

System-Wide Shortages in BC Continue to Curtail Justice

Last time we published this newsletter, the fate of the Harmonized Sales Tax (HST) had yet to be determined. And even though we now know its destiny (soon to be gone), citizens are still paying the much-maligned tax. It has yet to be eradicated where it counts, among the scarce number of pennies in the pockets of the province's residents. Speaking of scarcity and - ironically - also of things that won't go away, a funding crisis continues to plague our province's entire justice system. This is not simply a claim uttered by a few frustrated people. This is now a warning sounded by everyday citizens, news media, lawyers and highly esteemed members of the judiciary.

The legal system is suffering from major problems, much of which revolve around a severe lack of funding. Many criminal cases, reportedly thousands, are at risk of not making it to trial because they won't be heard in a timely manner (thereby infringing upon the rights of the accused). Judges cited this as the reason for several cases being dropped in 2011.

During a speech delivered late last year, Supreme Court of BC **Chief Justice Robert J. Bauman** went so far as to urge members of the Bar to speak out regarding today's lack of funding. He regards the state of affairs as being critical in importance, and he recommends taking "whatever steps you can to defend and protect our judicial system." His comments were made during a conference held by the CBA's BC Branch (November 19, 2011). Our Chief Justice went on to explain that a shortage of registry staff has, in recent years, led to delays in the processing of court orders. Some delays were six months in length. He called this an impediment to justice for litigants. He described how the Court Services

Branch has had to do a juggling act, which at times has led managers to bring registry staff into the courtrooms to work as clerks. Chief Justice Bauman also made reference to the recent shortage of sheriffs, which got to a breaking point last spring after 30 positions were cut. Eventually, many of the positions were restored, but it took public outcry before the government acted to rectify the problem it created. TLABC, incidentally, was one of the groups which voiced concern at the crucial time.

Our province does not have enough judges. This problem is most evident in provincial court, though it is also restricting the ability of BC Supreme Court. There is less weight on the bench at both levels, and it is a problem that continues to have a dreadful trickle-down effect on justice. Chief Justice Bauman deserves to be applauded for his courage and his straightforward thinking, and the system deserves support from the province's top officials, rather than having the words of our most learned go unappreciated.

Already, at this early part of 2012, more judges have commented publicly about the problems caused by an underfunded system. The BC Court of Appeal just upheld a ruling that saw charges dropped in a drug-smuggling case, abandoned simply due to a long delay in getting to trial.

Yes, every component of the system's inventory should be held up for scrutiny, but - above all and more than ever - the problems caused by a paucity of resources requires celerity of action by the BC Government. Bad is bad. And things could get worse.

STAY TUNED: As we set out to publish this edition of QuarterPAC, the BC Government announced the launch of a justice-system review...

QuarterPAC

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Do YOU Know?

If you're not aware already, please note that TLABC has its own channel on YouTube. Log on and call up the latest video-clips uploaded to "TLABC1" - at present, viewers can access highlight reels of recent public events pertaining to legal aid and wrongful death.

Don't forget to 'like' us on Facebook and follow us for event news, campaign updates and office info on Twitter @tla_bc!

"Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has."

- Margaret Mead

Development Corner

By **Megan Ejack**, Development Director (PAC & Social Media Coordinator)



2012 has started with a bang!

The Battle for Legal Aid in BC is in full swing, the call for a Wrongful Death Act continues to be in motion and all of our committee actions are heating up... it looks to be a busy season. As always, I'd like to thank all of our PAC donors, whose contributions demonstrate a great 'Commitment to Justice,' and of course, my dedicated committee, listed below. You will notice that we have added a few new faces to the PAC committee this year, and it has been great to gain some fresh perspective!

Speaking of new faces, we've also added a couple of new ones to the TLABC office. You will hear a new voice at the end of the phone... another Aussie, Belinda Nelson, has joined the team as our new Administrative Assistant, as we bid a fond farewell to the lovely Kate Simmins. So settle in, because this edition of the TLABC QuarterPAC is 'PAC'ked with updates and information pertaining to our public-minded efforts, and I look forward to keeping you updated during the coming year!

