

Collateral Issues & Consensual Dispute Resolution —CFCSA Tariff Survey Report



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Executive Summary

This report describes the results of a survey sent to 319 CFCSA lawyers in July 2011. The purpose of the survey was to find out more about how lawyers were using -- or why they were not using -- the Collateral Issues and Consensual Dispute Resolution tariff items, which were introduced in July 2008.

To be included in the survey, lawyers had to have taken at least two CFCSA referrals during the period when the items were in effect but before tariff simplification: July 2008 to November 2010. CMS data was also examined to find out if lawyers' perceptions of the benefits of using the items were reflected in the billing results.

Of the 319 lawyers who were emailed the survey, 98 responded and, of those, 84 completed the survey (26%). This response rate is similar to other LSS lawyer surveys.

Results for Consensual Dispute Resolution

Fifty of the 98 lawyers said they had used the Consensual Dispute Resolution (CDR) tariff item, which represents just over half of the actual number of lawyers in CMS who billed it.

In summary, the survey found:

- A large proportion (38%) of the respondents said they had billed for CDR five or more times, which is a little higher than average according to CMS.
- The lawyers said they largely used the tariff item to prepare and attend four-way meetings, family group meetings, and family meetings.
- The biggest impacts of using the CDR items according to the respondents were that it took less time to resolve the matter, court was avoided, and clients' matters were resolved.
- Respondents said their CDR cases most often resulted in a Temporary Custody Order, the child being returned to the parent, or the child being put in the care of a family member.
- Those lawyers who said they did not use CDR said it was because they did not know about it (18 lawyers), they did not think it would be helpful to their client (9 lawyers), there was not enough time (5), and other (16).

Comparison to CMS data

Although the respondents thought the cases involving a consensual dispute resolution process took less time to resolve, CMS data indicated that cases where CDR was billed took longer. However, the cases where CDR was used may have taken longer for other reasons, and cases where CDR was not billed may have been cases that were easier to resolve quickly.

Lawyers who responded also perceived that their CDR cases avoided court, but CMS data indicates that most cases involved a hearing.

The survey respondents indicated more incidences of the child being returned to the family than the billing forms “final results” data showed, which also indicated more Continuing Custody Orders than the lawyers recalled.

There are limitations to comparing overall CMS data to lawyers’ recollections of their own experiences. Where there are wide differences, it might indicate that the lawyers surveyed do not represent the average, that their recollections are inaccurate, or that the CMS data does not directly correlate with the survey questions.

Collateral Issues

Forty-four respondents (almost half) said they had used the Collateral Issues tariff item, which represents almost half of the lawyers who billed the item according to CMS.

The survey found:

- The collateral issues most faced by the respondents’ clients were housing (78%), mental health (78%), drugs and alcohol (76%), income (63%), and access to healthcare and other benefit programs and services (50%).
- The respondents used the tariff item to interview clients to identify their issues (93%), research and advise a remedy (68%), help clients to fill out forms (68%), advocate for clients with an administering agent (66%), and link clients to an advocate (56%).
- Of the respondents who could remember, most said the cases where the collateral issues tariff item was used had resulted in the child being returned to the home, a Temporary Custody Order, or going to court. Compared to the “final results” in CMS, more of the survey respondents’ cases resulted in the child being returned to the home than the CMS data suggests.
- Most of the respondents said that helping their clients with collateral issues helped them meet the conditions necessary to keep their child at home or move towards meeting those conditions.
- 47 lawyers (about half) said they had not used the Collateral Issues tariff. Most said it was because they did not know about it, or that their clients did not have other issues that would affect the outcome of their FCSCA case.

Poverty Law Primer

In September 2009, LSS produced a *Poverty Law Primer* to assist lawyers and advocates with clients who have issues related to their main legal matter. It was largely distributed to advocates but was also mailed out to the 72 lawyers who billed the most for Collateral Issues.

The survey found:

- Of the lawyers who said they billed for Collateral Issues, only 6 (out of 41) said they had used the *Poverty Law Primer*; another 5 survey respondents who had not billed for Collateral Issues said they used the primer.

- The sections of the primer used most by the 11 lawyers were those on housing (residential tenancy) and welfare law.
- The 74 respondents who said they had not used the primer said they did not know it was available.

Supporting lawyers

Forty-eight lawyers provided a comment regarding what, if anything, LSS could do to support their use of the CDR and/or Collateral Issues tariff items to help their clients. The main themes that emerged were as follows, with the number of mentions:

- Provide more training/resources (on how to help with collateral issues and/or consensual dispute resolution processes) (12)
- Provide more hours/expand tariff (9)
- Promote these items more (5)
- Keep these items in the tariff (5)

Costs

Of the 3,712 CFCSA cases billed between July 1, 2008, and June 30, 2010, just 8% (292 cases) billed for CDR attendance and nearly 9% (317 cases) billed for Collateral Issues. While the average cost of cases that include billings for CDR or Collateral Issues is considerably higher, the proportion of the total cost for those tariff items is small. For example, in fiscal year 2009/2010, \$124,576 was spent on tariff codes 5100, 5125 and 5191, which was just 3% of the total CFCSA costs that year (which were \$4,649,486).

Conclusion

The Collateral Issues and Consensual Dispute Resolution tariff items are considered valuable to the survey respondents who used them. While CMS data shows that cases that involve a consensual dispute resolution process tend to be lengthier and more costly than those that do not, it may be that CDR is used in more complicated cases, and the cases where it is not used are the ones that are simply easier to resolve.

The respondents indicated that using CDR and Collateral Issues results in better outcomes for the child, though it is unclear whether CMS data supports this.

According to the survey results, the *Poverty Law Primer* is not used very often. The lawyers who help their clients with poverty law issues tended to be more comfortable with that area of law already. Many respondents were not aware of the primer.

Recommendations

- Consider measuring client satisfaction with CFCSA services and whether there are differences between those who enter into CDR processes and receive help with their other issues and those who do not. It is recommended that client satisfaction with CDR and help with collateral issues

be included in an evaluation of all CFCSA services. Limitations may include whether clients can distinguish between CDR and mediation. Given the sensitivity of CFCSA cases, an exit survey at various points of service may be the best way to reach clients.

- Analyze the same CMS data used in this report on a yearly basis, looking for trends over time.¹
- Promote the use of Collateral Issues and Consensual Dispute Resolution to the tariff bar and clients.
- Promote the *Poverty Law Primer* only if it is considered worthwhile to keep this up-to-date and in print or online.
- Consider creating an online version of the *Poverty Law Primer* that can be regularly updated on the LSS website. This will also serve the purpose of supporting the society's goal of integrated services and the lawyers who are expected to carry it out.
- Provide lawyers with a list of community resources to assist in helping with Collateral Issues and place it on the LSS website. Likewise, such resources directed at lawyers will support the society's goal of integrated services.
- Arrange CLE or other lawyer training in how to address clients' related issues.
- Decide what results data is most useful for future operational and evaluation purposes and consider updating the billing forms. Track data for analysis rather than purely billing purposes, which will make interpretation less difficult. Require lawyers to input this data to proceed further in e-billing without making it onerous.

¹ Note that it will no longer be possible to separate out data for CDR and mediation under the simplified tariff.

