



This FAQ provides information about the withdrawal of criminal duty counsel services organized by the Trial Lawyers Association of BC

What is the Legal Services Society?

- The Legal Services Society provides legal aid in British Columbia. Created by the *Legal Services Society Act* in 1979, LSS is a non-profit organization that remains independent of government.
- Legal aid services include self-help information, advice programs and representation in court. Our advice and representation programs are limited to family, criminal and immigration matters.
- For more information see www.legalaid.bc.ca. Fact sheets are online at: <http://www.lss.bc.ca/media/factSheets.php>.

What is the Trial Lawyers Association of BC?

- TLABC is not affiliated with LSS. For more information, contact TLABC directly: <http://www.tlabc.org/>. According to a February 2011 TLABC newsletter, the organization has 1,300 members.

What is the service withdrawal?

- TLABC is urging lawyers not to sign up for criminal duty counsel services to protest underfunding of BC's legal aid program.
- The dates for the service withdrawal are: January 1 – 7, February 1 – 14, March 1 – 21, and April 1 – 30, 2012.

What are criminal duty counsel and what services do they provide?

- Criminal duty counsel are private lawyers paid by LSS to attend at courthouses and provide accused persons with advice about the charges against them, court procedures and legal rights. Duty counsel can also represent people at a guilty plea and sentencing, or on an application for judicial interim release (bail hearing).
- Lawyers sign up on an ad hoc basis to provide the service.
- There are 82 Provincial Court locations (including circuits) where LSS provides criminal duty counsel services. Duty counsel are only available when the court is sitting. In most locations, duty counsel are not needed full-time. In smaller locations, duty counsel are only needed on an ad hoc basis. For example, during the January 1 – 7 service withdrawal, 24 court locations held hearings on 4 days, 10 on 3 days, 2 on 2 days, 8 on 1 day and 38 held no hearings.

- Duty counsel are a cost-effective way to provide legal advice to people appearing in court who don't have a lawyer. Duty counsel are one of the most important services legal aid provides because they focus on early resolution of legal issues and enhance the efficiency of the justice system.

Are criminal duty counsel services still available during the service withdrawal?

- LSS has a statutory obligation to ensure we serve the legal aid needs of the public.
- Not all lawyers are participating in the service withdrawal. In some communities, the entire legal aid bar is refusing duty counsel work; in others, the entire bar continues to take referrals and services are unchanged; in some communities there is a split.
- During the January 1 – 7 service withdrawal, there were 19 locations where services were unchanged (services were provided by local lawyers or lawyers that would normally travel within the region to render service in those locations): Dawson Creek; Duncan; Fort St James; Kelowna; Kitimat; Nanaimo; New Aiyansh; North Vancouver; Port Alberni; Powell River; Prince George; Prince Rupert; Richmond; Salmon Arm; Sechelt; Smithers; Terrace; Vernon; Victoria.
- In three high-volume locations where local lawyers are withdrawing services, LSS provided services to persons in custody through lawyers from outside the community: Vancouver, Port Coquitlam, and Surrey.
- In the remaining locations, LSS provided criminal duty counsel services by telephone for persons in custody (the service is similar to the telephone bail system used on evenings and weekends). Duty counsel services were not available for persons not in custody.
- LSS expects to provide similar services throughout the withdrawal.
- LSS continues to have staff or contractors in most courthouses to take applications for representation from anyone who is in custody. Anyone in custody can also apply for representation by phone through our province-wide, toll-free call centre.

How much are duty counsel paid?

- Fewer than 1,000 of BC's 10,000 practising lawyers take legal aid referrals. That number has been declining steadily for the past 15 years — from a high of nearly 1,800 in 1997/98 to a low of 976 in 2009/10. Surveys conducted by LSS show that low tariffs are the primary reason lawyers refuse to take legal aid referrals. Of the lawyers who do legal aid work, only 372 took a criminal duty counsel referral in 2010/11.
- Duty counsel are paid an hourly rate that ranges from \$84 an hour to \$93 an hour depending on years of experience.
- In 1991, the hourly rate was \$80. The current rates were introduced in 2006 and have not changed. The current rate of \$84 is equal to \$58 in 1991 dollars, a decline in real terms of 27%.

Are other legal aid services affected by the service withdrawal?

- Other legal aid services are not affected. Family and immigration duty counsel services are still available and people can still apply for legal representation in criminal, family and immigration

cases at more than 50 locations around the province (including many courthouses) or through our provincial, toll-free call centre. In addition, our information services and public legal education programs are unaffected.

What is the financial impact on LSS of the criminal duty counsel service withdrawal?

- LSS expects the service withdrawal to be cost neutral and that the annual expenditure on criminal duty counsel will come within the \$5.6 million budgeted for the service.
- The expenditure for criminal duty counsel during the first four days of January 2011 was \$80,000. For the four days courts were sitting during the January 1 – 7, 2012 service withdrawal, the preliminary cost estimate for criminal duty counsel is \$63,000. The actual expenditure may be higher once we receive all lawyers' bills for duty counsel services.
- The lower expenditure is the result of fewer out-of-custody duty counsel assignments due to fewer lawyers taking referrals and the use of a lower cost telephone duty counsel service. Any savings may be offset by increased costs for persons who would have received service from duty counsel but were provided with a referral to a lawyer due to the unavailability of duty counsel. Any surplus in the duty counsel budget is used for other legal aid services.