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City poor at risk amid legal aid changes

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The Hamilton Spectator

(Sep 21, 2009)

Criminal lawyers say a growing number of low-income people who face potential jail sentences are being denied legal aid.

They say clients are being referred instead to duty counsel, who can only provide limited legal services at the courthouse.

The practice in the past has been that if someone charged with a crime was facing jail time, and the person did not have the financial means to pay for a lawyer, he or she would be eligible for legal aid and could then hire a lawyer of their choice.

But Andrew Confente, president of the Criminal Lawyers' Association of Hamilton, says that now people without means who face jail are being denied legal aid more often, especially if they make it known they intend to plead guilty.

"Legal Aid Ontario is facing a deficit, and has decided to curtail services to the detriment of those who normally would have qualified for representation by counsel. This policy decision has and will continue to have a significant impact upon the poor and disadvantaged," said Confente.

Soon after a person is arrested, the Hamilton Crown's office provides the individual with a screening form, which gives the prosecution's position on whether it will seek a jail term upon conviction.

Duty counsel can offer some services, but on a limited basis. They can give advice about a person's legal rights and the court process. They can help someone with a bail hearing, guilty plea or sentencing, but they cannot defend someone who wants to plead not guilty and have a trial.

The trouble with the recent changes, said defence lawyer Robert Gee, is that duty counsel changes from one day to the next, and do not stay with a case for long. They don't get involved in plea-resolution meetings with Crown attorneys, to try to negotiate a better sentence for a person. He said duty counsel do not always have time to sit down with an accused and review the evidence in detail, interview family members or gather letters of support from employers to present to the judge at sentencing.

But Legal Aid Ontario spokesperson Kristian Justesen said there has been no change in eligibility requirements.

"The legal eligibility test for criminal coverage remains the same - to be eligible for referral to the private bar, a client must qualify financially and there must be a probability of incarceration upon conviction. Duty counsel lawyers are in the best position to determine if there is a probability of incarceration."

Gee and other criminal lawyers say she is not telling the full story.

"What they have done is to redefine what they accept as proof that the client is facing a probability of incarceration," he said. "Prior to these changes, if the screening form provided by the Crown indicated it would seek a jail sentence, that was accepted as proof of a probability of incarceration."

Gee said staff at the area legal aid office and duty counsel at the courthouse are now second-guessing the Crown's position.

"Just (last) week I had a client in jail on a breach of probation charge who, when he applied for legal aid, was provided a letter that told him to contact duty counsel and that they would assist him.

"Isn't the fact that you are in jail and unable to be released on bail, proof that you face the probability of incarceration?" asked Gee.

Defence lawyers say that even a guilty person has the right to be properly convicted.

"The system that has been recently implemented would appear to encourage an accused person to make a decision about whether they're going to plead guilty or not guilty without the benefit of appropriate counsel," said veteran defence lawyer Barry Caskie.

"And duty counsel do not have the time, and in some cases, the ability, to make decisions about whether an accused person should plead guilty or not. Some duty counsel do not do enough criminal law to make that decision."

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