



Legal
Services
Society

British Columbia
www.lss.bc.ca

The Legal Aid Fax

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New board member

LSS welcomes Greg Stacey to the society's board of directors. Greg was appointed to the board on December 3, 2004, by the Law Society of BC's Benchers. Greg's active commitment to legal aid in BC began shortly after he was called to the BC bar in 1975.

Tariff review update

LSS staff are attending local CBA subsection meetings to follow up on last year's tariff bar consultations at each of the regional centres.

Meetings scheduled to date are:

- January 19 Vancouver criminal law subsection
- January 27 Victoria joint criminal and family law subsections
- February 22 New Westminster criminal law subsection

We encourage all tariff bar lawyers to come to these meetings. Staff will briefly outline the work we have completed and ask for input on the options we have identified to date. Check with your local sub-sections for more details.

Breach of conditional sentences

LSS has accepted a recommendation from the Criminal Tariff Committee that counsel should apply for extra fees if they feel the current block fee for breach of conditional sentences does not cover the time required to represent their clients. The Criminal Tariff Committee advises LSS on issues related to the Criminal Tariff.

Extra-fee applications must specify the amount of time counsel spent on the matter (attach timesheets), and briefly explain why the hearing required more time than provided for under the existing tariff.

Employment opportunity: Managing lawyer, Tariff Services

For more information about this position, please call (604) 601-6129, or check the LSS website at www.lss.bc.ca (look under "Jobs").

Criminal law alert

For criminal lawyers representing non Canadian citizens in sentencing matters

Permanent residents (landed immigrants) who are convicted of serious criminal offences may be subject to deportation depending on their status in Canada, the nature of their offence, and the length of their sentence.

An important change introduced in the *Immigration Refugee Protection Act* divests permanent residents of their right to appeal a deportation order to the Immigration Appeal Division if they have been "punished in Canada by a term of imprisonment of at least two years." (See section 64, *Immigration and Refugee Protection Act*.)

A recent Federal Court decision, *Atwal v. Canada*, held that the time spent in pre-trial detention, which is expressly factored into the person's sentence, forms part of this term of imprisonment.

Accordingly, permanent residents who received an 18-month prison sentence would lose their right to appeal if the sentencing judge had also given credit for the 6 months served in pre-trial custody.

It is unclear from *Atwal* whether pre-trial custody will be considered as time actually served or applied at the "usual" ratio of two to one. This may be clarified on appeal because the question "Does pre-sentence custody, which is expressly credited towards a person's criminal sentence, form part of the term of imprisonment under section 64 (2) of the *Immigration and Refugee Protection Act*?" is currently before the Federal Court of Appeal.

See *Atwal v. Canada* (2004), 245 F.T.R. 170; [2004] F.C.J. No 63; 2004 FC 7.

Send us your accounts

Please submit your bills by mid-March 2005. Only accounts received and paid between April 1, 2004, and March 31, 2005, are eligible to receive holdback payments (if such payments are authorized by the LSS board).