

The Wayback Machine - <https://web.archive.org/web/20180319215456/http://www.legalaid.on.ca/en/publications/r...>



Table of contents

1. Background
2. Highlights of 2016/17
3. Professional development
4. Activity trends
5. Conclusions

1. Background

The senior counsel program began in 2013 to further develop Legal Aid Ontario's (LAO) criminal client services by:

1. providing full representation for vulnerable and hard-to-serve clients who would otherwise go unrepresented
2. providing uninterrupted access to justice through staff services
3. supporting LAO's quality assurance by facilitating mentorship and training opportunities for LAO staff lawyers
4. representing LAO on behalf of the General Counsel's Office

1.1 Client eligibility

Clients must choose to be represented by senior counsel out of all the options for representation that are made available to them. Clients include, but aren't limited to:

- people with mental or physical health issues
- First Nations, Métis or Inuit
- the elderly
- teen or young adult first-time offenders
- people experiencing significant secondary consequences
- members of other disadvantaged groups.

Client eligibility generally falls between the test for certificates and duty counsel. Other criteria include clients who are eligible for certificates but who are either unable to choose representation or unable to maintain a relationship with their lawyer because of a mental or physical health issue, a legal incapacity, conflict, or the unavailability of a local lawyer.

The program is designed to respond to local demand. Each senior counsel practice is different and is tailored to meet the needs of the local district, so the rate at which certificate-eligible cases are undertaken varies. In some districts, requests for service are received almost exclusively from the private bar. In others, senior counsel serve no certificate-eligible clients at all. In appropriate circumstances, senior counsel also accept court appointments.

Senior counsel are also a mentoring and training resource to LAO staff lawyers and new private bar lawyers. This includes acting as co-counsel.

1.2 Program roster

At the end of March 2017, there were 15 senior counsel available across the province, with one full-time lawyer located in each district. The program is supported by the program lead and senior legal advisor.

2. Highlights of 2016/17

2.1 Lawyer supports

2.1.1 Senior legal advisor

The senior legal advisor provides case specific legal, procedural, and tactical advice, guidance, mentorship, and direction to senior counsel and other criminal staff lawyers where appropriate.

The advisor also:

- monitors and responds to emergent criminal practice issues
- conducts the criminal law portion of each senior counsel's performance evaluation
- assists in developing and conducting training programs, and
- consults with LAO's external practice advisor.

The senior legal advisor also provides LAO with criminal law expertise and advice.

As the program developed, the senior legal advisor has monitored and evaluated client service through direct observation of senior counsel in court.

2.1.2 Community of practice

The community of practice is a day-long session held twice a year. The session:

- provides an opportunity to meet in person
- allows participants to raise and resolve issues impacting their law practices
- offers an opportunity to case conference with other lawyers on challenging legal issues
- allows participants to discuss and receive advice on ethical issues
- promotes discussion on new cases and emerging legal issues
- offers an opportunity to establish a cohesive, team-based approach to practicing law and delivering client services

2.1.3 External practice advisor

For this fiscal period, the external practice advisor was Justice Peter Griffiths, a supernumerary justice of the Ontario Court of Justice, and formerly the Associate Chief Justice. In his role as practice advisor, Justice Griffiths supported the program by providing advice to LAO in resolving highly complex ethical issues faced by staff lawyers.¹

2.2 Referrals and intake

Duty counsel remain the program's key source of referrals. Following referral, senior counsel conduct follow-up assessments to confirm that senior counsel services are the most appropriate for the client. In some cases, this assessment will result in referral to the private bar. For example, between December 2016 and March 2017 senior counsel diverted 26 referrals received to the private bar, as these matters were determined to be more appropriately served by the Certificate Program.

2.3 Mentorship

Ensuring LAO's capacity to represent Ontario's hardest-to-serve clients remains a central objective of the program. As such, senior counsel assist in the mentorship of duty counsel and other junior staff lawyers when lawyers need criminal law expertise or advice on complex matters, or to develop trial work experience.

Throughout 2016/17 nearly 70 duty counsel and staff lawyers were mentored as junior or co-counsel by senior counsel on trial matters, or assisted senior counsel in preparing for trial. In addition, senior counsel have led Advanced Criminal Advocacy Training for staff and duty counsel.

2.4 Innocence Canada

In 2016/17, senior counsel assisted Innocence Canada in case evaluation. The program determined if there is a valid ground to recommend a Review to the Minister of Justice as a result of an alleged miscarriage of justice. This work involves review of the trial and appellate records as well as interviews with the convicted person and their counsel.

