



**EVALUATION OF THE FAMILY LAW
EXPANDED DUTY COUNSEL PILOT PROJECTS
FINAL REPORT**

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Prepared for:
Legal Aid Ontario

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EXECUTIVE SUMMARY

Introduction and methodology

In 1999, Legal Aid Ontario (LAO) implemented the Family Law Expanded Duty Counsel (EDC) Pilot Projects. The pilot projects, in Hamilton, London, and Oshawa, were designed to test the effectiveness and efficiency of an alternative to the traditional facilitation approach to duty counsel service. Whereas the traditional model is designed to help clients move to the next stage in the legal process, the expanded model emphasizes advancing cases toward resolution. In the expanded model, duty counsel spend time and effort on behalf of clients in an attempt to assist them in bringing closure to their matter or major elements of their matter. The expanded duty counsel model, therefore, has three important features that distinguish it from the traditional model and that are intended to enable the model to pursue this central principle: the capacity to create and carry client files; the ability to provide continuity of representation; and the capacity to draft court documents.

The three EDC pilot projects are characterized by different combinations of staff and per diem lawyers. In Hamilton, the pilot consists of one staff lawyer, a large per diem panel (55 to 60 lawyers), and 1.5 support persons; in London, the pilot consists of two staff lawyers, a small per diem panel (12 to 15 lawyers), and one support person; and in Oshawa, the pilot has three staff lawyers, a small per diem panel (approximately 22 lawyers), and one support person. At each site, one of the staff lawyers serves as the Coordinator, whose main responsibilities include general office administration and management, per diem scheduling based on demands within their respective courts, and supervision and training of per diems.

All three EDC models have undergone changes over time. One site was initially intended to pilot a pure staff model, but the potential for conflict precluded this arrangement.¹ Following a promotion of the staff duty counsel within LAO, the Hamilton site operated with only support staff for several months. Similarly, the London site operated with one staff duty counsel for several months, after one of the original two staff lawyers left the project. Since mid-April 2002, the Oshawa office has been operating with two staff duty counsel because one has gone on a leave of absence.

In addition, each pilot project has had to respond to a unique set of circumstances. The sites did not, for instance, become operational at the same time. The Hamilton and London offices opened on November 1, 1999, while Oshawa opened several months later, on February 14, 2000. The physical space of the EDC offices and their locations within the courts differ, as do regulations about signage, methods of triaging clients, and the nature of their relationship with the Family Law Information Centre (FLIC). Finally, court schedules and court processes vary substantially across the sites.

¹ LAO policy does not permit two staff duty counsel to represent the opposing parties in a matter. Since all staff duty counsel are employees of LAO, such a situation is considered a conflict of interest.



LAO engaged Prairie Research Associates (PRA) Inc. to carry out an evaluation of the pilot projects over three years. The evaluation of the Family Law EDC Pilot Projects had three objectives:

- ▶ *To compare cost and time efficiencies among the three Family Law Expanded Duty Counsel models.*
- ▶ *To compare cost and time efficiencies between the Family Law Expanded Duty Counsel model and the existing duty counsel model of service delivery.*
- ▶ *To compare quality of service among the three Family Law Expanded Duty Counsel models, and between the Expanded Duty Counsel model and the traditional duty counsel model.*

It is important to bear in mind that the evaluation did not compare three “pure” expanded duty counsel models that differ only in their mix of staff and per diem duty counsel. Rather, it compared three models whose implementation, development, and daily operations were influenced by numerous factors that vary across sites and over time.

We used four data collection methods in this evaluation, including a review of key documents, an analysis of data from the management information system (Amicus), a series of key informant interviews in two rounds (n=79), and a client feedback survey (n=632). This report consolidates and analyses the findings from all four data collection methods, and provides recommendations.

Findings

This evaluation found a strong need for expanded duty counsel services. More than half of EDC clients meet the financial eligibility requirements for full duty counsel assistance, a proportion that is somewhat higher in Hamilton and London (58 percent and 57 percent of clients, respectively) than in Oshawa (48 percent). Financially eligible clients – that is, clients who are entitled to receive the entire range of services that duty counsel can provide – tend to be single women living in rental housing, either alone or with their children. Regardless of financial eligibility, inability to afford a private lawyer and inability to obtain a legal aid certificate are common reasons for use of duty counsel services; only about ten percent of EDC clients reported having a lawyer at the time of their first court appearance.