Background

In July 2008, three new items were introduced into the CFCSA tariff:

- Preparation for consensual dispute resolution (CDR) processes (up to 5 hours to prepare client for CDR meetings)
- Attendance at consensual dispute resolution meetings (up to 8 hours for attending CDR meetings)
- Collateral issues (up to 4 hours to assist clients with issues such as income, housing, immigration status, drugs and alcohol, mental health, residential schools, health care)

The items were one of the society's new civil initiatives to promote holistic approaches to legal aid services. Dispute resolution services were already in the Family tariff, but were added to the CFCSA tariff in response to the private bar's suggestion that such services would benefit CFCSA clients too. The changes to the tariff for mediation and other consensual dispute resolution processes were also made to match changes in legal practice.

The objectives of the CDR and collateral issues tariff items were to:

- Avoid going to trial (mediated agreements are preferred over hearings)
- Provide help for related issues (and thereby reduce the number of returning clients)

In October 2009, the items were discontinued due to much higher than expected billings.

When money became available, and to support integrated services, CDR and collateral issues were reinstated in February 2010.

Under the simplified tariff, CDR processes and mediation were combined under one tariff item. Since November 17, 2010, lawyers can bill up to 10 hours for preparation for mediation and/or CDR, actual time for attendance for mediation and/or CDR, and up to 4 hours to assist with collateral issues.

Evaluation Objective

Collateral Issues and Consensual Dispute Resolution tariffs have been used often by some lawyers, and not at all by others. Between July 1, 2008, and June 30, 2010, 369 legal aid lawyers billed fees on 4,370 CFCSA referrals. Of those, 94 (25%) lawyers billed CDR fees on 313 referrals. The same number billed for Collateral Issues on 335 referrals. Forty-seven lawyers billed for both tariff items.

The objective of the evaluation was to find out more about how using the items helps lawyers and their clients, why some lawyers are not using them, and what, if anything, LSS can do to support lawyers to use the items. It will also include measuring the effectiveness of the *Poverty Law Primer*, which was developed to assist lawyers to provide help to clients with other related issues.

Methodology

A survey aimed at lawyers with some CFCSA experience was developed with input from the Legal Services Department. Lawyers who took at least 2 CFCSA referrals in a year during the period that the CDR and Collateral Issues tariffs were in effect (between July 2008 and November 2010) were surveyed via email between July 14 and July 28, 2011. CFCSA lawyers were notified in advance of the survey; and one week after they received the survey link, they were reminded of the closing date. They were also offered the chance to win a cash draw for participating.

Taking out the small number of lawyers without email addresses, with incorrect addresses, and inactive lawyers, the survey population was 319 lawyers.

CMS data was also examined for hearing attendance, costs, and case outcomes before tariff simplification. However it is too early to compare the pre- and post-simplification periods.

Limitations

The survey population was finite (everyone who could be sampled was sampled), which left no room for increasing the sample size, though it targeted more of those who were in the best position to respond knowledgeably.

Note when reading the results that lawyers were asked to refer to their use of the Consensual Dispute Resolution (CDR) and Collateral Issues tariff items during the period July 2008 to November 2010—before tariff simplification. A few comments in the survey results suggest that at least a small number of lawyers were referring to both the old and new tariff structures in at least some of their answers (the difference being that under the new tariff, mediation is combined with CDR).

While the report examines both CDR and Collateral Issues, there is no intrinsic relationship between the two tariff items.

Survey Results

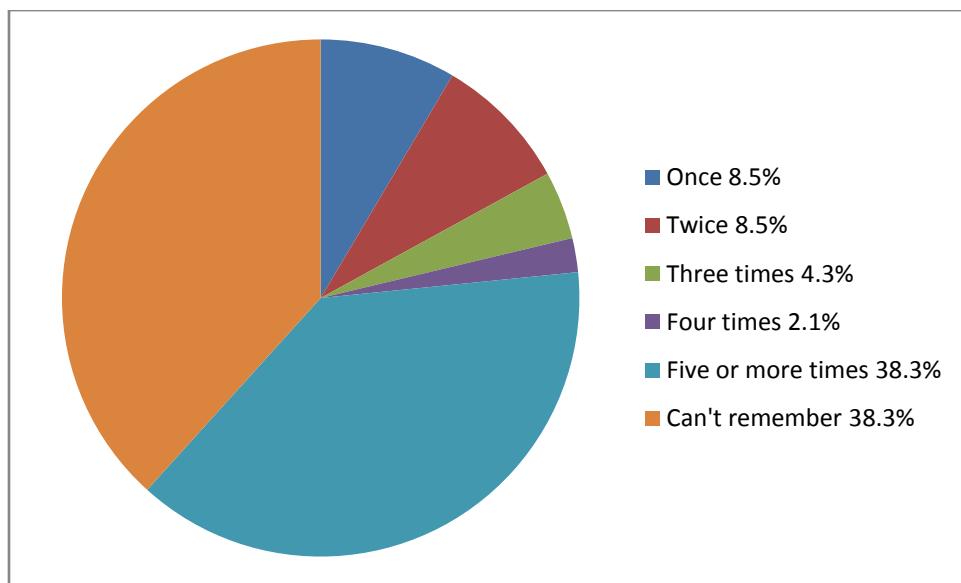
Of the 319 lawyers who were emailed the survey, 98 responded² (31%) and 84 of those completed the survey (26%). The response rate means some caution should be applied when interpreting the results, but it is high enough to provide credible insight into how lawyers use the two items of the tariff. In general, email surveys will generate a lower response rate than for telephone surveys. However, 26% closely matches response rates for other LSS lawyer email surveys.³

Consensual Dispute Resolution

The first question in the survey asked respondents if they had ever used the CDR item of the CFCSA Tariff to help a client. Fifty of the 98 lawyers who started the survey said they had used the CDR tariff item. This is a good sized sample of those who use CDR, as it represents just over half the number of lawyers who, according to CMS, billed for an attendance referral before simplification (94), lending credibility to the results.

A large proportion of the survey respondents said they had billed CDR five or more times (38%). The same proportion couldn't remember.

Figure 1: Frequency of billings for CDR



Five or more CDR billings is a little higher than average according to CMS, which shows CFCSA lawyers took an average of 3.3 referrals over two years where CDR was billed⁴. While it is difficult to say how accurate the survey respondents' recollections are, the responses might indicate that many of these lawyers billed for CDR fees more often than the average CFCSA lawyer.

² One other lawyer simply responded in an email, "I have not had a good experience with CFCSA."

³ In 2010, the Lawyer Satisfaction Survey response rate was 29% (after telephone reminders).

⁴ Between July 1, 2008, and June 30, 2010, 94 lawyers billed CDR fees on 313 referrals.

