



The Law Society of
Upper Canada

Barreau
du Haut-Canada

legal aid Bulletin

October 1995, No 104

Living to the MOU: Reducing costs for certificates

As we address ways to alleviate current cashflow problems, the Law Society realizes the long-term stability of the Plan rests with our ability to manage within the reduced and fixed funding levels provided by the MOU. The Government of Ontario has made it very clear that it will not provide any additional funds beyond the MOU for the provision of legal aid services in Ontario.

Living within the MOU will

be difficult. Consider that actual expenditures for certificates must be reduced from the \$263.4 million spent in 1994/95 to \$158.9 million allocated for certificates in 1998/99, the final year of the MOU. This amounts to approximately a \$100-million reduction in expenditures for certificates.

To meet these reductions, it is important that we continue to work toward implementing cost-saving measures that eliminate the likeli-

hood of facing similar shortfalls in the next three years. This process is a continuation of the exercise initiated last spring by the Legal Aid Committee of the Law Society to give the Plan greater financial predictability.

Cost-saving measures to be addressed at November Convocation

With the cost of accounts and the number of accounts exceeding projections for the first year of the MOU, it is recognized that significant savings must be realized if the Plan is to function within the funding levels outlined. This requires further cost-saving measures. While annual savings for measures approved in August amount to \$40 million, the Plan is still short of the annual savings necessary to meet the reduced funding levels.

The Legal Aid Committee will bring forward another list of measures to November Convocation for approval. These measures may include changes to the tariffs, further changes to financial eligibility criteria, improved cost recovery systems, contracting with lawyers for the provision of specific services at fixed rates, and eliminating COMSOC-initiated applications from coverage.

Adjustments to the graduated fee income deduction system

The dollar level at which the percentage deductions in the Graduated Fee Income Deduction System take effect have been adjusted upwards in accordance with the rate of inflation. For 1995-96, the new levels are as follows:

FEES PAID	REDUCTION %	MAX. DEDUCTION
Up to \$179,375		
Over \$179,375 and up to \$205,000	3	\$768.75
Over \$205,000 and up to \$230,630	3	\$768.75
Over \$230,630 and up to \$281,875	5	\$2,562.50
Over \$281,875 and up to \$307,500	10	\$2,562.50
Over \$307,500 and up to \$333,125	20	\$5,125.00
Over \$333,125 and up to \$358,750	30	\$7,687.50
Over \$358,750	60	

Basic tier level takes effect at \$179,375, tier level 1 takes effect at \$205,000 and tier level 2 takes effect at \$230,625. Only criminal billings are affected until the service provider reaches total billings of \$281,875. All service provider are affected thereafter.

Phase II of cost-saving measures

On August 29, a special Convocation on Legal Aid was held to expedite the approval of Phase I of measures that would begin to reduce costs for the Plan. At that time, further directions were given to the Legal Aid Committee to return to Convocation in October with a workplan addressing Phase II of measures to save costs and ensure financial predictability.

Below is a summary of the measures from Phase II approved by October Convocation, along with the implementation date for each measure. More details are being provided to the area offices and the bar as they are finalized.

FAMILY LAW

1. Enhanced Use of Duty Counsel

Implementation Date: January, 1996

In matters where both husband and wife are unrepresented at early attendances in Provincial and Family Court, duty counsel might only assist one spouse. The resulting disparity in representation might prompt the issuance of a legal aid certificate to the unrepresented spouse, which then would be matched with another certificate to the other spouse in the interests of fairness. In Peterborough and in Toronto a system of having two duty counsel in Family Court, so that both parties can be assisted, has been tried with success. The savings from this measure are long term, as they result from the non-issuance of certificates.

To be successful, duty counsel must be aggressive in providing the highest level of representation appropriate or possible. By acting proactively, duty counsel will assist in reducing the number of certificates issued.

2. Involve Plan Officials More Actively at the Front End of Family Law Cases

Implementation Date: January, 1996

When the issue of involving Plan officials in variation applications was canvassed in the consultations, it was suggested that this approach could be useful in the full range of family law matters where costs escalate once the parties become entrenched in their positions with a legal aid certificate on both sides.

The Plan can usefully be involved in the early stages of cases where both parties have legal aid certificates. Area Directors should become more involved before authorization is granted for litigation to be commenced. Policies adopted will be flexible enough to ensure appropriate treatment for cases involving assault or sexual abuse of children.

3. Divorces

Implementation Date: November, 1995

The Plan will no longer pay disbursements for divorces for applicants in receipt of Family Benefits or General Welfare. Disbursements will only be paid in exceptional circumstances. This measure was widely supported during the consultations.

CRIMINAL LAW

4. Enhanced Use of Duty Counsel

Implementation Date: January, 1996

In some areas of the province duty counsel do not undertake the services that are expected of them. This is particularly true in respect to bail hearings and guilty pleas relating to minor matters. Referrals to private lawyers to act on certificates happen too frequently and are often not required. Efforts by Plan officials to improve duty counsel performance have achieved only limited success. In these situations, staff duty counsel will be used and changes in patterns of issuing certificates monitored.

To be successful, duty counsel must be aggressive in providing the highest level of representation appropriate or possible. By acting proactively, duty counsel will assist in reducing the number of certificates issued.

5. Introduction of Discretion into Granting Certificates in Criminal Matters

Implementation Date: To be confirmed.

