

THE GLOBE AND MAIL

The right to be defended

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The large inequities in pay under Ontario's legal-aid system deny many lawyers proper compensation and their clients the right to a fair trial. The provincial government should fix this problem.

But the dozens of defence lawyers who are boycotting legal aid by refusing to take on serious cases, particularly those involving "guns and gangs" legislation, are hurting their clients and their cause.

In the past 20 years, legal-aid rates for defence counsel have increased by 15 per cent, while Crown prosecutors have won a 57-per-cent increase in the past decade alone.

Ontario's legal-aid system has long undercompensated its lawyers. This disparity means that the best and most experienced lawyers will go elsewhere, where their skills are better recompensed; junior lawyers may be tempted to use time-consuming measures that end up costing the government more.

Last week, after another 26 lawyers - from a program for prison inmates convicted of serious crimes - walked off the job, a senior Crown official pointed out that prosecutors are able to pay experts "something like double what the defence can pay. It makes us look like we are afraid of a vigorous defence bar."

Chris Bentley, the provincial Attorney-General, was a vocal proponent of higher compensation for defence lawyers, when he was in criminal-law practice in London, Ont., in 2001.

"Defence counsel have not been treated fairly or equitably," Mr. Bentley wrote at the time. "This is not an issue that requires further study. The reasonable observer might say that the facts speak for themselves - an increase is long overdue."

Though the finances of the Ontario government have since been worsened by the recession, it needs to correct this discrepancy, so that lawyers are paid for their time in a way that values the vital work they do, and to provide everybody with equal access to counsel.

A boycott, however, is not the answer. It is unconscionable for these legal practitioners to leave their clients in the lurch. There are now hundreds of would-be clients without recourse to legal advice or representation.

Legal-aid lawyers are right that there is a serious problem, but they owe their clients and their craft more than the cold comfort of knowing they are helping bring attention to an unfair pay system.

The Ontario government owes its lawyers recognition for the often gruelling work they do. More importantly, it owes all Ontarians what inequitable funding denies them: the right to a fair trial.

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