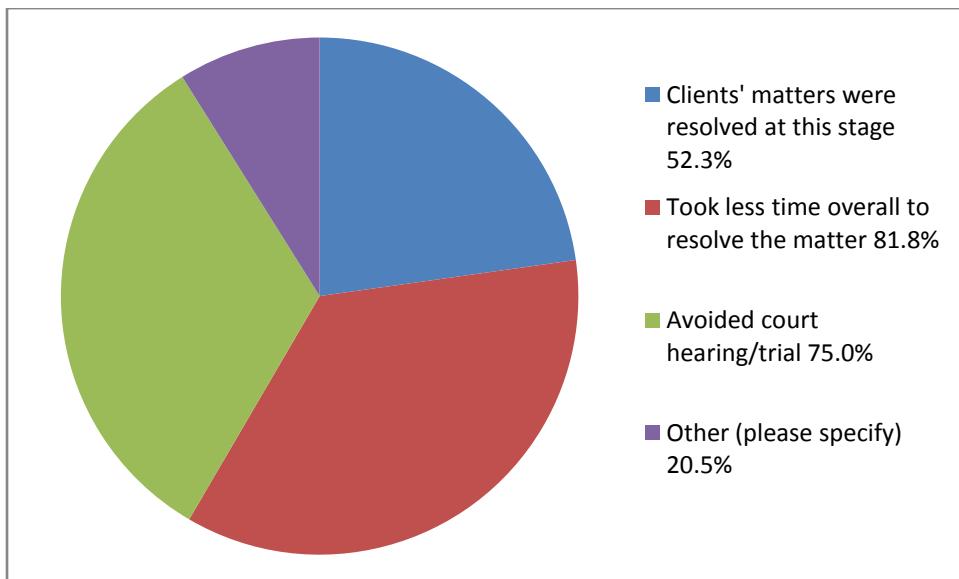
The 50 survey respondents who used the CDR tariff item said they used it mostly for preparation and attendance at four-way meetings (39 times), family group meetings (32 times), and family meetings (25 times).

Four respondents commented that they also used it for meetings that included social workers; one respondent said they used it to meet with support workers such as for housing and addiction; and another for meetings with MCFD, support workers, and the parents.

Impact

The impact of using CDR, according to the 44 respondents who answered, was that it took less time overall to resolve the matter (82%), court was avoided (75%), and clients matters were resolved (52%).

Figure 2: Impact of using CDR processes



Length of cases

Although lawyers perceived that cases involving a consensual dispute resolution process took less time to resolve, CMS data indicates that those cases took longer. Cases where CDR was billed⁵ took an average of 471 days (and a median of 467), and cases where CDR was not billed took an average of 334 days (and a median of 264). Lengthier cases might be expected when consensual dispute resolution is involved, but these cases might also have been longer for other reasons. Likewise, the lower median for cases where no CDR was billed likely includes cases that resolved considerably more quickly.

⁵ With assignment dates between July 1, 2008 and June 30, 2009.

Frequency of hearing attendance⁶

While lawyers also perceived that their CDR cases avoided court/trial, according to CMS data, court is not necessarily avoided because a CDR process is used. Of the 292 cases where lawyers billed for CDR attendance between July 1, 2008 and June 30, 2010; 85% of cases involved attendance at a hearing. In comparison, the 3,420 cases where CDR processes were not billed, only 68% involved hearing attendance. Again, there may be reasons other than CDR for this difference, and it is likely that among the cases where CDR processes were not billed there were some that were much more easily resolved.

Other impacts

Those who responded “Other” when asked about the impact of using CDR commented as follows:

[A] plan was developed.
Helps all family members understand that the child belongs to the family and to the community so everyone has to work to place this child in the First Nations community instead of non-native foster care
Avoided the need to file applications for access, etc...
Helped create rapport between counsel and other professionals working with client, helped client create rapport with other professionals
Letter of expectations that settled matter without court process.
FCPC [Family Case Planning Conference] is required, but not always helpful, prefer four-way meetings
Matters important to the client, but not necessarily legal, are dealt with.
I found the CDR process extremely helpful at clarifying issues. Often the clients are cognitively disadvantaged and are unable to accurately tell counsel what the actual parenting problems are. In meetings, that is clarified and I am then able to more clearly present and communicate the issues/real concerns to the client in a language they can understand.
Allowed parties to discuss issues and find resolutions. Also allowed MCFD to discuss expectations.

Case Outcomes

The outcomes of FCSCA cases cannot be directly attributed to the use of CDR or not, but CDR processes may have influenced the results. Lawyers were asked to recall approximately how many of their cases involving CDR resulted in any of a list of possible outcomes. While not an accurate gauge, the respondents said their cases resulted in a Temporary Custody Order (23 responses, adding up to 75+ cases), followed by the child being returned to the parent (27 responses, or 66+ cases), or in the care of a family member (24 responses; 56+ cases).

⁶ CMS also contains hearing types, but the data is not collected in a way that is conducive to analysis.

Survey question: Of the cases where you used a CDR process, what were the outcomes of your clients' cases? Tick the approximate number of cases you had with the outcomes listed.

Outcome	One Case	Two Cases	Three cases	Four cases	Five or more cases	Total cases	Response count
Temporary Custody Order ⁷	17.4% (4)	21.7% (5)	17.4% (4)	4.3% (1)	39.1% (9)	75 or more	23
Child returned to the parent	33.3% (9)	22.2% (6)	25.9% (7)	3.7% (1)	14.8% (4)	66 or more	27
Child in the care of a family member	45.8% (11)	12.5% (3)	20.8% (5)	4.2% (1)	16.7% (4)	56 or more	24
Case is still pending	36.8% (7)	31.6% (6)	5.3% (1)	0.0% (0)	26.3% (5)	47 or more	19
Continuing Custody Order	33.3% (4)	33.3% (4)	16.7% (2)	0.0% (0)	16.7% (2)	28 or more	12
Case went to trial	50.0% (6)	16.7% (2)	16.7% (2)	0.0% (0)	16.7% (2)	26 or more	12
Other (please specify)							11
Answered question							37

Some respondents could not recall the outcomes for all of their cases, and others explained that their response was an estimate. Comments about outcomes included the following:

I do a considerable amount of CFCSA work so I have had more than 5 outcomes for all of the above. I can say however that all CDR processes probably let me resolve about 80% of my files without trial.
Access for father arranged.
Change of counsel.
I find family group conferencing and family meetings often result in placements with healthy family members until the client can become healthy.

CMS CFCSA “Final Results”

The survey respondents’ recollections were compared to CMS data for the “Final Results” of CFCSA cases. Unfortunately, the results listed on the CFCSA billing form do not map precisely with the outcomes listed in the survey. For example, “Temporary Custody Order” is missing from the billing form.

Perhaps the only reasonable comparison that can be made is that lawyers in the survey indicated more incidences of the child being returned to the family than the billing form results indicate, and the survey indicated fewer cases where the outcome was a Continuing Custody Order than the CMS data indicates.

⁷ A Temporary Custody Order may occur after a Protection Hearing.

Top 5 Final Results⁸ in CMS where CDR is billed⁹		
	Cases	Percentage of total (292 cases)
Interim Custody Order ¹⁰	96	33%
Supervision Order ¹¹	80	27%
Continuing Custody Order	41	14%
No final result ¹²	37	13%
Child Returned	25	9%

Comparing only the CMS data on final results where CDR was billed (above) and not billed (below), Interim Custody Orders and Supervision Orders are the top 2 results in both. Though the number of actual cases is widely different, the percentages are too close to be able to conclude anything about the effectiveness of the CDR tariff item. Likewise, Continuing Custody Orders and Child Returned are almost the same percentage of the total in both instances.

