



MANY LAW STUDENTS, like U of T's Megan Vuksic, provide legal services to the poor. But will they be able to afford to after graduation?

# DOWN BY LAW

**An underfunded public justice system means many law students will face tough choices**

**BY JEFF RYBAK** • Law today is not really one profession, but several. For most lawyers, specialization is simply inevitable. True, some general firms still exist, particularly in smaller markets, but most lawyers will spend their careers in specific practices. When they enter law school, students are not required to have a practice area in mind, and the first-year curriculum is designed to cover all of the most fundamental material. But by the start of second year, the decision looms. And increasingly, hard financial realities—not just interest or inclination—drive a student's choices about practice area.

The rising cost of legal education is well documented, and most students face significant debt upon graduation. After seven or more years of university, it's natural that they expect some payoff. For many, a certain

income level is not only desirable but a bare requirement—they need the money. We are talking, after all, about adults who range from their mid-to-late 20s to considerably older. Some already have families to support; others are eager to start. The combination of these costs and education debt is a very powerful incentive to look for jobs that will cover the bottom line.

Most people outside the profession think all lawyers are very well off. But actual earnings vary considerably. When Service Canada last collected the information in 2007—available on its Job Futures website—lawyers were earning an average of \$50,600 a year after two years of employment. More striking is the disparity between the top 20 per cent, who were earning an average of \$70,000, and the bottom 20 per cent, earning an average of \$30,800. That gap doesn't close as time goes by. In fact, it widens. Law is a profession where some do very well indeed while others toil at the margins. And it isn't simply that some lawyers are more successful than others. Practice area has an awful lot to do with it.

Just as the cost of legal education has been

climbing, funding for areas of law that rely on public dollars has been in retreat. Though legal aid systems vary from province to province, one consistent theme is inadequate public investment. British Columbia is dramatically slashing its legal aid budget. As a result, family law has been hard hit, with the elimination of full-time staff lawyers and of a major family law clinic in Vancouver. In Ontario, the criminal defence bar is boycotting the system in protest of inadequate funding, refusing to accept legal aid certificates in a small but growing number of cases.

Any student graduating into this environment must face some tough choices. Is it really worth taking up practice in an area of law starved for public investment? Is it even possible?

"The gap between commercial firms and lawyers working in legal aid family law practice is widening," says Paul Daykin, who has an established family law practice with Aaron Gordon & Daykin in Vancouver. The key, of course, is the legal aid aspect of the practice. When it comes to clients who are able to fund their own legal costs, the system

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works just fine. In theory, legal aid relies on the idea that prominent lawyers like Daykin earn good retainers from some clients and then take some legal aid cases out of obligation to the justice system. Yet his firm takes on "zero" legal aid cases, he says. Instead, lawyers at his firm take on a selection of pro bono cases to give back to the community: they find it easier to simply not charge at all than to deal with legal aid.

This state of affairs leaves legal aid cases in the hands of another class of family lawyer altogether. Younger lawyers, struggling to establish a practice, may rely substantially on these retainers. Daykin is blunt on the economics of their situation: "The kind of income they earn is going to be pretty pathetic." And inadequate income for some lawyers is not the only discouraging aspect of the situation.

Increasingly, in every field of litigation, there are not two classes of clients but three: those who can pay their own way, those who qualify for legal aid, and those caught in the middle, who can't afford to hire a lawyer but

also can't get public funding for one. In his practice, Daykin is far more likely to face a self-represented litigant on the other side of the case than he is to deal with a lawyer retained on legal aid.

## Ontario's criminal defence bar is boycotting the legal aid system, and it's got support from an unlikely source: the Crown Attorneys' Association

For everyone in the justice system, this is immensely frustrating. Not only is it inefficient, but it also threatens the integrity of the process. And lawyers, just like anyone, want to be part of a system that works.

This desire for justice on all sides is now on display in Ontario. The growing boycott of the legal aid system by the criminal defence bar has attracted support from an unlikely

source: the Ontario Crown Attorneys' Association. "It is inevitable that an inadequately funded and under-resourced criminal defence bar will struggle to attract and retain counsel with the necessary abilities to properly represent accused persons in criminal cases," wrote Thomas Hewitt, the association's president, in a public letter addressed to their habitual opponents.

