



The
Law Society of
Upper Canada
Osgoode Hall, Toronto

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Legal Aid Tariff

The long negotiations respecting the Legal Aid tariff are over. Of the factfinder's recommendations the first, a 20% increase in the tariff, was put in place on December 1st, 1985; the second, removal of the 25% reduction from fees paid under the Plan, is to be implemented by July 1st. So far as further increases in the tariff are concerned, full implementation of the factfinder's recommendations would result in further increases of 15% in 1987 and again in 1988. The Attorney General has said he will use his best efforts to ensure that those final stages are implemented consistent with the government's fiscal responsibilities. The Law Society has formally recognized that there is an obligation on all the members of the profession to support the Plan.

The Attorney General wrote to the Acting Treasurer:

"I am pleased that we have been able to come to an understanding, subject to the approval of Convocation and Cabinet, which will allow us to continue to move towards the full implementation of the report of the factfinder on the legal aid tariff.

I am particularly pleased that the Law Society is prepared to formally recognize the obligation on all members of the legal profession to contribute to the cost of the delivery of legal services through the Legal Aid Plan. This is an important recognition of professional responsibility, and I applaud the Society for the significant step it has taken. It confirms my view that the Law Society's administration of legal aid advances the public interest.

I note that our agreement will permit the full implementation of the first two stages of the factfinder's report, subject only to a deduction of up to 5% from legal aid accounts, as required by the Society. The government of Ontario accepts the findings of the factfinder, and regards his recommendations as an appropriate basis for the compensation of lawyers under the Legal Aid Plan. With the implementation of our agreement, we will have made a significant advance towards the full implementation of his report, and thus towards our mutual goal of restoring legal aid fees to the level of those ordinarily paid by a client of modest means.

Our understanding constitutes the implementation of the first two stages of the factfinder's recommendations. I am desirous of implementing the final two stages on the basis of this understanding and within the timeframe proposed by the factfinder, subject to the same, limited delay which has been built into our implementation thus far. I can assure you that I will use my best efforts to assure the implementation of those two final stages, consistent with the fiscal responsibilities of the government.

Further, I can advise you that I am committed in principle to an annual review of the Legal Aid Tariff. We are prepared to meet with you or your representatives on an annual basis to review this matter. If the Society thinks it is necessary and appropriate, a mechanism for this could be formally established.

I have attached to this letter an outline of the understanding which has been prepared by my officials and officials of the Legal Aid Plan. As soon as you can confirm to me that Convocation has accepted this understanding, I will take the necessary steps to seek Cabinet's approval for legislation repealing the existing 25% deduction from accounts, and providing for such other matters as are necessary to implement the agreement."

The outline referred to reads:

- "1. The Legal Aid Act will be amended by eliminating the 25% reduction on accounts.
2. The Act will be amended further to provide, in its effect, that the Law Society will contribute each year an amount equal to 50% of the administrative costs of the Plan. As at present, the definition of administrative costs will exclude the costs of clinics, salaried duty counsel and the research facility.
3. One-half of the profession's share will be paid into the Legal Aid fund by the Law Society on behalf of the profession as a whole. The other half will be raised by a reduction in accounts of up to 5%. If, following a transition period, a reduction of 5% fails to generate one-half of the profession's contribution, the Society will make up the difference from the profession as a whole. Individual members of the profession may make a contribution on behalf of the profession by way of a deduction from fees owing for services provided on a certificate or as duty counsel.
4. By March 31st of each year, the Law Society will pay into the Legal Aid fund an amount equal to 25% of the estimated administrative costs of the Plan. Any shortfall or overage can be corrected once the precise administrative costs for the fiscal year are known. For 1986/87, the Law Society will pay into the fund, by March 31st, 1987, an amount equal to 12.5% of the administrative costs of the Plan. This amount is one-half of the Law Society's normal contribution because the full amount of the tariff increase will not have been felt.