Top 5 Final Results in CMS where CDR was not billed		
	Cases	Percentage of total (3,420)
Supervision Order	1,060	31%
Interim Custody Order	922	27%
No final result	558	16%
Continuing Custody Order	443	13%
Child Returned	372	11%

Why Respondents Did Not Use CDR

The most common reason cited for why lawyers did not use CDR was because they did not know about it (18 lawyers or 40%). Nine responded that they did not think CDR would be helpful to their client and 5 said there was not enough time to use it. Sixteen lawyers responded “Other.” Their reasons can be categorized as follows:

Don't do much FCSCA	4
No opportunity yet/didn't need to/not applicable	5
Not trained to do it/lack of resources	3
Used mediation instead	4

⁸ Other final results can include “Supervision and Continuing Custody Orders”; “Supervision Order and Child Returned”; and “Continuing Custody Order and Child Returned.” Each of these combinations represented much smaller percentages than those in the table.

⁹ Interview dates between July 1, 2008 and June 30, 2010.

¹⁰ An Interim Custody Order may occur after a Presentation Hearing. It decides where the child is placed until the Protection Hearing.

¹¹ A Supervision Order means the child is under the supervision of the Director (someone designated by the Ministry), but may still be in the care of the family.

¹² “No final result” includes such things as Change of counsel, Client no-show, and Client proceeding alone.

Collateral Issues

All the survey respondents were asked if they used the Collateral Issues tariff to assist their CFCSA clients with matters such as income, housing, immigration status, and drug and alcohol addiction.

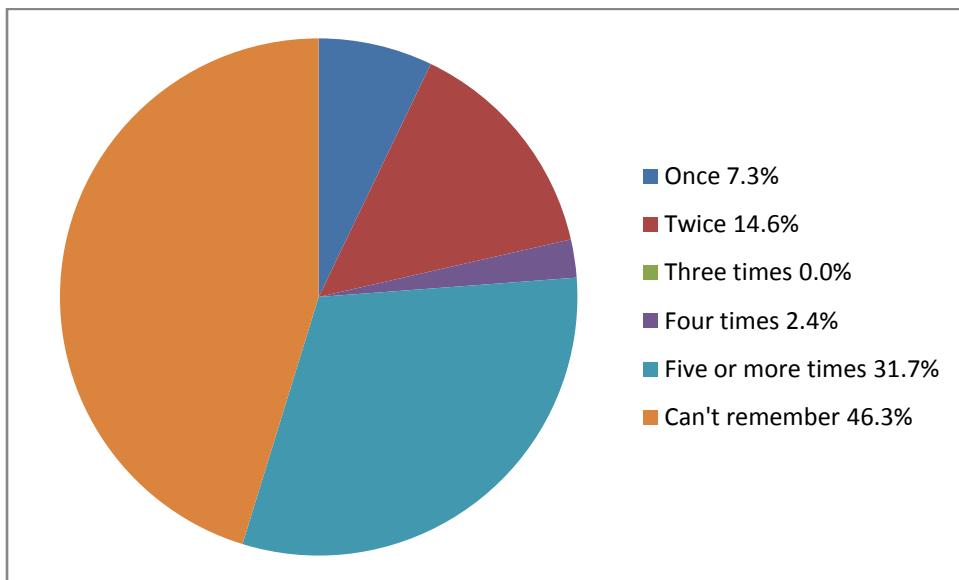
The survey showed that of the 50 lawyers who said they had used the CDR tariff item most of them -- 33 (73%) -- had also used the Collateral Issues tariff. According to CMS, 47 lawyers billed for both items during the same time period.

Of the survey respondents who said they had *not* used CDR, 11 (24%) said they had used the Collateral Issues item. CMS data shows that a total of 94 lawyers billed LSS for Collateral Issues before tariff simplification.

Altogether, then, close to half of the survey respondents (44) had used Collateral Issues, which is almost half of the lawyers who billed the item.

Most of the respondents (46%) who used the Collateral Issues item could not remember how many times they had billed LSS for it. The next largest group billed LSS for it five or more times (32%).

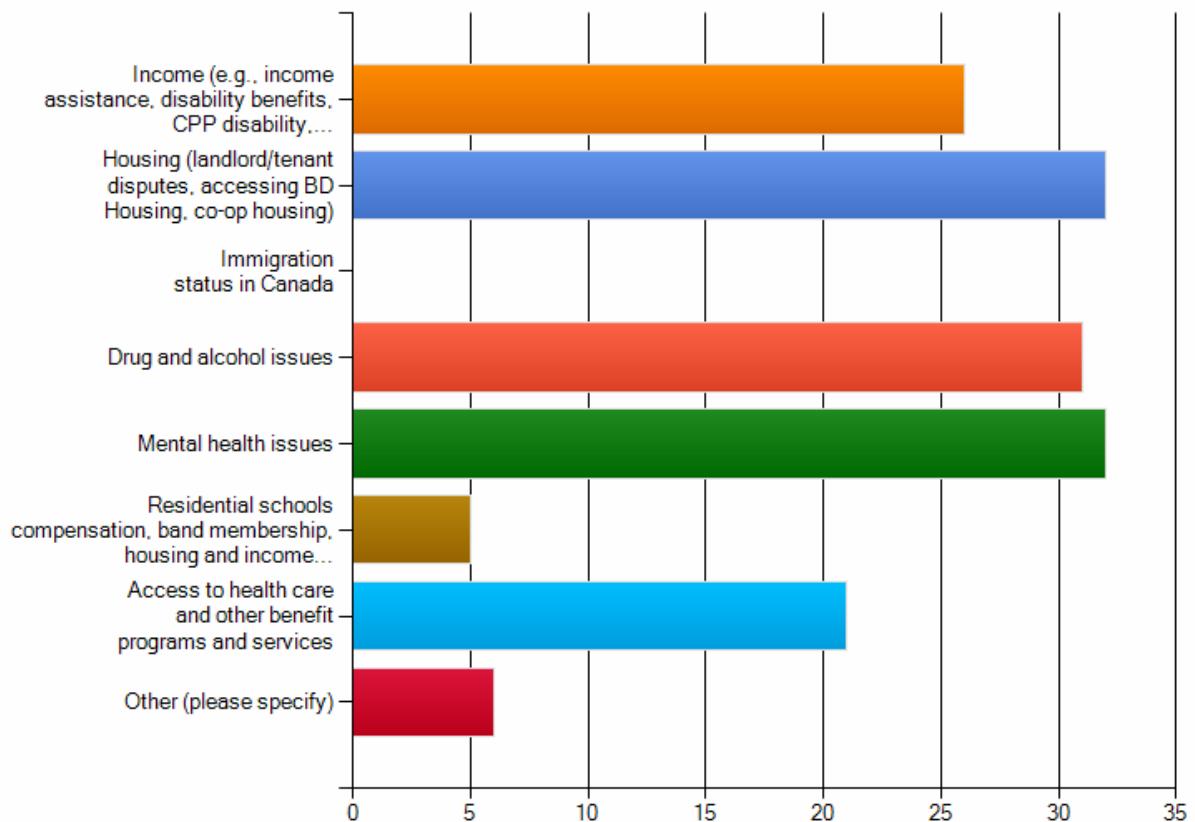
Figure 2: Frequency of billings for Collateral Issues



The collateral issues most often faced by the respondents' clients were housing (78%), mental health (78%), drugs and alcohol (76%), income (63%), and access to healthcare and other benefit programs and services (50%).

