

POLICIES AND GUIDELINES OF THE LEGAL AID COMMITTEE

(in accordance with the Legal Aid Act 1980, the Legal Aid (General) Regulations 1980, and Legal Aid (Scale of Fees) Regulations 1980)

The Legal Aid Committee (“LAC”) wishes to remind counsel of the following matters in an effort to meet its commitment to process applications and bills expeditiously. We also wish to make clear those matters that will attract taxing down of bills by the LAC. We refer counsel to the general provisions for remuneration of counsel assigned under a Legal Aid Certificate which are laid out in sections 13, 13A and 14 of the Legal Aid Act 1980 (as amended by the Legal Aid Amendment Act 2011) (“the Act”). Of particular note is section 13 (3A) which deals specifically with submission of bills by Counsel.

APPLICATIONS

1. Homeowners – are assessed by the LAC on the value of the ARV and not the value of the home. If the homeowner/applicant resides in the property and the ARV is less than \$24,000, this will not be considered as part of the capital assessment (see the Third Schedule, Section 3 of the Act).
2. Household Income – If an applicant is contributing regularly and at an appropriate level to the household wherein more than one person resides and proof is provided of this, the Financial Means Assessment (“FMA”) does not take into consideration the income of the other person residing in the household. The contribution is treated as being analogous to rent. Similarly, where an applicant has a non-dependent child who contributes towards the household, the child’s income will not be taken into account for the purposes of the FMA.

Where an applicant’s household is being assessed and other members of the household do not provide financial information requested by the Legal Aid Office which is necessary to determine the applicant’s financial eligibility, the LAC may draw adverse inferences as to the refusal to provide the requested information, bearing in mind that third parties under the Act have no obligation to provide such information. As such the LAC may be unable to make a determination as to the applicant’s eligibility for lack of sufficient information.

Where an applicant is in receipt of Financial Assistance, the amounts which the applicant receives as cash in hand will be considered as part of his or her disposable income. Payments made by Financial Assistance directly to third-

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parties, such as a landlord or child day-care provider will not be considered as part of the applicant's disposable income. (See *Okeisha Clarke v Minister of Legal Affairs* [2016] SC (Bda) 99 Civ (22 November 2016))

When an applicant is on remand, the LAC will take into consideration the duration for which he or she has been on remand and on that basis make a determination as to whether the applicant would still be considered a part of any household (see *Lekan Scott v Attorney General* [2016] SC (Bda) 52 Civ (12 May 2016)).

3. LAC Members' Matters - If a LAC member's firm has a matter on the LAC meeting agenda which requires some discussion before a decision is made the consideration of and decision on the matter is made in the absence of that member.

The position is also the same where the LAC member is the opposing lawyer or the spouse or partner of the lawyer in a matter before the LAC meeting.

4. Income of Applicant Exceeds Statutory limit/Capital of Applicant Exceeds the Statutory Limit - the LAC declines applicants for Legal Aid where the applicant's income exceeds \$18,000.00 and/or where the applicant's disposable capital exceeds \$20,000 (see Section 10 (1) of the Act). However, in some cases, the LAC will grant the Certificate in its discretion if it is satisfied that it is in the interest of justice to do so. The LAC in exercising its discretion, may also take into consideration circumstances where the applicant is a vulnerable person such as an elderly person with no family support, a mental health client, etc. (see Section 11 (6) of the Act).

In matters where the LAC is considering granting a Certificate in discretion, the applicant should provide as much detail as possible as to his or her circumstances (inclusive of circumstances regarding the matter for which the Certificate is being applied for) which the LAC should take into consideration. Counsel is encouraged to assist applicants with this process.

5. Limitation of Certificates - the LAC seeks to limit all certificates where possible to a specified number of hours, a specific event or to an amount of an approved brief fee. Where Certificates are limited to a period of time or for a specific event, Counsel are reminded that should work be done outside of the

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scope of the Certificate, such work will not be covered. Therefore, it is essential for Counsel to make extension requests in a timely manner to the LAC for consideration of an extension to ensure work required to be completed is covered under the Certificate (see “Requests for an extension of a Legal Aid Certificate” below”).

6. Contributions by Applicants -If an applicant falls within a specified income range , he or she will be required to pay a contribution towards the Legal Aid Certificate (see Section 11 of the Act and the Third Schedule). The LAC may approve a certificate for an eligible applicant who wants to pay his or her contribution by instalments; however, the general position is that the Certificate will not be issued until such time as the applicant has paid his or her contribution in full (see Section 4, subsections (5) through (9) of the Legal Aid (General) Regulations 1980 (“the Regulations”)).

The LAC will consider exceptions to this policy should an applicant not be in a financial position to pay the full contribution. The applicant needs to explain in as much detail as possible his or her financial circumstances which prohibit them from paying the contribution in full at that time. In these cases, the LAC will consider issuing a limited Certificate if partial payment towards the contribution is paid (the amount of partial payment to be determine by the LAC). Further extensions would be considered based on Counsel’s status report and the applicant’s ability to pay a further instalment towards the required contribution.

