



Private Bar Billing Modernization Sustaining Access to Justice

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Final

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Executive Summary

Legal Aid Saskatchewan (LAS) reviewed its private bar billing process to determine whether there are opportunities for improvement. The process has not changed for several years. The number of private bar files and accounts have increased from 1,818 to 2,136 over the last five years. Moreover, the private bar budget has grown substantially relative to total LAS expenditures: 19% in 2016-17 to 25% in 2021-22.

The increase in accounts and budget is creating challenges and opportunities for the private bar, staff, and management. The existing process can be modernized to:

- A. **Serve the private bar lawyers better.** Some lawyers are frustrated by the lack of clear, standardized billing policies and procedures related to ‘extremely exceptional circumstances’, the slowness at times of payments and requests for additional hours, and the ‘cut’ to accounts reduced to tariff. The bar would like timely and consistent payments and decision-making.
- B. **Support staff better.** Staff are finding it difficult to keep up with the increase in private bar accounts; processing billings is manual, and paper based. Staff would like a more effective and efficient process.
- C. **Increase accountability.** As a government agency funded by the taxpayer, management would like to ensure better oversight and reporting. Systems do not currently capture adequate data or produce reports required to meet increased oversight and accountability expectations, as well as planning and forecasting needs.

The report will focus on the submission and processing of private bar accounts for payment, using the following framework to capture the current state and recommend a future state:

- 1. Organization Design and People
- 2. Policies
- 3. Processes
- 4. Technology
- 5. Accountability
- 6. Performance Measurement and Reporting
- 7. Private bar satisfaction – voice of the customer

The proposed 2022-25 LAS Strategic Plan, currently awaiting approval by the Saskatchewan Legal Aid Commission, articulates a modernization strategy and the initiatives to meet modernization goals:

C3. Seamless, Innovative Service Delivery models

- ☐ C3.3 Develop and implement technology to support our work
- ☐ C3.5 Improve the efficiency of LAS processes through process improvement and technology

S1. Proactive and responsive decision-making

- ☐ S1.1 Develop measurement mechanisms to better inform decision-making and resources allocation.

This review supports LAS' strategic initiatives identifying system, policy and process improvements which will enhance service to the private bar, address staff concerns, and improve oversight and accountability.

The review found a general understanding of the issues among the private bar, management, and staff, as well as the identification of ideas to address the issues. There is a willingness to make the changes necessary to deliver best in class service to the private bar, to create an engaged and satisfied work environment for staff, and to enhance oversight and reporting for government and the public. A change management plan would support this effort, based on an understanding of the benefits and rewards to each stakeholder. This report reflects the findings of the review and provides a roadmap for improvement based on private bar, staff, and management expectations:

- ☐ Timely, responsive service
- ☐ Simplified processes
- ☐ Clarity of policy and process
- ☐ Adequacy of communication
- ☐ Training
- ☐ Recognition
- ☐ Reporting

The implementation roadmap provides a journey towards service excellence that will set LAS in a direction for sustainable access to justice. A failure to make changes is likely to result in increasing financial, reputational, strategic, and organizational risks and could, consequently, impact the achievement of LAS vision and mission. LAS is encouraged to implement the changes recommended as soon as possible.

Key Findings & Recommendations

The Consultant has captured below the key findings and recommendations together with a detailed discussion which focuses on current and future states. These findings and recommendations are grouped under the seven areas, namely:

1. Organization Design and People
2. Policies
3. Processes
4. Technology
5. Accountability
6. Performance Measurement and Reporting
7. Private bar satisfaction – voice of the customer

1.0 Organization Design & People

Rec#	Findings	Recommendations
1.1	The organization design creates inefficiency, ineffectiveness, and accountability gaps in the processing of private bar accounts and the management of a key LAS program – private bar services. The organization design creates some financial risk by lack of segregation of account settlement and payment functions.	Create a Private Bar Services Department, reporting to the CEO, and consisting of a Director and two private bar clerks to ensure greater efficiency, effectiveness, segregation of account settlement/payment, and accountability.
1.2	Job roles and responsibilities along the continuum of private bar accounts processing (Appointments, Duty Counsel, ADR) create confusion. The management of this program is dispersed across four departments (Finance, Practice Management, Operations, Area Offices) and managers/staff.	Review and revise job descriptions to align with the new organization design. Consolidate private bar functions across the organization within the new Private Bar Services Department. Review intersection of legal services directors' roles and Head office roles relative to private bar services (change of solicitor, conflicts) and strengthen decentralized decision making.

1.3	Some staff and management expressed dissatisfaction with the level of communication and information sharing re. private bar services. This issue is reflected broadly in the LAS Employee Engagement Survey 2021 results.	Improve communication between private bar services management and staff, particularly during changes to the private bar billing process. Keep legal directors regularly updated on lawyer panel issues and involve legal directors in panel membership and management activity.
1.4	Private bar clerks and some management receive little formalized training relative to their job role and function based on Consultant interviews and Employee Engagement 2021 Survey results. There are few documented private bar billing policies and procedures.	Develop a Learning and Growth Plan to ensure team-based training and learning opportunities for Private Bar Services management and staff. Document, in private bar services manuals, all policies and procedures for staff/management orientation and training.
1.5	Change resistance in the past likely hindered successful organizational change to private bar billing policy and process and may do so again. Efforts were made to modernize private bar services in 2014 with limited success.	Develop and implement a change management plan to increase the likelihood of private bar billing modernization.

Current State: Structure, Roles, and Responsibilities

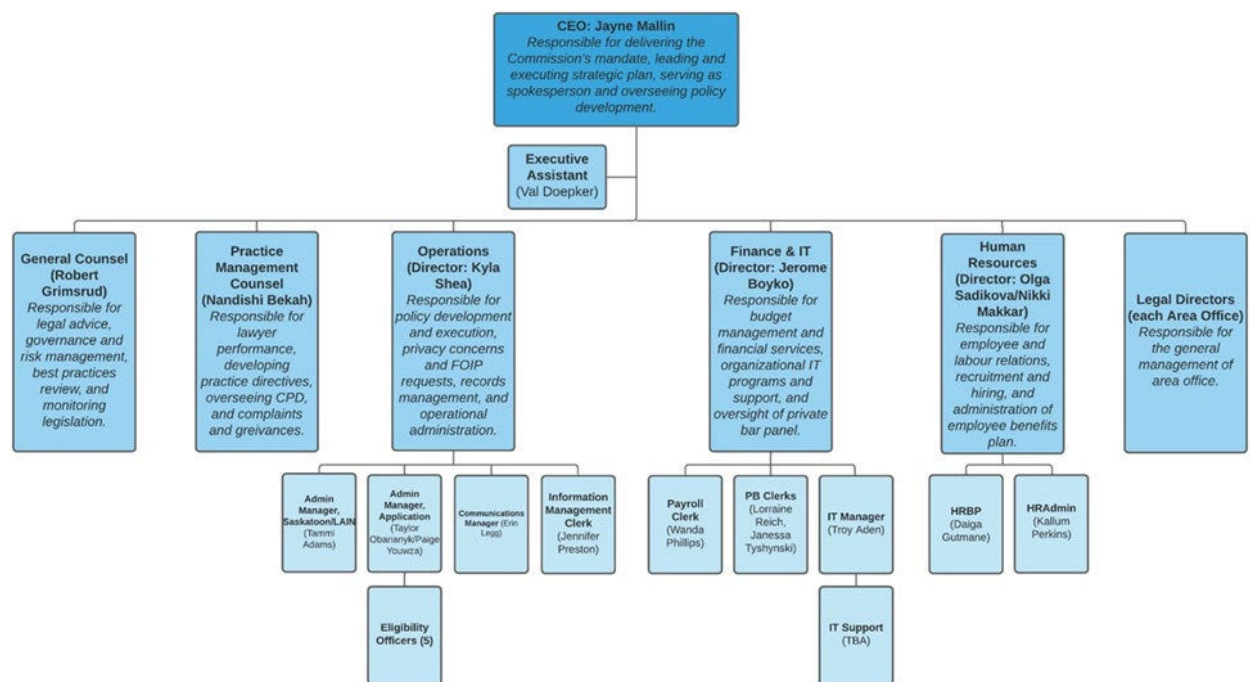
Private bar clerks (PB clerks) in the Finance Department receive, review, settle and pay private bar accounts for legal services. They also input Duty Counsel accounts and do 'audits' of farms outs (appointments) due to legal conflict and staff vacancies. The PB clerks report to and are supported in their function by the Finance Director.

The Legal Directors primarily manage a legal staff office. The Directors who appoint the private bar to deliver legal services, do not manage their private bar roster or private bar services budgets. Management noted that the private bar services budget is highly volatile, volatility being the result of client staff conflicts which are outside the control of the legal directors. The legal directors will issue appointments to the private bar for full service and contract out for duty counsel services.

The Practice Management Counsel is responsible for private bar additional preparation hours approvals. These approvals are made at Head Office without input from the legal directors who

issue the appointments. Practice Management Counsel is also responsible for private bar procedural notices (e.g., change of solicitor).

The Operations Director is responsible for private bar Duty Counsel contracts and ADRs. And until recently, the CEO's Executive Assistant managed client complaints related to private bar services and staff office conflict/vacancies audits.



The number of departments and managers/staff involved in private bar services, including billing and payment functions has created challenges: staff and private bar confusion, delays in processing, and a lack of clarity regarding accountability. Both staff and private bar, at times, do not know who to go to when they have a question or an issue, or who is responsible for what.

Private Bar – <u>Current</u> Staff Roles and Responsibilities	
Finance & IT Director	Assists with development of PB tariff - Practice Management Counsel Reviews private bar contracts and compliance Prepares updates for solicitor information on the public website Assists General Counsel with additional time requests Approves payment of taxed report of solicitor accounts
Accounting / Payroll Clerk	Assist private bar clerks with processing of payments
Private Bar Clerks	Completes taxation of private bar accounts for payments

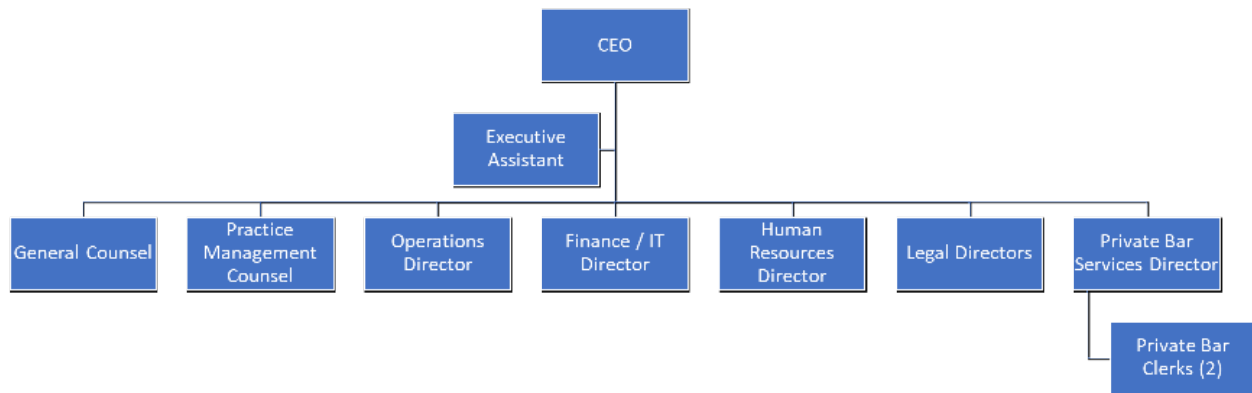
	Processes payments (appointments, Duty counsel) Amends appointments for change of lawyer Ensures spreadsheet is kept in balance for monthly analysis and accruals Updates private bar panel Audits conflict and staff vacancies appointments Liaises with Ministry of Justice with billing information Prepares private bar write-off list for Commission approval
Legal Directors	Approves private bar appointments (farm outs) Retains private bar duty counsel
Practice Management Counsel	Manages private bar requests and disbursements. Deals with private bar lawyers' requests for extra preparation time and time for expert documents as well as panel appointments.
Operations Director	Manages private bar duty counsel contracts Manages ADR services

The organizational structure, and roles and responsibilities do not allow for appropriate segregation of duties: settlement, and payment of accounts. Both functions are performed by PB clerks in the Finance Department, with some financial controls exercised by the Director of Finance. Overall, roles and responsibilities related to the private bar are not clearly defined in job descriptions. PB Clerks, who are hired primarily to perform accounting functions, find themselves spending most of their time processing private bar and duty counsel accounts, to their dissatisfaction.

The org design and culture create ambiguity regarding whether LAS operates using a centralized or decentralized decision-making model relative to private bar policies and procedures. Which decisions should be made by the area offices and which by head office? The legal directors' roles and responsibilities and those of head office regarding conflicts and private bar appointments, duty counsel and change of solicitor are unclear and sometimes cross over. Other times, one file is passed from area office to head office (eg. 3rd change of solicitor request). This lack of clarity and 'hand offs' leads to confusion among the private bar, who experience inconsistency of decisions across area offices. These inconsistencies may impact the fairness of client service.

Future State: [Structure, Roles, and Responsibilities](#)

Creating a new Private Bar Services (PBS) Department and consolidating private bar services functions within that department will address many of the challenges noted above. The proposed org chart is below:



The consolidation of the private bar services roles and responsibilities under the PBS Director and PB clerks will clarify and strengthen accountability. The chart below contains proposed staff roles and responsibilities under the new organization design, with a Private Bar Services Director being accountable for private bar services.

Private Bar Services – <u>Future</u> Staff Roles and Responsibilities	
Private Bar Services Director	Develop/revise PB tariff Approve payments of taxed report of solicitor accounts Approve additional time requests, disbursements Develop private bar policy and procedures manual with General Counsel Assess third change of solicitor application Audit conflict and staff vacancies appointments Prepare private bar practice memos and increase communication Prepare website updates for solicitor information Report private bar administrative and service issues to Legal Directors Report financial metrics to Legal Directors Develop policies and procedures manuals re. private bar account processing Address client complaints regarding PB services Keep the website up to date
Private Bar Clerks	Complete taxation of private bar accounts for payments Notify private bar when account reduced Amend appointments for change of lawyer Update private bar panel

Legal Directors	Approve private bar appointments (farm outs) Amend appointments to add additional charges Approve duty counsel contracts
Practice Management Counsel	Develop orientation and training for private bar
Finance Director	Process private bar payments (appointments, DC) Prepare financial reports for PB Services Director

Clarity can be further achieved through a RACI (Responsible, Accountable, Consulted, Informed) exercise and the creation of a RACI chart. This will be discussed further in the Report's section on Accountability.

Responsible	Who is responsible for doing the actual work.
Accountable	Who is accountable for the success of the task and is the decision-maker. Typically a manager.
Consulted	Who needs to be consulted for details and additional info on requirements. Typically, the person (or team) to be consulted will be the subject matter expert.
Informed	Who needs to be kept informed. Typically, senior leadership.

Current State: Communication and Information

The challenges related to structure, roles and responsibilities is further complicated by inadequate communication and sharing of information. Legal directors are often unaware of decisions on accounts made by Head Office staff or issues related to private bar performance, whether administrative or legal in nature. Legal directors are unsure of who is responsible for what. There does not appear to be regular communication and sharing of information regarding private bar services among all management and staff affected.

Future State: Communication and Information

One of the Private Bar Services (PBS) Director's key roles will be to increase communication and information across the organization. The Director will serve as the key 'manager' of private bar services, one point of contact. The Director will be responsible for regular reporting to Legal Directors on private bar administrative and/or legal service issues. The PBS Director will meet regularly with Legal Directors. This communication will promote increased panel management activity and strengthen accountability.

