

Duty Counsel Tariff

(includes Circuit Counsel)



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General Tariff Information

This chapter of *LSS Tariffs* provides information about how LSS will compensate you for duty counsel and circuit counsel services that you provide to clients. For general contractual information relating to the terms of your contract with LSS, see **General Terms and Conditions**. For information about billing disbursement items, see *Disbursements*. For information about coverage and eligibility, see the LSS website under Legal Aid – Legal Advice.

Procedures for taking on duty counsel work

To apply to have your name added to the criminal duty counsel roster, send your request to the office responsible for issuing duty counsel contracts at your court location.

To apply to have your name added to the family or immigration duty counsel roster, email dutycounsel@lss.bc.ca.

Additions to the duty counsel roster are made at the sole discretion of LSS. Generally, LSS only assigns duty counsel to lawyers who practise in the community where the court is located.

If you are on the duty counsel roster, LSS will contact you to ask for your available dates. Reply promptly and LSS will send you a schedule for the dates you are authorized to act as duty counsel.

Duty Counsel Tariff

This section contains instructions for criminal, youth, family, and immigration duty counsel contracts.

The *Duty Counsel Tariff* differs from the other tariffs in *LSS Tariffs* in that it does not contain individual tariff items to bill. Your duty counsel schedule will be set and distributed by your local issuing office. Based on that schedule, you will be sent a contract via LSS Online that will set out the service type, service date range, the total authorized hours for all scheduled dates, and tariff rate.

Use the information in this section when billing via LSS Online.

Guidelines for duty counsel

The following guidelines apply to all duty counsel contracts.

General Terms and Conditions

- The *General Terms and Conditions* apply to all duty counsel contracts.
- If you have received specific instructions from LSS, those instructions form part of the terms and conditions of your duty counsel contract.

Duty counsel contract and schedule

- Your contract will be available to you via LSS Online. The contract will show the total hours authorized for all service dates for the period of time and service listed on the contract. Your contract will not show the specific dates or daily maximums.
- Your issuing office will provide you the schedule listing the dates you are to appear as duty counsel, the services to be provided, and the daily maximums and minimums that may apply. Your acceptance of the contract is your commitment to appear and personally provide the services as set out in the schedule.
- The schedule may be amended or updated from time to time. You should contact your issuing office if there is any doubt about what days you are expected to appear.

Tariff rate and hours of service

- Duty counsel are paid an hourly rate, up to the maximum hours specified in the duty counsel contract. If you are obliged to work beyond the time stated on your duty counsel contract, provide the service, and submit a tariff item authorization request via LSS Online. In support, provide detailed timekeeping records for work performed.
- Legal fees are billable at the LSS hourly rate, except where a block fee applies.

Non-attendance

- You are required to personally attend each day of your appointment for as long as your services are required. If you undertake to attend as duty counsel, we expect you will personally attend on the day(s) and time(s) scheduled.
- If you cannot personally attend as duty counsel, you must request prior authorization from the local scheduling office to amend your contract. In an emergency, you may arrange for an alternative service provider to take your place. Please verify that the alternative service provider has been approved by LSS to provide duty counsel services.
- If another lawyer does a portion of your duty counsel/advice lawyer work, you are responsible for reimbursing that lawyer for the replacement period.

Touting

- “Touting” either for yourself or for members of your firm is prohibited. Duty counsel cannot use their appointments to the roster to solicit referrals for themselves or their firms.
- If a client asks if you may become his or her lawyer, always advise the client to contact the Lawyer Referral Service or ask for a recommendation from a trusted friend. Ensure that he or she has an opportunity to meet other lawyers before making a decision about retaining counsel. However:
 - if a client requests your business card, you may give it to him or her;
 - if a client is in custody and applies to LSS intake and asks for you to be his or her counsel, a duty counsel contract may be issued to you;
 - if a client is ineligible for legal aid and asks if you will represent him or her, you may, but not while acting as duty counsel in court that day and only after the client has had an opportunity to consult with other lawyers.

Record keeping

- You must keep a record of all clients assisted and notes about the advice or assistance provided, and the start and stop time for each service date. (You can use the **Duty Counsel Worksheets** provided in LSS Online under Resources – Forms).
- You will be required to provide a record of your time in order to request extra fees.

