



Legal Aid Manitoba
L'Aide Juridique du Manitoba

TAXATION

MANUAL

Approved by Management Council February 25, 2015

LEGAL AID MANITOBA
LEGAL ACCOUNTS DEPARTMENT
TAXATION MANUAL

This Manual represents the Executive Director's interpretation of [*The Legal Aid Manitoba Act*](#) and [*Regulation*](#), as these relate to the taxation of a Solicitor's Bill of Costs. It is intended as a guide to staff.

Following review of the section "Using This Manual: The Basics", a user can look for the specific type of bill to be submitted in the Table of Contents, and find the policy necessary to review a bill of costs that will permit proper taxation under the applicable tariff.

This Taxation Manual operates alongside the [Area Directors' Manual](#) which sets out Legal Aid Manitoba policy relating to eligibility for legal aid, and Certificate issuance.

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INTRODUCTION

Background

Legal Aid Manitoba, (LAM) is a government agency charged with managing the expenditure of limited public funds to ensure quality legal assistance is provided to eligible low-income individuals. LAM is governed by [*The Legal Aid Manitoba Act*](#) and [*Regulation*](#) (*Act and Regulation*), which set out requirements that must be met before any funds can be lawfully expended. In addition to these legislative provisions, the Executive Director provides direction through policy guidelines that structure and guide the exercise of discretion by those responsible for issuing certificates and administering the payment of accounts. The Executive Director is accountable to the Management Council of LAM for ensuring discretion is exercised by those acting under his delegated authority within appropriate guidelines and to ensure LAM is able to meet its ongoing financial obligations.

When an application for legal aid is submitted to LAM, a relationship is created between the Applicant and LAM. LAM must assess and determine eligibility for legal aid, and must provide legal services mandated by the *Act* and *Regulation* to eligible persons. The Applicant has a legal responsibility to provide updated information respecting eligibility as their financial situation changes.

When LAM appoints counsel to act for an applicant, and counsel accepts the appointment, a relationship is created between counsel and LAM. The lawyer agrees to provide quality legal services to the applicant in accordance with the provisions of the *Act*, *Regulation*, and LAM policies and guidelines. LAM agrees to compensate counsel in accordance with the applicable tariff provisions for providing the services set out in the applicant's legal aid Certificate.

Even in the context of the solicitor/client relationship, counsel appointed by LAM continues to have significant direct obligations to LAM which are similar to those counsel might have to a fee paying client, and/or to their law firm. Where it is apparent that an applicant/client is not, or is no longer eligible for legal aid, or other risks that might result in financial risk or loss to LAM come into play (ie. risk of removal through conflict, incurring additional costs after cancellation of coverage), counsel has obligations to LAM, set out in the *Act* and *Regulation*, policies and guidelines, to inform and to assist in protecting LAM from incurring unnecessary costs.

These obligations are in place to ensure the financial resources of LAM are not abused so they can remain available to those who properly qualify. Similar to other business and professional relationships, when counsel do not give proper attention to these matters, fees may be reduced or disallowed.

Process Overview

The Legal Accounts Department reviews criteria in four standard areas to determine compliance with LAM legislation and policy, and ensure proper payment of a Solicitor's Bill of Costs:

- 1. Authorization to incur costs:** Authorization to incur costs normally comes in the form of a certificate, or letter of authorization, but may also come by way of a contract to provide service(s) to a client, or client group. In limited circumstances authorization may post-date the provision of service. Authorization must always be documented before an account can be paid.
- 2. Form and Content of the Account:** A Solicitor's Bill of Costs must provide proper certification that authorized services were provided. All certification necessary to determine that the tariff fees requested in the account are properly paid must be provided. Documentation must be provided to demonstrate that disbursements (for which reimbursement is sought), have been properly incurred and paid by the solicitor.
- 3. Calculation of amounts owing:** The calculation of amounts must be accurate, and the amounts requested properly due and owing, and not previously paid.
- 4. Audit verification:** A Solicitor's Bill of Costs may be subject to random or targeted audits to determine the accuracy and validity of amounts claimed. Account audits may include such things as a review of the court pocket, verification of disbursements with service providers, comparison with other like accounts, and/or review of the solicitor's file.

The routine taxation of accounts has been delegated to the Legal Accounts Department by the Executive Director. Where this Manual uses permissive language in the application of a policy (ie. "may", "can", "is entitled to"), the exercise of discretion must be performed by the Executive Director personally or a Senior Manager(s) to whom the ED has delegated the discretion.

In addition to the routine taxation of accounts carried out by Legal Accounts Department staff, there are several types of special accounts which are taxed and paid by the Executive Director personally, and/or a person, or committee, to whom the Executive Director has delegated the exercise of discretion. These include assessment and taxation of Discretionary Increase requests, Big Case Management agreements, agreements to provide representation at the request of a judicial officer or the Attorney General, accounts submitted pursuant to criteria set out in Memoranda of Understanding with other Government Departments/Agencies, and/or under specified special project criteria.

1. BILL OF COSTS FORM: BASIC REQUIREMENTS

- 1.1** A Solicitors Bill of Costs must be presented to:
Executive Director
Administration Office
Legal Aid Manitoba
400 – 287 Broadway
Winnipeg, MB R3C 0R9
Facsimile: (204) 944-8582
Email: legalaccounts@legalaid.mb.ca
- 1.2** Bills must be submitted in writing or in such electronic form as may be required and must indicate the date on which the bill was created and must be submitted within 60 days from completion of the Legal Matter.
- 1.3** The following items and sums must be provided:
- a)** each Tariff item payable must be separately listed in columnar format;
 - b)** a sum of total tariff fees, indicating the total tariff due;
 - c)** each disbursement incurred must be separately listed in columnar format;
 - d)** a sum of total disbursements, indicating the total disbursements due;
 - e)** an itemized paid invoice and/or receipt for each disbursement other than for “office costs” billed at the itemized rate(see Billing Disbursements); and
 - f)** a total sum of all tariff fees and all disbursements due.
- 1.4** Where there is a Big Case Management (BCM) agreement, the BCM fees as agreed, or the portion being requested, must be separately accounted for in the bill and must be identified separately from all tariff fees and disbursements, and separately from the sums of fees and disbursements.
- 1.5** If a discretionary increase is sought in relation to a Legal Matter, the Legal Matter must be clearly identified by number, and the amount of the discretionary increase sought must be identified separately from all tariff fees and disbursements and separate from the sums of fees and disbursements.
- 1.6** Bills that include payment of BCM hours, and all requests for a Discretionary Increase, must be accompanied by:
- a)** a list of the tasks performed; and either

- (i) a detailed itemized account of total time worked; or
- (ii) certification that a total minimum number of total hours was actually spent on the legal matter.

Funds paid on BCM and DI cases shall not exceed the total number of hours certified by counsel multiplied by the nominal hourly tariff rate.

- 1.7** Bills must include certification in accordance with s. 41(a) of the [Regulation](#), which at a minimum requires certification endorsed by the personal signature of legal counsel who completed the work, that all prerequisites necessary to payment of the tariff amounts requested have been met (i.e. 3.1 hours for a full tariff payment, completion of service in a full tariff item, etc.).
- 1.8** Bills must include a brief statement of the disposition or completion date, and outcome with respect to each Legal Matter completed/disposed of at the same time as the Legal Matter being billed.
- 1.9** Where costs are awarded by the Court, the Solicitor's bill of costs (submitted to the Executive Director) must indicate that court costs were awarded and, where available, a copy of the order imposing costs.

2. BILL OF COSTS: TYPES

2.1 A Regular Bill of Costs

- Follows the tariff regularly applicable to a Legal Matter and complies with the requirements of the legislation and policy applicable in the ordinary course.
- Entitlement to any fees, and any request for the exercise of discretion, must be indicated on the face of the bill of costs.
- All included requests for reimbursement of a disbursement must be for disbursements authorized in advance of incurring the cost, and all such requests must be accompanied by a document verifying the services were provided, and have been paid for by the solicitor requesting reimbursement.

2.1.1 Where a bill follows the requirements of a **Regular Bill of Costs**, it will be taxed to verify:

- a) the correct tariff of fees has been used in calculating payment;
- b) the tariff has been applied properly in determining all tariff fees payable;
- c) any disbursement incurred has been properly authorized;
- d) the disbursement amounts do not exceed authorized maximum amounts;
- e) the sums are accurate; and
- f) all information and certification(s) required have been provided.

