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OPINION

Penny-ante legal aid system creates two tiers of justice

Lawyers' boycott has focused attention on chronic inequality in Ontario courts

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 PRESIDENT OF THE ONTARIO
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Ask Canadians how they see their justice system and most will say it is fair and balanced. They imagine a level playing field with a careful harmony between individual rights and state power. But the reality is dramatically different. Our justice system is in a state of dangerous imbalance. A crisis is here and no fix is on the horizon.



DEAN ROHRER/NEWSART

For the last 20 years, law-and-order thinking has animated provincial and federal policies on justice issues. Tough on crime has translated into tough on criminals and the bleeding heart lawyers who defend them. Bucket loads of money were poured into investigating and prosecuting crimes, while legal aid programs for impoverished defendants were starved.

In every region of the country, cases entering the system became bigger and more complex. Prosecutors routinely hired experts at double the money legal aid pays for defence experts. Little thought was given to the practical problem of funding only one side of a binary justice system.

In this, Ontario shows where the rest of the country is headed. Since 1987, Ontario prosecutors have won salary increases in excess of 100 per cent. But, against an overall inflation rate of 75 per cent, the Ontario legal aid tariff increased by only 15 per cent.

When lawyers complained about the disparity, the government replied that legal aid programs are even worse elsewhere in the country. When lawyers protested this was a silly argument, the government appointed fact-finders and law professors to study the issue.

When their own advisers told the government to stop begging the program, it ignored them. When lawyers asked Ontario to negotiate or submit the matter to arbitration, it refused. And so, a boycott was born.

Earlier this year, the Ontario Criminal Lawyers Association announced that senior lawyers in Toronto would no longer accept legal aid certificates in homicides and prosecutions created by the Guns & Gangs Task Force. The movement spread quickly. Soon, hundreds of lawyers across the province joined the boycott. It is now province-wide. Senior criminal lawyers in Ontario have been refusing new serious legal aid cases for four months.

I know what you're thinking. Lawyers on strike. Who's next? Dentists? Arbitrage traders?

The image of pinstriped lawyers complaining about their pay does not intuitively evoke sympathy. But the reality is much different. The lawyers who accept legal aid are practising poverty law, providing service to the poorest people in the province.

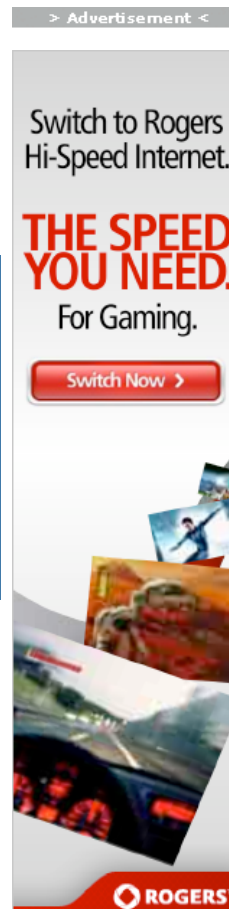
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They do not get the mind-boggling retainers that business lawyers demand. Instead, they agree to work for less than a quarter or more of what their top colleagues get in other branches of law. Lawyers doing this important work perform a service that makes the justice system fair.

Although the criminal legal aid program fills a vital gap for people struggling with poverty or unemployment, its recipients are not influential or popular. Their lawyers, caricatured as moral relativists, are regarded with equal disdain. Glib opinion-leaders like to lump defendants, their crime and the lawyers who defend them into a single "untouchable" category. For the last two decades Canadian legal aid programs have been strangled into ineffectiveness.

How do we get out of this mess? A little less cynicism would be a good start. Senior politicians have long calculated that antipathy toward lawyers makes ignoring legal aid a tolerable political risk.

Before the boycott began, insiders warned us that blowing the whistle on underfunding would be a public relations disaster. But they were wrong. Members of the popular media like defence lawyers. They understand we are indispensable to the credibility of the justice system and insurance against wrongful convictions. Apart from a few disgruntled bloggers, public support overwhelmingly favours equality.

Elected politicians have to declare themselves on access to justice for the poor. Governments that genuinely support equality must provide stable, long-term funding for legal aid programs. No waffling, half-measures or hedging will do.

Legal aid is modern social justice at its best. It is a triumph of equality when good lawyers accept such cases. It means that no matter how poor a person or how disorganized their life, a talented lawyer will speak for them.

In the legal system, at least, poverty takes a back seat. This beautiful ideal shows the rest of the world how we define justice. It's time to restore its sheen.

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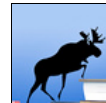
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