

FRONT PAGE

Staff shortages worry federal lawyers

Prosecutors warn Ot-tawa cases could be put in jeop-ardy

Jason van Rassel, Postmedia, May 12, 2015

CALGARY — Senior federal prosecutors in Alberta have been warning officials in Ottawa for three years that increasingly complex cases and a shortage of lawyers — particularly experienced ones — could place cases in jeopardy.

Emails and documents obtained by the Calgary Herald under access-to-information legislation show federal Crown solicitors working in Alberta for the Public Prosecution Service of Canada (PPSC) also privately complained about staff shortages and high workloads earlier this year even as a superior sent an email to all staff warning them to refrain from criticizing the agency in public.

In several communications with officials in Ottawa going back as far as 2012, Alberta's chief federal prosecutor warned staff was relatively inexperienced for the types of cases handled by the ser-vice, which is responsible for prosecuting matters involving federal statutes like money laundering, drug and tax cases.

“Current counsel complement at the senior level is inadequate to respond to law enforcement needs, particularly for advice and assistance in precharge case preparation,” Wes Smart wrote in a 2012-13 business plan for the Alberta office submitted to Ottawa in March 2012.

A risk assessment prepared by Smart rated the increased workload brought about by new mandatory minimum sentences as “high” — though at that time the government had allo-cated additional positions in anticipation of the new penalties.

Over the next two years, Smart and managers in Alberta repeatedly asked Ottawa, with varying success, to create new positions and fill several vacancies as de-mands increased on staff.

In January 2014, Smart submitted a business case asking to fill six permanent lawyer positions that were vacant — three each in Calgary and Edmonton.

In Calgary, Smart noted the three permanent positions he sought to fill would only partially address the problem: there were six vacancies when temporary staff were included in the staff numbers, and two more lawyers with temporary positions were scheduled to leave in the coming months.

“To continue without filling the permanent vacancies is not sustainable and will have an increasingly negative impact on the office the longer it continues,” he wrote.

Two weeks later, officials in Ottawa re-sponded to Smart’s re-quest to fill six permanent positions with approval for only two hires — one each for Calgary and Edmonton.

The union that represents federal Crown prosecutors across the country said the pattern has been a common one: to meet mandated cost-cutting targets, the federal government is not filling vacant positions or hiring more junior lawyers to fill them instead.

→ “They keep begging Ottawa for more bod-ies and they won’t fill them,” said Len MacKay, president of the Association of Justice Counsel, which represents more than 400 federal Crowns who work for the Public Prosecution Service of Canada.

MacKay said the service offices were asked to cut five per cent from their budgets in each of the past two years. Among the documents disclosed to the Herald was a Jan. 31, 2014 memo sent by Smart to superiors in Ottawa, titled Alberta Region Cost Reductions 2014-2015. The memo’s contents were blacked out, but MacKay said the cuts would mainly come from funding for staff.

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“You can only cut so much from staples and paper,” he said.

Working with fewer staff raises the risk that prosecutions could be delayed and thrown out for violating a defen-dant’s Charter right to a speedy trial. A senior lawyer can lessen that risk by being able to more quickly assess and “triage” more urgent cases, MacKay said — but a less-experienced lawyer may not be as adept at identifying high-priority files and moving them to the head of the queue.

“When you have a junior person with that kind of workload, that’s when you have risks arising,” MacKay said.

The Public Prosecution Service of Canada did not provide a response for this article.

When the Herald wrote a similar story last January about staffing in Al-berta and resulting workload issues, PPSC spokesman Dan Brien responded by saying the agency had never been forced to drop a prosecution because of staffing reasons.

The January article prompted a senior lawyer in the ser-vice’s Calgary office to write an email to his superiors taking issue with that claim.

“Just so you guys are aware, in terms of the last line of the article about never having to discontinue a prosecution for staffing reasons, it has come pretty close to that in terms of the glut of files that I have had to reassign,” Ian Fraser wrote to Smart and Shelley Tkatch, the deputy chief federal prosecutor in Alberta.

“In my opinion this is a dire situation which has to be addressed sooner or later and in that sense I’m glad the article came out.”

Smart, in turn, forwarded Fraser’s comments to his superiors in Ottawa. Smart wrote that the service’s complement in Alberta had grown over the years, to 63 prosecutors, but he noted seven vacancies on the books at the time were “quite typical” of the past few years.

“What we have done repeatedly ... is juggled assignments (prosecutors having cases collapse at the last minute so they become available to take on another that is awaiting a prosecutor to be assigned), used agents for inhouse work, used prosecutors from one office (or) the other and used people from other PPSC offices, always finding a way out of a conundrum but often at the 11th hour and under stressful conditions,” Smart wrote.

While senior lawyers in the service’s Alberta hierarchy privately backed up the news article’s portrayal of the situation, Tkatch sent an email about it to all staff in Calgary and Edmonton encouraging “open and frank communications within the office” but warning them against making any public comments about it.

“I wanted to remind you of your professional obligations under the PPSC Code of Conduct to be discreet and refrain from public criticism,” she wrote in the memo.