

News

Judge blasts legal aid eligibility threshold

JOHN SCHOFIELD

An Ontario Superior Court judge has sharply criticized the province's legal aid system for its unrealistic income eligibility requirements.

"It should be obvious to any outside observer that the income thresholds being used by Legal Aid Ontario do not bear any reasonable relationship to what constitutes poverty in this country," Justice Ian Nordheimer wrote in a May 26 decision in *R. v. Moodie* 2016 ONSC 3469. The so-called *Rowbotham* order effectively stays the charges against alleged Toronto drug dealer Tyrell Moodie until state-funded counsel is provided to him.

Moodie, 23, faces a variety of drug charges, including trafficking in cocaine, possession of cocaine for the purposes of trafficking, possession of marijuana and possession of property obtained by crime. After



“

He could have just left it, but he went above and beyond and talked about the broader implications and it resonated with a lot of people. We have to decide the kind of system we want to have.

Scott Pearl

Edward H. Royle & Associates

purchasing drugs undercover, police investigators alleged they saw him supplying drugs to a dealer, and identified him as the supplier through the use of a photographic lineup.

According to facts of the case detailed in the decision, Moodie is a high school graduate with a diploma in social work from George Brown College and has no criminal record. He works part-time for a boys and girls club, earning a gross income of \$12,547 in 2014 and \$16,211 in

2015. He lives at home with his mother, paying \$300 to \$400 a month for household expenses. His chequing account is overdrawn and he owes money on his credit cards.

His application for legal aid was rejected because he earns more than Legal Aid Ontario's threshold income level of \$9,000 a year for a boarder,

which he was originally classified as. Legal Aid Ontario later defined him as a single income earner, but rejected his appeal because his income was over the \$12,000 threshold for a single earner.

Those income thresholds, Justice Nordheimer noted, fall far short of Statistics Canada's 2014 low-income cutoff of

\$24,328 for a single person living in a metropolitan area of more than 500,000 people.

"The Crown submitted that the applicant had failed to take adequate steps to try and find other sources of funds to pay defence counsel," wrote Justice Nordheimer. "Obtaining a bank loan, having a family member co-sign for a loan, getting a second job, borrowing against credit cards and other suggestions were made. None of those suggestions are, in my view, realistic ones."

Because it's a complex case involving *Charter* arguments about the admissibility of evidence and a severance application, he added, it is the kind of case that warrants a *Rowbotham* order, as described in *R. v. Rushlow* [2009] ONCA 461.

"It is necessary for the applicant to have counsel in order to have a fair trial," concluded Justice Nordheimer. "The applicant has satisfied me that he

Thomas, Page 23

Alternative Dispute Resolution Directory

JM DISPUTE RESOLUTION

A proven record of consistently EXCELLENT settlement results

Joyce Miller, Barrister & Solicitor,
Mediator and Arbitrator since 1995

MEDIATING
Personal Injury Claims and
Statutory Accident Benefits

ARBITRATING
Priority and
Loss Transfer Disputes



CONTACT JOYCE AT
joycemiller@jmdisputeresolution.com
and at 416-780-1762 or visit
www.jmdisputeresolution.com

Visit Joyce's website at www.jmdisputeresolution.com
to SCHEDULE your mediation and arbitration

CHOOSE FROM CANADA'S TOP
MEDIATORS AND ARBITRATORS



The Honourable
Dennis Lane, Q.C.

is a former Superior Court of Justice Judge where he presided over every area of the Court's work. He has expertise in commercial, insurance, real estate, employment and family & estate matters.

adrchambers.com
416.362.8555



RUDOLPH
Mediation & Arbitration Services Inc.



J. Jay Rudolph

Online booking
available at

www.rudolphmediation.com

(t) 416-222-8787
(f) 416-222-5532

jay@jjayrudolph.com

Are you
a mediator,
arbitrator or
ADR expert?



Appearing
weekly in

Ontario Reports
and
The Lawyers Weekly

Over 240,000
issues distributed
each month

Jim Grice
jim.grice@lexisnexis.ca
905-415-5807
1-800-668-6481, Ext. 807

Ritu Harjai
ritu.harjai@lexisnexis.ca
905-415-5804
1-800-668-6481, Ext. 804

News

Thomas: Legal aid 'should get to poverty line' people

Continued from page 10

does not have access, on any reasonable basis, to other sources of funds in order to retain counsel. It is therefore necessary that he be provided with state-funded counsel."

While *Rowbotham* orders are not unusual, it's rare for a judge to be so outspoken on this issue, said Scott Pearl, a Toronto criminal defence lawyer with Edward H. Royle & Associates and Moodie's counsel. "Nordheimer pointed out a big problem and finally said it," he told *The Lawyers Weekly*. "He could have just left it, but he went above and beyond and talked about the broader implications and it resonated with a lot of people. We have to decide the kind of system we want to have."

Pearl said he believes an appeal from the Crown is unlikely. But he said the decision could influence other cases where the Crown argues that the accused should find other sources of funding for counsel.

Toronto lawyer Anthony Moustacalis, president of the Criminal Lawyers' Association, said the publicity surrounding the decision may prompt more unrepresented accused to seek *Rowbotham* orders — but they must exhaust the legal aid appeal process first. "A trial judge has jurisdiction to grant the remedy," he said, "but only if you are destitute and have a risk of jail and cannot properly defend the case without a lawyer."

Lawyers pursuing *Rowbotham* orders essentially have to work for free unless the application is granted, he added. Some lawyers have found they cannot sustain their practices with legal aid funding, he added, and grow frustrated with the complexity of billing and delays in payment. As a result, they have left criminal defence work. "True counsel of choice is threatened," he said. "Regrettably many impoverished accused persons still do not qualify, as is noted in this ruling."

