



## **Adequate Tariffs to Meet Client Needs**

May 11, 2018

### **Inadequate Tariffs**

1. Due to funding restrictions, the Legal Services Society has increased tariff rates only once since 1991.
2. Current rates do not provide adequate compensation for lawyers to meet the needs of legal aid clients and are not comparable to rates paid by government for similar legal services.

### **Tariff History**

1. From 1979 to 1984, hourly tariffs were \$35 - \$40. Block tariffs for criminal law services provided comparable compensation.
2. In 1984, the provincial government's Task Force on Public Legal Services chaired by Ted Hughes recommended that tariffs should be raised over time to "75 per cent of the fees an average lawyer would charge a private client of modest means." This would have required a 100 per cent tariff increase.
3. By 1991, LSS had raised the hourly tariff to \$50. Lawyers, however, withdrew services to protest poor compensation. The government increased tariff funding and LSS was able to raise the hourly rate to \$80.
4. Current rates were set in 2006.

### **Current Tariffs**

5. Tariff rate reference chart

<b>Year of Call</b>	<b>Hourly Tariff for Family, Child Protection and Complex Criminal Cases</b>	<b>Block Tariff for Less Serious Criminal Cases</b>
Less than 4 years	\$84	Amount specified in the tariff
4 to 10	\$88	Amount specified in the tariff + 5%
10 or more years	\$92	Amount specified in the tariff + 10%

### **Family law, child protection and immigration tariffs**

6. Lawyers working on family, child protection and immigration cases are paid according to LSS's hourly tariff rate up to a maximum number of hours for specific services. For example, the family law tariff allows a maximum of 35 hours for general preparation (increased from 25 hours April 2018).

Criminal law tariffs

- 7. Most criminal law services are paid according to a block tariff that provides a set amount for specific services rather than an hourly rate. For example, the block tariff for a bail hearing relating to a minor offence is \$100.
- 8. Complex and lengthy criminal trials are paid according to LSS’s hourly tariff rate rather than a block tariff. These case are subject to oversight by LSS’s case management program that ensures prudent and cost-effective expenditures.
- 9. To attract senior, experienced counsel to complex and lengthy cases, LSS offers an enhanced fee of \$125 an hour. To qualify for enhanced fees, the lawyer must have significant experience in criminal law.
- 10. In cases that are unusually complex and lengthy, LSS may offer an exceptional responsibility premium. To qualify for the premium, senior counsel must satisfy the requirements for enhanced fees and demonstrate that they have executive case management skills. The premium rate is a 15 per cent increase on any tiered rates or enhanced rates. This premium applies to very few cases (maximum = \$143 an hour).

**Comparison Rates**

Other legal aid plans

- 11. Legal aid plans that retain private lawyers use a system of block and hourly tariffs similar to that of LSS. Tiers used by other plans are based on experience and are similar, but not identical, to those used by LSS. In Ontario and Newfoundland, tariffs are set by the government (Ontario is currently negotiating new rates). It is not possible to compare the cap on hours.

	LSS	Ontario	Northern Ontario	Alberta	NFLD
Tier 1	\$84	\$109	\$120	\$84	\$120
Tier 2	\$88	\$122	\$135		\$125
Tier 3	\$92	\$136	\$150		\$135
Complex criminal	\$125 - \$143	\$161			

Other BC Government Rates

- 12. Ministry of Children and Families director’s counsel services: recently increased to \$135/h.
- 13. Ad hoc criminal services: \$75/h - \$125/h depending on the level of court.
- 14. The Legal Services Branch has a tariff for outside counsel in civil matters. The rates range from \$100/h for a lawyer with one year’s experience to a maximum of \$250/h for lawyers with seven or more years’ experience.

## Stakeholder Positions on LSS Tariffs

### Canadian Bar Association – BC Branch

15. [Agenda for Justice](#) (February 2017), page 6:

“Current rates, which have been increased just once since 1991, do not provide adequate compensation for the services needed to assist the low-income people who qualify for legal aid. They are less than the cost of most lawyers’ hourly overhead. As a result, the number of lawyers in BC who are prepared to take on legal aid cases has dwindled as they cannot afford to act. Without additional funding it will become increasingly difficult for even those who qualify for legal aid to obtain representation.”

### Law Society of BC

16. [A Vision for Publicly Funded Legal Aid in British Columbia](#), results of a November 2016 survey of BC lawyers, page 25:

- a. Forty percent of lawyers indicated that they operate at a loss by providing legal aid, 46% break even, and 12% manage to make a profit.
- b. On average lawyers reported that they would need to make \$150 an hour to break even on a legal aid retainer.
- c. The average hourly rate that would be required for new lawyers to take on legal aid referrals is \$175.

## Legal Aid Lawyer Earnings

17. Average and median earnings 2017/18

Area of Law	# of Lawyers	Average	Median
Criminal	650	\$46,300	\$25,000
Family	520	\$21,000	\$11,500
Child protection	390	\$15,600	\$7,700
Immigration	90	\$18,370	\$8,900

## Scale of Funding Needed for Adequate Tariffs

18. The following calculations are based on tariff costs for the past four years plus tariff changes resulting from the 2018/19 funding increase. Immigration tariffs, which are funded separately by both the provincial and federal governments, are based on current forecasts.

Average Annual Tariff Costs	Increase to Match MCFD = \$135/H	Increase to Match LSBC Survey = \$150/H	Increase to Match LSBC Survey = \$175/H
\$54,000,000	\$26,000,000	\$38,000,000	\$49,000,000
Immigration: \$2,500,000	\$1,300,000	\$1,700,000	\$2,400,000

## Impacts of Low Tariffs

19. Current rates and hourly caps are insufficient for lawyers to provide the legal services low-income people need to resolve their legal problems.
20. Current rates are too low for most lawyers to make a living from legal aid work. This prevents LSS from attracting and retaining a sustainable group of lawyers who will take legal aid referrals in future years.
21. Differences in funding for lawyers representing the government and lawyers representing legal aid clients creates a serious perception of unequal access to justice.
22. MCFD's decision to increase tariff rates for director's counsel in child protection matters to \$135 creates a particular inequity for lawyers who do both MCFD work and legal aid work (\$135 compared to \$84).
23. Tariffs are regularly noted in LSS's triennial lawyer satisfaction survey as a cause of concern and a reason for not taking referrals.
24. Lawyers have organized service withdrawals to protest low tariffs.