5. For 1986/87 and 1987/88, there will be fixed 5% reduction from accounts. Thereafter, the reduction from accounts will be the amount, up to a maximum of 5%, which will generate a reduction in accounts equal to 25% of the estimated administrative costs. This amount will be set by regulation by March 31st of each year, starting with March of 1988 for the 1988/89 fiscal year. The prescribed reduction will be applied to certificates issued on or after April 1st of the year. If a reduction of 5% is not sufficient to generate 25% of the administrative costs, the Law Society will pay the estimated difference into the fund by March 31st of the fiscal year, subject to adjustment when the final figures are available.
6. In 1986/87 and 1987/88 the Law Society contribution will be raised by a contribution from all members of the profession. In 1987/88 this is expected to be \$175.00 per member.

All of the foregoing subject to approval by the Treasurer of Ontario and Cabinet and to the approval of Convocation and revised federal cost sharing."

Convocation voted to accept the proposal on condition that the Society's contribution is established by regulation and that the annual review of the tariff is also provided for in the regulation.

Taking into account the projections of increased costs of administration and the increasing numbers in the profession, the per capita amount is likely to rise only by a relatively modest inflation factor. The 5% reduction will be adequate to cover the other half of the Society's obligation because of substantially increased fees under the tariff.

Credit Cards

Members may now enter into agreements with financial institutions that offer credit card services subject to certain conditions.

The Order in Council amending the regulation made under the Law Society Act to permit the use of credit cards to pay legal fees was approved on April 10th, 1986.

The definition of "money" in the regulation is amended to include "credit card sales slips" and to provide that credit card sales slips like other money received in trust, must be deposited to the member's trust account not later than the following banking day.

Conditions

Accounts from which Discounts and Service Charges are to be Deducted

Any credit card agreement that members enter into must provide that all service charges, discounts and other fees payable by the member to the financial institution are to be deducted from the member's general account and that no such charges are to be deducted from the trust account. Members should note that most financial institutions offering credit card services require the opening of accounts at one of their branches. If a trust account is opened with a financial institution to facilitate the use of a particular credit card, the financial institution must be directed to pay interest on the funds held in trust to the Law Foundation of Ontario.

Confidentiality

The sales slip may show the name of the lawyer or firm and its address, the necessary code numbers and date. The nature of the legal services provided must not be indicated, but only the words "legal services" plus a file number and a dollar amount. Details of the services are to be provided to the client in the usual way.

Amount must be Shown

Members must not accept a charge card sales slip unless the amount of the charge has been inserted at the time the client signs the sales slip.

Advertising

Members may display the logo or symbol of the credit card company only in their offices and on statements of account. It may not be displayed on business cards, letterhead or advertisements currently permitted by the Rules of Professional Conduct.

Payment of Retainers

The words "trust account" must appear on the original credit card sales slip and the credit card sales slip must be presented for deposit in the appropriate trust account in accordance with the Regulation. Normal accounting procedures are then to be followed in transferring the funds from trust to general. Any refund is to be made by credit card voucher. All service charges are to be deducted from the general account and the client must receive full credit for the face amount of the credit card invoice. The credit card company's discount or fee is a cost of carrying on practice and is not to be charged to the client.

The Society has received professional credit card agreements from three companies, American Express, Bank of Montreal - Mastercard, and Scotiabank - Visa. All three comply with the requirements set out above. A draft is expected from Canada Trust - Mastercard. Other credit card companies may wish to enroll law firms and members should ensure that their agreements comply with the Society's requirements.

Members should also note that most agreements provide that law firms cannot refuse payment by credit card if tendered subject to the terms and conditions of the relevant agreement. The Bank of Montreal - Mastercard agreement presently provides for a common floor limit (the amount which a firm can accept on a charge without prior authorization from the financial institution) and a common discount rate (the amount charged by the financial institution) for all members of the profession. American Express and Scotiabank - Visa provide for individual floor limits and rates which are negotiable from time to time.

Members who have questions concerning the use of credit cards should contact the Deputy Secretary, Richard Tinsley at 947-3322.

Kenneth Jarvis,
Secretary.