

Lawyers are lobbying for a better legal aid system

Many in public practice say the integrity of the justice system is being compromised

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Blue circles have been making an appearance at the Montreal courthouse in recent weeks, discreetly pinned to the black togues of some defence lawyers.



If the red square was the ubiquitous symbol of protest worn by students during the Printemps Érablé of 2012, the blue dots signal a growing push to radically overhaul Quebec's twotier legal aid system. Lawyers in public practice who take on legal aid cases say the program is broken and the integrity of the entire justice system is being compromised.

"Today, I call legal aid inadequate, inefficient and inequitable," said Ralph Mastromonaco, one of those leading the charge. On Tuesday, a coalition representing thousands of lawyers from across Quebec called on Justice Minister Sonia Lebel to commit to major reforms. The lawyers have the backing of the three opposition parties in the National Assembly.

About half of legal aid cases in Quebec are handled by lawyers who work for the legal aid program exclusively and are paid a salary by the government. The other half are done by lawyers in private practice who receive a premium from the public purse to represent clients below a certain income level. The main problem is that the independent lawyers who take legal aid files receive a lump sum based on the type of case, which can include everything from criminal to immigration law. For so-called lesser criminal offences, the maximum amount a defence lawyer gets is \$330.

For more serious charges it's \$550. That's not per hour — that's in total. And it's the same amount whether the client pleads guilty or goes to trial (with notable exceptions for murder cases and megatrials, where more funds are available). Mylène Lemieux, the vice-president of the Jeune Barreau de Montréal, said the current system doesn't take into account the actual work that goes into a case.

In family law, for instance, negotiations leading to an amicable settlement between divorcing spouses are not covered — even if that is desirable to save valuable court time and resources. In criminal cases, there is no budget for preparation, such as poring over disclosure, interviewing witnesses, drafting motions, making lists of questions and studying jurisprudence. Often the lawyers don't get paid until the file is closed. Other times they are never reimbursed for administrative fees they pay on behalf of their clients.

“Some of these cases can last years,” Lemieux said. “This is putting enormous financial strain on lawyers.”

Given lawyers typically charge anywhere from \$150 to \$500 per hour, this huge chasm discourages many practitioners, especially experienced ones, from taking on more complex cases or accepting legal aid mandates in the first place.

“At this point if I do legal aid, I consider it pro bono,” Mastromonaco said, which is something he doesn't do very often any more. “This is not a salary dispute. This is bigger than that.”

The risk is that accused persons may not have access to the full and fair defence the legal aid system is supposed to provide, said Félix-antoine Doyon, another lawyer. He represented Michée Roy, who was charged with killing his infant son in a suspected case of shaken baby syndrome in 2015. Roy was initially found guilty at trial and sentenced to 12 years in prison.

Doyon said it was difficult to find an expert to examine the Crown's medical evidence on legal aid's shoestring budget. However, Doyon later found an Ontario pathologist who agreed to review a sample of the child's brain pro bono. Doyon managed to convince the Quebec Court of Appeal to consider new evidence, which is extremely rare, and it subsequently ordered a new trial.

But with the case headed back to court, Doyon's client was denied sufficient legal aid to properly fund his defence once again. So fed up, Doyon has now launched a grenade. Not only is he appealing the refusal of additional funds, he is demanding that the entire legal aid system for lawyers in private practice be declared null and void.

“Since I filed my motion, the state has magically decided to allot resources to my client,” Doyon said in an interview. “He's now benefiting from a part of the law ... that allows a budget to prepare a file. It's the part of the law that applies to megatrials.”

But Doyon is not dropping the challenge and a number of associations are now seeking to join the battle. What's at stake is summed up in the first line of his motion: “The protection of the public and the honour of the profession of advocate have been put in peril.”

Protecting the rights of accused is never as popular as getting tough on crime. For too long, governments — both provincial and federal — have gotten away with ignoring the principles on which our justice system is based for both political and financial reasons.

But the very foundation of our free and democratic society depends on the right to a fair trial. And that right stems from having access to good representation and being able to mount a vigorous defence. If only the wealthy can afford a lawyer or to fight charges at trial, then the rights of everyone else are meaningless.