

Information for lawyers

As part of our commitment to tariff renewal, the Legal Services Society (LSS) has a three-tiered system of lawyer compensation that provides for rates based on experience and type of service (see Notice to Counsel #48). Initially, LSS will determine lawyer experience levels based upon year of call, but this may change upon future evaluation and with appropriate notice to the tariff bar.

The tiered rates are as follows:

Tier	Years of call	Compensation rate
1	Less than 4 years	Published tariff rate
2	4 or more years and less than 10 years	Tier 1 rate plus 5 percent
3	10 or more years	Tier 1 rate plus 10 percent

Background

The final report of the LSS tariff review, *Managing for Results: LSS Tariff Renewal*, recommended the adoption of a three-tiered system of rates as part of a five-year plan to implement a principled approach to compensation. (The report is available under the “For Lawyers” section of the LSS website at www.lss.bc.ca.) The three-tiered system provides for increased tariff rates based on seniority, to better reflect the skills and expertise lawyers gain with experience. It also reflects standard compensation practice in the legal profession, where billing rates tend to increase with seniority. LSS hopes the tiered-rate increases encourage experienced lawyers to continue accepting legal aid referrals, and attract newer lawyers with the expectation of future increases as they gain experience.

What services are eligible for tiered rates?

Tiered rates apply to most fee items listed in the *Guide to Legal Aid Tariffs*, including:

- the Family Tariff
- the CFCSA Tariff
- the Immigration Tariff
- the Appeals and Judicial Reviews Tariff (including criminal appeals for all offence categories)
- Duty Counsel Tariff (including Circuit Counsel)
- fees relating to Indictable and Major offences in the Criminal Tariff, as well as s.278 Victim/Witness Representations, extradition hearings, and BC Review Board hearings.

Please note that tiered rates also apply to:

- extra fees,
- junior counsel fees,
- travel and out of office fees,
- mentor fees, and
- referrals issued based on a *Rowbotham* application.

The increased rates for tiers 2 and 3 do *not* apply to the following:

- fees relating to Summary offences in the Criminal Tariff, and
- criminal enhanced fees authorized in exceptional cases for preparation and attendance.

The disbursements rates in the *Guide to Legal Aid Tariffs* are not affected by tiered rates.

How are the tiered rates calculated?

When processing your accounts, LSS automatically calculates the tiered rate for each tariff item you claim on your billing form. The applicable rate is based on:

- your call date,
- the service start date of each referral, and
- the tariff item.

Call date

For call date, LSS will use the first day of the month and year you were called to the bar in British Columbia, as reported on your original application for an LSS vendor number. (Thus, if your actual call date was May 25, 1990, your call date for billing purposes would be May 1, 1990.) If you notice that our record of your call date is incorrect, or if you had an earlier call date in another Canadian jurisdiction, please notify LSS by e-mail (lssvendorinfo@lss.bc.ca). In the future, LSS will upgrade the secure portion of the LSS website (Lawyer e-services) to allow you to update your own profile in the LSS computer system.

Service start date

The service start date is listed on the referral form and is the date from which LSS authorizes you to bill for legal services provided to a client. In other words, it is the effective date of the tariff contract between you and LSS for representation of a particular client. Typically, the service start date for a referral is set at ten days before the client's initial interview date with LSS intake staff.

LSS will determine which tiered rate applies by calculating your years of call as of the referral's service start date, *not* your years of call on the date of service to the client.

Example:

Your were called to the bar on September 30, 2002, so for LSS billing purposes your call date is September 1, 2002. On September 1, 2006, you become eligible for tier 2 rates on all new referrals (i.e., referrals with service start dates of September 1, 2006, or later). However, you will continue to receive tier 1 rates for services you subsequently provide on your existing referrals (i.e., referrals with service start dates before September 1, 2006.)

Tariff items: Family, CFCSA, Immigration, Appeals and Judicial Reviews

LSS pays an hourly rate for most of the services in these tariffs, for which the tiered rates are \$83.90 (tier 1), \$88.10 (tier 2), and \$92.29 (tier 3).

Example:

A lawyer with 12 years call provides services on a family (emergency services) referral and claims the following fees, which are adjusted by LSS:

		Claimed/ Tariff rate	LSS Adjustment	
	Hours	Tier 1	Tier 3	Total
Preparation	5.0	400.00	40.00	440.00
Court attendance	3.0	240.00	24.00	264.00
Opinion for appeal	1.0	80.00	8.00	88.00

Criminal tariff

In the criminal tariff, the tier 2 and 3 increases do not apply to Summary offences, so criminal lawyers may find that their accounts include a mix of tariff items, only some of which are eligible for the tiered-rate increase. For example, in a criminal case, your account may entitle you to payment at the tier 3 rate for an Indictable tariff item, and the tier 1 rate for a Summary tariff item. Please note that current criminal tariff billing rules continue to apply:

- **If the tariff indicates that two services cannot be billed together, bill for the service with the higher fee.**
- **If two offence categories are included on one Information/Indictment, bill your services at the rate of the higher level.**

Example:

Your client is charged with theft under \$5,000 (Summary) and theft over \$5,000 (Indictable) on the same information. Where both charges proceed to trial, bill your fees for the trial, claim the tier 1 rate for an Indictable offence and LSS will pay you at the tier 2 or 3 rate if you have sufficient years of call.

- **If your client pleads guilty to a lesser or lesser included offence, bill your services at the rate of the original charge, unless your client was committed to trial on the lesser charge at the preliminary hearing.**

Example:

Your client is charged with possession of marijuana for the purpose of trafficking (Indictable), but pleads guilty to the lesser included offence of possession (Summary). You claim the tier 1 rate for the Indictable offence and LSS will pay you at the tier 2 or 3 rate if you have sufficient years of call.

If, however, your client was originally charged with possession for the purpose of trafficking, but after a preliminary hearing is committed to trial on possession only, you will claim the tier 1 rate for the Summary offence for services you subsequently provide and LSS will pay you at the tier 1 rate.

What about accounts with services performed by other lawyers or articulated students?

The applicable rate will be calculated based on the call date of the lawyer who provided the service and the referral service start date. If your account includes services provided by other lawyers, LSS will pay you and the other lawyer at your respective tiered rates for the services each of you provided.

Preparing your accounts

Please continue to use the published tariff rates (the tier 1 rates) when preparing your accounts. When processing your account, LSS will automatically calculate and apply the applicable tiered-rate increase, if any, to the amount approved. For your own accounting purposes, you may wish to calculate any applicable increases and the adjusted account total in the “Lawyer use only” box on your billing form, so that your LSS cheque amounts match the amounts claimed in your submitted accounts. The adjustment amount LSS calculates will be printed on your cheque remittance. LSS will upgrade its e-billing system to automatically calculate the tiered rate for you.

Future changes

LSS will continue working collaboratively with the private bar to promote tariff renewal. These increases represent a further step towards improving tariff compensation, following the elimination of the holdbacks in July 2005 and the October 2005 introduction of new tariff items (see Notice to Counsel #47). As the tiered-rate system represents a new approach to tariff lawyer compensation, LSS recognizes that it will be necessary to evaluate progress over time and make appropriate adjustments. LSS welcomes your feedback on the introduction of the tiered-rate system and other tariff renewal initiatives. Please direct your questions or comments to lawyersresources@lss.bc.ca.