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## Legal aid can't recruit lawyers

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Ontario legal aid officials went on a phone blitz recently, hoping to find a lawyer to represent accused double murderer Michael Durant for \$97 an hour.

After some 200 calls, they found a willing participant in Avrum Flisfeder, a Thornhill lawyer with 36 years of experience – but none defending a murder trial.

He certainly picked a challenging first case.

Durant, charged in the slayings of two Niagara-area prostitutes, was arrested after a combined police effort and the evidence includes two terabytes of electronic documents, enough to fill the hard drives of 50 laptop computers.

While his past files range from house closings to an attempted murder, Flisfeder conceded in a Welland court this week he has never had a case involving digital disclosure.

As it turns out, Flisfeder's recruitment may have been a short-lived solution to a province-wide legal aid boycott by 784 defence lawyers.

Later in the week, Durant "decided he doesn't want me representing him," Flisfeder told the *Star*, while declining further comment.

So the 36-year-old accused labourer may be rejoining dozens of people facing serious charges without a lawyer, the most tangible measure of how the boycott is affecting Ontario's justice system.

Wayne van der Meide, a legal aid official who has quietly attempted to lure lawyers to take cases by offering signing bonuses of up to \$5,000, recently estimated that 24 people charged with murder haven't found counsel to accept their legal aid certificates.

The Criminal Lawyers' Association believes the number is closer to 60.

"The public confidence in the administration of justice right now in this province is being severely shaken over this crisis in legal aid," Justice John Keast said recently while dealing with an unrepresented defendant at a dangerous offender hearing in Sault Ste. Marie.

Members of the Criminal Lawyers' Association began boycotting legal aid cases in June to protest what they believe is the inadequacy of the tariff.

This week, lawyers who represent the mentally ill at review board hearings said that as of Dec. 15, they will join the boycott.

Meanwhile the Attorney General's ministry is trying to stop judges from ordering the government to pay defence counsel more than \$97 an hour.

In at least six cases, lawyers in criminal and family law cases have asked the court to do exactly that.

Appearing before Justice Keast, Crown counsel John Zarudny argued the cap on defence fees is essential for "accountability" and to avoid a repeat of what happened in the case of Richard Wills, a former Toronto police officer convicted in 2007 of murdering his lover. The judge ordered Wills' lawyers to be paid nearly double the legal aid rate and they billed the province more than \$1 million.

But Frank Addario, head of the Criminal Lawyers' Association, said the problem in Wills' case, as Ontario's ombudsman has said, wasn't the hourly rate but a failure to scrutinize the lawyers' accounts.

"No one seriously suggests fraud is rampant," he said, "so raising the spectre of that is a slur on the criminal bar."

For the most part, the province has been unable to hold the line. In five of the cases, judges have ordered lawyers be paid from \$110 to \$275 an hour.

The exception was for Durant, scheduled to stand trial Jan. 5 for first-degree murder in the deaths of Diane Dimitri, 32, whose body was found in a Welland ditch in 2003, and Cassey Chichocki, 22, an exotic dancer whose body was found in 2006 near the Niagara Gorge.

He was issued a legal aid certificate in 2006. After his first lawyer withdrew, Durant indicated he wished to hire Toronto lawyer Michael Lacy, who is willing to take the case, but not at legal aid rates.

Lacy and co-counsel Joe Wilkinson are seeking \$170 an hour.

At a hearing last month, Superior Court Justice James Ramsay called that rate "a bargain" but opted in the end to give Flisfeder a chance.

But he left the door open to reconsider if it didn't work out, which now seems a distinct possibility.