2.1.2 Where a simple error in the calculation of sums, or the application of the tariff has occurred, it will be corrected on the face of the taxed bill and the account will be paid as taxed.

2.1.3 Where an error arises from a question of interpretation that is clearly addressed in this Manual, the error will be corrected on the face of the bill and a brief explanation will be provided to counsel with the taxed bill. The bill will be paid as taxed.

2.1.4 Where an apparent error arises from a novel interpretation of the tariff, the *Act* and *Regulation*, a policy, or an official representation made by LAM, the bill will be brought to the attention of the Executive Director.

2.1.4.1 The Executive Director will review the *Act*, *Regulation*, other policy documents and/or representations and make whatever inquiries are appropriate before determining the proper regular tariff payment.

2.1.4.2 The Executive Director's decision, and an explanation of the basis for the decision, will be attached to the taxed bill, and the bill will be paid as taxed.

2.1.4.3 Decisions on taxation made by the Executive Director may be appealed to the Management Council Appeal Committee. The Executive Director may review and reconsider any decision submitted to the Appeal Committee prior to the hearing of an appeal.

2.2 An **hourly bill of costs** must be submitted when an agreement permits hourly billing, when the face of the certificate authorizes or requires fees to be billed per hour, or when the tariff or this Manual requires detailed itemization of hours to justify a tariff payment.

2.2.1 Detailed itemized billing means that an indication of each billable activity billed in a given work day is accounted for separately, and an accurate indication of the time spent on that activity in each work day is separately recorded on the face of the bill. Unless otherwise stated in this Manual, all hourly accounts require detailed itemization of each discrete work activity in units not to exceed 10 minutes per unit.

2.2.2 Subject to taxation, hourly billing is paid at the nominal rate for hourly billing indicated in the tariff that is applicable at the time the certificate is issued, or other agreement to provide service comes into force.

2.2.3 Where hourly billings are permitted, each bill will be taxed by the Executive Director or delegate to ensure that the time spent is reasonable and necessary to achieve the efficient and effective disposition of the Legal Matter for which coverage has been provided. Where work does not appear reasonable or necessary to the conduct of the matter, specific items that are disallowed will be indicated either on the face of the bill or in a memo attached to the bill, and the bill will be paid in accordance with this taxation.

2.2.4 Disbursements on hourly bills are subject to the same authorization process, and are taxed in the same manner, as disbursements on Regular Tariff bills.

2.3 LAM provides Duty Counsel services at: Bail Courts; Intake courts; and *Brydges* On-Call services in Manitoba. These services are billable in accordance with the written agreement between LAM and appointed counsel.

2.3.1 Generally, duty counsel fees are paid at a set fee per ½ day, or per full day, and include travel time and mileage, at the applicable government rates as prescribed in the LAM schedule where travel is required. Where the ½ day set fee is inadequate to properly compensate for the time required, counsel may request additional compensation through a request to the Executive Director.

2.3.2 Counsel are entitled to bill ½ day for provision of duty counsel services between 9:00 a.m. and 12:00 p.m. and one half day for services provided between 1:00 p.m. and 4:00 p.m.. It is anticipated that counsel will not bill for a second ½ day where the court sitting only nominally exceeds the hours above. The bill is categorized as a “non-case bill” or “non-case time” for billing purposes.

2.3.3 A Bill of Costs must be provided to LAM in a timely manner for each intake court attended and include the number of youth and adult people assisted separately. Long Distance and Photocopying costs necessary to provide services as Duty Counsel may be billed. The *per diem* for “incidentals” in the Civil Service Schedule is not applicable.

2.3.4 Where a lawyer providing duty counsel services disposes of more than 1 certificate Legal Matter in the ½ day for which duty counsel services are provided, the fee for duty counsel services will not be paid, due to the significant private work generated by attendance at the court.

2.3.5 Non-payment for duty counsel services does not affect the provision of travel time and mileage, which will still be paid upon provision of the duty counsel report for the intake court.

2.4 Special Bill of Costs

2.4.1 Big Case Management

2.4.1.1 Big Case Management is used to manage cases which require resources substantially above what tariff provides.

2.4.1.2 In most instances, the ED delegates his authority to make decisions respecting BCM matters to a committee consisting of 2 senior managers. The Committee will determine an appropriate fee and disbursement estimate on a BCM matter in advance of counsel fully committing to accept the case.

2.4.1.3 Counsel will then have the ability early in the process to determine whether to accept the case or not. If counsel accepts the case, a formal Agreement is entered into between LAM and counsel.

2.4.1.4 Where a BCM matter is concluded, counsel must provide a list of the tasks performed, and certify the total number of hours worked on the matter.

2.4.1.5 Counsel will be paid for tasks reasonably necessary to the proper conduct of the matter, up to the maximum provided in the BCM agreement.

2.4.1.6 The total compensation will not exceed the number of hours certified, multiplied by the nominal hourly rate in effect at the time.

2.4.1.7 Payment of BCM agreed matters are considered payments pursuant to a binding contract for services. These bills are taxed initially in the usual course for compliance with the Tariff, for authorized additional tariff items and disbursements, and thereafter are forwarded to the Executive Director or the committee appointed by the Executive Director for taxation of BCM agreements.

2.4.2 Discretionary Increase Request

2.4.2.1 [Regulation 40\(2\)](#) allows the Executive Director to increase or decrease the fees provided for in the Tariff where “extremely unusual circumstances” exist and the funds of LAM in the fiscal year in question permit payment of an increase.

2.4.2.2 A lawyer who is not content with the regular tariff may write to request an increase. In most instances, the ED delegates his authority to make decisions respecting DI requests to a committee consisting of 2 senior managers. The Committee will determine an appropriate increase based on the circumstances of the request and the current resources of LAM.

2.4.2.3 In considering whether to grant an increase over the tariff fees otherwise payable, LAM will first consider the compensation that the Tariff provides. The Tariff is a “flat fee” tariff which contemplates a range of possible activity, and endeavors to reward efficient provision of quality services, without penalizing counsel where effective provision of service requires significantly more time.

2.4.2.4 Where counsel certifies at least 3.1 hours work was done in providing the services contemplated in a tariff item, they are entitled to the full tariff payment regardless of the number of additional hours worked. For example, if counsel do more than 3.1 hours work on a case, the block tariff payment for a Category B guilty plea is \$860.00, regardless of how many additional hours they have actually done.

2.4.2.5 The block fee tariff provides an incentive to be efficient by encouraging counsel to keep the hours worked on a file as close to 3.1 hours as possible. There is still sufficient compensation that, even where significantly more hours are required to properly conclude a case, the lawyer is on balance properly compensated.

2.4.2.6 LAM interprets “extremely unusual circumstances” to mean more than simply a lot of time spent on a case. **To receive an increase over the tariff, counsel needs to outline unforeseeable and essential work which had a significant impact upon the disposition of the Legal Matter, and that required substantial and unusual work not contemplated in the tariff.**

2.4.2.7 Once the lawyer has demonstrated that the tasks done meet the threshold of “extremely unusual circumstances”, they must go on to provide a list of the tasks performed, and certify they have done a total number of hours that exceeds the hours contemplated in the tariff.

2.4.2.8 Where the resources of LAM allow compensation for all similarly situated counsel, an increase will be considered. The increase will be based on the value of the extra tasks reasonably required. The total compensation will not exceed the number of hours certified, multiplied by the nominal hourly rate in effect at the time.

2.4.2.9 Even if extremely unusual circumstances exist, and significant hours in excess of the hours contemplated in the Tariff were necessary to properly conclude the matter, any increase is dependent on the funds available to LAM. Availability of funds is not a certainty.

3. COMMON BILLING ISSUES

3.1 Incomplete/Cancelled Certificates (Reduced Fees)

3.1.1 An incomplete legal matter is a file that does not result in a final disposition of the legal matter for which the certificate issued. In a criminal matter, this means that the charge for which the legal matter issued remains outstanding; in a civil or family matter, this means that any relief granted does not fully and finally resolve the matters in issue.