Current State: Training and Development

Staff currently receive very little orientation, training, or development in private bar services outside of shadowing and verbal instructions. There are no policies and procedures manuals regarding processing and settlement of accounts.

Future State: Training and Development

To improve training and development, create a Learning and Growth Committee, led by Human Resources, for new and existing staff, to address changes to roles and responsibilities, and the introduction of new policies, processes, and practices. The Committee would start with a training needs assessment and include staff from all levels and regions. The terms of reference should include the exploration of various training methods with the view to developing a comprehensive training plan and program. The plan would provide for elements of leadership and continuous improvement that encourages innovation and teamwork. Management and Human Resources would develop a competency framework at the individual, position, and team level to assist in the creation of the training program.

Current State: Change

LAS is undergoing significant transformation. Some staff and management have experienced little change at LAS over the years, and many have been with the organization for some time. Change is difficult and can be threatening to some management and staff. As with most organizations, change can bring about uncertainty and exhaustion, as staff try to manage the stresses of their everyday work, together with demands for doing and learning different approaches to systems, policies, and procedures.

Legal Aid Saskatchewan's readiness for change will be a function of both commitment, leadership support and ability to change. A hesitancy to change will affect the desired outcome of the 2022 Private Bar Billing Review as well as lack of preparedness.

In 2014, LAS undertook a similar billing review – LAS Private Bar Farm Out Process. Efforts to improve private bar billing at that time did not achieve substantial change. In 2014, 10% of all private bar lawyers in Saskatchewan were willing to take Legal Aid Saskatchewan (LAS) files. The purpose of the 2014 LAS Private Bar Farm Out Process proposal was to:

- ☐ Create a value stream map of the process, including key documents and decision points that currently involve Central Office, 14 Area Offices and approximately ninety private bar lawyers across the province.
- ☐ Identify ways to streamline the process and reduce the associated paperwork, while ensuring appropriate oversight of the number of appointments and the associated costs. The outcomes of the work were to be:
- ☐ Improve the contracting out process to ensure that Private Bar lawyers are appointed and paid in a timely manner
- ☐ Improve communication from Private Bar lawyers to Area Offices and Head Office to ensure that LAS is aware of the current status of work being performed by Private Bar lawyers

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- ☐ Ensure all Area Offices are using the same decision criteria to determine when to farm out files
 - ☐ Ensure that the approval of farm outs and the associated costs meet the requirements of the Provincial Auditor
 - ☐ Improve oversight of and approval process for requests to exceed the tariff maximums for activities, especially preparation times

Much of this Private Bar Billing Modernization report touches on the same issues identified in 2014. Understanding the reasons why LAS was unable to move ahead with addressing some of these issues will be key to ensuring more successful outcomes this time round.

Future State: Change

Preparing and executing a change management plan will assist LAS in its efforts to modernize its billings and payments systems, policies, and processes. A well-executed change management plan can prepare LAS for ongoing change and create an agile work environment. Effective ongoing communication, identification of key benefits, active engage of staff in the change process, and training and development opportunities can go a long way to supporting management and staff for successful modernization of the private bar billing system, policy, and process. Further discussion of change management principals can be found in the Report's Section entitled Organizational Readiness for Change.

2.0 Policies

Rec #	Findings	Recommendations
2.1	Private bar billing policies and procedures are confusing for some, have not been updated recently, and in some circumstances, do not reflect current practices (e.g., interim accounts, administrative late fees). There is a lack of clarity and understanding regarding private bar appointments, duty counsel, ADR, 'extremely exceptional circumstances' requests, billing (block v. hourly), and the tariff (prep hours).	Review private bar billing policies and procedures with legal directors considering new organization design and roles and responsibilities. Update to ensure consistency and clarity. Identify any gaps. Policies and procedures should be reviewed annually for continued relevance.
2.2	Private bar billing policies and procedures can be found on Legal Aid Saskatchewan's website in individual PDF documents. There is no private bar services manual which consolidates all policies related to the private bar.	Develop a private bar billing policies and procedures manual which consolidates all up-to-date private bar billing policies and procedures. Such a manual would assist with the training and orientation of panel lawyers.
2.3	The regulations to the Legal Aid Services Act uses the term "extremely exceptional circumstances". It is often referred to by lawyers and staff simply as "additional hours". This creates an expectation that additional hours should be approved regularly, rather than 'extremely exceptionally'.	Ensure lawyers can demonstrate "extremely exceptional circumstances" after the tariff hourly maximum has been met with specific reasons. The application process should be online with individual entry sections for each reason type and the amount of "additional hours" requested. The request should be submitted with the account. Inform and train panel members with respect to the test and the requirements.

2.4	The private bar clerks and Finance Director currently approve requests for additional hours at a defined threshold (5-10hrs.). There is no formal policy or delegation of authority but more so a standard practice.	Develop a policy and procedure, together with a delegation of authority to the private bar clerks, to allow for clerk decisions regarding additional hours, including an “hours maximum” and criteria for decision-making.
2.5	“Extremely exceptional circumstances” for additional prep hours is being used in situations which may not be appropriate, particularly in matters such as homicide and sexual assault where lawyers may routinely exceed the inadequate tariff preparation hours.	Develop a mid and big case management policy with budget setting at the commencement of proceedings. This process must go in tandem with changes to implementation of ‘extremely exceptional circumstances’ criteria.
2.6	Private bar lawyers can bill either by fixed or hourly fee. Some members of the bar are confused regarding when they ought to use fixed or hourly fees.	Review the policy related to fixed and hourly fees to determine the usefulness of this billing option and whether there are advantages to expanded fixed fees based on data collection and analysis to improve system efficiency and effectiveness. Clarify for the bar when they should use fixed and when hourly.
2.7	The private bar, management and staff are confused regarding the ADR policy and process. The policy provides for contracts for services delivered by duty counsel.	Review the use of ADRs and determine whether they ought to be eliminated and replaced with duty counsel contracts to simplify processes.
2.8	The Eligibility and Service Delivery Manual contains a couple sentences on duty counsel policy and process. The Duty Counsel contracts outline LAS expectations regarding private bar duty counsel services LAS does not have other documented duty counsel policies or procedures.	Create a duty counsel policy and procedures manual and capture changes based on adopted recommendations of the Private Bar Billing Modernization Report.

Current State: Policies

Management provided the Consultant with the following documents which contain private bar billing policies and procedures:

- Draft Governance Manual 2019
- Eligibility and Legal Services Delivery Manual 2021 (being revised)
- Legal Aid Tariff of Fees
- Memorandum on Taxation Clarification (ineligible disbursements), Alan Snell, October 2009
- Memorandum on Tariff Matters to Private Bar, “Account Details and Requests for More Preparation Time” CEO Craig Goebel 2018
- Saskatchewan Legal Aid Commission, Private Bar Appointment Policy, Effective October 1, 2014 (amended 2020)
- Procedures and Contact Person(s) for matters concerning additional time requests, change of lawyer, appeals and conflicts, March 2022

At a general level, some of the policies are dated and require review and amendment, particularly if the recommendations contained in this Report are adopted. Some policies do not appear to be followed (e.g., the process for approving interim accounts, and the administrative fee on late accounts). Moreover, it would be helpful to consolidate all updated and revised private bar billing policies and procedures in one private bar services manual to assist staff and the bar with ease of access and for orientation and training purposes. Currently, policies and procedures are posted in separate PDF format on the LAS website under the section entitled Information and Forms; the information is helpful and well organized.

The chart below identifies key Legal Aid Saskatchewan legislative provisions, regulations, policies, and practices:

	Legislation	Governance Manual 2019 /Website	Eligibility & Legal Services Delivery Manual 2021	Practice Memo
Referrals (Appointments)	<i>The Legal Aid Act</i> , Section 6(1)(h): establish and maintain a panel of	Saskatchewan Legal Aid Commission Private Bar Appointments Policy	Part II, Section F Conflict Office and Private Bar Farmouts	Procedures and Contact Person(s) for matters concerning additional time

	solicitors to provide services. Section 29: appointments	(amended 2020) Effective October 1, 2014		requests, change of lawyer, appeals and conflicts Practice Management Counsel 2022
Tariff	<i>The Legal Aid Act</i> Section 6 (1) (d): establish a tariff of fees	Tariff of Fees Schedule A		
Extremely exceptional circumstances		Legal Aid Tariff of Fees Schedule A – General Conditions Addendum B1-2 Maximum Preparation Time for Files calculated on an Hourly Fee Base “extremely exceptional circumstances” Submitted prior to incurring additional hours		Procedures and Contact Person(s) for matters concerning additional time requests, change of lawyer, appeals and conflicts Practice Management Counsel 2022
Fixed/hourly fee		Legal Aid Tariff of Fees – Schedule B1.		
Authorized disbursement records for agent			Part II, Section E – Legal Services	

appearances (ADRs)				
Duty counsel			Section A – Range of Service	

Future State: Policies

A fulsome review and revision of private bar services policies, from appointment to billing, settlement, and payment, would ensure clarity for management and staff, as well as the private bar, and inform modernization of processes and decision-making. Clarity will increase the odds of compliance and will require ongoing monitoring and correction of policies and procedures during the change. Revisions will ensure fairness and consistency in decision-making.

Current state: Extremely exceptional circumstances (additional hours)

The private bar, management, and staff, due to the inadequacy of the hourly tariff in complex proceedings, use the “extremely exceptional circumstances” provision in the Legal Aid Tariff Schedule A to allow for the billing and payment of additional hours. The Schedule A requires that a request for approval of the additional hours be submitted prior to being incurred.

The chief Executive Officer may, if a solicitor can show extremely exceptional circumstances due to: the nature of the offence, complexity of the case, and/or any other factors that would warrant an increase in preparation time, allow an increase in the preparation time for the file, provided in his/her opinion an increase is justified
Legal Aid Tariff of Fees Schedule A – General Conditions

It appears that the “extremely exceptional circumstances” provision, in some circumstances, is being applied inappropriately. As the organization does not currently track or report on ‘extremely exceptional circumstances’ requests and payments, it is difficult to assess the extent of its use. In some circumstances, there is likely nothing ‘extremely exceptional’ about a particular case. In some situations, legal proceedings have grown in complexity over the years (e.g., homicides, sexual assault) and the hourly tariff has failed to keep up. In 2021, the Saskatchewan government raised the hourly fee from \$88 to \$92. But the allocation of hours relative to preparation time has not been changed for many years.

In addition to this provision regarding “extremely exceptional circumstances”,

LAS has the power to disallow fees in whole or in part, where
i) proceedings were unreasonably taken or prolonged
ii) not calculated to advance the interest of the client
iii) incurred though negligence

iv) preparation or counsel fees were unreasonable in their nature, scope or time expended

Private Bar Appointment Policy – Section H-2, Payments of Accounts Governance Manual

The criteria below, contained in Memorandum on Tariff Matters, CEO Craig Goebel, February 2, 2018, are meant to assist both private bar and staff regarding requests for additional preparation time.

A request for additional preparation time should address the following matters if they apply:

- 1) What are the factors that contribute to the complexity of this matter?*
 - i) What kind of disclosure is involved? How much of it is important, but more critical is its substance and how it needs to be attended to and what is to be “made” of it.*
 - ii) What witnesses are anticipated from both sides? What issues are they expected to serve?*
 - iii) Are Charter applications likely? If yes, set out the nature of the argument(s).*
 - iv) Are there likely to be case management or other attendances?*
 - v) What is the expected length of preliminary hearing and / or trial?*
 - vi) Any other considerations that could justify the allocation of additional time.*
- 2) What is the theory you are advancing on behalf of your client and what issues are likely going to be defended?*
- 3) How serious is the client’s jeopardy? Is the case (client and / or crown) likely to be amenable to factual agreements, plea negotiations, etc.?*
- 4) What is the total amount of time being requested and how is that time going to be specifically apportioned?*
- 5) What are the economies of the work being anticipated?*
 - i) Is there a division of labor regarding the file within the firm?*
 - ii) If so, who is assisting with the matter?*
 - iii) How is the assignment of work being allocated?*

The criteria are not being used consistently by the bar, some of whom submit requests by email in free text, without the use of a request form. It does not appear either that management is using these criteria consistently. As mentioned earlier, there is little tracking and reporting on the reasons for additional hours and consequently, the extent of the inconsistency is difficult to know. Management has indicated that the extremely exceptional circumstances provision is not clearly defined to ensure consistent decision-making. And currently, due to the large number of requests, LAS is unable to respond in a timely manner and often, not before the services have been rendered by the lawyer due to court timelines. This results in staff processing retroactively additional hours in some circumstances, rather than reducing the account and frustrating and alienating service providers. The lack of policy clarity has likely led to increasing requests and allowance of additional hours.

Private bar clerks and the Finance Director will approve additional hours up to a maximum of 10, sometimes with no ‘extremely exceptional circumstances’ request or explanation on file. All requests for additional hours should go to management for review and decision-making unless there is a formal policy and delegation of authority to others.

There is no mid or big case management policies and procedures that would enable the setting of budgets in cases which regularly exceed the prep hours available. This would lead to less reliance on “extremely exceptional” circumstances and may ultimately result in more cost-effective services with carefully managed budgets and approvals.

“Extremely exceptional circumstances” is an area of dissatisfaction for the private bar based on several factors including lack of understanding of the process for requesting additional hours, with no clear form regularly used; delays in processing discretion requests; lack of staff responsiveness; and frustration when work is completed and discretion is denied, resulting in unpaid services.

Future State: Extremely exceptional circumstances (additional hours)

Extremely exceptional circumstances should be clearly defined in a policy, together with specific criteria to provide guidance to both the bar and decision-makers. In addition to what meets the test for ‘extremely exceptional’, the policy should define what does not. The bar should be required to use a specific request form and submit the form online with the account. With clearly defined criteria, it should become less necessary to process the request for additional hours prior to the services being rendered, a task that is unlikely to be achieved by management given the number of requests and the speed at which some court proceedings move.

Attached as Appendix 4 are forms from Legal Aid Ontario used by the private bar when requesting discretion (‘exceptional circumstances’). The forms could be adopted by LAS to capture “extremely exceptional circumstances” requests. The factors below also could be considered in the development of a policy and procedure document. Some of these factors are already contained in Saskatchewan legal aid materials. As noted in the Reporting section of this report, this process of identifying what is exceptional will require ongoing tracking of requests and data analysis:

The reasons for which ‘extremely exceptional circumstances’ may result in additional hours could include:

- 1. The result obtained*
- 2. The complexity of the matter*
- 3. The contributions of the Client or other contributors*
- 4. Preparation time done in anticipation of a lengthy trial or hearing, which did not proceed through no fault of the Lawyer*
- 5. Any other relevant factor which would warrant an increased fee.*

Examples of what might be considered extremely exceptional include:

- *Length of the trial or hearing*
- *Number of charges against the Client*
- *Number of parties involved*
- *Volume of disclosure*
- *Forensic evidence*
- *Client with special needs*

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- Importance of the matter to the Client
 - High Profile Case

Practices that are generally not covered by 'exceptional circumstances' include:

- Secretarial work masquerading as law clerk work.
- Attendance on multiple remands that could have been handled by duty counsel.
- Excessive research time caused by a lawyer's inexperience
- One Lawyer prepares, another does the court case.
- No visible progress on a matter.
- Work done disproportionate to seriousness of the matter.
- Insufficient information provided in account or letter to explain number of hours spent.

