

Authorization and billing guidelines

In response to feedback from the Tariff Review and as part of our Quality Assurance initiative funded by the Law Foundation, LSS is introducing two new pilot projects to promote mentoring within the tariff bar.

Mentoring assistance

LSS will support referral lawyers with less than five years' call to obtain mentoring assistance on their LSS cases from experienced counsel. The authorization will allow the experienced lawyer to spend up to 10 hours at the applicable tiered rate to provide guidance on trial-related matters such as drafting documents, witness preparation, trial preparation and strategy, and advocacy skills. This may include attendance in court to observe performance and provide feedback.

Authorization guidelines

Mentoring assistance is designed to help lawyers as they begin to take on more serious cases with greater procedural or substantive complexity. It is not generally intended to help lawyers with short, relatively straightforward cases, but LSS will evaluate each request in light of the nature of the case, the lawyers' experience levels, and the likely benefits of mentoring assistance. While the maximum is 10 hours, LSS may authorize less than 10 hours to ensure that the level of mentoring assistance provided is proportionate to expected time demands of the case.

For example, lawyers with less than five years' call might seek mentoring assistance in the following types of cases:

Criminal

- A solo trial involving more complex charges than the lawyer has defended in the past (for example, sexual assault or impaired driving).
- A case involving forensic expert evidence.
- A case involving pre-trial motions to resolve complex Charter or evidentiary issues.
- An indictable appeal in the Court of Appeal.

Family

Given the limits on LSS funding and the scope of the Family Tariff, mentoring referrals will only be considered for Extended Services referrals and in limited circumstances, for example:

- A case involving expert evidence.
- A case involving the Hague convention.
- A case where the opposing party is unrepresented and particularly challenging.
- A case involving multiple parties, such as biological parents and grandparents.
- A complex appeal.

CFCSA

- A case involving expert evidence.
- A case involving related Family Relations Act proceedings.
- A continuing custody order hearing.
- An Aboriginal extended family meeting.
- A complex appeal.

Immigration

Given the limits on LSS funding and the scope of the Immigration Tariff, mentoring referrals will only be considered in exceptional circumstances, for example:

- A complex refugee claim involving exclusion issues such as war crimes or serious criminality.
- A case where the Minister of Immigration intervenes.
- A complex judicial review application or appeal.

The proposed mentor should be a lawyer with at least 10 years' experience in the relevant practice area, with significant experience in the type of case for which the mentoring assistance is requested. LSS will retain discretion to issue authorizations based upon the circumstances of the case and the qualifications of the proposed mentor.

Apprentice counsel

Lawyers with less than five years' call may arrange with an experienced lawyer to act as apprentice counsel on one of the experienced lawyer's LSS cases. The purpose is to offer a practical learning experience to the apprentice lawyer, rather than provide the experienced lawyer with junior counsel for the case.

LSS will authorize the apprentice counsel to bill at a rate of \$40 per hour, while the experienced lawyer may bill at the applicable tiered rate for time spent mentoring.

LSS will authorize up to a maximum of 75 hours for the apprentice counsel, including preparation and court attendance, and 15 hours for the mentor. Within those limits, LSS will authorize an appropriate number of hours given the nature of the case, the hours approved for the case as a whole, and the extent of available funding. In shorter cases, the apprentice counsel may be involved throughout the preparation and hearing stages, while in longer cases the apprentice could be more selectively engaged. For example, in a criminal case involving wiretap evidence, the apprentice might seek authorization to work on the *voir dire* only. It will be up to the two lawyers to decide how to allocate the apprentice counsel's time on each case so as to maximize learning opportunities within the limits of the authorization.

Authorization guidelines

The proposed mentor should be a lawyer with at least 10 years' experience in the relevant practice area, with significant experience in the type of case for which the apprentice counsel authorization is sought.

