

***A Test of Wills* – OPENING REMARKS**
André Marin

When I announced this investigation in November, there was a lot of public outcry about a shocking murder case that had cost the people of Ontario more than a million dollars – and that was just to pay the defence lawyers. The case of Richard Wills was shocking enough because of the terrible facts of the murder of the woman he supposedly loved. But the revelations of the abuse of public money made it even more appalling – because the government of Ontario allowed it to happen. I received complaints about this, and I was concerned about the prospect of a public inquiry, especially after so much public money had already been wasted. It made no sense to throw more good money after bad.

So I announced an investigation and just over three months later, here we are. The Special Ombudsman Response Team has determined what happened and we have some solid recommendations to make sure nothing like this happens again. More importantly, I am suggesting a way for the Ontario public to get some of the wasted money back – and to deter others from abusing the system the same way.

The title of this report, *A Test of Wills*, comes from a statement from one of the frustrated judges in the case. I don't believe he meant it as just a play on words, and neither do I – because this case really did involve serious battles of wills on several fronts. There was, of course, the obstreperous accused murderer, who took on everyone from his own lawyers to judges. But he alone did not cause this fiasco. There was also a battle of wills between Legal Aid Ontario and the Ministry of the Attorney General over who was responsible for what, with one side shamefully shirking its responsibility. And, at the individual level, there was a pivotal battle of wills between the LAO director who should have been keeping a lid on the costs of this case and one of the defence lawyers who was determined not to have anyone put a financial straitjacket on him.

In this test of wills, Legal Aid Ontario failed, and the Ontario taxpayers lost. So did the Ontario justice system. It was a shameful episode that never should have happened and should never be repeated. But make no mistake – it could happen again if nothing is done. That's why I am recommending new legislation and legislative amendments to strengthen a system whose credibility has been badly damaged.

Richard Wills, as everyone knows by now, started out a relatively rich man, but after the murder he systematically got rid of his assets and then pleaded poverty so he could get the public to pay for his defence. He got his way, too, thanks to a perfectly understandable order from a judge who realized that allowing him to go on trial without a lawyer would not only be a nightmare for the justice system, but a breach of fundamental principles of fairness.

But the judge certainly never intended to hand Mr. Wills a blank cheque. Mr. Wills only got that because Legal Aid Ontario, which had initially turned him down, refused to keep a close eye on his lawyers' bills. This was because the money was coming from the Ministry of the Attorney General, and a culture had developed within LAO that essentially said, "if it's not our money, it's not our problem." That culture, combined with catastrophic errors in judgment on Legal Aid Ontario's part, created this mess.

My recommendations address these problems in two ways: First, I propose legislation to make it possible to go after those who try to divest themselves of assets in order to get the public to pay for their defence. I'm also calling on the Ministry of the Attorney General to do whatever it takes to recover some of the money that was wasted on Mr. Wills.

Second, I propose new legislation that will clear up the confusion between Legal Aid Ontario and the Ministry of the Attorney General once and for all – making LAO the watchdog, so to speak, over all publicly funded cases. I recognize that the Attorney General has already put a protocol in place for this, but it's not enough. Legislation will cover everyone from bureaucrats to judges and leaves no more room for error.

My other recommendations involve monitoring improvements by LAO, the Ministry and the government in these areas, some of which are already under way. I'm pleased to note that although this report is quite hard on his organization, Bob Ward, the President and CEO of Legal Aid Ontario, has accepted all of my recommendations, and he has taken full responsibility for LAO's failures in the Wills case.

The Ministry's response so far has also been positive but disappointingly non-committal on the recommendations for legislative change. I am convinced that the government needs to move quickly and decisively to fix the problems we've uncovered, and I will be monitoring their next steps – I am certainly happy to consult with them further on the legislative proposals this report sets out.

I am also hopeful that those involved in the ongoing discussion of the issue of legal aid rates will bear this report in mind and feel free to use parts of it to bolster a case for raising rates. To put it bluntly, our legal aid rates are too cheap. This effectively means many deserving Ontarians are being denied their right to a quality defence in court. Meanwhile, a few people like Richard Wills benefit from what amounts to a two-tier system if they are lucky enough to have their cases funded through a judicial order.

It would be easy to chalk the Wills case up to sensational headlines, and then cross our fingers that there will never be another one like it. But I've done enough of these investigations to know that taking the easy route only allows far worse bureaucratic problems to fester in the long run. I think Legal Aid Ontario gets this and is on the road to recovery, and I'm hopeful that the government will agree with me that the time to act on these issues is now.