



LEGAL AID ONTARIO  
AIDE JURIDIQUE ONTARIO

# Tariff consultations

Criminal law

**Part of LAO's Modernization program**

December 2020



# Agenda

1. Welcome and introduction
2. Background and purpose
3. Discussion
4. Next steps

# Welcome and introductions

## 1. Welcome and opening remarks

David McKillop, VP Strategy & Public Affairs

## 2. Remarks

Darcy DesLauriers, Director, Lawyer Services & Payments

## 3. Introductions

LAO

Participants

# Background

Updating the way we pay lawyers is an important part of LAO's Modernization program that aims to modernize Ontario's legal aid system, allowing LAO to be more responsive to community needs, and putting our clients at the centre of everything we do.

To this end, we are seeking your input on tariff reform, redesigning *Legal Aid Online* and improving access to information necessary to bill successfully.

# Context

- Updating the way LAO pays lawyers is an important part of LAO's modernization program, which aims to modernize Ontario's legal aid system and allow LAO to be more responsive to lawyer, client and community needs, while continuing to be a responsible steward of public funds.
- We don't currently have funding to make increases to the tariff, so the focus of these consultations are on immediate, cost-neutral updates. We do, however, want to hear from you about where future increases might be applied, if and when possible.
- We will use your input to determine how best simplify our current billing rules, improve *Legal Aid Online* to reduce the time and effort required to submit accounts, and provide easier online access to information.
- Our goal is to receive as much feedback and as many perspectives as possible so we can move forward and make important decisions about how to modify the way we pay you, revamp *Legal Aid Online* and facilitate easier online access to information you need to do legal aid work.

# Principles

- Flexibility to adjust to changing needs
- Cost effectiveness to promote sustainability
- Efficiency to ensure the best use of resources
- Accountability
- Fairness to ensure payment is reflective of the work done
- Incentive for good client service and for lawyers to accept LAO clients

# Consultation process' three parts:

1. Small group discussions based on area of law – open to all panel members
2. Survey sent to all panel members
3. Written submissions

# What we have heard from you

- *Legal Aid Online* is outdated and difficult to navigate.
- Discretion payments are unpredictable and infrequently approved.
- The tariff is inadequate, particularly to deliver high quality legal services.
- The administrative effort for billing is too onerous.
- Only 24 percent of respondents to the 2019 Lawyer Satisfaction Survey viewed LAO billing and payment practices positively, the lowest percentage compared to other areas of LAO activity surveyed.



# Process

1. The first set of questions are of a general nature and your views on these issues will help focus our work going forward.
2. The questions that follow are based on feedback that has been provided in the past and we want to get your views on these issues and potential solutions.
3. We hope that our conversation these issues will generate further discussion on other issues and possible solutions.

# Improving *Legal Aid Online* and the Tariff

1. What aspect of billing takes up the most amount of time?
2. What is the biggest impediment to finding information regarding billing or billing rules?
3. How can LAO simplify billing for you?
4. What additional features would you like to see in an online portal?
5. What are your top three billing grievances unrelated to the tariff?
6. Where do you feel that the block or tariff is most inadequate?
7. How would you improve discretion?

# Start and end times for hearings

8. LAO's current hourly tariff rules require panel members to record both start and end times in their detailed dockets for those hearings which add tariff for the attendance.

Would you support a counsel fee for these attendances which are based on either a set number hours or a block fee? This would eliminate the requirement that counsel keep track of start and end times for court appearances and LAO would only need to confirm that the particular attendance took place.

# Adjusting tariff inadequacies: Reducing reliance on discretion

1. We've heard that the tariff is inadequate. One example is when a matter set for trial resolves close to the trial date after the majority of preparation has been completed leaving you to rely on discretion.
  - How would you adjust the tariff to account for this and reduce the reliance on discretion?
  - In what other situations do you feel this is most acute?
2. In some cases, a reduction in one area might be used to supplement noticeably inadequate coverage elsewhere. For example, it has been suggested that payment for consent bail hearings could be decreased and used to increase the fee payable for contested bail hearings.
  - Would this change better reflect the work required of counsel? Are there other areas where time could be taken from one place and applied differently?

# Adjusting tariff inadequacies – Withdrawal of charges

3. Another example is the manner in which LAO treats the withdrawal of charges in criminal matters. When proposing resolutions, the Crown regularly offers to withdrawal one or more charges in return for a guilty plea to the remaining charges. LAO treats these circumstances as a withdrawal and increases the tariff on hourly accounts and the block fee payable. The additional payment for a withdrawal occurs irrespective of the seriousness of the charges withdrawn or the efforts of counsel.
  - To make payments more reflective of counsel's efforts, LAO could change the rule to increase the tariff only in cases where all charges are withdrawn or the most serious charges are withdrawn.
  - What are your thoughts on this?

# Block fees

5. Sometimes, block fee matters are resolved early and may disproportionately compensate counsel for simple, quick pleas. Instead, LAO could decrease fees payable for these, and instead pay more for more complex tariff and block matters.
  - What do you think?
  - An example: Block fees could be improved by adding “sub-blocks” to account for additional complexities, creating a more graduated payment scheme based on the individual complexities of a case.

# Crown's election

6. It has been suggested that the Crown's election should not be a factor in determining payment because it has little impact on work required of counsel, and it is the seriousness of the charges that is determinative.

Is this consistent with your experience?

Would basing payment on the seriousness of the charge rather than including the election more accurately reflect time involved?

# Other matters

- What other matters would you like to raise, that have not been discussed today?



# Next steps and estimated timelines

1. Review and aggregate the consultation feedback, cost analysis and development of survey questions (March 2021)
2. Send out follow-up survey and written submissions (April 2021)
3. Survey analysis and summary of survey/submission findings and highlights (April/May 2021)
4. Communication to the bar and implementation of changes (TBD)



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Questions?

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