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1. Background

The senior counsel program began in 2013 to further develop Legal Aid Ontario's criminal client services.

Its key objectives are:

1. Developing LAO's continuum of client services
2. Providing full representation for vulnerable and hard-to-serve clients
3. Providing uninterrupted access to justice through staff services
4. Ensuring senior counsel achieve and maintain extremely serious matter (ESM) panel qualification
5. Creating and facilitating mentorship and training opportunities for LAO staff lawyers
6. Ensuring senior counsel are available to represent LAO in a range of General Counsel Office (GCO) matters

1.1 Strategic alignment

LAO's Board confirmed the program's mandate to further LAO's Continuum of Client Services through a mixed model of service delivery. This model is based on the findings in the McCamus Report¹, which recognizes that client need cannot be met by a single program alone. As such, LAO has invested in a spectrum of services that ensure the right service is offered to the right client at the right time, all while doing so within the best available means. The Senior Counsel Program achieves this for clients who experience extreme difficulty in securing counsel within a reasonable amount of time.

The program is also strategically aligned with LAO's vulnerable client strategies, including the Aboriginal, Mental Health, and Domestic Violence Strategies. These initiatives focus attention on the most vulnerable in society, often the indigent and suffering. Senior Counsel augment these initiatives by continuing to serve more and more of the most vulnerable in society.

1.2 Client eligibility

Clients must choose to be represented by senior counsel out of all the options for representation that are available to them. Clients are advised of all options, including retainer with a member of the private bar. 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.

1.3

As of July 2018, there were 11 senior counsel available across the province, with one full-time lawyer located in most districts. Due to internal fiscal constraints, however, several vacancies were being held

open at the time of writing. The program is supported by the program lead and senior legal advisor.

2. Highlights of 2017/18

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
- consults with LAO's external practice advisor
- provides LAO with criminal law expertise and advice, and
- monitors and evaluates 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 normally held at least 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

Internal limits on staff travel this year led to the COP's temporary suspension after its first meeting on June 12.

2.1.3 External practice advisor

In 2017-18, Justice Paul Belanger became external practice advisor. Justice Belanger previously served as Senior Judge for Eastern Ontario, Regional Senior Justice of the Ontario Court of Justice for the East Region and Chair of the Judicial Ethics Advisory Committee of the Court. Justice Belanger's experience and knowledge are of immeasurable value to senior counsel and other LAO staff lawyers.

2.2 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.

In 2017-18, financial constraints and the retirement of senior mentorship program members resulted in fewer mentorships.

2.3 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.

Committee accomplishments in 2017-18 include disclosure job aids, post-Antic bail hearing procedures and post-Jordan 11(b) considerations.

2.4 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.

While financial constraints limited participation in such opportunities in 2017-18, programs attended by senior counsel include:

- Annual Criminal Litigators Association Conference
- Law Society of Ontario's Coach and Advisor Network networking and training sessions

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

- Articling Student Education Conference on client interviewing practices
- Duty Counsel Conference on Bail Issues
- Consent and Capacity Board training
- Continuum of criminal law services training
- Lunch and learn on advocacy as a member of a visible minority or racialized group

4. Activity trends

4.1 Work load

At the beginning of fiscal 2017/18, there were 509 open client files carried by senior counsel. This includes both full-representation of the client up to trial, as well as partial services. Each senior counsel's baseline caseload was between 30 to 35 open files per lawyer, depending on file complexity. This compares to 29 to 36 the year before.

Caseloads show that mental health clients continue to comprise the majority of those served by the program, with 64% of total client base in 2018, as was the case in 2017. Similarly, senior counsel reported an increase in the number of racialized clients served. From April 2017 to March 2018 the senior counsel program maintained a monthly average of 1,776 file work hours, or 137 file work hours per lawyer. The senior counsel program represents clients with matters proceeding at all levels of Ontario's courts. On average, approximately 92% of senior counsel files are matters proceeding at the Ontario Court of Justice. Superior Court of Justice files account for approximately 8% 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 2017/18, the senior counsel program received 811 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 nearly 100% of matters had better outcome for clients 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 2017/18, senior counsel provided 2,769 hours in mentorship. During the same period, the senior legal advisor provided more than 250 mentoring hours.

4.5 Case management partnerships

LAO junior and co-counsel arrangements with private defence lawyers add value to the court process and improve client service. 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 2017/18, there were 26 co-counsel partnerships with private bar lawyers and 40 with staff lawyers.

5. Conclusion and the year ahead

While funding constraints in 2017/18 resulted in a somewhat leaner program, LAO senior counsel remain committed to increasing access to justice for low-income, vulnerable, and hard-to-serve defendants. We continue to strive to meet our objectives of ensuring eligible clients have a pathway to full representation up to and including trial where necessary, and of providing LAO with effective criminal law services.

Footnotes

1. Ontario Legal Aid Review 1997. *A Blueprint for Publicly Funded Legal Services: the Report of the Ontario Legal Aid Review*. <https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/toc.php> (<https://web.archive.org/web/20190222012100/https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/toc.php>)

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