The "extremely exceptional circumstances" policy should provide a delegation to the private bar clerks to make decisions to a maximum number of hours per request, following identified criteria to ensure consistency. This delegation may reduce the number of handoffs and speed up processing of smaller accounts with lower risk.

And a mid and big case management policy will ensure budget setting in complex cases in advance of court proceedings. This will result in better management of high-cost files. The Private Bar Services Director, recommended in a new organization structure, or legal directors could develop mid and big case management budgets with lawyers. Attached as Appendix 2 is information regarding big-case management policy and process.

Current State: Fixed or hourly fee

Private bar lawyers can bill either by block or hourly rates. Some members of the bar are confused regarding when they ought to use block or hourly. The policy provides little guidance regarding block and hourly rates.

A solicitor who has provided services may receive compensation based on the fixed fee or hourly fee. The same billing method (Fixed or Hourly) must be used throughout the file.

Fixed Fee: The solicitor may receive compensation for a minimum fixed fee amount outlined in the "Appointment of Lawyer" (Schedule "D1"). Fees are to include conducting trial(s), all necessary and preparatory services such all interviews with clients and others, all correspondence, all telephone attendances, all documentation, and all briefs. (Addendum B1-1) Jury waits are included in the fixed fee.

OR

Hourly Fee: the solicitor may receive compensation up to the maximum amount established in this tariff (Addendum B1-2) by providing a detailed listing which gives a fully itemized statement of each and every service rendered both by way of preparation and in Court showing among other things the precise time and date involved in rendering that service.

Legal Aid Tariff of Fees – Schedule B1

Future state: Fixed or hourly fee

Review the policy related to fixed and hourly fees to determine the usefulness of this option and whether there are advantages to an expanded fixed fee option based on data collection and analysis to improve billing system efficiency and effectiveness. Clarify for the bar with clear communication when one or the other ought to be used.

Current State: Authorized Disbursement Records (ADRs)

Authorized Disbursement Record (ADR)s occur when a private bar lawyer covers one docket court appearance for a client. This appearance may be an adjournment or running a bail or show cause hearing or entering a guilty plea and speaking to sentencing. Private Bar lawyers are paid \$110 per client/applicant to a maximum of \$880 per day. This dollar maximum does not limit the lawyer to eight files. If a lawyer has agreed to cover a docket court for an Area Office, they handle all the LAS clients appearing that day. ADRs must be authorized by Head Office Management in advance.

The private bar and management are confused by ADRs and do not fully understand the distinction between ADRs and duty counsel, and whether that distinction is material. Some believe the duty counsel policy should be amended to include ADRs under its umbrella.

Future State: Authorized Disbursement Records (ADRs)

Review the use of ADRs for services and determine whether the term ADR should be eliminated, and all services included in the duty counsel policy to simplify matters.

Current State: Duty Counsel

The Eligibility and Legal Services Delivery Manual provides the following regarding duty counsel policy:

*An applicant is entitled to **Duty Counsel Service (DCS)** if:*

- 1. They are currently remanded; AND*
- 2. They are having a bail or show cause hearing OR wish to enter a guilty plea.*

Note: Our regular range of service guidelines apply. There is no financial eligibility test for individuals receiving duty counsel service.

*An applicant is entitled to **Duty Counsel Advice (DCA)** if:*

- 1. They have been detained or remanded.*

Note: Duty Counsel Advice is provided by contract lawyers over the phone EXCEPT for individuals facing homicide charges. In those matters, the Brydges Service will contact LAS staff lawyers and request they provide DCA in person to the individual.

Each duty counsel contract has an “Appendix A” attached which outlines some of the expectations regarding private bar duty counsel services. The Consultant was unable to find any other policy or procedural reference to Duty Counsel.

Future State: Duty Counsel

Create a duty counsel policy and procedure manual and capture changes based on adopted recommendations from the Private Bar Billing Modernization Report. The manual would document matters such as the nature of duty counsel services, how duty counsel gets assigned, how duty counsel should bill, etc.

3.0 Processes

Rec #	Findings	Recommendations
3.1	The private bar billing process – account submission, settlement, and payment - related to appointments is inefficient, containing many non-valued added steps because it is paper based and manual.	Reengineer the private bar billing process to create efficiency and effectiveness. Move to an electronic online billing and payments platform which eliminates paper and manual processing of private bar services, settlements, and payments.
3.2	Account submissions and requests are by fax and email, some with forms, some with letters. Multiple channels for submission and requests and non-standardization of process and forms lead to confusion and inefficiency. Duty counsel accounts are particularly time consuming; staff are required to manually enter all duty counsel accounts into LAIN.	Require all private bar lawyers to use online billing system, including submitting private bar appointments and duty counsel accounts, and requests for additional hours. Require use of standard error proofed forms on portal for billing and requests (eg. additional hours).
3.3	Work is distributed manually through the printing of paper accounts, and the sharing of accounts among staff. Processing is based on a First In First Out scheme.	Implement an e-workflow (worklist) system for staff based on new billing and payment organization structure, policies, and processes.

Rec #	Findings	Recommendations
3.4	The taxation and settlement manual process is coupled with a manual payment process using Sage; staff enter account data manually into the Sage accounting system.	Integrate the private bill billing portal with Sage to allow for a seamless efficient payment of accounts.
3.5	The private bar and staff are confused regarding when a service should be billed as ADR or Duty Counsel. The billing process is unclear, resulting in inconsistency and delay.	Simplify billing by eliminating the term ADR and capturing current ADR services under duty counsel billing processes.

Current State: Private bar billing process

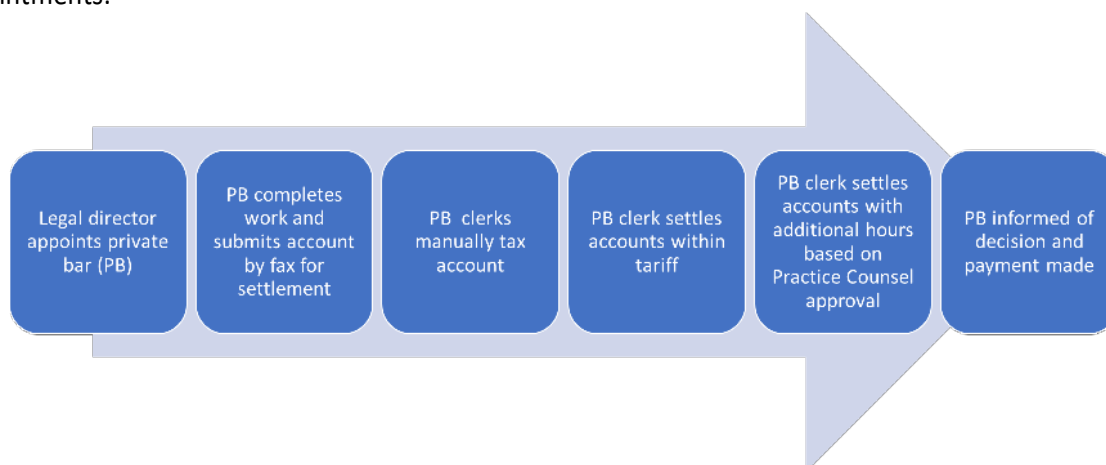
This section will focus on the following key processes, time, and cost to settle, and the identification of non-value-added activities that result in inefficiency.

- A. Receipt of accounts
- B. Processing of accounts – within tariff (settlement/taxation)
- C. Processing of accounts – additional hours (settlement/taxation)
- D. Request for additional hours (extremely exceptional circumstances)
- E. Processing of payments
- F. Time and cost to settle accounts

Some of key issues identified in the private bar billing process overall include:

- 1. Manual processes (receipt of accounts, settlement(taxation), tracking, payments)
- 2. Limited error-proofing at the front end of the account submission process to ensure correctness, completeness, and few staff follow-ups
- 3. Inadequate information regarding status of accounts and payments on accounts during processing
- 4. Unclear mandatory requirements/forms with respect to requests, account submissions and communication options.
- 5. Insufficient integration of settlement and payment processing
- 6. Manual file assignment processes
- 7. Manual tracking and management reporting through spreadsheets

The diagram below provides a high-level overview of account processing related to private bar appointments.



A. RECEIPT OF ACCOUNTS

Current State: Receipt of Accounts

The private bar lawyer completes a Report of Solicitor in excel format and submits the account by fax primarily, but also by mail and email. The excel form has some drop down menu items with some error proofing features. The form is well designed and likely can be used in the future state. The form is accompanied by a User Guide for private bar lawyers.

Once the account is received by LAS, private bar clerks print paper copies, and manually search in LAIN via client name for the file that matches the account. If there are multiple files open for one client, the PB clerk must match the account to the correct file searching the lawyer and firm, and then the charges. The PB clerk writes the Private Bar File # from LAIN in the PB File # field on the printed paper account.

The next step involves the PB clerk manually updating the charges in LAIN based on Section “E” of the Report of Solicitor. If insufficient information was provided by the lawyer, the PB clerk contacts the lawyer requesting further information. The PB clerk then adds any extra notes deemed necessary/useful to LAIN. If the account is the final account for the file, and the file needs to be closed, the PB clerk closes the LSN in the LAIN Decision tab. In the LAIN Appointments tab, the PB clerk adds a new appointment for the first date of contact made between the private bar counsel and the client. If all the charges were dealt with and the lawyer goes off record with no issues, the PB clerk selects Application Approved, and sets “Closed as” to Matter Complete.

If the file is being closed due to the client going missing/not maintaining contact, then the PB Clerk sets the Application Status to Application Approved, Closed as Client Abandoned, and Reason to “Client lost contact”

If the file is being closed due to the client firing the private bar lawyer, and the client will not be receiving a replacement, then the PB clerk sets the Application Status to Application Approved, Closed as Client Abandoned, and Reason to “Client Terminated Service”

The PB clerk then matches the printed paper accounts with the physical file folders. Most files will be in their sorted places in an open-files cabinet, but some may be elsewhere: on a desk, in the closed-files cabinet, boxed up, or in a payment batch.

Process Map – Receipt of Accounts – See Appendix 2

Future State: Receipt of Accounts

The future state involves the creation of a PB portal and the digitization of all PB transactions. The portal would allow the submission of ALL PB accounts online by use of a specific billing form that is fully error proofed. The portal would permit the upload and attachment of necessary documents. The accounts would automatically link to the appointments/vendor contracts and scope of services. Charges would be updated within the system by

allowing the legal directors to increase the scope of services being provided on request online by the solicitor. Manual paper processing of accounts on receipt would be eliminated increasing efficiency. The portal would enable data capture and automate reporting.

B. PROCESSING OF ACCOUNTS WITHIN TARIFF – SETTLEMENT (TAXATION)

Current State: Processing of Accounts within Tariff

Private bar clerks will compare the preparation time on the paper account with the scope of services and the tariff to determine whether it is within the hourly preparation allowed. Factors the PB clerk will consider include:

- ☐ Were there previous accounts on the file which used up some of the prep time?
- ☐ Was the lawyer granted extra time?
- ☐ Are there multiple separate trials which each require separate prep time?
 - Are the charges split cleanly between the separate trials?
 - Are the separate trials backed up by the time breakdowns?

If, after considering the above, the preparation time is within tariff, the PB clerk moves on to the following steps:

- Updates the travel spreadsheet accordingly if there is travel billed on an account
 - If the account is billing travel which we have reimbursed on a previous account, then remove the relevant travel from the account.
 - If travel entries do not seem to make sense or do not line up with other information, an inquiry might need to be sent to the lawyer.
- Checks for GST billed on disbursements – remove if there is any (Legal Aid is GST exempt)
 - If receipts are not provided for disbursements, the PB Clerk must request receipts from lawyer
- Ensures that any special disbursements such as translators, medical experts, etc. have been pre-approved with estimated costs.
- Reviews time breakdown
 - Checks for entries which seem strange (e.g., an entry for “email client” which took several hours)
 - Marks off any entries which are not covered by the tariff
 - Adds court entries and adjust court time on account to court time shown on time breakdown
- If there are entries which combine court and prep time, and this could influence the max prep time, then need to send a request to lawyer to resubmit time breakdown with the entries separated into court and prep
- Uses the court time, the travel time, and the total hours on the time breakdown to calculate the preparation time on the time breakdown. Compares this to account and adjusts accordingly.
- Ensures file closure fee is being used appropriately

Once this review is completed, the PB clerk will write the account code on the account, check that correct fee hourly rates are being used, and do one final overview. The account is then considered settled/taxed and the PB clerk initials the “Approved for Payment Field” of the paper account. The PB Clerk concludes by sending an email to the lawyer notifying her/him of any adjustments made to the account.

Process Map – Processing Accounts – See Appendix 2

Future State: Processing of Accounts within Tariff

All accounts within tariff are matched/settled and paid by the system automatically. Controls involve the random and periodic selection of accounts for post-payment examination.

C. PROCESSING OF ACCOUNTS – ADDITIONAL HOURS (SETTLEMENT/TAXATION)

Current State: Processing of accounts – additional hours

The processing of these ‘additional hours’ accounts is much the same as those within tariff, except for the following manual steps.

If on examination, the PB clerk determines that the account is not within tariff, then the clerk checks LAIN to determine whether additional hours have been approved. The private bar is required to obtain approval for additional hours prior to submitting an account over tariff. As noted earlier in this report, many accounts are submitted without the required approval for various reasons.

If information regarding additional hours ‘request and approval’ is not in LAIN, the PB clerk must search to determine where/whether this information exists, including:

- Reviewing Emails
- Asking coworkers
- Sending inquiries to lawyers

If no request or approval can be found, the PB clerk, under the oversight of the Finance Director, or the Finance Director, may approve the additional hours, if considered small (5-10hrs). If the additional hours are more than 10, the PB clerk will contact the Practice Management Counsel for direction regarding approval of the additional hours or reduction of the preparation time hours to tariff.

All the steps noted above regarding “within tariff” accounts are thereafter followed by the PB clerk.

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- ☐ If there is travel billed on an account, update the travel spreadsheet accordingly.
 - ☐ Check for GST being billed on disbursements – remove if there is any
 - ☐ If receipts are not provided for disbursements which necessitate them, then must request them from lawyer.
 - ☐ Ensure that any special disbursements such as translators, medical experts, etc. have been pre-approved with estimated costs.
 - ☐ Review time breakdown
 - ☐ Add court entries and adjust court time on account to court time shown on time breakdown
 - ☐ Ensure file closure fee is being used appropriately
 - ☐ Write account code on account
 - ☐ Check that correct hourly fee rates are being used
 - ☐ Do a final overview to ensure everything appears to be in order
 - ☐ Initial the Approved for payment field.
 - ☐ Send an email to the lawyer notifying them of any adjustments made to their account.

Process Map – Processing Accounts – See Appendix 2

Future State: Processing of accounts – additional hours

All accounts which exceed the preparation hour maximums are submitted online with a completed request for additional hours form. These accounts are “flagged” by the online system and placed on a work list for review and settlement by a new role entitled PB Services Director.

The additional hours form contains drop down menus with the criteria that will be used to assess the request, as well as brief text box to allow for any additional information the PB lawyer would like the decision-maker to consider. Forms will enable the capture of critical data and the ability to run comprehensive management reports. If the request is approved, the PB Services Director will increase the allowable hours in the system on the appointment contract and thereby settle the account for payment.

