

# CRIMINAL BAR ASSOCIATION OF NEW ZEALAND INC.

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18 March 2024

To The Honourable Paul Goldsmith, Minister of Justice,

## **Re: Legal Aid and Duty Lawyer Rates**

A healthy criminal defence bar is vital to any democracy. Defence lawyers assist defendants who lack the resources the State can bring to bear in a prosecution. They also act as a check on the State, ensuring that unlawful or unjust actions by law enforcement or the Courts are made known and corrected. The complexity of the law and its procedures is such that few defendants can effectively defend themselves.

We are regularly told that the justice system is stretched to capacity. Recently, you told the New Zealand Herald that reducing court delays is a key priority for your Government. However, the causes and solutions you identified ignored one of the most significant factors of all, namely the shrinking of the criminal defence bar. A large number of defendants before the Courts in New Zealand obtain a grant of legal aid. Most cannot afford to pay a lawyer privately. Criminal defence lawyers assist the Government in meeting its obligations under the International Covenant on Civil and Political Rights to provide those who cannot afford a lawyer with a defence. This is a fundamental obligation in a free society. In New Zealand, this is carried out through the provision of grants of legal aid to qualifying defendants, as well as the duty lawyer scheme at Courthouses up and down the country.

However, over the last 30 years or more, multiple Governments have refused to fund the legal aid and duty lawyer schemes appropriately. Since 1999, the Government has increased the legal aid guideline hourly rates three times and reduced them twice. They have changed the way that providers of criminal legal aid were paid, in a way that was effectively a third reduction in remuneration.

The duty lawyer rate has only seen two increases in the last 25 years.

None of the increases even attempted to keep up with inflation. No other profession in New Zealand has had to endure a total and consistent failure to adjust

remuneration despite the complexities and expectations of the job increasing. The New Zealand population has grown and more and more is expected of defence lawyers. The cumulative effect of inflation diminishes the value of legal aid and duty lawyer rates, and we are seeing the consequences.

When considering why there are significant backlogs, we see the Ministry of Justice and other stakeholders suggest that we need more Judges, more funding for the Police and prosecution services, or to get tougher on criminals and defence lawyers 'gaming the system'. At the same time, the one issue that has a huge bearing on all of the issues that are faced in the justice system is completely ignored.

The criminal defence bar is in a state of crisis.

We are facing a crisis in that we have a diminishing defence bar. In 2001, with a New Zealand population of 3.9 million people, the Ministry of Justice could call upon about 1000 providers of criminal legal aid. That was about 11% of the profession, at the time about 9000 lawyers. Twenty-one years later, in 2022, the number of criminal legal aid providers was about 1285, an increase of 29%. The population has grown by 33%.

It must be noted, also, that in any one year, only about 75% of providers will consistently accept criminal legal aid work. That means that the bulk of the criminal legal aid work in New Zealand is being undertaken by about 1000 lawyers, in a country that has seen its population grow by over one-third, and the size of the legal profession by almost 80%. Effectively, the criminal defence bar is now just 6% of the legal profession in New Zealand.

The resulting dearth of legal aid providers in some areas results in greater cost being incurred by legal aid – through payment of lawyers to travel extensive distances (often repeatedly) and to be accommodated. Note this particularly effects the regions.

But that only tells a part of the story. The duty lawyer scheme is in even more dire straits, having been underfunded for longer.

In New Zealand, the number of duty lawyers has decreased, even as the number of lawyers has gone up. In 2008, there were just over 1000 approved duty lawyers in New Zealand. In 2022, that number was 970. Between those years the number of lawyers in the country rose by about 60%. The effective percentage of approved duty lawyers dropped from 10% to 6% of the legal profession.

There is also an unseen discrepancy in those numbers. In 2022, it appears that the number of lawyers actually on duty lawyer rosters came in at about 550. There were

about 325 on the 15 rosters where the Public Defence Service has a presence and 225 for the rest of the country.

The problem is simple. The defence bar is overworked and ageing. Outside of the Crown and the PDS, there is no focus on bringing new lawyers to the defence bar. We know that a large number of those at the defence bar do exceptionally long hours at rates of remuneration for which most of the legal profession refuses to work. The bar is not replacing itself sufficiently to meet the demands of a growing population and a more demanding justice system.

It is easy to see why. Since 1999, the guideline hourly rates for legal aid providers have increased by about 21%, while wage inflation has been 129%. A significant portion of the legal aid increase came just last year. Since 1995, duty lawyer rates have increased by about 29%. At the same time, wage inflation was 171%. As noted, those increases don't take into account changes to the fee structure in 2011 that were, in themselves, cuts. For some fees, providers now earn roughly the same in dollar amounts as they did in 2000.