There is a high level of support for the expanded duty counsel model among clients and stakeholders. A large majority of client survey respondents (80 percent) believe that they received quality service from the duty counsel lawyer, and similar majorities believe that the duty counsel lawyer who served them treated them with respect, responded to their concerns, took enough time to listen to them, and explained to them how the court works and what they were supposed to do. Although results from the client survey were quite consistent across all three pilot project sites, clients of the London EDC office expressed the greatest degree of satisfaction with the duty counsel services they received.

There is a strong consensus among stakeholders that the expanded duty counsel approach has clear advantages compared to the traditional per diem model. File continuity, or the practice of opening and maintaining written client files, is regarded as one of the most important. File



continuity reportedly enables a more standardized approach that saves time, improves the consistency of advice that duty counsel give to clients, and ultimately results in fewer delays in the court process. It is widely regarded as absolutely essential if duty counsel is to provide an efficient, effective service over time.

Stakeholders also see continuity of representation as desirable. They acknowledged that lawyer continuity enhances clients' trust in duty counsel and improves the efficiency of the court process, but also observed that it should not be necessary to maintain the same lawyer on a case as long as file continuity is maintained and all duty counsel provide a consistent level of service. This evaluation found some differences among the EDC offices in their ability to provide lawyer continuity. The two-staff model in London was the most successful at maintaining a single lawyer on multiple-day files, while the Oshawa office was the least likely to do so despite having three lawyers on staff. Clearly, continuity of representation is for scheduling reasons more difficult to achieve for per diem duty counsel than for staff. Factors such as staff turnover and the demands of the pilot (i.e., the need to avoid conflict) have also affected the ability of the EDC offices to achieve continuity of representation.

Stakeholders perceive the supervisory function of the EDC Coordinator as another important benefit of the expanded duty counsel approach. The presence of a Coordinator has resulted in better organization, scheduling, accountability, and consistency of advice. The EDC approach has also reportedly led to a high degree of settlement orientation among both staff and per diem duty counsel and has resulted in fewer adjournments and more early stage settlement. Key informants emphasized that, together, these features of the expanded duty counsel approach – file and lawyer continuity; improved organization, accountability, and consistency of advice through the Coordinator role; and a new emphasis on resolution – have resulted in a more expeditious court process and a better quality of client service compared to the traditional model.

Despite this strong endorsement for the expanded duty counsel model on the part of stakeholders, there are important differences among the three offices. In some respects, the two-staff model in London best reflects the client service principles of the expanded duty counsel model. Its high case retention rate certainly distinguishes it from the other two sites. London retains almost 60 percent of all client files, whereas Hamilton and Oshawa refer the majority to the private bar or for a legal aid certificate (three-quarters and two-thirds of all cases, respectively). Partly as a result of its greater willingness to take carriage of files, including some that are presumably more complex, London sees clients more often on a per file basis than the other two sites and spends more time on each file.

The London office is also the most inclined of the three to prepare documents. However, at all three EDC locations, the amount of time that duty counsel spend on document production has tended to increase since the pilots were first implemented. Furthermore, per diems and staff actually spend similar proportions of their time at document production, except in Hamilton, where per diems are slightly less disposed than staff to produce documents. The willingness of per diem duty counsel to prepare documents is encouraging, especially given initial resistance to the idea on the part of some members of the family law bar. While concerns about liability continue to influence the willingness of some per diem duty counsel to prepare documents, staff reported that these concerns have mostly abated. However, there continues to be reluctance to prepare documents in *Child and Family Services Act* (CFSA) proceedings due to the time



required. Finally, some key informants suggested better coordinating and integrating EDC and FLIC functions to improve document production as well as other services for clients.

