



Legal
Services
Society

Tariff Simplification Evaluation Report

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Strategic Planning and Policy Department



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Executive Summary

This is the third and final report of the Tariff Simplification Evaluation prepared by the Legal Services Society (LSS). The evaluation investigates the impact of simplifying the criminal, family, and CFCSA tariffs in 2010. The first interim evaluation report was produced in 2011, and the second in 2012. The findings here reflect data collected over a three-year period ending in 2013.

The objective of the evaluation was to determine the extent to which Tariff Simplification met the following project objectives:

- A. reduce the cost of administering the tariff
- B. increase cost certainty
- C. maintain appropriate payments for tariff services within the available budget
- D. support recruitment and retention of the referral bar

Findings

The LSS case management system is the main source of the following data. A focus group and two surveys provide context to the findings. A limitation of the data is the difficulty of attributing tariff simplification to the results when outside factors are often at play.

Based upon available evidence, the evaluation findings indicate that LSS has met most of its objectives, but there is room for improvement.

For objective A, to reduce the cost of administering the tariff, LSS case management system data indicates:

- The proportion of bills that cleared first pass in all three areas of law rose by 10.4% between 2008 and 2012. This means Tariff Accounts Examiners (TAEs) are spending less time resolving unnecessary errors.
- There was a slight increase in the overall number of bills per case post-simplification; but a more significant increase of 1.0 – 1.3 bills per case for both family and CFCSA cases. The expectation was that fewer tariff items under simplification would mean fewer forms lawyers had to submit for processing by TAEs.
- Requests for extended family services decreased by 32.9% post-simplification, suggesting that the new tariff is comprehensive enough to cover the costs of a family referral. However CFCSA requests for



extended services are slowly increasing (as anticipated) with the introduction of the new item in the CFCSA tariff.

For objective B, to increase cost certainty, the evaluation found:

- Improved billing times. Earlier billing improves LSS' ability to forecast tariff costs. Although the time between a referral and a lawyer's first bill can be influenced by a number of factors, there were improved billing times particularly for CFCSA and family tariff bills, which dropped an average of 29 days.
- More referrals billed within 30 days of referral. The most pronounced difference was for CFCSA bills. In 2012/13, 38% of CFCSA referrals billed in under 30 days, compared to 27% in 2008/09.
- The average costs increased for some criminal tariff items during the evaluation period, most notably for trial fees (up 54%) and non-trial resolution (up 58%), a new tariff grouping under the simplified tariff.

The analysis of appropriate payments to lawyers for objective C showed that:

- The number of extra fee requests dropped significantly post-simplification, which LSS anticipated would be the result of consolidating multiple tariff items under one general preparation item. In the first year post-simplification, CFCSA extra fee requests dropped to 5 from 64; family requests rose slightly (from 33 to 35) then dropped by half (to 16) in the second year of simplification.
- The majority of lawyers sampled billed slightly higher average and median fees on cases under the simplified tariff than under the previous tariff. However just 48% of criminal lawyers doing summary cases billed higher average and median fees. Conversely, about 20% to 45% of lawyers billed slightly lower average or median fees.

Finally, tariff simplification did not have an observable impact on objective D, lawyer retention and supply.

Lawyers were surveyed twice during the evaluation period. The surveys found that:

- Criminal lawyers' views were markedly different than family and CFCSA lawyers on questions about compensation and overall satisfaction with the new tariff. The perception of criminal lawyers was that they are paid less, and the analysis confirms that a number of lawyers, due to the nature of their caseloads, are being paid less for the work they are doing, though others are being paid more.
- Despite lawyers' views about lower compensation, 41% of respondents indicated that they felt the new tariff was an improvement over the old tariff.



- 81% of lawyers stated that it was somewhat/very easy to understand the new tariff and 75% said it was somewhat/very straightforward when it comes to billing.
- In the follow-up survey, 61% of lawyers strongly agreed with the statement “the new tariff has made billing easier for me”.

TAEs views were gathered in a focus group during the evaluation period. The TAEs corroborated many of the findings. In particular, they reported that:

- Tariff bills were easier to process post-simplification, particularly CFCSA bills—both for them and for lawyers.
- The grouping of non-trial resolution tariff items into one category under simplification was challenging for lawyers.
- They were spending more time processing late billings or requests to extend the stop date on referrals — a result of shortening the stop date from three years to two under tariff simplification.

Introduction

In 2010 the Legal Services Society (LSS) restructured the criminal, CFCSA and family tariffs with the intention of simplifying lawyer billing, processing accounts, LSS case management, Legal and Tariff Services operations, and other administrative functions. The new criminal and family tariffs were implemented on June 29, 2010, and the new CFCSA tariff was implemented on November 17, 2010.

The Tariff Simplification Steering Committee established four project objectives for the simplified tariff.

These objectives included:

- A. reduce the cost of administering the tariff
- B. increase cost certainty
- C. maintain appropriate payments for tariff services within the available budget
- D. support recruitment and retention of the referral bar

Focus Consultants prepared an evaluation framework to guide LSS in measuring the objectives and, with LSS input, created a list of indicators that were measured over three years. This third and final evaluation report reflects analysis and comparisons of key indicators over a three-year period. Over this period, LSS removed some of the indicators originally included in the framework as the society did not have suitable data, or it became apparent that there were too many confounding variables.

The first two interim reports examined only performance measurement data from LSS' internal case management system (CMS). This report re-examines that data, using data that is current as of September 2013, along with survey data from LSS lawyers and qualitative data from a focus group with LSS Tariff Accounts Examiners (TAEs).

