

The pay is criminal

19 of 25 local criminal lawyers join boycott over salary, leaving accused without representation

BY JANIS RAMSAY
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A Barrie man charged with murdering his estranged wife is without a defence lawyer.

Daniel Simmons, 46, was arrested June 7 and was charged with second-degree murder after Michelle Simon, 45, was found stabbed in her Mary Street apartment.

He has no representation after criminal lawyers in Ontario decided to stop taking major criminal legal aid cases, complaining of poor pay rates.

Simmons is staying at the Central North Correctional Centre in Pen-tanguishene, and his legal fate is unknown.

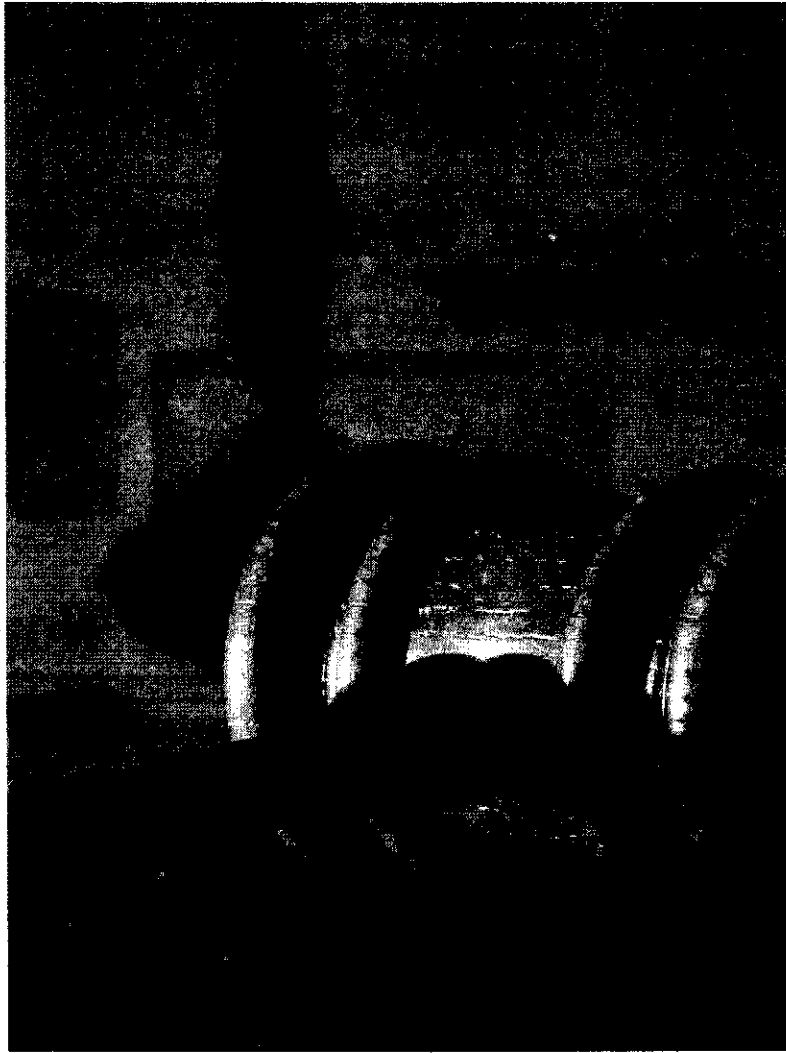
Barrie lawyer Tom Bryson is president of the Criminal Lawyers Association of Simcoe County, and said locally, there are 25 criminal lawyers. Nineteen of them have joined the boycott.

"The Criminal Lawyers Association has asked its members to boycott accepting legal aid certificates for murders, attempted murders and guns and gangs prosecutions," said Bryson.

That boycott started June 1, and also affects a man charged with attempted murder in Wasaga Beach.

The problem is the compensation for lawyers who are doing their public service.

Bryson said lawyers who accept legal aid cases know they won't earn their usual hourly rate - they are doing it as a public service - but the



compensation has been frozen for the past 20 years.

Now, criminal lawyers taking a legal aid case earn less than \$100 an hour, where their professional rate would be around \$400 an hour. Add to that the fact that they can only

bill for a maximum of 15 hours to prepare for the defence, and it makes paying their bills difficult.

Bryson gave the example of a murder case, where he could be in trial for eight weeks, only dealing with evidence. "It could be practice-

crushing."

Paying for office space, receptionists and insurance, and the cost is at best minimum wage, he said.

But on top of a lengthy trial, there's still all the work ahead of time, interviews and research, and any other preliminary appearances before the judge.

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

To ensure legal aid cases are completed efficiently, Bryson said only experienced lawyers should take on a murder case.

"Anyone with less than five years experience could make silly mistakes that waste resources and court time."

While public perception may be that someone charged with a crime is guilty, Bryson believes more in the scales of justice.

"I worked on a case where a man was trying to buy drugs, and he was attacked, and his cellphone stolen. The attacker was only wearing swim trunks and running shoes, and they spoke for a half-hour before the attack.

"He was asked to describe his attacker and never mentioned any tattoos. The police ended up charging a man with 32 tattoos, and the victim said he didn't see them."

Recent reports have called for raising aid rates

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Bryson won the case with a good defence – but it showed his client wasn't guilty of the crime.

"The truth and testing of evidence is best arrived at when each side has its own lawyer. When one side doesn't, you risk that mistakes will be made. Inequality creates a risk of a wrongful conviction.

"If there's a wrongful conviction, it's an enormous cost to the taxpayer, and a terrible cost to the victim."

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, spokesperson 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.

Bryson knows this is a difficult time to be asking for an increase in compensation, but said it's time.

"It's important when people can't generally afford a lawyer, if one is being provided, they are reasonably paid."

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.

If changes aren't made, Bryson said the boycott will grow geographically and in the range of services being refused. Right now the boycott is only in Toronto, Barrie, Sudbury and Hamilton.

Bryson said it could spread to family law in the future, and lawyers are prepared to continue this fight for six months to a year if necessary.

*-With files from
Torstar News Service*