Full-time public defender system won't work

When the legal aid system in Ontario became stressed two decades ago there was talk of replacing the certificate system with a true "public defender" model – something that's beginning to happen on a limited scale, says Toronto criminal lawyer Jacob Stilman.

"The initiative by Legal Aid Ontario (LAO) to hire full-time staff lawyers has been a lightning rod issue in the criminal defence bar for years," Stilman says of the recent hiring of senior staff lawyers by the provincial legal aid organization as reported in *Law Times*.

Stilman says the concern for the defence bar is that the program was initiated and will expand incrementally to "ultimately replace the current certificate system, the so-called 'thin edge of the wedge' scenario, and there is good reason for the defence bar to be concerned in this regard."

The program will be a trial balloon and the supposed secondary role of these lawyers, to represent the interests of LAO on certain types of applications and proceedings sounds disingenuous, he adds.

"These types of issues, such as Rowbotham applications or complainant representations, have always had counsel available to represent the interests of other parties," says Stilman. "There is the concern that this is simply how things tend to work out, a program gets established on a small scale, and then it mushrooms into a fully operational service provider."

While the private defence bar has an interest in maintaining the current certificate system, Stilman says the public should also be concerned if the certificate system is replaced.

"The universal experience of full-time public defenders has demonstrated that it delivers a much poorer level of service," says Stilman. "The indigent will inevitably receive a lower quality level of legal representation in such a system, as has been the experience in every jurisdiction which has one. It is also questionable as to whether there will really be a savings to the public purse, although arguments can be made either way."