

Family and CFCSA Tariff Simplification Discussion Paper

Purpose

The purpose of this paper is to provide:

- information about the Legal Services Society's (the Society) Tariff Simplification project that includes simplifying the family and CFCSA tariffs while maintaining overall cost neutrality,
- a copy of the proposed simplified family tariff and billing rules,
- a copy of the proposed simplified CFCSA tariff and billing rules, and
- an opportunity for stakeholders to provide comments on the proposed family and CFCSA tariffs.

Note: A similar paper is available on the LSS website that describes the simplified criminal tariff.

Background

a. Current Family and CFCSA Tariffs

The family tariff is an hourly rate tariff; it is 34 pages long and contains 46 billable items. Counsel bills his/her time up to the maximum specified for each billable item.

The CFCSA tariff covers child apprehension matters; it is 14 pages long, contains 26 billable items, and its structure is similar to that of the family tariff.

In contrast, the entire 1991 tariff (covering both family and criminal) was 28 pages.

Appendix A shows how frequently existing tariff items were billed for cases initiated in 2007. For Family Emergency Services, there are only 6 items that are used frequently while for CFCSA there are about 10.

b. How did the tariffs get so complex?

The tariffs expanded to reflect court processes and changes. New tariff items were added to cover these new processes but no existing items were taken out or merged with the new items. Changes to practice and procedures have been accommodated within the fee structure.

c. Problems associated with a complex tariff

A complex tariff makes it more difficult for lawyers to clearly explain to clients what they can expect from their lawyer.

As well, the complex tariff structure and related rules and conditions require LSS to perform and manage many activities to ensure compliance. With over 70 tariff items and the authorization of thousands of payments annually, significant time and costs are incurred to maintain these manual and automated controls.

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In addition, current tariff items do not always match how counsel allocates its time, which creates extra administrative effort for both billing and processing accounts.

Finally, since the multiple tariff items cover such a wide range of services that are not always clearly defined, it is difficult to forecast total billings. This situation poses significant problems for effective budgeting and financial planning for the Society.

Tariff Simplification Project

a. Purpose

The purpose of the project is to design and implement a new family and CFCSA tariff structure that will simplify the policies and procedures for billing, accounts processing, case management, and other administrative obligations for Society staff and lawyers who do work on behalf of the Society. The project is not meant to reduce current family or CFCSA tariff expenditures and is designed to be cost neutral.

b. Scope and Objectives

The scope of the project includes:

- the restructuring and consolidation of existing tariff items within the Family and CFCSA Tariffs,
- the introduction of a closing fee for Family and CFCSA cases,
- changes to billing rules, policies, and procedures directly related to all of the above tariff modifications, and
- changes to business processes and systems applications directly related to all of the above tariff modifications.

The primary objectives and expected outcomes of the project are to reduce the cost of administering the tariff, and increase cost certainty. In addition, it is anticipated that the project will maintain appropriate payments for services within the available budget and support the recruitment and retention of lawyers who do work on the Society's behalf.

Research and Consultations

a. Family and CFCSA Tariff Structures of Legal Aid Plans

In Canada, Alberta (since 2008), Manitoba (since 1992), and Quebec have simplified their tariffs to reduce the number of items. These legal aid plans have found that the benefits of the simplified tariffs include ease of billing and administration, and an increased level of predictability in expenditures.

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b. Stakeholder Feedback (Judiciary, Tariff Advisory Groups, etc.)

Since October 2009, the Society has met twice with the Family Tariff Advisory Group to discuss approaches to the simplified tariff. As result, the Society has developed a model for family and CFCSA cases that reduces the number of tariff items and simplifies billing procedures.

Before the Society completes the design of the tariff and sets a timeline for implementation, it is necessary to inform stakeholders about the new tariffs and implementation timeframes. Local Agents, Referral Lawyers, the Judiciary, the Attorney General, non-referral lawyers and community agencies will be canvassed from now till the end of March 2010 to provide their comments on the structure.

The general purpose of meeting these groups is to describe the new tariff items, provide the rationale behind these changes, and answer any questions.

Evaluation Component

The Society has contracted with an independent evaluation consultant who is developing an evaluation framework. The primary focus of the evaluation framework is related to the project objectives listed above.