Figure 3: Issue types

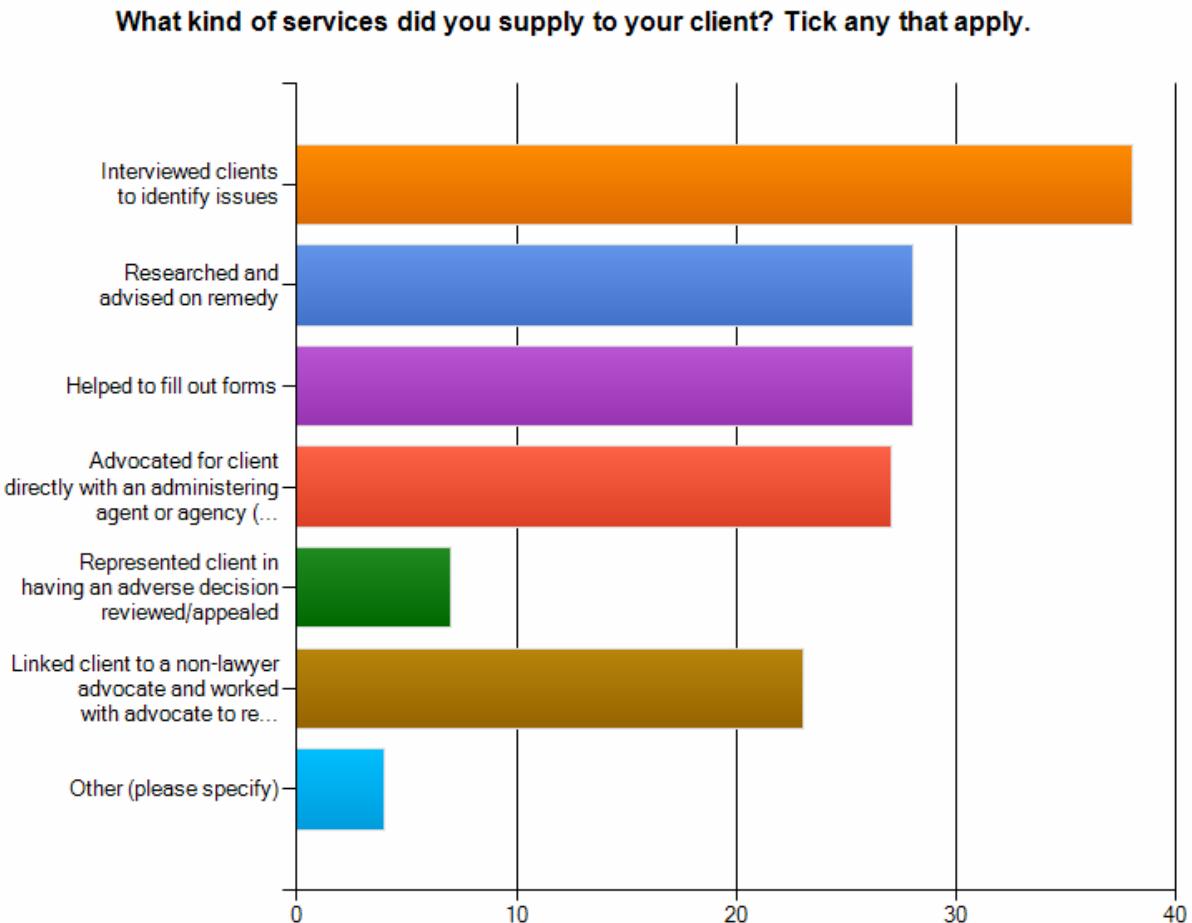
Which of the following matters did you use the Collateral Issues tariff item for? Tick all that apply.



Of those who used it for other things, two respondents said Child Tax Benefits/Child Tax Credit; one referred to dealing with criminal restrictions, such as bail orders; another to dealing with police.

The respondents said they largely used Collateral Issues referrals to interview clients to identify their issues (93%). They also used them to research and advise a remedy (68%), help clients to fill out forms (68%), advocate for their client with an administering agent (66%), and link their client to an advocate (56%).

Figure 4: Services provided



Case Outcomes

Positive outcomes of CFCSA cases cannot be directly attributed to helping clients with collateral issues, however such help may have contributed to positive outcomes. Lawyers were asked to indicate the results of cases where they provided help for clients' other issues.

Of the respondents who could remember, most said their cases had resulted in the child being returned to the home (24 responses, adding up to 76+ cases); a Temporary Custody Order (20 responses or 65+ cases); and going to court (16 responses, adding up to 52 cases).

Survey question: Of the cases when you used the Collateral Issues tariff item, what were the outcomes of your clients' cases? Tick the approximate number of cases you had with the outcomes listed.

Outcome	One Case	Two Cases	Three cases	Four cases	Five or more cases	Total cases	Response count
Child returned to the parent	16.7% (4)	25.0% (6)	12.5% (3)	16.7% (4)	29.2% (7)	76 or more	24
Temporary Custody Order	15.0% (3)	35.0% (7)	5.0% (1)	0.0% (0)	45.0% (9)	65 or more	20
Case went to court	12.5% (2)	12.5% (2)	31.3% (5)	6.3% (1)	37.5% (6)	52	16
Child in the care of a family member	38.9% (7)	16.7% (3)	16.7% (3)	0.0% (0)	27.8% (5)	47	18
Case is still pending	16.7% (2)	8.3% (1)	8.3% (1)	8.3% (1)	58.3% (7)	43	12
Continuing Custody Order	33.3% (4)	16.7% (2)	16.7% (2)	0.0% (0)	33.3% (4)	34	12
Other (please specify)							7
Answered question							34

Two of the respondents who chose "Other" commented as follows:

"All clients need help with collateral issues when the MCFD is involved. I have never had a CCO for any of my clients to date — all children have been returned or are in the **care of a family member**."

"I do not recall the outcomes of all, but in at least one instance the child was ultimately returned and this would have not occurred without this additional help."

CMS CFCSA “Final Results”

CMS data on “final results” does not directly correspond to the list of outcomes lawyers could choose from in the survey. In the survey, lawyers said that more of their cases resulted in the child being returned to the parent or in a Temporary Custody Order; however, there is no Temporary Custody Order on the billing forms, and only 14% of the cases where Collateral Issues was billed resulted in a return of the child.

Looking only at the CMS data, the percentages in the tables below for “Child Returned” are too close to draw any conclusions about the potential effect that helping clients with their collateral issues may have provided. However, the numbers seem to indicate that there were fewer Supervision Orders (24% compared to 31%), but more Interim Custody Orders (34% compared to 27%).

