

Criminal Tariff Simplification Discussion Paper

Please note that there is an important revision to the following paper called “Update May 3, 2010” that is available on the LSS website. However, the appendices in this document have been updated to reflect the revisions of May 3rd.

Purpose

The purpose of this paper is to provide:

- information about the Legal Services Society’s (the Society) Tariff Simplification project that focuses on simplifying the criminal tariff while maintaining overall cost neutrality,
- a copy of the proposed simplified criminal tariff, and
- an opportunity for stakeholders to provide comments on the proposed criminal tariff.

Background

a. Current Criminal Tariff

The current Criminal tariff is 52 pages, and contains 158 billable block fees. Private bar lawyers are contracted with and provided with a referral that may cover a number of offences.

Under the tariff, criminal offences are grouped into four categories, the most serious or complex matters being category IV (murder, conspiracy etc.). Complex criminal matters (large cases) are streamed to a case managed process and are not included in the Tariff Simplification project.

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

Appendix A shows the frequency of current billings (2007) for the current tariff. Overall, six tariff items account for 2/3 of total annual billings.

b. How did the tariffs get so complex?

The tariffs expanded to reflect court processes and changes. New tariff items were added to cover these new processes but no existing items were taken out or merged with the new items. Court administration and the judiciary imposed a number of procedural steps that had to be accommodated within the block fee structure.

c. Problems associated with a complex tariff

A complex tariff makes it more difficult for lawyers to clearly explain to clients what they can expect from their lawyer. As well, the complex tariff structure and related rules and conditions require LSS to perform and manage many activities to ensure compliance.

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With almost 200 tariff items and the authorization of 160,000 payments annually, significant time and costs are incurred to maintain these manual and automated controls.

In addition, current tariff items do not always match how counsel allocates its time, which creates extra administrative effort to bill and process accounts.

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

Tariff Simplification Project

a. Purpose

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

b. Scope and Objectives

The scope of the project includes:

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

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

Research and Consultations

a. Criminal Tariff Structures of Legal Aid Plans

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

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lawyers on an hourly basis but will be piloting a project to determine whether block fees are easier and less expensive to administer than a capped hourly system.

Scotland, the United Kingdom, Wales, and Victoria (Australia), have gone to a simplified block fee type system within the last ten years because of the benefits of this model – specifically, simplicity, control and certainty – which are recognized by legal aid plans internationally.

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

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

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

The general purpose of meeting these groups is to provide:

- information about the project,
- an overview of the Society's intended direction for tariff reform,
- a copy of the proposed simplified tariff, and
- an opportunity for stakeholders to provide comments.

Evaluation component

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

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

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

Proposed Model

a. Criminal Simplified Tariff

Simplification is about reducing the number of tariff items without changing coverage and eligibility, while maintaining existing services and ensuring the same

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level of compensation overall. It is also about simplifying the billing rules associated with each item.

The new simplified criminal tariff (Appendix B) has been reduced from 52 to 15 distinct items, largely through the consolidation of services that are seldom used¹ or broadening the scope of major events in the criminal process.

Highlights of the proposed simplified criminal tariff are:

- categories have changed to summary, indictable and major,
- summary includes hybrids where Crown proceeds summarily and maximum sentence is 6 months,
- indictable includes hybrid summary matters where maximum sentence is greater than 6 months, except for breach of probation. Includes forcible confinement or abduction cases where the Crown proceeds summarily,
- major cases include non-SCAP cases for the following offences: murder, attempted murder, manslaughter, aggravated sexual assault, sexual assault with a weapon or causing bodily harm, kidnapping, and dangerous and long-term offender hearings. Includes forcible confinement or abduction cases where the Crown proceeds by indictment,
- includes payment for each information resolved without trial,
- maintains a payment for each bail hearing,
- maintains a first day of hearing rate with a subsequent half day rate to reflect front end loading necessary for each trial,
- maintains travel fees and in custody visits,
- youth matters now dealt with under the simplified tariff rather than as separate items, and
- maintains a separate item for sentencing although the first half day of sentencing is included in the guilty plea under tariff item #7.

A draft copy of the billing rules associated with each tariff item is attached as Appendix C. There are still a few issues that the Society has to resolve around the billing rules but these decisions will be based on further research and any significant changes will be communicated or amalgamated as an amendment to this paper.

