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Legal aid boycott grows over paltry paycheques

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Last fall, in the middle of a schizophrenic breakdown, a 21-year-old man approached a woman in the parking lot of a north Toronto supermarket and asked for directions. As she began writing out a map, he stabbed her in the neck.

Charged with attempted murder, aggravated assault and weapons charges, the man was suddenly facing the maximum penalty under the Criminal Code – life in prison.

Despite the gravity of the charges, Catherine Currie, a Toronto lawyer appointed to represent him, was allowed to spend just 15 paid hours preparing his defence – the billing restriction imposed by Ontario's embattled legal aid plan.

Strict billing caps and meagre hourly rates are fuelling a rapidly growing legal aid boycott in Ontario. It began June 1 in Toronto, where more than 300 criminal lawyers stopped accepting legal aid certificates for homicide and guns and gangs cases.

Lawyers in Kingston and northwestern Ontario joined the boycott, which in the past week spread to Barrie, Sudbury and Hamilton. That pushed the number of protesters to more than 400, nearly half of all criminal lawyers in Ontario.



COLIN MCCONNELL/TORONTO STAR

Catherine Currie, shown in her Toronto office, has been a defence lawyer for 17 years. Given her experience, she is entitled to \$96.95 an hour under Legal Aid Ontario's billing tariff. But, as she points out, most defence lawyers are also small business owners with operating expenses. Here's how her pay gets reduced: \$96.95 (hourly rate) — \$39/hr. (overhead, which includes \$1,100/month for rent and \$300 in office expenses) — \$16/hr. (\$32,000 a year, or \$16 an hour based on a 40-hour work week) — \$1/hr. (for pension, based on \$2,000 a year to an RRSP) = \$40.95 (hourly rate, if Currie doesn't work longer hours than Legal Aid billing limit)

RATES BY PROVINCE

A sampling of top hourly rates paid to private bar lawyers through legal aid.

NWT \$135 or \$805 per day

Ontario \$96.95

B.C. \$92.29 with an enhanced rate of \$125 an hour for complex cases

Defence lawyers understand their case is a tough sell, given it involves lawyers and accused criminals, two groups unlikely to attract sympathy. "Nobody cares. That's the problem," says defence lawyer Chris Kostopoulos.

One of his own cases is an example of why he doesn't represent legal aid clients at bail hearings.

Under Legal Aid Ontario rules, lawyers can be paid for no more than two hours of work on these cases, at a top rate of \$96.95 an hour. A recent non-legal-aid bail hearing required 19 hours of work for Kostopoulos, three hours of preparation and 16 hours in court. Had he taken the case on legal aid, those 19 hours would have earned him \$10.32 an hour, before expenses.

Three recent provincial reports have recommended raising legal aid rates, but Attorney General Chris Bentley recently told the Criminal Lawyers' Association board of directors that he can't commit to an increase.

Brendan Crawley, a spokesman for the attorney general's ministry, notes the McGuinty Liberals implemented a 15 per cent tariff increase that had been promised by the Conservatives in 2003, but was never funded.

"These investments don't make up for the 15 years of cuts and freezes that came before," Crawley acknowledges.

For Currie, one inescapable fact needs to be recognized: the justice system is designed to be adversarial, with trials an equally matched contest between the prosecution and the defence. Yet defence counsel are usually the lowest-paid professionals in the courtroom.

Over the past 20 years, pay for legal aid lawyers has increased 15 per cent. Crown attorneys, meanwhile, have had raises of 57 per cent in the past 10 years. Provincially appointed judges' salaries have increased 83 per cent in the past two decades.

The hourly limits mean that lawyers like Currie work many hours free.

She recently spent more than 30 hours working on behalf of another mentally ill man who was charged with a series of incidents that included stepping on his wife's toe, stealing a TTC conductor's hat and falling asleep in a drugstore. She got the most serious charge – aggravated assault – withdrawn. Her client received a conditional discharge after pleading guilty to assault.

But while she saved the system thousands of dollars in trial costs, Currie wasn't rewarded. She could bill legal aid for 8.5 hours work.

Raising the hourly rate to between \$105 and \$140 an hour, as recommended eight years ago in a report done for the province, would cost approximately \$120 million, the Criminal Lawyers' Association believes.

Patrick LeSage, former chief justice of the Superior Court of Justice, and former law professor Michael Code, recommended Ontario follow the legal aid model developed by British Columbia, which pays lawyers an enhanced fee of \$125 an hour for complex cases.

P.E.I. \$80, \$95 for murder cases

Alta. \$84

Sask. \$80

Manitoba \$80

Nfld. \$55

NOTE: In some provinces, such as Saskatchewan, most legal aid cases are handled by government staff lawyers

Although the boycott raises the spectre of accused people not getting experienced lawyers to defend them against serious charges, Crawley said the government "will do what is required to avoid social justice implications."

"Lawyers with appropriate skills are still taking cases, and Legal Aid Ontario is monitoring the situation," he told the *Star*.

Legal Aid Ontario issued 68,541 certificates last year to people charged with criminal offences, at a cost of \$103 million. Of those, 646 were for homicide cases, which accounted for \$14 million in criminal defence expenditures.

And Currie's bills? In the supermarket stabbing case, she billed legal aid for two hours of work on his bail hearing and another 15 hours to prepare for the trial, where he was found not criminally responsible due to his mental disorder.

She could also charge six hours for her time in court. The total: \$2,410.62.

Currie was permitted to bill another 12 hours for an Ontario Review Board hearing to determine if he should remain in a psychiatric hospital.

He will stay in hospital with minimum restrictions while officials work on a plan for releasing him back into the community. Currie's bill: \$1,745.

Grand total for saving someone from possible life in prison: \$4,155.62.

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