

\$50,000 Fee Cap in Criminal Cases

The Legal Services Society will maintain the current \$50,000 fee cap in criminal cases when the new *Guide to Legal Aid Tariffs* comes into effect on January 1, 1999.

The Board of Directors of the Legal Services Society implemented the fee cap on February 1, 1998, to address the recurring problem of controlling the cost of defending lengthy and complex criminal proceedings. Cases with costs in excess of \$50,000 consume almost 10% of the Criminal Tariff budget, but represent less than 0.1% of legal aid cases. The Auditor General has previously recommended a special funding agreement to address these costly and unpredictable cases, but LSS has not been able to reach such an agreement with the provincial government. LSS is further restricted by Section 11 of the *Legal Services Society Act*, which prohibits it from operating at a deficit.

In the absence of a special agreement with the provincial government, LSS was obliged to implement the fee cap to ensure its financial stability. Under the fee cap policy, LSS will terminate legal aid coverage for a client when legal fees paid or billable on his or her behalf in a criminal proceeding exceeds \$50,000. This limit will now extend to all cases where the hearing of the trial, appeal or retrial commenced on or after February 1, 1998.

Once the fee cap is reached, LSS will not pay for further legal fees or disbursements. The fee cap will be calculated by aggregating all fees billed by counsel appearing in a particular case (i.e. junior and senior counsel fees will be added together, as will fees of a prior lawyer where there has been a change of lawyer). Appeals and retrials are considered separate cases from the initial trial, and the fee cap is calculated net of GST and holdbacks.

The Legal Services Society's past experience suggest that about 20 clients per year will be affected by this change. Counsel appearing on behalf of these clients are advised to monitor their accounts carefully, and might familiarize themselves with the case law that has developed in relation to *Rowbotham* applications. For more information on the last issue, counsel may wish to contact the General Counsel office of the Legal Services Society.

Mark Benton
Director of Tariff