

## Notice to the Profession # 44 - 2020

### Financial Eligibility – Changes to Agreement to Pay Program

Legal Aid Manitoba Management Council has authorized a pilot project removing the initial \$400.00 - \$700.00 payment that was previously required for entry onto the Agreement to Pay Program. Applicants will be required to make a first monthly payment of \$100 prior to being enrolled in the program. During the COVID -19 pandemic, but subject to LAM's overall funding, payments after the initial payment of \$100.00 are suspended until further notice. Following the pandemic Applicants will be required to continue payments to reimburse LAM, even beyond the disposition of their matter, where they have not provided sufficient funds to cover the full cost of their legal matter prior to disposition.

The guidelines for the program are provided below:

Family Size	"Free" Legal Aid Gross Family Income	Agreement to Pay Gross Family Income	Poverty Line (2020 Stats Canada Low Income Cut off (LICO) before Tax)
1	\$0 – 26,000	\$26,000 - 38,000	\$25,920
2	\$0 – 30,000	\$30,000 - 48,000	\$32,270
3	\$0 – 34,000	\$34,000 - 53,000	\$39,672
4	\$0 – 37,000	\$37,000 - 57,000	\$48,166
5	\$0 – 40,000	\$40,000 - 60,000	\$54,630
6	\$0 - 43,000	\$43,000 – 63,000	\$61,612
>6	\$0 – 46,000	\$46,000 - 63,000	\$68,598

### Tariff Review – Interim Increase to unpaid invoices

Private lawyers delivering legal aid services have recently been engaged in discussions with the Province regarding changes to the Tariff. The private bar Tariff was last increased twelve (12) years ago in 2008 and is based on the nominal hourly rate of \$80 per hour. Significant additional pressures have been placed on those providing services through LAM due to COVID-19. Multiple weekly changes in court procedure; short notice cancellation of motions and other hearing dates; the need to purchase additional technological equipment; the inability to do in-person interviews and meetings with clients, LAM, Crowns, opposing counsel and the courts, to name but a few. All of these extremely unusual circumstances have caused substantial problems for counsel accepting work at tariff rates.

In light of these extremely unusual circumstances , the Management Council of Legal Aid Manitoba has authorized the following:

Where counsel certify:

- 1. I have continued to accept legal cases as a private bar lawyer from Legal Aid Manitoba during the COVID-19 pandemic;***
- 2. The nature and conduct of Legal Aid cases I have accepted has been significantly affected by the pandemic;***

**3. *I am requesting that the Executive Director apply an increase of 25% to the fees on this legal Matter based on these extremely unusual circumstances.***

the Acting ED may exercise discretion to provide a 25% increase on all fees, including Discretionary Increases, billed on unpaid invoices submitted to LAM before before March 31, 2021.

***Until this certification is available in the PBOOnline billing system counsel are required to provide the above certification in the DI narrative field on each bill where they are requesting this increase.***

**Following the authorization of Management Council LAM immediately stopped assessment and payment of bills already received by LAM. LAM will send an email to counsel on all pending accounts asking to give the required certification, if appropriate.**

LAM will make every effort to process and pay authorized accounts as certification is received. Due to the the manual processing of accounts necessary until the implementation of this change within the PBOOnline billing system, counsel should be aware that payment on some files requesting this increase may be delayed. Full assessment and processing capacity for accounts is expected to be in place by January 1, 2021.

**TARIFF REVIEW – Administrative Increase to cover cancelled trial preparation due to COVID-19**

**Preliminary Hearing or Trial without BCM Agreement**

As a result of the closure of the court facilities to reduce the transmission of COVID-19 counsel are being forced to adjourn trials which would have otherwise commenced and concluded. Legal Aid Manitoba Management Council recognizes that this factor alone has greatly affected the practice and billing of legal matters, and caused a significant hardship for counsel. Accordingly Management Council has authorized the following:

Where counsel certify:

1. The matter is not a BCM matter on which an agreement has already been accepted by counsel;
2. A trial or preliminary inquiry has been adjourned due to COVID-19;
3. The trial or preliminary inquiry was set for not less than 1 full day;
4. Counsel certifies that at least 5 hours per day of the set length of the trial has already been expended in the preparation of the matter;
5. There was no resolution of the trial or preliminary inquiry entered into prior to the adjournment, and the matter has either been rescheduled to a new trial date, or date setting court, or a direct indictment has been preferred.

The Executive Director may provide administrative discretionary increase which will provide interim payment equivalent to 5 hours for each full day of trial set. This increase may be requested for all legal matter types. Any increase authorized by the Acting Executive Director will be taken into account in any DI authorized at the disposition of the file.

To request this increase without closing a file Counsel shall submit a \$1 disbursement invoice and seek a discretionary increase in the amount of \$400 per full day of trial set. Counsel must include certification of the above criteria in the discretionary increase request, as well as the hearing dates from which the matter was adjourned.

### **Preliminary Hearing or Trial with a BCM Agreement**

Where a matter has pre-authorized preparation hours in accordance with a BCM agreement counsel may request the pre-authorized hours upon certification that:

- the hours requested have been fully used in preparation for the cancelled matter;
- the matter has been adjourned due to COVID-19; and
- new trial or preliminary inquiry dates have been set or a direct indictment has been preferred.

To request this increase without closing a file Counsel shall submit a \$1 disbursement invoice and request the BCM hours to be paid. Counsel must include certification 2, 3 and 5 of the above criteria in the discretionary increase request, as well as the hearing dates from which the matter was adjourned.