

**LEGISLATIVE ASSEMBLY OF ONTARIO**

**THE STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS**

**PRE-BUDGET CONSULTATIONS**

**WRITTEN SUBMISSIONS OF CHARLES O. SPETTIGUE**

**JANUARY 29, 2007**

**HAMILTON, ONTARIO**

**PAT HOY, MPP**

**Chair, President**

## ACCEPTANCE OF RESPONSIBILITY

1. The views expressed below are my own and mine alone. They are not to be attributed to any other person or group.

## CONTEXT

2. Contrary to what might appear from the following I have supported the Liberal Parties of Ontario and Canada for approximately thirty - five (35) years. I say this not to curry favour but to put my remarks in context.

## INTRODUCTION

3. I practice criminal law in Hamilton, Ontario. I have practiced Law for twenty-two years. I am one of approximately 4000 Ontario lawyers who accept certificates from Legal Aid Ontario and help the administration of justice by representing those disadvantaged individuals who can not help themselves and whom Attorney General Michael Bryant and his assistants bring before the Courts of Ontario on a daily basis.
4. According to Legal Aid Ontario these persons make up approximately one - third of the accused persons brought before Ontario's Courts. Many of these persons are unemployed, suffer substance abuse or mental health issues. Some of them are survivors of abuse and other catastrophic events themselves. "Hamilton is one of the worst places in the country to be looking for work" according to Statistics Canada ( Hamilton Spectator, January 26, 2007 p. A 16).

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5. Just like every other Ontarian these individuals are entitled to justice, fair and timely trials and representation by counsel of their choice. Legal Aid Ontario has endeavoured to provide this representation through what it calls a partnership with Ontario's lawyers.

#### SUBMISSION

6. Legal Aid Ontario is a government agency overseen by Attorney General Michael Bryant. On October 21, 2004 Michael Bryant spoke at a dinner sponsored by Hamilton's Criminal Lawyers Association. That evening Michael Bryant announced his commitment to a "robust and independent" legal aid system.

7. If that was not a lie or cheap politiking then Michael Bryant has failed miserably. Two years after that statement by Michael Bryant Legal Aid Ontario is broke and Attorney General Michael Bryant is funding its day to day operations by delaying payment to the lawyer - partners who do the work. Depending on which report or study you believe Legal Aid is at least \$10 million in the hole ( Toronto Star, November 22, 2006 p. A1).

8. Attorney General Michael Bryant and the Liberal Government of Ontario have not put any new money into Legal Aid in two years. Oddly enough, this failure of funding comes on the heels of a surprise increase in revenue of approximately \$5 billion for 2005-2006 ( Hamilton Spectator, January 27, 2007 p. A3).

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9. In the same period this Liberal Government has just granted itself a 25% raise. In 2006 Michael Bryant's Assistant Crown Attorney's received a 40% pay hike. Police and other government employees also continue to negotiate raises.

10. Legal Aid statistics indicate that the average cost of a single defence or certificate is slightly over \$ 1600.00. Michael Bryant's raise, as a Cabinet member, ( not his current salary) could have funded approximately 24 Legal Aid clients. The Cabinet raises in total could have funded approximately 650 disadvantaged Ontario citizens.

11. Contrast that sort of self-indulgent generosity with the fact that Legal Aid Ontario lawyers received their first raise in 14 years in 2002 and have not had a raise since 2002 and you begin to see the problem. That raise by the way was 5% and represents the second of two increases over 20 years ( CDLPA vol. 11, Issue 5 Dec. 2006 - Jan. 2007, LAO - Newsroom June 8, 2006). Michael Bryant acknowledges that legal aid tariff ( hourly rates) increases for his lawyer - partners have been sporadic at best. ( Globe and Mail 21/09/06) .This enormous understatement is insulting to anyone familiar with this crisis.

12. Michael Bryant and the Ontario Liberals are using Ontario's defence bar to fund Legal Aid. YOUR solution to the problem has been to GUARANTEE the JOBS, SALARIES AND SNACKS of the government employees who work inside the legal aid system while deliberately dumping the financial burden onto the lawyers that Legal Aid Ontario claims to be in partnership with ( LAO Internal Memo - October 2006) .

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13. To avert a funding crisis Michael Bryant and Janet Leiper, Chairwoman of LAO, dramatically altered the rules of the game in October 2006. As the Internal Memo mentioned above points out Michael Bryant and Janet Leiper changed the rules without advance consultation or adequate notice to their lawyer - partners while admitting that: "Yes, some changes will affect lawyers." They changed the rules after many of us had made commitments based on the existing system. As you can see from the Memo Michael Bryant and the Liberals looked after their own government pals and "[talked] to staff first".

