

## In this issue

Special edition: Message to the tariff bar — Fiscal update

LSS is facing fiscal pressures that may result in disruption of services later this year. This advisory provides background information about the society's financial circumstances, the efforts we are making to resolve the problem, and the steps we recommend you take to minimize your exposure in the event that LSS has to implement measures to reduce costs. Some of you will already be aware of this situation as the result of a recent [column in the Vancouver Sun](#).

### The problem

LSS is facing a \$2.5 million deficit in the criminal tariff and a \$500,000 deficit in the child protection tariff this year. It is not unusual for LSS to face unexpected fiscal pressures. Examples in recent years include the Tamil marine arrivals and increased family law costs in 2011. When faced with pressures like this, our practice is to alert the appropriate government in an effort to secure a commitment for additional revenue. In the case of the Tamil arrivals, the federal government agreed to indemnify the society for the additional cost of the immigration cases, and the provincial government increased our family law funding by \$2.1 million to address rising costs. In situations where we do not get a commitment for more money, the LSS board provides direction about the steps the society could take to manage its budget.

What is unusual this year is that while we have had a 12 percent increase in referrals for child protection cases, the demand for criminal legal aid has not increased and yet criminal tariff costs have gone up. Over the past several months, we have determined that this increase is driven by external factors outside our control. These factors include federal legislative changes such as the *Safe Streets and Communities Act*, the Provincial Court backlog reduction initiative, and renewed capacity in the Provincial Court due to the appointment of judges and prosecutors.

The success of the backlog reduction initiative, along with the court's increased capacity, is a significant contributor to the society's current fiscal problems. The time it takes a case to get to trial has been cut in half at many busy courts. This results in LSS getting bills sooner than in previous years. For example, in December 2012, when we were preparing the 2013/2014 budget, the average criminal bill came in almost 300 days after we made the referral. That time has shrunk to about 220 days so far this year. As a result, LSS is paying for more services this year than we had budgeted for. Another way to put this is that this year, we expect to receive about 58 weeks of bills for services provided in 52 weeks.

Based on our analysis and information from the Office of the Chief Judge, we expect costs will stabilize in the next few months, but even so we are still forecasting a tariff deficit of \$2.5 million for criminal services and \$500,000 for child protection services.

The problem we face is not about our ability to pay lawyers. We have the resources to do that and the society will continue to pay lawyers' accounts in the normal course. The difficulty is that we have a statutory obligation to balance our service costs to our revenue, so this requires us, if necessary, to restrict the services we deliver in the fiscal year to the funding available.

### What LSS is doing

LSS has been examining a number of alternatives in an effort to balance our revenue to our service costs, and we have been discussing this problem with the Ministry of Justice since May of this year. We raised the issue directly with Attorney General Suzanne Anton, QC, when we met with her in late July. We also discussed it with Chief Judge Thomas Crabtree in early August. Our discussions with the justice ministry are ongoing, and the board has been corresponding directly with the Attorney General and expects to meet with her again in late September.

The LSS board met in mid-August to discuss what steps the society could take if government does not commit to further funding. The options the board considered related to reducing service costs in this year's criminal and child protection tariffs. The board was particularly concerned that any service reductions have minimal impact on legal aid clients and the tariff bar. After exploring several options, the board has decided that it is in everyone's best interests to wait until after the next meeting with the Attorney General before making any final decisions about reducing services.

### What you can do

Even though we are optimistic that this problem will be resolved in a way that allows us to maintain services, LSS must have a contingency plan. If government does not commit to providing additional funding, one of the options the board will consider is to restrict services to only a portion of the year. For example, in this circumstance, LSS would not pay for regular criminal tariff or child protection services rendered from mid-February until March 31, 2014 (the end of the fiscal year). Accounting rules require LSS to record in its financial statements the estimated cost of services when they are delivered, not when the bills are received. If we were to reduce services at the end of the fiscal year, this would result in a corresponding reduction in reported expenditures and allow LSS to balance its budget in the fiscal year.

LSS would continue to take applications and issue referrals, and we would have the discretion to authorize payment in cases where there is exceptional risk to the client, but as a general rule, we would not pay for the majority of criminal or child protection services provided by counsel during this period. If it becomes necessary to implement service reductions, referrals that are subject to the [Criminal Case Management program](#) will be addressed on a case-by-case basis. Family and immigration referrals are funded from separate budgets and would not be affected.

Because some very busy courts are about to set hearing dates for that time period, we strongly recommend that you avoid booking hearing dates for your criminal and child protection cases or doing any hourly paid legal aid work from February 17 through March 31, 2014. You might consider booking hearings for your non-legal aid cases in this period.

Should it be necessary to implement these restrictions, we will provide as much notice to you as possible and, in any event, will comply with the [General Terms and Conditions](#) that apply to these services.

Thank you for your ongoing commitment to making justice work in BC. We at LSS will continue to do our utmost to resolve this problem without a service disruption and will keep you advised of developments.

As always, we welcome your feedback on how we can better support you at [LawyersResources@lss.bc.ca](mailto:LawyersResources@lss.bc.ca).

Mark Benton, QC  
*Chief Executive Officer*  
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