Methods

This evaluation uses a mixed methods approach, including a focus group, survey data and a three-year comparison of CMS data, to determine whether Tariff Simplification achieved the four objectives outlined above. The indicators and data collection guidelines follow the evaluation framework established in 2009/2010 by Focus Consulting.



Data collection

This evaluation uses three data sources – CMS data is the main source; data from a focus group with LSS Tariff Accounts Examiners (TAEs) and surveys of tariff lawyers are used to contextualize the CMS data.

CMS data

The CMS data was taken from reports generated by LSS Business Intelligence between July and September 2013.

The time periods chosen for comparison vary according to the indicator and the area of law. This was done to address some of the historical events and changes to tariff items that would affect the validity of comparisons. Most noteworthy, the reporting periods for the simplified criminal tariff were chosen to control for an unrelated change in coverage of administrative offences between April 2009 and December 2010, that had a substantial impact on tariff billing during that period. Also, since the simplified CFCSA tariff was implemented later than the simplified family and criminal tariffs, the comparison years are different.

Unless otherwise indicated, data was sampled by

- referral date and
- billing or authorization request date.

This data sampling approach was deemed most accurate because it ensures that each comparison group of cases (pre- and post-simplification) is at similar stages in the billing cycle. Since bills are received at different times throughout the life of a case, bills can arrive many months, or even years, after a referral is made. The age of cases will impact the results of many indicators in this report, because older cases will necessarily have accumulated a higher volume of bills and authorization requests. This can be controlled by sampling in a manner that limits the amount of time cases in the sample are open. A limit of two years (from the date of referral) was placed on the cases in both the pre-simplification and post-simplification periods in this report. This time frame was chosen based upon the number of years that has passed since simplification, to maximize the amount of time for billing. Any less and both samples would be biased towards cases that are billed earlier and could skew results.

Focus Group (Tariff Account Examiners)

A focus group was conducted with the TAEs at LSS on August 27, 2013. TAEs were identified as an important source for information about the impact of tariff simplification because they are responsible for administering lawyer accounts, responding to lawyers' billing enquiries, processing bills, and managing billing errors. As TAEs



were responsible for implementing and responding to many of the changes that arose from tariff simplification, they are well positioned to provide an informed perspective about the impact of tariff simplification on internal administrative processes. They were also able to provide anecdotal information about lawyers' experiences with the new tariffs.

The objective of the focus group was to obtain TAE's feedback regarding the overall impacts of tariff simplification. Six TAEs and one facilitator (the Evaluations and Policy Coordinator) attended the focus group. The facilitator asked a series of open-ended questions and provided an opportunity for the TAEs to elaborate and engage in free dialogue about tariff simplification.

Surveys with LSS tariff lawyers

Two surveys of lawyers' opinions about the objectives and outcomes of tariff simplification were conducted. First, to obtain general opinions from a broad cross section of lawyers, two questions about tariff simplification were added to LSS' regular triennial Lawyer Satisfaction Survey in February 2013. This online survey was distributed to tariff lawyers who had taken at least one referral or billed in the previous year, and included approximately 50 questions regarding a number of LSS' initiatives and services to lawyers. The response rate for this survey was 34%.

The second survey endeavored to obtain more detailed opinions from a smaller group of LSS lawyers about tariff simplification. This survey was administered in October 2013 to 240 lawyers who had taken at least 10 referrals in the previous 5 years. The survey asked closed and open-ended questions about their views and experiences with the new tariff, as compared to the old tariff. The response rate was 27%.

Limitations

Measuring the impact of tariff changes is not a straightforward exercise. Several indicators used in this evaluation have a less-than-perfect correlation with tariff simplification; it is impossible to isolate a direct causal relationship between the indicators and tariff simplification, especially given the number of confounding variables that may be influencing the results of the pre- and post-simplification comparisons. For this reason, the findings from the lawyers' surveys and the TAEs focus group provide important context to the analysis of the CMS data.

LSS operates in a constantly shifting environment, and regularly updates policies and procedures in response to changes in the justice system, funding priorities, and other external factors beyond the organization's control. Although the indicators for this evaluation were carefully selected, they are not immune to the influence of external factors; instances of this influence will be noted where appropriate.



Finally, relatively low response rates for the surveys also present a limitation to this evaluation. Although unsolicited online survey response rates in the 25-35% range are within the bounds of acceptability, they are too low to reasonably rule out some potential biases in respondents – for example, people who responded to the surveys may have had stronger feelings about the issues in question compared to those who did not respond. These potential biases were mitigated somewhat by the use of a small incentive for survey participants. Although the survey results are valid, they should be cautiously interpreted.

Summary of findings

The summary of findings is organized into sections for each of the 4 objectives that guided the tariff simplification initiative, and summarize the results of three-year comparisons for the evaluation indicators.

Objective A: To reduce the cost of administering the tariff

LSS anticipated that simplifying the tariffs would create administrative efficiencies, particularly for tariff lawyers and the LSS Lawyer Services department. To assess this, LSS selected a number of indicators to measure any observable changes that might be attributable to tariff simplification. Pre-simplification baselines were developed, and changes were tracked over two full years post-simplification.

