

Ottawa lawyers vote to join boycott of legal aid

Drastic action needed to make government fund program properly: defence counsel

BY ANDREW SEYMOUR, THE OTTAWA CITIZEN AUGUST 25, 2009

OTTAWA — Ottawa criminal defence lawyers voted unanimously Monday to join a provincewide boycott of high profile legal-aid cases involving homicides or guns and gangs.

“We’re joining the boycott because we agree with the (provincial) Criminal Lawyers’ Association that without doing something dramatic to bring attention to this situation, there will never be any action from government to properly fund the program,” said Mark Ertel, president of the Defence Counsel Association of Ottawa.

Lawyers have argued the government-set schedule of rates for legal-aid cases, where an accused can’t afford his or her own lawyer, are unfairly stingy.

Provincially, about 520 lawyers have already signed on to the boycott to protest legal-aid fees that have risen just 15 per cent in the past two decades. Fees range between \$77 and \$98 an hour and are subject to a cap set by the province.

Ertel said defence lawyers would like to see the rates rise to between \$150 and \$200 an hour.

According to Ertel, the current legal-aid rates are so low that a defence lawyer could privately bill more for a one-day impaired driving trial than what they’d receive for a week’s worth of work on a murder trial at legal-aid rates.

“We have a professional obligation to do it and the state trades on that,” said Ertel, warning that the province is on the path to a “two-tier system of justice.”

“It is a pretty fundamental thing in a democracy that someone is adequately represented,” he said.

Ertel said the decision will mean people in Ottawa accused of homicide or other guns and gangs charges will not be able to find representation on a legal-aid certificate. Current homicide and guns and gangs cases that have already been taken by lawyers on legal-aid certificates are not affected.

Ertel said the boycott could result in accused people languishing in jail unless a judge orders a lawyer appear on their behalf and orders the Ministry of the Attorney General to properly fund the defence.

Ertel said Ottawa’s 125 defence lawyers will formally join the boycott when the Criminal Lawyers’ Association “gives us the nod.”

“The only thing that’s preventing us from joining it immediately is the Criminal Lawyers Association is hoping that in the next week or 10 days, the government will get serious and negotiate something with them,” he said. “But I’m not holding out any real hope for that.”

A spokeswoman for the Ministry of the Attorney General responded to requests for comment with an e-mailed statement, saying that the ministry is working to ensure there is a sustainable legal aid system in Ontario.

“We have been actively working with Legal Aid Ontario to renew the system, even within the constraints of the current global economy, and we will continue to work with them to do what is needed to ensure cases continue to be heard,” wrote Valerie Hopper, a media relations officer, who added that the ministry has increased funding for Legal Aid Ontario by \$51 million over the last three years.

Ottawa defence lawyers are among the last to join the boycott, which began in Toronto on June 1, and includes defence lawyers from Kingston, Kitchener, Waterloo, Cambridge, Hamilton, Sudbury, Barrie, Thunder Bay and Windsor.

Ertel said Ottawa held out because the provincial Criminal Lawyers’ Association wanted to limit the disruption in hopes something could be negotiated with the province.

University of Ottawa law professor David Paciocco said the boycott will likely lead to more people representing themselves in court.

“I think what you’ll see in most cases is unrepresented accused persons trying their best to get through these cases on their own,” Paciocco said, adding that judges may also appoint lawyers to act as *amicus curiae*, or “friends of the court” — lawyers who assist an unrepresented defendant — as a middle-ground compromise. “So that they don’t directly represent the accused, but can give the accused advice on how to deal with the technical matters.”

Paciocco said although judges have the authority to appoint counsel for the defence and direct the Attorney General to pay the cost, they will be reluctant to do so.

“This is a rarely, rarely used power,” Paciocco said. “It might be a matter of some discomfort for the judge to feel as though they’re intervening in what is in substance a labour dispute; on the other hand, the judge has an obligation to ensure the accused a fair trial.”

Paciocco said “there’s tremendous public interest” in resolving the dispute and “ensuring that persons accused are properly represented,” adding that trials are longer and more difficult when individuals represent themselves.

“It’s a big issue and it’s something that, whether it gets resolved through this action or not, really

needs to be addressed, or you're going to continue to have unequal access to justice and unfair trials for individuals least able to afford them," he said. "One thing is pretty clear: It's going to be very disruptive in a lot of ways."

aseymour@thecitizen.canwest.com

With files from Brendan Kennedy

© Copyright (c) The Ottawa Citizen