A wavier of the contribution may also be considered by the LAC at the request of the applicant. Again, it is up to the applicant to make this request and to provide as much information as possible regarding his or her financial circumstances he or she believes the LAC should have regard to in making determination.

7. Activation of Certificates - Where an applicant has been granted a Legal Aid Certificate, the Certificate will not be activated until such time as the applicant signs the Acceptance of Offer of Legal Aid Certificate. This document is enclosed in the letter to the applicant confirming he or she has been granted a Certificate.

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Where the applicant is required to pay a contribution, the applicant must provide a receipt from the Cashier's Office of the Magistrates' Court evidencing the contribution has been paid in full. When proof of payment has been provided to the Legal Aid Office **and** the Acceptance of Offer of Legal Aid Certificate has been signed the Certificate will be activated (see Regulation 4, sub regulations (6) through (9) of the Regulations).

8. Multiple Defendants - The LAC will not grant more than one certificate to the same Law Firm where the Applicants are joined on an Indictment or Information, other than in exceptional circumstances.
9. Temporary Certificates - Emergency certificates, as they have come to be known, are provided for by Regulation 6 of the Regulations as read with Section 10 of the Act.

In cases where Counsel telephones, email or refers a client to the Legal Aid Office for an emergency certificate, sufficient information (both financial and in respect of the nature of the matter) should be provided to enable Senior Legal Aid Counsel to determine if the client qualifies and/or if the interest of justice requires a Temporary Certificate to be granted.

A Temporary Certificate may have certain limitations such as, a specific number of hours, a specific appearance in the Court by Counsel, etc. If the Temporary Certificate is not limited in any manner, it expires in 28 days. Where a full certificate has not been obtained in the interim, counsel must request an extension before the Temporary Certificate expires failing which any additional work carried out thereafter will be subject to taxing off by the LAC.

Temporary/Emergencies Certificates should only be sought when in fact there is a matter of urgency and not be used as a means to simply attempt to circumvent the usual application process.

10. Matters to be Appealed - If the Applicant had Legal Aid for the substantive matter then they must request from the Committee that the certificate be extended to include the Appeal. Where an extension is sought in these circumstances, a new Certificate will be issued for the Appeal rather than the

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matter continuing on the initial Certificate. Those applying in respect of an appeal for the first time must submit an application in the normal way.

Please note that where a Legal Aid Certificate was already in place for the initial hearing/trial of a matter, the brief fee will be considered to include sentencing and counsel providing the LAC with of the merits of an appeal if counsel intends to request coverage for an appeal.

11. Requests for an Extension of a Legal Aid Certificate – Counsel’s attention is drawn to Regulation 10 and in particular (4), (5), (6) and (7) of Regulations.

When counsel becomes aware that it will be necessary for the proper conduct of the client’s matter and/or in order to conclude the matter that the Legal Aid Certificate’s limitation will not be sufficient, counsel should request an extension as soon as is practicable. The request should set out clearly why the request is necessary and should either specify the number of additional hours he or she estimates it will take to conclude the matter or to make a request that there be no limitation.

Certificates will not automatically be extended by the LAC without both receipt of the request from counsel as well as detailed explanation for the request. Failure to provide these requirements may result in counsel carrying out work which will not be covered by a Legal Aid Certificate and as such will be taxed off from any bills submitted.

Certificate Transfers – A request by a client for a transfer of his or her Legal Aid Certificate must be made in writing and come from the client rather than Counsel making the request on his or her behalf. The LAC, upon receipt of the request, will require that current Counsel provide an updated status report if it is unclear to it at what stage the matter is at. Upon receipt of the updated status report, the transfer request will be considered by the LAC.

12. Referral to Bar Council – Where it is apparent to the LAC there has been a breach of the letter or spirit of the Barristers Code of Professional Conduct by counsel who have been assigned Legal Aid Certificates, either in respect of counsel's fees or counsel's conduct of the lay clients matter, the LAC reserves

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the right to refer the matter to Bar Council whether or not the client wishes to pursue a complaint in their own right.

13. Means of Communication`- In keeping with modern trends of case management, all Counsel are encouraged to submit all correspondence and bills as scanned attachments to e-mails. If correspondence is sent in this manner, a hard copy is not required to be sent as well.

BILLING/TAXATIONS

In the taxation process, the LAC will generally follow the case law guidance of taxations which have been conducted by the Registrar. Set out below are general policies and guidelines which the LAC follows for the taxation process.

1. Bill format - Counsel are reminded that there is a specific format in which bills should be submitted for taxation (see Appendix 1). Bills submitted in any other format will not be accepted and submitted for taxation.

