



Legal Aid Ontario Tariff Reforms 2023

Submitted to: Legal Aid Ontario

July 17, 2023.

Submitted by: Ontario Bar Association



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## Executive Summary

The Ontario Bar Association (OBA) appreciates the opportunity to provide this submission to Legal Aid Ontario (LAO) about proposed Tariff Reforms. The following is a summary of our comments, which are more fully set out below.

This submission was jointly prepared by members of the OBA's Criminal, Family, and Citizenship and Immigration Sections. This submission was prepared by lawyers who practice across Ontario. Tariff reforms for Criminal LAO matters, Family LAO matters and Refugee LAO matters were reviewed by the OBA.

- **Criminal:** Increases are needed to reflect the reality of increasingly complex appellate work, including pending appeals that can take many years. The Mental Health and Rural and Remote enhancers should be increased to reflect increased cost and time required to service these clients.

The annual cap on tariffs and hours should be reviewed and adjusted to ensure that lawyers are not 'cut off' mid case. These proposed increases should be built into LAO's annual budget, so there is not a corresponding cut to other tariffs.

- **Family:** Increases should be considered for cases involving domestic assault, Case Conference hours and attendance of legal counsel at ADR sessions.
- **Representing Refugees:** The overall increase is not reflective of the increased costs and complexities in this area of law and may be a disincentive to lawyers being willing to represent refugees. IRCC hearings are increasingly demanding and Stay Motions and the time required for humanitarian and compassionate hearings are not addressed. The cost of interpreters and medical tend to exceed the allotted amounts, making it increasingly difficult to engage high quality people, which disadvantages the clients.

## The Ontario Bar Association

Established in 1907, the OBA is the largest volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system and who provide services to people and businesses in virtually every area of law and in every part of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and delivers over 325 professional development programs to a diverse audience of over 16,000 lawyers, judges, students, and professors.



## Overview

The OBA applauds the steps taken by LAO to acknowledge the work of lawyers providing services to the most vulnerable persons in Ontario. The need to reform the Tariffs for LAO is overdue. The OBA welcomes the proposed changes as a first step to ensuring that lawyers providing assistance to low-income Ontarians can continue.

However, these first steps are applauded. The OBA has also reviewed the reforms and would like to provide feedback regarding some area of concern. The feedback is included below.

## Comments

### Criminal Tariff Reforms

The OBA's Criminal Justice Section reviewed the Summary of Changes for LAO's Criminal Law Tariff Reforms. In their review they wish to provide the following feedback.

- 1 **Appeals**-While the Tariff reforms do address many matters, they do not offer any reforms for appeals. Appellate work has become inordinately more challenging and complex, as the nuanced jurisprudence balloons. Conducting effective and efficient appeals, even on the simplest of matters, always requires more time than the tariff amount. There is no mid-case management for appeals' If an appeal is not eligible for Big Case Management (which typically requires the trial to have lasted at least 3 weeks), counsel is forced to seek a discretionary fee increase after contributing significant hours on pro-bono. Increasing the tariff to perhaps 50 hours could address the need for appropriate time required to review transcripts, review the Crown's factum and book of authorities, write factum, prepare a book of authorities, an appeal book, a compendium for oral submissions and to prepare oral submissions.
- 2 **Pending Appeals**. Additional funding is needed for pending appeals. Not just one; but, up to four. Many appeals can take up to two years to process. The Crown and Court typically require sunset clauses for surrender every six months. Extensions are done pro bono and shouldn't be. The paperwork and logistics involved require significant work. This includes affidavits on the progress of the appeal, a notice of application, a draft order, obtaining written Crown's consent, and facilitating the execution of the bail orders by all sureties and the accused.
- 3 **Mental Health**. The Mental Health Enhancer should be five hours instead of two. Additional work on a matter can require review of documents that go beyond the two hours offered in the enhanced coverage.
- 4 **Rural and Remote**. There should be more enhanced coverage for lawyers in remote and rural communities for travel to and from courts for these underserved communities.



