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More than 140 Ontario lawyers join legal-aid boycott

Experienced defence counsel refusing to take on serious cases until fee dispute settled

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A boycott of Ontario's legal-aid plan by seasoned criminal lawyers doubled overnight, as virtually every experienced defence counsel in Toronto vowed to stop taking serious cases until there is a hike in legal-aid fees.

By late Tuesday, 140 lawyers had signed onto a boycott of future homicide and guns-and-gangs cases in protest of legal-aid rates that have steadily fallen further behind the cost of living, said Frank Addario, president of the Criminal Lawyers Association.

“Homicide and gun-and-gangs are obviously the most high-profile examples of how the criminal justice system does or doesn't work,” Mr. Addario said. “We wanted to pull back the curtain on those cases because we have been holding it in place and hiding the problem for the government for two decades.”

Marlys Edwardh, a prominent Toronto defence lawyer, said the boycott “will underscore, in the strongest possible way, that there is a need to bring senior, experienced people back into the complex cases. I think this is a very loud statement.”

However, Ontario Attorney-General Chris Bentley warned in an interview that the boycott “could very well end up being counterproductive.”

He refused to elaborate, but said his government cannot be expected to rapidly resolve a problem that was created by previous governments. “We have made some progress over the past five years with a 15-per-cent increase in the fees, but the 15 years before were years of cuts,” Mr. Bentley said.

Veteran lawyers who typically charge \$300 to \$500 an hour to private clients make \$98 an hour for a legal-aid case, Mr. Addario said, which results in them ceding the field to inexperienced young lawyers. “The cost is runaway trials, unreliable verdicts that lead to overturned cases, and a terrible expenditure of police and prosecution and judicial resources,” he said.

Mr. Addario said that the justice system must resign itself to sprawling trials that are conducted by fledgling lawyers who lack the experience to make concessions and focus on key legal issues. “It's no slur on our younger members to say that they are being thrown onto cases often because there is no one else to take them,” Mr. Addario said.

“The government knows the program is discredited in the legal community,” he added. “The service providers they have lost in the last decade will not return if it maintains the status quo. So, it's not as if this is going to eliminate an excellent program that serves the indigent. It's already a mess.”

Ms. Edwardh said wrongful convictions may result from the growing imbalance between the resources available to the Crown and the defence.

“I see this as the straw that breaks the camel's back,” she said. “We have not had meaningful legal-aid reform. I think there are voices from the Attorney-General's office that perceive adequately funding the defence as being part of a soft-on-crime agenda. This is misconceived and it's misguided, but there is no other explanation.”

The boycott is the most dramatic action the defence bar has taken in the past decade. It comes after three major reports into legal aid and systemic problems in the court system concluded that legal-aid rates must rise in order to attract senior lawyers back to the program.

Ms. Edwardh said that besides barely covering the cost of law-office overheads, legal aid pays defence expert witnesses half of what they can receive if they are retained by the Crown.

“That is a very skewed and dangerous lack of balance,” she said. “I have absolutely no doubt that, when the defence bar is unable to access the experts they need, what's at stake are wrongful convictions.”

Each province administers its own legal-aid system, however, underfunding is so widespread that the Canadian Bar Association launched litigation a couple of years ago in several regions in order to force adequate financing.

Mr. Addario said that in 2007-2008, Legal Aid Ontario's total budgeted revenue was \$350-million.