 **Powered by PAC**

To make a 'Commitment to Justice' please email me at megan@tlabc.org

Captain & Crew

The almost omnipresent **Larry Kancs** (recipient of the TLABC President's Award in 2009) continues to captain the Public Affairs Committee. This body of volunteers continues to convene regularly to discuss current fundraising efforts and map out plans for the future. With PAC's backing, our association is able to remain active with the goal of protecting the rights of individuals and ensuring that access to the courts is not unfairly restricted or undermined by government through proposed policies, draft legislation or misguided consultations.

On behalf of the PAC volunteers, TLABC wishes to extend a tremendous and heartfelt thank you to all members who donate to the PAC fund. Many of the association's efforts would never get underway if it wasn't for the generosity of our contributors. Many of you have donated regularly for years. Regular donations year in and year out have been crucially important to TLABC's public-minded aims.

To all donors past and present, we thank you for your commitment to justice! And we thank the current members of the Public Affairs Committee, as follows:

- **Adam de Turberville** (governor)
- **Steve Frame** (past-president)
- **Lisa Hamilton**
- **Azool Jaffer-Jeraj** (immediate past-president)
- **Larry Kancs** (governor & PAC chair)
- **Conrad Margolis**
- **Irene Pietrow** (executive officer)
- **Greg Pratch**
- **Saro Turner** (executive officer)
- **Stephanie Vyas**
- **Joseph Zak** (governor)

Staff members involved: **Carla Terzariol** (CEO/executive director), **June Moersch** (finance director), **Megan Ejack** (development director) and **Bentley Doyle** (director of communications).

Support for Food Banks in BC

TLABC instituted a policy in 2011 that now provides regular support to food banks in British Columbia. TLABC makes a significant monetary donation to a BC-based food bank (chosen randomly from the province-wide list) following each of our educational conferences. The donations are made in lieu of gifts to seminar speakers. TLABC makes one contribution after each legal education conference, instead of providing each of our speakers with a small gift. Gifts for speakers had always been a seminar expense, and so the current process is essentially revenue-neutral, though amounts to a few hundred dollars being donated to food banks several times a year. The process is a nice fit with TLABC's public-minded goals. Monetary donations to food banks equip food-bank administrators with purchasing power. Some estimates indicate that each dollar donated equates to \$3 in food. Therefore, TLABC will continue to make cash donations rather than a traditional donation of food items.

Standing Invite to Our Cherished Donors

PAC donors are invited to attend all of TLABC's seminar receptions. These refreshment-enhanced events are held at the conclusion of conferences, at an area adjacent to each seminar location. For those of you who contribute to PAC, keep this well-deserved perk in mind.

TLABC Denied Leave as Case Went to SCC

In late 2011, we learned that TLABC was among the groups denied leave to intervene in the ultimate phase of the appeal related to legal standing for the group Sex Workers United Against Violence. TLABC acted as an intervener, with success, in prior stages of this constitutional challenge. Our thanks to TLABC governor **Megan Ellis QC** for her efforts pro bono. TLABC's interest has always pertained solely to the issue of legal standing (public interest standing) for a group of citizens. The Supreme Court of Canada heard the federal government's appeal in January, albeit without the benefit of TLABC's input and some other concerned parties that were denied leave to intervene.

**"Injustice anywhere is a threat to justice everywhere."
- Martin Luther King Jr.**

Year to Year, Our Work Continues

Some important TLABC efforts were completed last year while others are poised to remain ongoing for much of 2012. One of TLABC's project teams put the final pen strokes to a detailed paper aimed at enhancing and protecting the use of civil juries. With the like-minded goal of improving BC's system of justice, the TLABC rules committee submitted a critical assessment (in December) to the Supreme Court Rules Revision Committee, with regard to the 'new' civil rules, which took effect in July 2010.

