

Enhanced Fees & Exceptional Responsibility Premium Policy

Part 1: Definitions

Criminal Case Management (CCM): a program where criminal cases set for more than 20 half days of trial are managed by LSS in consultation with defence counsel pursuant to LSS *Criminal Case Management* policy and procedures.

Director: is the Director, Legal Advice and Representation, or his or her designate.

Enhanced fees: fees in excess of the tiered rates normally paid to counsel; enhanced fee rates are set by LSS in the LSS Tariffs - *General Terms and Conditions*.

Exceptional responsibility premium: a 15 percent increase in any tiered rates and/or enhanced fees that LSS pays to counsel pursuant to this policy.

LSS: is the Legal Services Society.

Manager: is the Manager, Criminal, Immigration and Appeals, or his or her designate.

MOU: the Memorandum of Understanding between the Attorney General and LSS setting out (among other things) LSS's funding for criminal cases and exceptional cases, types of criminal cases, terms of indemnity, and the management role of LSS.

Representation Contract: is a LSS authorization for a lawyer to provide legal services to a client in a specified case and to bill LSS for legal fees and disbursements according to the tariff contract.

Representations: material provided to LSS in writing to support an enhanced fee request, but does not include an oral hearing.

Senior legal counsel: as defined in Part 4 of this policy.

Tariff Contract: the retainer agreement between LSS and tariff lawyers, as modified from time to time by LSS, including the contents of the LSS Tariffs (General Terms and Conditions and applicable Tariffs), Notices to Counsel, and other written instructions that LSS may provide to tariff lawyers directly or through the LSS website.

Vendor Number Policies: are LSS policies including the *Lawyer Compliance Policy*, the *Vendor Number Reactivation Policy*, and the *Vendor Number Removal and Modification of Conditions Policy*.

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Part 2: General Principles and Objectives

1. LSS is responsible for ensuring counsel acting in complex criminal legal matters have the expertise to provide quality service to clients, and for ensuring that complex criminal cases are managed effectively while balancing the priorities related to those cases.
2. LSS is responsible for the monitoring and control of case costs in all cases, including those cases where LSS pays enhanced fees and/or an exceptional responsibility premium.
3. LSS may approve the payment of enhanced fees and/or an exceptional responsibility premium for senior legal counsel in particularly complex criminal legal matters in order to compensate counsel for high quality service to clients and effective case management, and to encourage senior legal counsel with criminal law expertise to continue to accept legal aid contracts in complex criminal matters.
4. LSS has sole discretion to determine whether enhanced fees and/or or an exceptional responsibility premium will be paid to senior legal counsel. The rate of compensation reflects the cost and complexity of the case, and the level of skill required to effectively manage the case.
5. Senior legal counsel, who receive enhanced fees and/or an exceptional responsibility premium, are expected to bring skill and experience to manage the case efficiently and to work effectively with LSS and the case management process. This includes the capacity and willingness to engage with LSS *Criminal Case Management* policy and procedures.

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Part 3: Policy Application

This policy applies to all cases where LSS is responsible for the administration of the funding for defence services in criminal matters pursuant to the MOU between LSS and the Ministry of Justice, whether at trial or on appeal, and includes court-ordered appointments of counsel, e.g., amicus curiae. This policy also applies to cases administered by LSS pursuant to a funding agreement with the Department of Justice.

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Part 4: Applicant (Senior Legal Counsel) Basic Requirements

1. LSS defines senior legal counsel as a lawyer who:
 - a. complies with LSS policies, including Vendor Number Policies;
 - b. has 12 years of criminal law experience or has less than 12 years criminal law experience but has demonstrated, to the satisfaction of the Manager, that he or she has proven expertise in criminal law; and
 - c. has at least 50% of his or her practice in criminal law.