3.1.2 A cancelled certificate is one that has been cancelled by the appropriate Area Office.

3.1.3 The tariff provides fees for cancelled/incomplete matters and these amounts, where permitted in the tariff, must be clearly noted in the solicitor's bill of costs. In addition, the following costs will be paid:

- (i) the cost of any authorized disbursement incurred prior to cancellation and that cannot be reasonably cancelled or otherwise mitigated;
- (ii) fees where applicable, and disbursements necessary for a motion to withdraw from the court record;
- (iii) the cost of any steps that counsel are reasonably required to take prior to making a timely motion to withdraw; and
- (iv) where counsel has made a reasonable and timely motion to withdraw, and permission to withdraw has been refused by order of the court, such fees and disbursements as would otherwise be payable if the certificate had not been cancelled.

3.1.4 Where a certificate is cancelled for a reason that was, or ought to have been, apparent to counsel (such as a conflict that arises as a result of previously representing the complainant or a material witness whose name has been disclosed, or where it was apparent from information in the possession of counsel that the client may no longer be financially eligible for coverage), fees and disbursements may be disallowed by the Executive Director in whole or in part for services provided after the date when the reason for cancellation was, or ought to have been, apparent to counsel.

3.1.5 A bill may be “cancelled active” (which means billing for work done up to the date of cancellation will be paid), or “cancelled inactive” (in which case no billing is permitted on the bill), depending on when the knowledge of the reason for cancellation ought to have been apparent to counsel.

3.1.6 Once cancelled, a certificate remains cancelled until LAM provides the lawyer with notice in writing that it has been re-activated.

3.2 Reduced Fees on Incomplete Legal Matters

3.2.1 In the [Tariff](#), Part I 10(1) and 10(2), the *Regulation* provides for a reduced fee for incomplete legal matters.

3.2.2 This reduced fee can be applied to the same lawyer who resumes a case previously billed (for example, where contact is lost and regained, or a warrant issues and the client is subsequently arrested); or to two different lawyers where the file is assigned to a second lawyer.

3.2.3 Any reduced tariff will be indicated on the face of the certificate.

3.2.4 If counsel takes issue with the reduced tariff being applied it must be addressed when the certificate is issued and not at taxation after the work is completed.

3.2.5 If counsel intends to request additional funds on a reduced tariff legal matter after the work is completed, then it must be requested by way of a Discretionary Increase request.

3.2.6 Because a completed case merits only one tariff fee, and it is impossible for LAM to determine whether one lawyer has a more meritorious claim to the fees in a given case, the guiding principle is that all cases not dealt with completely by one lawyer will attract a 50% reduced fee to each lawyer.

3.2.7 Where a third or subsequent lawyer is assigned to a reduced tariff case, the tariff paid will not be reduced to less than 50% of the applicable tariff.

3.2.8 Where the same lawyer continues on the Legal Matter for third or subsequent appointment, the tariff paid will not be reduced to less than \$80.00.

3.2.9 LAM cases often include several tariff items, and a lawyer who provides complete service with respect to any tariff item will be paid the full amount for that item (Part 1, section 8 of the [Schedule](#) [Tariff of Fees]). The reduced fee refers only to those tariff items that a lawyer does not bring to a full and final resolution.

3.3 Moving to a New Firm or Closing a Practice

3.3.1 In accordance with the *Act*, all LAM certificates are issued to a lawyer registered on the LAM Panel. Although payments may be made payable to a law firm for accounting purposes, LAM's agreement to provide services is with the individual lawyer, and the lawyer to whom a certificate is provided retains their rights and responsibilities pursuant to the certificate when they move between firms.

3.3.2 Cheques will be issued to the law firm LAM has on file, as provided by the lawyer billing the file. The responsibility of a lawyer to account to a law firm for disbursements incurred, or any fee split or commission arrangement, remains with the lawyer.

3.3.3 LAM is sometimes able to facilitate movement between law firms/corporations, and accounting for work in progress, by interim billing of certificates or canceling and reissuing certificates *en masse*. Such arrangements are completely at the discretion of LAM.

3.3.4 Where special arrangements are made to facilitate movement to a new firm or the winding up of a practice, the lawyer is required to follow the directions provided by LAM.

3.3.5 Where LAM does agree to participate in special arrangement(s) to facilitate the movement of counsel or winding up of a practice, LAM is not a party to, and undertakes no obligations pursuant to, a lawyer's arrangement with any law firm or law corporation. LAM's obligations to a lawyer are encompassed within the terms of the certificate and assigned counsel remains fully responsible and liable for any accounting and payment of any amounts owing, as between counsel and the firm or corporation.

3.4 Expiry of Certificates

3.4.1 [Regulation 30](#) provides a deemed discharge date for all legal aid certificates "...six years...from the date on which the certificate is issued... unless the time is extended by the area director". A LAM certificate may not be relied upon for payment of work done more than 6 years after the date the certificate issued, unless the time is extended in writing by the appropriate Area Director.

3.4.2 Provided that the lawyer applies before the expiry date of a certificate, the Area Director may grant an extension for a specified period of time subject to a new test of the merits of the case and the demonstrated continued financial eligibility of the client. If an extension is not granted, the lawyer is not entitled to payment for any work done, or disbursements incurred after the 6 year date of expiry.

3.4.3 A request for an extension operates as an automatic extension of the certificate until such time as the Area Director has made a decision respecting the request. If the Area Director chooses not to extend the certificate, the lawyer will have 60 days within which to submit a bill.

3.5 Copy of Taxed Accounts

3.5.1 LAM sends a copy of any taxed account to the lawyer who submitted the bill. A taxed account sets out clearly and concisely:

- a) the corrections made to the account and the reason for the changes along with reference to the Tariff; and/or
- b) any applicable legislative provisions.

3.6 Remuneration Limited to Tariff

3.6.1 LAM [Regulation 38](#) provides that, "No solicitor providing legal aid, whether under a certificate or as duty counsel, shall invite or accept any fee, gratuity or other compensation, with respect to legal aid other than the fees and disbursements provided for in the *Act* and *Regulations*."

3.6.2 This provision prevents a lawyer retained by way of a LAM certificate from (at the same time) seeking or accepting compensation directly from a person receiving legal aid. A person who qualifies for legal aid is entitled to receive the legal services provided by way of a LAM certificate, and to "quality legal representation".

3.7 Disallowance of Fees

3.7.1 [Regulation 44](#) allows the Executive Director to disallow fees in whole or in part for a proceeding unreasonably taken or prolonged, and not calculated to advance the interests of the client, or necessitated by the solicitor's negligence.

3.7.2 Examples of this might be:

- a) where a motion for *Charter* relief has been authorized based on inaccurate or misleading information provided by counsel and there is no proper foundation for the motion;
- b) defending against a motion to withdraw where there is a change of counsel already determined, or the client has stated an intention to act in person; or
- c) where authorization to proceed to trial or pursue some other additional relief was granted based on inaccurate or misleading information provided by counsel.

3.7.3 Similarly where the lawyer made an error, LAM expects the lawyer to remedy that error without an additional bill to LAM.

3.7.4 Regulation 44(e) specifically allows fees to be disallowed with respect to “a matter from which the solicitor was required to withdraw because of a conflict of interest that the Executive Director is satisfied was reasonably foreseeable by the solicitor before he or she furnished the service for which the fee is claimed”.

3.7.5 Where LAM learns that counsel have sought or received additional compensation for a legal aid eligible matter while the client has coverage pursuant to a certificate, the ED may also exercise discretion to disallow payment for fees and/or disbursements pursuant to the certificate. Depending on the circumstances, LAM may also report a lawyer who participates in this practice to The Law Society of Manitoba, and/or pursue other legal remedies.

3.8 Conflicts of Interest

3.8.1 Where a lawyer develops an unforeseeable conflict of interest, that lawyer will be entitled to the half tariff payment for an incomplete matter. However, if the conflict of interest was reasonably foreseeable at the inception of the case, LAM may not pay a bill for any service provided to that client. See [Regulation 44\(a\)](#).

3.9 Duty to Report Change in Client's Circumstances

3.9.1 Receiving a certificate for coverage creates an ongoing and direct relationship between LAM and an applicant; and between LAM and the lawyer appointed to provide service to the applicant. LAM has an ongoing responsibility to determine that the client continues to qualify for legal aid services.

3.9.2 [Regulation 25\(1\)](#) requires solicitors to provide certain information to LAM to ensure ongoing eligibility. One responsibility of a lawyer appointed pursuant to a certificate is to bring the appropriate information to the attention of the Area Director so LAM can make that decision.

