

# Only \$25,000 of compensation can be kept Government stealing from assault survivors: lawyer

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Lawyers are urging the Ontario government to implement a select committee recommendation to get rid of laws that leave poor survivors of sexual assault with only a small portion of their cash entitlements when they win lawsuits against their abusers or arrive at a settlement.

Currently, Ontarians who receive benefits under the Ontario Works program are allowed to keep only \$25,000 of their total court-awarded compensation for pain and suffering when they win personal injury cases, even if the case arises out of sexual assault. If they want to continue receiving benefits under Ontario Works, they must give the government the balance of their compensation.

If victims receive support via the Ontario Disability Support Program, they get to keep \$100,000 of their total compensation and put the rest of the cash into government coffers.

The scheme amounts to “stealing” from sexual assault survivors, says London, Ont. lawyer Robert Talach, who often represents victims of sexual assault in civil cases.

“This is the reward these people get for going through the

[court] process, tearing the scab off to a certain extent,” Talach says. “If you give the client one dollar more than \$100,000, [the province] cuts them off ODSP.”

After hearing about these “unfair” schemes from Toronto lawyers Elizabeth Grace and Susan Vella, the Select Committee on Sexual Violence and Harassment recommended last year that sexual assault victims be exempted from the government clawbacks.

In its report, issued last December, the committee recommended abolishing these restrictions on how much of their compensation awards sexual assault victims can retain if they’re also recipients of social assistance.

“The committee believes that receipt of such awards should not affect a recipient’s ongoing eligibility for social assistance or result in a claw back of social assistance benefits,” the report said.

After enduring difficult and intrusive legal processes, Grace says her most vulnerable clients are receiving “second-rate” compensation.

“This is an access to justice issue. What it does is give [survivors] a discounted compensation. Others who are not poor, who are not vulnerable or disenfranchised . . . get their full compensation,” Grace says.

“To add insult to injury, we have just antiquated schemes in



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place,” she continues. The Ontario Works cap of \$25,000 has not been amended to keep up with inflation since 1990, and ODSP caps of \$100,000 have been in place since 1997. If those amounts had kept up with inflation, recipients today would have been able to retain \$41,000 in the case of Ontario Works and more than \$142,000 when it comes to ODSP, Grace says.

The Ministry of Community and Social Services says it is considering the recommendations made by the select committee.

“The select committee’s report recommends that the legislature review the progress on implementation of the recommendations in this report within two years of its adoption,” said Kristen Tedesco,

spokeswoman for the ministry in an e-mail to *Law Times*. “The ministries indicated in the report are currently considering the recommendations made by the select committee, including these ones.”

Grace says exempting survivors of sexual assault from these clawbacks shouldn’t be a complex or time-consuming process.

“This is an easy change to make. One doesn’t have to amend the acts,” Grace adds, referring to the Ontario Works Act and the Ontario Disability Support Program Act. “What has to be done is merely changes to the regulations . . . it doesn’t have to go before the legislature,” she adds.

Talach says that, in two instances, he was able to achieve exemption from the clawbacks for his clients, but he adds that the way individual exemptions are granted is inconsistent. While the laws remain, one way he’s been able to help his clients retain their compensation orders is by putting the money away in structures and making it inaccessible to the client until they are 65 years of age and no longer receiving ODSP.

Grace says following the select committee’s recommendation, she encourages clients to tell the ministry their compensation was a result of a sexual assault lawsuit or settlement. She also encourages clients to let the ministry know

they’re aware of the select committee’s recommendation and the potential changes coming to the regulation.

In Ontario, there is precedent of exempting certain types of compensations from the Ontario Works and ODSP clawbacks. Grace says examples of compensations that will not affect eligibility for social assistance or result in clawbacks include the Indian Residential Schools Settlement Agreement, the Helpline Reconciliation Model Agreement, the Grandview Agreement, the Ontario Hepatitis C Assistance Plan and the Walkerton Compensation Plan.

Tedesco said the government is “moving forward to build a multi-year action plan to reform social assistance within the broader income security landscape and aligned with the efforts to combat poverty.”

In the meantime, the government is ending the full clawback of child support from social assistance payments, Tedesco said. “It’s also important to note that other assets are exempt and do not count toward Ontario Works and ODSP asset limits, such as a car and a principal residence. Furthermore, [Registered Disability Savings Plans] and [Registered Education Savings Plans] are also not counted as assets for ODSP recipients.”

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