

Defence lawyers want government-funded counselling

BY ALEX ROBINSON

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Now that the provincial government will provide counselling to jurors suffering from PTSD, defence lawyers say it is time they received government-funded counselling to deal with trauma they experience in harrowing cases.

The Ministry of the Attorney General recently announced a new program providing counselling to jurors that will be implemented at the beginning of 2017. This leaves defence lawyers as the lone justice participants who are not covered by government-funded counselling programs in criminal justice matters in the Ontario Superior Courts.

“Everybody in the criminal justice system is being supported in some fashion with something from the government except for the accused and the defence, which doesn’t make for an equal playing field,” says Keli Mersereau, the women’s vice president of the Criminal Lawyers’ Association.

As members of the Ontario Public Service, Crown attorneys have access to the employee and family assistance program of the OPS, which provides counselling support. An employment assistance program through the Com-

missioner for Federal Judicial Affairs covers Ontario Superior Court justices. In 2007, this service was expanded to include counselling for judges who preside over traumatic cases.

And jurors will soon have access to the Juror Support Program, which will provide counselling services without having to ask permission from a judge.

The juror program will include coverage for those serving in juries in civil and criminal cases, as well as inquests.

Defence lawyers applauded that jurors will have easier access to get the help they need, but they also lamented what they say is an imbalance of funding for such services between Crowns and defence.

“I’ve had to view really grotesque and horrible photographs of deceased persons and no one is worried about how I’m doing,” Mersereau says.

She says the resources the government has poured into everybody but the defence and the expansion of services for complainants over the years have created a huge imbalance and “an enormous mountain” for defence counsel to get over.

She says the perception that has formed of the government pouring resources into the other side of the case can be problematic.



Breese Davies says instances of post-traumatic stress disorder and vicarious trauma that defence lawyers experience will only increase with the explosion of video from smartphones.

“It’s like we’re the David and the government and all their tentacles are the Goliath,” she says. “It begs the question when is there going to be a level playing field?”

Toronto defence lawyer Breese Davies knows first-hand how difficult it is to process disturbing evidence.

She has been involved in a number of cases with graphic video footage of acts of violence.

One of those cases was the inquest into Ashley Smith’s death in the Grand Valley Institution for Women in 2007. Smith strangled herself in her cell, while she was on suicide watch.

Davies had to witness particularly graphic video footage in the inquest, in which she represented the Canadian Association of Elizabeth Fry Societies.

She has sought treatment during and after particularly difficult trials, but she has paid out of pocket for those services.

“We can be deeply affected by the cases we try and the stories we hear,” says Davies, who is a vice president at the CLA. “Getting help in the face of very difficult cases is not a sign of weakness. It should be encouraged by our profession and health-care providers.”

Davies says instances of post-traumatic stress disorder and vicarious trauma that defence lawyers experience will only increase with the explosion of video from smartphones, which will likely create more graphic evidence.

While there is no government-funded assistance for defence lawyers, the Law Society of Upper Canada offers counselling through its Member Assistance Program for all lawyers, judges, paralegals, students and their immediate family members.

The program offers counselling through an initiative called solution-focused therapy. Lawyers can receive counselling in person, on the phone or via an online service. The counselling is at no cost to lawyers and avail-

able across the province.

Doron Gold, a staff clinician with MAP, says just making people aware that these services exist and at no cost is an ongoing battle.

“A lot of people don’t even know they have a problem,” he says.

Gold says one misperception many people have is that the program shares personal information with the law society.

“This is a completely confidential program,” he says.

He encourages any lawyers who think they may need help to call MAP.

Despite the existence of the LSUC-funded program, defence lawyers say the government should provide counselling services for them.

“On a more symbolic level, it’s important to have a publicly funded system for this so that there is a public recognition that this is one of the associated risks of this kind of work,” says Davies.

“The role of defence counsel is crucial to the proper administration of justice.

“If we publicly recognize this is one of the difficulties that comes with the job of defence counsel among many others, it will go some way to reducing the stigma that is still associated with having to ask for psychiatric or psychological help.” **LT**