

Family law group wants boost for children's lawyer

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The Family Lawyers Association of Ontario wants to see a funding boost and procedural reform for the province's overwhelmed Office of the Children's Lawyer.

The move comes as Ontario Auditor General Jim McCarter singled out the office in his annual report over concerns with the number of cases it turns down, the time it takes to issue decisions and reports, uneven coverage across the province, and the cost-effectiveness of its operations.

"It's going to be a big issue for us this year," says Victoria Starr, chairwoman of the association.

"We're going to be focusing on working with the [office] to help them improve their process. When the [office] talks in court, it has huge persuasive power over the parties and over the judge. I think we really need to invest in it for the sake of children and give it the resources it needs to conduct thorough investigations and produce high-quality reports because their work is being so heavily relied upon in court."

The auditor general's report acknowledged the value justice players place on the work of the office, which spent about \$32 million in the 2010-11 fiscal year.

"However, these services are often not assigned or delivered in a timely enough manner," the report noted.

"I feel bad for them," says Toronto family lawyer Robert Shawyer, who also sits on the association's board of directors. "With so many people getting divorced or involved in some type of family law dispute, the office hasn't been funded to the level it needs to keep up with the amount of work that keeps getting submit-

ted to them."

One concern highlighted by the auditor general was the amount of time the office takes to accept or reject custody and access cases referred to it by the court. Last year, it took it 39 days on average to deliver its decision. That was a big improvement on the previous year's 68-day average but still way off the office's 21-day turnaround target.

"The case comes to a standstill from a process perspective because everybody needs to know if the [office] will get involved," says Starr.

Shawyer says the delays are particularly significant in custody and access cases because the current arrangements for the child are a factor the judge must consider in making a decision.

"The more time passes, the more the status quo sets in, and that makes it difficult for the courts to deal with the issue," he says. "The longer the child is situated with one parent or the other, the harder it is for the court to turn around and uproot the child and possibly disrupt their life in a negative fashion."

Last year, the office declined to act in about 40 per cent of the access cases referred to it by the court. The average refusal rate for the last five years stands at 44 per cent. Wild regional variations meant applicants from eastern Ontario were much less likely to be unsuccessful with a 29-per-cent refusal rate. That compares with a 50-per-cent rate in northern Ontario.

According to the auditor general, the office makes its decisions, which are based on 13 refusal criteria, without adequately assessing "the impact of these refusals on the children and the court." The report recommended that the office reverse its thinking



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and instead establish criteria for accepting cases "based on the best interests of the children involved and the benefits provided by the office's involvement."

Family lawyer Andrew Feldstein of Markham, Ont., hopes the new criteria will give lawyers and judges a better sense of which cases the office is most likely to accept. Right now, he says assessing the chances of success is like a stab in the dark.

"Forty-four per cent are getting rejected and nobody really knows why. I think it makes more sense to have reasons to explain to a judge why your case should make the grade. It'll also help the judiciary as gatekeepers because if they can see a case is not appropriate, then the parties aren't going to go and spend all that money and time preparing the intake forms and the [office] isn't going to have to read them and reject them."

One explanation for the office's reluctance to explain its rejections may be that one of the most com-

mon reasons isn't even among the 13 official ones. According to the auditor general's report, a lack of financial resources was the primary factor in many rejections.

"For cases that would otherwise be accepted (based on the refusal criteria) had funds been available, we were told that another reason for refusal is selected from one of the 13 refusal criteria," the report, quoting senior management at the office, noted.

"That's not the fault of the [office]," says Starr.

"That's the fault of the Ministry of the Attorney General for not giving it enough money. We need them more in custody and access cases, especially with the rise of self-reps. The [office] has an incredibly important role to play and can really make the difference as far as getting the child's needs properly met."

Feldstein says he'd rather see the office be more forthright about its budgetary constraints and warn parties when money is particularly tight.

"I've seen periods of time where several cases in a row have been turned down, even ones I thought were perfect, and I always suspected it might have been on financial grounds," he says.

"More transparency would be better, I think, because if there's a time period where they're going to be turning down cases over finances, I'd rather they told everybody because it's a waste of everyone's time and money. In that case, I'd rather spend my client's money, if they have it, on hiring someone privately who could do the same thing as the [office]."

When the office agrees to take on custody cases, the Family Law Rules require it to complete its

investigation and deliver a report with recommendations to the court within 90 days. But the auditor general found it met that deadline in just 20 per cent of cases and saw no evidence of a formal strategy to improve the timeliness.

However, Starr is less concerned about that delay. She says strict adherence to timelines during the investigation can lead to cutting corners at the most crucial stage of the office's involvement.

In fact, the association wants to see more of the office's efforts concentrated on improving the depth and quality of the investigative process. Starr says that by making more money available at that stage, investigators will feel less limited in the number of meetings they can schedule with parents and children, especially considering how much time it can take to build rapport and trust. The association also wants the office to give more thought to how and where it interviews children, provide parents with more information on the process from the outset, and take their concerns into consideration during it.

"If the investigation process is detailed and thorough, I don't think we would be complaining about the length of time it takes," says Starr. "When parties feel an investigation is thorough and complete, they will settle."

The auditor general also voiced concerns that the office was becoming less cost-efficient, noting that its payments to panel agents had grown by 60 per cent during the last decade despite a 20-per-cent decrease in the number of cases it accepted and a static overall caseload. McCarter also recommended that the office include an assessment of whether the fees panel agents charge are reasonable. **LT**