The evaluation also found substantial differences in resolution rates among the three offices. Because Hamilton and Oshawa are more discriminating than London about the cases they retain, they are more successful at achieving a final resolution in these cases. Overall, however, Oshawa and London have considerably higher resolution rates than Hamilton, mainly because they, unlike Hamilton, frequently secure temporary resolutions and frequently resolve issues before referring them out. Although other interpretations are possible, this suggests that the one-staff model in Hamilton, to a greater extent than the other offices, may be focusing its efforts primarily on simple matters where there is a good chance of achieving a quick resolution. In doing so, the Hamilton model may be forgoing the opportunity to assist clients whose legal proceedings could benefit from expanded duty counsel services.

Of the three EDC offices, the Hamilton model is closest to operating at what might be conceived as full capacity. Duty counsel in Hamilton are unique in spending a majority of their time on client-related tasks; at the other two offices, the opposite is true. Having more than one staff duty counsel seems to create inefficiencies in the use of staff time, at least given the volume of clients at the pilot project sites; staff in London and Oshawa devote more than 60 percent of their time to administrative functions. Of the three offices, Hamilton is also closest to approaching capacity in the number of clients it assists on a daily basis. In the last quarter of this analysis, on average, Hamilton duty counsel each assisted 7.3 clients per day, compared to 4.4 in London and 4.6 in Oshawa. In London, staff duty counsel have taken advantage of the time they have available to schedule repeat appointments, to prepare court documents, and to spend more time on each client file.

The Oshawa EDC office has been the most successful of the three pilots at minimizing per diem downtime, which is probably the most important determinant of cost. Per diem duty counsel in Oshawa docket just over 20 percent of their time as downtime, compared to 30 percent in Hamilton and 27 percent in London. Although other factors also influence cost, it is not coincidence that cost per client file is lowest in Oshawa. To a considerable extent, downtime is the result of two factors over which the EDC offices have no control – court scheduling and the need to maintain per diem duty counsel at the court in the event of a conflict. However, all three offices have been devising ways of reducing the amount of downtime based on the situation at their particular courts. Their experience has shown that flexibility in per diem scheduling and responsiveness to particular circumstances is essential to reducing per diem downtime and cost.

While each of the EDC models has unique strengths and weaknesses, it is important to appreciate that all three are providing enhanced duty counsel services to clients at costs that are comparable to those of the traditional per diem model. In fact, two of the EDC sites – Hamilton and Oshawa – have total costs per visit that are lower than that of the control site at Barrie, and London's cost per visit is only marginally higher than Barrie's. In light of the numerous advantages of the expanded duty counsel approach, therefore, including improved client service, file continuity, continuity of representation, better organization and accountability, and an emphasis on resolution, this evaluation found a strong rationale for continued implementation of expanded duty counsel services across the province.



- Recommendation** 1. The expanded approach to duty counsel service delivery has clear advantages over the traditional per diem model, including improved client service, file and lawyer continuity, improved organization and accountability, and emphasis on resolution, at costs that appear to be comparable to those of the traditional per diem approach. Legal Aid Ontario should therefore proceed with implementation of expanded duty counsel at other locations across the province.
- Recommendation** 2. Given volume of clients, size of the per diem panels, and court operations, the evidence from this evaluation suggests that a two-staff duty counsel EDC office is the most appropriate model for the Hamilton, London, and Oshawa locations.
- Recommendation** 3. The EDC Coordinator is indispensable to the efficient and effective functioning of the expanded duty counsel model. Any new expanded duty counsel office should be staffed by a Coordinator whose role it should be to manage the EDC office and to train, schedule, and supervise duty counsel on the per diem panel.
- Recommendation** 4. Any new expanded duty counsel office requires a client management information system and administrative support staff to facilitate record-keeping, maintain efficiency, and support ongoing performance measurement.
- Recommendation** 5. The creation and maintenance of client files is essential to providing efficient and effective duty counsel services in the expanded model, and is a requisite for continuity of representation. Maintaining file continuity should be a requirement of any new expanded duty counsel office.
- Recommendation** 6. Continuity of representation enhances client trust in duty counsel and, like file continuity, contributes to the provision of efficient and effective duty counsel services. Any new expanded duty counsel office should endeavour to achieve continuity of representation to the extent possible, recognizing that it will be more easily attainable for staff than for per diem duty counsel.
- Recommendation** 7. Comprehensive training for per diem duty counsel is essential to the success of the expanded duty counsel approach. At any new expanded duty counsel office, the Coordinator should be responsible for providing orientation training to all lawyers on the duty counsel panel and for providing ongoing training as necessary.



