

Raise legal aid rates, says report

Law prof says lawyers should be getting paid
\$110 an hour

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Lawyers who accept legal aid certificates got some more ammunition in their battle for higher rates in Prof. Michael Trebilcock's review of the Ontario system.

The University of Toronto Faculty of Law professor recommends the province create "initial equilibrium" in the legal aid tariff by raising the rate to the range of \$110 an hour.

Anything less than that, says Trebilcock, "seriously risks further attenuating the commitment of the private bar to the legal aid system and will exacerbate the unfairnesses and inefficiencies in the existing tariff structure."

He concedes that amount would disappoint many in the system, noting the previous Holden-Kaufman task force recommended a 2007 equivalent of \$120-\$160 per hour. Lawyers in the system currently get from \$73 to \$92 an hour.



Chris Bentley

Trebilcock also notes more should be done to make legal aid available to the middle class.

Ontario Attorney General Chris Bentley tells Law Times he's "determined to get to a better place with legal aid," and adds the report will aid that effort.

"It's very helpful having that advice and having that review," he says.

"Prof. Trebilcock makes the point, about 12 years before we became the government were very lean years, and often saw cutbacks. We're determined to get to a better place. It's not going to happen overnight."

Bentley wouldn't say if the government is actually considering an increase to the legal aid tariff.

"What I want to do is get to a better place on legal aid," he says. "What that looks like, what form that takes, we haven't come to those conclusions."

Randall Bocock, chairman of the County and District Law Presidents' Association, says the group is "very hopeful" Bentley will accept Trebilcock's recommendation to raise the tariff. He notes that Bentley previously worked as a criminal lawyer on many legal aid cases. Bentley also served as the first chairman of Neighbourhood Legal Services (London & Middlesex), a clinic set up for low-income clients.

"If any attorney general is going to look at the issue of legal aid with a knowledgeable eye, it would be the present attorney general," says Bocock.

“It’s not that the tariff rate is an issue. The tariff rate is the issue,” in terms of an exodus of lawyers from legal aid cases, says Bocoock, adding that the current rate is 25 per cent less than market value.

“If that issue is addressed, it will ease the strain on accessibility, access to justice, and the number of lawyers who take legal aid,” he says.

Overall, Trebilcock says seven “key themes” arose during his review of the legal aid system:

- Legal aid tariffs need to be raised immediately and substantially, as do salaries for staff lawyers in clinics and the duty counsel system.
- Management of the legal aid system must be considered within an overall framework of reform in the justice system.
- Financial eligibility criteria must be “significantly raised” to better recognize users’ needs.
- Some level of legal aid services should be available to all Ontarians “on a non-means-tested basis.”
- Legal Aid Ontario must find better ways of integrating services and get rid of its “silo approach.”
- To achieve these improvements, LAO needs to get more innovative, possibly through the use of electronic information systems and hotlines.
- Apart from a commitment from LAO to improve its innovative approach to problems, notes the report, the improvements can’t happen “without a substantial infusion of additional financial resources into a system that has been chronically underfunded for decades and which compromises our commitment to the ideals of access to justice and the rule of law”

Trebilcock, who reviewed the system from 1999 on, says in the report that the percentage of Ontarians eligible for legal aid has shrunk. That’s shut out many lower- and middle-income earners who earn too much to qualify, but too little to pay hefty legal fees.

While conceding “it is also now clear that there is no silver bullet, no previously unimagined idea that will reveal the best, most efficient, and most cost-effective means of delivering legal aid in all contexts,” Trebilcock recommends a number of ways for the province to improve the system.

On top of increasing the use of staff lawyers as duty counsel and expanding the use of paralegals, he points to private insurance markets as a viable option for coverage of legal expenses, especially in family law and civil matters.

“Prepaid legal plans are not a new concept in Ontario,” says Trebilcock. “They were considered and endorsed by the Law Society of Upper Canada in 1993, but have yet to make their way into the mainstream in Ontario. The Law Society of Upper Canada and LAO should accord a high priority to promoting the role of legal insurance in Ontario.”

In regards to long-term solutions for the legal aid tariff, Trebilcock recommends LAO and the Ministry of the Attorney General commit to a “fundamental review” every three years. The

plan would be to name an individual to “undertake quantitative analyses with an agreed set of comparators.”

Ontario Bar Association president Greg Goulin notes the many initiatives underway at the AG’s office — the Justice on Target program, the Civil Justice Reform program, the Code and LeSage reviews of complex and criminal cases, the Trebilcock report, and a review of insurance law in the province.

Goulin says Bentley “is doing a lot to try to figure out what’s wrong. But sooner or later you’ve got to stop looking at it and start doing something. You’ve got to start throwing money at it. I’m not talking about throwing money at it like you throw fertilizer at vegetables,” he says.

“The point is that the government has to start investing in justice. If people don’t have access to justice, they don’t have respect for the rule of law. And then they start taking the law into their own hands.”

Trebilcock’s full legal aid report is available at:

www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock/.