



Former Superior Court judge blasts Ontario's legal aid system

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A former Superior Court judge known for his law-and-order proclivities has blasted the Ontario government for its continuing "neglect" of the province's legal aid system, warning that continuing down the same path will do irreversible damage to the justice system.



TORONTO STAR FILE PHOTO

In this file photo Police board member Hugh Locke motions at a Police Services board meeting.

With a disproportionately low pay scale driving seasoned criminal lawyers away from legal aid cases, judges, prosecutors and police are losing the benefit of courtroom lawyers with experience and judgment, said Hugh Locke, a retired trial judge and current member of Toronto's Police Services Board.

"The lack of judgment has tragic consequences for the entire justice system ranging from wrongful convictions, run-away trials or unnecessary and misguided litigation positions and the resultant waste of resources that arises," Locke said in a letter to Frank Addario, president of the Criminal Lawyers Association, a copy of which was made public today.

One of the essential elements of the criminal justice system, Locke noted, is ensuring "a level playing field" for all participants, including accused people and their lawyers.

But under the current legal aid regime, the days of a strong and vigorous defence bar may be numbered, said Locke.

"I do believe the independence of the defence bar may be in peril," he said.

In his letter, Locke added that his long-time friend, David Humphrey, a highly-regarded Toronto trial judge who died in May, would have agreed with his sentiments.

Locke is one of two unlikely sources to lend support to the province's criminal lawyers, who are now entering the third month of a very public battle with the province over legal aid rates.

Even though their members work for the province, The Ontario Crown Attorneys Association, which represents nearly 900 front-line prosecutors, has also thrown its weight behind the Criminal Lawyers Association.

"Notwithstanding the professionalism of individual counsel, it is inevitable that an inadequately funded and under-resourced criminal defence bar will struggle to attract and retain counsel with the necessary abilities to properly represent accused persons in criminal cases," Thomas Hewitt, president of the Ontario Crown Attorneys' Association, said in a letter to Addario.

In an interview today, Hewitt said that for many years his organization has been making representations behind the scenes to the attorney general, pushing for an increase to the legal aid tariff.

"This is an issue of both access to justice and appropriately-paid counsel," he said. "Both sides of the bar have to be properly represented and the profession also has to be able to attract the next generation of defence lawyers and keep defence lawyers working on criminal files."

On paper, the hourly rate paid to criminal lawyers for legal aid work ranges from \$77.56 to \$96.95. But in some instances, that can work out to as little as \$10 an hour once billing restrictions and a lawyer's operating expenses are taken into account.

Over the past two decades, the legal aid tariff has increased by 15 per cent. While that pay raise had been pledged by the Ontario Conservatives, they never actually followed through with the funding.

Brendan Crawley, a spokesperson for the Attorney General's ministry, notes that it was the McGuinty Liberals who implemented the fee hike. While Crawley has acknowledged the 15 per cent raise doesn't make up for the freezes and cuts by previous governments, Attorney General Chris Bentley has also said he can't commit to a fee hike at the moment, even though he would like to improve the legal aid plan.

In his letter, Locke said he is "more than cognizant of limited state resources." But, at the same time, the situation in which the defence bar currently finds itself is "deeply troubling," he said.

On June 1, approximately 300 defence lawyers in Toronto stopped accepting legal aid certificates for homicide and guns and gangs cases to draw attention to their concerns about the tariff. In subsequent weeks, the protest spread to Kingston, Hamilton, Barrie, Sudbury and Thunder Bay.

"The boycott is spreading into every area of the province," Addario said today. "It's confined to serious cases, but that won't last. It will expand to other cases soon enough. We have deliberately given the government an opportunity to head it off, but they have refused to discuss matters of substance."

Meanwhile, Addario said it is 'gratifying' to hear Crown colleagues and a long-time member of the judiciary go public with sentiments about the legal aid system which they have been expressing privately for years.

"When someone of Justice Locke's stature speaks out, one hopes the message gets heard," Addario said.

Although Locke was a founding member of the Criminal Lawyers Association more than 40 years ago, well before his appointment to the bench, he was known as a fair but tough-minded judge. Nine years ago, he handed what was the stiffest carjacking sentence ever given in Canada to what he described as the two "thugs" who kidnapped and tortured Bay St. lawyer Schuyler "Skipper" Sigel and his wife Lynn. Larry DaSilva and Troy Metropolit were locked up for 18 and 16 years respectively.

On the police board, Locke opposed attempts to oust then-Toronto police chief Julian Fantino.

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