

General Terms and Conditions



Legal
Services
Society

British Columbia
www.lss.bc.ca

Revision history

(January 2006)

Date issued	Replaced pages	Effective date
01/06	all pages	01/06
02/05	ii, iii, 4, 7 – 8	02/05
06/04	all pages	06/04
06/03	i/ii, 3/4	01/99
11/02	all pages	01/99
10/01	section title page, 5 – 9	01/99
04/01	all pages	01/99
05/99	iii, 5/6, 7/8	01/99

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1. Introduction

(June 2004)

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

2. Definitions (January 2006)

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

Attendance time: the time spent at a court, tribunal, or mediation session, including waiting time when the matter does not proceed at the scheduled time. (Does not include meal breaks.)

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

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 and holdbacks.

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: 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: 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 a referral.

Extra legal fees: legal fees in excess of tariff rates that referral lawyers request from LSS in exceptional circumstances.

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 legal 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.

Holdbacks: percentage reductions to legal fees payable to referral lawyers made when LSS processes accounts for payment.

Hourly rate: the hourly rate set by LSS, to be billed in 10ths of hours; currently, \$80 per hour.

Interim accounts: 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: 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: 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.

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

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

Referral: 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 accepts a referral.

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.

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.

The society: another name for LSS.

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 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.

3. General Terms and Conditions (February 2005)

General (January 2006)

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 BC; or
 - (4) performed by a lawyer contrary to the terms of an LSS restriction on billing privileges.
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. LSS pays the individual lawyer named on the referral and not the law firm. A signed billing form or E-billing submittal is your representation that the services billed for were performed by you, or a lawyer or articled student acting under your supervision, and that you are entitled to payment.
11. LSS may, at its discretion, and upon reasonable notice to lawyers, impose holdbacks or reductions at percentage rates set by LSS.

12. LSS may, at its discretion, restrict a referral lawyer's billing privileges in accordance with its Policy on Restriction of Lawyer Billing Privileges, which the society will make available to referral lawyers upon request.

Client coverage and eligibility (June 2004)

13. Referral lawyers must immediately notify the referring office if they learn that a client has —
 - (1) improved his or her financial situation; or
 - (2) failed to disclose assets or income to LSS; or
 - (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 LSS that he or she has received such funds;
 - (2) pursuant to the client's instructions on the Legal Aid Application — Accepted 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 managing lawyer of Tariff Services.

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 show cause 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 (January 2006)

21. 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 the legal services billed for on the dates recorded on the billing form, unless otherwise stated;
 - (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 an inaccurate and/or incomplete billing form.
24. Referral lawyers may submit interim accounts if —
 - (1) the legal fees total \$500 or more; or
 - (2) the disbursements total \$300 or more; or
 - (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 not more than six months after —
 - (1) the conclusion or abandonment of the case; or
 - (2) 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.
28. Referral lawyers must not include the Goods and Services Tax (GST) when recording legal fees and disbursements on a billing form.
29. Referral lawyers are not permitted to bill for two services provided at the same time or 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 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 services.
30. After an account has been paid, the society may, within two years of the date of payment, make enquiries to verify that the account as submitted was for an amount properly payable under the *Guide to Legal Aid Tariffs*.

Counsel agents and articled students (June 2004)

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; and
 - (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 managing lawyer of Tariff Services for authorization.
33. Referral lawyers must ensure that the counsel agent is —
 - (1) a member in good standing of the Law Society of BC; and
 - (2) not subject to an LSS restriction on billing privileges that affects his or her eligibility to bill for legal services.
34. Referral lawyers may, without prior LSS authorization, bill LSS for legal services performed by an articled student if —
 - (1) the articled student acts according to Law Society rules; and
 - (2) the client consents; and
 - (3) the referral lawyer bills the legal services in accordance with the tariff contract and indicates on the billing form which legal services the articled student performed.

Junior and co-counsel (February 2005)

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 managing lawyer of Tariff Services, indicating —
 - (1) the exceptional circumstances of the case, including complex legal and factual issues, that make junior or co-counsel necessary; and
 - (2) the specific tasks junior or co-counsel will perform; and
 - (3) the name and vendor number of the proposed junior or co-counsel.
36. A lawyer authorized by LSS to act as junior counsel may bill LSS —
 - (1) at half the tariff rate; or
 - (2) at the full tariff rates for legal services the junior counsel provided when the referral lawyer was not in attendance.

37. A lawyer authorized by LSS to act as co-counsel may bill LSS for legal services at the full 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; and
 - (2) ask LSS to issue a new referral in his or her name and 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 (February 2005)

41. LSS may, at its discretion, pay extra legal fees to referral lawyers under exceptional circumstances. In reviewing requests for extra fees, LSS will consider factors such as the actual time expended, legal complexity, nature of services rendered, importance of the matter to the client, length of proceeding, amount of court time and/or LSS fees saved by the efforts of counsel, skill and competence of counsel, and results achieved.
42. Referral lawyers may, at the conclusion of a case, submit written requests for extra legal fees to the managing lawyer of Tariff Services.

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 (June 2004)

49. Referral lawyers must maintain adequate time-keeping and accounting records for each referral.
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 confirming legal fees and disbursements.
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 billed fees or disbursements.

Costs (January 2006)

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. 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.