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Boycott battle deepens



By Helen Burnett-Nichols | Publication Date: Monday, 02 November 2009

As Legal Aid Ontario begins posting jobs for counsel to take on serious cases, several applications are making their way through courts around the province aimed at providing special funding for people unable to get a lawyer.

The applications, which come amid the ongoing legal aid boycott, are from people charged with murder or other serious offences who can't find competent counsel to represent them on a legal aid certificate, says Criminal Lawyers' Association executive member Andras Schreck. As a result, they're applying to have the court appoint a lawyer for them at another rate.

In most cases, the accused have identified someone they'd like to have act for them. But while the lawyers in question are unwilling to do it on a legal aid certificate, they would provide representation at a rate lower than a private fee, Schreck says.

"In all these cases, the lawyers in question have indicated a willingness to take it on at a fair and reasonable rate but not at the legal aid rate, which they view as not fair and reasonable. These are long trials, and to do them on legal aid is just not financially feasible for many lawyers."

There are currently two ongoing special applications, one in Welland and one in Thunder Bay, that are set to continue at a later date. Another is also being brought in Haileybury, while a second Thunder Bay application will go before the court later this month. All are murder cases being argued by CLA members, says Schreck.

The CLA legal aid boycott of murder and guns-and-gangs cases has been going on since June after starting in Toronto and then spreading across the province. Hundreds of lawyers have since signed on, and Schreck says reports have suggested recently that 70 cases are currently on hold as a result.

The boycott is aimed at highlighting the imbalance in Ontario's criminal justice system between the government's funding of police and prosecution resources and support for legal aid, says the CLA.

Criminal lawyer Paul Burstein notes that in other cases, the courts have taken the initiative to appoint amicus curiae when they were unable to find qualified senior counsel who would take on legal aid certificates.

He says he expects more of the special applications to materialize and has been contacted by a number of unrepresented people who have tried and failed to retain lawyers in homicide cases. They're asking to either retain him or get a referral to someone else who will bring one of the funding applications forward.

In each of the special cases, LAO has attempted to find someone willing to take the case on, Schreck says.

"Whether the accused in question wants to accept the person that legal aid found, whether or not the person is competent, are open questions," he says.

In the meantime, LAO has a posting on its web site seeking criminal counsel with the major case management office responsible for conducting litigation of serious criminal trials and providing oversight of other matters.

LAO says it's looking to attract lawyers with five to 20 years' seniority in practices devoted to criminal law to contract with the organization.

In a statement, LAO said that since the boycott began, it has been assisting clients whose cases could be affected by the boycott to retain counsel.

"In most cases, this involves local legal aid offices working directly with clients and talking with members of the local bars to help identify lawyers to accept cases that could be impacted by the boycott."

The contractors LAO is seeking will provide the organization with the "ability to fill a range of litigation and representation gaps quickly and with flexibility," the statement noted.

In terms of compensation, LAO says contractors will maintain their private practice and will receive the appropriate tariff rate along with a \$5,000 administrative retainer to "reflect the administrative burdens associated with work on these cases."



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The plan also includes a proposed \$2,000 administration fee per case to reflect the challenge of having to accept matters on short notice. Only designated cases will be eligible for the fee.

“LAO will take action as necessary, within the framework of the Legal Aid Services Act, to ensure we continue to fulfill our legislated obligation to promote access to justice in Ontario by providing high-quality legal aid services for low-income individuals throughout Ontario,” the organization said.

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