Top 5 Final Results ¹³ in CMS where Collateral Issues is billed ¹⁴		
	Cases	Percentage of total (317 cases)
Interim Custody Order	108	34%
Supervision Order	76	24%
No final result ¹⁵	45	14%
Child Returned	43	14%
Continuing Custody Order	38	12%

Top 5 Final Results in CMS where Collateral Issues was not billed		
	Cases	Percentage of total (3,395)
Supervision Order	1,064	31%
Interim Custody Order	910	27%
No final result	550	16%
Continuing Custody Order	446	13%
Child Returned	354	10%

¹³ Other final results can include “Supervision and Continuing Custody Orders”; “Supervision Order and Child Returned”; and “Continuing Custody Order and Child Returned.” Each of these combinations represented much smaller percentages than those in the table.

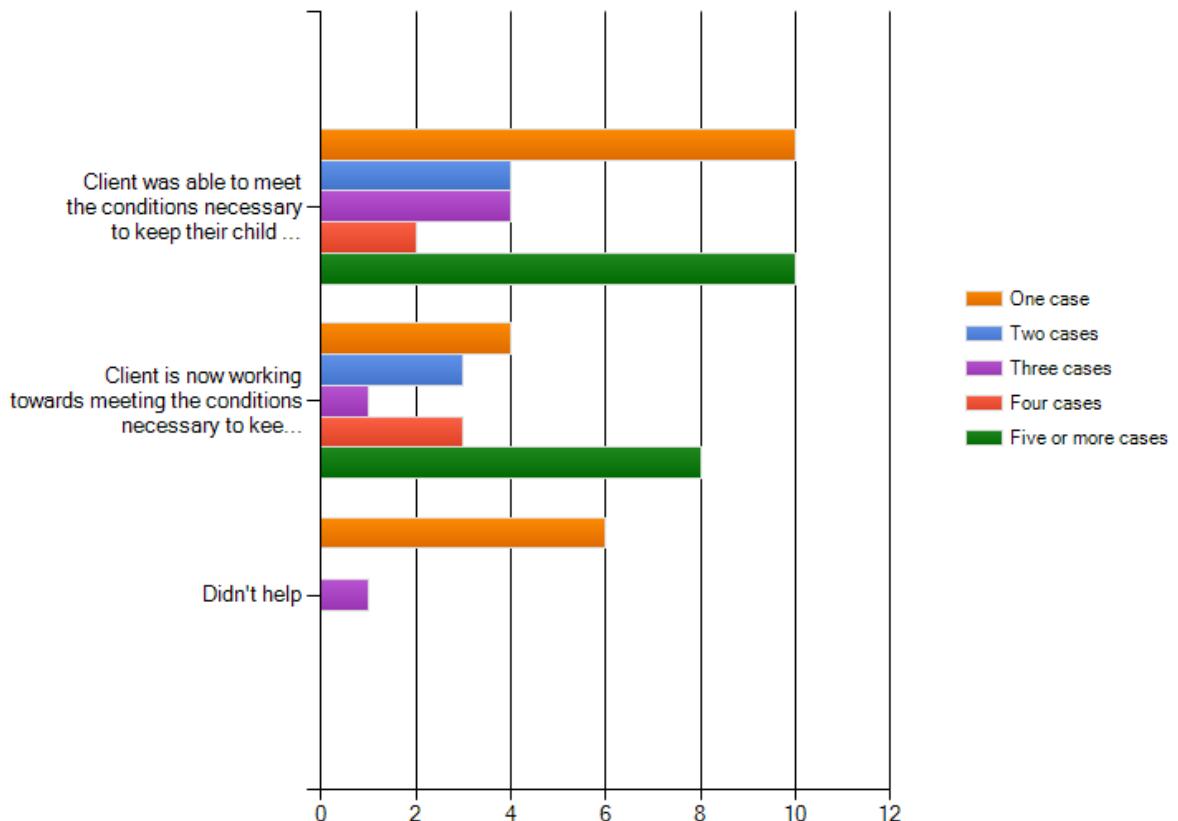
¹⁴ Interview dates between July 1, 2008 and June 30, 2010.

¹⁵ “No final result” includes such things as Change of counsel, Client no-show, and Client proceeding alone.

Impact

Most of the respondents said that helping clients with their collateral issues meant the client was able to meet the conditions necessary to keep their child at home or was working towards meeting those conditions.

In what way, if any, did helping your clients with their collateral issues impact the resolution of their CFCSA matter?



Why Respondents Did Not Use Collateral Issues

Forty-seven respondents said they had *not* used the Collateral Issues tariff. Of the respondents who said they did not use the Collateral Issues item, most said it was because they did not know about it (16 out of 43) or that their clients did not have other issues that would affect the outcome of their CFCSA case (14). Other reasons included that they did not think it would be helpful to their clients and there was no time.

Here are some of the comments about why respondents did not use the Collateral Issues tariff item:

Clients did not request assistance, lack of skills in these areas. Clients use other service providers.
Forgot it was there.
The clients were able to deal with these matters themselves.
Most of my CFCSA files involved First Nations parents as clients, and such collateral services are readily available through the aboriginal health services and other referral programs run by the Band.
I have made a few referrals to the Poverty Law Advocate....have had no follow-up from that.
In the few CFCSA matters I had, I have assisted the clients at the initial stage.
Hasn't come up; but I do not feel comfortable with such subjects anyway - no particular expertise to offer.

Interestingly, another 34 respondents said they had helped clients with collateral issues but had not billed LSS for it. Two lawyers commented:

"I often did these things and forgot that I could bill these items separately under this tariff item. The old tariff was driven by stages of hearing and I simply did what I had to do for the client and considered it prep for that hearing stage. I now utilize this tariff item more often because I realize that I can bill this and I have to change my way of approaching the tariff in terms of prep time."

"...I have not billed this item that much.... It is not so much a matter of not assisting clients with these issues as either not requiring any time over and above the prep provided or just forgetting to bill it."

Poverty Law Primer

In September 2009, LSS produced a *Poverty Law Primer* to assist lawyers and advocates with clients who have issues related to their main legal matter. Of the 500 copies, some were distributed to advocates and in May 2010, the primer was mailed out to the 72 lawyers who had billed the most for Collateral Issues, and some were distributed upon request (exact numbers were unavailable).

Of the people who billed for the Collateral Issues item, only 6 (out of 41) said they had also used the *Poverty Law Primer* to help them support their CFCSA clients who were facing other matters. Another 5 survey respondents (who had not billed for Collateral Issues) also said they had used the *Poverty Law Primer* to help them with their clients.

The sections of the primer used most by the 11 lawyers who said they had used it were “Housing—Residential Tenancy” and “Welfare Law.” The sub-sections respondents found most useful included “Common client problems”; “Frequently Asked Questions”; and “Governing statutes, regulations, and rules.”

More significantly, 74 (87%) survey respondents said they had not used the primer. The majority said they did not know it was available. Two lawyers commented that they had forgotten about it, one of whom appreciated the reminder.

Other reasons included:

Not quite sure how it can be utilized to assist my clients.
Practised poverty law previously.
I read it one time in the past but certainly do not refer to it on a case by case basis. It is a good reference for less experienced counsel.
I do not find it useful.
So few lawyers in this area taking family clients only have time to help clients with their family matters [sic]."
I've lived and worked in the communities I service for years. I'm on the board of a social service agency so am aware of resources/can direct clients to resources.
Not an area I feel able to offer advice on.