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Part 5: Case Requirements

1. The criminal legal matter must be subject to Criminal Case Management, or be a complex criminal law appeal.
2. Enhanced fees may be available for senior legal counsel representing a legal aid client facing what LSS considers a complex criminal matter. The matter must be a complex criminal law appeal or a CCM case where the general preparation approved or anticipated to be approved by LSS, should the matter proceed to trial, is in excess of 300 hours.
3. An exceptional responsibility premium may be available for senior legal counsel on a CCM case that is exceptionally costly, complex and serious.
4. LSS will assess the relative cost and complexity of the CCM case to determine whether it justifies senior legal counsel being paid enhanced fees and/or an exceptional responsibility premium. The factors assessed include:
 - a. the factors for budget setting listed in Part 5, section 2 of the *LSS Criminal Case Management* policy,
 - b. the length and nature of the police investigation,
 - c. whether co-accused have antagonistic defences,
 - d. whether the case involves new and emerging areas of forensic evidence beyond what would be expected in this type of trial,
 - e. whether the case raises complex admissibility issues,
 - f. whether the case involves historical charges or historic sections of the *Criminal Code of Canada*,
 - g. whether the case includes multiple counts involving different facts, and
 - h. whether the case is receiving intense public attention.

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Part 6: Factors Considered by LSS-Enhanced Fees

1. Senior legal counsel must have the skills and experience necessary to meet the principles and objectives of this policy. In assessing whether the applicant has the necessary skills and experience and is eligible for enhanced fees LSS will consider:
 - a. whether counsel has acted as senior legal counsel in a substantial number of serious Major trials;
 - b. whether counsel has demonstrated his or her ability to deal with the complexities of the case;
 - c. whether counsel brings the skill, experience, capacity and technical infrastructure to efficiently and effectively manage the case as outlined in LSS *Criminal Case Management* policy and procedures; and
 - d. counsel's prior history of working with LSS and compliance with LSS Criminal Case Management.

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Part 7: Factors Considered by LSS-Enhanced Responsibility Premium

1. To be eligible for an exceptional responsibility premium, senior legal counsel must demonstrate all of the following conditions:
 - a. counsel satisfies the requirements for enhanced fees; and
 - b. counsel has the executive management skills to effectively manage and be accountable for the significant demands of the exceptionally costly, complex and serious CCM case for which the application is made.
2. In assessing an application for an exceptional responsibility premium, LSS also will consider the following factors:
 - a. whether Crown Counsel is being paid in “Recognition of Exceptional Responsibilities” pursuant to Article 31 of the British Columbia Crown Counsel Association Agreement with Respect to Crown Counsel (“the CCAA”) or a successor to the CCAA; and
 - b. any other relevant factors that may justify senior legal counsel being paid an exceptional responsibility premium.

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Part 8: Application for Enhanced Fees and/or Exceptional Responsibility Premium

1. Senior legal counsel, who has a CCM case or a criminal law appeal that he or she believes meets the criteria set out in this policy, may request enhanced fees and/or an exceptional responsibility premium be paid on that case.
2. To apply for enhanced fees and/or an exceptional responsibility premium senior legal counsel must provide:
 - a. a completed CCM questionnaire or an appeal opinion letter, if not already provided to LSS;
 - b. a letter outlining the following:
 - whether counsel is applying for enhanced fees, an exceptional responsibility premium, or both;
 - the anticipated cost and complexity of the case with regard to the factors set out in Part 5. Counsel should, in particular, address the following information:
 - i. Crown's summary of the case,
 - ii. details of the volume and nature of disclosure,
 - iii. short overviews of any legal argument counsel intends to make, and
 - iv. details concerning expert evidence;
 - how counsel meets the requirements of Part 6 and/or Part 7. Counsel should, in particular, address his or her case management skills, experience, and technical infrastructure; and
 - any other information that might be useful to LSS in determining if enhanced fees and/or an exceptional responsibility premium should be available in that case.

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Part 9: Application Processing and LSS Decision-Making

