

THE GLOBE AND MAIL

Ontario agency trying to break legal-aid boycott, lawyers say

In one of a flurry of moves, LAO is offering \$5,000 bonuses across the country to non-boycotting attorneys

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Ontario's legal-aid program has struck back at boycotting defence lawyers by creating a novel, one-lawyer flying squad to travel the province defending murder cases.

In a flurry of moves to defeat the six-month-old boycott and move Legal Aid Ontario toward a public-defender system, the agency has also begun to put cases out to tender and offer \$5,000 bonuses to non-boycotting lawyers across the country in the hope they will “strike break,” Criminal Lawyers' Association president Frank Addario said Friday.

“This will mean increased expenses for travel and accommodation – which they don't pay for now – and foisting counsel on a defendant even if he doesn't think that particular lawyer is qualified,” Mr. Addario said. “Why don't they just fund the program they originally designed?”

Mr. Addario said the bonus program is a first, and that he is unaware of any other province that has tried a legal-aid flying squad.

“They are advertising across Canada for lawyers to come to Ontario to break the boycott,” Mr. Addario said. “They would rather waste millions on inquiries and fact-finding reports which they ignore – and hundreds of thousands more on advertising, travel expenses and signing bonuses.”

Attorney-General Chris Bentley was stung last month when the striking lawyers rebuffed his attempt to end the fee boycott with an infusion of money into the program.

William Trudell, chairman of the Canadian Council of Criminal Defence Lawyers, said Friday that if the latest moves are intended to circumvent the boycott, it is “disgraceful.”

“It will fail to impress the public we serve and it will never entice criminal lawyers across Canada, who all recognize the inadequacy of legal-aid funding in this country.”

A spokesman for LAO, Kristian Justesen, said legal aid has an obligation to use “any method it considers appropriate” to promote access to justice for low-income Ontarians.

Although Mr. Justesen did not directly respond to a question about the bonus system, he said LAO “talks with members of the local bars to help identify lawyers to accept cases that could be impacted by the boycott.”

In other developments:

A half-dozen Ontario judges have ordered that lawyers in individual cases be paid twice the legal-aid hourly rate. In one case – R v Whelan – Ontario Court Judge John D. Keast said: “Compensation must be fair and reasonable. The legal aid rate is not fair and reasonable.”

Former Supreme Court of Canada judge Louise Arbour denounced legal aid as being an “inadequate quasi-charity,” that exploits the goodwill of defence counsel. “Having worked on human-rights issues for many years, I’m never surprised that marginalized and unpopular people are easily abandoned – particularly when times are difficult for everybody,” Ms. Arbour wrote in a letter to Mr. Addario. “There is no better guarantee against a miscarriage of justice than adequate legal representation. I hope that your collective action will bear fruit.”

Paul Calarco, a Toronto defence lawyer with expertise in the legal-aid system, said it is “pretty clear that LAO and the Attorney-General are working hand in glove,” on the latest moves. “The LAO board does not have the guts to tell the Attorney-General: ‘Go to hell; this is not our statutory mandate. You created this mess via low fees – you fix it.’”

“I think they are trying to create a pseudo-full-staff office in order to defeat the boycott,” Mr. Calarco said. “This would be a temporary measure until they see the boycott as dying. They hope that we will all go back to cringing before their inadequate rates.”

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