3.10 Holdback Repayments

3.10.1 [Part 7](#) of the *Regulation* permits the Management Council of LAM to impose a percentage reduction in fees. Management Council has been very reluctant to take this step, known as instituting a ‘holdback’. If a holdback is instituted, counsel with active certificates will be notified in accordance with the *Regulation*.

3.10.2 Part 7 of the *Regulation* provides a process for determining repayment of the holdback.

3.11 Set-off

3.11.1 Pursuant to [Regulation 43\(3\)](#) where a lawyer owes funds to LAM for any reason, the ED may require that these funds be deducted from any subsequent payment otherwise due to that lawyer.

3.12 Representation of Co-Accused

3.12.1 Payments for representation of co-accused in the same Legal Matter are set out in Part I item 7 of the [Tariff](#). While the Executive Director may provide additional fees for separate services provided, any additional fees must be requested as a Discretionary Increase. Emphasis will be on assessing any separate services necessary to the proper defence of each co-accused.

3.13 Appeal of Taxed Accounts

3.13.1 Section 18 of the [Act](#) provides that “A solicitor may appeal a decision about the amount he or she is to be paid for providing legal aid.” Taxation appeals are based on the written record and are made in writing and will be heard by the Management Council Appeal Committee.

3.13.2 The written appeal will set out the basis of the appeal, and provide any information relied upon. The ED's written submission to the Appeal Committee will be based largely on the record of taxation decisions made by the ED, or by the delegate who acted on the ED's behalf. As a result of this, all decisions must be made in accordance with this [Manual](#) and be properly recorded in the administrative file.

4. PAYMENT PROGRAMS (ATP, COL) & COST RECOVERY

4.1 General

4.1.1 Please see the general explanation of these files in the Payment Programs Manual.

4.1.2 Taxation of these accounts is performed on the same basis as a regular bill of costs; however the clarity of documentation and certification, and the importance of the bill of costs being prepared and sent to LAM in a timely manner is more pronounced.

4.1.3 Adherence to the documentation requirements and guidelines outlined herein, are strictly enforced to ensure LAM is able to process payment program bills and reimbursements in a timely manner.

4.2 Amendment Adding a Client Contribution

4.2.1 Sometimes new information comes to the attention of the Area Office and results in adding a contribution requirement. This amendment may be retroactive.

4.2.2 Regardless of whether the client signs the agreement to repay LAM and/or the Charge on Land, the assigned lawyer is entitled to a taxation based upon the time put in before the amendment. This will be true whether the amendment is retroactive or not.

4.2.3 The only exception would be where the lawyer has been complicit in not disclosing the information that results in the amendment.

4.3 Recovery from an Opposing Party: Court Ordered Awards & Settlements

4.3.1 Section 17(4) of the Act provides that “all moneys recovered by an applicant from an opposing party, by way of costs or otherwise, shall be paid to Legal Aid Manitoba”. Regulation 35 makes the cost of legal aid a charge against any money recovered by the client. This provision requires lawyers to structure recoveries so that they are available to LAM.

4.3.2 If a lawyer does not take reasonable steps to protect LAM's interest and LAM suffers thereby, the cost to LAM may be set off against any payments due on the lawyer's account as provided for in [Regulation 44\(d\)](#).

(i) **Maintenance:** LAM requires clients to withhold money from settlements and reimburse LAM from money they receive from settlement of a legal matter. This does not apply to money received with respect to child maintenance. If the order is not technically child maintenance but is, for example, to pay the custodial parent \$3,000 for dental work for a child, then it will generally be treated as child maintenance, and the client will not usually be required to pay the funds to LAM. The Executive Director should be notified if there is any question about how to characterize a settlement, prior to release of the money.

(ii) **Lump Sums:** If a period of time has gone by during which the party opposite has not paid child maintenance, and the judge orders a lump sum payment in respect of the time that has passed, LAM will usually not expect the client to pay the funds to LAM. However, if the amount of arrears is very large, or the judge making the order has specifically addressed the payment of LAM in the order, the Executive Director must be notified to determine if the client will be required to pay funds to LAM.

(iii) **Pension credits and RRSPs and other property:** LAM does not consider a division of pension credits to be an award of a sum of money as no money changes hands. A division of RRSPs that results in the transfer of actual money is considered to be an award of a sum of money, and the applicant must pay LAM out of that money. The general rule is that where money changes hands, or property is liquidated and funds are received in lieu, LAM must be paid.

4.3.3 Where a lawyer fails to take these steps and does not hold back enough money to cover the total fees and disbursements, the lawyer's fees may be taxed down accordingly. The client may also have had other dealings with LAM which should also be covered out of the cost recovery so it is vital to check on each file.

4.3.4 The client may be pursued legally for recovery of such amounts and/or dis-entitled to legal aid in the future as provided for in [Regulation 16\(1\)\(g\)](#).

4.4 Recovery from an Opposing Party: Cost Awards

4.4.1 LAM has ownership of any and all costs awards made to the benefit of an individual receiving legal aid ([Act s. 17\(4\)](#)) and retains the discretion to waive costs at any stage of proceedings. [Regulation 31](#) requires the lawyer to obtain the Area Director's approval to waive the right to costs.

4.4.2 A lawyer may waive costs without specific authorization from the Area Director:

- (i)** where a client has signed an agreement to pay, a direction to pay, or charge on land, in favour of LAM and agrees to the waiver of costs,
- (ii)** where the other party is legally aided, or,
- (iii)** where counsel is satisfied the respondent has no means to pay costs, (having no assets and being unemployed).

4.4.3 In all other circumstances, Area Director approval is required to waive costs. Where costs are waived for one of the three reasons set out above, counsel should set out that reason in their closing report to LAM.

4.4.4 When billing a civil or domestic Legal Matter, counsel must indicate if costs were or were not awarded.

4.4.5 If costs are awarded on a Legal Matter, counsel must provide the Executive Director with a copy of the relevant Order and any enforcement information submitted to the Court, (i.e. [Form 70W](#)).

5. BILLING CRIMINAL MATTERS

5.1 General

5.1.1 This section provides guidance on billing matters under Part 2 of the [Tariff](#) of Fees. It is not intended to reword or replace the Tariff. It sets out the general policy for billing criminal matters and thereafter provides specific policy and general guidelines for interpreting the Tariff in specific situations.

5.1.2 Part 2 is subject to the General provisions set out in Part 1 of the Tariff of Fees including in particular paragraphs:

- (i) fees where two persons are represented in the same matter;
- (ii) fees where matters are dealt with together;
- (iii) payment for travel time; and
- (iv) fee reductions for partial service.

5.2 Offence Categories in the Tariff

5.2.1 Coverage in criminal matters is provided by way of identifiable “Legal Matters” that qualify for full independent coverage. These are designated as a “Legal Matter” on the face of the certificate.

5.2.2 Criminal charges that do not qualify for full independent coverage are designated as “Also” on the face of the certificate.

5.2.3 The criminal tariff consists of types of offences divided into three categories “A”, “B” and “C”. Category “A” offences are nominally the most serious and/or complex cases to properly defend; “B” somewhat less serious and/or complex; and “C” the least serious and/or complex to defend.

5.2.4 Counsel who provides a completed service respecting any criminal “Legal Matter” is entitled to the tariff fee applicable to the category of charge for the specific item of service completed.

5.2.5 Counsel who provides service on any matter listed on the face of the certificate as an “Also” are entitled to \$80.00 for completion of that “Also” matter.

5.2.6 If the “Also” matter is dealt with by a different prosecutor in a different court than the covered “Legal Matter” for all steps in the case, or all steps other than disposition, it will be paid \$160.00 as a “Separate Stream Also”.

5.2.7 “Separate Stream Also’s” must be indicated as such, and the proper certification must be made on the bill of costs.

5.2.8 Where extremely unusual circumstances arise, and the tariff payment does not appropriately compensate counsel for the services provided in any “Legal Matter” or “Also” matter, counsel may apply to the Executive Director for a discretionary increase in addition to the regular payments otherwise available for criminal matters.

5.3 Identified Categorization Issues

5.3.1 The current categorization of offences dates back to the beginning of the block fee tariff, as revised from time to time. Categories “A” and “B” are categories that include specifically listed offences, and category “C” is a residual category intended to include any offences not listed in “A” or “B”.

