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Legal aid in crisis

Insufficient funding for defence counsel threatens to make system unfair

By EDWARD GREENSPAN

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There is a crisis in the Canadian criminal justice system. legal aid, particularly for criminal defence lawyers, is woefully underfunded.

Until this inequity is addressed we will never solve the problem of access to justice for all. In protest of the funding shortfall and to highlight the problem, since June 1 the Ontario Criminal Lawyers Association has asked its members to refuse to accept legal aid clients in murder cases or cases relating to the police's "Guns and Gangs" investigations.

A criminal court is not properly constituted under our adversary system of law unless there is a judge, counsel for the prosecution and independent counsel for the defence. That's precisely the reason the legal aid plan was first established in Ontario -- to ensure that everyone, even those without financial means, would be represented by counsel.

The Crown already has tremendous advantages over a defendant in terms of resources. The government's failure to provide sufficient funding for defence counsel is enough to alter our system from one that is merely unbalanced to one that is unfair.

For example, the hourly legal aid tariff in Ontario (although the problem is nationwide) for defence counsel has been increased by only 15% in 20 years. Inflation alone has increased by almost 75% over the same period. The compensation of Crown lawyers in Ontario has increased by over 100% since 1997. Legal aid rates are so woefully inadequate as to bring into question the government's pledge to make access to justice available to everyone.

Criminal defence lawyers who take on legal aid cases often find themselves paying out of pocket to cover expenses.

No Crown attorney has ever had a dime taken from their own paycheques to fund a prosecution. Yet defence counsel frequently subsidize legal aid through out-of-pocket expenses, experts, overhead, reduced fees, and unbilled work. My colleagues in the defence bar have had enough.

Pledge

The attorney general of Ontario's recent pledge of an additional \$150 million to legal aid spread over the next four years seems impressive at first glance but it actually exposes how poorly treated legal aid has been.

Even with the government's pledge, legal aid will fall far short of being able to fulfil its mandate. There will be no real improvement on access to justice. And keep in mind much of legal aid's expenditures are in family law cases, not criminal ones.

Many people will ask, "Why should my taxes be used to pay to defend these people?" Because our nation has recognized, to its great credit, that no system of criminal justice can exist without counsel for the defence.

Once you accept that, it is simply unjustifiable to fail to properly fund legal aid throughout Canada.

I have spent a good part of my career defending my career. Too many people suffer from a profound misunderstanding of the role of criminal defence lawyers. We are unpopular with the public and with politicians. Such is the lot of being a criminal defence lawyer.

Nonetheless, while some may find funding legal aid a bitter pill to swallow, properly funding legal aid is the only way to have a meaningful justice system.

-- Edward L. Greenspan is a Toronto criminal lawyer and was recently awarded the Advocates' Society Medal

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