To show the differences between the old and new tariff, Appendix D contains several examples where sample cases under the current tariff have been re-calculated using the new tariff items, rates and billing rules. These examples are for illustrative purposes only and are not representative of all billings. Further work is necessary to develop a more comprehensive list of scenarios that more accurately reflects the current distribution.

Appendix E contains 12 items from the old criminal tariff that will continue to exist under the simplified model.

¹ From year to year, six tariff items account for 2/3 of total annual billings. See Appendix A.

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b. Cost Impacts

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

The analysis assumed referrals under the new tariff are resolved in the same manner as under the existing tariff with similar billing patterns. The new tariff items were linked to referral information and grouped to show billing totals at the court, region and provincial level.

Next, analytical tools were developed to assess the implications of alternative tariff amounts and grouping of different fee items into a simplified tariff based upon input from stakeholders and LSS cost requirements. This process highlighted the potential impacts of the simplified tariff and tested alternative models.

In the end, total billings under the current criminal tariff were compared with projected billings under the simplified tariff. Overall, the new tariff items with the revised rates and associated billing rules resulted in a net difference of less than 1%.

c. Benefits of a Simplified Tariff

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

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

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d. Implementing the Simplified Tariff

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

Feedback Opportunity

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

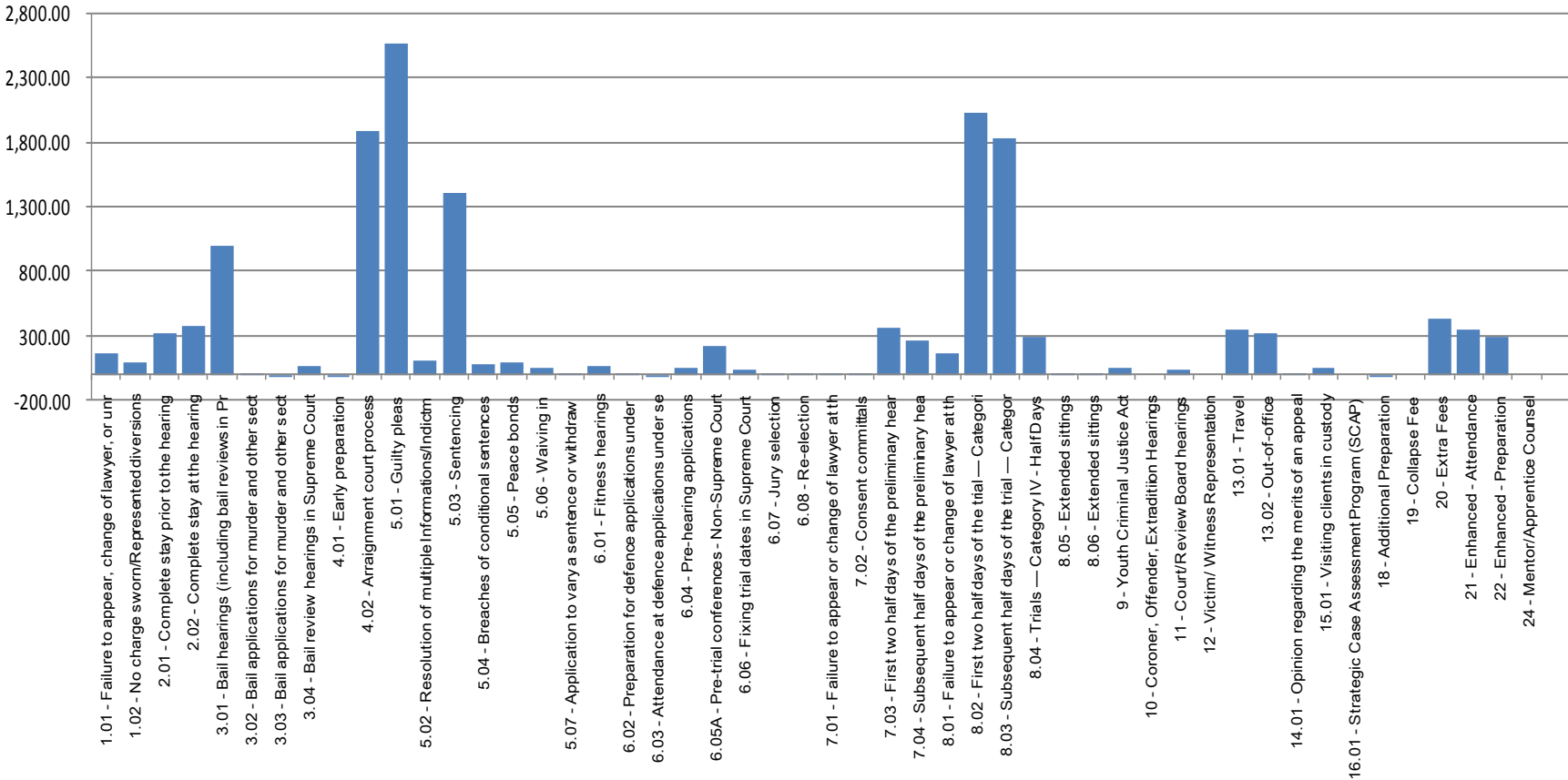
1. From your perspective, what are the positive impacts of simplifying the tariff?
2. Conversely, what are the negative impacts of simplifying the tariff?
3. What are your general comments on the proposed tariff?

