

24 - 2014

NOTICE TO THE PROFESSION

INTERIM STATEMENTS OF ACCOUNT

Pursuant to [Notice to the Profession 8, \(March 2011\)](#):

Management Council, at the request of the Advisory Committee instituted a change in billing practice by allowing counsel representing clients on BCM matters to submit interim statements of account at the conclusion of a definite stage of proceedings. Counsel were permitted to bill both the tariff amount for the completed stage of proceedings and any BCM enhancement authorized for that stage of proceedings. For example, a preliminary hearing could be billed when concluded, along with the disbursements related to that stage of proceedings and any BCM preparation fees may now also be billed at that time.

Pursuant to [Notice to the Profession 20, \(August 2013\)](#) LAM expanded the policy set out in Notice to the Profession 8, (March 2011) to include the following:

Where completed service has been provided for a discrete tariff item that exceeds \$200.00, counsel will be permitted to interim bill the tariff amount and any BCM authorized with respect to that tariff item. Counsel will note that this now excludes only a few minor items in the tariff such as bail hearings at first instance, Pre-trial and Case Management conferences, and “Also’s”.

A trial will be considered a completed tariff item where a conviction has been entered and the sentencing hearing is not scheduled to take place in the 30 days following the conviction. BCM hours, as agreed with respect to Legal Matters, can be billed along with the tariff item.

Discretionary Increases continue to be payable only when submitting the final account on a Legal Matter. This is required to ensure that complexities (which sometimes arise unexpectedly even following conviction) are properly redressed in a single Discretionary Increase assessment.

After consulting with the Manitoba Bar Association, (MBA) the Criminal Defence Lawyers’ Association (CDLA), the Legal Aid Lawyers’ Association, (LALA) and Justice Innovation, LAM has amended the policy set out in the above Notices to the Profession as follows:

- Counsel may submit interim statements of account at the conclusion of a definite stage of proceedings for all legal matter types. This policy is not limited to BCM matters.
- For Court of Appeal Matters, counsel may submit their statement of account upon the completion and filing of their factum. A copy of the filed factum, (preferably in electronic form) must accompany counsel’s interim statement of account.

- Counsel may request payment of the block tariff amount for the completed stage of proceedings, and - where “extremely unusual circumstances” exist - discretionary increases may also be requested and will be considered by the Executive Director.
- Where a discretionary increase is requested, counsel must include a written explanation justifying the requested increase. The explanation should indicate the amount payable in accordance with the tariff and the amount of the increase being requested. Counsel must also certify that, at a minimum, the number of hours of compensation requested (at the tariff rate) were necessary to conclude the tariff item.
- An itemization of time may be provided at the lawyer’s discretion but will not on its own, constitute a justification of the request for “extremely unusual circumstances”. The Appeal Committee of Management Council has indicated the following in previous appeal decisions:

“Complexity of matters is to be expected, as are long hours working on cases. Whether extremely unusual circumstances exist will vary from file to file, however, counsel and/or their agents should be aware that the Appeal Committee has interpreted extremely unusual circumstances to mean circumstances that competent and experienced counsel could not have expected or foreseen, that the circumstances are out of the ordinary and such circumstances were extreme”.

LAWYER COLLECTED COURT COSTS

Pursuant to [Notice to the Profession, \(March 1996\)](#) LAM has been paying a fee to private bar lawyers if they successfully collect court costs awarded in proceedings.. The fee paid to private bar lawyers has been 50% of court costs actually recovered.

There are currently 242 lawyers registered on LAM’s private bar panel. During fiscal year ending 2014, only 7 lawyers on LAM’s panel collected court costs.

Since July 2014, LAM has implemented a pilot project where clerical staff have been collecting court costs on LAM’s behalf. As a result, effective October 1, 2014, LAM is suspending the operation of the policy outlined in Notice to the Profession (March 1996) until further notice.

Court costs must still be requested by counsel acting pursuant to a Legal Aid Certificate where that relief is indicated on the Certificate.

JUNIOR COUNSEL CERTIFICATES

In [Notice to the Profession 16, \(June 2012\)](#) LAM indicated that Junior Counsel certificates would be compensated at 50% of Senior Counsel's billings.

Since July 2014, LAM has restructured the manner in which Junior Counsel certificates are issued and paid. Junior Counsel are now offered compensation for specific tasks. A number of factors, including the actual work to be performed by junior counsel, and junior counsel's level of experience, are considered in determining the amount of compensation offered.

COVERAGE FOR PERSONS IN CUSTODY

Counsel are reminded of s. 5.2.3 of the [Area Directors' Manual](#):

Applications for persons in custody have merit where:

- a) an application for release has not been made and Legal Aid duty counsel is not available to make a bail application;
- b) a bail application has been made and denied; or
- c) the Applicant has been sentenced to incarceration and a conviction is likely to lengthen the period of incarceration or result in a significant loss of freedom or livelihood while incarcerated.

Where the only basis of merit is this section, merit extends only to representation necessary to secure the release of the Applicant or relief from the loss of freedom or livelihood.

DOMESTIC VIOLENCE ENHANCED DUTY COUNSEL PROJECT

In [Notice to the Profession 3 – 2009, \(May 2009\)](#) LAM made the following announcement:

Domestic Violence Full Service Duty Counsel Project

The advent of the Attorney General of Manitoba's Zero Tolerance policy in 1983 has profoundly impacted the volume of spousal abuse cases in the criminal justice system. The direction to police to lay charges in virtually all cases, and reduced prosecutorial discretion, have created a substantial imbalance in the justice system for accused persons. LAM is formally establishing a Full Service Duty Counsel Project to provide services to financially eligible accused in domestic violence cases. This Project will be restricted to financially eligible persons whose applications would be refused due to insufficient likelihood of jail....

Effective September 1, 2014, the above referenced project has been amended as follows:

- The Project continues to be restricted to financially eligible persons whose applications would be rejected/refused due to insufficient likelihood of jail;
- In Winnipeg Centre, these matters will be referred to the University of Manitoba Community Law Centre. Staff lawyers and/or the Managing Director of the Centre will be issued University Law Centre Certificates with Law Students assisting;
- In areas/courts where Law Students are not available, (this includes Regional Judicial Districts and some circuit points administered within Winnipeg Judicial District such as Berens River, Paungassi etc) staff lawyers may represent persons that are eligible for the Project on an Enhanced Duty Counsel basis.
- Staff lawyers will not be restricted to offering only traditional duty counsel services. They may set matters for trial, and may proceed to trial.

FEE VOUCHERS

Counsel are reminded to use Fee Vouchers when filing documents in court. Disbursements for filing fees may not be honoured where the use of a voucher was available but not used.