D. REQUEST FOR ADDITIONAL HOURS – EXTREMELY EXCEPTIONAL CIRCUMSTANCES

Current State: Request for additional hours

LAS asks the private bar to forward “additional time” requests to the Practice Management Counsel for review and decision-making ahead of spending the time and incurring costs. There is no standard regarding how much time is needed to process these requests, and often, requests are approved retroactively after time has been spent on the case. There is no specific form that is used for these requests; some do not contain the information needed by Practice Management Counsel to make decisions, resulting in delay. There is no one point of entry; the private bar will send email requests re. additional hours to LAS Head Office General Mailbox or to Practice management Counsel directly, or through mail and fax. The emails from LAS Head Office General Mailbox are moved to a PB Request Inbox. The PB clerk will manually transfer emails from the PB Request Inbox into LAIN.

The Practice Management Counsel will review and assess requests based on previous decisions, guided by “extremely exceptional circumstances” and ‘client of modest means’ frameworks. There are no clearly defined criteria on which the PB can make requests and Counsel make decisions. There is no data to support decision-making. All of this results in inconsistency in requests and decision-making, retroactive authorizations, as well as a tendency for LAS management to approve rather than deny additional hours.

When Practice Management Counsel approves additional hours, she sends an email to the PB Clerks who will add the email to LAIN. A new process introduced recently has begun to track the number of requests for additional hours and the number of hours approved in LAIN.

When the Practice Management Counsel denies or reduces additional hours requested, she will prepare and forward an email with her decision and an explanation to the PB lawyer with a copy to the PB Clerks.

Process Map – Processing Request for Additional Hours – See Appendix 2

Future State: Request for additional hours

Private bar lawyers request additional hours online through the LAS PB portal using a specific form with drop down features, including ‘extremely exceptional’ criteria, and error proofing. The request is submitted with accounts for approval after the services have been incurred. The data contained in the online ‘additional hours’ form should be “minable”, allowing LAS to monitor, manage and forecast costs based on additional hours by lawyer, type of case, and so on. The new positions entitled Private Bar Services Director reviews requests online and communicates decision and reasons to the lawyer through the portal.

E. PROCESSING OF PAYMENTS

Current State: Processing of Payments

Once approximately 30-60 accounts have been settled/taxed, the PB clerk begins the payment batch process. This process includes the following steps:

- Entering the data manually from each account into the Sage accounting system including
 - Document number
 - Private bar number
 - Client name
 - Account total
 - Account code
- Printing out a payment batch summary for the Director of Finance to review (before posting)
- Posting the payment batch

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- Printing cheques & matching cheques with accounts
 - Printing a posting summary and waiting for batch review and sign off on by at least two managers
 - Sending out the EFT payments and printing off EFT summaries for each account (matching and filing with accounts)
 - Mailing cheques to vendors who refuse to use EFT

Once the batch payment process is completed, the PB clerks will update the private bar spreadsheet manually by:

- Adding payment batch totals for each account code (criminal, civil, youth)
 - Entering necessary data from each account into spreadsheet
 - Account total
 - Disbursements
 - Absence
 - Travel disbursements
 - If the account is final and the file is being closed, clear accrual field, copy amount in current year payment field into final field, add relevant dates
 - If the account is interim, add an * to column M
- Once every account has been entered, the spreadsheet should be in balance, and the physical file folders for the accounts are filed away. There are reconciliations and check balances built into the system; if there is an indication of an out-of-balance amount, then the correction needs to be found.

Process Map – Processing of Payments – See Appendix 2

Future State: Processing of Payments

A Private Bar Services online portal is integrated with LAS's payment system. This integration enables the elimination or substantial reduction in the manual processing of private bar payments. Legal Aid Manitoba's PBOonline system, as an example, integrates front end account submission and back-end payment processing.

F. TIME AND COST TO SETTLE ACCOUNTS

Current State: Time and Cost to Settle PB Accounts

Some private bar lawyers expressed dissatisfaction with the delay in payments and obtaining responses to requests for additional hours. Staff do not utilize activity-based costing on each case; there is no system to track the amount of time to settle an account to determine the validity of estimates below. Every account or request for additional hours is reviewed manually by a Private bar clerk and Practice Management Counsel respectively. The extent of the issue of delay is difficult to assess.

Anecdotally, the amount of time spent by a PB Clerk on an account is approximately 10-30 minutes depending on information available, complexity of the request and degree to which the panel lawyer

has explained the issue. Staff walked through the process and estimated that an account would likely take 10 minutes if all information was available, and the PB Clerk had the authority to make the decision. In cases where the account was above tariff and additional hours was requested but not yet approved, time to process increased substantially.

Private bar members who work for LAS commented during interviews on delays of a few months for payment and responses to requests for additional hours. In May 2022, LAS had an inventory of 230 accounts awaiting processing (dated February to May 2022), and a minimum of 44 duty counsel accounts.

Some of the data needed to determine time and cost of PB account processing includes:

- ☐ Number of accounts submitted within tariff
- ☐ Time spent processing accounts within tariff
- ☐ Number of accounts submitted with additional hours requested
- ☐ Time spent processing additional hours accounts
- ☐ Cost of resource processing accounts

LAS does not track date of account received and as noted, time to process. The age of account inventory (how many accounts 1-15 days old, how many 15-30, 30-60, etc.) is unknown and can only be determined by manual counts.

Takt time is the rate at which services - account settlement - should be completed to meet the customer (private bar) demand. The value, in conjunction with current account settlement rates, is used to analyze process loads, bottlenecks, and excess capacity. Unfortunately, LAS does not collect sufficient data for an accurate TAKT Time assessment. To do so would require the following:

Area	Data
Files completed per month	?
Staff time to complete file	?
Staff time available to process files	?
Customer Demand (payment in 15-30 days)	?

With this data and TAKT Time Assessment, LAS would be able to determine the following:

1. The number of minutes required by PB Clerks to complete an account, plus the number of accounts completed by PB Clerks to address the monthly private bar account demand and make payments within 15-30 days.
2. The number of minutes required by PB Clerks to address any inventory and meet a 15-30 day turnaround; productivity (staff settlement of accounts) would need to increase to eliminate inventory.

Current State: Time and Cost to Settle PB Accounts

Moving to an online portal will significantly reduce time and cost to settle accounts. It will enable better data capture, analysis, and more evidenced based decision-making regarding time, resourcing and cost to settle accounts to meet private bar expectations.

Elimination of processing steps and delays due to inadequate information through improved policies, procedures, systems, and use of technology (online portal) will allow staff to turnaround accounts in tune with customer demand (private bar account payments within 15-30 days) and at less cost. The first step is to recognize the wastes and eliminate them, creating continuous flow of process activities from start to end. Of most importance to LAS is the elimination of errors at the front end and improved decision making with delegated authority to reduce the number of handoffs through the process. With respect to the number of requests for additional hours, a move away from the existing approach with prior authorization for “additional hours” to one that is a request with account submission for extra hours based upon extremely exceptional circumstances. A move in this direction may reduce private bar demand and approval significantly – some hours are currently approved retroactively as the organization has been unable to process requests in a timely way and the lawyer has incurred time and cost. This change would be coupled with mid and big case management policies and process.

NON-VALUE ADDED ACTIVITIES:WASTE

Waste or non-value-added activity is defined as any process or step that does not add value from the customer or business perspective. As an example, the private bar values speed in processing accounts, requests, and payments within 15 days. Many of the activities engaged by staff currently do not add value to achieving this end. In fact, the activities make achievement of a 15-30 day turnaround on all accounts and requests highly unlikely.

The process maps and discussion above identify key wastes and recommend changes to increase efficiency and cost-effectiveness to meet private bar expectations. The table below captures categories of waste (in LEAN referred to as DOWNTIME) to assist the organization in understanding why change is necessary:

TYPES OF WASTE¹	DEFINITION	PB ACCOUNT PROCESSING EXAMPLES
(D) Defects / Process Errors	Defects, errors, skipped process steps that cause rework.	Missing or incomplete account or additional hours request information Lost paperwork or documents

¹ WSCS Consulting, <https://www.wscsconsulting.com/>

(O) Over-Production	Producing more, sooner, or faster of one component than is required for next step.	Excessive paperwork trails, checklists, spreadsheets, etc.
(W) Waiting	Time or interruption in the process where staff are waiting for something to happen before doing the next step. Process idle time.	Waiting for information, paperwork, request approvals System downtime – Duty Counsel entries Searching for needed information in email, Word folders
(N) Non-Utilized Talent	Underutilizing people's knowledge and creativity	Duplication of effort, manual PB clerk activity
(T) Transportation	Unnecessary handling or transportation, multiple handling. Steps where work is moved from one role to another, one location to another, etc. Office design and layout does not flow of decision making.	Processing of additional hours – PC Clerks, Practice Management Counsel Paper-based versus electronic transfer
(I) Inventory	Producing, holding unnecessary inventory or materials. More inventory than is required to meet 1 or 2 days of work.	Stacks of accounts sitting idle Excessive backlog or work to be processed Too much paper to be handled, processed
(M) Motion	Unnecessary movement to access information, files, materials, to equipment to complete a task.	Walking to pick up documents and deliver paperwork or accessing needed tools (eg. printer) Excessive walking to and from printers, files etc. Time chasing information and data Lack of proximity of staff working in teams (PB clerks, Practice Management counsel, Director Finance)

(E) Extra-Processing / Redundancy	Activity that doesn't add value or transform the product/service. Steps that repeat another step in the process – multiple roles doing similar tasks. Checking work of others already completed for accuracy or completeness.	Unnecessary steps and handoffs between PB Clerks, Practice Management Counsel, Director Finance Restacking or sorting files Re-entering data Making extra paper copies
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Duty Counsel and ADR Processes

Time limitations did not permit a full process review of Duty Counsel and ADR processes. Below is a summary which will assist the organization in its future review of this important service activity. What is clear is that many of the same process issues identified with private bar appointment billing are occurring in Duty Counsel and ADR. And some of the same solutions can be used to improve efficiency and effectiveness.

Duty Counsel

The Director of Operations and Legal Director determine the need for a duty counsel contract (long term staff vacancy, increasing workload) bearing in mind the Collective Agreement. The Director of Operations and Legal Director will try to find a private bar lawyer to assist. There are currently 7 duty counsel contracts with various private bar lawyers/firms.

The Operations Director will prepare the duty counsel contract using a paper-based template. The Area Office will provide the list of files to the private bar lawyer who completes the work requested and then sends a report to the Area Office. The Area Office then closes off the contract in LAIN without adding the time spent. There are currently about 10 duty counsel contracts with the private bar.

Schedule A – outlines the billing requirements. The billing requirements are unclear to both private bar and management/staff. The private bar duty counsel is required to submit monthly billing on closed files, identifying what work was done. The accounts are submitted manually by fax or mail, and the timelines for submitting DC accounts are often not respected. The PB Clerks will put the printed account in a file folder until staff time is available to process. PB Clerks manually input time into LAIN, logging in as the lawyer using the LSN number. Each manual entry takes a lot of time as the system spins prior to saving or providing access to the client account. One big DC account can take up to 1.5 hours to process. As noted above, the

Consultant recommends that Legal Aid Saskatchewan require lawyers to use an online portal and to submit duty counsel accounts using an online form.

ADR (Authorized Disbursement Record)

Authorized Disbursement Record (ADR) services occur when a private bar lawyer covers one docket court appearance for a client. Legal Directors will identify the need for coverage of a court point in the eventuality of staff sickness or vacancy and will seek approval of Head Office, Director of Operations. The Director of Operations will email her approval. Once approved, the Legal Director will email the PB clerk regarding the ADR arrangement and the PB Clerk will file approval in a subfolder and set up an accrual spreadsheet using Schedule B3 (2). Once the service has been completed, the ADR PB lawyer will give the Area Office a report regarding services rendered.

The ADR private bar provider will submit an invoice by fax or email – no time sheet is needed, simply a list of clients served, and court attended. There is a block fee of \$115 per 8 clients, with a max of \$920 per day. The PB clerks will code the invoice and manually enter it into the Sage accounting system for payment. Spreadsheets are used to track ADRs. Sometimes, ADR invoices are included with duty counsel bills. There is confusion among the bar regarding when to bill as ADR and when as DC. The Consultant recommends simplifying billing and using the Duty Counsel policy and process for ADR services (i.e., eliminating this subset of services which can be captured under duty counsel).

4.0 Technology

Rec #	Findings	Recommendations
4.1	LAS has a custom developed software called LAIN which is currently used in a limited way to capture matters such as private bar appointments. LAIN maybe a solution to private bar billing and payments. Legal Aid Manitoba has a custom-built private bar portal for billing and payments.	Develop a Request for Quote/Request for Proposal and select a proponent to assess the business and functional requirements related to private bar billing. Identify and implement a technological solution.
4.2	LAS will need adequate resources to fund a successful private bar portal project.	Request government funding to design, develop and implement a private bar portal.
4.3	The manual distribution and handling of paper private bar accounts and requests does not allow for effective work management tracking, monitoring, and reporting. It can also lead to missed or incomplete activity on accounts or requests.	Develop and implement electronic WorkLists for staff with appropriate training for more effective and efficient assignment of work and performance and service management tracking and reporting.

Rec #	Findings	Recommendations
4.4	Most correspondence from the private bar is currently received by fax. Much of this correspondence is stored in shared LAS fax drives that are difficult to search.	Ensure the private bar portal provides functionality for the upload of all correspondence associated with client files.

4.5	Files related to account processing and requests are stored in different locations (e.g., LAIN, email folders), requiring staff to spend time looking for information, sometimes without the knowledge of its existence. There is a risk that staff may make decisions without full information.	Ensure all private bar account and request documents are attached to the online accounts. Eliminate the use of shared drives for this purpose. Provide for document attachments for all types of applications and correspondence in the online portal.
4.6	Manual processing limits the capture of data required to manage workload, develop policy and processes, monitor, and forecast finances. The Consultant was unable to complete some process analyses as decision reasons, times and decision maker cannot be determined without substantial effort and time.	Undertake a Data Collection and Reporting Study to ascertain the data fields required to meet policy, procedure and financial reporting requirements contained in these recommendations.
4.7	The lack of online submission of private bar accounts and requests, resulting in manual processing increases workload and possibility of error and omission.	Develop online application forms (built into the database) for all private bar accounts and requests. Error proof these forms and ensure that only online applications are accepted following adequate orientation and training to new process.
4.8	The billing process does not currently connect in one continuous flow with the payment process. Many elements of both are manual and paper based.	Identify integration of the billing and payment processes as a business and functional requirement in the design of the online private bar portal to increase efficiency.

Current state: Technology

LAS has an IT Plan 2021-25 prepared by an external consultant for the Department of Finance/ IT and approved by the CEO. Some of the key goals include :

1. *A responsive and innovative IT infrastructure and service that supports its administrative and legal teams.*
2. *The integration and evolution of the document management systems that support lawyers and staff.*
3. *Greater operational efficiencies and business processes through effective implementation of technology.*

Under Goal 2 above are the following activities:

- a) *Continue using LAIN as the main repository for managed documents in LAS.*

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- b) Work with ADS to create and test LAIN system on a separate server. This will facilitate testing of updates to OS, SQL, and new LAIN code updates. This could also be used in disaster recovery testing of the LAIN service.*

LAIN is a customized web-based application currently used by LAS for limited purposes related to document management, including the private bar appointment or 'farm-out' process. LAS provided the Consultant with a User Manual currently undergoing edits and revisions. The application has several functional tabs, including Calendar, Requests, Shared Documents, News, Text and Email.

The Operations Director indicates that LAIN is capable of further customizations and enhancements that may be able to reduce/eliminate manual processing of private bar accounts. Areas for process improvement would include an increase in online services, timely management of accounts through worklists, timely and accurate handling of extremely exceptional circumstances requests, elimination of non-value-added activity (paper processing), increased efficiencies, and better reporting.

