

# THE GLOBE AND MAIL

## Crown prosecutors call for legal aid reform

Ontario under pressure to increase funding as Superior Court judge also denounces funding shortfall

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The Ontario government came under intensified pressure Monday to increase legal aid funding after several hundred Crown prosecutors joined their defence bar counterparts in warning that the 50-year-old program is crumbling.

A meaningful increase in funding is “essential” if the justice system hopes to maintain a proper balance between the state and criminal defendants, said a letter of support from Ontario Crown Attorneys Association president Thomas Hewitt to the Criminal Lawyers Association.

“It is the position of the OCAA that, for our criminal justice system to work both effectively and fairly, it is essential that there is a balance in our adversarial system,” Mr. Hewitt wrote. “It is the position of the OCAA that the present funding of the legal aid tariff undermines the ability of the defence bar to perform their vital role.”

Coming from a relatively conservative association that adopts political positions sparingly, the move ratchets up the pressure on the McGuinty government to increase legal aid rates enough to entice experienced defence lawyers back into accepting serious cases.

Most experienced defence lawyers across the province are boycotting homicide cases and those involving guns and gang laws until the top rate for legal aid counsel is raised well above the current plateau of \$98 an hour.

Private clients generally pay more than \$300 an hour for experienced counsel. Defence lawyers argue that the legal aid rate leaves them barely able to pay their office overhead expenses, let alone provide them with any take-home pay.

In another significant move Monday, Ontario Superior Court Judge Hugh Locke denounced the legal aid funding shortfall as “deeply troubling.” He warned that it may soon result in “wrongful convictions, runaway trials or unnecessary and misguided mitigation positions and the resultant waste of resources that arises.”

A veteran judge with a reputation for tough decisions during his 35 years on the bench, Judge Locke helped create the Criminal Lawyers Association.

In a letter to the association's president Frank Addario, Judge Locke noted that several reports and inquiries in recent years have concluded that other areas of the justice system – the judiciary, police and prosecution – have received healthy funding increases, yet the legal aid program has struggled through “years of neglect.”

“I do believe that the independence of the bar may well be in peril,” Judge Locke wrote. “I suggest that the flight of senior counsel from the most serious of legal aid cases not only threatens the independence of the bar, but the administration of justice at large. 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.”

Judge Locke said that the loss of senior counsel has deprived the defence bar of a mentoring system that has been essential to mould new generations of responsible lawyers capable of using sound judgment to isolate key legal issues, expedite trials and fully appreciate ethical boundaries.

“This is perhaps the most troubling aspect of the situation because it has irreversible, negative long-term effects on our criminal justice system,” he said.

Launched two months ago, the boycott has evolved from an isolated irritation to Attorney-General Chris Bentley into a serious embarrassment to the government. A former defence lawyer, Mr. Bentley has repeatedly expressed his support of the legal aid program, while arguing that years of underfunding by previous governments cannot be easily rectified.

The Criminal Lawyers Association has predicated its boycott strategy on a “business plan” approach. It asserts that the province could save substantial amounts of money by raising fees for experienced counsel, because they possess the acumen and confidence to truncate legal proceedings by focusing on the most important issues.

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