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Ombudsman calls for new law to avert legal aid “fiascos”

TORONTO (February 26, 2008) – Ontario Ombudsman André Marin today called on the province to change the law to prevent further legal aid fiascos like the Richard Wills murder case – and to take whatever steps possible to recover some of the \$1.1 million it cost taxpayers. He warned that the situation is not beyond repetition if things are left the way they are.

“This is a story about waste,” Mr. Marin says in his report on Legal Aid Ontario’s handling of the case – entitled *A Test of Wills*. The Wills case was “a perfect storm” of mischief, mismanagement and miscommunication that resulted in “obscene” costs, the Ombudsman found. However, his investigation also revealed systemic problems in the way the province funds people who cannot afford to defend themselves in court, and the way that funding is managed.

Mr. Wills, who was convicted of first-degree murder last fall in the 2002 death of his longtime lover Linda Mariani, hired and fired a series of lawyers over almost six years, seven of whom were publicly paid for – despite the fact that he was initially considered too wealthy to be eligible for legal aid. Mr. Marin launched his investigation in the wake of public outcry following revelations that Mr. Wills, a former veteran Toronto police officer, had transferred almost all of his assets to his estranged wife before demanding the public pay for his defence.

Although the public funding was ordered by a judge and the money came through the Ministry of the Attorney General (MAG), it was the duty of Legal Aid Ontario (LAO) to keep an eye on the mounting costs – a duty it completely abdicated, the Ombudsman found. This was partly because LAO had developed a “not our job” mentality in dealing with such cases. In the Wills case, that mentality, along with individual mistakes, amounted to a “no check/blank cheque” policy, the report states.

The Wills case prompted the Ministry to implement a new protocol for similar cases. A protocol is better than nothing but fails to address the problem, the Ombudsman said. “A protocol is not a legally binding document. In this case, it serves more like a ‘gentleman’s agreement’ between the Ministry and LAO. Only legislation can impose a clear plan for administration on everyone, including judges and lawyers, so that it becomes part of every court order for legal fees.”

The Ombudsman also recommended new legislation “to discourage legal aid applicants from transferring away their wealth and for recovering funds where this has happened.” As for the Wills case, he called for the various lawyers’ bills to be reviewed by a court.

Legal Aid Ontario has agreed to implement all of the recommendations in the report and has already made some welcome reforms, Mr. Marin said. By contrast, he described the MAG’s response as non-committal so far. “I am concerned that there is no sense of urgency or necessity on the Ministry’s part regarding these recommendations. Rather than substantive information on next steps, the Ministry has left me with only vague references to decisions to be made at some point in the future.”

Both the Ministry and LAO have agreed to report to the Ombudsman every six months on their progress in implementing his recommendations. “At that time I will assess whether the Ministry has taken any tangible steps toward the improvements I believe are necessary,” Mr. Marin said.

The Ombudsman’s report did not directly address the issue of legal aid rates, since they are the subject of an ongoing review commissioned by the government. However, he indicated that his report offers “ample support for the argument” that the rates “unquestionably impede equal access to justice in Ontario” and should be increased.

This investigation was conducted by the Special Ombudsman Response Team (SORT) and *A Test of Wills* is the ninth published SORT report since Mr. Marin was appointed in April 2005. Previous investigations have sparked, among other things, changes to the province’s municipal property assessment process, improved disease screening of newborn babies and reforms to the Ontario Disability Support Program, Criminal Injuries Compensation Board and the provincial lottery system.

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Full report and backgrounders can be found online at www.ombudsman.on.ca

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