Future State: Technology

LAS should undertake a comprehensive review to determine a technological solution to support the private bar billing process, a solution that will eliminate paper and manual activity. The review would start with an assessment of all required/desired business and functional requirements based upon priorities starting with the areas that will have the biggest impact (elimination of non-value-added manual activities and maintaining scrutiny of riskiest transactions.) LAS should develop a Request for Quote/Request for Proposal and select a proponent to assess the business and functional requirements, identify, and implement a technological solution. LAS should also develop a request for funding to secure necessary resources to deliver a successful project.

The technology would provide a portal for the private bar to access with a menu of activity, including submission of accounts, submission of requests for additional hours, additional charge requests, disbursement requests, etc.. The portal would allow the private bar to see all files assigned to their law firms and the status of various requests and payments, including notices regarding settlements. Accounts within tariff would be automatically matched (settled) and paid by the system. Those with requests for additional hours would be 'work listed' for PB clerk review, increasing opportunity for tracking monitoring and reporting on performance. An online portal with digitization of activities and data capture, would improve reporting, essential for better decision-making, forecasting and accountability related to "extremely exceptional circumstances" and finances, among others.

During this process change, LAS could explore opportunities to integrate the private bar billing portal with LAS' payment system (Sage). This would result in additional efficiency, better meeting private bar expectations regarding time to pay.

5.0 Accountability

Rec #	Findings	Recommendations
5.1	There is no clear line of accountability for private bar services, including addressing matters related to panel management and billing; accountability is fragmented across the organization.	Align roles and responsibilities with the new organization design, policies, and procedures to clarify and strengthen accountability for private bar services. Engage in a RACI (Responsible, Accountable, Consulted, Informed) exercise with legal directors, practice management counsel, finance and operations directors.
5.2	There is no formal delegation of authority to PB Clerks regarding approval of additional hours to ensure that staff understand their accountability and responsibility.	Develop a delegation of authority instrument that identifies the person delegating the authority, the financial limits for PB Clerks making decisions on additional hours, and conditions of the delegation.
5.3	Budgetary accountability for private bar services rests with Head Office although area offices make decisions to appoint private bar lawyers based on conflict of interest and staff capacity.	Review private bar services budgetary accountability to determine whether area offices ought to assume some budgetary responsibilities related to private bar services. Consider budgetary accountability in the regional office model being piloted.

Current State: Lines of accountability

Private bar services begin with an Area Office appointment ('farm-out'), duty counsel or ADR assignment. The private bar carries out work on LAS' behalf and then submits accounts to head office where private bar clerks settle and process payments, sometimes for additional hours without delegated authority.

When issues arise regarding billing, these appear to be addressed by the private bar clerks who contact the firm or lawyer involved, whether it be billing above tariff with no additional hours approved or submitting an incomplete account.

The Area Office legal directors do not actively manage their roster of private bar lawyers, including addressing issues related to payments or quality of client service. Ultimately, the legal directors are accountable for their panel and the lawyers appointed to serve clients. The legal directors understand best the local situation – cases, clients, courts, lawyers involved.

Likewise, regarding matters such as change of solicitor requests, local legal directors are likely in a better position than Head Office, to assess requests.

The legal directors have no accountability for private bar budgets, As noted elsewhere in this report, the budgets for private bar services can be volatile because private bar services are sometimes needed due to legal staff/office conflicts, a factor outside the control of legal directors. In addition to conflicts, however, legal directors will farm out matters for reasons such as staff shortages, staff vacations, and lack of expertise related to highly complex files. The management of farm-outs for these reasons would be impacted were the legal directors given some budgetary accountability.

Future State: Lines of accountability

Engaging in a RACI exercise (Responsible, Accountable, Consulted, Informed) with everyone in the organization who touches private bar services (eg., legal directors, practice management counsel, finance and operations directors, PB clerks), will provide the opportunity to clarify roles and responsibilities.

Delegating authority to the PB clerks to approve additional hours requested, including the financial limits for PB Clerks making decisions on additional hours, and conditions of the delegation would reduce risk and ensure consistent and appropriate decision-making.

LAS is currently piloting a regional office model which may provide an opportunity to increase accountability at the regional level for budgetary and panel management. Although some of these comments can be considered outside the scope of this engagement focused on private bar billing, they arise in the context of who ought to be accountable/responsible for matters related to billing and are part of the continuum of one private bar process: panel application, appointments, services, performance, billing, and payments.

6.0 Performance Measurement, Reporting

Rec #	Findings	Recommendations
6.1	Lack of data collection related to billings and payments is contributing to some of the challenges faced by LAS. Time consuming manual effort is needed to ascertain the status of an account in the payment process, or the number of additional hours requested and approved.	Develop a data collection plan based upon data required for management decisions, including policy and process improvements. This should include financial and non-financial information (e.g., tracking of ‘extremely exceptional circumstances’ decisions by type, decision maker, reasons, and amount)
6.2	There is little measurement of staff performance related to billing and payments activity.	Develop and implement a staff performance measurement plan. Time tracking and assignment of accounts files could be developed in conjunction with the worklist project to manage staff performance.
6.3	There are no private bar service standards.	Develop some key service standards based on private bar expectations (e.g. 15 days to payment of non-complex, ‘within tariff’ accounts). Measure and monitor delivery of services based on these standards.

Performance measurement and reporting are limited due to manual systems and use of excel spreadsheets. A move to online billing, payments and worklists would enable the capture and analysis of key data essential for performance measurement and management reporting.

Performance Measurement

Management is unable to adequately measure staff or departmental performance based upon data currently collected. Many data elements required to measure performance are not tracked in an IT system or manually. Staff performance levels are individual in nature and vary dependent on that individual. There are no specific performance targets. Staff agree that accounts can be processed on average every 10 minutes for straightforward “within tariff” accounts, and 30 minutes or more for accounts that exceed the tariff. Currently, the system

does not track decisions, reasons, cycle time, lead time, staff role in decisions, whether approved or denied. The Consultant was unable to determine through data-based analysis, the time taken to make decisions and some of the elements that cause delays in decisions. Developing a data collection plan and associated technologies to support that data collection is imperative to manage staff performance and continuously improve processes and results.

Some performance standards LAS might consider include:

Activity	Responsibility	Indicator	Service Level Commitment	Recommendation (Future State)
Accounts	Private bar clerks	Payment	All standard accounts paid within 15 days of receipt	All standard accounts paid by system within 15 days
Emailed additional hours request	Private Bar Services Director	Response	All requests through online portal submitted with account responded to within 30 days of receipt	No emails – requests submitted online with account – account paid within 30 days
Correspondence	Private Bar Services Director	Response	All correspondence replied to within two business days of receipt	All correspondence online and responded to within two (2) business days

Telephone Inquiries	All Staff	Return Call	All calls returned within 24hours	All calls returned within 24hours
Complaints	Private Bar Services Director	Response decision	(i) Acknowledgement or resolution communicated to solicitor within 5 business days of receipt of complaint; (ii) resolution within 30 days of receipt	(i) Acknowledgement or resolution communicated to solicitor within 5 business days of receipt of complaint; (ii) resolution within 30 days of receipt

The standards are meant to capture some of the work undertaken by the private bar clerks and Practice Management Counsel. Given the data currently collected, it would be difficult to measure and monitor these standards without significant manual work. These standards need to be included in the IT system worklists project to enable management reporting.

Reporting

Current management reporting prepared by Finance provides important and useful financial, panel and service information.

PRIVATE BAR SERVICES							
# of Private Bar Lawyers Accepting Referrals						5 year average including Covid year 20/21	5 year average excluding Covid year 20/21
	2016/17	2017/18	2018/19	2020/21	2021/22		
PB Accepting Referrals	106	126	143	143	202	7.93%	7.64%
Law Society Practicing Members	1836	1894	1902	1982	2087		
% of members	5.77%	6.65%	7.52%	7.21%	9.68%		
Cases Completed by PB & \$ Amount, per annual report						2186	2146
Cases Completed PB	1818	1883	2307	2017	2136		
Paid to PB, includes Brydges	\$4,816,299	\$5,125,815	\$5,789,049	\$5,000,499	\$7,118,156		
# of cases completed by SLAC staff	13041	13722	11836	11253	9717		
Total SLAC Expenditures, including transfer of FA	\$25,287,814	\$25,448,139	\$26,378,386	\$25,399,809	\$28,732,563		
% of completed cases of PB: to total cases completed by SLAC	12.24%	12.07%	16.31%	15.20%	18.02%		
\$ of amount paid to PB: total legal aid expenditures	19.05%	20.14%	21.95%	19.69%	24.77%		

The management reporting chart below captures only criminal accounts paid. LAS also reports on civil and youth private bar services in the same way.

SASKATCHEWAN LEGAL AID COMMISSION			
PRIVATE BAR COSTS			
As at March 31 2022			
ACCOUNTS PAID IN 2021/2022			
		CRIMINAL 2240	
		FILES	\$ AMOUNT
A. FOR YEARS PRIOR TO CURRENT	931	FINAL	1,864,315.79
	104	INTERIM	328,769.34
B. FOR CURRENT YEAR	524	FINAL	714,801.73
	77	INTERIM	172,647.57
C. MISCELLANEOUS (AGENT)	157		159,582.58
TOTAL PAYMENTS			3,240,117.01
ACCOUNTS OUTSTANDING			
C. AGENT ACCRUAL			68,446.40
A. FOR YEARS PRIOR TO CURRENT	338		1,124,669.93
B. CURRENT FISCAL YEAR	1,078		2,110,458.37
TOTAL OUTSTANDING			3,303,574.70
TOTAL PAYMENTS AND OUTSTANDING			6,543,691.71
LESS PRIOR YEAR ACCRUAL			2,858,239.34
BALANCE PER GENERAL LEDGER			3,685,452.37
Big Case adjustments adjusted at Y/E			(135,831.32)
			3,549,621.05

LAS does not track enough data to effectively analyze and report on ‘extremely exceptional circumstances’ requests. Requests are being used to address the increasing complexity of files and inadequacy of the tariff. Questions such as areas of law and proceedings with the highest occurrence of requests could be answered, as well as the highest cost per case, with better data. A further analysis showing the degree to which these requests were approved or denied could provide information to determine areas where the tariff hours may be too low and where LAS should move to budget setting mid-case and big-case management processes, with budgets set based on actual cost.

If the system tracked ‘exceptional circumstances’ data, LAS would be able to understand better the elements that staff should use in making decisions to allow or deny additional hours. By capturing this data, LAS and panel members will be able to assess what makes a case ‘extremely exceptional’ as opposed to the norm and provide additional guidance to minimize the number of requests for additional hours and/or tariff changes. By making some policy changes and tracking of decision reasons, LAS will be in a better position to provide guidance to staff and panel members as well as government.

For each case, exceptional reasons should be tracked to determine what is the norm as opposed to exceptional based upon statistical analysis. For example, length of trial impacts the preparation time of the case. The amount of hearing hours would be captured in the system and thereafter, analyzed. A significance level should be established for each element based upon these statistics to guide lawyers with respect to the exceptional nature of the case. If the normal hearing hours for a particular proceeding are 4 hours with an average of 5 hours, exceptional circumstances may be 7 hours based upon the data. Similarly, results of the case should include categories to assess the situations that are exceptional.

Below is a list of management reports LAS should consider as it moves to online billing. These reports would be included in a business requirements document to inform development of an appropriate platform and data fields. This list was provided by Legal Aid Manitoba which uses a private bar portal - PBOOnline.

Management Reports	M/E	Y/E
Fees and Disbursements: Fees, disbursements, reimbursements by legal matter type. One tab on spreadsheet is generated for each matter type (civil, criminal and youth).	Y	Y
Daily Legal Accounts Listing: Lists private bar accounts submitted for payment. This is the tracking system used by accounts payable to ensure accounts are processed in the order that they are submitted and that pending accounts (accounts under review) are not missed. Run every day by the Legal Accounts Department	N	N

Firm Payment: Total payments by firm	N	Y
Lawyer Payment: Total payments by lawyer	N	Y
Monthly Accounting: Month to date and year to date fees, disbursements, and total broken down by area and then matter type (including duty counsel).	Y	Y
Tracked Private Bar Disbursement Breakdown: Tallies tracked disbursements on private bar invoices by matter type.	N	Y
Disbursement Costs by Office: Staff disbursement costs by disbursement type broken down by office.	N	Y
Expired Certificates: Lists certificates issued before a given date which are not closed. LAM can terminate a certificate after six years if the lawyer has not closed it within that time.	N	Y
Private Bar High Cost Certificates: Lists private bar certificates over \$5,000. Certificates are put into groups by cost range and matter type. Number of certificates under \$5,000 are also shown.	N	Y
Enhanced Fees: Total of legal matter fees paid above and beyond the tariff broken down by month, matter type and type of fee. Enhanced fees are paid where the tariff does not sufficiently compensate lawyers for the actual work on a legal matter.	N	Y

7.0 Private Bar Satisfaction

Rec #	Findings	Recommendations
7.1	<p>LAS does not survey its roster of private bar lawyers to determine their level of satisfaction. Consultation with the private bar would help identify the critical to quality indicators from the lawyer's perspective regarding billing and payments.</p> <p>Roster satisfaction is important to maintain and increase the supply of private bar lawyers willing to do legal aid work and serve vulnerable clients.</p>	<p>Undertake an annual survey of LAS roster of private bar lawyers to determine their expectations and requirements regarding billing and payments. Measure improvement effectiveness based on concrete actions and impact on private bar satisfaction.</p> <p>Value is defined by the private bar, and services ought to be consistently delivered per private bar expectations when at all possible.</p>
7.2	<p>LAS has overall a very committed roster of private bar lawyers who often work tirelessly for clients at a low rate of pay with inadequate tariff hours.</p>	<p>Develop a simple, effective private bar recognition initiative, in consultation with the bar, to acknowledge the contribution of the roster to access to justice in Saskatchewan.</p>
7.3	<p>The private bar receives no formal orientation or self-help tools such as videos, regarding working with LAS.</p>	<p>Provide all private bar lawyers on the LAS roster with an orientation to policies and procedures, including billing. Provide access to self-help tools and a Call Centre for online billing support, if an online platform is implemented.</p>
7.4	<p>There is no single source of ongoing communication to support the private bar roster in its working relationship with LAS</p>	<p>Publish a monthly electronic Better Billing Bulletin to support the private bar with billing tips and information aimed at continuous improvement of process.</p>
7.5	<p>The private bar lawyers on the LAS roster do not have a clear sense of who to contact for what.</p>	<p>Develop a simple contact sheet for the private bar lawyers on the roster, identifying persons responsible for private bar services.</p>

Current State: Surveys, Recognition, Orientation, Communication

The number of lawyers accepting appointments is growing, and the percentage of legal services delivered by the private bar is increasing. This trend is likely to continue over the next few years due to organizational and environmental factors such as client conflicts, staff capacity, and increasing societal and economic inequities which will result in deeper poverty and concomitant criminal activity and family disruption. The private bar is a key component of delivering access to justice in Saskatchewan.

The chart below shows the increasing trend of the number of private bar members accepting LAS referrals. The number increased over five years (2016-2022) from 106 to 202. The most significant increase was during Covid, 2020-21.

# of Private Bar Lawyers Accepting Referrals					
	2016/17	2017/18	2018/19	2020/21	2021/22
PB Accepting Referrals	106	126	143	143	202
Law Society Practicing Members	1836	1894	1902	1982	2087
% of members	5.77%	6.65%	7.52%	7.21%	9.68%

The chart below shows an increase in cases being referred out and completed by the private bar; over the last five years (2016-2022) cases have increased from 1,818, to 2,136. There has been a corresponding decrease in the number of cases completed by Saskatchewan Legal Aid Commission (SLAC) staff from 13,041 to 9,717. The most significant decrease occurred during Covid, 2020-21.

