



Cutting the legal aid purse

As the UK comes to grips with an eye-watering national debt of around £150-billion, it is hardly a surprise that legal aid is feeling the squeeze. Neil Rose reports in the first installment of *National's* series on legal-aid funding challenges.

By Neil Rose

Both the new and previous British governments have never tired of reminding lawyers that the annual £2.1-billion (\$3.3-billion) budget for publicly funded legal services is the most generous in Europe and very favourable compared to most other Western countries — around 35 per cent of the population is eligible for legal aid, a figure that fell from 52 per cent in 1998 under a string of reforms introduced by the previous Labour government.

The Liberal-Conservative coalition government's agenda of attacking the deficit means the UK will be a land of austerity in the years to come, and hardly any area of public expenditure will survive unscathed. With the Ministry of Justice (MoJ) having to reduce its budget by 23 per cent (nearly £2-billion) by 2014-15, and legal aid being its second biggest expenditure after prisons, you could even argue that legal aid campaigners should be happy to have escaped with a proposed £350-million reduction.

They are not, however. In early January a coalition of legal and advice agencies, politicians, trade unions, community groups and members of the public launched the "Justice for All" campaign at the Houses of Parliament in London to fight the cuts.

Civil justice is the main loser under the government's plans. Eligibility levels will squeeze out middle-income earners even more (perhaps reviving the Yuppie-era acronym MINELA — Middle-Income, Not Eligible for Legal Aid), while whole practice areas are being removed from the scope of funding, such as medical negligence and divorce (except for mediation or where there is domestic violence).

Essentially, unless your life or liberty is at stake, or you are at risk of serious physical harm, or immediate loss of your home, you will have to fund your case privately. The government prefers to talk about "focusing" and "targeting" the budget on priority areas of need.

The cuts are less radical to criminal legal aid, although the spectre of price competitive tendering to provide publicly funded criminal services — which some thought had been fought off under Labour — has risen again.

This all comes at a time when advice agencies, which will be left to soak up much of the unmet demand, are themselves having their funding slashed. It is also making *pro bono* supporters uneasy that the government may secretly be relying on their goodwill to fill the void too. So the MoJ

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is investigating sources of new cash, such as the interest lawyers earn from holding client money, and the creation of a conditional legal aid fund, under which a funded party pays a portion of their damages back to the fund for the benefit of future claimants.

Clearly civil litigants who are no longer eligible for legal aid and by definition do not have the money to pay in the usual way will have to fall back on other methods of financing their case, primarily conditional fee agreements (CFAs). So the MoJ has simultaneously issued its blueprint to reduce the cost of private litigation. This proposes to implement the key recommendations of Court of Appeal judge Sir Rupert Jackson's year-long review into civil costs and represents something of a double whammy for litigants.

As well as allowing lawyers to offer 'no win, no fee' deals, CFAs enable the winning claimant to recover from the losing side, as well as their base costs, a success fee of up to 100 per cent of their regular fees and the cost of insurance taken out to cover the risk of losing and paying the other side's costs, so-called additional liabilities. The heart of Jackson's reforms is to end the recoverability of additional liabilities so that clients have a financial interest in their case — a deduction they would not face were they legally aided.

His suggestion that damages be increased by 10 per cent to compensate, even by Jackson's own figures, will still leave a good number of claimants worse off and is thought not to work in big cases in particular.

The problem, of course, is that any campaign, which looks like it may benefit lawyers, however inadvertently, is a hard sell, especially when the alternative is deeper cuts to, say, schools or swine flu vaccination stocks. Just 29 members of Parliament signed a motion welcoming the launch of Justice for All and the likelihood has to be that the cuts will go through largely as planned.

The emphasis will then be on finding new ways of delivering legal and advice services, so it is not a complete coincidence that from this October, non-lawyers will be allowed to set up, own or invest in law firms. But can the market provide the solution to this particular problem?

Access to justice is an issue that has been rumbling on for many years. But the axe is now falling. We will only find out the hard way whether it is just the legal profession, or worse the public, that has its neck on the block. **N**

Neil Rose is a freelance journalist. His last article for *National*, *Risky business*, about third-party litigation funding in the UK, was featured in the March 2010 issue.

