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Federal prosecutors feel burden of tough-on-crime agenda

JASON VAN RASSEL, CALGARY HERALD, January 19, 2015

The number of federal prosecutors working in Alberta's courts is not keeping pace with a bigger workload created by increasingly complex cases and Ottawa's tough-on-crime agenda, says the union that represents them.

→ The Association of Justice Counsel, which represents more than 400 federal Crowns who work for the Public Prosecution Service of Canada (PPSC), said Alberta is one of several regions across the country where the federal agency is not filling vacant positions as a way of trimming costs.

Although criminal courts are administrated by provincial and territorial governments, the PPSC is responsible for prosecuting matters involving federal statutes, particularly drug-related cases and the seizure of proceeds of crime connected to them.

In Alberta, there are supposed to be 58 lawyers working for the PPSC, but the Association of Justice Counsel said the actual number stands at 50.

→ "The workload is going up because of the complexity of files and the number of people doing the work is going down," said Len MacKay, the association's president.

Statistics in the PPSC's recent annual reports show the number of cases handled each year by federal prosecutors has remained steady at approximately 81,000 since 2010, as has the number of staff positions on the books.

"What happens instead is they don't fill the vacancies," MacKay said.

But the PPSC's statistics also show the average number of hours spent on each file is going up. One likely reason is that drug cases and financial crime prosecutions, by nature, are often

complex and time-consuming. At the same time, landmark rulings by the Supreme Court have increased the legal requirements on authorities in areas such as disclosing evidence to the defence.

However, MacKay and others in the legal profession point to a suite of legal reforms introduced by the federal government in recent years — particularly the elimination of conditional sentences and the imposition of mandatory minimum jail terms — as another factor increasing the burden on prosecutors.

“People facing those charges are more likely to litigate them,” said Pawel Milczarek, vice-president of the Calgary Criminal Defence Lawyers’ Association.

MacKay agreed that a defendant facing jail time is more prone to plead not guilty, necessitating a one- or two-day trial in a case that might have been settled via a plea agreement negotiated in half a day.

MacKay added he doesn’t doubt the legislative changes are aimed at cracking down on crime, but said they’re at odds with the federal government’s moves to cut costs and streamline the public service.

“It is one of the ironies of this government,” he said.

The federal government is also responsible for appointing judges to the provinces’ superior courts, and has come under fire for not expanding the number of benchers in Alberta’s Court of Queen’s Bench. Although Ottawa recently filled two vacancies in Queen’s Bench, Justice Minister Jonathan Denis has said the court’s roster — which hasn’t grown since 1996 — must increase further to accommodate Alberta’s population growth.

Milczarek said Queen’s Bench trials in Calgary are already booking into 2016 and the defence lawyers’ association said an increasing number of cases will be in jeopardy of being thrown out due to undue delays.

PPSC spokesman Dan Brien acknowledged the organization has had challenges recruiting and retaining federal Crowns — particularly in jurisdictions where their provincial counterparts are paid more — but he stressed the vacant prosecutor positions haven’t placed any cases in jeopardy due to delays.

The PPSC can temporarily shift lawyers to other regions if they’re short of manpower, said Brien, adding the agency also uses a network of private-sector lawyers who act as agents in part-time circuit courts that serve more remote communities.

“We’ve never had to discontinue a prosecution for staffing reasons,” he said.