	2016/17	2017/18	2018/19	2020/21	2021/22
Cases Completed by PB & \$ Amount, per annual report					
Cases Completed PB	1818	1883	2307	2017	2136
Paid to PB, includes Brydges	\$4,816,299	\$5,125,815	\$5,789,049	\$5,000,499	\$7,118,156
# of cases completed by SLAC staff	13041	13722	11836	11253	9717
Total SLAC Expenditures, including transfer of FA	\$25,287,814	\$25,448,139	\$26,378,386	\$25,399,809	\$28,732,563
% of completed cases of PB: to total cases completed by SLAC	12.24%	12.07%	16.31%	15.20%	18.02%
\$ of amount paid to PB: total legal aid expenditures	19.05%	20.14%	21.95%	19.69%	24.77%

The data provided should be interpreted cautiously as Legal Aid Saskatchewan was impacted, like every other legal aid plan, by Covid. It may be that LAS staff absences/vacancies that increased reliance on the private bar, were driven by Covid illness. It also appears as if LAS is having difficulty recruiting staff lawyers for various reasons – LAS is not seen as an employer of choice, and its salary and benefits may not be competitive in today's tight labour market.

LAS has not conducted a lawyer survey recently. The voice of the customer, in this case, the private bar, is captured anecdotally from private bar complaint emails and calls. It is difficult to understand customer expectations without undertaking a formal private bar survey. Ongoing discussions with lawyer associations to gain an understanding of any LAS issues being experienced by the bar would also assist in identifying expectations.

The Consultant interviewed 7 members of the private bar. A summary of feedback is captured below.

Additional hours requests take too long to approve	Account payments take too long	Inadequate communication regarding taxed accounts	Tariff unreasonable and unclear – prep time, bail, charter applications	Need for complex case budgets
Interim accounts policy unfair	Scope of appointments unclear and narrow	Inconsistency of application of rules	Information, orientation, training needed	Ease of access to staff when needed
What is required on billing form, challenges with excel	Appointments, duty counsel, ADR confusing	Confident in getting paid	Proud to play a role in LAS access to justice mission	Good working relationship with LAS

LAS contracts with private bar lawyers on a case-by-case basis to handle files which the Area Office is unable to handle due to staff-client conflicts, inadequate staff capacity due to short-term leaves (i.e., sickness, vacation), and inadequate competence related to complex files (i.e. murder).

It is important to ensure that the private bar lawyers are satisfied with their dealings with LAS. A decrease in the number of lawyers willing to work for LAS will make it difficult for LAS to serve clients in a timely manner. In some communities, it is challenging to find private bar lawyers willing to accept LAS family files. Demand for services is beginning to outstrip staff capacity in some regions.

Although the data indicates an increase in the number of private bar lawyers on the LAS roster, and the number of LAS cases being handled by the private bar, this increase, unless process matters are addressed, is likely to exacerbate some of the challenges currently being experienced, including dissatisfaction with time to pay and response to additional hours requests. This dissatisfaction could impact the supply of private bar lawyers willing to work with LAS. Any impact on the supply of private bar could result in justice delays for clients because of adjournments and a backlogged court system.

Future State: Surveys, Recognition, Orientation, Communication

The critical to quality factors from the private bar perspective in the billing and payment process would likely include the following, based on annual surveying. All these elements are addressed in this report.

- ☐ Design of process based upon private bar requirements
- ☐ Simplified instruction, policies, procedures, and documentation
- ☐ Reduction in cycle time for payments
- ☐ Reduction of process time variation
- ☐ Reduction of decision variation
- ☐ Reduction in number of requests for additional hours
- ☐ Minimal account touch times
- ☐ Reduction in various forms of waste (e.g. errors, rework, delays, waiting, underutilized talent, inventory)
- ☐ Improved understanding of extremely exceptional circumstances policy and decisions
- ☐ Timely response to private bar questions

An annual recognition of the private bar lawyers who deliver services for Legal Aid Saskatchewan and its clients will serve to acknowledge the hard work and commitment of these individuals to the vision and mission of LAS.

Orientation of private bar lawyers to the policies, processes and systems of LAS, together with expectations regarding compliance and quality, will help reduce errors and omissions in billing

submissions, for example, and build a stronger relationship on both sides based on efficiency and effectiveness.

And ongoing monthly communications regarding best practice billing will lay the foundation for continuous improvement.

Implementation Roadmap

The Consultant has suggested below a high-level path for implementing the Report recommendations over the next two years:

Key Area	2022	2023
1.0 Organization & People	<ul style="list-style-type: none"> <input type="checkbox"/> Create Private Bar (PB) Services Department <input type="checkbox"/> Review/revise job descriptions 	<ul style="list-style-type: none"> <input type="checkbox"/> Consolidate PB services functions <input type="checkbox"/> Train and develop PB staff
2.0 Policies	<ul style="list-style-type: none"> <input type="checkbox"/> Review, revise and consolidate PB policies with PB input (e.g., additional hours) <input type="checkbox"/> Develop big case management policy 	<ul style="list-style-type: none"> <input type="checkbox"/> Implement additional hours policy <input type="checkbox"/> Implement big case management policy
3.0 Processes	<ul style="list-style-type: none"> <input type="checkbox"/> Standardize all PB processes (forms, point of contact) 	<ul style="list-style-type: none"> <input type="checkbox"/> Eliminate all manual, paper PB services and processes by use of technology <input type="checkbox"/> Integrate PB online platform with LAS payment systems (Sage)
4.0 Technology	<ul style="list-style-type: none"> <input type="checkbox"/> Secure resources to develop PB online platform <input type="checkbox"/> Launch IT RFP 	<ul style="list-style-type: none"> <input type="checkbox"/> Develop and implement PB online platform <input type="checkbox"/> Develop and implement staff worklists
5.0 Accountability	<ul style="list-style-type: none"> <input type="checkbox"/> Align PB roles and responsibilities with new org design (RACI) <input type="checkbox"/> Delegate limited authority to PB clerks re. approving additional hours 	
6.0 Performance, Measurement	<ul style="list-style-type: none"> <input type="checkbox"/> Develop key PB service standards and PB staff performance measures <input type="checkbox"/> Develop data collection plan 	<ul style="list-style-type: none"> <input type="checkbox"/> Implement and communicate service standards <input type="checkbox"/> Implement staff performance measures <input type="checkbox"/> Produce reports based on data collection plan
7.0 Private Bar Satisfaction	<ul style="list-style-type: none"> <input type="checkbox"/> Engage PB service providers in PB service changes 	<ul style="list-style-type: none"> <input type="checkbox"/> Provide orientation to PB service providers on policy and online process <input type="checkbox"/> Survey PB service providers annually

Benchmarking Analysis

Benchmarking compares LAS' current billing, settlement, and payment processes with other legal aid plans. Using this information, LAS can drive improvement of its processing performance. The Consultant interviewed management of Legal Aid Manitoba (LAM) and Legal Aid Nova Scotia (LANS), two plans similar in size to LAS, as well as Legal Aid Ontario (LAO).

Legal Aid Manitoba (LAM)

Manitoba uses a mixed delivery system. Roughly half of legal cases are handled by lawyers on staff at LAM, and the other half are handled by private bar lawyers who are paid a fee for each case.

PBOnline is Legal Aid Manitoba's web service for private bar lawyers to sign certificates, receive correspondence, documents and client updates, request authorizations and submit statements of account. All private bar lawyers active on the Legal Aid Manitoba panel must use PBOnline. The website contains instructional videos regarding how to use the platform, with several modules. Training Modules include: 1 How to request an authorization, and 2. Online statement of accounts. There is also a HelpDesk to support users.

LAM has 235 active private bar lawyers on its roster and receives 24,000 ?? invoices per year. The accounts are processed by 4 payables clerks and one supervisor in the Finance Department. In Manitoba, clients have choice of counsel. If a client does not select a private bar lawyer, the client is routed to LAM's staff offices. Most transactions are online, using LAMAS (Legal Aid Manitoba Application System), including certificate issuance, request for additional authorizations, additional hours. Accounts within tariff are matched and paid by the system. Discretionary requests are submitted online with accounts for payment after services rendered, are identified by the system, and forwarded to a discretion increase committee as a task on a worklist. Once a decision is made, the account is sent back to the payables' clerks for payment. A standard bill within tariff is paid within 14 days by the system.

Management Reports are generated by LAMAS. Below is a list of the kinds of reports that are produced for management.

MANAGEMENT REPORTS - LAMAS	M/E	Y/E
Forecast Contributions: Total client contribution certificates closed: costs, number closed and number issued broken down by payment type, matter type and fiscal year.	Y	N
Private Bar Duty Counsel: Number of private bar DC assists by region, circuit location and matter type. Includes costs and average cost per assist.	Y	Y

Fees and Disbursements: Fees, disbursements, reimbursements by legal matter type. One tab on spreadsheet is generated for each matter type (civil, criminal and youth).	Y	Y
Daily Legal Accounts Listing: Lists private bar accounts submitted for payment. This is the tracking system used by accounts payable to ensure accounts are processed in the order that they are submitted and that pending accounts (accounts under review) are not missed. Run every day by the Legal Accounts Department	N	N
Firm Payment: Total payments by firm	N	Y
Lawyer Payment: Total payments by lawyer	N	Y
Monthly Accounting: Month to date and year to date fees, disbursements, and total broken down by area and then matter type (including duty counsel).	Y	Y
Tracked Private Bar Disbursement Breakdown: Tallies tracked disbursements on private bar invoices by matter type.	N	Y
Disbursement Costs by Office: Staff disbursement costs by disbursement type broken down by office.	N	Y
Cheque Activity: Lists cheques that were issued or canceled in the date range. If a cheque was canceled in the date range, it will show up with a negative amount. If a cheque has been issued and canceled in the date range, it will show up twice, once negative, once positive.	Y	Y
Outstanding Cheques: Issued cheques that have been printed but not reconciled or cancelled. Lists cheque number, date issued, firm number, firm name and amount. If the cheque was canceled after the "As Of" date, it will show up on the report.	Y	Y
Expired Certificates: Lists certificates issued before a given date which are not closed. LAM can terminate a certificate after six years if the lawyer has not closed it within that time.	N	Y
Private Bar High Cost Certificates: Lists private bar certificates over \$5,000. Certificates are put into groups by cost range and matter type. Number of certificates under \$5,000 are also shown.	N	Y
Enhanced Fees: Total of legal matter fees paid above and beyond the tariff broken down by month, matter type and type of fee. Enhanced fees are paid where the tariff does not sufficiently compensate lawyers for the actual work on a legal matter.	N	Y

Legal Aid Nova Scotia (LANS)

The Private Bar handles approximately 20% of legal aid full-service cases, primarily where Nova Scotia Legal Aid Commission staff lawyers are conflicted out of representation. Legal Aid Nova Scotia's Business Plan 2022-23 calls for Supporting Certificate Lawyers by digitizing billing processes and creating a digitized environment to support remote work activity.

Legal Aid Nova Scotia has a roster of about 200 private bar lawyers. It has 1.5 accounts payable clerks to process (primarily pay) private bar accounts; the settlement of accounts is handled by area office staff. Legal Aid has a turnaround policy of payment within 4 weeks. Due to staff shortages, some accounts are taking up to two months for payment.

The billing and settlement processes in Nova Scotia are primarily manual. Lawyers complete a paper account form and submit it to the area office by mail or email. The legal assistant at the area office will check the account (settle it) and forward to the area office manager for sign off. Once signed off, the account is forwarded to head office for payment.

LANS currently has a pilot underway with a fillable PDF form which calculates the tariff automatically on input of hours spent and can be signed digitally. LANS has also started to use One Drive where accounts can be uploaded from the 22 area offices and stored centrally.

The managing lawyer at the area office has discretion to approve extra tariff hours. Although private bar lawyers are required to have approval prior to providing the service, discretionary hours are often approved after incurred. Requests for extra hours are received by mail/email. The managing lawyer makes the decision, and her assistant amends the contract to show the new total hours. The amendment is sent to the lawyer and uploaded to the One Drive certificate folder. LANS has a certificate data base system using Progress software which keeps track of all cases. Finance will update the system by adding the additional hours.

LANS has a director responsible for managing its Big Case Management program, setting hours/budgets for large cases.

Legal Aid Ontario (LAO)

Legal Aid Ontario operates under the judicare model – clients have the right to choose counsel, and legal services are primarily provided through the private bar. Staff offices/lawyers are few.

Legal Aid Ontario launched its PeopleSoft application in 2005. Most transactions, and the settlement and payment of private bar accounts, are done through PeopleSoft. Private bar lawyers access a portal, Legal Aid Online, through which they can acknowledge certificates, request authorizations and discretion, and submit accounts. Accounts that match (ie. within tariff) are paid by the system within 14 days. Matching accounts make up 80% of all accounts submitted. Accounts that do not match, are placed on a worklist for adjusters and staff lawyers within Lawyer Services and Payments to review and settle, a department distinct from Finance.

Adjusters have delegated authority to make decisions on accounts above tariff to a maximum of 10 hours. Accounts above 10 hours must be reviewed and settled by a staff lawyer.

Discretion requests are submitted online using a prescribed form. Discretion is submitted with accounts after services have been rendered. Discretion must meet clearly defined 'exceptional circumstances' criteria.

Post Payment Examination (PPE) staff review lawyer accounts (after payment) for compliance with tariff and to identify abuses and misrepresentations by lawyers participating in legal aid. If PPE examiners cannot obtain satisfactory support for account billings from lawyers, the amounts paid through “matching” can be clawed back from the lawyer ‘s future billings.