5.3.2 Three significant issues have arisen with respect to the categories:

- (i) individual charges that cross categories;
- (ii) unlisted charges that are similar or identical to those listed in a higher category; and
- (iii) services that are significant and contemplated in a criminal proceeding but are not in the Tariff (i.e. Dangerous Offender hearings).

5.3.3 LAM has addressed significant shortcomings of the Tariff pursuant to the Executive Director’s discretion and/or section 5 of [Part 1](#) of the Tariff as follows:

- a) where a charge crosses categories, it is to be paid at the tariff rate applicable to the higher of the two categories;

- b) where an unlisted charge is similar or identical to a charge listed in a higher category, the Executive Director has exercised discretion to apply the higher paying tariff, providing notice to the panel through a Notice to the Profession; and
- c) where a significant service is not listed in the Tariff and an appropriate analogous service has been identified the service is paid accordingly.

5.3.4 Cross-categorized Charges

5.3.4.1 The policy in [5.3.3 a\)](#) above can be applied on a principled basis when a charge, as particularized in the court Information or in the Indictment as drafted, identifies the charges.

5.3.5 Anomalous Categories

5.3.5.1 Legal Aid pays on the basis of the categorization at the time the bill is received.

5.3.6 Unspecified Services

5.3.6.1 The *Regulation* allows the Executive Director to pay by analogy where coverage is authorized and no specific provision exists for a certain service.

5.3.6.2 LAM pays by analogy for the following services:

- (i) “Extraordinary Remedies”
 - o Extradition Hearings
 - o Dangerous Offender/Long Term Offender Hearings
 - o Peace Bond: Fear of Offence (ss. 810.01 to 810.2)
 - o Faint Hope Applications to the Chief Justice (s. 745.6)
- (ii) Category “C” Preliminary Hearings
 - o Curative Discharge Hearings
 - o Sentencing Circles
 - o Conditional Sentence Breach Hearings
 - o Disciplinary Hearings
 - o Parole Hearings
 - o Youth Reviews
 - o Peace Bond: Fear of Injury or Damage (s. 810)
- (iii) Category “B” Trial
 - o Faint Hope Hearing before a Jury (s. 745.63)

- (iv) Itemized Hourly to the Maximum of “Bail Review”
 - Vary Probation Orders
- (v) Itemized Hourly to the Maximum stated on the face of the certificate
 - Assistance to a Material Witness

5.3.7 Charges Paid as One Legal Matter

5.3.7.1 LAM policy is that all the charges referred to in a Legal Matter will attract a single block payment pursuant to the highest category charge.

5.3.7.2 Charges dealt with together are treated as if they were joined together on the Information or Indictment. For example, a robbery and a theft included on the same charging document, or dealt with at the same court appearance, attract a single Category “B” payment, unless they are identified as separate Legal Matters on the face of the certificate **and** discrete hearings are provided on each.

5.3.7.3 In the latter case, each is paid in its appropriate category and attracts the payment for the service provided (i.e., a guilty plea on the Robbery followed by a trial on the theft or *vice versa*, results in one category “B” guilty plea and one category “C” trial).

5.3.7.4 In addition to this, each separate Information that does not otherwise receive payment under a tariff category, receives a payment of \$80.00 (nominally called the “Also” fee).

5.3.7.5 If unusual work is anticipated for a charge specified as “Also”, the lawyer must request the Area Director to authorize a separate Legal Matter for that charge in advance of disposing of it. Legal Accounts cannot pay for a separate Legal Matter, unless the Area Director has authorized it before billing the charges.

5.3.7.6 In any other situation, a request to pay for an unauthorized Legal Matter will not be paid by Legal Accounts and will require counsel to submit a request for a Discretionary Increase, (DI). The ED may choose to address this issue by issuing a new Legal Matter, providing an appropriate DI, or disallowing any increase in fees.

5.3.8 Amendments & the Tariff

5.3.8.1 LAM from time to time amends certificates as provided for in section 9 of the [Area Directors' Manual](#), (ADM) An amendment may substitute a new activity for the old one, may declare that the original activity encompasses certain additional activity, or may add a new, complete block fee to the certificate as per 9.5 of the ADM :

9.5 *Where a certificate needs to be amended after issuance the Area Director may:*

- a) correct an error in existing coverage by adding the words "amend to read" and rewriting the coverage on the certificate to reflect the correction;*
- b) add a disbursement or increase the scope of coverage provided on a previously authorized matter by adding the words "amend to include" and describing the change (e.g., permission to proceed to trial); or*
- c) authorize coverage within the same certificate by adding the phrase "amend to add" and adding a new paragraph identifying the coverage in accordance with the guidelines in 9.1 to 9.6 above.*

5.3.8.2 A lawyer may bill for all the services authorized including any services authorized by any amendment to that certificate once the work is done. Amendments only permit additional tariff payments where the changes made result in the addition of discrete new tariff items or specified disbursements.

5.4 Application of the Tariff

5.4.1 Interim Billing of Certificates

5.4.1.1 Where a Legal Matter, or a discrete service item in excess of \$250.00, is dealt with and the remainder of the tariff items in the certificate will not be billed in the proceeding 30 days, the lawyer's interim bill for fees to date will be assessed and billed in the ordinary course.

5.4.1.2 Bills submitted in accordance with [Notice to the Profession 24-2014](#) must be dealt with by the Executive Director personally or a Senior Manager(s) to whom the ED has delegated the discretion.

5.4.2 Guilty Plea, Stay of Proceedings

5.4.2.1 This category includes final conclusions of criminal charges that do not include a preliminary hearing or trial.

5.4.3 Preliminary Hearing

5.4.3.1 A preliminary hearing is defined as a hearing at which the prosecution presents its case and which is followed by a committal for trial or the discharge of the accused. It does not include a dismissal for want of prosecution which LAM treats as if it were a stay.

5.4.3.2 Where the lawyer's bill simply says that the charges were dismissed without an indication that the Crown called evidence, LAM will treat it as a stay of proceedings.

5.4.4 Trial

5.4.4.1 The tariff provides payment for "trial at which the judge decides the matter based on evidence adduced". LAM uses the plain meaning of "trial" and considers it to mean that at least one witness was called and testifies respecting the case.

5.4.4.2 A dismissal for want of prosecution at trial is paid as a stay of proceedings. Where the lawyer's bill simply says that the charges were dismissed without an indication that the Crown called evidence, LAM will treat it as a stay of proceedings.

5.4.5 Subsequent ½ Days

5.4.5.1 LAM will not pay for a subsequent half day where the hearing did not actually proceed.

5.4.5.2 Where counsel returns to court and a further witness is called, submissions are made on a substantive point of law, or an oral judgment is delivered, then a subsequent half day will be paid.

5.4.5.3 The tariff also does not include subsequent ½ days while waiting for a jury verdict, unless the lawyer is called back to court to attend in the presence of the jury to address an issue with deliberations.

5.4.6 Stay at Preliminary Hearing or Trial

5.4.6.1 At times, defence counsel have diligently attempted to reasonably resolve a matter in advance of the hearing date without success and must fully prepare for a hearing. When this occurs and the position advanced earlier, or a preferable position, is accepted by the Crown on the hearing date, the Executive Director has determined that a finding of extremely unusual circumstances is warranted. A specified Administrative Increase is provided for these cases, where the appropriate certification is provided on the bill.

5.4.6.2 In order to qualify for the Administrative Increase, the following conditions must be met, and specifically certified on the bill of costs:

- (i) prior to the main preparation for the hearing, defence counsel must have made an offer to the Crown for a reasonable plea agreement, a reduced charge, or stay of proceedings, and provided a factual basis to the Crown that made the position of the Crown untenable;
- (ii) the hearing must have been fully prepared by defence counsel;
- (iii) immediately prior to, or on, the hearing date the Crown must have acceded to the position previously advanced, or accepted a preferable disposition to the one previously advanced by the accused and
- (iv) where there is a question whether the requirements for an Administrative Increase have been met, these cases will be dealt with by the Executive Director or a Senior Manager(s) acting under the delegated authority of the ED.