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

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

Appendix A

Current Tariff – Billings by Code



This chart highlights that most of the current criminal tariff items are billed in 6 main areas.

Appendix B – Simplified Criminal Tariff

as revised May 2010

		Summary ¹	Indictable ²	Major ³
1	Provincial Court fee	85	100	175
2	Supreme Court fee		300	350
3	Visiting clients in custody	90	90	90
4	Bail matters in Provincial Court	125	150	200
5	Bail matters in Supreme Court	350	400	600
6	Contested fitness hearing	450	450	450
7	Non-trial resolution (Guilty pleas, Stay of proceedings, “terminal” FTA’s, Change of counsel)	200	300	475
8	Sentencing (each half day)	100	125	200
9	Multiple information resolution (per additional info)	90	120	150
10	Prelim (first day)		600	800
11	Prelim (subsequent half days)		300	400
12	Trial (first day)	600	800	1400
13	Trial (subsequent half days)	390	490	700
14	Mental health review (court or Review Board)	450	450	450
15	Travel	180	180	180

¹ Summary includes hybrids where the Crown proceeds summarily and max is 6 mos. Category IV will be preserved for major non-SCAP cases.

² Indictable includes summary matters where maximum sentence is greater than 6 months, except for breach of probation. Includes forcible confinement or abduction cases where the Crown proceeds summarily.

³ For non-SCAP cases for the following offences: murder, attempted murder, manslaughter, aggravated sexual assault, sexual assault with a weapon or causing bodily harm, kidnapping, and dangerous and long-term offender hearings. Includes forcible confinement or abduction cases where the Crown proceeds by indictment.

Appendix D
Criminal Tariff Simplification - Case Examples

Case Scenario #1 - Client A – one referral	Current Tariff	New Tariff
<u>Information 1 - B&E (category 3)</u> Bail - Dec 1st a.m. Guilty Plea - Dec 7 a.m. - Judge X Sentencing - Dec 7 a.m. - Judge X Note: If this referral had one information, there would be a net benefit of \$72	Early preparation fee 113 Bail 150 Guilty plea 250 Sentencing 125 <div style="text-align: right;">Sub-total <u>\$638</u></div>	Provincial Court fee 100 Bail 150 Guilty plea 300 Sentencing 125 <div style="text-align: right;">Sub-total <u>\$675</u></div>
<u>Information 2 - B&E (x2)</u> Sentencing - Dec 7th p.m. - Judge X Bail - Dec 1st a.m. Guilty plea (cnt 1), SOP (cnt 2) - Dec 7 a.m. - Judge X Sentencing - Dec 7th p.m. - Judge X	Early preparation fee 113 Bail 0 Resolution of multiple infos 125 SOP 0 Sentencing 0 <div style="text-align: right;">Sub-total <u>\$238</u></div>	Bail 0 Resolution of multiple infos 120 SOP 0 Sentencing 0 <div style="text-align: right;">Sub-total <u>\$120</u></div>
<u>Information 3 - Assault summary (category 2)</u> Bail - Dec 1st a.m. Stay of proceedings - Dec 7th a.m. - Judge X Sentencing - Dec 7th p.m. - Judge X	Early preparation fee 80 Bail 0 Resolution of multiple infos 0 Sentencing 0 <div style="text-align: right;">Sub-total <u>\$80</u></div>	Bail 0 Resolution of multiple infos 120 Sentencing 0 <div style="text-align: right;">Sub-total <u>\$120</u></div>
This scenario shows the impact of the new billing rule for the resolution of multiple infos (now billable per information) 7 items billable on the old tariff and 5 on the new tariff	Grand Total \$956	Grand Total \$915 (\$41 less)