Summary Chart

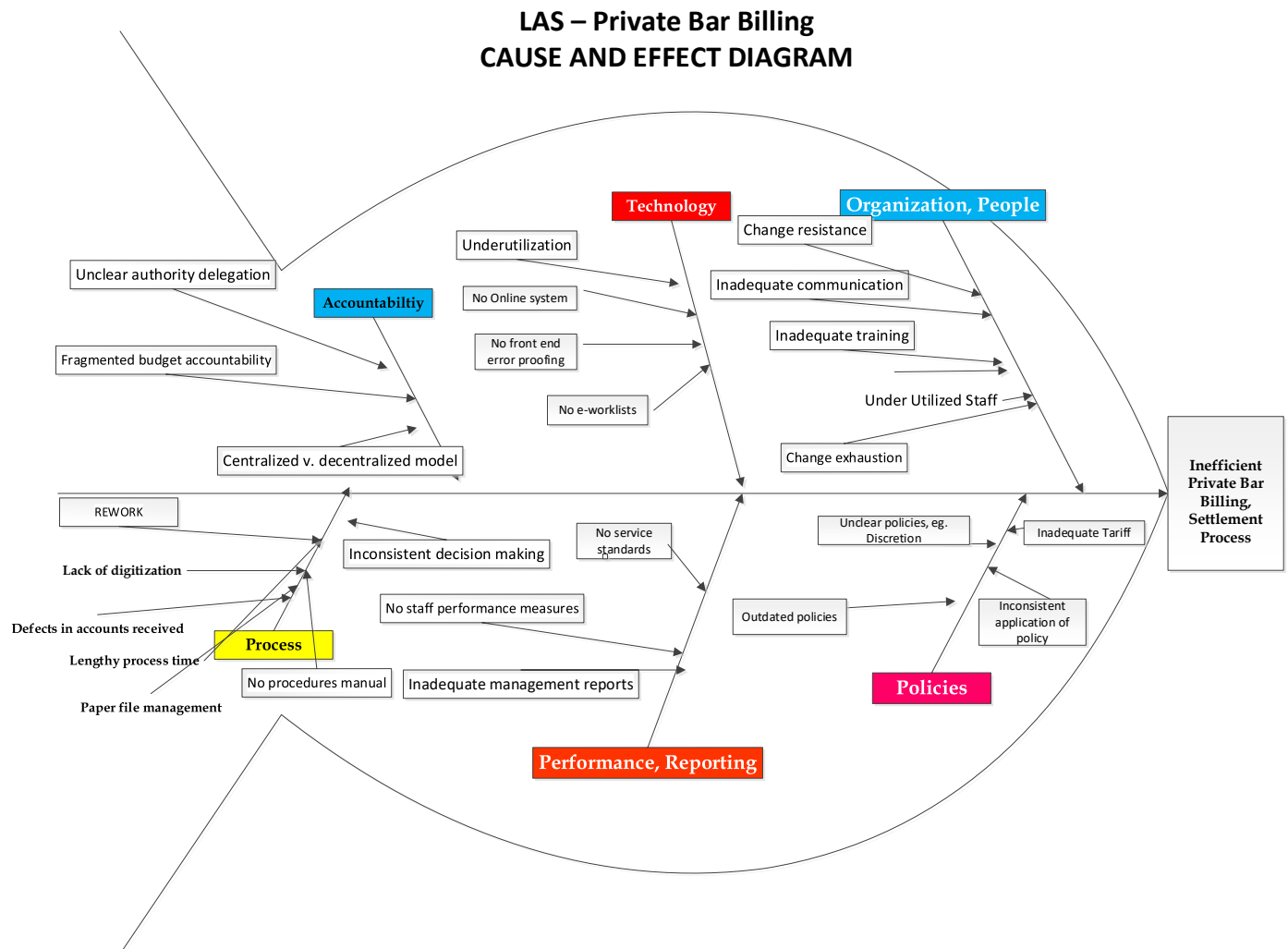
The chart below summarizes each benchmarked legal aid plans approach to billings and payments: Legal Aid Manitoba, Legal Aid Nova Scotia, Legal Aid Ontario, Legal Aid Saskatchewan.

Process	Ontario (LAO)	Manitoba (LAM)	Nova Scotia (LANS)	Saskatchewan (LAS)	Benchmark Recommended
# of active private bar lawyers	6,837	290	200	202	N/A
# of accounts per month	13,500	2,000		350-400	N/A
# and role of staff who process accounts	24 FTE: 2 payment specialists 8 payment adjusters 4 staff lawyers 2 lawyer managers 8 BCM case managers 4 BCM payment adjusters	4 FTE accounts payable clerks, 1 FTE supervisor Finance – settle and pay	1.5 FTE accounts payable clerks Finance – pay only (settlement in area office)	1 FTE, 1 FTE vacancy (posted), 1 summer student, Private Bar (PB) clerks Finance – settle and pay	Separation of Settlement and Payment functions
Private bar certificates/ Appointments/ duty counsel	Legal Aid Online 2005	Online 2014	Paper, email	LAIN software pre-populates contract for services with lawyer. Contract emailed to lawyers. Paper file kept at PB office to match Report of Solicitor. Duty counsel service requested by email by legal director unless DC contract exists.	Online - private bar appointment, DC
Submission of Accounts	Legal Aid Online 2005	PBOnline 2016	Paper – Pilot PDF account form Email	Paper – Report of Solicitor form in excel, updated semi-annually, includes formula calculations to reduce error risk made by PB lawyers, staff. Submitted by fax	Online - Error proofed accounts with formular calculations, drop down menus and upload features for all correspondence documentation

Process	Ontario (LAO)	Manitoba (LAM)	Nova Scotia (LANS)	Saskatchewan (LAS)	Benchmark Recommended
Processing of Accounts	Matched accounts processed and paid by PeopleSoft. Non-matched placed on worklist for staff review	Matched accounts processed and paid by system	Accounts manually settled by area office staff	All accounts manually settled by Finance staff	Accounts within tariff matched and paid by online system. Accounts with tariff exceptions placed on worklist for staff review
Payment of Accounts	75% paid within 15 days (matched accounts) 20% paid within 60 days	14 days turnaround – standard account 60 days - nonstandard		All accounts paid by Finance staff using accounting Sage 300 batch processing and ScotiaConnect for EFT processes. 95% of PB accounts are paid by EFT. Average 21 days turn around for standard accounts.	15 days for payment within tariff matching by system 30 days for other accounts
Additional hours Discretion	Online – prescribed form request submitted with account for payment	Online – submitted with account for payment – 60 requests per month – goes to discretion increase committee.		Email – goes to Practice Management Council – request prior to delivering services.	Online with prescribed error proofed form submitted with account for payment.

Root Cause Analysis

The cause-and-effect diagram in the form of a fishbone² below illustrates the root causes of the billing and payment challenges LAS is experiencing. The root causes are identified based on the following key areas: Organization & People, Policies, Processes, Technology, Accountability, Performance & Reporting, Voice of the Customer.



Of the root causes illustrated in the cause-and-effect diagram, several main themes emerge:

- Policies regarding the term “extremely exceptional circumstances” are unclear, procedural documents are not prescriptive to ensure that panel members file required information and the few forms used do not ensure front end error proofing.

² WSCS Consulting, <https://www.wscsconsulting.com/>

-
- ☐ The system is not designed to capture data that will assist management in performance measurement and reporting
 - ☐ The manual processes and accountabilities result in rework, and movement of files, particularly in requests for additional hours involving the Practice Management Counsel. There are many handoffs, staff looking for information, or requesting additional information from panel lawyers.
 - ☐ The physical space is not designed in a cell where work can flow easily. Physical file folders and fax machines are located at a distance from staff desks. This has resulted in significant time waste in the process.
 - ☐ The form of queuing, a First In First Out (FIFO) perspective whereby the account is not reviewed until due, causes unnecessary back end processing particularly where information from the lawyer is lacking.
 - ☐ There is no rigorous training program for new staff or adequate written accounts procedures which may lead to staff errors.
 - ☐ The data currently collected is insufficient to show where errors and/or decisions are made or the source of the errors. Of particular importance is the lack of information on the type and reasons for additional hours requests by panel lawyers, the reason for the decision with respect to additional hours, the amount of time it takes to complete an account request, the number of staff involved in the request and/or the ultimate decision maker.
 - ☐ Workflow is based on receipt date (FIFO) rather than various risk-based criteria. Some requests for payment are for very small amounts and might be processed first although the date of receipt maybe later than another account.

Organizational Readiness for Change

An organization's ability to change involves two main elements, individual skill and change enablers. Individual skill is a measure of an employee's ability to operate in a new environment as well as whether the employee possesses the necessary skill sets and training for a successful transition. Enablers are the supporting functions, finance, HR and technology that facilitate operations in the new environment. Each must be in place and assessed — to understand how much employee education and technology will be needed to achieve the proposed changes.

To assist in assessing the LAS's commitment and capability to change, LAS's leaders should evaluate the following, either through surveying or focus groups:

- ☐ Do the people responsible for executing the change have the required understanding of the need for change?
- ☐ Are the stakeholders invested in the change? Do they want to see the change happen?
- ☐ Has the organization assessed its capability to change including the individual skill and business enablers required to execute the change?
- ☐ Will the employees have the ability, and skill to operate utilizing the new processes, and within the new structure?
- ☐ Will LAS be able to mobilize the necessary skills and provide the required training to support the new processes?

-
- ☐ Are business enablers (HR, IT and Finance) engaged in driving and supporting the change initiatives?
 - ☐ Have the impacts of not making the change been identified?

The following are the keys to successfully gaining employees' support as an organization prepares to embark on change initiatives:

- ✓ Identify a Champion of change – the individual(s) must be respected within the organization.
- ✓ Ensure leaders demonstrate a willingness to invest and provide the necessary resources to successfully implement the change.
- ✓ Engage the front-line staff, private bar, and other key stakeholders affected by the change
- ✓ Hire a project manager who has experience in leading and managing change.
- ✓ Share the values and vision of LAS across the organization.
- ✓ Use a team approach in deploying the project, creating employee and stakeholder support and motivation through participation and engagement.
- ✓ Define short-term goals and milestones. Celebrate successes.
- ✓ Ensure the change sticks through ongoing support, monitoring and reporting.
- ✓ Communicate, communicate, communicate

Appendices

Appendix 1: Summary of Review Approach and Activity

Approach

The Consultant utilized the concepts of LEAN Six Sigma business process improvement in the review of private bar billing. LEAN Six Sigma is a disciplined process that focuses on developing and delivering value added services based on the voice of the customer. It is a management strategy that uses statistical tools and management practices to achieve service sustainability through process improvements and quality service gains.

LEAN is about eliminating wastes, taking time out of processes, and creating better flow. By focusing on process and flow, management can assess value added and non-value-added activities from the customer's point of view and ultimately eliminate waste in the processes to improve turnaround time, eliminate errors, and reduce variation in service. For LEAN projects to be successful, every staff and manager must be involved in the project, must understand the problem and current processes, and feel part of the solution.

To this end, the Consultant undertook extensive consultations, documentation reviews, system walkthroughs and observations to gain an understanding of the current state of private bar billing processes and gather possible solutions and improvements. LAS staff and management were actively engaged through the Private Bar Billing Steering Committee, in focus groups, and interviews. And the Consultant met with members of the private bar to capture the voice of the customer and with management of other legal aid plans to benchmark best practices. It was evident that LAS management and staff, as well as the private bar, recognize the issues in private bar billing and provided excellent ideas for process, policy, and technology improvements.

Documentation review

The Consultant reviewed documents provided by management and staff as well as research on the LAS website, including but not limited to:

- ✓ Legal Aid Saskatchewan Annual Reports 2017-2021
- ✓ Draft Strategic Plan 2022-25
- ✓ IT Plan 2021-25
- ✓ LAIN User Manual 2.1
- ✓ Productivity Proposal 2014
- ✓ Legal Aid Saskatchewan Engagement Survey Results 2021
- ✓ Disaster Recovery and Business Continuity Plan Updated May 2021 – Sask Legal Aid Commission
- ✓ Draft Governance Manual 2019

-
- ✓ Eligibility and Legal Services Delivery Manual 2021 (being revised)
 - ✓ Legal Aid Tariff of Fees
 - ✓ Memorandum on Taxation Clarification (ineligible disbursements), Alan Snell, October 2009
 - ✓ Memorandum on Tariff Matters to Private Bar, “Account Details and Requests for More Preparation Time” CEO Craig Goebel 2018
 - ✓ Saskatchewan Legal Aid Commission, Private Bar Appointment Policy, Effective October 1, 2014 (amended 2020)
 - ✓ Procedures and Contact Person(s) for matters concerning additional time requests, change of lawyer, appeals and conflicts, March 2022
 - ✓ Forms: Report of Solicitor Billing Form, Duty Counsel Service Closing Form
 - ✓ Job Descriptions: General Counsel, Practice Management Counsel, Director Operations, PB Clerks, Regional Legal Director
 - ✓ Financial/Service Reports: PB Reports 2021-22, PB Farm-outs by Office/Region 2018-2022, PB Services Report 2011-2022

Data provided and analyzed

The Consultant obtained data regarding private bar services primarily from the Finance & IT Director. This data is noted in the report. The Consultant was unable to analyze private bar billing processes (eg. account time to process) as this data is not collected.

System walkthroughs and observations

LAS management and staff provided system and process walkthroughs including LAIN from lawyer account submission to taxation (settlement). The Consultant observed PB clerks as they processed private bar accounts.

Interviews and Focus Groups

The Consultant conducted interviews face-to-face as well as through Zoom with staff and management across LAS including the CEO, Finance and Information Technology Director, Operations Director, Practice Management Counsel, General Counsel, PB Clerks, Legal Directors, Saskatoon Area Office staff. The Consultant interviewed members of the private bar.

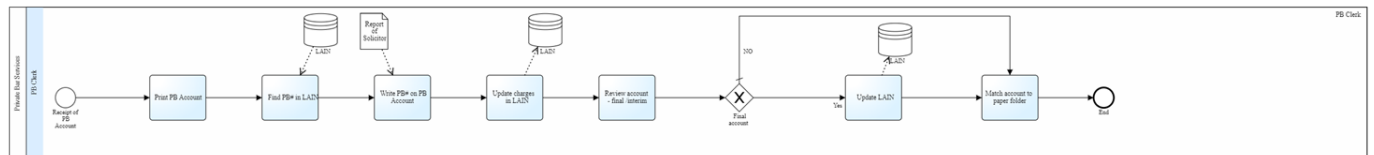
To perform some benchmarking, the consultant contacted Legal Aid Ontario, Legal Aid Manitoba, and Legal Aid Nova Scotia. The interviews provided an understanding of the changes that have occurred with other legal plans in their efforts to modernize billing systems. The interviews helped the Consultant gather information on possible solutions that would be in line with LAS direction.

The Consultant discussed and mapped key billing processes with management and staff. The following section summarizes, at a high level, the consultations undertaken from February 22, 2022, to June 2022. The Consultant is grateful for the engagement, time, and effort of each participant in this important review of private bar billing, in particular the members of the Steering Committee:

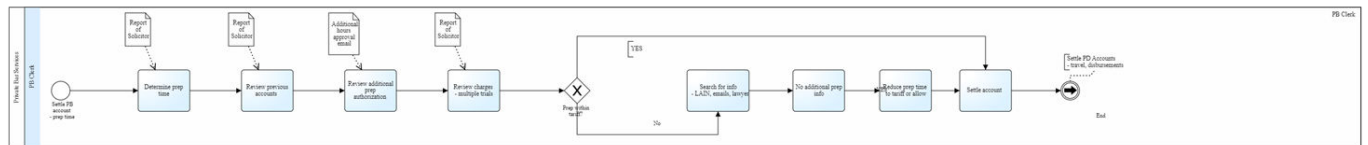
-
- ☐ CEO – Jayne Mallin
 - ☐ CEO Admin Assistant - Val Doecker
 - ☐ Director Finance & Technology – Jerome Boyko, Steering Committee Member
 - ☐ Director Operations – Kyla Shea
 - ☐ Practice Management Counsel – Nandishi Bekah, Steering Committee Lead
 - ☐ PB Clerks – Lorraine Reich, Jenessa Tyshynski , Steering Committee Members
 - ☐ PB Student Clerk - Lachlan Muir
 - ☐ General Counsel - Robert Grimsrud
 - ☐ Legal Directors – Cameron Schmunk, Earing Kimberly, Tyne Hagey, Joanne Khan, Deanna Harris, James Struthers
 - ☐ Admin Manager – Tammy Adams
 - ☐ Legal Assistant - Cheryl Boechler
 - ☐ Private bar - Khurshed Chowdhury, Kasya Naidu, Michael Nolin, Rod Simaluk, Martin Dupont, Ola Ben-Ajayi, Crystal Eninew
 - ☐ Court Appointed Counsel – Leslie Sullivan
 - ☐ Darcy Deslauriers – Director, Lawyer Services and Payments, Legal Aid Ontario
 - ☐ Robin Dwarka, Director of Finance, Legal Aid Manitoba
 - ☐ Jennifer Cain, Director of Finance, Nova Scotia Legal Aid Commission

