

MINUTES

COMMITTEE: Ethics Committee

DATE: November 6, 1997

6. LEGAL SERVICES SOCIETY BLOCK CONTRACTS

At the request of the Treasurer the Committee was asked to review the potential ethical implications of the delivery of legal aid services by the Legal Services Society through the use of block contracts with counsel. Although the Committee was advised by the Deputy Executive Director of the Legal Services Society that the delivery of services through block contracts is currently under review by the Society, no formal decision has yet been made to abandon them.

Under the system of block contracts the Legal Services Society would contract out blocks of cases to lawyers who have successfully bid for them. At the time this matter was referred to the Committee the project was to have consisted of the referral through block contracts of a number of youth and adult criminal legal aid cases. The initial phase of the project would have involved contracts of 50 cases each with private counsel in Victoria, Vancouver and other communities in the lower mainland participating. In total, the project would have involved the referral of up to 9,000 cases. An evaluation of the project was originally expected to begin in February 1998.

Some of the other features of this project are the following:

- Clients charged with most criminal offenses will be referred under the project to the lawyers chosen to provide services. Client choice of counsel will be suspended during the period of the project.
- Clients charged with murder, robbery, sexual assault and other more serious criminal offenses will not be referred under the project but will continue to have a choice of counsel under the current judicare system.
- In order to avoid possible conflicts, co-accused will not be referred to the same contract lawyer.
- Contracts will be awarded to lawyers considered most qualified by the Legal Services Society. Those lawyers will not necessarily be the lowest bidders.
- Alternate arrangements for the representation of clients will be made in cases of conflict.
- The Legal Services Society is aiming for a 25% savings on the cost of those cases referred under the project over the cost of referring the same cases on the existing judicare system.
- Lawyers chosen to participate in the project must agree to participate in the evaluation. For the purposes of the evaluation the lawyer must agree to grant access to the client file which the client has authorized at the time of applying for legal aid.
- The Legal Services Society has concluded that the cost per case under the current legal aid tariff of the kinds of cases that will be eligible for contracting out under the contract system is approximately \$450. This means that across all offenses of this type, taking account that charges will be disposed of in a variety of ways including stays of proceedings, guilty pleas and trials, the average cost to the Legal Services Society for each case (and corresponding remuneration to lawyers) is \$450 per case.

- For cases referred under block contracts the Society hopes to achieve savings of about 25% of the current cost per case under the tariff. This means that a lawyer who wants to bid successfully on a block of 50 cases will be obliged to agree to do the cases for about \$335. per case.

The Committee examined a number of aspects of the Legal Services Society proposed block contract system and concluded that it is not improper for lawyers to bid on and deliver services to legal aid clients in this way.

The Committee observed that situations where a fee is paid by a person other than the client are not unusual. In these situations, however, although a person other than the client may be contractually bound to pay the lawyer's fee, the lawyer's relationship of trust and confidence is with the client.

Under the Legal Services Society block fee contracts a client will have the choice of accepting the Legal Services Society offer of services through the contracting lawyer or declining the offer by the Society to provide legal aid. It was the Committee's opinion that it is not inherently unethical for lawyer to act simply because the client would prefer the services of some other lawyer who was not the successful bidder on the Legal Services Society contract.

The Committee noted that Rules 1 and 2 of Chapter 3 of the *Professional Conduct Handbook* place a responsibility on lawyers to be competent in any matter in which they act and to decline to represent clients in circumstances where they cannot provide adequate representation.

The possibility that lawyers may misjudge their ability to provide the services under the contract creates a danger that clients may not receive the standard of representation the *Professional Conduct Handbook* requires. However, bidding on and delivering services through the Legal Services Society proposed block contract system will not necessarily require a lawyer to compromise the responsibilities imposed by Chapter 3 of the *Professional Conduct Handbook* provided lawyers carefully consider whether their resources permit them to provide services under the proposed contract system before agreeing to act.

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