

Excessive costs cheapen justice

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Canadians want a fair and accessible justice system, giving equal opportunity to all. What they have, instead, is a legal realm readily available only to corporations, the rich and the very poorest of society.

Justice open to everyone is a defining principle of democracy but this country falls short of that ideal, putting Canadian values at risk.

When middle class people, ineligible for government-funded legal aid, assert their right to seek justice it often means a taking second mortgage on a home, losing their retirement savings, and the very real threat of bankruptcy. Few people have readily available the \$60,700 needed to pay for an average three-day civil trial. And many court actions last far longer than that.

Discouraged by the unbearable expense of the system, some people give up on justice. Others try to navigate this potentially treacherous terrain on their own, without a lawyer, often with disastrous results.

Even legal aid, meant to give the poor a route to justice, has become so limited that a single person earning just \$16,000 a year, after taxes, is considered too affluent to qualify. Such people are supposed to hire their own lawyer, like the rich do. Those who can afford it secure the best legal brains they can muster, and corporations are even allowed to write off court costs as a business expense in calculating their taxes. Their access to justice is subsidized by ordinary taxpayers – people who have no right to claim legal costs as a tax deduction.

For much of this year, the *Star* has attacked barriers blocking the way to justice in this country and, in news stories and editorials, has pressed for fundamental change. A breakthrough was achieved this week when former associate chief justice Coulter Osborne outlined a set of much-needed reforms in a report to Ontario's attorney general.

In an effort to have more cases heard in small claims court, where the pace is relatively fast and legal costs low, Osborne urged the province to allow claims worth up to \$25,000 in such courts – up from a \$10,000 ceiling in force today. He also proposed help for people arguing their own cases, including provision of easy to read, step-by-step guides to assist these "unrepresented litigants" in finding their way.

Other worthwhile recommendations include shortening trials by giving judges the power to impose strict time limits on courtroom arguments; requiring lawyers to give their clients a "litigation budget" before starting a case; and restricting the scope of lengthy and often ruinously expensive pre-trial "examinations for discovery."

Attorney General Chris Bentley has promised to assess the nature and needs of unrepresented litigants and vowed to pay close attention to the rest of the report. That is a good start. But more change is needed before Canada's justice system becomes truly accessible.

Ottawa has a role to play, too. One way to ease the onerous cost of justice is to remove the federal government's goods and services tax from legal bills, resulting in a 5 per cent saving. Such a move would save litigants millions of dollars a year. Recognizing their fees are beyond the reach of a great many Canadians, law firms should do more free-of-charge, or "pro bono," work. Expanded emphasis on such service could be used to give younger lawyers in a firm valuable experience in advocating before a judge.

In addition, a study should be undertaken to assess the impact of making legal bills tax deductible for all Canadians, not just corporations. Such deductions would be of huge benefit to the middle class.

Canadians trust that when they are wronged, they are entitled to their day in court. But that day loses all meaning when it comes at the cost of bankruptcy. The justice system must reconnect to the people it has abandoned. No country can provide equality for all when its legal system is priced beyond the reach of most citizens.