Frank Addario, president of the Criminal Lawyers' Association (Ontario), describes a system on the brink of real disaster. Experienced counsel are either leaving for greener pastures or simply declining to participate in legal aid. The profession depends on the availability of articling positions under experienced lawyers, but those are drying up in criminal defence. That makes it hard to enter the field even for students who are determined to do so. And considering the current state of affairs, it's hard to imagine why many would want to.

"If you graduate law school with some idealism regarding the public service aspect of legal practice," Addario says,

"it's a terrible time to choose that path." He cites the cost of legal education as a major factor driving students away from more public-oriented careers: "It's very hard to watch your classmates make two, three, or four times

what you're making." As Canada has moved toward an American-style legal market, with high tuition and high starting salaries at top firms, some areas of law simply can't keep up.

Many students go to law school with definite ideas of how they'd like to make a difference, or at the very least

with the general sense they would like to do something worthwhile. It may not be family law or criminal defence. Similar problems exist in every field of poverty law—meaning fields where people interact with the legal system not because they want to but because they have no choice. Inevitably, many of these clients are poor and vulnerable. It is reasonable to expect lawyers entering these fields to make at least some personal sacrifice. But there must also be a limit. When the gap in income and resources becomes too wide, it threatens the balance required in an adversarial legal system, and it undermines our stated commitments regarding access to justice.

Even more than a small paycheck, that may be the greatest disappointment many law students face after graduation. The sincerely held belief that their work is important makes it easy for lawyers to absorb some cost, but it also makes it hard to see the system neglected. "It is very discouraging," says Addario. "I just don't understand the instinct to be stingy around a program that holds so much of our justice system together." For him, and the criminal defence bar he represents, this is about more than just a long-overdue raise: it's about whether the work they do is valued. That's a concern to which any lawyer, and indeed any worker, should be able to relate.

For current and future law students, questions over how and why this situation has come about are secondary to the simple reality. The income gap between lawyers working in areas of public law and those in the corporate-commercial sector has never been wider. That pits the very motives that led many people to law school in the first place against the need and desire to earn a reasonable living. For anyone faced with that choice, there may not be a single right answer. But the justice system as a whole is poorer for it. ■

**ON THE WEB:** Jeff Rybak is now in his final year of law school at the University of Toronto. Read his blog at [oncampus.macleans.ca](http://oncampus.macleans.ca).

### LAW SCHOOL: WHAT WILL IT COST?

Heading off to law school requires a big investment, as these 2009 tuition figures for first-year students show. Civil law schools offer lower fees than most of their common law counterparts. Figures listed here do not include other compulsory fees, which at some institutions can add more than \$1,000 to the bill.

#### COMMON LAW SCHOOLS

	Tuition Canadian Students	Tuition International
Alberta	\$9,797	\$27,624
UBC	\$9,937	\$23,008
Calgary	\$9,833	\$29,498
Dalhousie	\$12,515	\$20,411
Manitoba	\$8,209	\$18,731
McGill	\$1,968/\$5,501*	\$20,000
Moncton	\$4,920	\$8,949
New Brunswick	\$9,032	\$16,667
Osgoode	\$16,325	\$16,325
Ottawa	\$10,884	\$26,785
Queen's	\$12,195	\$22,635
Saskatchewan	\$7,353	\$19,118
Toronto	\$21,767	\$31,081
Victoria	\$4,089	\$10,874
Western	\$13,265	\$18,800
Windsor	\$12,462	\$21,059

#### CIVIL LAW SCHOOLS

	Tuition Canadian Students	Tuition International
Laval	\$1,968/\$5,501*	\$13,444
Montréal	\$1,968/\$5,478*	\$15,767
Ottawa	\$6,481	\$16,706
UQAM	\$1,968/\$5,501*	\$13,444
Sherbrooke	\$1,968/\$5,501*	\$13,444

\* Two figures are listed for law schools in Quebec: the first applies for residents of Quebec; the higher figure is charged for students from outside the province.