5.4.7 Subsequent Guilty Plea; Subsequent Sentencing

5.4.7.1 The regular guilty plea [tariff](#) applies where a plea is entered:

- prior to the commencement of either a preliminary hearing, or trial, in Provincial judges court; and,
- after the preferring of an Indictment, but before the commencement of the trial in the Queen's Bench.

5.4.7.2 A Subsequent Guilty Plea and/or Sentencing is a discrete hearing that occurs upon a plea or finding of guilt:

- following the commencement of the preliminary hearing but prior to an Indictment being preferred in the Queen’s Bench; or,
- at any time after the commencement of a trial.

5.4.7.3 The “subsequent guilty plea” is inclusive of the entire sentencing hearing, even where the two proceed on different dates.

5.4.7.4 Where a court appearance is required to receive a stay of proceedings, or a withdrawal of charges following a hearing, the court appearance will be paid as a subsequent guilty plea/sentencing.

5.4.8 Bail Review

5.4.8.1 LAM will pay the [tariff](#) rate for a bail review in the Queen’s Bench where the Crown has initiated the review, or prior authorization has been obtained from the Area Director. Authorization for a bail review includes authorization to incur the cost of ordering an expedited transcript of the original bail hearing.

5.4.9 Appeal

5.4.9.1 LAM will pay the tariff rate for an Appeal in the Queen’s Bench or the Court of Appeal where a certificate has been issued.

5.4.9.2 Authorization for appeal includes authorization to incur the cost of ordering a regular transcript of the hearing under appeal.

5.4.9.3 Where the appeal is of sentence only, the cost of ordering the submissions and reasons on sentence are included in this implicit authorization.

5.4.9.4 Specific authorization must be obtained prior to reimbursement for expedited or priority transcripts and will only be provided where the circumstance of the case justify incurring the additional cost.

5.4.9.5 If an appeal is filed and then abandoned by either party, it must be submitted to the ED. The ED will determine whether it is appropriate to pay the full tariff or a reduced fee tariff based on proximity to the hearing, and the work done by counsel to the date of abandonment.

6. BILLING DOMESTIC MATTERS

6.1 General

6.1.1 This section provides guidance on billing matters under Part 4 of the [Tariff](#) of Fees. It is not intended to re-word or replace the tariff. It sets out the general policy for billing domestic matters, where authorized, and thereafter provides specific policy and general guidelines for interpreting the Tariff in specific situations.

6.1.2 Part 4 is subject to the General provisions set out in Part 1 of the Tariff of Fees. Particular attention should be paid to paragraphs:

- Requirement for itemization;
- First ½ day Tariff inclusive of preceding services;
- Proof of services rendered;
- Fees where two persons are represented in the same matter;
- Fees where matters are dealt with together;
- Payment for travel time; and
- Fee reduction for partial service.

6.2 Categories in the Tariff

6.2.1 Domestic matters are paid in accordance with an inclusive block [tariff](#) which has two basic tariff categories:

- (i) Tariff 1 provides payment for services in contempt proceedings, a maintenance enforcement proceeding, a divorce in which no corollary relief is sought or in which corollary relief has been settled in previous proceedings, an application pursuant to *The Inter-jurisdictional Support Orders Act*, or child protection proceedings that are disposed of by way of a temporary order of guardianship in favour of a child protection agency, a supervision order, a third party placement order, or a child protection agency agrees to return the child(ren) to the parent(s), including all preparation and appearances; and
- (ii) Tariff 2 provides payment for services in all other domestic matters.

6.2.2 Tariff 1 and Tariff 2 include payment for all services other than examination for discovery (tariff item 3) and trial (tariff item 4), which are available only where authorized by the Area Director.

6.2.3 Payment for Examinations for Discovery or Examinations on an Affidavit are based on itemized hourly billing up to the maximum specified in the Tariff in addition to the applicable Tariff 1 or 2 tariff indicated above.

6.2.4 Payment for Trials is based on a payment per ½ day (tariff item 4) in addition to the applicable Tariff 1 or 2 tariff indicated above.

6.2.5 Appeals to the Court of Appeal (tariff item 5), or the Supreme Court (tariff item 6) are available where authorized by the Executive Director; “other appeals” (Tariff item 7) are available where authorized by the Area Director. The tariff paid is a block fee and is subject to reduction for incomplete service.

6.3 Identified Categorization Issues

6.3.1 Tariff 1 and 2

6.3.1.1 LAM classifies cases as [Tariff 1 or 2](#) when issuing a certificate based on information gathered from an applicant during the legal aid application process.

6.3.1.2 Counsel are encouraged to review the relief sought by the client as early as possible to ensure the Legal Matter is properly categorized. Counsel should request the categorization be changed promptly where the matter, after review with the client, appears to fall under the wrong tariff. This will allow the bill to be processed without delays due to reclassification at the AD level.

6.3.2 Maintenance Enforcement Court

6.3.2.1 If a certificate is issued to vary maintenance, an appearance in the enforcement court is an included interim step in the variation proceeding unless the Area Director has authorized a separate Legal Matter for enforcement court proceedings.

6.3.3 Amendments and the Tariff

6.3.3.1 LAM from time to time amends certificates as provided for in section 9.5 of the [Area Directors' Manual](#). An amendment may substitute a new activity for the old one, may declare that the original activity encompasses certain additional activity, or may add a new, complete block fee to the certificate.

6.3.3.2 A lawyer may bill for all the services authorized, including any services authorized in an amendment to the certificate, once the work is done. Amendments only permit additional tariff payments where the changes made result in the addition of discrete new tariff items or specified disbursements.

Example: The certificate allowed for a separation. The lawyer reports that there are a number of family property issues to be settled which require significant extra work and an agreement. The Area Director may add the separation agreement (under the flat fee tariff specifying a half-block fee) and the lawyer will be paid at half the applicable half-tariff rate.

6.4 Application of the Tariff

6.4.1 LAM pays for completed service in domestic matters. Completed service is a final resolution by way of an order, or a written agreement that provides a full and final settlement of all the matters listed on the face of the certificate.

6.4.2 A full and final resolution can be achieved through the pronouncement of a Final Order by the Court, an Interim Order, or a duly executed written agreement that resolves all the outstanding issues in a manner that all parties agree is final. Upon counsel's certification that one of the above has occurred, the matter will be paid as a full tariff item.

6.4.3 Where a question arises as to whether or not an outcome is a full and final resolution, the matter must be referred to the ED for a decision. If the outcome falls short of a full and final resolution, the Legal Matter can be billed as incomplete. The reduced tariff provisions apply to incomplete domestic matters.

6.4.4 It is necessary for LAM to have the reasons for submitting a final bill in the matter, whether a full and final resolution is achieved or not, since the reasons for concluding representation may have an impact on future legal aid coverage. The focus is to ensure future coverage is provided only in cases where a change in circumstances makes the previous outcome unsatisfactory and to avoid the unnecessary cost of revisiting a resolution without a reasonable basis to do so.

6.4.5 LAM no longer requires a signed order or executed agreement prior to payment for cases unless an order for costs is made, or Social Assistance is paying for representation on the matter ("Bill SA" noted on the face of the certificate)." If a signed Final Order or executed written agreement is not provided at the conclusion of the case and an issue arises in this regard, LAM expects the lawyer to resolve the issue without additional charge to the client or LAM.

6.4.6 Note also that the [Tariff](#) requires a minimum of three hours for each individual tariff service before the flat fee is effective. The exceptions to this are item 3, examinations for discovery or on an affidavit, which are itemized and item 4, half-days of hearing for which the tariff payment constitutes payment for attendance per ½ day of trial.

6.4.7 Payment for Separate Activities

6.4.7.1 A LAM certificate will attract only one payment for the full and final resolution of the domestic relief listed in a Legal Matter, unless otherwise indicated on the face of the certificate (Tariff 1 or 2). A separation agreement that is concluded prior to obtaining a Final Order, for example, will be treated as minutes of settlement and not paid for as an additional tariff item.

6.4.7.2 The only exceptions to 6.4.7.1 are payment for examinations for discovery or on an affidavit, and the trial tariff, all of which are paid as additional tariff items, where authorized by the Area Director.

6.4.8 Area Director Authorizations

6.4.8.1 Items 3 and 4 of the Domestic Tariff are only payable when those services are authorized by the Area Director. This applies to all certificates paid on the Domestic Tariff.

