

Opinion: Quebec legal aid needs a major overhaul

Everyone charged with a crime deserves a proper defence, but the current system incentivizes guilty pleas from our most marginalized citizens.

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“If Quebecers believe that everyone charged with committing a crime, regardless of financial circumstance, deserves a fair day in court, this must include being represented by a properly funded lawyer who will provide a vigorous defence,”
Ralph Mastromonaco writes.

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The Quebec Legal Aid Act was adopted in 1972 during an era when government was seriously committed to bettering the lives of the less advantaged.

Since then, our legal aid regime has become obsolete and unjust due to political complacency and chronic underfunding.

This is to the detriment of some of our society’s most marginalized citizens. Defining legal aid clients as “poor” is inadequate. Most people are poor for a reason. Indigenous intergenerational trauma, systemic racism, depression and other mental health issues, struggles with alcoholism or substance abuse, medical challenges and physical limitations, learning disabilities or illiteracy that compromise earning potential — many things can make you poor, not all of them within your control.

Quebec’s mixed legal aid regime gives those eligible a choice of being represented either by a government-employed lawyer or a private-practice lawyer who is paid by the government according a set fee schedule. Private-practice lawyers account for 50 per cent, and in some years up to 60 per cent, of the total number of legal aid mandates issued for criminal matters.

In 1972, Quebec funded the defence against any criminal accusation whether prosecuted by summary procedure or as an indictable offence, correctly believing that all criminal charges are serious. A conviction in either case generates a criminal record, the stigma of which carries life-altering consequences.

In the 1990s, governments walked back their promise to the underprivileged. Coverage for criminal infractions prosecuted by summary procedure was abolished unless an accused could prove that a conviction would result in incarceration or job loss. Our federal government abandoned the vulnerable by cutting its share of the legal aid funding it had been providing to provinces from approximately 50 per cent to what soon became and remains to this day to be approximately 14 per cent. Successive Quebec governments have done nothing to reverse this significant cut. Advocating for legal aid pays no political dividend.

Quebec's block fee model pays lawyers a total of \$400 for summary cases and \$600 for indictable cases. Moreover, the fee is the same regardless of whether the case is brought to closure by a plea agreement or a judgment rendered after a trial.

The legal aid fees paid to lawyers are grossly inadequate, which is why many of us rarely take legal aid cases.

But that's not the most important issue here. The more serious problem with Quebec's block fee model is its impact on the right of the marginalized accused to objective representation, to a robust defence.

The Quebec legal aid regime clearly incentivizes guilty pleas.

The block fee is earned more quickly and with far less effort if the legal aid client pleads guilty. This regime is lucrative for lawyers who generate a high volume of clients who plead guilty. It is far from certain that every legal aid client who pleads guilty in Quebec does so because the file presents charter compliant, compelling evidence of guilt. They may very well be pleading guilty to crimes they have not committed or may have an arguable defence that is not being brought to trial. This is unacceptable.

What is required is transformational change, not adjustments to a fundamentally flawed regime. The block fee system must be abandoned. We must reimagine and reinvent legal aid.

Compared to other provinces, Quebec legal aid is a national embarrassment. Eight provinces operate legal aid systems that pay lawyers on an hourly basis, reasonably capping the number of hours that lawyers can charge. Ontario's hourly system pays lawyers approximately four times what Quebec pays.

The legal aid client could, one day, be you or someone you love. If Quebecers believe that everyone charged with committing a crime, regardless of financial circumstance, deserves a fair day in court, this must include being represented by a properly funded lawyer who will provide a vigorous defence.

There but for the grace of God go I.

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