

News**Lawyers lend a hand*****Major law firms are participating in new pro bono programs to assist litigants at the OSC and the Tax Court of Canada***

By Donalee Moulton | Oct 31, 2011 16:38

Two pilot projects have been launched to help cash-strapped Canadians appearing before the Tax Court of Canada and the Ontario Securities Commission.

Last year, 70% of individuals who appeared before the OSC were not represented by a lawyer, says Karen Manarin, the OSC's deputy director of enforcement: "That is a trend. Five years ago, most people who appeared before us had counsel."

Self-represented litigants are also a more common sight at the Tax Court of Canada. In fact, it was an offhand observation by the court's top judge that has led to the creation of one of the pilot projects, a joint initiative of Fraser Milner Casgrain LLP and Pro Bono Students Canada.

"Chief Justice Gerald Rip remarked on the increasing number of unrepresented litigants in Tax Court and said it would be wonderful to offer representation," said David Spiro, a lawyer with FMC in Toronto. "That was the light bulb that went off in my head."

Individuals without lawyers are a concern for two reasons. First, such a situation may prevent Canadians from getting the justice they deserve if they are unable to hire legal help.

"From a public-policy perspective, the administration of justice is negatively impacted by having lay people involved. There is not a balanced view," notes James Camp, an associate with law firm Gowling Lafleur Henderson LLP in Toronto and one of the creators of the Litigation Assistance Program at the OSC. "From an administrative-efficiency perspective unrepresented litigants are extremely inefficient," Camp adds. They are very costly to the system."

The Tax Court project involves FMC and six University of Toronto law students affiliated with Pro Bono Students Canada. The students, working in pairs, will contact litigants whose cases are scheduled to be heard next March and offer their legal services. Lawyers from FMC will remain in the background to provide support.

The OSC-endorsed project involves five junior securities litigators with private law firms in the Toronto area. The volunteers will offer their services to as many unrepresented individuals as possible appearing before the OSC on enforcement-related matters. Says Camp: "It is anticipated the demand will far exceed the supply."

The lawyers will provide services in key areas: pre-hearings, settlement conferences, and sanctions and cost hearings. Says Manarin: "Those are three very important areas."

Factors behind the increase in self-represented litigants include: a weak economy; reduced investment income; and increased financial strain for businesses.

Going to court without a lawyer comes with a hefty price tag. "By and large," says Camp, "litigation is too expensive for the man in the street to afford. It's problematic."

And, at the same time that bank accounts and savings have dwindled, enforcement efforts at the Canada Revenue Agency and the OSC have ramped up.

As a result, more Canadians may find themselves in legal hot water. The pilot projects are intended to make sure unrepresented litigants will benefit from the knowledge and expertise of legal counsel. The possibility of extending both pilot programs has already been anticipated. IE

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