- Recommendation 8.** Duty counsel training should include an emphasis on advancing cases toward resolution as the central principle of the expanded duty counsel approach.
- Recommendation 9.** Legal Aid Ontario should explore ways of facilitating document production to ensure that duty counsel in the expanded model carry out this function to the greatest possible extent. Possibilities include continued development of document templates and examination of the respective roles of the EDCs and the FLICs in terms of document production.
- Recommendation 10.** More generally, Legal Aid Ontario should examine the respective roles of expanded duty counsel and FLIC advice counsel, with a view to identifying any potential client service and cost efficiencies that may be obtained through greater coordination or integration of services between the EDC and the FLIC.
- Recommendation 11.** Flexibility in per diem scheduling, taking into account court scheduling, daily number of client visits, and other relevant factors, is essential to the expanded duty counsel approach as a means of reducing per diem downtime and thereby controlling costs. Any new expanded duty counsel office needs to devise a flexible approach to per diem scheduling that responds to the particular circumstances prevailing at the court at which it is located.



1.0 Introduction

In 1999, Legal Aid Ontario (LAO) implemented the Family Law Expanded Duty Counsel (EDC) Pilot Projects. The pilot projects, in Hamilton, London, and Oshawa, were designed to test the effectiveness and efficiency of an alternative to the traditional facilitation approach to duty counsel service. Whereas the traditional model is designed to help clients move to the next stage in the legal process, the expanded model emphasizes advancing cases toward resolution. In the expanded model, duty counsel spend time and effort on behalf of clients in an attempt to assist them in bringing closure to their matter or major elements of their matter.

LAO engaged Prairie Research Associates (PRA) Inc. to carry out an evaluation of the EDC pilot projects over three years. The evaluation had three objectives:

- ▶ *To compare cost and time efficiencies among the three Family Law Expanded Duty Counsel models.*
- ▶ *To compare cost and time efficiencies of the Family Law Expanded Duty Counsel models with the existing duty counsel model of service delivery.*
- ▶ *To compare quality of service among the three Family Law Expanded Duty Counsel models, and between the Expanded Duty Counsel model and the traditional duty counsel model.*

At the outset of the evaluation, PRA developed an evaluation framework in consultation with LAO, elaborating on these three objectives. The framework, which served to guide the research, is in Appendix A. As often occurs in evaluations that span several years, some of the questions that were originally posed proved in time to be secondary or incidental to the larger issues that emerged over the course of the research. This report focuses on the larger themes, with a view to responding to the three evaluation objectives enumerated above.



1.1 Methodology

We used four data collection methods in this evaluation.

Document review – We reviewed key documents pertaining to LAO and the EDC Pilot Projects, including the 1997 Report of the Ontario Legal Aid Review (McCamus Review), the Proposed Pilot Projects Final Report (1998), monthly management reports produced by the EDC sites, and memos, minutes, and other documents maintained by LAO staff and management.

Analysis of data from the management information system (Amicus) – We analysed statistical information collected by EDC staff using Amicus, LAO’s customized management information system. This report is based on information collected over a one-year period between April 1, 2001 and March 31, 2002. We included all client files opened before or on April 1, 2001 and still open on that date. Using these parameters, a total of 6,426 client files were eligible for inclusion in the analysis. Statistical output from the analysis of Amicus data is in Appendix D.

Key informant interviews – We conducted 79 key informant interviews over the course of this evaluation. Appropriate key informants were identified by staff duty counsel at each of the pilot project sites. The interviews provided valuable qualitative insights that could not be obtained through quantitative methods of data collection.

Client feedback survey – To supplement the qualitative data provided by key informants, we conducted a client feedback survey to capture the opinions of clients about the duty counsel services they received at the EDC sites. We received and analysed a total of 632 client feedback forms over the course of the evaluation. Tabulated results from the client feedback survey are in Appendix C.

A detailed discussion of the methodology is in Appendix B.



