



**INMATE APPELLATE  
DUTY COUNSEL PROGRAM**

July 21, 2009

Chief Justice Warren Winkler  
Court of Appeal for Ontario  
130 Queen Street West  
Toronto, ON M5H 2M5

- and -

Associate Chief Justice Dennis O'Connor  
Court of Appeal for Ontario  
130 Queen Street West  
Toronto, ON M5H 2M5

- and -

Mr. Justice Marc Rosenberg  
Court of Appeal for Ontario  
130 Queen Street West  
Toronto, ON M5H 2M5

Dear Sirs:

It is with great regret that we write to advise you that given the current Legal Aid crisis and the government's failure to meaningfully respond to these issues, the participants in the Inmate Duty Counsel Program feel compelled to suspend their services to unrepresented appellants. From its inception through to its expansion, the program has been enthusiastically supported by the *pro bono* work of senior appellate duty counsel who feel a strong commitment to assist those who are denied Legal Aid in serious cases. It is because of this deep and genuine personal commitment that we can assure you that this has been a most agonizing but nonetheless unanimous decision.

We have been providing assistance to unrepresented inmates who come before this Court since 1996. We have provided this service either *pro bono* or for a very modest honorarium of \$400.00 per day because we are committed to the principle of equal access to justice. Each attendance at each session requires seven to fourteen unpaid days of legal research and preparation.

The work is collaborative and assists hundreds of appellants yearly as well as the Crowns and this Honourable Court. Given the success of the program, we were asked to extend our *pro bono* work to include Toronto inmate appeals. These increased demands were enthusiastically met by defence counsel. Our commitment is evidenced by the fact that we have never had a shortage of senior appellate counsel who are willing to donate their time. We are very proud of our contribution to access to justice and in assisting in reducing delays in the hearing of inmate appeals.

However, we feel compelled to withdraw our services because we agree with the current boycott by the Criminal Lawyers' Association to protest the inadequate funding of the Legal Aid program. Every study and task force that has looked at the issue has recommended a tariff increase. The Legal Aid Review established by the Ontario government in 1997, Robert Holden and Justice Kaufman's Tariff Review Task Force Report in 2000, the LAO Legal Aid Tariff Reform: Business Case in 2001, Professor Michael Trebilcock's Report of the Legal Aid Review in 2008, the Goudge Inquiry Report in 2008 and the Code/Lesage Report in 2008 have all recommended increases in the tariff. These reports have been unanswered. The Legal Aid crisis cannot be remedied by solutions that do not include a meaningful increase in the Legal Aid tariff. The current state of Legal Aid has driven senior counsel away from the handling of serious cases both at trial and on appeal. The loss to the justice system as a whole and the significant contribution this has caused to delays and overall costs cannot be underestimated.

Successive governments have ignored the problem that has produced the present crisis. As a result, criminal defence lawyers are making significantly less than they were 20 years ago. Between 1987 and today, the compensation for Crown Attorneys has increased over 100%, the compensation for provincially appointed judges has increased by approximately 99% and the compensation for federally-appointed judges by 61%. In contrast, Legal Aid rates have increased only 15%. As a result of the government's inaction, the criminal defence bar has assumed much of the responsibility of subsidizing the representation of those who cannot afford lawyers. The criminal defence bar has carried an unfair share of the burden by doing work without adequate compensation and by working on many cases for free. It is an expectation that is not placed on members of the civil litigation bar. Until this changes, duty counsel, many of whom have a Legal Aid practice, can no longer carry that burden by donating their time through participation in programs such as the inmate appeal duty counsel program.

For similar reasons, we are no longer prepared to accept appointments made pursuant to s. 684 of the *Criminal Code* where those appointments involve counsel being paid at Legal Aid rates.

We recognize that our withdrawal will make the hearing of inmate appeals more difficult for the Court and our Crown counsel colleagues. We greatly regret this. In keeping with our commitment to access to justice, however, we wish to assure you that duty counsel will honour their commitments as usual during the August sittings as well as any commitments made with respect to particular inmates whose matters have been adjourned to be argued by duty counsel in September. It is our sincerest hope that we will be able to reinstitute the program when meaningful long term reforms to Legal Aid again permit defence counsel to take on this *pro bono* program.

Yours very truly,

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Paul Burstein	Delmar Doucette	Michael Lacy	Jill Presser
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