The evaluation will also involve an internal post-implementation review to determine if:

- the structure of the simplified tariffs including new tariff items meets the Society's expectations, and
- actual billings under the new tariffs match projected expenditures to ensure a cost-neutral outcome.

Proposed Models

a. Family and CFCSA Simplified Tariffs

Simplification is about reducing the number of tariff items without changing coverage and eligibility, while maintaining existing services and ensuring the same level of compensation overall. It is also about simplifying the billing rules associated with each item.

The new simplified family tariff (Appendix B) has been reduced from 46 to 9 distinct items; the simplified CFCSA tariff (Appendix C) has been reduced from 26 to 10 distinct items. Both tariffs have been reduced largely through the consolidation of services that are seldom used.

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Highlights of the proposed simplified Family Tariff are:

- consolidation of multiple items into an increased allocation of general preparation hours,
- additional preparation hours for Supreme Court cases,
- extended services re-introduced under a simplified model which provides a standard allocation of general preparation hours and actual attendance time,
- a closing fee which provides compensation for administrative tasks involved in closing the case including providing a final results form to LSS.

Highlights of the proposed simplified CFCSA Tariff are:

- consolidation of multiple items into an increased allocation of general preparation hours,
- general preparation hours includes time for the presentation hearing and two additional hearing stages,
- hours provided for additional hearing stages,
- additional preparation time provided for Continuing Custody hearings,
- hours provided for assisting clients with collateral issues (e.g., housing, debt, addiction),
- a closing fee which provides compensation for administrative tasks involved in closing the case including providing a final results form to LSS.

To show the differences between the old and new tariff, Appendix D (to be posted shortly) contains two examples where existing cases initiated in 2007 under the current tariff have been re-calculated using the new tariff items, rates, and billing rules. These examples are for illustrative purposes only and are not representative of all billings.

b. Cost Impacts

As mentioned above, one of the constraints of introducing a new model is to ensure that the total family and CFCSA tariff expenditures remain unchanged, i.e., the outcome is cost neutral. To determine the overall financial impact of the proposed model, total billings for all family and CFCSA cases initiated in 2007 were examined. They were compared to projected billings under the simplified tariff by applying the new rates and rules for the same number of cases.

For both the family and CFCSA tariffs, lawyers are provided with hourly maximums. Because items have been consolidated under the new tariffs, lawyers will be provided with a larger allocation of hours to complete the work required within the case. Although it is expected that lawyers will continue to bill as they previously would have to complete the work required on the file, there is some risk that behavior may change when provided with a larger allocation of general preparation hours (i.e., counsel may bill more hours than previously).

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Total billings under the current family and CFCSA tariffs have been compared with projected billings under the simplified tariff. Overall, the new tariff items with the revised rates and associated billing rules will result in a very small net difference.

c. Benefits of a Simplified Tariff

The benefits of reducing the number of tariff items and eliminating or streamlining the existing business rules are:

- it is easier for LSS and the referral bar to explain to clients the specific services included in a legal aid referral. It is also beneficial to other stakeholders such as the judiciary, community agencies, government officials, and other stakeholders who, at times, are required to understand the tariff to facilitate their role in family and child protection law matters;
- achieves greater cost certainty because there are fewer factors to consider when estimating the cost of a case; improves the accuracy of forecasts which leads to more effective budgeting and financial planning;
- streamlines administrative processes so the Society and the referral bar can focus more resources and efforts on client services. With fewer tariff items and billing rules, workload is reduced for tariff policy development, accounts processing, publications, audit, and other administrative areas; and
- increases lawyer supply as it may encourage more lawyers to take referrals knowing the new tariff is so much easier to work with; the new tariff is more aligned to how lawyers practice family and child protection law which has the potential to reduce their administrative costs for billing and managing their accounts.

d. Implementing the Simplified Tariff

The new tariff will be introduced in 2010 but the implementation date has not been fixed. This is the date that new referrals will start using the tariff and bill under the revised billing rules. Referrals issued prior to this date will continue to use the old tariff until the case is closed or it reaches its expiry date – two years from the implementation date. This stop date was previously three years. LSS will continue to provide support for the existing tariff.