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Criminal Tariff Simplification - Case Examples

Case Scenario #2 - Client B – one referral	Current Tariff	New Tariff
<u>Information 1 - B&E</u> Bail - Dec 1st p.m. Guilty Plea - Dec 24 a.m. - Judge X Sentencing - Dec 29 p.m. - Judge X	Early preparation fee 113 Bail 150 Guilty plea 0 Sentencing 0 <div style="text-align: right;">Sub-total <u>\$263</u></div>	Provincial Court fee 100 Bail 150 Guilty plea 0 Sentencing 0 <div style="text-align: right;">Sub-total <u>\$250</u></div>
<u>Information 2 - B&E x2</u> Bail - Dec 20th a.m. Arraignment - Dec 21 a.m. Preliminary hearing - Dec 22 a.m. Fix date - Dec 23 a.m. Trial - Dec 24th a.m. & p.m. - Judge X Sentencing - Dec 29th p.m. - Judge X	Bail 150 Arraignment 113 Preliminary hearing 600 Fix date 90 Trial 800 Sentencing 125 <div style="text-align: right;">Sub-total <u>\$1,878</u></div>	Bail 150 Preliminary hearing 600 Supreme court fee 300 Trial 800 Sentencing 125 <div style="text-align: right;">Sub-total <u>\$1,975</u></div>
This scenario shows the guilty plea on Information 1 not billable on either tariff because it occurred on the trial date 8 items billable on the old tariff and 7 on the new tariff	Grand Total \$2,141	Grand Total \$2,225 (\$84 more)

Appendix E – Criminal Tariff Items that Remain

ITEMS THAT STAY AS THEY CURRENTLY ARE (FORMAT MIGHT CHANGE IN NEW TARIFF)									
		Strategic Case Assessment Program (SCAP): General Preparation Senior Counsel	<ul style="list-style-type: none"> Billable per hour for actual preparation time authorized. Record the actual time spent as specified in your time records. 	I II III IV	As authorized	8660 8550 8100 8202		STAYS AS IS	
		Strategic Case Assessment Program (SCAP): General Preparation Junior Counsel	<ul style="list-style-type: none"> Billable per hour for actual preparation time authorized. Record the actual time spent as specified in your time records. 	I II III IV	As authorized	9000 9010 9100 9202		STAYS AS IS	
		Strategic Case Assessment Program (SCAP): SCAP daily preparation Senior Counsel	<ul style="list-style-type: none"> Billable per hour for actual preparation time authorized up to a daily maximum as set out in your letter of authorization. Bill on days when you appear in court and evidence is led, witnesses are called, an argument is made, or a judgement is given. Record the actual time spent as specified in your time records. <p>Cautions</p> <ul style="list-style-type: none"> Daily preparation time that has not been used on the day it accumulates may be attributed to preparation spent on the case during that week, the weekend before, or the weekend after the day it accumulates. A maximum of two hours of accumulated daily prep time may be used after the conclusion of the case for appropriate wind-down of the file. 	I II III IV	As authorized	8670 8548 8105 8252		STAYS AS IS	
		Strategic Case Assessment	<ul style="list-style-type: none"> Billable per hour for actual preparation time authorized 	I II	As authorized	9008 9012		STAYS AS IS	