14. As lawyers, we pay expenses on an up front basis to government agencies and employees such as the Minister of Finance and Court Reporters. Under Michael Bryant we pay and then we wait inordinate periods for the Attorney General, through Legal Aid, to reimburse us our out of pocket expenses without any payment for interest or carrying charges. These additional fees are compounded and exacerbated by time and money lost whilst wrangling with a pampered bureaucracy rife with internal inefficiencies and a total lack of accountability. We regularly have to submit and resubmit the same material 3 or 4 times before an account is processed. The new computer system that was heralded after an expenditure of some \$20 million dollars is regularly out of service. For example it has been off line since 4:00 p.m. Friday January 26, 2007 and will not be accessible until 9:00 a.m. Tuesday January 30, 2007. This means that no lawyer can submit an account for the better part of four days. When the computer is functioning human error is rampant. I was granted Big Case Management status for a client on December 15, 2006. As of January 25, 2007 ( or 40 days after the approval was given) the computer was not programmed to accept my account.

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15. I seriously doubt that Michael Bryant has any of his own money invested in Legal Aid Ontario or his own Ministry. So I ask you, Why should I invest mine? I also seriously doubt that any of you would sponsor or support legislation to compel Assistant Crown Attorney's to pay out of pocket expenses for the prosecutions they handle or to force them to wait 60 to 90 days for their pay cheques. Why should I ?

16. The deck is stacked against those Ontarians least able to defend themselves. Attorney General Michael Bryant is no better than a schoolyard bully using the tremendous muscle and big stick of the Ontario Government to beat up the weakest segment of Ontario society. I consider that to be sheer cowardice pure and simple.

17. Michael Bryant admitted his failure in September 2006 when he admitted that he is not entitled to "a standing ovation". Sadly though Michael Bryant refuses to accept responsibility for his failure as Attorney General and suggests that he does not deserve criticism either ( Globe and Mail, Sept. 21, 2006) .

18. I'm surprised that Michael Bryant hasn't blamed the panel lawyers or the poor. To be fair the government of Mike Harris and Charles Harnick did more than their fair share of damage. This crisis certainly didn't develop over night. *However, its time to end the rhetoric and the studies and make an investment in justice.*

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19. In April 1997 an independent study by the Donner Canadian Foundation determined that there was a problem and that 70% of low income clients in Ontario were unrepresented. In January of 1997 then Attorney General Charles Harnick announced the appointment of John McCamus of Osgoode Hall to study the problem as well. Charles Harnick advised that "Legal Aid reform is on the legislative agenda. This report is timely, and we hope it will help inform the important public policy reform now underway" ( York University April 7 1997).

20. The people of Ontario support legal aid services. A poll commissioned by Legal Aid Ontario in April 2006 indicates that 85% of Ontarians strongly or moderately support legal aid services and nearly 60 % feel that legal aid funding should receive the same priority as social programs ( LAO - Newsroom - June 28, 2006).

21. Unfortunately Michael Bryant and this Liberal Government have ignored this and other clear messages. Various Bar associations and other organizations have written to Michael Bryant to express their concerns. Mark Ertel, President of the Ottawa Defence Lawyers Association has demanded an apology from Michael Bryant. As recently as Friday January 19, 2007 the Supreme Court of Canada released a decision known as Little Sisters. In it the Supreme Court acknowledged that " Legal aid programs remain underfunded and overwhelmed. Self representation in courts is a growing phenomenon" and that there is an inherent unfairness when litigating against someone with greater resources (Little Sisters [2007] SCJ 2 at pars. 5, 44; Toronto Star, January 20, 2007 p. A8). Yet as noted above Michael Bryant doesn't believe that he should be criticized ( Globe and Mail September 21, 2006) .

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22. Instead of acting Michael Byrant and this government have ducked the issue and swept it under the political carpet of studies and commissions. Instead of acting Michael Bryant has re - appointed John McCamus to re - study the legal aid system (LAO - Newsroom Dec. 1, 2005). I suspect that this is just a ploy to get the crisis off the legislative agenda and to bury it until after the October 2007 election. I suspect that if Michael Bryant foregoes the comfort of a Bay Street Boardroom in order to run again this fall that we will all hear how his re - appointment of John McCamus was a brilliant solution to the crisis.



23.Mr. Chairman I would like to leave you with this thought. The names:

**Baltovich**

**Dixon**

**Dalton**

**Driskell**

**Druken**

**Milgaarde**

**Morin**

**Mullins-Johnson**

**Parsons**

**Reynolds**

**Truscott**

**all prove one thing. Politicians, Justices, Crown Attorney's, Police Officers, Coroners, Probation / Parole Officers, and even some defence lawyers, all suffer from the same fundamental flaw. We are all human and mistakes are made. Without a fearless, robust and independent defence bar to counter the tremendous power of the state there is no justice. The juggernaut of the state simply runs roughshod over the individual citizen in the same way that tanks rolled over citizens in Tiananmen Square (CTV.ca - Feb. 4, 2006).**

**THANK YOU**