

Legal aid boycott expected to spread

BY SARAH SACHELI, THE WINDSOR STAR NOVEMBER 16, 2009



Criminal defence lawyer Brian Dube with files relating to a murder case that he had prepared to pass to a legal aid attorney last week.

Photograph by: Nick Brancaccio, The Windsor Star, The Windsor Star

For criminal defence lawyer Brian Dube, three banker's boxes gathering dust in his Ouellette Avenue office are a constant reminder of a crisis in Ontario's legal aid system.

The boxes contain videotaped witness statements, transcripts, police notes and other Crown evidence related to the June 15 shooting death of a man named Lucky Suites.

Because Dube had represented Suites in the past, a judge thought it best some other lawyer take over the defence and granted the Crown's request to have Dube removed as the lawyer for one of the man's alleged killers.

"I have everything here ready to pass on," Dube said.

But no new lawyer has called asking for the materials because no one is willing to take on the case.

Defence lawyers across the province are boycotting legal aid when it comes to complex cases like homicides.

Saying the rates they get paid are too low, and that legal aid won't pay for experts or other expenses necessary to properly defend accused people, they are refusing to participate any longer in a system they say is broken.

The boycott applies to homicide cases, attempted murder, dangerous offender hearings or cases in which the Crown asks for independent counsel to represent a victim during a trial.

Lawyers won't abandon clients they'd begun to represent before the boycott began, but they won't take on any new ones charged with serious crimes.

"I can't imagine this won't spread," said Lisa Carnelos, regional director for the provincial Criminal Lawyers Association, who is expecting other types of cases will be boycotted if the protest wears on.

Legal Aid Ontario, funded by taxpayers through the Ministry of the Attorney General, pays defence lawyers between \$77 and \$96 an hour, depending on the lawyers' level of experience.

"To someone flipping burgers at McDonald's I'm sure it seems like buckets of money, but really it's not," says lawyer Ken Marley.

A lawyer working 40 to 60 hours a week on legal aid cases will bill the system \$175,000 a year, estimates Frank Miller, Marley's successor as president of the local Criminal Lawyers Association.

The lawyer will have to pay a secretary, rent and utilities.

There's malpractice insurance at \$5,000 a year, subscriptions to necessary online research tools like QuickLaw at \$3,000 a year, mandatory licensing fees, memberships in professional organizations, stationery costs, phone bills, office equipment and other overhead.

Even if they share office space and staff to cut costs, defence lawyers are left making \$75,000 a year before taxes for a job with no pension, life insurance, maternity leaves or health benefits.

Meanwhile, assistant Crown attorneys -- who prosecute the people defence lawyers represent -- make up to \$188,000 year.

They get government pensions and benefit plans and have no overhead. Support staff salaries come out of the government budget, not theirs.

The Ontario Criminal Lawyers Association points out that provincial prosecutors' salaries have more than doubled since 1987. Meanwhile, the legal aid "tariffs," as the pay schedule is called, have increased just 15 per cent, despite the rate of inflation going up 75 per cent.

"The system has been ignored over a 20-year period and it's been drained and we won't prop it up anymore," Carnelos said.

After the boycott began in Toronto in June and spread across the province by September, Attorney General Chris Bentley has announced a cash infusion to Legal Aid Ontario of \$150 million over four years -- \$15 million more this year, \$30 million next year, \$45 million in the third year and \$60 million

in the final year.

Under the funding plan, by the fourth year, the most senior defence lawyers will be making \$20 more per hour.

That's too little, too late, say defence lawyers, and it doesn't address other imbalances in the system.

Sometimes two Crown attorneys prosecute a single accused person. Legal aid doesn't pay for two defence lawyers.

For sex offender Jeffrey Bastien's dangerous offender hearing, Dube had to hunt high and low for an expert willing to work for legal aid rates -- and had to pay some of the doctor's expenses out of his own pocket.

Meanwhile, the Crown paid 11 doctors to testify, and several more to prepare reports -- all of them compensated at higher rates than legal aid pays, Dube said.

In a robbery case that resulted in an acquittal, the Crown paid to fly a witness in from the Middle East.

"Yeah, like we could ever afford to do that," Dube said.

To avoid defendants representing themselves in serious cases, judges are weighing the option of appointing lawyers for them. Those lawyers get to bill their going rate.

"Generally, we oppose such applications," said Brendan Crawley, spokesman for the Ministry of the Attorney General.

Crawley said the government is trying to figure out ways to fix the system.

He said the government has set up working groups that will provide advice on "greater access to legal support for Ontario's most vulnerable" and "additional remuneration for those who are doing the work."

Carnelos said the government has cracked down on crime, giving police more money to investigate gangs, drugs and guns, enacting zero-tolerance policies for domestic violence and requiring mandatory detention for some charges, thus necessitating more bail hearings.

The number of prosecutions has increased, but legal aid isn't funded proportionately, Carnelos said.

"I'm not necessarily critical of the government in getting tougher on crime, but there has to be a balance."

Miller said lawyers invariably work for free in the course of a legal aid defence. For example, a bail hearing is compensated at a flat rate of two hours, even if it takes days to complete.

"People shouldn't have a great deal of sympathy for people charged with murder and they may not have a lot of sympathy for lawyers," Miller said.

"But it's about more than lawyers making more money. The government has undermined the ability of the lawyer to defend."

Wrongful convictions are an increasing risk, Miller said.

"The risk of someone's life being ruined is something we should all care about."

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