1.2 Outline of the report

This report consists of several sections. Section 2.0 describes the historical context and rationale for the expanded duty counsel pilot projects. Section 3.0 presents evaluation findings related to expanded duty counsel service delivery, while section 4.0 presents findings related to the costs of the three EDC models. In section 5.0, we provide profiles highlighting the unique strengths and weaknesses of each of the three EDC models, before drawing final conclusions and providing recommendations in section 6.0.

Several appendices supplement the main report:

- ▶ Appendix A – Evaluation Framework
- ▶ Appendix B – Methodology
- ▶ Appendix C – Client Feedback Survey Results
- ▶ Appendix D – Statistical Data from Analysis of Amicus
- ▶ Appendix E – Cost Formula.



2.0 Context and overview of the EDC pilot projects

Since the establishment of the Ontario Legal Aid Plan (OLAP) in 1967, the legal aid system in Ontario has operated as a *judicare* model. In this model, services are provided by private members of the bar on the basis of certificates issued to eligible individuals. These lawyers are then compensated by the OLAP at legal aid tariff rates. Moreover, under the Plan, eligible individuals are entitled to legal aid. As a result, the cost of the legal aid system is driven by client demand, with the OLAP paying all of the accounts rendered by service providers during each fiscal year.

Cutbacks to legal aid led to growing numbers of unrepresented family law litigants and ultimately to inefficiencies in the court process.

The legal aid system experienced a period of rapidly escalating annual costs in the 1980s and early 1990s. In 1994, in response to these increasing costs, the Province of Ontario introduced a cap on funding for legal aid. In the area of family law, a prioritization scheme was introduced that restricted legal aid certificates to a limited range of family law matters. As a consequence of prioritization, many family law clients who were financially eligible for legal aid did not receive certificates and were obliged to represent themselves in court with the assistance of duty counsel.² Ultimately, reductions in funding to legal aid resulted in a growing number of unrepresented family law litigants and delays and inefficiencies in the justice system as a whole.³

It was in this context that, in December 1996, the Ontario Legal Aid Review was established with a mandate to consider all aspects of the legal aid system in Ontario and, in particular, to evaluate what implications the imposition of capped funding would have on the system's future design, administration, and governance. When it reported in 1997, the Review concluded that the choice of delivery system for legal aid services was essential to determining the most effective and efficient use of funds. Avoiding the polarized views that have traditionally characterized debate over the best delivery model, the Report (known as the McCamus Report) recommended that the Ontario legal aid system should experiment with a much wider range of delivery systems than it had to date. The Report also observed that a governance structure was required for the legal aid system that could administer an innovative exploration of different delivery systems and that was capable of systematic and objective periodic evaluations of their

² The Ontario Legal Aid Plan issued 14,063 family law certificates in 1996/97, less than a quarter of the number issued in 1993/94, and about the same level as in 1970. From the *Report of the Ontario Legal Aid Review: a blueprint for publicly funded legal services*. Legal Aid Ontario, 1997.

³ Report of the Ontario Legal Aid Review, *ibid*.



performance. Finally, the Report recommended that performance evaluation and quality assurance should take a much more prominent role in Ontario's legal aid system in order to be certain of baseline levels of quality assurance in legal services.

2.1 Rationale for expanded duty counsel

The McCamus Review recommended that LAO experiment with expanded duty counsel services.

One of the immediate structural reforms to the legal aid system suggested by the McCamus Report was the development of an expanded duty counsel system as part of the expansion of delivery models and, at the same time, the implementation of a public accountability and evaluation capacity.

The basic role of duty counsel in court is to be on duty to deal with the clients and cases that are scheduled on the court docket on a particular date.⁴ In the traditional model, duty counsel perform a “facilitating” role. By providing summary advice and limited representation, duty counsel help litigants move to the next step in the legal process. In the vast majority of cases, duty counsel have only one contact with litigants, usually just before their first appearance. In fact, duty counsel are usually restricted to this first contact, after which the case must be handled by a private or legal aid lawyer on a certificate if it is to continue. However, because duty counsel are often the only legal assistance available to unrepresented litigants, they sometimes take on the role of their lawyers. Difficulties arise when time constraints limit the quality of the assistance that can be provided, when litigants see a different duty counsel each time they appear in court, or when a shortage of time or expertise results in poor legal advice.