One lawyer said they used other online resources to get the same information:

“[I] used the internet instead for more updated information. An online primer by LSS that is continually updated would be more reliable than a paper one.”

A PDF of the primer is available in the Lawyers section of the LSS website, however it is not updated.

Supporting lawyers to use CDR and Collateral Issues

Forty-eight survey respondents provided a comment about what, if anything, LSS could do to support lawyers' use of the CDR and/or Collateral Issues tariff items to help their CFCSA clients. All the comments are listed in Appendix A, but the following themes emerge (with # of mentions):

- Provide more training/resources (12)
- Provide more hours/expand tariff (9)
- Promote these items more (5)
- Keep these items in the tariff (5)

Here is a selection of the responses:

Remind counsel when they get a CFCSA referral that these tariff items are available and how to get more info on how to access them.
Recognize with specific tariff item. Every CFCSA file I have done has an issue needing attention through collateral resources. These files need a more holistic approach.
A more advanced CLE course focusing on the intersection of these issues and how to best use these items to assist clients.
My experience has been that my support and advocacy helps the client to not feel overwhelmed by the ministry and there is more clarity and concreteness in planning and resources and building understanding. LSS could assist by promoting bridging and some education/workshops perhaps at the Family law conference. Having the LSS lawyers know about the different avenues of CDR would be a good step in getting out the word.
If we had more hours we could assist with many more of these meetings which I feel could eliminate some court time. If a client clearly understands what is required and feels they are being heard, many issues could be resolved prior to a hearing. Many times issues such as interim access could be addressed given the time to have meetings. As well many clients suffer from substance abuse or mental health issues. It takes a great deal more time than is presently allocated to properly represent these clients.
4 hours is minimal, can't do much with 4 hours, can't prepare pleadings, nor go to court with that little prep time....expand the Collateral, or, create a poverty law tariff to provide people with real and meaningful assistance rather than this minimal band-aid help. All it does is enable us to research the problem, fill in a form or 2, and then tell the client they are on their own.
I am simply asking that you keep these two tariff items in the new tariff....

Billing Costs

Of the 3,712 CFCSA cases billed between July 1, 2008, and June 30, 2010, just 8% (292 cases) billed for CDR attendance and nearly 9% (317 cases) billed for Collateral Issues. While the average cost of cases that include billings for CDR or Collateral Issues is considerably higher (see Appendix B), the proportion of the cost going to those tariff items is small. For example, in fiscal year 2009/2010, \$124,576 was spent on tariff codes 5100, 5125 and 5191, which was just 3% of the total CFCSA costs that year (which were \$4,649,486).

CFCSA quarterly billings for tariff codes:

5100	Preparation - Consensual Dispute Resolution Process
5125	Attendance - Consensual Dispute Resolution Process
5191	Collateral Issues

Batch Quarter	Tariff Code 5100	Tariff Code 5125	Tariff Code 5191	Total
2009/10_Q1	15,003	11,859	14,258	41,120
2009/10_Q2	15,431	10,341	16,984	42,756
2009/10_Q3	11,540	3,378	8,698	23,617
2009/10_Q4	6,180	4,842	6,061	17,084
	\$48,155	\$30,421	\$46,001	\$124,576

Because of rounding, the above subtotals may not appear to equal the sum of the numbers totalled.

Total CFCSA quarterly billings

Batch Date Fiscal Quarter	Case Type	Net Fees	Disbursements	Transcripts	Total Net Cost
2009/2010 - Q1	Appeal - CFCSA	\$1,816	\$0	\$2,518	\$4,333
	CFCSA	\$962,061	\$64,340	\$1,197	\$1,027,597
2009/2010 - Q2	Appeal - CFCSA	\$2,924	\$1,147	\$2,550	\$6,622
	CFCSA	\$1,012,895	\$61,136	\$2,625	\$1,076,655
2009/2010 - Q3	Appeal - CFCSA	\$6,379	\$493	\$213	\$7,085
	CFCSA	\$1,108,220	\$73,261	\$4,395	\$1,185,876
2009/2010 - Q4	Appeal - CFCSA	\$6,071	\$1,781	\$6,151	\$14,003
	CFCSA	\$1,245,987	\$79,909	\$1,419	\$1,327,315
Total		\$4,346,353	\$282,067	\$21,067	\$4,649,486

It is too early to compare costs before and after tariff simplification, but even after the passage of time analysis will be problematic for CDR because costs for CDR and mediation cannot be pulled apart under the new tariff.

Conclusion & Recommendations

About half of the survey respondents used the CDR and Collateral Issues tariff items and presumably will continue to use them under the simplified tariff. They are seen as valuable by those who use them and represent only a small portion of the overall cost of the CFCSA tariff.

CMS data shows that cases that involve a consensual dispute resolution process tend to be lengthier and more costly than those that do not. The data cannot tell the whole story, however. CDR may be used in more complicated cases, and, in turn, referrals where no CDR was billed likely include cases that were more quickly and cheaply resolved without involving more complicated processes, which can skew the data. In other words, it may be the nature of the case that dictates the length and cost, rather than if CDR was used or not.

Lawyers who responded to the survey indicated that using CDR and Collateral Issues results in better outcomes for the child, though it is unclear whether CMS data supports this, especially given the way results are collected on the billing forms. It is no surprise that survey respondents suggested LSS provide more hours for the two tariff items.

What the evaluation did not measure, however, is whether clients are more satisfied with legal aid services when their lawyer uses a consensual dispute resolution process or helps them with their other issues. Given the nature of the issues facing CFCSA clients, the timing of interviews can be sensitive and in some cases probing questions may be inappropriate, however client satisfaction with the delivery of CFCSA services in general should be considered.

According to the survey respondents, the *Poverty Law Primer* is not used very often. The lawyers who said they help their clients with poverty law issues tend to be comfortable with that area of law already. Many survey respondents were not aware of the primer.

Recommendations

- Consider measuring client satisfaction with CFCSA services and whether there are differences between those who enter into CDR processes and receive help with their other issues and those who do not. It is recommended that client satisfaction with CDR and help with collateral issues be included in an evaluation of all CFCSA services. Limitations may include whether clients can distinguish between CDR and mediation. Given the sensitivity of CFCSA cases, an exit survey at various points of service may be the best way to reach clients.
- Analyze the same CMS data used in this report on a yearly basis, looking for trends over time.¹⁶
- Promote the use of Collateral Issues and Consensual Dispute Resolution to the tariff bar and clients.
- Promote the *Poverty Law Primer* only if it is considered worthwhile to keep this up-to-date and in print or online.

¹⁶ Note that it will no longer be possible to separate out data for CDR and mediation under the simplified tariff.

- Consider creating an online version of the *Poverty Law Primer* that can be regularly updated on the LSS website. This will also serve the purpose of supporting the society's goal of integrated services and the lawyers who are expected to carry it out.
- Provide lawyers with a list of community resources to assist in helping with Collateral Issues and place it on the LSS website. Likewise, such resources directed at lawyers will support the society's goal of integrated services.
- Arrange CLE or other lawyer training in how to address clients' related issues.
- Decide what data is most useful for future operational and evaluation purposes and consider updating the billing forms. Track data for analysis rather than purely billing purposes, which will make interpretation less difficult. Require lawyers to input this data to proceed further in e-billing without making it onerous.