Feedback Opportunity

The Society invites you to provide your feedback on the proposed family and CFCSA tariffs. As part of your feedback, your consideration of the following questions would be appreciated:

1. From your perspective, what are the positive impacts of simplifying the tariff?
2. Conversely, what are the negative impacts of simplifying the tariff?
3. What are your general comments on the proposed tariff?

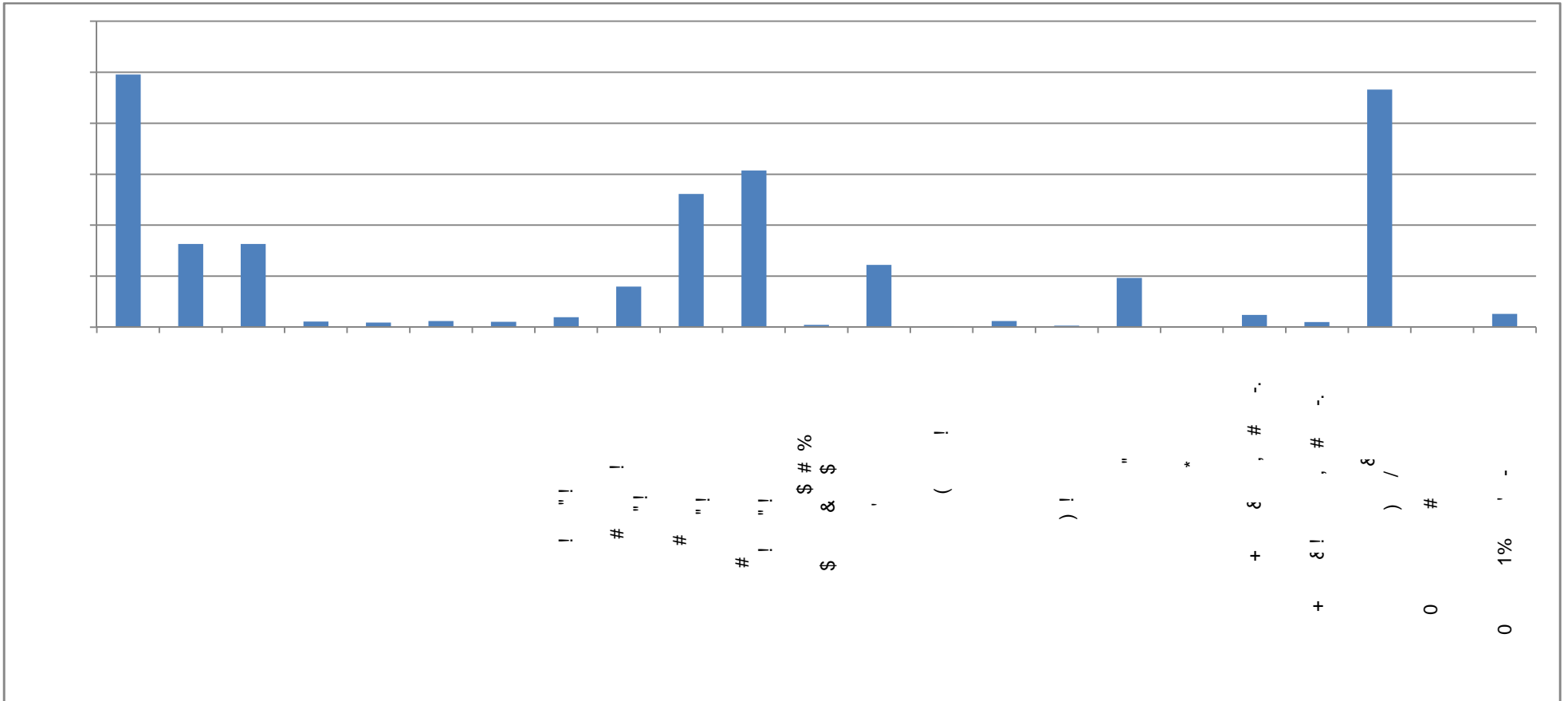
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The Society will review your response, along with feedback from other sources to finalize the simplified tariffs and prepare transition materials.

Also, the Society welcomes your questions on the Tariff Simplification project through email. Please send them to lawyersresources@lss.bc.ca.