The EDC approach is distinct from the traditional model in its capacity to draft documents, its ability to provide continuity of representation, and its capacity to create and carry files.

Expanded duty counsel is an alternative to the traditional facilitation model. The expanded duty counsel function is still to focus on routine and brief matters that can be handled with limited case preparation, but unlike the facilitation model, it is designed to assist clients in bringing closure to their matter or major elements of their matter. The expanded duty counsel model, therefore, has three important features that distinguish it from the traditional model: the capacity to draft court documents; the ability to provide continuity of representation; and the capacity to create and carry client files. Because advancing cases toward resolution is the central principle of the expanded duty counsel model, a key feature of the service is spending time and effort on behalf of clients. The table below differentiates between the general functions of duty counsel and the enhanced functions of expanded duty counsel.

⁴

Simcoe County Family Lawyers' Working Committee. *Duties of Family Duty Counsel*, 1996.



Table 1: Functions of duty counsel	
General functions of duty counsel	Enhanced functions of expanded duty counsel
<ul style="list-style-type: none"> ▶ Advising unrepresented parties about their legal rights and obligations ▶ Assisting unrepresented parties in negotiating and settling issues on a final or temporary basis ▶ Reviewing court documents and assisting in preparing court documents such as motions, affidavits, and financial statements ▶ Referring unrepresented parties to other sources of assistance, such as on-site or off-site mediation, Legal Aid, or private counsel ▶ Attending court with unrepresented parties to request adjournments, argue motions, child protection hearings, default, garnishment and support “show cause” hearings; and assisting in summary hearings regarding custody, access, and support where the issues are not complex 	<ul style="list-style-type: none"> ▶ All of the general functions of duty counsel PLUS: ▶ Expanded role in drafting and preparing documents for unrepresented parties using the facilities and equipment provided by the project ▶ Maintaining continuity of client representation whenever possible from one court appearance to the next ▶ Opening and updating files opened for unrepresented parties in the duty counsel office to maintain file continuity for clients if continuity of representation is not possible ▶ Preparing and submitting data forms for statistical collation
Source: Presentation notes prepared for the Hamilton Duty Counsel Training Session on October 27, 1999.	

2.2 Three expanded duty counsel models

LAO implemented three family law expanded duty counsel pilot projects in 1999.

Following the recommendations of the McCamus Review, LAO implemented three family law expanded duty counsel pilot projects – in Hamilton, London, and Oshawa – in 1999. The EDC pilot projects were intended to offer a form of better service to clients who were ineligible for legal aid certificates as a result of prioritization, and to test the effectiveness and efficiency of an alternative to the traditional facilitation model of duty counsel service.

The three pilot projects are characterized by different combinations of staff and per diem lawyers. At each site, one of the staff lawyers serves as the Coordinator, whose main responsibilities include general office administration and management, per diem scheduling based on demands within their respective courts, and supervision and training of per diems.

- ▶ In Hamilton, the pilot consists of one staff lawyer, a large per diem panel (55 to 60 lawyers), and 1.5 support persons.
- ▶ In London, the pilot consists of two staff lawyers, a small per diem panel (between 12 and 15 lawyers), and one support person.
- ▶ The Oshawa pilot has three staff lawyers, a small per diem panel (approximately 22 lawyers), and one support person.



All three EDC models have undergone changes over time and have responded to a unique set of circumstances.

It is important to note that all three EDC models have undergone changes over time. One site was initially intended to pilot a pure staff model, but the potential for conflict precluded this arrangement.⁵ Following a promotion of the staff duty counsel within LAO, the Hamilton site operated with only support staff for several months. Similarly, the London site operated with one staff duty counsel for several months, after one of the original two staff lawyers left the project. Since mid-April 2002, the Oshawa office has been operating with two staff duty counsel because one has gone on a leave of absence.

In addition, each pilot project has had to respond to a unique set of circumstances. The sites did not, for instance, become operational at the same time. The Hamilton and London offices opened on November 1, 1999, while Oshawa opened several months later, on February 14, 2000. The physical space of the EDC offices and their locations within the courts differ, as do regulations about signage and methods of triaging clients. Their relationship with the Family Law Information Centres (FLICs) located at their courts differ, as do court scheduling and court processes.

