

April 17, 2009

Honourable Chris Bentley
Attorney General for Ontario
McMurty-Scott Building
720 Bay Street, 11th Floor,
Toronto, Ontario
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Dear Mr. Attorney:

I am writing to outline the position of the Criminal Lawyers' Association concerning access to justice under the existing legal aid program.

As you know, your Ministry commissioned three reports in the last three years on different justice issues: the "Code-Lesage Report"; the "Goudge Inquiry Report" and the "Trebilcock Report". Each concluded that something must be done to improve the legal aid program. Code and Lesage describe legal aid underfunding as a key source of dysfunction in Ontario's justice system. Professor Trebilcock described a "palpable anger" in the defence bar about the inertia in improving the tariff. The urgency of the problem is apparent to all participants in the system. Judges, Crown counsel and the police all recognize the compelling need for a substantial improvement to the tariff.

Lawyers who accept legal aid certificates do so because they want to represent people regardless of their income or economic station. This is a liberal ideal and we adhere to it. But, every lawyer who represents legally-aided clients has an office to run and employees to pay. We view an improvement to the legal aid tariff as an acknowledgment that the public, speaking through its government, understands this.

Ontario has recognized the important contribution that Ontario Court judges make to the administration of justice by giving them an 83% increase in their compensation between 1997 and 2007. Ontario has recognized the important contribution of Crown lawyers in Ontario by giving them a 57% increase in compensation between 1997 and 2007.

Yet lawyers acting for the poor who are caught up in the legal system have been given only a 15% increase since 1987 (against a CPI increase of 75%). This disparity is not lost on defence counsel. It is the reason many senior counsel have walked away from the program. It is also the source of the palpable anger described by Professor Trebilcock.

The legal aid program has only been able to operate for the last two decades through the donated services of defence counsel. We have patiently explained to one Attorney General after another that the tariff requires an equilibrium adjustment and an ongoing review mechanism to fix the problem. (Professor Trebilcock agreed, and recommended this). Yet, no Attorney General in the past twenty years, yourself included, has been willing to speak publicly about the inadequacy of the hourly rates. That reluctance means that the person who should be the principal advocate for balance in the system has been silent.

There is no sound alternative but to fund the independent bar through the certificate program. The Criminal Law Office experiment has been shown to be an expensive alternative to the certificate system. A public defender system would be equally or more expensive because public defenders would expect to be paid at the Crown salary scale.

Since November 2007, you and I have had several discussions about this issue. I acknowledge that you have listened carefully to my concerns and expressed a wish to “get legal aid to a better place”. In our many discussions you have made no promises or commitments about how that is to be done. Throughout this period, I have been working with you on behalf of the CLA in an attempt to maintain stability with the primary service providers of Ontario’s legal aid program. Sixteen months later, I am unable to report any progress to my Board and to my members. On the contrary, I am compelled to report that my expectation that real progress would be made as a result of working together has not been met.

I am aware that a global financial crisis is occurring and that it has created enormous upheaval in the Ontario economy. I am also aware that money is being dedicated to maintain existing social programs. Legal aid is one of these vital social programs.

In view of these realities, I have identified a number of measures that could be taken by the Ministry of the Attorney General, LAO, and the police to address the tariff in a revenue-neutral way. The overall cost to

the justice system of raising the tariff would be insubstantial because money allocated to the legal aid program can be saved in other areas. I have provided these suggestions to you in a memo that I prepared for my Board. During our meeting in December, I expressed my willingness to begin developing proposals with your staff immediately. I have also provided you with a memo outlining the business case for reducing delay and improving the legal aid program. I am aware that other ideas may be put forward. The CLA is willing to consider any reasonable proposal that redirects funds without compromising access to justice. However, we think the time for concrete proposals is immediate.

For the reasons I have described, it is important that we work together immediately to improve access to justice and the legal aid program. Criminal lawyers are extremely impatient with the lack of meaningful progress on this issue in the past 20 years. We no longer equate bland, general assurances to improve the legal aid program with concrete undertakings. We seek the latter because the former has stalled a remedy beyond a tolerable length. The outcome that we seek is a balanced justice system that achieves reliable, efficient results in cases brought before it.

I will be meeting with my Board on May 30, 2009. I will be obliged to report concerning the progress that has or has not been made on this issue. It would be helpful to hear from you before then.

Yours very truly,

Frank Addario
President
Criminal Lawyers' Association