The new *Family Law Act*, as passed in late 2011, was a positive development, by most accounts. TLABC made a submission during the reform consultation process. Other items were met with concern by members of various TLABC committees. Some continue to express concern over potential impacts of policy and legislative changes (including proposed or anticipated changes), such as: activities related to privacy issues, development of a new care-card and the delivery of auto-insurance coverage in the near future. With respect to the latter, members remain interested in what may lie ahead at the Insurance Corporation of BC (ICBC), now that an interim rate increase was granted and with the rate-hearing process set to be held this spring by the BC Utilities Commission. We also await details as to the development and scope of ICBC's "Transformation 2014" process and implementation.

Meanwhile, when and where appropriate, TLABC representatives continue to meet with officials from both the provincial government and opposition, as well as non-partisan public employees. On the campaign side of things, the Battle for Legal Aid and the call for a Wrongful Death Act continue to be big areas of focus among TLABC officials, staff and the members of the respective committees.

2012 Equality Breakfast - March 13th

TLABC will once again be among the sponsors of West Coast LEAF's annual Equality Breakfast. This year's event will be held on Tuesday, March 13 at 7:00 am inside the Fairmont Hotel Vancouver (900 West Georgia Street). The keynote speaker will be columnist and political pundit **Chantal Hébert**, author of *French Kiss: Stephen Harper's Blind Date with Quebec*.

This year's event will be the 25th Equality Breakfast. The stated mission of LEAF – the Legal Education Action Fund – is to achieve equality by changing historic patterns of systemic discrimination against women through BC-based equality rights litigation, law reform and public legal education.

More information on LEAF and the Equality Breakfast can be accessed at www.westcoastleaf.org. Tickets can be purchased online or by contacting LEAF representatives at 604-684-8772.

Cards for Pledging Your Support

You will find a pledge card enclosed with this edition of QuarterPAC. The cards provide our members with donation options. If you are a current PAC donor (as an individual lawyer or through your firm), please pass along the pledge card to colleagues or consider using it to upgrade your existing donation. The support of TLABC members is the lifeblood of our association's public-minded efforts. We are grateful for the dedication and generosity supplied by our members, from entry-level donations all the way through to the shining-star diamond platform.

In Search of Legal Aid

Our association continues to be heavily involved in the Battle for Legal Aid, which at present is highlighted by an escalating series of service withdrawals by lawyers who work as duty counsel in adult criminal matters. The first withdrawal phase was in effect from January 1 – 7. Seven more days stand to be added each month, right through to the end of April, which will endure a full month of service withdrawals. This province-wide effort has already succeeded in raising awareness about the massive problems caused by a lack of adequate funding for legal aid. The battle is not with the Legal Services Society, the entity forced to work with the budget given to it by the provincial government. The effort is aimed at gaining the attention and support of the BC Government – from Premier **Christy Clark** to dual-portfolio holder (Attorney General and Solicitor General) **Shirley Bond** and the rest of the BC Cabinet.



As members of our Legal Aid Action Committee know all too well, legal aid has been in a dire state for far too long. The lack of proper funding denies justice to citizens in need of legal assistance. This is detrimental on many levels, as a lack of services means a lack of justice and the perpetual marginalization of some of society's vulnerable citizens.

Hundreds of lawyers are involved in this effort, many of whom took part in the Rally in Ribbons & Robes events held (November 30, 2011) in several locations, generally as a heads up about the job action tactics planned for 2012. There was news coverage around the province. Go to TLABC's YouTube channel ("TLABC1") to access a highlight reel of the Vancouver-based rally.

Wrongful Death: The Call for New Legislation in BC

Worthless in the Eyes of the Law!



British Columbia Needs a Wrongful Death Act

Representatives from more than 50 families continue to call for a Wrongful Death Act in British Columbia. These families constitute the Wrongful Death Law Reform Group, the collective of citizens TLABC consults with regularly, primarily through our association's Wrongful Death Action Committee. The WDLRG also receives active support from of the BC Coalition of People with Disabilities and the Coalition

Against No-Fault. Additionally, numerous organizations have signed on to support the call for new legislation.