Appendix E – Criminal Tariff Items that Remain

		Program (SCAP): SCAP daily preparation Junior Counsel	<p>up to a daily maximum as set out in your letter of authorization.</p> <ul style="list-style-type: none"> • Bill on days when you appear in court and evidence is led, witnesses are called, an argument is made, or a judgement is given. • Record the actual time spent as specified in your time records. <p>Cautions</p> <ul style="list-style-type: none"> • Daily preparation time that has not been used on the day it accumulates may be attributed to preparation spent on the case during that week, the weekend before, or the weekend after the day it accumulates. A maximum of two hours of accumulated daily prep time may be used after the conclusion of the case for appropriate wind-down of the file. 	III IV		9105 9252				
		Strategic Case Assessment Program (SCAP): Court Attendance Senior Counsel	<ul style="list-style-type: none"> • Billable per hour for time spent in court at a pre-trial application, preliminary hearing, or trial. • Provide the date(s) and time spent in court. • Bill the actual time spent as specified in your time records, from the time court was scheduled to begin to its conclusion, excluding meal breaks. 	I II III IV	Actual time	8677 8569 8120 8460		STAYS AS IS		
		Strategic Case Assessment Program (SCAP): Court Attendance Junior Counsel	<ul style="list-style-type: none"> • Billable per hour for time spent in court at a pre-trial application, preliminary hearing, or trial. • Provide the date(s) and time 	I II III IV	Actual time	9015 9020 9120 9460		STAYS AS IS		

Appendix E – Criminal Tariff Items that Remain

			<ul style="list-style-type: none"> spent in court. Bill the actual time spent as specified in your time records, from the time court was scheduled to begin to its conclusion, excluding meal breaks. 						
		Victim/witness representations under section 278 of the Criminal Code: Preparation for victim/witness representations	<ul style="list-style-type: none"> Billable at the LSS hourly rate when you receive a referral for victim/witness representation and provide the client with advice and representation about the disclosure of records under section 278 of the Criminal Code. This item includes interviewing clients, giving legal advice, and preparing for the hearing. Record the actual time spent as specified in your time records. 	Up to 5 hours	6439		STAYS AS IS		
		Victim/witness representations under section 278 of the Criminal Code: Attendance at victim/witness representations	<ul style="list-style-type: none"> Attendance is billable at the LSS hourly rate when you attend the hearing of an application under section 278 of the Criminal Code. Travel is billable at \$180 per half day, subject to the rules set out under Travel. Bill the actual time spent in the hearing as specified in your time records. Provide the hearing date. <p>Caution</p> <p>🔄 Do not bill these items for the same half day with any other tariff item.</p>	Actual time	6827 Travel Tariff code is 6460		STAYS AS IS		
		Victim/witness representations	<ul style="list-style-type: none"> Prior authorization from the Manager, Legal Services is 				STAYS AS IS		

Appendix E – Criminal Tariff Items that Remain

		under section 278 of the Criminal Code: Additional preparation for victim/witness representations	required and will be granted only in cases of unusual complexity. The authorization will establish the extent and terms of the retainer.						
		Victim/witness representations under section 278 of the Criminal Code: Representation for victim-serving agencies	<ul style="list-style-type: none"> • Prior authorization from the Ministry of Public Safety and Solicitor General is required. To establish the extent and terms of the retainer, apply to the Manager, Legal Services. 					STAYS AS IS	
		Related Proceedings: Extradition hearings	<ul style="list-style-type: none"> • Bill the applicable tariff items using the offence for which the other jurisdiction is seeking to extradite your client to determine the offence category and tariff rate. For all categories, use offence code 922. • Provide the hearing date. <p>Caution</p> <ul style="list-style-type: none"> ➡ Regardless of the number of offences, bill all appearances before the same judge on the same half day as one item. 					STAYS AS IS	
		Related Proceedings: Material witness representations	<ul style="list-style-type: none"> • Billable when you are appointed to represent a material witness in a murder investigation and interview the client or attend court for the client. • Bill the applicable tariff items at a Category III rate and use offence code 026. <p>Caution</p> <ul style="list-style-type: none"> ➡ Billing for attendance at the 					STAYS AS IS	

Appendix E – Criminal Tariff Items that Remain

			hearing is restricted to those parts of the proceeding when the client may incriminate him/herself. For further attendance, request prior authorization from the Manager, Legal Services.							
		Related Proceedings: Other witness representations	<ul style="list-style-type: none"> • Billable when you are appointed to represent a witness in a court proceeding and interview the client or attend court for the client. • Bill the applicable tariff items at a Category III rate and use offence code 577. Caution • Billing for other witness representations is restricted to attending when the client gives evidence. For further attendance, request prior authorization from the Manager, Legal Services. 					STAYS AS IS		