Coupsures massives dans l'aide juridique

Dans la première d'une série sur les défis posés par le financement de l'aide juridique, National examine comment le Royaume-Uni tente bien que mal de réduire sa dette nationale gigantesque d'environ 150 milliards £, mettant ainsi le budget de l'aide juridique en péril.

Avant de prendre des mesures draconiennes, le gouvernement britannique actuel et précédent n'a eu de cesse de rappeler aux avocats que le budget annuel de 2,1 milliards £ (3,3 milliards \$) pour les fonds publics affectés aux services juridiques est le plus généreux de l'Europe. D'ailleurs, 35 % de la population peut recevoir l'aide juridique, comparativement à 52 % en 1998.

Le programme de la coalition libérale-conservatrice consistant à s'attaquer au déficit annonce que le R.-U. sera plongé dans l'austérité au cours des prochaines années, avec son lot de réduction généralisée des dépenses publiques.

Le ministère de la Justice doit réduire son budget de 23 % d'ici 2014-2015, l'aide juridique représentant la dépense la plus considérable après les prisons. Les coupures prévues sont de l'ordre de 2 milliards £; l'aide juridique sera réduite de seulement 350 millions £. Cela n'a pas empêché une coalition composée d'agences-conseils, de cabinets, de politiciens, de syndicats, de groupes communautaires et de citoyens de lancer la campagne « Justice pour tous » au Parlement de Londres pour contrer les compressions budgétaires.

Certes, la justice civile est la principale perdante. Compte tenu des niveaux

d'admissibilité, davantage de personnes à revenu moyen seront écartées, tandis que des sphères de pratique entières ne seront plus admissibles au financement, telles que la négligence médicale et le divorce (sauf la médiation ou la violence familiale).

Au bas mot, il faudrait absorber soi-même les coûts juridiques, à moins que sa vie ou sa liberté ne soit menacée ou en cas de perte de propriété.

Les réductions sont moins considérables pour l'aide juridique criminelle, même si le spectre des appels à la concurrence des prix pour les fonds publics est réapparu.

Tout ceci arrive à un moment où les agences-conseils s'organisent pour s'opposer à ces coupures. De son côté, le ministère de la Justice cherche de nouvelles sources de capital. Parmi celles-ci figurent les intérêts que les avocats gagnent à partir des fonds qu'ils détiennent appartenant à leurs clients. L'autre source de capital serait la création d'un fonds d'aide juridique conditionnel dans lequel un tiers ayant obtenu un financement réinjecterait une partie des indemnités au profit de futurs requérants.

Les justiciables qui n'ont plus droit à l'aide juridique devront recourir à d'autres méthodes de paiement, notamment les conventions d'honoraires professionnels. Le

ministère de la Justice a donc établi un plan d'action pour réduire les coûts des litiges.

Les conventions d'honoraires professionnels sont au cœur des réformes des coûts civils recommandées par le juge de la cour d'appel Sir Rupert Jackson. Il s'agit de mettre fin au recouvrement des engagements additionnels, ce qui veut dire que, dans certains cas, le demandeur qui n'a pas gain de cause ne serait pas obligé de payer les frais juridiques du défendeur. En cas de gain de cause, par contre, le défendeur devrait payer les frais du demandeur. Néanmoins, l'augmentation prévue de 10 % des indemnités à titre compensatoire n'empêchera pas un grand nombre de requérants d'être plus mal en point. Et sachant que seulement 29 membres du Parlement ont signé une résolution en faveur du lancement de la campagne « Justice pour tous », les coupures prévues auront probablement lieu.

Les efforts seront concentrés sur la découverte de nouveaux moyens pour fournir des services juridiques et des services-conseils. D'ailleurs, dès octobre, des personnes qui n'ont pas le titre d'avocat seront autorisées à établir, acquérir et investir dans des cabinets juridiques. En somme, seul l'avenir dira si le marché peut fournir une solution à ce problème d'accès à la justice. **N**

— Yasmina El Jamaï