The call for a Wrongful Death Act was given a large boost last fall, when family reps from the WDLRG gathered in downtown Vancouver (September 25, 2011) to renew their call for a new act, with an emphasis on **ACT** as an acronym, calling for:

Accountability. Compassion. Today.

TLABC and members of the public were there in support. The event earned a massive degree of media coverage, including the front page of that day's Province newspaper and loads of subsequent coverage in print, on the radio and via television newscasts. Check out TLABC's YouTube channel ("TLABC1"), where you can call up a video highlight reel of the event.

NOTE: A similar event was held simultaneously in Kelowna by citizens who rallied around the

family of another unfortunate victim of wrongful death.

YOU CAN HELP THE FAMILIES: Go to the wrongful death portion of www.protectingjusticeforbc.org and use the automated form to send messages directly to Premier **Christy Clark**.

While you're on that website, check out the latest materials created for the campaign, highlighted by the updated document the families, TLABC and others are promoting as preferred legislation, namely the Wrongful Death Accountability Act.

PUBLISHING NOTE, THE VERDICT: TLABC's magazine, *the Verdict*, is devoting its spring edition to wrongful death. It will be the theme of Issue #132, due to be circulated before the end of March.



TLABC is Powered By PAC

TLABC is active with a variety of public-minded efforts – some of which require real dollars in order to be sustained, while others require a great deal of strategy, time and energy. Certain campaigns have required print and online advertising, a presence on the web and supplementary resources, such as postcards, flyers and an array of awareness-aimed items.

Ongoing donations help fund many of TLABC's efforts, as demonstrated through advertising, mailouts and various campaign resources. A strong PAC fund enables TLABC to respond when and where the justice system is threatened by external attempts to unfairly limit the rights of individuals or otherwise adversely impact the system of justice in British Columbia. Ergo, PAC provides the power to TLABC's voice. Indeed, many TLABC activities are powered by PAC. Contributing to PAC is a commitment to justice, one that goes beyond paying membership dues.

A Six PAC of Actions:

- Participating in public and government consultations
- Monitoring legislative activity and other public processes
- Creating and maintaining campaign websites
- Issuing pre-election questionnaires to political candidates
- Intervening or providing assistance on important cases and appeals
- Partnering with people working within the disability community and assisting groups involved in like-minded public efforts (law-based associations and other advocates for justice) in both Canada and the United States.

Note to All Members: The last page of this newsletter provides a list of the individuals and firms who donate at present to the PAC fund.

Catastrophic Update from Ontario

There was concern last year about potential changes in Ontario that could have made it much harder for auto-crash victims to qualify for compensation in the event of catastrophic impairment.

A report from a medical panel gave rise to some concern, but a court ruling in late December just clarified the matter. The Ontario Court of Appeal (on December 23, 2011) cleared up a discrepancy left by a 2010 trial ruling, a decision which concluded that psychological impairment should not be combined with physical impairment in making a determination about catastrophic impairment. Prior rulings combined the two forms of impairment. The appellate court just did the same thing. This put an end to more than a year of uncertainty for insurers and insured citizens in Ontario. However, speculation remains that the Government of Ontario is still considering amendments to existing insurance legislation, which could ultimately alter the definition of what constitutes catastrophic impairment.

The TLABC Litigation Committee

A litigation committee within TLABC was created in May 2003. It has provided our association with a straightforward means of helping TLABC determine which matters of public importance should gain formal support and assistance from the association. The founding members of the committee created criteria to aid in the assessment of whether, and to which extent, TLABC should help fund certain cases, appeals and intervener actions.

A legal matter must be relevant to an issue of public importance in order to gain support from TLABC. In general, there is an emphasis on matters aimed at protecting or enhancing the rights of individuals. Priority is given to BC-based proceedings. Among the considerations are cases where a person's access to the courts is diminished, situations where the independence of either the bar or the judiciary is threatened, and instances that unjustifiably limit a person's ability to recover damages from those who wronged them. TLABC is to be considered a last resort for funding on any given matter.