1. Under this part, a decision about enhanced fees may be made by the Manager, Criminal, Immigration and Appeals, or his or her designate, but a decision about an exceptional responsibility premium may be made only by the Manager, Criminal, Immigration and Appeals.
2. Upon receipt of the information listed in Part 8, the Manager will review the information and may, based on material received, make a decision on the application.
3. Prior to making a decision, the Manager may request additional information from the applicant and/or consult with experienced criminal legal counsel, as the Manager deems appropriate, to assist in assessing the merits of the application.
4. At the Manager's discretion, the Manager may convene a conference call between LSS staff, experienced criminal legal counsel and the applicant to consider the application.
5. The Manager will consider but is not bound by the advice received from experienced criminal legal counsel consulted regarding the application. The advice received by the Manager from experienced criminal legal counsel is confidential between LSS and the experienced legal counsel and shall not be released to the applicant.
6. Enhanced fees and/or an exceptional responsibility premium may be paid for some but not all of the work performed by counsel. The Manager will decide whether and for what work enhanced fees and/or an exceptional responsibility premium will be paid to the applicant. The Manager will provide the applicant with a written decision with reasons.
7. The date from which enhanced fees and/or an exceptional responsibility premium will be paid is the date of the written decision, unless otherwise indicated.
8. An applicant, who has received a decision under this Part, may request a review of that decision under Part 12 of this policy.

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Part 10: Defence Teams

1. Where there is more than one defence lawyer on the case and enhanced fees and/or an exceptional responsibility premium are approved for senior legal counsel, LSS will determine whether other lawyer(s) on the defence team should receive the regular tiered rate or an enhanced fee rate as set out in the LSS *Tariffs*, and/or an exceptional responsibility premium.
2. In assessing the rate to be paid, LSS will consider *each* lawyer's skills, experience and assigned tasks to determine a rate of compensation that is commensurate with his or her role on the case and that meets the principles and objectives of this policy. Junior counsel is not required to have a specific number of years of practice experience to qualify for junior counsel enhanced fee rates or an exceptional responsibility premium.
3. The enhanced fee rate or exceptional responsibility premium is personal to the approved senior legal counsel or lawyer and cannot be transferred to another lawyer.

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Part 11: Revoking Enhanced Fees or Exceptional Responsibility Premium

1. Under this part, a decision about enhanced fees may be made by the Manager, Criminal, Immigration and Appeals, or his or her designate, but a decision about an exceptional responsibility premium may be made only by the Manager, Criminal, Immigration and Appeals.
2. Counsel granted enhanced fees and/or an exceptional responsibility premium must engage in an ongoing case management process with LSS case management staff and comply with LSS *Criminal Case Management* policy and procedures.
3. The Manager may, in his or her sole discretion, revoke enhanced fees or an exceptional responsibility premium if counsel is unable or unwilling to comply with the expectations set out in this policy or in any way fails to meet the principles and objectives of this policy.
4. The Manager will advise counsel of LSS's concerns and provide counsel with an opportunity to respond in writing prior to making a decision to revoke enhanced fees and/or an exceptional responsibility premium.
5. Notwithstanding the previous paragraph, the revocation of enhanced fees and/or an exceptional responsibility premium may occur without notice to counsel if counsel fails to reply to any request from LSS, including but not limited to a request for information, documentation or to submit accounts.

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Part 12: Review

1. Under this part, a decision about enhanced fees may be made by the Director or his or her designate, but a decision about an exceptional responsibility premium may be made only by the Director.
2. An applicant who has been approved for limited enhanced fees and/or an exceptional responsibility premium, denied enhanced fees and/or an exceptional responsibility premium, or has had enhanced fees and/or an exceptional responsibility premium revoked, may request a review of that decision by the Director within 30 days of the Manager's decision.
3. The Director may receive such representations from the applicant as he or she deems appropriate.
4. After completing a review, the Director may confirm or vary the Manager's decision.
5. The Director will notify the applicant of his or her decision in writing. The Director's decision is final and binding.

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History

Questions to: Manager, Criminal, Immigration and Appeals

September 1, 2016: Updated terminology and department name

April 27, 2015: Reformatted and updated terminology.

April 15, 2014 EMC Approved Revisions: Exceptional Responsibility Premium added to this policy; clarified decision-making for defence team members; streamlined policy by referencing CCM policy and procedures.

November 2013 All references to SCAP changed to Criminal Case Management (CCM).

November 10, 2009 Strategic Case Assessment Program (SCAP) definition changed to 20 half days from 10 half days to qualify for the program.

February 24, 2009 EMC Approved Policy: this policy replaces current practice regarding enhanced fees.

SEE [POLICY](#) AND [FORMS](#) PAGES FOR: Other policies and forms referenced in this document.