Volume of bills clearing first pass

The “cleared first pass” indicator refers to the volume of bills that clear the tariff accounts system error free. When the computer system identifies an error in a lawyer’s bill, the bill is flagged and a TAE must manually review the bill to identify the error and determine what steps should be taken. In practice this may also require time on the part of supervisors and other departments to reconcile the issue. LSS anticipated that reducing the number of tariff items would reduce the number of billing errors and would simplify the billing process overall, thus resulting in more efficiency and less time required by TAEs to respond to billing errors.

The findings from the three-year comparison indicate that the proportion of bills clearing first pass continues to rise in the two years post-tariff simplification – overall, across all three areas of law, the proportion of bills that cleared first pass rose by 10.4% between 2008 and 2012. These findings, broken out by area of law, are summarized in Table 1.



Table 1: Volume and Proportion of Bills Clearing First Pass

% Cleared First Pass				
	Pre-Simplification	Post-Simplification		
Area of Law	2008	2011	2012	% Change
Criminal	66.3	71.5	74.2	+7.9
Family	69.9	81.6	82.8	+12.9
CFCSA	65.7	80.2	83.1	+17.4
Total	67.2	75.2	77.6	+10.4

Number of bills

Lawyers submit their bills on forms that limit the number of tariff items that may be billed per form (a limitation imposed by the CMS structure, not the tariff simplification process). Each form with an error must be processed by a TAE, and thus each form with an error requires additional time on the part of LSS staff. By reducing the number of tariff items through simplification, LSS anticipated a decrease in the volume of billing forms submitted per case, and an associated decrease in the time required by TAEs to address errors.

Overall, results show a slight increase of 0.3 bills per case from pre- to post-simplification. The ratio of bills per criminal case remained static, while increases of 1.0-1.3 bills per case were found in both family and CFCSA. Table 2 summarizes these findings.



Table 2: Average Number of Billing Forms per Case

	Pre-Simplification	Post-Simplification	
Area of Law	2008	2011	2012
Criminal	2.9	3.0	3.0
Family	4.9	5.5	5.9
CFCSA	3.9	5.4	5.2
Total	3.3	3.6	3.6

Extended services requests

Lawyers apply for extended services authorizations in family and CFCSA cases when referrals reach their stop dates and the client's primary issues remain unresolved, or when the lawyer anticipates the need for additional hours earlier in the case due to case complexity or other issues. LSS considers merit, available budget, and other factors when approving extended services requests. If approved for extended services, lawyers can continue the case without the need for a new referral.

When implementing the simplified tariffs, LSS questioned whether shorter referral lengths might increase the number of extended services requests, as lawyers had less time to complete cases. At the same time, LSS anticipated that the restructured tariff might better support lawyers to complete complex cases than the previous tariff, reducing the need for lawyers to request extended services.

Results show that the number of family extended services requests decreased by 32.9% from the pre-simplification period (610 in 2006/2007) to the post-simplification period (409 in 2012/2013). To account for the impact of the fluctuation in referral volumes on the volume of extended service requests, LSS examined the ratio of referrals to requests in the periods assessed. The increase in the ratio of referrals to requests between 2007 and 2013, after a slight dip in 2011, indicates that volume of requests decreased relative to the volume of referrals issued in that period. Table 3 summarizes these findings.



Table 3: Volume of Requests for Family Extended Services

Pre-Simplification		Post-Simplification			
2007		2011		2013	
Requests	Ratio referrals to requests	Requests	Ratio referrals to requests	Requests	Ratio referrals to requests
610	8.5:1	579	8.4:1	424	10.4:1

For CFCSA cases, LSS introduced an extended services option under tariff simplification that didn't exist before. Based on analysis of billings and length of CFCSA cases, LSS estimated that approximately 10% of cases would require extended services. Findings indicate that the number of CFCSA extended service requests is slowly increasing, reaching 155 in 2012/2013 or just over 6% of the 2425 cases referred during the analysis period—two years post-simplification. However, the ratio of referrals to requests indicates a doubling of the volume of requests relative to the volume of referrals issued in that period. See Table 4.

Table 4: Volume of Requests for CFCSA Extended Services

Post-Simplification			
2011		2013	
Requests	Ratio referrals to requests	Requests	Ratio referrals to requests
74	31.5:1	155	15.6:1

DISCUSSION

Indicators in this section provided information concerning different ways that tariff simplification could reduce administrative costs. These included examinations of the volume of bills that cleared through LSS without error, the number of bills per case, and the number of requests for extended services — all of which have an effect on the amount of time and resources spent administering the LSS tariffs.



While not unequivocal, results associated with these indicators generally support the hypothesis that tariff simplification has had a positive impact on administrative burden. The proportion of bills that clear LSS without error has increased steadily compared to baseline values, while the overall volume of bills has decreased substantially. This demonstrates that the system is flagging fewer bills for follow-up by TAEs, suggesting increased efficiency in processing. It is worth noting that LSS decreased the TAE staff complement following the introduction of the simplified tariff.

Results also show a notable decrease in the number of requests for family tariff extended services, which means a lower administrative burden for LSS staff in this area. A reduction in extended services requests may suggest that the simplified family tariff better supports lawyers' work on family law cases. However, volumes of requests also fluctuate based on a range of external factors, including the rate of approval of these requests. A reduced approval rate exerts downward pressure on requests, and the approval rate for extended services on family cases declined during the period under study.

Other findings did not demonstrate the same positive impact on tariff administration. The overall number of bills per case did not decrease, as expected. On the contrary, the CFCSA and family tariffs saw a fairly substantial increase in the number of bills per case, while the number of bills per criminal case remained static. It is not known why family and CFCSA billings increased, but lawyers may have billed more often because tariff simplification made it easier to do so. On the other hand, lawyers may have billed more often because of concerns that LSS might make cuts to the tariff in response to budget pressures.

