

Introduction

Exceptional Circumstances

Criminal Law – 1 Year Trial

LEGAL AID
SASKATCHEWAN



January 31, 2025
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Purpose

To orient the criminal panel to the new exceptional circumstances request policy

To answer questions and address concerns

EXCEPTIONAL CIRCUMSTANCES

Legal Aid tariff normally applies

The LAS Legal Aid Tariff of Fees, Schedule “A” General Conditions states:

- *This tariff is intended to reflect fees that would customarily be paid by a client of modest means. 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 for the file, provided in his/her opinion an increase is justified.*

CEO authority is delegated to the Private Bar Services Director pursuant to *Legal Aid Act*

Exceptional Circumstances Payments Policy (previously called “Additional Hours”)

Legal Aid tariff normally applies

Request for exceptional circumstances payment (hours beyond tariff) submitted with account – pre-approval no longer required

Exceptional circumstances payment – assessed by PB Clerk (up to 10 hrs.), PB Director (10 hrs. plus)

Guidelines with specific eligibility criteria – results obtained, complexity, forensic evidence, etc.

Principles for EC payments – onus on lawyer to provide sufficient information to justify EC payment

Change in Process – pre-approval for hours beyond tariff no longer required



Counsel is no longer required to request approval of “additional hours” prior to the hours being spent for the following reasons:



1. Pre-approvals administratively burdensome.

The bar only has to contact LAS once regarding the additional hours – at the time of billing.

LAS only has to touch the account once. Staff do not have to review a request for additional hours in advance of billing.



2. Many private bar members don't know how many additional hours to request prior to the matter being heard/dealt with. LAS doesn't know how many hours to approve.



3. Exceptional circumstances Guidelines clarify when hours may be granted providing the private bar with some certainty

What are the exceptional circumstances Guidelines?

The Guidelines describe and clarify in accordance with the Rules, exceptional circumstances for which a lawyer may be eligible for an increased payment above tariff.

The Guidelines are not exhaustive

The onus (burden) is on the lawyer to provide sufficient details and explanation as to how the matter meets the exceptional circumstances test. Simply indicating one of the guidelines has been met is not sufficient.

Once the exceptional circumstances criteria are met, LAS will determine the amount of payment taking into consideration

- What is usually billed for cases of similar type based on the experience of LAS staff in processing accounts and the practice of law.
- The nature of the exceptional circumstances.
- What a client of modest means would pay.
- The work done by a lawyer based on the information provided in the lawyer's request.

Guidelines – Criminal law

Results obtained

Complexity

Forensic/expert
evidence

Client's special needs –
e.g., mental illness,
language barriers
(unique proceedings)

Characteristic of
witness – e.g., child
witness (testamentary
capacity)

Defence facing
exceptional
Crown/prosecutorial
resources.

Disclosure

Extended sentencing
hearing

High profile case

Any other relevant
factor that may
warrant an increased
fee

A close-up photograph of a hand holding a blue pencil, writing on a document. The document has some faint, illegible text and a red bar at the bottom. The background is blurred, showing a person's face and a lamp.

Exceptional Circumstances Payments Request


Criminal Law FORM

Requests for an 'exceptional circumstances' payment (ECP)?

Exceptional circumstances payment (ECP) requests should be attached to the specific account for which a request is being sought; an ECP request should not be sent separately.



A separate ECP request is required for each account which bills the work completed during the service period of that account.



Submit your ECP Request and account by emailing LAS Central PBAccounts@legalaid.sk.ca with the subject line ECP Request

Reasons for reducing or denying EC requests

Hours requested reduced:

- Hours exceeded those usually billed for cases of similar type based on the experience of LAS staff in processing accounts and the practice of law
- Hours exceeded that which a client of modest means would pay

Hours denied:

- Counsel failed to establish exceptional circumstances that would warrant an increased fee

Resources

Private Bar Billing and Payments Handbook 2024

Chapter 2.7 Exceptional Circumstances Payments

<https://legalaid.sk.ca/lawyer/policies-conditions/>

Trial – Exceptional Circumstances (EC)



Trial Period: Monday, February 15, 2025, to February 13, 2026



Eligibility: All appointments with **no prior requests** for “additional hours” are eligible for exceptional circumstances consideration



Support: EC Trial support meetings will be scheduled if needed



PB Support: Private bar clerk support

pboffice@legalaid.sk.ca



Access: EC materials on LAS website:

Orientation Materials

Policies

Forms



QUESTIONS



BREAK

CASE MANAGEMENT

Case Management Policy

- Objectives – adequate resources for complex criminal cases based on approved budgets
- Program eligibility
 - The case contains at least one of the listed charges in the Criminal Case Management Policy
 - A preliminary hearing or trial date has been set
 - The tariff will be insufficient to complete the proceeding, and exceptional circumstances payments would be significant and inappropriate, i.e., complex criminal cases likely to cost more than \$10,000 eligible for case management.
- Budgets
 - Budgets set based on existing tariff authorizations and case management (CM) authorizations.
 - CM authorizations to be added to letters of appointment in increments of 10, 25, 50, 75, 100 or 150 hours.
 - Budgets will be determined in consultation with the Private Bar Services Director
- Process – complete case management assessment form, discuss with PB Director

Factors Considered for Authorizing Case Management Budget

Length of the proceedings	Disclosure, e.g., complexity, volume, etc.
Charge(s) and tariff preparation hours provided	Client with special needs (e.g., mental health issues, serious non-criminal law consequences if convicted).
The merits of the proposed pre-trial motions.	Crown litigation strategy (e.g., prosecution acting unreasonably).
Novel legal issues (e.g., constitutional challenges to legislation, expansion of common law defences).	Extended sentencing hearing (e.g., matter resolved but detailed Gardiner hearing required).
The nature of forensic and expert evidence (e.g., novel forensic evidence that may be challenged at trial by either defence or the Crown).	The historical billing pattern of the service provider (e.g., regularly exceeds tariff and requests exceptional circumstances payments).

Case Management Process

The Direction “Matter is potentially eligible for Case Management” is included in appointment letters for services which cover charges eligible for case management.

1. Where costs are likely to exceed \$10,000, counsel should complete either of the following forms as appropriate:

- Criminal Case Management Assessment Form—Preliminary Hearing
- Criminal Case Management Assessment Form—Trial

2. Counsel should submit the completed Case Management Assessment Form to the Private Bar Services Clerks via *email*: pboffice@legalaid.sk.ca

3. The Private Bar Services Clerks will review the form for completeness and forward to Private Bar Services Director who will contact counsel to discuss the case and set a budget, if appropriate. Case management (CM) hour authorizations may be added to the appointment.

4. Counsel completes work and submits account for payment. Payment is made within 25 days if the account does not exceed the established budget, is not billed late, etc.

A close-up photograph of a hand holding a blue pencil, poised to write on a document. The document has a red bar at the bottom. The background is blurred, showing a person's face and a lamp.

Criminal Case Management

FORM-Prelim
FORM - Trial

Resources

Private Bar Billing and Payments Handbook 2024

Chapter 3.4 Criminal Case Management

<https://legalaidsk.ca/lawyer/policies-conditions/>



QUESTIONS

Trial – Exceptional Circumstances, Case Management



Trial Period: Monday, February 15, 2025, to February 13, 2026



Eligibility: All appointments with **no prior requests** for “additional hours” are eligible for exceptional circumstances and case management consideration



Support: EC, Case Management Trial support meetings will be scheduled if needed



PB Support: Private bar clerk support

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Access: EC materials on LAS website:

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