Nye Thomas, executive director of the Law Commission of Ontario and former director general for policy and strategic research at Legal Aid Ontario, said access to legal aid across the provinces is "inconsistent," so the federal government's recent announcement that it will provide more money for legal aid after years of stagnant funding was widely welcomed.

Ottawa has committed \$88 million over five years in the federal budget, beginning with \$9 million this fiscal year. The increase in funding will rise to an additional \$30 million a year by 2021. "I would say so far so good, but there's more work to be done," said Thomas. "There's a general consensus in Ontario that legal-aid eligibility should get to the poverty line."

David Field, CEO of Legal Aid Ontario, said he did not interpret Justice Nordheimer's decision as a criticism of the organization. "I don't think we really have any disagreement with the comments," he said. "I guess the issue is, how do we fix the problem."



“

A trial judge has jurisdiction to grant the remedy, but only if you are destitute and have a risk of jail and cannot properly defend the case without a lawyer.

Anthony Moustacalis
Criminal Lawyers' Association

Still, thanks to the largest increases in provincial funding in 25 years, he said, Legal Aid Ontario (LAO) is gradually moving its low-income threshold in line with Statistics Canada's low-income measure, but it will take 10 years to get there. LAO is also expanding its criminal law certificate coverage beyond its traditional "loss of liberty" test.

Legal Aid Ontario's total budget was \$446 million for the fiscal year ending last March. In its last two budgets, the provincial government committed itself to increasing legal aid funding by \$154 million over four years. The increased federal funding will also help, he added, but "we're not quite sure how much of it we're going to get. It's a matter of negotiation."

Partially as a result of increased legal aid funding, *Rowbotham* orders in Ontario declined to 115 in the 2015-16 fiscal year from 134 in 2014-15. The lowest number in recent years was 99 in 2012-13.

CAREERS

Eckler

CONSULTANTS + ACTUARIES

Corporate Secretary and In-House Counsel

Eckler Ltd., a leading consulting and actuarial firm with offices across Canada and the Caribbean, is looking for a Corporate Secretary and In-House Counsel to advise and guide the Board and staff on policies, laws, governance and managing risk. The "right fit" will be an individual who has a minimum of five (5) years of legal experience gained in private practice or in-house within a corporate environment (experience working on private partnerships would be desirable).

The preparation of all corporate documents, records and annual filings for Eckler Ltd. and its subsidiaries as well as preparation of all Board and Risk Management Committee meeting materials will be the priorities. Negotiation of various contracts with clients, subcontractors and suppliers and advice to all business units with respect to all legal questions will also be a major focus. Subject matter expertise on key legal topics is required in the areas of liability, indemnities, intellectual property and privacy/data protection. The ability to build strong working relationships with colleagues amongst the various lines of business is critical to success in this role.

If you are interested in learning more about this opportunity, please email your resume and cover letter to Cris Hopkinson at chopkinson@eckler.ca



www.dpcdsb.org

The Dufferin-Peel Catholic District School Board is one of the largest and most diverse school districts in Ontario with approximately 82,000 students in 149 Catholic schools throughout Mississauga, Brampton, Caledon and Orangeville. With more than 11,000 employees, we are one of the largest employers in the region.

In-House Legal Counsel: Lawyer

The Dufferin-Peel Catholic District School Board is inviting applications from well-qualified, dynamic, innovative lawyers who will provide legal services and advice, review of board policies and administrative procedures, while collaborating with a faith-based, integrated, system team. Reporting to the Director of Education, Secretary to the Board, you will manage the legal services of the Board and will advise on a range of legal matters such as employment issues, workplace health and safety, human rights, special education, student discipline, rights of non-custodial parents, student records, risk management and procurement contracts. The In-House Legal Counsel will attend all Board of Trustee Committee and Board meetings and provide parliamentary advice and support.

With a Bachelor of Laws, you have demonstrated experience in Education Law and relevant Acts, Codes and Procedures. This position will require expertise in The Education Act, Children's Law Reform Act, Municipal Freedom of Information and Protection of Privacy Act, Municipal Conflict of Interest Act, Human Rights Code, Child and Family Services Act, and School Board Governance and Parliamentary Procedures. A member in good standing in the Law Society of Upper Canada, you have a minimum of seven years' related experience. Your ability to work in a fast paced and rapidly changing environment is complemented by exceptional communication and interpersonal skills which are vital to an excellent working relationship with Board staff, trustees, external legal counsel and external organizations.

Please reply, in confidence, with supporting documentation and references by **4:00 pm on August 31, 2016** to:

Theresa Davis, General Manager of Human Resources
Dufferin-Peel Catholic District School Board
40 Matheson Blvd. West, Mississauga, ON L5R 1C5

We would like to thank all applicants; but, advise that only those under consideration will be contacted.

ALL new employees will be required to submit a current original criminal background check (CBC) including a "Vulnerable Sector Screening" (VSS) issued within 6 months prior to commencing employment with the Board. If you require a disability related accommodation in order to participate in the recruitment process, please contact us at (905) 890-0708 extension 24230 to provide your contact information. Support Services staff will contact you within 2 business days. The Dufferin-Peel Catholic District School Board is an equal opportunity employer. We will accommodate your needs under the Ontario Human Rights Code.

Marianne Mazzorato
Director of Education and Secretary to the Board

Mario Pascucci
Chair of the Board of Trustees

Extraordinary Lives Start with a Great Catholic Education