6.4.9 Separation Agreements

6.4.9.1 LAM will pay for a separation agreement only where counsel advises they have concluded a duly executed written agreement that resolves all the outstanding issues in a manner that all parties agree is final.

6.4.9.2 In order to qualify as the full and final settlement of a case, the lawyer must certify that the relationship between the parties and the nature of the agreement is such that the agreement is likely to be effective. The agreement must be formally executed and include certification respecting provision of independent legal advice.

6.4.10 Interim Order as Final

6.4.10.1 Where a lawyer obtains the relief provided for in the certificate in an Interim Order, and the lawyer and/or the client certify that the Interim Order provides full and final settlement of all pertinent issues, the Interim Order can be billed as a completed tariff matter.

6.4.11 Examinations for Discovery or on an Affidavit: Preparation and Conduct

6.4.11.1 Examinations for Discovery or on an Affidavit are payable where they have been authorized. If the examination does not proceed, the waiting time for the person is billable as part of the preparation time up to the maximum provided in the Tariff.

6.4.12 Trial

6.4.12.1 The trial tariff is payable in addition to other tariff items payable where proceeding to trial has been authorized. The tariff provides for a payment for a trial “ when authorized by the Area Director and witnesses testify”.

6.4.13 Additional ½ Day Trial

6.4.13.1 LAM pays for an additional ½ day only where the trial actually proceeds on that 1/2 day. If you return to court and a further witness is called, submissions are made, or an oral judgment is delivered, then a subsequent half day will be paid.

7. BILLING CIVIL LITIGATION MATTERS

7.1 General

7.1.1 This section provides guidance on billing matters under Part 3 of the [Tariff](#) of Fees. It is not intended to re-word or replace the tariff. It sets out the general policy for billing civil litigation matters, where authorized, and thereafter provides specific policy and general guidelines for interpreting the tariff in specific situations.

7.1.2 Part 3 is subject to the General provisions set out in Part 1 of the Tariff of Fees.

7.1.3 The Civil Litigation tariff, with the exception of Appeals, is based upon itemized hourly billing to the maximum stated amount for each service provided.

7.1.4 Where multiple service items are authorized in a Legal Matter the items each require detailed itemized billing in increments no larger than 1/10 of an hour up to the maximum amounts stated in the tariff.

7.1.5 LAM does not require a signed order or executed agreement in each case concluding a matter. If a signed final order or executed written agreement is not provided at the conclusion of the case and an issue arises in this regard LAM expects the lawyer to resolve the issue without additional charge to the client or LAM.

7.2 Reduced Tariff

7.2.1 The reduced tariff does not apply where itemized hours are required. Where an appeal is filed and subsequently abandoned by a client or by the party opposite the ED will determine whether the full tariff is payable based on the proximity to the hearing date and the amount of work completed.

7.3 Amendments and the Tariff

7.3.1 LAM from time to time amends certificates as provided for in section 9.5 of the [Area Directors' Manual](#). An amendment may substitute a new activity for the old one, may declare that the original activity encompasses certain additional activity, or may add a new, complete block fee to the certificate.

7.3.2 A lawyer may bill for all the services authorized including any services authorized by any amendment to that certificate once the work is done. Amendments only permit additional tariff payments where the changes made result in the addition of discrete new tariff items or specified disbursements.

7.4 Appeal

7.4.1 [Tariff](#) item 5 applies to appeals to an Appeal court including the Manitoba Court of Appeal and the Federal Court of Appeal.

7.4.2 Tariff item 7 applies to all other appeals including those that proceed by way of Judicial Review in the Federal Court, and appeals that proceed in another provincial or federal court, including appeals that proceed as a hearing *de novo*.

7.4.3 Tariff item 4 applies to appeals that are heard by a tribunal, including a specialized administrative tribunal.

8. BILLING IMMIGRATION MATTERS

8.1 General

8.1.1 This section provides guidance on billing matters under Part 4.1 of the [Tariff](#) of Fees. It is not intended to re-word or replace the tariff. It sets out the general policy for billing immigration matters, where authorized, and thereafter provides specific policy and general guidelines for interpreting the tariff in specific situations.

8.1.2 Part 4.1 is subject to the General provisions set out in Part 1 of the Tariff of Fees.

8.1.3 Items 1, 2 and 6 of the Immigration Tariff are based upon block tariff amounts. The block tariff amounts items do not apply if the services furnished are for three hours or less. In those circumstances, the solicitor shall claim for time expended at a rate of \$80 per hour.

8.1.4 Items 3, 4 and 5 of the Immigration Tariff are based upon itemized hourly billing to the maximum stated amount for each service provided.

8.1.5 Where multiple service items are authorized in a Legal Matter, the items each require detailed itemized billing in increments no larger than 1/10 of an hour up to the maximum amounts stated in the tariff, if they are services contemplated in items 3, 4 and 5 of the Immigration Tariff.

8.2 Amendments and the Tariff

8.2.1 Legal Aid from time to time amends certificates as provided for in section 9.5 of the [Area Directors' Manual](#). An amendment may substitute a new activity for the old one, may declare that the original activity encompasses certain additional activity, or may add a new, complete block fee to the certificate.

8.2.2 A lawyer may bill for all the services authorized including any services authorized by any amendment to that certificate once the work is done. Amendments only permit additional tariff payments where the changes made result in the addition of discrete new tariff items or specified disbursements.

8.3 Reduced Tariff

8.3.1 The reduced tariff does not apply where itemized hours are required.

8.3.2 Where an immigration matter payable by block fee is initially opposed, or an application filed, and then subsequently abandoned by the Legal Aid client, the reduced tariff may apply.

8.3.3 Where the matter is initially opposed, or an application is filed and then abandoned by the party opposite, the full tariff amounts may be payable.

9. BILLING DISBURSEMENTS

9.1 General

9.1.1 LAM is responsible for ensuring that eligible cases are provided with the resources necessary for proper conduct of the legal matter. This requires balancing limited resources to meet the needs of over 25,000 new cases each year. The funds expended are primarily public funds and subject to independent audit and verification. Assessment of need and cost effectiveness, documenting authorization, proper payment of funds, and cost recovery all mandate a carefully administered authorization and payment regime. The cooperation of appointed counsel in this process is an essential responsibility of counsel who act pursuant to a LAM certificate.

9.1.2 It is generally up to the lawyer to pay for the disbursement and LAM will reimburse the lawyer, as per [Regulation 42\(2\)](#).

9.1.3 LAM will not pay for disbursements that are not properly authorized or documented and lawyers who undertake or pay for disbursements that have not been authorized, or without retaining proper written documentation of the expense, do so at their own risk. The requirement that disbursements must be authorized by LAM applies to all files, including client contribution files.

9.1.4 Lawyers do not need authorization for disbursements less than \$125.00.

9.2 Regular Procedure

9.2.1 Lawyers must use [PBOnline](#) or LAMAS¹ for all disbursement requests. To expedite processing payment, the bill of costs that includes the disbursement should specifically reference the Legal Matter number and date of authorization for each disbursement.

9.2.2 Deemed Authorization of Transcripts

9.2.2.1 Specific authorization is not required for reimbursement of a bill for transcripts (at the LAM rate or the regular court transcription rate) for previously authorized:

- (i) Examinations for Discovery/Examinations on an Affidavit;
- (ii) Appeals;

¹ LAMAS is the Legal Aid Manitoba Application System. It keeps track of all Legal Aid applications, both for the private bar and LAM staff, and what happens on those matters.

- (iii) Askov Motions;
- (iv) Certiorari Applications; or
- (v) Trials in the Queen's Bench Criminal Division (preliminary hearing transcripts).

9.2.2.2 Specific authorization is not required for payment of a bill for transcripts (expedited court transcription rate) for previously authorized Bail Review Applications.

9.2.3 File Retrieval Fees

9.2.3.1 LAM will not pay for the cost of obtaining the contents of open client files concerning uncompleted matters which are being transferred to new counsel. As per [Chapter 12 of the Manitoba Code of Professional Conduct](#), it is improper for former counsel to impose a trust condition on the client's new lawyer purporting to require payment of photocopying charges. In the case of closed completed client files, LAM will pay reasonable file retrieval fees.

9.2.4 Payment of Service Providers

9.2.4.1 Appointed counsel does not have authority to make arrangements with a service provider to bill LAM directly. The lawyer, not LAM, contracts with the disbursement provider. The lawyer is therefore ultimately responsible to ensure that the bill is paid. [Regulation 42\(2\)](#) contemplates that the lawyer has paid the service provider before billing LAM.

