

Justice Denied

THE OTTAWA CITIZEN

JUNE 20, 2009

Throughout much of Ontario right now, if you're charged with a serious crime and can't afford a lawyer, you won't be able to get one through legal aid. Hundreds of lawyers began a boycott in Toronto a few weeks ago, saying the fees the province pays for legal aid are too low. They're refusing to take on homicide or guns-and-gangs cases. Their colleagues in other communities, from Kingston to Thunder Bay, have joined the boycott. There is support in Ottawa for the cause and a boycott could happen here at any moment.

The provincial government must not allow this situation to continue. It is a fundamental principle of our justice system that a proper defence is available to anyone, including people with no money. The province needs the lawyers to get back to work. That doesn't mean it should give in to unreasonable demands, but it should at least start talking about solutions.

And the lawyers have a point. They argue that the fees for legal aid have only increased by 15 per cent since 1987. That has kept pace neither with inflation, nor with the salaries of Crown lawyers and judges -- both of which have increased substantially over the last decade or so.

This creates an imbalance in the justice system, because the Crown has access to much greater resources and can retain experts more easily. It might not be easy for the lawyers to convince ordinary Ontarians -- especially during a recession -- that legal-aid fees of between \$77 and \$98 an hour are too low. But the lawyers are quick to point out that those fees must cover office and research expenses and employee salaries. And the number of billable hours is capped, often at a level lower than what's actually needed to argue the case.

Lawyers in private practice are essentially business people, so the money they make must cover much more than their own wages. It takes years of expensive education to become a lawyer in the first place, and it's fair for lawyers to expect a good living at the end of it.

Still, it's also fair to ask lawyers to take on legal-aid cases for less than they would make working for clients who can pay. The traditional view of legal aid was that it was the duty of a good lawyer to give back to the community, to work for reasons other than profit. That ethical obligation should still have a place in the system today.

Ideally, the legal-aid remuneration scheme should strike a balance: the fees can be lower than private fees but should be high enough to prevent lawyers from being forced to give up legal aid entirely. The Criminal Lawyers' Association argues that many senior lawyers are walking away from legal aid because they are angry about the disparity between their fees and the norms in the rest of the legal system. That means legal aid is increasingly becoming the domain of less experienced lawyers.

A research report last year found that the lack of senior lawyers in the system means trials drag on longer, because senior lawyers would be better prepared and would work more efficiently. Long, complicated trials are costly for taxpayers. And if the best lawyers won't work on cases where the accused is poor, the risk is heightened that wealthy people will enjoy a different standard of justice.

Ontario's attorney general has acknowledged that the legal-aid system has some problems. It's time to go beyond that. The province has to get the lawyers to the table and then get them back to work.