

Lawyers throw weight behind legal aid boycott

Group says raising legal aid rate makes business sense because it will attract experienced lawyers and improve efficiency of system

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TRACEY TYLER

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An influential trial lawyers' association – which includes many of Canada's top litigators – has thrown its support behind Toronto defence lawyers who are boycotting legal aid cases.

The citizens of Ontario can no longer afford the cost of a legal aid system that pays so poorly only the least-experienced lawyers are willing to accept cases, said Marie Henein, vice-president of The Advocates' Society.

It creates too many inefficiencies in the justice system, she said.

"The adage, which applies to this market as well, is you get what you pay for," Henein told the *Toronto Star* today.

"What is happening is the lawyers who are being driven out are the people who are able to negotiate resolutions (to cases before a trial) and have the presence and seniority to manage clients and the ability to streamline the process," she said.

Raising the legal aid tariff makes good business sense because it will attract the most experienced lawyers back into doing the work, argues the society, a broad-based organization that includes family and immigration lawyers as well as civil litigators.

Criminal lawyers launched their boycott June 1 to protest the

provincial government's refusal to raise the tariff, which currently pays \$77 to \$98 an hour depending on their experience level, with caps on the number of hours paid.

The boycott, which involves lawyers with more than five years experience, applies to all homicide and gangs and guns cases.

Since the late 1980s, the government has increased the hourly rate by 15 per cent, well below the rise in the cost of living.

Three reports for the provincial government in the past year have recommended the tariff be boosted.

Last November, the authors of one report – Patrick LeSage, former chief justice of Ontario's Superior Court of Justice, and former law professor Michael Code, who was recently appointed a judge – said raising the tariff to levels that would bring seasoned lawyers back to legal aid work is a solution to runaway trials.

Between 1999 and 2007, there was a 15 per cent decline in the number of senior lawyers taking on these cases.

Yet during their research, LeSage and Code noted in their report, senior police officers, Crown lawyers and judges "forcefully submitted that it is much better to conduct a long complex trial with one of the leading members of the bar because they will generally focus on the real issues in the case, will consistently prepare in advance and will have no reason to unduly prolong the case."

"While you pay more on an hourly basis, in the end, when you talk about the overall cost of delays to the system, including court costs and the cost of a judge, there is a cost saving," Henein said.

Code and LeSage recommended that Ontario follow the model developed by the Legal Services Society in British Columbia, which pays \$125 an hour for particularly complex cases known as "enhanced fee cases" — considerably higher than the top hourly rate of \$92.29.

The B.C. legal aid plan also carefully screens lawyers who are eligible for the enhanced fees and a panel of three senior lawyers must determine if the case is of sufficient length and complexity to merit the higher rate.

Attorney General Chris Bentley has offered no substantial response to

the boycott, only repeating previous assurances that he wants to move the legal aid system "to a better place."

He told the Star earlier this month he was concerned the boycott might backfire, but declined to elaborate.

Henein said the time and cost savings that would result from raising the tariff would fit well with other efforts Bentley now has underway to improve the efficiency of the criminal justice system, which he has called his "Justice on Target" initiative.