9.2.4.2 The exceptions to this general policy are:

- arrangements that LAM makes with service providers from time to time to bill LAM directly. Notice of such arrangements is provided to Panel Lawyers through Notices to the Profession; or
- discrete authorizations in writing which may be provided where a singular and expensive disbursement is in view and the Executive Director has given prior written authorization to enter into a special billing arrangement.

9.2.5 Receipts

9.2.5.1 LAM requires receipts for all disbursements other than those set out above and long distance bills, photocopying, postage, and couriers. Receipts are also necessary where the lawyer has paid cash to the Court or to the Sheriff.

9.2.6 GST

9.2.6.1 LAM is GST exempt. All bills for disbursements should indicate they are billed “net of GST”.

9.2.6.2 Where the lawyer receives a bill inclusive of GST, the bill forwarded to LAM should indicate that the reimbursement request does not include any GST billed.

9.2.7 Disallowed Disbursements

9.2.7.1 Where a lawyer has billed LAM for a disbursement that is not eligible for reimbursement, or the billing does not provide the justification for payment, LAM will correct the billing and pay accordingly. LAM will provide the lawyer with an explanation for any disbursement that is not paid.

9.2.7.2 Where a lawyer bills for something that is eligible for reimbursement, but there is an issue with respect to payment, the Legal Accounts Compliance Officer will ask the lawyer for an explanation. If there is no response after 14 days, the Legal Accounts Compliance Officer, acting under the delegated authority of the Executive Director, will disallow the payment.

9.2.8 Interim Billings

9.2.8.1 LAM will accept interim bills for disbursements on a certificate whenever the total outstanding exceeds \$75.00 and/or when submitting any bill of costs on the Legal Matter that gave rise to the disbursement.

9.2.9 Supplementary Bills

9.2.9.1 LAM will not accept any supplementary bills for disbursements more than 30 days after the final bill for the conclusion of work on the certificate has been paid.

9.2.9.2 LAM will not pay supplementary accounts presented for amounts less than \$10.00.

9.3 Lawyer's Routine Expenses

9.3.1 Office Costs

9.3.1.1 LAM does not pay for "office expenses". The lawyer may bill to recover a cash outlay, such as long distance telephone charges or for sending a facsimile, the actual amount paid for an land titles search or discharge request, where a fee has to be paid by the firm.

9.3.1.2 LAM pays 10¢ a page for photocopying.

9.3.2 File Copying

9.3.2.1 If a client changes lawyers, the new lawyer will want the file. The previous lawyer is, in the absence of a lien, obligated by the rules of [The Law Society of Manitoba](#) to forward the file to the new lawyer. If that previous lawyer wishes to make a copy of the file for their use, this is not part of their service to the client. LAM does not pay the previous lawyer for the cost of photocopying the file. This is the case whether or not the former lawyer was acting pursuant to a legal aid certificate.

9.3.3 Computer Research

9.3.3.1 LAM does not pay for a firm's access to an electronic research tool or for specific electronic research charges, except in an extremely unusual case, and then only if the cost has been authorized as a disbursement by the Area Director in advance.

9.3.4 Travel Expenses

9.3.4.1 Travel time and expenses will be paid only if explicitly authorized by the Area Director. In the case of a law firm that has more than one office, travel expenses (and time) will generally be considered to be authorized from the office nearest to the place where the legal services are provided.

9.3.4.2 Lawyers are permitted to use Government Air Services (or any other flight arranged by the Department of Justice) **only if authorized by LAM for the specific flight**. Appointed counsel must contact the person in charge of arranging the charter for Government Air, and provide the certificate number and the date of the flight.

9.3.4.3 This must be done in advance of the flight in order to allow LAM to confirm the authorization for Government Air. This authorization may be made globally where a lawyer has an arrangement to provide duty counsel services to a specific point. Where unauthorized travel is billed directly to LAM, the cost of any travel will be set off against fees otherwise payable to the lawyer.

9.3.4.4 LAM pays **mileage** for travel in Northern Manitoba (north of the 53rd parallel) and south of the 53rd parallel in accordance with the applicable rates applicable to the civil service. Note that **travel time** is a fee, not a disbursement and the rate of payment is set in Part 1 of the [Tariff](#), Note 9 (1).

9.3.4.5 The Legal Accounts Department will provide counsel with the current travel time and mileage chart on request.

9.3.5 Waiting Time

9.3.5.1 When counsel is delayed leaving a fly-in circuit point because they must wait for the court party, waiting time will be paid at the rate of \$80 per hour from the time their last matter is complete until the time when the flight leaves the airport to return to their point of origin.

9.3.6 Meals

9.3.6.1 Where authorized by an AD, meals will be reimbursed at the civil service rate.

9.3.7 Client Expenses

9.3.7.1 LAM does not pay client costs, including any travel costs or court costs. In the case of court costs, the [Act](#) s. 17(8) grants Management Council the discretion to determine whether to pay client court costs.

9.4 Transcripts, Evidence and Witnesses

9.4.1 Expert Witnesses

9.4.1.1 Expert Witness fees, where required, often significantly exceed the nominal hourly rate LAM pays appointed counsel. They should be requested only where necessary to the proper representation of a client, where a reasonable expectation of benefit can be articulated, and never as a fishing expedition, in blind hope of finding an advantage in an otherwise hopeless case, or to advance a novel defence previously unknown in Canadian law.

9.4.1.2 Authorization for the costs of retaining an expert must be sought at the earliest opportunity, and will generally only be authorized in stages as follows:

- (i) for an initial report to determine if any benefit is likely to accrue;
- (ii) for a full report to provide a basis for assessment, negotiations, to cross examine the opposing parties expert etc.; and
- (iii) to prepare a report for and attend at court to provide evidence as necessary.

9.4.1.3 Since maintaining a reasonable cost for the use of an expert is contingent on the eventual overall cost, the decision to retain an expert for any of the above should be made in light of the total fee estimate, or schedule of fees used by the expert. LAM will generally require an estimate or schedule of fees or all stages of expert evidence before providing authorization.

9.4.1.4 Where available, a Canadian expert is generally preferred, especially where their expertise and cost is comparable to a non-Canadian alternative.

9.4.2 Crown Evidence

9.4.2.1 It is the duty of the Crown to provide adequate disclosure. LAM will not pay any of the costs relating to this disclosure, including for videotapes, for transcripts of tapes, or anything else that the Crown must provide as part of its prosecutorial duty.

9.4.3 Medical Fees

9.4.4.1 Authorization is not required to order a medical report where the cost does not exceed \$125.00.

9.4.4.2 In order to obtain authorization for a disbursement for a medical report or other service that exceeds \$125.00, the lawyer should provide an outline of the reasons for such a report, who is to provide the report, and a quote respecting the anticipated cost of that report.

9.4.4.3 A bill which exceeds the amount authorized will only be paid to the amount authorized.

9.4.1 Blood Tests

9.4.1.1 Paternity testing is required in a number of different cases under [*The Family Maintenance Act*](#). Section 23 of the *Family Maintenance Act* sets out presumptions of paternity:

Absent special authorization LAM will only pay for the full cost of a paternity test when there is no presumption of paternity.

9.4.2 Assessments

9.4.2.1 LAM approves disbursements for assessments only when necessary to properly advance a client's case and when an assessment service is not otherwise available without charge. The value of an assessment will be scrutinized on taxation of an account where authorization appears to have been requested on an improper foundation.

9.5 Special Arrangements for Disbursements

9.5.1 Vouchers

9.5.1.1 Certain services, such as filing fees, can be paid for by LAM voucher. As per [NTTP 24-2014](#), if a lawyer pays for these services other than by voucher, LAM may not reimburse the lawyer.

9.5.2 Service of Documents and Subpoenas

9.5.2.1 It is not necessary to obtain authorization to effect service through the Sheriff's Office.

9.5.2.2 Counsel are permitted to use an authorized service provider for up to two emergency attempts at service in a family law case without Area Director authorization. In these cases, counsel must certify when submitting their account that the disbursement was necessary because the situation was an emergency. Service will be provided in these instances at the normal LAM rates, unless specific authorization of a higher rate has been granted.