Travel

- If travel is authorized, refer to the travel item in the *Criminal or Family Tariff*, as applicable, for information and the tariff rate.
- Bill any travel disbursements according to the *Disbursements Tariff*.

Billing

- You must submit invoices to LSS within two months of each service date.

Criminal in-custody duty counsel (including youth): Instructions for duty counsel contracts

1. Personally attend at the local lock-up well before the start of the court's sitting. Allow enough time to ensure that you will be able to interview each accused in custody. If you cannot act because of a conflict, determine if another lawyer is available and contact the issuing office for assistance.
2. Interview each accused in custody.
3. Provide the accused with:
 - **information** about the nature of the charge;
 - **advice** about legal rights, including the right to counsel, the right to apply for legal aid, and the right to retain counsel privately for a show cause hearing; and
 - an **explanation** of court procedures to be faced that day.
4. Obtain from the accused the background information and instructions necessary to represent him or her on that day for show cause hearings, remands, variations of bail, adjournments, guilty pleas, and other proceedings.
5. Advise Crown counsel, court staff, and the sheriffs that you will be appearing as duty counsel.
6. Meet with Crown counsel before the court sitting to discuss potential terms for release and to verify that both of you will be prepared for the list.
7. Appear in court and speak on behalf of the accused, as necessary. It is your responsibility as duty counsel to attend throughout the day to deal with any accused in custody appearing in your court.
8. If you believe a bail review is warranted after a show cause hearing, contact LSS as soon as possible so that arrangements can be made for the bail review. Bail reviews are covered by legal aid if the accused is financially eligible and a likelihood of success exists. Provide the name of the accused, the charge, the nature of the offence, and a brief description of the grounds for review.
9. The daily court list shows the number of people in custody. Check with staff of the lock-up about any person who is shown as being in custody, but is not brought out for an interview. Although there may be a valid reason for the absence, sometimes people are improperly held in custody, and an inquiry should be made so they are not lost in the system.
10. Keep a record of people held in custody and inquire about anyone who is not on the court list to ensure they are promptly brought before the court that day. You are not obliged to

assist anyone not in custody and will not be paid by LSS for such services unless you hold a separate out-of-custody duty counsel contract.

11. Extra legal fees are available for reasonable and necessary time spent beyond that which is authorized. Submit an authorization request via LSS Online and attach a **Duty Counsel Worksheet (Criminal)**. Provide an explanation if the time spent is disproportionate to the number of clients.
12. If you assist your other LSS or private client(s) while acting as duty counsel, you cannot bill for both for the same time period. Please do not include time spent assisting your other LSS or private client(s) with your duty counsel fee invoice.
13. If you know that your services will not be required for a significant period of time, attend to other work. If you anticipate gaps in service during the day, bring other files with you on which you can work without billing duty counsel time. You may return to your office provided that the sheriffs, court staff, and Crown counsel know how to reach you and you are able to return to the court within a reasonable time.

Youths in the temporary or permanent care of the director

Refer any young person who is in temporary or permanent care by court order to his or her social worker or the local office of the Ministry of Children and Family Development. Provide assistance to youths who are in care of the director under voluntary care agreements. *Do not provide assistance for youths in temporary or permanent care under court order.*

Criminal out-of-custody duty counsel (including youth): Instructions for contracts

Out-of-custody duty counsel is assigned to provide summary advice and assistance to accused people making initial appearances under the Criminal Case Flow Management Rules. To the extent that your duty counsel contract permits, out-of-custody duty counsel may assist clients with simple bail variations, negotiations, or guilty pleas. If additional services are required, the client should be assessed and referred for a standard criminal tariff representation contract.

Attend court 30 minutes before the scheduled initial appearance list. Obtain a copy of the court list(s) for that day. Advise Crown counsel, court staff, and the sheriffs that you are present as duty counsel for that day.

1. Meet with all unrepresented people making initial appearances — if they are willing to meet with you — to provide summary assistance and advice.
2. Briefly review available Crown disclosure with each client. Summarize the legal issues raised by the case and explain options available to the client. Ensure that the client understands the significance and consequences of any plea.