Appendix A Billings by Code

Family Tariff - Emergency Services
Proportion of Cases Involving Specific Tariff Items for cases initiated in 2007



Family Tariff (draft)

Tariff Item #	Tariff Item and Billing Rules	Billable Hours
1	<p>Basic Coverage – General Preparation</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour for general preparation (e.g., interviewing the client, taking instructions, preparing correspondence, preparing and filing court documents, negotiating a settlement, preparation with expert witnesses, written arguments, separation agreements, minutes of settlement, consent orders, preparation for applications and hearings, preparing for case or settlement conference, Examinations for Discovery, drafting opinion letter for Extended Services). • Record the actual time spent as specified in your time records. 	Up to 25 hours
2	<p>Additional Preparation for Supreme Court</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour for additional preparation for Supreme Court cases that have pleadings before the Supreme Court (e.g., Examinations for Discovery, drafting pleadings and document disclosure, applying or responding to applications). • Provide the court file number and the delivery date for each motion for which you claim preparation. • Record actual time spent as specified in your time records. <p>Caution</p> <ul style="list-style-type: none"> • Preparation for Supreme Court is billable where the matter is already before the Supreme Court. 	Up to 10 hours
3	<p>Preparation for Collaborative Processes and/or Mediation</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour when you prepare your client for mediation or for collaborative settlement meetings including formal collaborative meetings or other interest-based settlement meetings conducted in the presence of your client, opposing counsel, and the opposing party. • Billable to a maximum of 10 hours per referral. <p>Caution</p> <ul style="list-style-type: none"> • Conditions for retaining a mediator are contained in the Disbursements for all Tariffs. The cost of a mediator is to be shared between the parties unless prior authorization has been granted by the Case Management Section. 	Up to 10 hours
4	<p>Attendance for Collaborative Processes and/or Mediation</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour for attending a mediation session or collaborative settlement meetings, including formal collaborative meetings or other interest-based settlement meetings where negotiations are conducted in the presence of your client, opposing counsel, and the opposing party. • Record the actual time spent as specified in your time records. • Billable to a maximum of 15 hours per referral. 	Up to 15 hours

Appendix B – Family Tariff (draft)

Tariff Item #	Tariff Item and Billing Rules	Billable Hours
8	<p>Travel</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per half day of travel to or from a hearing or to interview a client in custody if the trip exceeds 160 km per round trip. • Billable for each half day you remain at the hearing location (Provide your destination and your travel date). • To bill travel fees, you must have prior authorization unless “authorized” appears beside “Travel” under the “Conditions of Referral” on your referral form. Apply to the Manager, Legal Services for authorization if travel is not authorized on the referral. • The maximum travel and out-of-office fee on one date is \$360, unless you bill other services for the same day. • The maximum travel and out-of-office fee for a day for which you bill other services is \$180. • Travel fees are paid per trip, not per client 	\$180
9	<p>Closing Fee</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable on the final account rendered on a referral. The fee is intended to compensate counsel for steps associated with the conclusion of the file, including providing materials to the client, preparing accounts to submit to LSS, and preparing the file for closure. • To bill the closing fee, you must have met in-person with your client at least once. • Billable only on e-billing accounts. 	\$100

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Appendix C – CFCSA Tariff (draft)

Tariff Item #	Tariff Item and Billing Rules	Billable Hours
1	<p>Basic Coverage – General Preparation</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour for general preparation (e.g., includes preparation for presentation hearing(s) and 2 hearing stages, interviewing the client, taking instructions, preparing correspondence, preparing and filing pre-hearing and post-hearing applications, negotiating a settlement or plan of care agreement, providing advice to the client before and after he or she attends a mediation session, preparing written arguments, consent orders, pre-trial conferences, preparation with expert witnesses, case conference). • Record the actual time spent as specified in your time records. • If authorized, billable for preparation for an application to leave to cancel a CCO or application to cancel a CCO. 	Up to 20 hours
2	<p>Preparation for Mediation and/or Consensual Dispute Resolution</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour when you prepare your client for mediation sessions with a mediator and/or consensual dispute resolution meetings (e.g., family group conferencing, family meetings, and other forms of consensual dispute resolution processes). • Record the actual time spent as specified in your time records. • Billable to a maximum of 10 hours per referral. 	Up to 10 hours
3	<p>Attendance for Mediation and/or Consensual Dispute Resolution</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour for attending mediation sessions with a mediator or consensual dispute resolution meetings (e.g., family group conferencing, family meetings, and other forms of consensual dispute resolution processes). • Record the actual time spent as specified in your time records. 	Actual time
4	<p>Attendance for Court Processes</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour when you appear in court for a presentation hearing, commencement date hearing, case conference, and hearing stages. • Provide the hearing date and the time spent in court. • Bill the actual time spent as specified in your time records, from the time the hearing was scheduled to begin to its conclusion, excluding meal breaks. <p>Caution</p> <ul style="list-style-type: none"> • If hearings are scheduled on the same day for more than one client, distribute the waiting time in court equally between the clients. Do not bill waiting time more than once. 	Actual time