5 **Annual Cap.** The increases to tariffs and hours will also require a change to the annual cap, so that lawyers are not being cut off.

6 The tariff reforms will require appropriate budgeting. It will not be beneficial to cut budgeting elsewhere to reform the tariff.

## Family Tariff Reform

The OBA's Family Law Section reviewed the Summary of Changes for LAO's Family Law Tariff Reforms. In their review they wish to provide the following feedback.

1. **Domestic Assault.** Recent statutory amendments have caused substantial changes to family law that are not adequately addressed in the tariff reform. For example, the amendments have increased the importance of consideration of family violence; however, the reforms do not address the same focus on the issue. The existing additional hours available for cases of alleged domestic violence fail to address the issue and should be increased to reflect the work required.

Victims of family violence are amongst the most vulnerable people in the legal system. It is imperative they be adequately represented by counsel. The tariff reforms may not ensure that that counsel is properly compensated.

2. **ADR.** Recent statutory amendments also put an increased emphasis on the use of alternative dispute resolution in family law disputes. This should be reflected in tariff reforms as well. ADR can be an effective way to resolve matters. However, mediation can be better served by having counsel at the mediation. Legal counsel can also be effective in resolving matters without having the matter proceed to court. The benefit of this could be reducing pressure on the courts.

3. **Case Conference Hours** - There is concern that the increase in hours for Rule 17 case conferences is insufficient. According to Rule 17, there must be three separate and different conferences. The Case Conference; the Settlement Conference and the Trial Management Conference. Each of these conferences requires that briefs be served and filed. While the 5-hour authorization may allow for more flexibility in attendance, it does not allow for adequate preparation for each of the three required conferences. Inadequate preparation time can make resolution of matters before trial more challenging and could ultimately increase the likelihood of trial.

4. **New Settlement Conference Rule.** A new rule requires that an expert report be provided prior to the Settlement Conference. Currently, the tariff for expert reports is triggered when there is confirmation that the matter is going to go to trial. The timing of payment of the tariff needs to be revised to reflect this change.



## Refugee Tariff Reforms

The OBA's Citizenship and Immigration Section reviewed the Summary of Changes for LAO's Immigration and Refugee Tariff Reforms. In their review they wish to provide the following feedback.

1. **Increase Not Sufficient.** The proposed hourly increase in the tariff rate does not reflect the realities of the increasing complexity and costs of representing refugee clients– particularly as there has been no increase to the tariffs in several years. Unfortunately, as a result many lawyers have stopped taking certificates on immigration and refugee matters. It is unlikely the proposed increases to the hourly tariff rate will result in these lawyers again taking on immigration matters.
2. **IRCC Hearings.** The complexity of preparing an IRCC refugee matter is also not recognized sufficiently by the increased tariff rate. This is even more the case when the lawyer is preparing an IRCC matter for a family. The proposed tariff changes where there are multiple family members does not adequately address this issue.
3. **Stay Motions.** Stay motions, which are complex and can take significant time to prepare properly, do not appear to be addressed in the tariff reforms. The current tariff for stays is not adequate to compensate counsel for their representation and should also be increased.
4. **First Stage Approval.** In the tariff reforms, a humanitarian and compassionate application is only increased if first stage approval is granted. The 16 hours for preparation of the application prior to this increase is inadequate.
5. **Interpreters.** The legal aid tariff rates for interpreters (and translations) have made it very difficult to find interpreters and translators willing to work on legal aid funded cases. The number of hours of interpretation should be increased from the current tariff limit of 10 hours.
6. **Medical Experts.** As with interpreter services, the same can be noted for medical reports. At present it is difficult to find doctors willing to work on legal aid funded files.

## Conclusion

Thank you for taking the time to review our submission. The OBA appreciates the opportunity to provide comments on LAO's Tariff Reforms. We applaud the much-needed attention to these reforms as they do begin to acknowledge the work that many lawyers provide to ensure access to justice for many Ontarians. We recognize the importance of this first step, and we would be pleased to provide additional feedback as you move forward.