

## NEWS

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# B.C. lawyers turn up the heat

JEREMY HAINSWORTH

British Columbia lawyers withdrew duty counsel services from provincial courts the first week of January in an escalating job action to protest what they say is the provincial government's inadequate funding of the legal aid system.

"Our criminal defence bar province-wide withdrew services," Trial Lawyers Association of B.C. president Marc Kazimirski told *The Lawyers Weekly*.

Lawyers stopped first-appearance counsel for one week and will continue to withdraw services an extra week per month, which would mean, come April, there will be no service. The initial job action affected first appearances only.

"This wasn't the whole enchilada. This was the most minor, most benign withdrawal we could do," organizer Rishi Gill said. "We're in the middle of a crisis in the court system."

In a January 6 statement to *The Lawyers Weekly*, Attorney General Shirley Bond said the Legal Services Society (LSS), which manages the legal aid system, has arranged for people in custody to receive duty counsel services at 38 courthouses.

"This represents more than 75 per cent of the volume of in-custody accused on any given day," Bond said. "I understand in locations where lawyers are not available in-person for in-custody duty counsel services, LSS has contracted for telephone duty-counsel services."

She said the government was not aware of any case delays as a result of the action.

Bond announced a \$2.1-million legal aid funding for family and child protection services on Dec. 30. That additional money brings current legal aid funding in the province to \$68.6-million this fiscal year.

LSS executive director Mark Benton said in a government news release that the increased funding will allow it to maintain services designed to help families find early and stable resolutions to their legal problems, often without having to go to court.



The removal of duty counsel from B.C. provincial courts during the first week of January is part of a job action to protest what they claim to be inadequate legal aid funding, organized by Vancouver-based lawyer Rishi Gill, pictured above.

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**That money was supposed to go explicitly to fund legal aid. That's taxpayers' money. It's been misappropriated by government since the 1990s. They're killing the justice system.**

Rishi Gill, lawyer and protest organizer

However, the lawyers point out that LSS funding remains short of what it has been in the past.

LSS annual reports show Victoria's contribution was \$67.4 million for 2010-2011, \$68.5 million for 2009-2010, and \$69.4 million for 2008-2009. In 2002 and 2003, those funding figures were \$92.7 million and \$75.7 million, respectively.

Kazimirski called the current funding "grossly deficient...The system is broken."

Both Kazimirski and Gill point to a tax on legal fees they say brings the government about \$100-million a year.

"That money was supposed to go explicitly to fund legal aid. That's taxpayers' money," Gill said. "It's been misappropriated by government since the 1990s. They're killing the justice system."

Bond did not respond to a request for a comment on that tax. She did say in the December release that the government remains committed to finding efficiencies in the court system and to reduce the number of in-court appearances.

She said new family law legislation coupled with the funding

would ensure the LSS has additional resources to support families who needed assistance to resolve custody, access and other legal disputes.

Bond said 14 provincial court judges have been appointed over two years and the hiring of court administrators and sheriffs, as well as other government investment continues.

However, a Dec. 31 provincial court judge complement report says the system is 18 judges below the 143-judge baseline level of 2005.

Gill said Bond is playing politics with the judicial and legal aid systems — a game of "smoke and mirrors" that an attorney general should rise above, he said.

Bond, however, told *The Lawyers Weekly* "that one of the key reasons behind this job action is to seek an increase in the tariff rate paid to the lawyers who provide legal aid services. Currently, lawyers receive a tariff rate of between \$84 and \$93 an hour, depending upon their experience."

Both Gill and Kazimirski take exception to that assertion.

"She's clued out completely," Gill said. "We want better access to the system for everybody who needs it."

Added Kazimirski: "It has nothing to do with the amount lawyers get paid. It is the most disadvantaged people getting hit by this."

The lawyers are relying for their arguments, in part, on findings on last spring's Public Commission on Legal Aid report authored by veteran lawyer Len Doust, who asserted the system is failing to meet the human, economic and social needs of British Columbians: "In a just society, it is a public service that is as essential as education, health care and social assistance." The legal aid system has the capability to pick up "where our other social systems fail and...significantly reduce the strain on health care and social assistance," Doust wrote.

He made nine recommendations, including recognizing legal aid as an essential public service; developing a new approach to define core services and priorities; modernizing and expanding eligibility; establishing regional legal aid centres and innovative service delivery; increasing long-term, stable funding; and increasing collaboration between public and private legal aid service providers.

Kazimirski said Doust's report makes a good business case for proper funding of legal aid.

"Unfortunately, that doesn't get taken up by government," he said. ■

## Correction

A story on page 8 of the Dec. 16, 2011 edition of *The Lawyers Weekly* incorrectly characterized insurance coverage requirements for paralegals. In fact, practising paralegals must carry professional liability insurance.

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