Appendix C – CFCSA Tariff (draft)

Tariff Item #	Tariff Item and Billing Rules	Billable Hours
5	<p>Additional Preparation if an FRA Application is Required to Resolve the Underlying CFCSA Case</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour for general preparation or other work when an FRA application is required to resolve the underlying CFCSA case and LSS has not issued a separate FRA referral. • Record the actual time spent as specified in your time records. • Provide the date the application was filed or delivered as the service date for billing purposes. • Billable once per referral. <p>Caution</p> <ul style="list-style-type: none"> • Bill under this item only if you are responding to an FRA application filed in a CFCSA case or if an FRA application is required to resolve the underlying CFCSA case. 	Up to 7 hours
6	<p>Collateral Issues</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour to assist clients with collateral issues where the assistance will likely help resolve the CFCSA matter. • Billable for assistance with issues such as: <ul style="list-style-type: none"> – income (e.g., income assistance, disability benefits, CPP disability, Employment Insurance, Workers' Compensation, Employment Standards); – housing (landlord/tenant disputes, accessing BC Housing, co-op housing); – immigration status in Canada; – drug and alcohol issues; – mental health issues; – residential schools compensation, band membership, housing and income support on reserve; and – access to health care and other benefit programs and services. • Bill the actual time spent as specified in your time records. • Examples of services that could be provided are interviewing a client to identify issues, researching and advising on remedy, helping to fill out forms, advocating for a client directly with an administering agent or agency (e.g., income assistance worker, landlord, creditor, or Aboriginal band), representing a client in having an adverse decision reviewed/appealed, or linking a client with a non-lawyer advocate and working with the advocate to resolve the client's collateral issues. 	Up to 4 hours

Appendix C – CFCSA Tariff (draft)

Tariff Item #	Tariff Item and Billing Rules	Billable Hours
7	<p>Preparation for Additional Hearing Stages</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour if you have utilized the hours available as general preparation for 2 hearing stages and require additional time for additional (3rd or 4th) hearing stages on the same referral (see LSS definition of hearing stage). • Record the actual time spent as specified in your time records. • Billable for access applications after CCO if you have completed 2 stages on the referral. 	Up to 12 hours
8	<p>Preparation for a CCO Hearing</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per hour for preparation for a continuing custody hearing (e.g., meeting and preparing for a hearing with the client, reviewing court documents, meeting and negotiating with the social worker, preparing for a hearing, researching case law, interviewing witnesses, negotiating a settlement). • Record the actual time spent as specified in your time records. 	Up to 5 hours
9	<p>Travel</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable per half day of travel to or from a hearing or to interview a client in custody if the trip exceeds 160 km per round trip. • Billable for each half day you remain at the hearing location (Provide your destination and your travel date). • To bill travel fees, you must have prior authorization unless “authorized” appears beside “Travel” under the “Conditions of Referral” on your referral form. Apply to the Manager, Legal Services for authorization if travel is not authorized on the referral. • The maximum travel and out-of-office fee on one date is \$360, unless you bill other services for the same day. • The maximum travel and out-of-office fee for a day for which you bill other services is \$180. • Travel fees are paid per trip, not per client. 	\$180
10	<p>Closing Fee</p> <p><u>General Billing Rules</u></p> <ul style="list-style-type: none"> • Billable on the final account rendered on a referral. The fee is intended to compensate counsel for steps associated with the conclusion of the file, including providing materials to the client, preparing accounts to submit to LSS, and preparing the file for closure. • To bill the closing fee, you must have met in-person with your client at least once. • Billable only on e-billing accounts. 	\$100