Overall, the results paint a positive, yet mixed picture of the impact of simplification on the cost of administering these tariffs. However, drawing a concrete link between these measures and tariff simplification is not a straightforward exercise. Other contextual factors, such as the general fluctuation in case volumes from year-to-year or changes to the court system, may have had an impact.



Objective B: To increase cost certainty

A second objective of the new streamlined tariff was to improve LSS' ability to forecast tariff costs by encouraging earlier billing. Cost certainty (predictable cost patterns) is undermined by erratic and delayed billing, so the time between referral to first bill and the volume of early bills are indications that the simplified tariff is contributing to earlier and more reliable billing patterns, and therefore more cost certainty.

Days from referral to first bill

The average time between referral date and the first billing submittal date decreased over the post-simplification period, indicating that lawyers are billing earlier.

Time to first bill declined most for CFCSA cases, dropping by an average of 29 days from 2008 to 2013. Family bills arrived an average of 18 days earlier and lawyers submitted criminal bills 11 days faster, on average, post-simplification.

Reports from the TAEs also reinforce this finding, as they indicate that the CFCSA tariff, in particular, is much easier to process and easier for lawyers to bill. .

Proportion of referrals billed 30, 60 and 90 days after referral

The proportion of referrals billed within the 30-day, 60-day and 90-day periods after referral also measures whether billing times have shortened following tariff simplification.

Findings suggest that lawyers submitted bills on a greater proportion of referrals within 30 days of referral during the post-simplification period (summarized in Table 5). This difference was most pronounced for CFCSA bills. In 2012/2013, 38% of CFCSA referrals billed in under 30 days, compared to 27% in 2008/2009. Criminal and family billings showed more modest fluctuations with only 5% more criminal referrals and 7% more family referrals billed in less than 30 days during the post-simplification period.

Table 5: Percentage of Referrals Billed within 30, 60, and 90 days

Tariff	Billing period	Pre-Simplification 2008/2009	Post-Simplification 2010/2011	Post-Simplification 2012/2013
Criminal	Under 30 days	31%	33%	36%
	30-60 days	16%	14%	15%
	60-90 days	11%	10%	10%
	Over 90 days	43%	43%	39%



Tariff	Billing period	Pre-Simplification 2008/2009	Post-Simplification 2010/2011	Post-Simplification 2012/2013
Family	Under 30 days	30%	34%	37%
	30-60 days	16%	17%	16%
	60-90 days	11%	11%	10%
	Over 90 days	43%	38%	36%
CFCSA	Under 30 days	27%	38%	38%
	30-60 days	15%	17%	17%
	60-90 days	12%	10%	10%
	Over 90 days	46%	36%	36%

Fees under new simplified tariff groupings

Under tariff simplification, several tariff items were placed together under new groupings. The expectation was that by reducing the number of tariff items, LSS would limit the number of variables that can influence cost predictability.

To examine the impact of the new tariff groupings on the cost per case, LSS used a sample of adult indictable offences and compared costs before and after tariff simplification. The comparison found that the increase in average fees rose most during the periods studied for non-trial resolution (58%), trial fees (54.4%), and multiple information resolutions (24.3%).

Referral length

Cases can take a long time to resolve, and for this reason LSS used stop dates that, when reached, require a lawyer to close the referral, request additional time to resolve the case, or get a new referral. Under tariff simplification, LSS reduced the referral length to two years (from three). The change was expected to support greater predictability and certainty of tariff costs than is possible under a longer timeframe. While that goal falls under this objective, referral length was not an indicator in the evaluation framework because of the difficulty of measuring its impact. Instead, the evaluation focus group with TAEs noted an unintended impact on administrative costs.

More referrals appear to be reaching their stop dates before the case is complete under the simplified tariff than under the previous tariff. Processing the resulting late billings or requests to extend the stop date requires the intervention of TAEs and others. This extra time can delay payment or approvals. During the focus group, TAEs suggested that LSS consider a review of the stop date policy and process.



DISCUSSION

The findings are mixed regarding whether tariff simplification has a positive impact on LSS' ability to predict tariff costs. On the one hand, the indicators showed lawyers were billing earlier under tariff simplification than in the period before. Earlier billing is thought to contribute to LSS' ability to forecast tariff costs. However, it is important to highlight that the time between lawyer referral and the lawyer's first bill can be influenced by a number of factors. External factors such as the court room availability, for example, may have contributed to earlier billing, particularly for criminal cases.

Average costs rose significantly for certain tariff items grouped under simplification and had an unintended impact on administrative costs. Findings from the TAE focus group suggest that the non-trial resolution tariff item in particular has been challenging to implement because some lawyers did not understand what it included. TAE's said the "grey areas" resulted in them spending substantial time corresponding with lawyers and working with supervisors to rectify errors and/or determine whether the billing code had been applied properly. The TAEs recommended separating out some items included in the new non-trial resolution fee to reduce errors.

LSS would have to carry out more research to determine whether reducing the total number of tariff items through grouping plays a role in being able to predict costs and achieve cost certainty.

Shorter referral lengths is another factor that had an impact on administrative costs but was not able to tell us anything about cost predictability or certainty. TAEs reported having to spend more time processing late billings or requests to extend referral stop dates.

Objective C: To maintain appropriate payments for tariff services within the available budget

Another objective of tariff simplification was to ensure lawyers' compensation for representation services remained consistent overall with the previous tariffs.