In that same period, other Government-funded professions have seen significant increases in their remuneration. Crown guideline hourly rates have received regular inflation adjustments.

Having so much of the work done by so few means that all defence lawyers are overworked. The courts demand that they comply with ever-shortening timetables to meet Ministry of Justice expectations. It is in the interests of justice for matters to be resolved quickly. However, the effect of these demands on a relatively fixed number of lawyers is that the defence bar works longer hours. That has the concomitant flow-on effect on work/life balance, family life, and mental health. It also has significant ramifications for access to justice.

The New Zealand Government is using the strong ethical and social conscience of the defence bar, as well as their firm commitment to providing access to justice, against them. In effect, the Government is expecting defence lawyers to fund significant parts of their client's defence themselves. Guideline hourly rates are now often only one-third of private rates, and sometimes below a quarter in some areas. This is not sustainable.

The Criminal Bar Association is concerned that the present situation is taking an unwarranted toll on the lives of the criminal defence bar. Even more worrying, without a significant increase in funding we cannot see the defence bar, in its present form, continuing. Junior lawyers are already avoiding or being prohibited from undertaking criminal legal aid or duty lawyer work. The criminal justice system

relies inordinately on an ageing defence bar that is losing the appetite to continue in these circumstances.

It is clear that we need more defence lawyers, and we need them urgently. We also need those lawyers who are already providers to remain. To achieve those goals, we call upon the government to adopt the following measures in time for the 2024 budget:

1. An increase of the 1999 GHR and Duty Lawyer rates to their 2024 equivalent on a wage inflation-adjusted basis.
2. An increase of all criminal fixed fees on the same basis, using a PAL 1 time calculation for the adjustment.
3. A commitment to inflation-adjust all fees every second year in accordance with the previous two years wage inflation.
4. Matching all disbursement amounts to those paid to the Crown as set out in the Crown Solicitor's regulations, to be increased whenever the Crown rates are increased.
5. Automatic approval for junior counsel on all Crown matters (Schedules D and higher).

The Criminal Bar Association acknowledges that the present financial position of the country is not good. However, this will not wait. Had rates been increased appropriately in times of surplus this call would not have to be made. However, they were not.

Accompanying this letter is an appendix showing the guideline hourly rates and duty lawyer rates for 1999 and 2000 respectively. When we compare those rates from almost 25 years ago to the present ones, it is clearly obvious that the fees have stagnated badly. We also include what the rates would be if wage inflation was taken into account. It is those fees that we as an Association demand the Government implement immediately.

These are the minimum requirements that we see necessary to address significant issues in the criminal justice system.

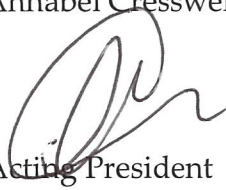
There is no more time for discussion; we call upon the Government to act now.

We extend an invitation for you to urgently meet with our Association to discuss the contents of this letter and the immediate issues facing the criminal defence bar.

We look forward to hearing from you.

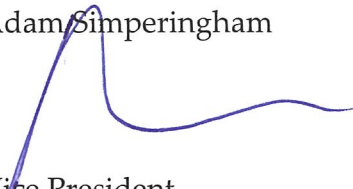
Yours faithfully

Annabel Cresswell



Acting President  
Criminal Bar Association

Adam Simperingham



Vice President  
Criminal Bar Association

# Appendix

Table 1: PAL 1 hourly rates

	1999	2024	Claimed
	\$	\$	\$
1-4 years	84	103	197.85
4-9 years	89	108	209.63
9+ years	98	119	230.83

Table 1: PAL 2 hourly rates

	1999	2024	Claimed
	\$	\$	\$
1-4 years	89	108	209.63
5-9 years	111	134	261.45
9+ years	116	139	273.22

Table 1: PAL 3 hourly rates

	1999	2024	Claimed
	\$	\$	\$
1-4 years	107	130	252.02
5-9 years	116	139	273.22
9+ years	124	159	292.07

Table 1: PAL 4 hourly rates

	1999	2024	Claimed
	\$	\$	\$
1-4 years	120	146	282.64
5-9 years	133	161	313.26
9+ years	147	178	346.24

Table 1: Duty lawyer hourly rates

	1999	2024	Claimed
	\$	\$	\$
1-4 years	80	103	188.43
5-9 years	80	103	188.43
9+ years	80	103	188.43