Appendix A: Survey Comments

Finally, what, if anything, could LSS do to support your use of the CDR and/or Collateral Issues tariff items to help CFCSA clients?

Answer Options	Response Count
	48
Number	Response Text
1	Allow more time under both of these issues, as the court process is barely functional in terms of making timely decisions. The Collateral Issues tariff is very important to clients.
2	I have used it as a method of increasing the time I have to allow me to attend meetings with my clients (addiction counsellors, social workers) and to allow me to communicate with housing advisors for instance. But, in the end, I could be putting these services under the general tariff now, I suppose.
3	course
4	Provide training on when to use these services.
5	some training on what is available in our local communities on these collateral issues and how we can help the clients with those issues.
6	I have assisted in family group conferencing, and they have been successful. I understand that certain social workers don't want lawyers present as they seem concerned that the process becomes more litigious. There are also lawyers who either don't know about CDR or don't feel comfortable. My experience has been that my support and advocacy helps the client to not feel overwhelmed by the ministry and there is more clarity and concreteness in planning and resources and building understanding. LSS could assist by promoting bridging and some education/workshops perhaps at the Family law conference. Having the LSS lawyers know about the different avenues of CDR would be a good step in getting out the word.
7	Remind counsel when they get a CFCSA referral that these tariff items are available and how to get more info on how to access them.
8	Do not cut it off. Provide more resources and less restrictions to this item.
9	I find much of my CFCSA practice is helping clients with their collateral alcohol/drug use/housing needs. That is why my clients have been successful. the hours should be increased.
10	At November, 2010, I had only been on one Bellas Circuit Court. I have been on one each month since then. In the last two (Bella Bella & Bella Coola) the mediator, Laura Mathews, came with us. She was paid through Pamela Shields, LSS Aboriginal Programs. Both times the mediator was invaluable in assisting Aboriginal families in CFCSA and FRA matters. I strongly recommend a mediator be a part of the Circuit Court. WEC
11	Now that the attendance issue is not capped, the only issue I have is not having enough prep for CDR processes when the case extends on for a significant period of time and there are multiple CDR attempts.
12	Make its existence known. Provide enough hours to make its use realistic.
13	Keep it as a tariff item
14	need to be expanded
15	provide list of resources availabel outside Lower Mainland
16	Remind counsel that it's an option. I didn't even know it was there.
17	A more advanced CLE course focusing on the intersection of these issues and how to best use these items to assist clients.
18	Nothing comes to mind. The biggest issue is simply getting clients to follow instructions from the social workers. The problem lies with clients.
19	If there is no violence involved, I would make mediation available for all CFCSA matters and FRA matters.
20	have more lawyers available to take referrals

- 21 Fund a professional development course centered on the resources and techniques useful for helping family law parties with poverty issues.
- 22 Training!
LSS could allocate more hours. Many times clients meet with social workers and do not understand what is required of them or feel very intimidated.
- If we had more hours we could assist with many more of these meetings which I feel could eliminate some court time. If a client clearly understands what is required and feels they are being heard, many issues could be resolved prior to a hearing. Many times issues such as interim access could be addressed given the time to have meetings. As well many clients suffer from substance abuse or mental health issues. It takes a great deal more time than is presently allocated to properly represent these clients.
- 23 nothing more
- 24 keep these areas supported under the tariff as they are important
Most CFCSA clients are angry/stressed/depressed because the Ministry is in their lives. Providing counselling services which help them focus on the issues is very useful. The reality is that many of these individuals need a counsellor more than they need a lawyer. Counselling is rarely provided by the Ministry and when it is it is for Ministry purposes, i.e. gathering evidence in regards to capacity. These clients need guidance and support. We would be a lot more successful if we had an interdisciplinary approach to assisting these clients.
- 25 I have not had a case where these tariff items were applicable
4 hours is minimal, can't do much with 4 hours, can't prepare pleadings, nor go to court with that little prep time. Suggest expand the Collateral, or, create a poverty law tariff to provide people with real and meaningful assistance rather than this minimal band-aid help. All it does is enable us to research the problem, fill in a form or 2, and then tell the client they are on their own. I do not do pro bono, because every legal aid case I take is in part a pro bono file because of poor pay. If the Provincial Liberals have \$600 million for a new roof for a sports stadium in Vancouver, then they can afford to properly fund legal aid and bring back poverty law for the thousands of poor people who desperately need help.
- 26 Can't think of anything at this time.
- 27 I would like LSS to provide mediation or negotiation training.
I am simply asking that you keep these two tariff items in the new tariff. Under the new tariff, I have 20 hours of general preparation. Under the old tariff, if I had a file from the presentation hearing onwards, I was able to bill 5 hours general prep, 2 hours for prep for the presentation hearing = 7 hours; protection hearing and three extensions 6 hours x 4 = 24 hours and 6 hours prep for a CCO hearing for a grand total of 37 hours of total preparation time. The new tariff only gives me 20 hours, but I can apply for 20 more. I am saying that the new tariff now makes me think differently about the areas of service I provide and these two tariff items have become more important in terms of how I currently bill my files under the new tariff.
- 28 CDR is a useful and helpful tariff
I frankly don't know. Many of my clients have usually one thing they concentrate on and don't even do that well. I'm sure some could use the CDR support but don't indicate it.
- 29 I do not practice child protection law
- 30 LSS should keep it in place.
- 31 Not sure.
- 32 I know that it is there.
- 33 Nothing to suggest.
- 34 it would be helpful to have it in the family tariff
- 35 not sure
have a community list of resources available in that particular community including contact information.
- 36 LSS could recognize that on some files more than one meeting is needed to resolve certain issues. Not enough preparation time for CDR has been built into the tariff.
- 37 As to CDR, cheerlead the ministry to provide a facility. They do make mediation available.

- 44** Have not acted for CFCSA clients
- Recognize with specific tariff item. Every CFCSA file I have done has a an issue needing
- 45** attention through collateral resources. These files need a more holistic approach.
- 46** Be more visible - educate the courts, ie Judges
- 47** Offer a referral list for persons with expertise in these non-legal areas
- 48** increase hours available as collateral issues directly impact the outcome

Appendix B: Case costs

CFCSA cases and average costs with and without CDR attendance billed (tariff code 5125)

Interview dates from July 1, 2008 to June 30, 2010 (2 years)

Excluding appeals and cases with any staff or reciprocal referrals

	Cases billed	Expenditure	Average case cost
CDR attendance billed	292	\$ 1,229,665	\$ 4,211
CDR attendance not billed	3,420	7,171,248	2,097
All cases	3,712	\$ 8,400,913	\$ 2,263

CFCSA cases and average costs with and without collateral issues billed (tariff code 5191)

Interview dates from July 1, 2008 to June 30, 2010 (2 years)

Excluding appeals and cases with any staff or reciprocal referrals

	Cases billed	Expenditure	Average case cost
Collateral issues billed	317	\$ 1,342,363	\$ 4,235
Collateral issues not billed	3,395	7,058,550	2,079
All cases	3,712	\$ 8,400,913	\$ 2,263