In determining whether to authorize apprentice counsel, LSS will consider whether the proposed case is likely to afford a worthwhile learning opportunity for the apprentice counsel. In general, LSS will take into account the:

- issues in the case;
- nature, amount, and complexity of the evidence;
- expected number of substantive witnesses;
- scheduled number of court days;
- qualifications of the proposed mentor;
- experience level of the proposed apprentice counsel; and
- proposed allocation of the apprentice counsel's hours to promote learning.

LSS expects that the apprentice counsel's time will be reasonably apportioned between preparation tasks and court or hearing attendance to observe and practice advocacy skills.

In criminal cases, LSS will give priority to requests for apprentice counsel for:

- jury trials,
- category IV trials,
- dangerous offender proceedings, and
- cases involving pre-trial motions to resolve complex Charter or evidentiary issues.

In family, child protection, and immigration cases, LSS will authorize apprentice counsel only in unusually complex cases.

Seeking authorization for mentoring assistance and apprentice counsel

To request authorization for mentoring assistance or apprentice counsel, lawyers should submit a written request to the managing lawyer, Tariff Services by fax at (604) 681-7963. LSS will not grant retroactive authorization, so counsel should submit their requests in advance.

The request should include the following information:

- The names and years of call of the lawyers involved
- Confirmation that the experienced lawyer has agreed to act as a mentor
- A description of the mentor's qualifications to provide guidance in the particular case, including years of experience in the practice area and experience with the type of case for which authorization is sought
- A description of the junior lawyer's experience in the practice area, and with the type of case for which authorization is sought
- A description of the nature of the case (issues, evidence, and expected length of the proceeding)
- An explanation of why mentoring assistance or apprentice counsel is appropriate in the case, and what the lawyer expects to learn
- For apprentice counsel requests, a description of how the apprentice counsel's hours will be allocated to promote learning
- The number of hours requested

The more detail the request for authorization provides, the easier it will be for LSS to review it. A case review lawyer will assess each request. If it meets LSS guidelines and sufficient funding is available, LSS may issue the authorization for an appropriate number of hours to the lawyer who has the referral for the case. LSS retains discretion to determine who is eligible for a mentoring opportunity and who is qualified to serve as a mentor.

Funding is limited, so LSS will issue authorizations only in appropriate cases, and on a first come, first served basis. At present, the available funding will not permit LSS to provide lawyers with more than one authorization of each type.

If you are interested in a mentoring opportunity, but need help finding a suitable mentor, LSS may be able to assist you. Please send an e-mail to lawyersresources@lss.bc.ca.

Extra fees

LSS will not authorize extra fees for mentoring assistance and apprentice counsel. Counsel should take care to select cases where the authorized hours are appropriate given the expected time demands of the case.

Billing

Mentoring assistance and apprentice counsel authorizations are not e-billable, and disbursements will not generally be payable. Other services and disbursements LSS has authorized under the referral can still be e-billed. Send your accounts to Tariff Operations, Legal Services Society, 400 – 510 Burrard Street, Vancouver, BC V6C 3A8.

Lawyers should maintain accurate time records, and all invoices should include a detailed breakdown of the hours claimed and how the time was spent.

For mentoring assistance, the lawyer with less than five years' call will pay the mentor directly and claim the mentor's fees as a disbursement when billing LSS. The lawyer should attach the mentor's invoice when submitting an account to LSS.

For apprentice counsel authorizations, the mentor will pay the apprentice counsel directly and claim those fees, as well as his or her own mentoring time, as a disbursement when billing LSS. The mentor should attach his or her invoice, and that of the apprentice counsel, when submitting an account to LSS.

As noted previously, the mentor's fees will be eligible for any applicable tiered-rate increase. Because LSS requires a mentor to have ten years' experience in the practice area, in many cases the mentor will qualify for the tier 3 rate. For more information regarding tiered rates, please refer to Notice to Counsel #48. If you have any questions, please send an e-mail to lawyersresources@lss.bc.ca.