3. Outline the procedural steps to be followed by the client to obtain disclosure, enter a guilty plea, or proceed to trial.
4. As appropriate, advise the client on how to apply for legal aid.
5. As appropriate, refer the client to the Lawyer Referral Service, pro bono services, other community agencies, or self-help materials, including LSS online resources.
6. Attend initial appearances with clients requiring assistance to obtain disclosure, adjournments, or other procedural requirements.

Your priority as out-of-custody duty counsel is to assist clients who have appearances in your assigned court on your assigned dates. As time permits, you may assist clients who are required to appear on other days or in other courts.

Family duty counsel: Instructions for duty counsel contracts

Family duty counsel services

Family duty counsel and advice services are offered in Provincial and Supreme courts:

- In **Provincial Court**, family duty counsel attend on scheduled days, usually the first appearance day for family matters. Family Court duty counsel must first give assistance to those with matters on the list, but are also obliged to provide advice whenever possible to any eligible persons seeking help with a family matter.
- In **Supreme Court**, family duty counsel attend on scheduled days to provide either court assistance or advice services, or both, to litigants without counsel.

Note: Clients seeking advice may be referred to either Provincial Court or Supreme Court duty counsel. Counsel should provide advice regardless of the court in which clients' matters are scheduled, but priority should be given to clients with matters in the court you are scheduled for.

Instructions for duty counsel contracts

The following instructions, together with those contained in the *Family Duty Counsel Policy and Procedures Manual*, as updated from time to time, are all part of the terms and conditions of your duty counsel contract.

1. On each assigned date, attend court one half hour before court is scheduled to begin. Pick up a Family Court list from the registry if you have not already got one. Inform the registry, any legal aid intake staff at the courthouse, and other relevant persons that you are family duty counsel for the day.
2. Ensure that you are not in a position of conflict before you give advice.
3. Ensure that the client has signed the Acknowledgement of Duty Counsel Services form. This signature is required before you can assist the client. (The form is available on the LSS website under Lawyers→Forms.)

4. Test for financial eligibility by applying the financial eligibility test for advice services (for more information, see the LSS website at www.legalaid.bc.ca and click Legal aid→Legal advice) or refer to the *Family Duty Counsel Policy and Procedures Manual*. Record the result on the Acknowledgement of Duty Counsel Services form before providing assistance. Financially eligible clients may return for additional service on other days in accordance with the *Family Duty Counsel Policy and Procedures Manual*.
5. Provide eligible clients with the services set out in the Acknowledgement of Duty Counsel Services form and the *Family Duty Counsel Policy and Procedures Manual*.
6. You may not:
 - go to court for a contested trial or hearing if the issues are lengthy or complex,
 - attend trial planning conferences,
 - help with complex property disputes,
 - help a client who has already retained a lawyer,
 - help with legal problems not related to family law,
 - accept service of or serve any court document, or
 - become the client’s solicitor of record while acting as duty counsel/advice lawyer.
7. Extra legal fees are available for reasonable and necessary time spent beyond that which is authorized. Submit your authorization request via LSS Online, along with a brief outline of the reasons why the extra time was required and a **Duty Counsel Worksheet (Family)**. Provide an explanation if the time spent is disproportionate to the number of clients.
8. Family duty counsel lawyers are required to be available to provide service for the minimum time for which they may invoice. The minimum hours authorized varies by court location so check your duty counsel schedule for your applicable minimum.
Provincial Court and Supreme Court family duty counsel are required to stay the minimum authorized time at the courthouse to ensure service is available to drop-in clients.
9. Do not bill for time spent on another legal aid representation contract during the minimum hours authorized on your duty counsel schedule for doing family duty counsel. See the *Family Duty Counsel Policy and Procedures Manual* for more details on invoicing.
10. There is no minimum for time spent on conflict of interest referrals. If a family duty counsel contract is issued for the purpose of covering the regularly scheduled duty counsel because of a conflict of interest, only the time spent on that case is billable.