NOTE: There is an expectation that people seeking funding assistance from TLABC have explored and exhausted other sources of assistance.

The founding members of the committee recommended that applicants be required to repay TLABC a proportionate share of increased awards in the event an appeal is successful, as well as a proportionate share of any costs awarded to the applicant in the appeal or leave-to-appeal application. With regard to counsel, there should be a consensus between the applicant and TLABC as

to who should be retained, but such matters are determined on a case-by-case basis.

TLABC members are encouraged to forward suggestions and requests for the committee's consideration. Requests should be directed to TLABC's CEO/executive director **Carla Terzariol**. Carla is the staff liaison and primary gatekeeper for this committee. The committee as a whole discusses the request and makes a recommendation to TLABC's Executive Committee and Board of Governors, which, in turn, makes the decisions as to which requests are granted. The process has been effective since it was implemented, and it remains an important aspect of TLABC's operations with respect to public affairs. PAC and the litigation committee are an integral part of TLABC's collective goals.

At present, the litigation committee is chaired by TLABC governor **Robin McFee QC**. Here is the roster of members for the 2012 term:

- **Megan Ellis QC** (governor)
- **Stephen Frame** (past-president)
- **Steven Heringa**
- **Robert Holmes QC** (governor and past-president)
- **Larry Kancs** (governor)
- **Robin McFee QC** (governor and committee chair)
- **Frank Scordo** (governor)
- **Gary Weatherill QC** (past-president)
- **Jeffrey Witten** (past-president)

Overview of the Public Affairs Committee

The primary function of the Public Affairs Committee (PAC) is to carry out fundraising efforts to ensure TLABC has sufficient funds to fight back against threats aimed at limiting the rights of individuals and impeding access to justice. Barriers to justice take various forms, and TLABC is always mindful of the need for vigilance.

Contributions directly from PAC donors have equipped TLABC to create resources and provide assistance on a case-by-case basis, from straightforward isolated matters to complex campaigns.

Our association's ability to protect and enhance individual rights and ensure access to justice is diminished if members do not recognize the critical importance of having been able to secure funds for important causes – not just at crisis time, but on an ongoing basis.

We cannot afford to wait when circumstances warrant action. There is often

a need to mobilize at a pace that enables our leaders and membership at large to hit the ground running. Having access to a significant degree of funding is strategically important. This is why money needs to be obtained through a regular system of donations.

To date, PAC-generated funds have been crucially important to TLABC's success as an organization. Funding is often the most important instrument to public campaigns and public-minded aims. In addition to the PAC fund, TLABC maintains a specific fund to oppose 'no-fault' schemes and other major threats to justice.

The need to maintain ongoing financial support above and beyond the cost of individual membership in TLABC is vital in importance. Fortunately, our leaders of yesteryear recognized this and set out to ensure that a sound structure is always in place. Subsequently, TLABC has grown steadily in size and scope.

TLABC Members

The Trial Lawyers Association of BC's voluntary membership base is 1400 people strong, with legal professionals located throughout the province actively practicing in a diverse range of areas. Many members have a mixed practice, though a common characteristic of their work is that they represent individuals rather than corporations, governments or other large entities. Practice areas include family, employment and immigration law, wills and estates, criminal defence and personal injury litigation. The association of today is a not-for-profit society with 31 years of history to its credit. Members are united with the goals of protecting the rights of individuals, ensuring access to the courts, preserving the jury system and maintaining the highest standards in legal education for the profession.

THANK YOU! TLABC PAC Contributors

Lawyers
helping People

TLABC's PAC Fund is at work for you. Join this distinguished group today.

If you would like to learn more about TLABC's PAC Fund and how you can help to preserve the justice system in BC, talk to Megan Ejack at the TLABC office, 604 682-5343 or 1 888 558-5222.

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"Setting an example is not the main means of influencing another, it is the only means." – Albert Einstein