Counsel are also reminded that when compiling bills, the greater detail that is provided in respect of each item provides greater assistance in terms of the taxation process. The LAC finds itself in a position all too often requesting counsel to provide more detail in the bill which ultimately causes unnecessary delay in payment.

2. Waiver of filing fees and revenue stamps - Fees paid in respect of matters filed in the Supreme Court Registry and in the Magistrates' Court are not recoverable on taxation. In order to obtain a waiver of such fees it is counsel's responsibility to produce a copy of the Legal Aid Certificate to the relevant court.

This waiver applies to Revenue Stamps which would normally be required to be affixed to pleadings filed in the Supreme Court. Therefore, for pleadings filed with the Court where the Applicant has been granted a Legal Aid Certificate, Revenue Stamps are not required to be affixed. The Court requires a copy of the Applicant's Legal Aid Certificate to be submitted otherwise the Court will expect Revenue Stamps to be affixed and will not process the filed documents in the usual manner

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3. Status reports – All bills should be submitted with a status report. Bills submitted without status reports will not be taxed until such time as counsel submits the status report. Counsel will normally be allowed to bill up to 30 minutes for a status report to the LAC.
4. General billing – With respect to submission of bills, counsel should note that the following matters should not be included as they are not provided for in the Regulations: Preparation of bills; telephone calls to or from the Legal Aid Office; and File Notes/Administration.
5. Interim billing – Section 13 (3A) (d) specifically states that interim bills should be of amounts of \$2,000 or more. An interim bill can however be submitted for a lesser amount by counsel upon receipt of notification the certificate has been transferred to another counsel. Bills for less than \$2,000 can also be submitted if they are final bills or if they are requested to be submitted at the end of the LAO's financial year which runs from April 1st to March 31st. Any bills submitted that do not fall within these guidelines will not be taxed by the LAC.

This provision does not apply to bills submitted in respect of Duty Counsel billings and billings in respect of attending on behalf of Legal Aid Counsel for the treatment courts.

6. Disbursements – General provisions for disbursements of counsel made in respect of the conduct of a matter on behalf of a legally aided person are contained in regulation 4 of the Regulations 1980. Counsel should provide a breakdown of disbursements when submitting their bills for taxation. The breakdown should include the nature of the disbursement and the cost of each disbursement. Disbursements submitted without the requisite breakdown will be taxed off by the LAC.

If counsel needs to use an expert or incur fees for a service which they cannot undertake themselves, counsel must first obtain the estimated cost of the service in writing and request the approval of the LAC before using the service. The estimated cost should be provided in a specific, detailed breakdown rather than Counsel submitting a global sum for the cost. The

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LAC may not pay the disbursement if the requisite approval has not been sought and obtained beforehand.

Administrative Disbursements - The general policy is that administrative costs are not covered under a Legal Aid Certificate. However, in the event where Counsel is required to file substantial bundles or may need to incur extraordinary administrative disbursements, Counsel is expected to notify the LAC and provide an estimate as to the costs in order for the LAC to consider pre-approval.

7. Research - Any research completed by counsel will be very closely scrutinized. When the LAC is determining what is a reasonable amount of research to be billed it will be guided by the expected experience/knowledge counsel is assumed to have. Additionally, the LAC will not be responsible for excessive amounts of research for effectively training counsel (see case of *SC Capital Partners Securities Co Ltd v Sturgeon* [2017] SC (Bda) 32 Com).
8. Law Search Engine/Database Charges - Charges submitted for use of legal search engines such as Lexis Nexis, will not be covered as a disbursement and will be taxed off should these disbursements be included in a bill.
9. Travel Time -The LAC will generally allow Counsel up to one (1) of travel time in respect of client meetings at Westgate Correctional Facility, Co-Ed Facility or any other location which may require Counsel a substantial amount of travel time . Any submission for travel time over and above this, the LAC will require an explanation from Counsel as to why it should not tax the travel time down.
10. Brief fees - When an applicant is granted a Certificate by the LAC in respect of a criminal matter, counsel is normally expected to provide a brief fee proposal which includes all work on the matter from the date on which the Certificate was initially issued or extended. Should counsel fail to submit a brief fee proposal and the matter proceed to trial, any bill submitted by counsel will be very closely scrutinized and taxed in line with brief fees that have been previously approved by the LAC in similar matters.

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LEGAL AID
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When submitting bills for brief fee payment (either partial or full payment) a breakdown must be provided as to the dates and times where counsel appeared in Court. The LAC may seek verification from the Courts as to the days and length of time the matter was heard.

In criminal cases where brief fees have been approved by the LAC and the client is found guilty, the brief fee includes the sentencing and the drafting/filing of the Notice of Appeal. Bills submitted for these items will not be paid.

11. Payment letters - All payment letters sent to counsel will include a copy of the taxed bill showing what items have been taxed down, where applicable.