Family advice lawyer services

Family advice lawyers work in Family Justice Centres and Justice Access Centres to meet with clients who are referred by family justice counsellors or child support officers. Clients may schedule up to three hours of free advice.

Instructions for duty counsel contracts

1. Attend at the designated location at the scheduled time.
2. Ensure you are not in a position of conflict before you give a client advice.
3. Ensure that the client has signed the Acknowledgement of Advice Lawyer Services form. This signature is required before you can assist the client. (The form is available on the LSS website under Lawyers→Forms).
4. Test for financial eligibility by applying the financial eligibility test for advice services (see the LSS website and click Legal aid→Legal advice) or refer to the *Family Duty Counsel Policy and Procedures Manual*. Record the result on the Acknowledgement of Advice Lawyer Services form before providing assistance.
5. Provide eligible clients with the services set out in the Acknowledgement of Advice Lawyer Services form and the *Family Duty Counsel Policy and Procedures Manual*.
6. Advice may range from independent legal advice about draft separation agreements to procedural advice for clients who are heading to court (Provincial or Supreme Court). You should not provide advice on complicated property disputes or matters unrelated to family law.

Immigration duty counsel: Instructions for duty counsel contracts

1. Personally attend at Canada Border Services Agency Pacific Region Enforcement Office (CBSA) at 300 West Georgia Street, 7th floor, by 9:00 a.m.
2. Obtain a list of detainees from the CBSA reception. Pick up disclosure materials and interview each person in detention that wishes to speak to duty counsel. Priority should be given to 48 hour reviews, then 7 day reviews, and then 30 day reviews.

Note: Represent detainees at a detention review only where there has been a change in circumstances that might lead to release. If a person is being held on identity issues and there are no new identity documents and no ability to secure their release, do not represent them. If the minister is consenting to a release, do not attend the detention review hearing unless counsel's attendance is necessary to resolve the terms of release.

3. Provide each detainee with:
 - **information** about the reasons for their detention;
 - **advice** about legal rights; and
 - an **explanation** of immigration procedures to be faced that day.

4. Obtain from the detainee the background information and instructions necessary to represent him or her on that day for a detention hearing.
5. Advise CBSA and the Immigration and Refugee Board (IRB) whether you will be appearing as duty counsel on behalf of a person in detention.

If you picked up disclosure materials but will not be appearing on behalf of the person in detention, return the disclosure materials to the hearing officer assigned to the case. Do not give the disclosure materials to a person in detention.

6. Appear before the IRB and speak on behalf of persons in detention, as necessary.

Do *not* represent any person in detention at an admissibility hearing unless the issues are very straightforward and counsel can secure the person's release by acting at the admissibility hearing or if instructed to do so based on admissions.

7. If you believe a person in detention requires legal assistance with a refugee claim or a complex admissibility hearing, contact the Vancouver Regional Centre intake office at immigration.intake@lss.bc.ca. Provide the information, using the **Detained Client Information Sheet for Immigration Duty Counsel**, within 24 hours so that arrangements can be made to issue a representation contract, if appropriate.
8. If you believe a person in detention could possibly be released at their next detention hearing with the assistance of an LSS duty counsel referral to a specific lawyer, contact the dutycounsel@lss.bc.ca so arrangements can be made to issue a special duty counsel contract if appropriate.
9. Provide summary advice to persons in detention, even if you are not appearing on their behalf, as time permits.
10. Respond to enquiries by persons in detention who are detained at the airport, other ports of entry, or awaiting an interview with a minister's delegate or at a detention facility, as time permits.
11. Extra legal fees are available for reasonable and necessary time spent beyond that which is authorized. Submit your authorization request via LSS Online, along with a brief outline of the reasons why the extra time was required and the **Duty Counsel Worksheet (Immigration)**, or similar worksheet. Provide an explanation if the time spent is disproportionate to the number of clients.
12. If you know that your services will not be required for a significant period of time, attend to other work. If you anticipate gaps in service during the day, bring other files with you on which you can work without billing duty counsel time. You may return to your office provided that the commissionaire and CBSA staff know how to reach you and you are able to return to CBSA within a reasonable time.
13. If you have any questions about duty counsel or require assistance contact dutycounsel@lss.bc.ca.

