply to legal fees relating to Criminal Tariff Category I and II offences or enhanced fee cases.

Criminal tariff rate for legal services to co-accused on same half day	Additional maximum of a single half-fee for services to all additional clients.
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Articled students (Important: Claim the Tier 1 rate (\$83.90) and LSS will add any applicable changes when processing your account.)		
Hourly rate	75% of Tier 1 (effective January 1, 2009)	\$62.93
Block fees	Full amount specified in tariff item	Current rate published

Appendices

Appendix 1: Timesheet (Example) (July 2008)

Appendix 2: Timesheet (Optional) (July 2009)



Timesheet

(Example)

Lawyer name: _____

Client name: _____

LSS case no. _____

Date	Time	Description	Tariff Code	Hours
March 25/08	9:30 am – 10:30 am	Meeting with client — hearing prep	4220	1.0
March 26/08	3:00 pm – 4:30 pm	Meeting with expert — expert’s office	1035	1.5
March 28/08	10:00 am – 12:10 pm	Court attendance	4375	2.2
			Total	4.7

SAMPLE