LSS sought to design simplified tariffs that would be "cost neutral" overall and cause as little disruption as possible. Costs under the new tariffs could not exceed budget envelopes.

For family and CFCSA, LSS designed the new tariffs to provide a larger allocation of hours spread over fewer items. This was intended to provide lawyers with greater flexibility to manage time on cases, while recognizing LSS budget constraints. When it did its costing model, LSS understood it was accepting the risk that a larger allocation of general preparation time could result in higher compensation to lawyers.

Extra fee requests

In the simplified family and CFCSA tariffs, LSS consolidated multiple tariff items into an increased allocation of general preparation hours under one tariff code. LSS anticipated that the number of lawyer requests for extra fees would decrease as a result of this change.

Findings from a three-year comparison of extra fee requests, summarized in Table 6, indicate that the number of requests dropped significantly post-simplification. In 2012/2013, the number of CFCSA extra fee requests dropped to 5 from 64 in the pre-simplification period. While family extra fee requests rose slightly (from 33 to 35) in the first post-simplification year, they dropped by half (to 16) in the second post-simplification year. It is worth noting that a reduction in extra fee requests also translates into administrative savings for LSS because there are fewer requests for TAEs to process.

Table 6: Number of Extra Fee Requests

Area of Law	Pre-Simplification	Post-Simplification	
	2008/09	2010/11	2012/13
Family	33	35	16
CFCSA	64	25	5
Total	97	60	21

Lawyer fee analysis

To assess the impact of the simplified tariff on lawyers' compensation, LSS compared the average and median fees on samples of cases opened in two periods, one before and one after introduction of the simplified tariffs.



To create the samples, LSS identified lawyers who had taken a minimum of six cases of the same type (family, CFCSA, criminal by category) in the two periods. The sample periods vary for each area of law to reflect the timing of the introduction of the new tariffs and other changes in coverage.

The results of this comparison indicate that the majority of lawyers sampled billed slightly higher average and median fees on cases under the simplified tariff than on cases of the same type under the previous tariff. Conversely, about 20% to 45% of lawyers billed slightly lower average or median fees for cases of the same type under the simplified tariff. The one exception is criminal summary cases, where 48% of lawyers billed higher average fees, and 57% billed higher median fees. See table 7 below.

When examining average cost per case it is important to consider that we are comparing the cost of three-year pre-simplified tariff cases to those of two-year simplified tariff cases. Results suggest the shortened case length did not reduce the average cost per case.

Table 7: Summary of Changes to Lawyers’ Fees Post-Tariff Simplification

		Number and percentage of selected lawyers with...					
Area of law	# Lawyers	Higher average fees		Higher median fees		Higher variability in fees	
CFCSA	72	46	64%	44	61%	36	50%
Family	112	70	63%	73	65%	54	48%
Criminal Administrative ¹	89	71	80%	73	82%	53	60%
Criminal Summary	194	93	48%	111	57%	53	60%
Criminal Indictable ²	200	111	56%	116	58%	102	51%

1. While the simplified criminal tariff was designed to be “cost-neutral” when launched in June 2010, LSS reintroduced Administrative cases in December 2010 with fees set 20% higher than under the previous tariff to better compensate lawyers for the least complex criminal cases.

2. Part of any increase in the average cost of indictable cases during the post-simplification period may be due in part to the change in the Criminal Case Management (CCM—formerly known as Strategic Case Assessment Program or SCAP) threshold LSS introduced in December 2009. Major cases are not included in this analysis because changes in average cost between the pre- and post-simplified periods for these cases would be more likely attributable to the change in SCAP threshold, and not to the introduction of the simplified tariff in June 2010. Also, the high variability in cost of major cases, especially in a small sample, also reduces the reliability of results.



Average case cost analysis

To assess the impact of the simplified tariff on average case costs, LSS calculated the average costs for cases referred and billed within comparable sample periods before and after simplification. The results of this analysis are shown below, by area of law.

Family Tariff

LSS estimated that costs per family case would increase under the simplified tariff by up to 22%. A comparison of average costs per case under the old tariff and simplified tariff found that average costs per case increased by 19.7%, close to original estimates.

Analysis shows that 60% of the increase can be attributed to additional hours allocated to general preparation, and 20% is attributable to increased payments for collaborative processes and mediation. These latter increases align with a general growth in the practice of mediation/collaborative dispute resolution (CDR), and increased allocation of LSS resources to support family mediation and CDR efforts.

CFCSA Tariff

LSS estimated that overall costs per CFCSA case could increase under the simplified tariff by up to 37%. A comparison of average costs per case under the old tariff and simplified tariff found an increase of 31.7%, in line with projections. About 43% of the increase is attributable to additional hours for general and hearing preparation, with another 30% of the increase attributable to mediation/consensual dispute resolution tariff items.

Criminal Tariff

LSS estimated that tariff costs for summary and indictable cases could increase by 3.4% under the new tariff. Analysis of cost per case under the old and new tariffs was conducted by category of offence for administrative, summary, and indictable cases.¹

¹ LSS could not conduct a reliable analysis of the impact of the simplified tariff on Major offence cases due to change in the Criminal Case Management (CCM—formerly known as Strategic Case Assessment Program or SCAP) threshold introduced in December 2009. This change meant that a greater number of more expensive cases would be included in the post-simplified sample period than would be included in the pre-simplified period.