Appendix 2: Process Maps

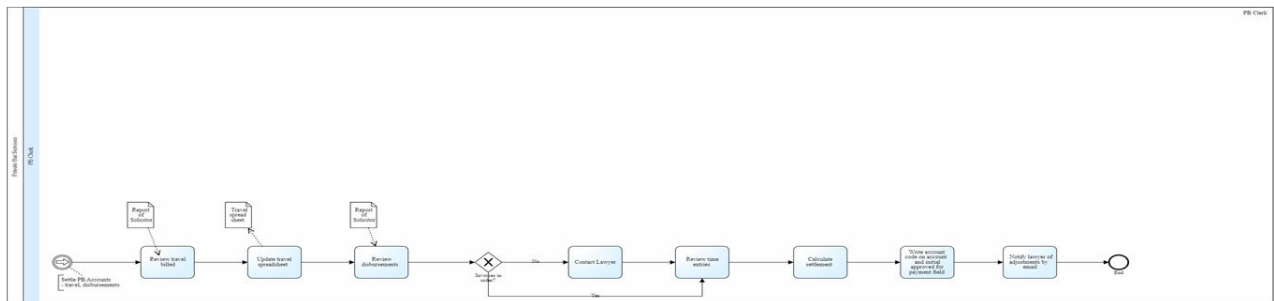
1.0 RECEIVE Private Bar ACCOUNTS



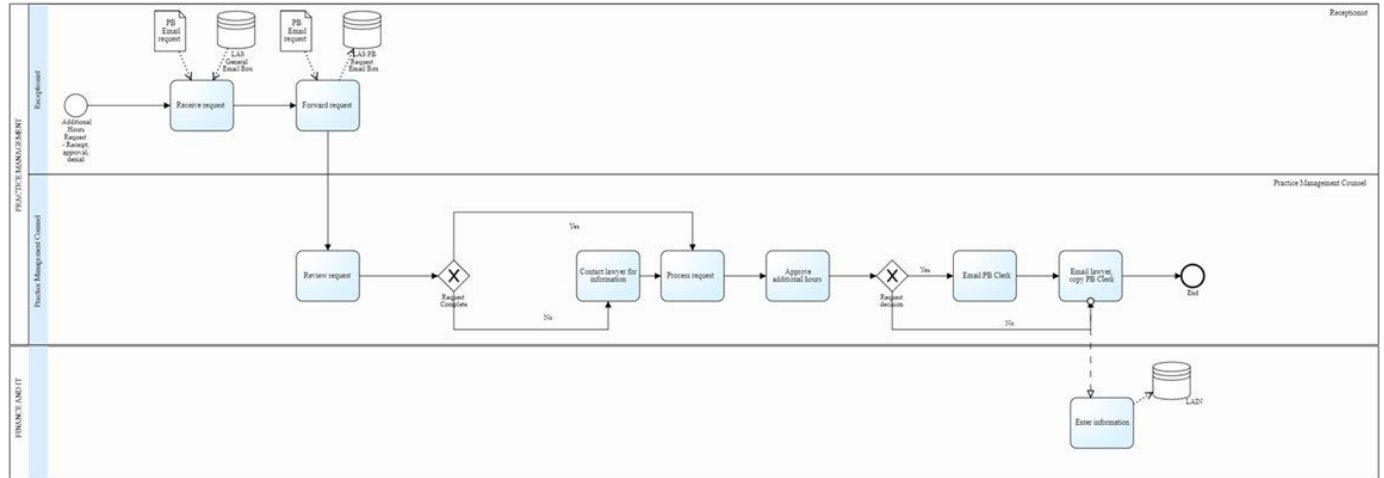
2.1 SETTLE Private Bar ACCOUNTS – Preparation Hours



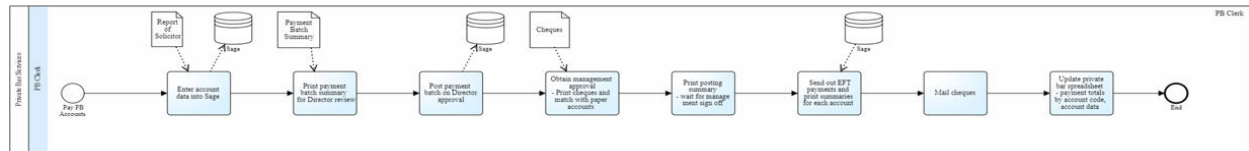
2.2 SETTLE Private Bar ACCOUNTS – Travel, Disbursements



3.0 RECEIVE, APPROVE/DENY Additional Prep Hours



4.0 PAY Private Bar ACCOUNTS



Appendix 3: Sample Big Case Management Policy and Process

Big Case Management – Legal Aid Ontario

The Big Case Management (BCM) program governs the most expensive and complex criminal trial defenses Legal Aid Ontario (LAO) funds.

Under the BCM program, LAO may set budgets for complex criminal cases expected to cost more than \$20,000. In these cases, LAO establishes individual budgets rather than using its [standard tariff system](#) to determine the maximum hours available to counsel.

LAO's legislated guidelines provide big case management for criminal matters in the following circumstances:

- ☐ Complex cases where the total fees and disbursements are anticipated to exceed \$20,000
- ☐ Murder cases (first- or second-degree murder charge) where the total fees and disbursements are anticipated to exceed \$30,000
- ☐ Complex cases with multiple accused where the collective fees and disbursements are anticipated to exceed \$50,000

Goals of Big Case Management

The goals of the BCM program are to:

- ☐ monitor and control case costs, in accordance with the standard of a reasonable client of modest means;
- ☐ increase predictability of case cost;
- ☐ provide lawyers with appropriate resources to manage complex cases;
- ☐ ensure that the criminal bar is adequately compensated for accepting certificates for big cases;
- ☐ develop and maintain a framework of accountability and consistency.

BCM application process and guidelines

When to apply for Big Case Management

If you anticipate any of the following:

- ☐ a case is likely to exceed \$20,000
- ☐ the preliminary hearing is likely to exceed two weeks.

Budget requests must be made to the Big Case Management department in advance of each proceeding and with reasonable notice. Budgets will not be set retroactively.

How to apply

Lawyers seeking a Big Case budget must complete the [trial opinion guideline form](#) or the [Preliminary hearing opinion guideline form](#). Please use the preliminary hearing opinion guideline form for sentencing and dangerous offender hearings. You can use either form to apply for co-counsel, but these requests are granted only in exceptional circumstances.

Please note that all information disclosed in the opinion letter, and discussions between the case manager and counsel in the BCM meeting, are treated as confidential, and are protected by solicitor client privilege.

Application process

- ❑ Once the BCM office has reviewed your request, a case manager will contact you to schedule a budget meeting.
- ❑ After the meeting, the decision regarding the budget and the acceptance of the matter into BCM is given to counsel in writing. Until confirmation is received in writing, the regular tariff maximums apply.
- ❑ There is no appeal from a refusal of admission into BCM. You are entitled to re-apply if there is a change in circumstance.

BCM guidelines

- ❑ The BCM budget does not supersede [basic tariff provisions](#) such as the hourly rate for lawyers, the limit of billing to 10 hours per service provider per calendar day, or restrictions on travel within the GTA. Please note that the annual billing limit of 2,350 also applies to BCM matters.
 - ❑ If a case is accepted into the BCM program, you will be provided with a number of hours to prepare for the proceeding. Per diem hours will be allocated for preparation during the proceeding. Any questions about the budget should be brought to the attention of the case manager.
 - ❑ A case manager will confirm the budget in writing. Please note that LAO will not pay more than the budget, and will only amend in exceptional and unforeseen circumstances.
 - ❑ Bring any changes in circumstance to the case manager attention as soon as they arise. LAO does not set retroactive budgets.
 - ❑ Before you submit your accounts, be sure to clearly indicate the type of proceeding, the type of preparation hours and the time spent in court for the proceeding.
 - ❑ If you are unsatisfied with the budget, you can write a letter of appeal to the president of Legal Aid Ontario, (copied to the director, Big Case Management)
 - ❑ Make any further requests for disbursement authorizations to the BCM program.
-

Exceptions committee

A budget that is likely to exceed \$75,000, may be sent to an exceptions committee for review. An exceptions committee is composed of LAO staff and highly respected private bar lawyers with expertise in conducting large cases.

The committee considers any written materials and oral submissions and makes budgetary recommendations to LAO. LAO will consider the recommendations and make the final decision.

Big Case Management for appeals

Although the \$20,000 threshold applies, Big Case Management for appeals to the Ontario Court of Appeal and the Supreme Court of Canada has a separate process.

If you believe a matter is likely to qualify, forward a letter to LAO's provincial office to the attention of Big Case Management Appeals. The letter should set out the details concerning the appeal and include the length of the original trial. It should also include supporting documentation such as the original opinion letter, and appropriate time requirements to complete the appeal.

[Enhanced Expert Rates](#)

An enhanced rate may be considered appropriate for a Big Case (including Complex Case Rate certificates) where counsel demonstrates that the expert is necessary given the nature of the defense. Criteria LAO will use the criteria below to determine the market rate for services and...

[Complex Case Rate](#)

The Complex Case Rate (CCR) offers lawyers authorized to provide criminal legal aid services an enhanced rate of compensation for work on complex criminal cases, helping to retain high-quality representation for clients and improving access to justice. For a case to receive CCR...

[Billing Big Case Management files](#)

Big Case Management (BCM) files generally take up a lot of time and energy. Legal Aid Ontario (LAO) is committed to supporting this effort by paying BCM accounts quickly and accurately. You can help us do this by following billing instructions.

Request for discretion: Criminal law

In some cases, where exceptional circumstances can be demonstrated, a discretionary increase in payment of an account may be granted where an account has exceeded the tariff maximum for the certificate. If your account exceeds the tariff maximum, and you want to apply for discretion, fill out this form and include it when submitting the account.

Account date:

Date of request:

Lawyer information

Name:

Solicitor #:

Phone:

Email:

Client information

Name:

Certificate #:

Names of
co-accused / other parties:

Request details

Request type

- What type of request are you submitting? ☐ New discretion request
- ☐ Retroactive discretion request

If this is a retroactive discretion request for an account already settled, enter the account number below and submit the request using the *Legal Aid Online* electronic document submission or LAOiFax process.

LAO account number:

Authorizations

Have you sought all necessary district office authorizations? ☐ Yes ☐ No

If no, please do so before submitting any accounts by contacting your district office.

Circumstances

The Legal Aid Tariff reflects the fees customarily paid by a reasonable privately paying client of modest means. These fees apply for all legal aid services, except in exceptional cases. Should your account exceed the tariff maximum and you wish Legal Aid Ontario to consider paying the account as billed with discretion, please explain the exceptional, factual and legal circumstances of your case based on the following factors (click all that apply):

Circumstances

- ☐ All charges withdrawn because of your actions
- ☐ Discharge of all charges at preliminary hearings because of your actions Acquittal
- ☐ of all charges at trial as a result of your actions
- ☐ Sentence significantly reduced as a result of your actions
- ☐ Material contribution to an outcome that is precedent-setting, that affects the administration of justice in favour of the defendant

Complexities

- ☐ Novel legal issue or unusual factual situation
- ☐ Rare motion (e.g.: Third part records, recusal motion, mistrial)
- ☐ Forensic/expert evidence
- ☐ Client's special needs (e.g.: mental illness (unique proceedings))
- ☐ Characteristics of witness (e.g.: child witness (testimonial capacity))

Other regulatory factors

- ☐ Contributions of the applicant or other contributors
- ☐ Amount of time realistically set aside in anticipation of a lengthy trial or hearing which time was not otherwise filled by the lawyer

Relevant factors

- ☐ Defence facing exceptional Crown/prosecutorial resources
- ☐ Disclosure
- ☐ Extended sentencing hearing
- ☐ Timelines/reduction in appearances - JOT criteria)
- ☐ High profile case

Case details

Please provide case details and the factual circumstances that support the specific factors for discretion selected in the section above. Attach any attach relevant documents to support your discretion request.

Note: if the certificate authorized an opinion letter, please attach.

Director General exception request

Are there any other discretion factors not articulated in the above criteria?

☐ Yes ☐ No

If yes, provide details below:

Note: This request is to be used rarely and only in circumstances when counsel can clearly demonstrate that the exception circumstances test has been met.

For more information on discretion requests see the Legal Aid Ontario Tariff & Billing Handbook.

For assistance in completing this form please contact the Lawyer Service Centre via 1-866-979-9934 (toll free).

☐ I certify that the information included in this form is complete, true, and accurate.

Name:

Date:

Please attach the completed form to your online account.

Save form

Print form

Reset form

Personal information contained on this form is collected under the authority of the *Legal Aid Services Act, 2020* and will be used for the purpose of payment of accounts, investigations, and the administration of the *Legal Aid Services Act*.

Questions about this collection should be directed to the Privacy and Access to Information Officer at fippa@lao.on.ca or 1-800-668-8258.



LEGAL AID ONTARIO
AIDE JURIDIQUE ONTARIO

Request for discretion: Family law - Child, Youth and Family Services Act (CYFSA)

In some cases, where exceptional circumstances can be demonstrated, a discretionary increase in payment of an account may be granted where an account has exceeded the tariff maximum for the certificate. If your account exceeds the tariff maximum, and you want to apply for discretion, fill out this form and include it when submitting the account.

Account date:

Date of request:

Requestor information

Lawyer information

Name:

Solicitor #:

Phone:

Email:

Client information

Name:

Certificate #:

Names of
co-accused /
other parties:

Request details

Request type

What type of request are you submitting? ☐ New discretion request
☐ Retroactive discretion request

If this is a retroactive discretion request for an account already settled, enter the account number below and submit the request using the *Legal Aid Online* electronic document submission or LAOiFax process.

LAO account number:

Authorizations

Have you sought all necessary district office authorizations? ☐ Yes ☐ No

If no, please do so before submitting any accounts by contacting your district office.

Circumstances

The Legal Aid Tariff reflects the fees customarily paid by a reasonable privately paying client of modest means. These fees apply for all legal aid services, except in exceptional cases. Should your account exceed the tariff maximum and you wish Legal Aid Ontario to consider paying the account as billed with discretion, please explain the exceptional, factual and legal circumstances of your case based on the following factors (click all that apply):

Results obtained

- ☐ Protection Application - no protection order made
- ☐ Motion - temporary care and custody - no temporary care and custody order made
- ☐ Motion - summary judgement on protection application - successfully defunded and/or costs awarded
- ☐ Status review

Complexities

- ☐ Child or parent special needs (e.g.: mental illness, addiction)
- ☐ Sexual or serious physical abuse allegations (criminal charges)
- ☐ Indigenous factors, band issues

Other regulatory factors

- ☐ Contributions of the applicant or other contributors
- ☐ Amount of time realistically set aside in anticipation of a lengthy trial or hearing which time was not otherwise filled by the lawyer

Relevant factors

- ☐ Disclosure
- ☐ Forensic/expert evidence
- ☐ Multiple children/parents/parties
- ☐ Timelines/reduction in appearances through mediated/negotiated settlement
- ☐ Well funded litigant

Case details

Please provide case details and the factual circumstances that support the specific factors for discretion selected in the section above. Attach any attach relevant documents to support your discretion request.

Note: if the certificate authorized an opinion letter, please attach.

Director General exception request

Are there any other discretion factors not articulated in the above criteria?

☐ Yes ☐ No

If yes, provide details below:

Note: This request is to be used rarely and only in circumstances when counsel can clearly demonstrate that the exception circumstances test has been met.

For more information on discretion requests see the Legal Aid Ontario
Tariff & Billing
Handbook.

For assistance in completing this form please contact the Lawyer Service
Centre via
1-866-979-9934 (toll free).

☐ I certify that the information included in this form is complete, true, and accurate.

Name:

Date:

Please attach the completed form to your online account.

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Reset form

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