The categorical approach to criminal legal aid certificates will be modified so that in all cases, not just with respect to

hybrid offenses, persons receive a certificate if there is a likelihood of incarceration, loss of livelihood, or adverse change of immigration status.

6. YOA Reforms

Implementation Date: Uncertain given that statutory amendments are required

The Plan will pursue reforms which allow certificates to be refused, or monies to be collected in reimbursement, where the young offender's family has the means to pay for legal services. It is understood that the Federal Government is considering changes to the Young Offenders Act.

FINANCIAL CONTRIBUTIONS FROM CLIENTS

7. Improved Cost Recovery Systems

Implementation Date: January, 1996

A number of measures have been adopted to improve the Plan's recovery of monies from clients with repayment agreements, and to enhance the Plan's general ability to recoup costs from those it assists, where they are able to pay. The measures are as follows:

a) Except in unusual circumstances, persons who have not honoured payment agreements with the Plan will be denied further assistance.

b) Lien Agreements should be for terms not exceeding five years. In addition, payments will be required upon refinancing whenever possible.

c) Regular updates on the financial situation of persons with a repayment agreement will be required.

COST-SAVING MEASURES ADDRESSING BILLING BY LAWYERS

8. Daily Cap

Implementation Date: November, 1995

A cap of 10 hours per day will apply on lawyers' billings. Time in court will be discounted by 50 per cent thereby extending the billing day during trials. This measure will assist by providing more details per account, permitting an improved tracking system to be developed. Under the current criminal tariff, this proposal cannot be applied to block fee matters.

9. Implementing the Six Month Rule

Implementation Date: December 1, 1995

The Rule requiring accounts to be submitted within six months of the completion of the services billed for will be applied as of December 1, 1995. Until that date, accounts received that contravene the rule will be accepted but will not be paid until sufficient funding is available to pay all accounts within the payment guidelines.

10. Waiving Government Disbursements in Legal Aid Cases

Implementation Date: Uncertain - requires government agreement.

With reduced funding levels and extra pressures on the Plan, the Legal Aid Committee feels the Plan should no longer be required to pay for government fees incurred by legally aided clients. This involves the transfer of money between two publicly funded institutions which involves unnecessary bureaucratic red tape and costs to the taxpayer.



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L'aide juridique en bref

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La réduction des dépenses de certificats, clé du respect de l'entente

Le Barreau est conscient, alors qu'il s'efforce d'alléger les problèmes actuels de trésorerie, que la stabilité durable du Régime dépend de sa capacité à le gérer dans les limites du protocole d'entente, qui prévoit des niveaux de financement fixes et réduits. Le gouvernement de l'Ontario nous a bien fait comprendre qu'il s'en tiendrait à l'enveloppe convenue et ne libérerait pas de crédits additionnels pour les services d'aide juridique en Ontario.

Le respect de l'entente ne sera pas chose facile. Les dépenses réelles de certificats devront retomber à 158,9 millions de dollars en 1998-1999 par rapport aux 263,4 millions de dollars qui ont été engagés en 1994-1995. Cela représente une compression de l'ordre de 100 millions de dollars.

Pour atteindre cet objectif, nous devons poursuivre nos efforts de réduction des coûts pour éviter qu'un tel déficit ne se reproduise dans les trois

prochaines années. Cette démarche est conforme à l'action du Comité de l'aide juridique du Barreau, depuis le printemps dernier, pour assurer une plus grande prévisibilité au Régime.

Mesures d'économie présentées au Conseil de novembre

Le dépassement des projections relatives au nombre des comptes et à leur coût pour la première année de validité du protocole d'entente nécessite la réalisation de sérieuses économies si l'on veut que le Régime puisse fonctionner dans les limites financières fixées. De nouvelles compressions s'imposent vu que les économies annuelles découlant des mesures approuvées en août (40 millions de dollars) ne permettront pas au Régime de respecter les niveaux de financement réduits.

Le Comité de l'aide juridique présentera une nouvelle série de mesures au Conseil de novembre, y compris notamment la modification des tarifs, une nouvelle révision des critères d'admissibilité financière, des mesures facilitant le recouvrement des coûts, des contrats de services déterminés avec les membres à un tarif fixe, l'élimination des demandes de prise en charge présentées par le ministère des Services sociaux et communautaires.

Indexation du système de retenues progressives sur les revenus d'honoraires

Les seuils financiers du système de retenues progressives sur les revenus d'honoraires ont été relevés pour tenir compte du taux d'inflation. Ils ont été établis comme suit en 1995-1996 :

HONORAIRES PAYÉS	RÉDUCTION %	RETENUE MAXIMALE
Jusqu'à 179 375 \$		
179 376 \$ - 205 000 \$	3	768,75 \$
205 001 \$ - 230 630 \$	3	768,75 \$
230 631 \$ - 281 875 \$	5	2 562,50 \$
281 876 \$ - 307 500 \$	10	2 562,50 \$
307 501 \$ - 333 125 \$	20	5 125,00 \$
333 126 \$ - 358 750 \$	30	7 687,50 \$
Plus de 358 750 \$ -	60	

La limite a été fixée à 179 375 \$, le premier seuil à 205 000 \$ et le deuxième à 230 625 \$. Le Régime ne tient compte que des services facturés en droit criminel jusqu'au seuil de 281 875 \$. Tous les services, quel que soit le domaine, sont ensuite inclus.



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