Administrative cases

In 2009, LSS discontinued coverage for administrative offences for budgetary reasons, so administrative offences were not included in the original simplified tariff. When LSS reinstated coverage and incorporated administrative offences into the simplified tariff in December 2010, it estimated a 20% increase in costs per administrative case. Analysis shows that the average cost per administrative case opened in 2011 was 19.7% higher than for cases opened in 2008 under the old tariff.

Summary & Indictable cases

The average cost per summary case opened in 2011 under the simplified tariff was 0.7% lower than those opened 2008 under the old tariff, while the average cost per indictable case was 7.8% higher under the simplified tariff. Analysis of summary and indictable cases combined show an increase of 5% in costs under the simplified tariff than for summary and indictable cases opened in 2008 under the old tariff. This combined increase is slightly higher than the original estimate of a 3.4% increase in costs for these offences.

Lawyer feedback on compensation

To assess lawyer's perceptions of their remuneration, two separate surveys sought lawyer feedback about tariff simplification. In February 2013, the LSS Tariff Lawyer Satisfaction Survey was delivered to all tariff lawyers who had taken a referral or billed in the past year (n=1,110; response rate = 373 (34%)). A shorter follow-up survey was completed with a smaller group of lawyers (n=240; response rate = 61 (25%)) in September 2013. This survey was specifically about tariff simplification.

Triennial Tariff Lawyer Satisfaction Survey (February 2013)

The 2013 LSS Tariff Lawyer Satisfaction Survey asked lawyers whether their compensation is better, worse or the same under the new simplified tariff. Thirty-six percent replied that they had no opinion, 25.5% felt compensation was worse, 21% felt it was the same, and 12% felt that they were paid more under the new simplified tariff.²

When disaggregated by area of law that respondents practiced (see Table 8), the findings show that criminal lawyers are the most likely to feel they are paid less under the new tariff (47%), while only 21% of CFCSA lawyers and 20% of family lawyers feel they are paid less.

² Ipsos Reid (2013), *Tariff Lawyer Satisfaction Survey*. Legal Services Society:
<http://www.lss.bc.ca/assets/aboutUs/reports/lawyers/tariffLawyerSatisfactionSurvey2013.pdf>, p.27



Table 8: Lawyers’ Opinions of Compensation Post-Simplification vs. Pre-Simplification – 2013 LSS Tariff Lawyer Satisfaction Survey

Area of Law	Better than it was	Worse than it was	Same as it was	Not sure/don’t know
CFCSA*	21%	21%	21%	38%
Criminal	4%	47%	22%	28%
Family	14%	20%	24%	43%
Immigration*	9%	14%	18%	59%
Overall Average	12%	25.5%	21%	42%

* Caution – small sample size

Tariff Simplification Survey (September 2013)

The September 2013 survey of lawyers’ opinions on tariff simplification also asked about compensation. On this survey, lawyers were asked, “In your view, do you feel you are paid less, more or the same under the new simplified tariff?”. Of those who responded, 54% replied that they felt they were paid less under the new tariff, while 36% felt they were paid the same and only 2% stated that they felt they were paid more.

Cross-tabulated by area of law (summarized in Table 9), the survey question reveals that of those who said they felt they were being paid less, 66% practice criminal law, while only 27% are family lawyers and 26% are CFCSA lawyers. About 60% of both family and CFCSA lawyers felt they were being paid the same.

Table 9: Lawyers’ Opinions of Compensation Post-Simplification vs. Pre-Simplification

Area of Law	Better than it was	Worse than it was	Same as it was	Not sure/don’t know
CFCSA	4%	26%	59%	12%
Criminal	2%	66%	23%	9%
Family	4%	27%	62%	12%
Overall average	3%	40%	48%	11%

The majority of lawyers who provided a follow-up explanation for their response to the question on compensation gave examples specific to the criminal tariff. Among lawyers who identified criminal tariff concerns, 30% stated that they could no longer bill for certain items that they could bill for under the old tariff, such as arraignment hearings or brief court attendances (for example, admissions to shorten a trial). Criminal lawyers frequently stated that the provincial court fee was limiting, because they could only bill it once per referral.



Criminal lawyers made the following comments:

“Many services required of reasonably diligent counsel as part of their professional obligations are no longer compensated, and are subsumed into the 'block fee', which of course we do not necessarily even get to bill for, such as if there is a breakdown in the relationship pre-trial.”

“Let's say I go to court for a court ordered pretrial — 9:15 am. Then court starts at 9:30 and I get through five arraignments, then have lunch and have to go back, do a few trial readiness hearings and maybe another arraignment or two. I would not get paid anything for my day. And this happens weekly.”

“There are a number of items for which we could bill under the old system i.e. complete stay on the trial date, arraignment hearings, waivers, early termination of counsel, per file fee, etc. that are not billable under the new tariff any longer.”

Comments from family and CFCSA lawyers indicated that they felt they are paid less under the simplified tariff for longer and complex cases.

Lawyers also commented that the tariff doesn't provide adequate compensation for changes of counsel, client failures to appear in court, and peace bonds. While unrelated to tariff simplification, these comments may be useful for future adjustments to the tariff and also demonstrate that lawyer dissatisfaction with the tariff is not exclusively due to simplification.

Interestingly, despite lawyers' views about lower compensation, 41% of respondents indicated that they felt the new tariff was an improvement over the old tariff. Just under one third felt it was not an improvement. Asked for more information about why they felt it was not an improvement, 22% replied that they were paid less. For those who viewed it as an improvement, 24% stated that this was because billing was easier and less time consuming (12%).