Circuit Counsel Tariff

Your circuit counsel contract will set out your authorized hours and rate.

Use the information in this section when billing via LSS Online.

Guidelines for circuit counsel

General

- The *General Terms and Conditions* apply to all circuit counsel contracts.
- If you have received specific instructions from LSS, those instructions form part of the terms and conditions of your circuit counsel contract.
- LSS enters into contracts for circuit counsel if the location and operation of a circuit court make it impractical to refer eligible clients to local counsel. Circuit counsel provide all duty counsel services for family, criminal, and youth matters on the court list, including services up to negotiated settlements and simple guilty pleas. Subject to conflicts or other reasons that limit lawyers' ability to act, circuit counsel represent all eligible clients at their hearings or trials on circuit.
- Ensure that clients are advised on how to apply for legal aid through the LSS Call Centre.
- You must ensure that clients requiring more than duty counsel services are assessed by LSS and receive a separate representation contract. This separate contract allows you to invoice disbursements incurred on behalf of the client, but not fees (fees are covered under your regular circuit counsel contract). You may not act as trial counsel for clients who are not covered and financially eligible unless LSS has granted prior authorization. You will only be compensated for services rendered on circuit in accordance with the terms of the circuit counsel contract unless LSS has granted prior authorization.
- If circuit clients require representation between circuit sittings (e.g., for bail reviews, Supreme Court trials), you will be compensated separately for such services on the applicable tariff, provided that LSS has assessed the client and issued a separate representation contract.

Record keeping

- You must keep a record of all clients assisted and notes about the advice or assistance provided. (You can use the **Circuit Counsel Worksheet** available in LSS Online under Resources – Forms).

Disbursements

- Invoice disbursements according to the *Disbursements Tariff*.

Tariff rate and hours of service

- **Circuit counsel is paid either a block fee for each circuit or on the basis of a half-day block fee. The tariff rate includes all preparation on dates between circuits. Claim the block fee on your invoice. When processing your invoice, LSS Online will automatically adjust the amount if you are eligible for Tier 2 or 3 rates.**

Billing

- **You must submit invoices to LSS within two months of each service date. Complete one invoice for each date range you are authorized to perform circuit counsel services.**

Circuit counsel tariff items

The following tariff items apply for circuits paid on the basis of a half-day block fee.

Court time

- Billable per half day when you appear in court. When the court sits after the dinner adjournment, you may bill this appearance as a separate half day.
- You may only bill a maximum of two half days per date.

For service dates prior to Nov 4, 2019	\$500.00 per half day
For service dates on or after Nov 4, 2019	\$625.00 per half day

Late sitting

- Late sitting refers to court attendance but does not include time spent interviewing witnesses after the end of the court sitting.
- Provide the hearing date(s) and times.

Hearing more than one hour beyond

- Billable when you attend a hearing lasting more than one hour beyond the normal five-hour day (excluding lunch or dinner time), calculated from the time the hearing actually begins.

For service dates prior to Nov 4, 2019	\$300.00 up to 3 hours
For service dates on or after Nov 4, 2019	\$375.00 up to 3 hours

Hearing more than three hours beyond

- Bill a second \$300 when you attend a hearing lasting more than three hours beyond the normal five-hour day (excluding lunch or dinner time), calculated from the time the hearing actually begins.

For service dates prior to Nov 4, 2019	\$300.00 beyond 3 hours
For service dates on or after Nov 4, 2019	\$375.00 beyond 3 hours

Travel

Note: The following is for circuit counsel contracts only.

- Billable per half day of travel to or from a circuit if the trip exceeds 160 km per round trip.
- Also billable for each half day you remain at the circuit location (provide your destination and your travel date).
- You can bill travel fees if your circuit counsel contract states that travel is authorized under “Contract Details.” If not, you must request prior authorization via LSS Online.
- The maximum travel and out-of-office fee on one date is one half day, unless you bill other services for the same day, in which case the maximum is two half days.

For service dates prior to Nov 4, 2019	\$180.00 per half day
For service dates on or after Nov 4, 2019	\$225.00 per half day