

Judges wrestle with federally mandated surcharge on offenders

[Louise Dickson](#) / Times Colonist

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Victoria provincial court judges are quietly doing an end run around the Harper government's new mandatory surcharge to fund victim services.

A new law that took effect in late October does not allow judges to waive the victim fine surcharge of 30 per cent of a fine or a flat fee of \$100 or \$200. It is imposed on offenders at the time of sentencing.

But faced with the impoverished, homeless and mentally ill offenders in Victoria's Integrated Court, judges are being creative to avoid what they perceive is injustice. They are giving the convicted 99 years to pay the surcharge or ordering them to pay \$1 a year.

Local judges are also ordering those convicted of crimes to pay the surcharge immediately. This means an offender can serve time in custody instead of paying the fine. Time in custody is generally concurrent and amounts to time already served.

"It's an appropriate way to avoid saddling seriously disadvantaged clients, who have no possibility of paying the fine, with unpayable debts, upon their release from custody," said Victoria criminal lawyer Richard Schwartz.

On Tuesday, Schwartz's client Joshua Wall appeared in Integrated Court and pleaded guilty to a breach of his probation. Wall, who is homeless and unemployable with significant health issues, had been in custody for eight days. He would have owed — and been unable to pay — a \$100 victim fine surcharge.

Schwartz asked Judge Adrian Brooks to make the surcharge payable immediately so that Wall could serve the time in custody instead of making payment. Brooks ordered Wall to serve a day in custody. It was understood the sentence was concurrent.

"So he was released the same day," Schwartz said.

Although judges across the country have spoken out against the mandatory surcharge, Victoria judges have made no public comment. However, they are trying to balance Parliament's orders with the problems people appearing before them are facing.

"It's a difficult circumstance for judges. They have an obligation to uphold the law and equally they have an obligation to try and do justice," said Victoria criminal lawyer Michael Mulligan. "Most people become judges because they want to do some good and not because they want to cause harm to homeless, mentally ill people who have no money."

Unlike some other provinces, B.C. does not offer the option of doing community work to pay off the fines, Mulligan said. "So poor people in the criminal justice system either face fines which will cause an undue hardship or jail."

Mulligan believes services for victims of crime should not be contingent on the government's ability to collect \$100 from street people. If victims of crime need counselling, the government should provide it, he said.

Ultimately, Mulligan said, the new legislation is harmful, not only because of its impact on impoverished offenders, but also because it undermines respect for the law when judges impose unfit sentences.

In an interview with the Ottawa Citizen Monday, Justice Minister Peter MacKay suggested poor criminals could sell their belongings to pay the government's mandatory victim fine surcharge.

Schwartz called MacKay's statement preposterous.

"To qualify for Integrated Court, you have to be engaging the criminal justice, mental health and housing ministries in a significant way," Schwartz said. "These people don't have any excess property to sell. What are they going to do — sell their winter coat?"

MacKay told The Canadian Press that judges will eventually "see the wisdom in putting victims in a better place and respecting their right to be compensated.

"A \$200 to \$300 compensation being applied in these cases, we believe, is proportionate. We believe it is also part of the administration of justice and it reflects society's condemnation of those acts against the law, against society and against individuals."

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