DISCUSSION

The objective to maintain appropriate payments for tariff services was measured by the number of extra fee requests lawyers made and lawyer perception of compensation.

Two lawyer surveys found mixed results, but confirm that lawyers largely believe they are being paid less under tariff simplification. The perception among many tariff lawyers that they are being paid less does not entirely correspond with an analysis of average or median fees. Looking at actual fees, the majority of lawyers are being paid slightly more for the same case type under all three new tariffs. At the same time, however, the cost



analysis highlights the variability in fees per case, so the reality is that while most lawyers sampled were paid more, some were in fact paid less.

Contributing to the perception of lower compensation may have been lower case volumes during the time of the surveys. For some lawyers, fewer referrals meant they were making less money regardless of tariff changes.

The evaluation found a positive finding for the extra fees indicator. Overall, the decreasing number of requests for extra fees suggests that the general preparation block fee under the family and CFCSA tariffs is providing enough support for more cases being billed in those areas. It also means an administrative savings to LSS because there are fewer requests for TAEs to process.

Objective D: To support lawyer recruitment and retention of the referral bar

A final objective of tariff simplification was to improve lawyer supply by attracting new lawyers and retaining existing lawyers by consolidating tariff items into a shorter and more flexible structure that makes billing easier. Previous feedback from tariff lawyers indicated that the old tariff was confusing and onerous. This was identified as a barrier to attracting new lawyers who wished to avoid complicated administrative processes, and a challenge to retaining lawyers who were discouraged by the tariff. Thus, tariff simplification was also an effort aimed at improving the legal aid system for lawyers.

To assess the success in achieving this objective, LSS identified three indicators that measure lawyer retention.

Median referrals per lawyer

The number of referrals each lawyer takes is indicative of the workload and availability of lawyers, as well as their ability to take on more cases. If tariff simplification reduced the administrative burden on lawyers and improved their overall experience with LSS, it was hypothesized that lawyers would be willing to dedicate a greater level of availability to legal aid work, and would take on more referrals.

Findings show that the average number of referrals taken in the two post-simplification samples is roughly consistent (though down slightly from both pre-simplification sample periods) in all areas of law. See Table 10.

Table 10: Average Number of Referrals per Lawyer

Area of Law		Pre-Simplification		Post-Simplification	
		2007	2008	2011	2012
Criminal	Total Referrals	26,798	27,573	24,078	22,507
	Total Lawyers	693	687	701	668
	Avg. # Referrals	38.7	40.1	34.3	33.7
Family	Total Referrals	6,523	7,363	5,179	5,081
	Total Lawyers	483	473	475	491
	Avg. # Referrals	13.5	15.6	10.9	10.3
CFCSA	Total Referrals	2,866	2,821	2,521	2,740
	Total Lawyers	314	319	361	382
	Avg. # Referrals	9.1	8.8	7.0	7.2



Lawyers' consistency in taking referrals

The number of lawyers who took cases in the year previous, but decided not to take a case in the current year, provides a measure of lawyer retention. CMS information (summarized in Table 11) shows that the proportion of lawyers who took referrals last year, then none this year, remained fairly static over the three sample periods.

Table 11: Percent of Lawyers Who Took Referral in Previous Year, but None This Year

Area of Law	Pre-Simplification	Post-Simplification	
	2008/09	2010/11	2011/12
Criminal	14	10	15
Family	20	20	17
CFCSA	16	13	18

Overall, these findings appear to be consistent with the responses provided by tariff lawyers on the 2013 Tariff Lawyers Satisfaction Survey. Lawyers were asked whether they felt they were taking more, less or the same number of referrals following tariff simplification. The largest proportion of lawyers (40%) said they felt they were taking the same number of referrals, while 32% were unsure and 22% felt they were taking less. Only 6% felt they were taking more referrals.³

On the same survey, lawyers were asked about their intentions regarding referrals in the upcoming year – whether they intended to take more, the same amount, or fewer referrals than the past year. A combined 72% of respondents indicated that they planned on taking the same number or more referrals in the upcoming year, while 27% specified that they would take fewer referrals or none at all⁴.

Ease of billing

A question on the 2013 LSS Lawyer Satisfaction Survey asked lawyers whether the tariff was easy to understand, and whether dealing with tariff items and billing rules was straightforward. The vast majority stated that it was somewhat/very easy to understand (81%) and somewhat/very straightforward (75%) when it comes to billing. This is a slight improvement from 2010 survey (pre-simplification) for both of these questions.⁵

³ Ipsos Reid (2013), p. 26

⁴ Ipsos Reid (2013), p. 52

⁵ Ipsos Reid (2013), p. 24

In the Tariff Simplification survey (September 2013), lawyers responded to a similar question that asked them to indicate how strongly they agreed with the statement “the new tariff has made billing easier for me”. In response, 61% agreed or strongly agreed with this statement, 28% were neutral and 12% disagreed/strongly disagreed (see table 12). In open-ended questions, 27% said that it was easier to bill, 21% noticed there were fewer items,

Table 12: Lawyers’ Agreement with Statement “Has the new tariff made billing easier?” – 2013 Tariff Simplification Survey

Level of Agreement	%
Strongly Agree	15
Agree	46
Neutral	28
Disagree	7
Strongly Disagree	5

These findings suggest that the new tariffs achieved the objective of making billing easier for lawyers. Of the lawyers who responded to the follow-up question asking them to elaborate on why they found it easier, most responded that fewer items on the tariff made it easier, while others said they found it useful that they did not have to match items up to each file (which was time consuming) – see Table 13. Twelve percent of lawyers stated “online billing,” which may refer to the shorter drop-down list of tariff items in e-services resulting from simplification.

