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Province fiddles, legal aid burns

August 07, 2009

The poor, criminals and lawyers tend not to be popular. Perhaps that explains why the province seems to be doing so little to end a legal aid boycott that threatens to undermine our justice system.

So far, half of Ontario's criminal lawyers have joined the boycott and are refusing to handle legal aid cases for the most serious crimes – homicides and guns-and-gangs offences – until their pay is raised. Come September, when the court calendar ramps up, this could mean that low-income Ontarians accused of these crimes will be walking into court alone.

To be sure, there are other issues involved here. The wheels of justice grind far too slowly in Ontario. It took, for example, seven years to convict Garth Drabinsky, compared to just four months for Bernie Madoff in the United States. The longer cases are dragged out, the more expensive they are.

But fixing the whole judicial system will take time; legal aid is a crisis hurtling toward us now. Unfortunately, however, Attorney General Chris Bentley does not seem to be seized with any sense of urgency and is responding to the crisis with woolly statements about being determined to "renew" and "strengthen" legal aid.

Legal aid lawyers argue that our judicial system has become dangerously unbalanced as pay hikes for prosecutors have not been matched by increases in fees for the defenders of alleged criminals.

There is no doubt that legal aid has fallen behind. Over the last 20 years, legal aid lawyers have seen their fees go up by just 15 per cent, compared to a 57 per cent increase for Crown attorneys over just the last 10 years.

Legal aid lawyers make up to \$97 an hour. That may sound like a lot, but the lawyers make a compelling case that half of it goes to office overhead. Furthermore, due to caps on the number of paid hours, legal aid lawyers often work hundreds of hours for no pay at all.

If legal aid rates had risen with inflation they would now be \$120 to \$160 an hour. That would cost the government an additional \$120 million a year, according to the Criminal Lawyers' Association. The lawyers have suggested phasing in the increase over three years.

The government has commissioned numerous reports – three in the last year alone – and largely ignored the recommendations to improve legal aid funding. So it is understandable the legal aid lawyers believe a boycott is now their only option.

Bentley likes to point out that there were 15 years of cuts and freezes to legal aid before the Liberals came to power and raised rates 15 per cent. But what happened in the past is behind us. What matters now is how Bentley and the government handle the current crisis.

As Mr. Justice Hugh Locke of the Ontario Superior Court states: "Left unaddressed, I fear that the current imbalance in the criminal system will not only continue to have a negative impact on the administration of justice, but may well be irreversible."

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