

# *HON. HUGH R. LOCKE*

July 28, 2009

Mr. Frank Addario, President  
Criminal Lawyers' Association  
296 Jarvis Street, Unit 7  
Toronto, Ontario  
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Dear Mr. Addario,

## **Re: Legal Aid Ontario and the Administration of Criminal Justice**

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I had the privilege to become involved in the criminal justice system over 50 years. As you are aware, I was the first President of the Criminal Lawyers' Association. It bears mention, that the guiding force behind the creation of the CLA was my friend, partner and colleague, the late Hon. David Humphrey Q.C. While the sentiments expressed in this letter are mine, I know David would agree.

I have participated in, and witnessed many changes to, the administration of criminal justice in our province in which I continue to be involved. In my view, one of the essential aspects to the administration of criminal justice is an independent defence bar. Because our criminal justice system is adversarial, a level playing field for all participants is essential, not only as a matter of fairness, but in order to maintain the rule of law.

I have reviewed a number of reports authored by eminent members of the profession and academia. These reports span a long time period and have a common theme. They detail years of neglect of the legal aid program while other participants in the criminal justice system have been allocated increasingly disproportionate resources. While I do not wish to comment on "why" this has occurred and am more than cognizant of limited state resources, the situation in which the defence bar currently finds itself in is deeply troubling.

I do believe that the independence of the bar may well be in peril. Particularly troubling from my perspective is the flight of senior counsel from the bar and the judgment they bring to bear in criminal cases. Their absence, not only adversely impacts the individuals who are losing the benefit of their wise judgment, but also the Court, Crown Counsel and the police. In this regard, I speak from experience. 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. Criminal defence work is not easy. From the days in which I practiced law it is almost unrecognizable. The enactment of the Charter, changes to the rules of evidence, modern policing methods and the growth of this province have all impacted upon ever increasing demands on the defence bar.

Fundamental to the administration of justice is mentoring. The continued flight of senior defence counsel whom at one time took on legal aid for the most serious of cases has resulted in a situation where mentoring, as the reports indicate, has steadily decreased to the point, I am told, that criminal defence articles are becoming rare or almost non-existent. This is perhaps the most troubling aspect of the situation because it has irreversible negative long term effects on our criminal justice system. Without mentoring from senior members of the defence bar the independence of the judiciary is imperilled. The words of MacKinnon J state:

An independent bar is essential to the maintenance of an independent judiciary. Just as the independence of the courts is beyond question (see *Valente v. R.*, 1985 CanLII 25 (S.C.C.), [1985] 2 S.C.R. 673; 14 O.A.C. 79), so the independence of the bar must be beyond question. The lawyers of the independent bar have been the constant source of the judges who comprise the independent judiciary in English common law history. The "habit" of independence is nurtured by the bar. An independent judiciary without an independent bar would be akin to having a frame without a picture.<sup>1</sup>

The independence of the bar must be maintained and occasionally be protected. This was in large measure why the CLA was created. 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.

I wish both you and your Board and your membership the very best in your current endeavours.

Yours truly,

  
Hugh R. Locke

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<sup>1</sup> *LaBelle v. Law Society of Upper Canada* (2001), 52 O.R. (3d) 398 at p. 408