Table 13: Lawyers’ Reasons for Finding Tariff Billing Easier – 2013 Tariff Simplification Survey

Reason	%
Fewer Items	62
Less Tedious	12
Online Billing	12

DISCUSSION

Overall, the tariff simplification process has thus far had a neutral impact on lawyer retention rates. The number of referrals per lawyer appears consistent across all comparison years, and there were only minor fluctuations in the proportion of lawyers who took referrals in the previous year but none the next, suggesting that lawyer retention rates were stable over all three comparison years. Looking forward, the majority of LSS tariff lawyers believe they will take as many or more referrals in the coming year – a positive finding for lawyer retention. However, it is unclear how much influence the tariff simplification process has had on this result.



It is worth noting lawyers' recommendations for tariff improvements. The Tariff Simplification Survey asked lawyers: "Apart from increasing tariff rates, what would you change about the current tariff if you could?" In response, 11% of lawyers suggested adding pre-trial and additional preparation items, while 26% made suggestions related to improving the block tariff fees to make them more reflective of the amount of work done, including attendance at trials, extra appearances, and other activities.

Other recommendations include:

"Get rid of the provincial court fee and add a small amount to the non-trial resolution fee and trial fee to compensate. Add a trial cancellation fee for each scheduled day of trial if the trial collapses within a week of trial because of a stay of proceedings. Add prep fees for any trial involving a Charter issue where the Charter issue was argued at court. Add prep fees for any sentencing that takes over two half days."

"I would like to see a structure where counsel is not at a disadvantage financially when they do what is best for their clients. For example, if on a trial date I convince crown to drop charges against my client I make less than if I plead my client guilty. On a trial date I would make more in fees if I run a losing trial than if I accept a reasonable and lenient offer from the crown for a plea (and less again if I convince the crown to drop the charges)".

A few CFCSA lawyers noted the need for additional compensation for the collateral issues item and for the cost of the work they put into a file prior to a change of counsel, with reference to the complexity and length of many CFCSA cases.



Conclusion

The tariff simplification initiative had four main objectives: to improve administration of the tariffs, increase cost certainty, to maintain adequate payment for lawyers and to enhance lawyer retention. Based upon available evidence for this evaluation, the findings from this evaluation indicate that LSS has met most of its objectives, but there is also room for improvement.

With respect to administration of the tariff, data indicates that more bills are clearing first pass, which means that Tariff Accounts Examiners are spending less time resolving unnecessary errors. Requests for family extended services authorizations are slowly decreasing, suggesting that the new tariff is comprehensive enough to cover the costs of a family referral. CFCSA requests are slowly increasing (as anticipated) with the introduction of the new item.

Regarding cost certainty indicators, the data showed a positive decrease in the average time between referral date and first billing. Although it is not possible to isolate the impact that tariff simplification had on billing times, it is noteworthy that the improved billing times appear most pronounced for CFCSA and family bills. Reports from the TAEs also reinforce this finding, as they indicate that the CFCSA tariff, in particular, is much easier to process and easier for lawyers as well. At the same time, external factors such as the court scheduling initiative in the provincial courts, may have contributed to earlier billing, particularly for criminal cases.

It was not possible to determine if cost predictability and certainty increases when tariff billing items are combined into fewer but larger categories. During the evaluation period, average costs increased for some items under the criminal tariff, most notably for non-trial resolution (a 58% increase) and trial fees (up by 54%). The non-trial resolution tariff item was a new grouping under the simplified tariff.

TAEs made some important contributions to this analysis regarding tariff administration. They highlighted the need for more clarity around the new non-trial resolutions tariff item. They also described challenges with responding to stop date errors, which resulted in case processing backlogs. To respond to those challenges, the TAEs suggested LSS review the 2-year referral length.

The analysis of lawyer compensation suggests that overall a majority of lawyers are receiving higher average and median fees per case under the simplified tariff than under the old tariff. A larger majority of lawyers received higher average and median fees for family and CFCSA cases, where general preparation is covered under a larger block fee that appears to be more reflective of the work these lawyers do.

At the same time, the findings indicate that lawyers' average and median fees on summary and indictable cases are roughly 50% higher and 50% the same or lower. While these findings align with the original projections of



the tariff simplification initiative (which aimed for no increase or decrease in overall payments to lawyers on the criminal tariff), criminal lawyers are the least satisfied of all lawyers about the outcome of simplification on their compensation.

Their views were markedly different than family and CFCSA lawyers on questions about compensation and overall satisfaction with the new tariff on the surveys. Criminal lawyers offered many examples to highlight their perception that they are paid less, and the analysis confirms that a number of lawyers, due to the nature of their caseloads, are being paid less for the work they are doing. This deserves closer examination going forward.

Finally, tariff simplification did not have an observable impact on lawyer retention or supply.



Recommendations

The evaluation findings suggest LSS should consider the following recommendations:

1. Review the referral length policy and related processes.
2. Review and consider separating lawyer services currently billed under the “non-trial resolution” tariff item.
3. Re-examine the criminal tariff and conduct broad consultations with the criminal bar regarding areas for improvement, particularly those identified by lawyers in the surveys cited in this report.
4. Conduct further analysis on costs to identify areas for improvement.
5. Continue monitoring key indicators to determine whether trends continue longer term post-simplification.