2.5 Criminal Issues Committee

The senior counsel program has worked with other LAO departments to establish the Criminal Issues Committee (CIC). The CIC represents LAO's leading criminal law experts with representation across the province and is mandated to assist staff criminal lawyers in ensuring a high standard of quality legal services are provided to clients. The CIC achieves this by creating escalation channels that identify and resolve systemic criminal law issues through the development and implementation of best legal practices. Legal tools, directions, and guidance are developed by the CIC and implemented for use by LAO's on-the-ground staff lawyers.

2.6 Stakeholder Feedback

The senior counsel program has worked to ensure a strong presence in the districts in which senior counsel are located, including a commitment to responsiveness when dealing with members of the private bar, judiciary, and other justice sector partners.

3. Professional Development

The senior counsel program participated in, and assisted to facilitate, a series of educational opportunities throughout the course of the year. These programs improve the lawyers' skills and expand LAO's ability to offer high quality criminal services.

Programs attended by senior counsel in 2016/17 include:

- National Criminal Law Program 2016
- Criminal Lawyers Association Conference
- Law Society of Upper Canada's Coach and Advisor Network
- LAO General Counsel training

Several programs developed by senior counsel, or those that included their participation as facilitators and/or mentors, include:

- Advance Advocacy Training, including mock trial with participating judges of the Ontario and

Superior Courts

- senior counsel mental health training
- "Everything But Bail" training conducted by an all-female criminal faculty
- "Lessons Learned from *R. v. Daibes*" Lunch & Learn seminar

4. Activity trends

4.1 Work load

At the beginning of fiscal 2016/17, there were 527 open client files carried by senior counsel, which is a 22 per cent increase for the same period of the previous year. This includes both full-representation of the client up to trial, as well as partial services. Each senior counsel's baseline caseload was between 29 to 36 open files per lawyer, depending on file complexity.

In both 2016 and 2017, caseloads show that mental health clients continue to comprise the majority of those served by the program, with 64% of total client base in 2017. This is an increase of 12% over the previous year, where mental health clients made up 52% of clients served. Similarly, senior counsel reported increases in Aboriginal clients served, as well as women. From March 2016 to March 2017 the senior counsel program maintained a monthly average of 2,139 file work hours, or 143 file work hours per lawyer. The senior counsel program represents clients with matters proceeding at all levels of Ontario's courts. On average, approximately 91% of senior counsel files are matters proceeding at the Ontario Court of Justice. Superior Court of Justice files account for approximately 9% of files carried in a given month.

4.2 Referrals

Senior counsel are integrated into each district's services. This means that the program receives referrals from local services and providers, including duty counsel, community agencies, the judiciary, and the private bar. In 2016/17, the senior counsel program received 1,053 referrals and accepted 84% of those.

4.3 Trials and Resolutions

The senior counsel program requests lawyers report volumes of trials completed and resolutions where acting as counsel. Monthly outcomes assessments have shown that 100% of matters had better outcome for client than the original Crown position. This includes outcomes where matter is stayed, withdrawn, or dismissed, and, if client found guilty, finding is based on fewer or lesser charges and/or sentence is lower than initial Crown position.

4.4 Hours Mentoring

In 2016/17, senior counsel provided 3,907 hours in mentorship. During the same period, the senior legal advisor provided approximately 200 mentoring hours.

4.5 Case Management Partnerships

Private counsel may be offered LAO staff lawyer assistance in a junior or a co-counsel capacity. Similarly, at the discretion of a director general, staff lawyers interested in improving their trial advocacy skills may be able to co-counsel with senior counsel on trial matters.

In 2016/17, there were 33 co-counsel partnerships with private bar lawyers and 79 with staff lawyers.

5. Conclusions

In 2016/17, the senior counsel program continued to provide high-quality defence services to vulnerable, hard-to-serve criminal defendants who required full defence services but would not or could not otherwise obtain representation. These clients frequently experienced mental health issues and/ or other significant vulnerabilities.

The program extended the services LAO could provide low-income clients through its duty counsel and certificate system, filled a gap in the criminal justice system, and ensured access to justice to a highly marginalized clientele.

Footnotes

1. Justice Paul Belanger, former Regional Senior Judge and Chair of the Judicial Ethics Committee for the Ontario Court of Justice, has taken over for Peter Griffiths as practice advisor.

[Back to report](#)

Legal Aid Ontario (LAO), an independent but publicly funded and publicly accountable non-profit corporation. None of this material may be commercially reproduced, but copying for other purposes, with credit, is encouraged.

© 1998-2016 Legal Aid Ontario, all rights reserved

^

Site information