Numerous factors have influenced the implementation, development, and daily operations of the EDC offices.

Thus, the evaluation did not compare three “pure” expanded duty counsel models that differ only in their mix of staff and per diem duty counsel. Rather, it compared three models whose implementation, development, and daily operations were influenced by numerous factors that vary across sites and over time.

⁵ LAO policy does not permit two staff duty counsel to represent the opposing parties in a matter. Since all staff duty counsel are employees of LAO, such a situation is considered a conflict of interest.



3.0 Analysis of EDC service

This section of the report presents evaluation findings related to EDC service delivery. The discussion covers areas such as the need for expanded duty counsel services, the functions of duty counsel in an expanded model, time spent with clients, and client and stakeholder satisfaction.

3.1 Need for expanded duty counsel services

More than half of clients overall meet the financial eligibility requirements for full duty counsel assistance. Eligible clients tend to be single women living in rental housing, either alone or with their children.

This evaluation found a strong need for expanded duty counsel services at all three pilot project sites. More than half of EDC clients overall meet the financial eligibility requirements for full duty counsel assistance, a proportion that is somewhat higher in Hamilton and London (58 percent and 57 percent of clients, respectively) than in Oshawa (48 percent).⁶ Financially eligible clients – that is, clients who are entitled to receive the entire range of services that duty counsel can provide – tend to be single women living in rental housing, either alone or with their children. Ineligible clients, by contrast, who are entitled to 20 minutes of procedural advice, are more often male and more often married, separated, or divorced. They are also more likely to own or mortgage their home and are slightly older than their eligible counterparts.

Many EDC clients have a history of involvement in the family legal system and have previously used either private lawyers or duty counsel services, or both. Between 30 and 40 percent of client survey respondents, for example, reported having used duty counsel services in a family law case before their present case, and about one-quarter had gone to court on their present case before they saw duty counsel, almost always without representation. Among EDC clients in general, only just over ten percent reported having a lawyer at the time of their first court appearance.

Key informants confirmed that there are large numbers of unrepresented persons in the family legal system, a phenomenon they attributed primarily to the low financial cut-off for legal aid certificates. The threshold creates a stratum of people who are ineligible for legal aid, yet cannot afford to retain private counsel.

⁶ Income in excess of the financial cut-off is the most common reason for failure to qualify for duty counsel assistance; this is true more than three-quarters of the time. Just under one-fifth of clients have income below the waiver but nevertheless do not qualify because they own property.



Some key informants also attributed the large number of unrepresented persons to other factors, including reluctance on the part of some clients to retain lawyers and/or a belief that they can represent themselves; the restriction of legal aid certificates to certain priority issues; and unwillingness on the part of lawyers to accept legal aid certificates due to what is perceived as an insufficient allocation of hours for specific types of matters, and *Child and Family Services Act* (CFSA) matters in particular.

There is a strong need for duty counsel services at all three sites. Inability to afford a private lawyer and inability to obtain legal aid are common reasons for use of duty counsel services.

Results from the client feedback survey suggest that inability to afford a private lawyer and inability to obtain legal aid are indeed common reasons for client use of duty counsel services. About half of respondents reported using duty counsel on their present case because they could not afford private counsel, while about one-fifth reported doing so because they could not get a certificate. However, in both London and Oshawa, one-fifth of clients said they used duty counsel because it was easier than going to see a lawyer, and a similar proportion said they did so because they had used duty counsel before. It appears that while inability to afford private counsel and to obtain legal aid are certainly deciding factors for many duty counsel clients, some clients use the service, at least in part, because it is familiar or convenient.

3.2 Functions of duty counsel in an expanded model of service

The expanded duty counsel model is distinguished from the traditional approach to duty counsel service delivery by its emphasis on advancing cases toward resolution. In the EDC model, duty counsel have three functions that differentiate their role from that of duty counsel in the traditional model, and that are intended to enable the model to pursue this central principle: the capacity to create and carry client files; the ability to provide continuity of representation; the capacity to draft documents. The sections that follow examine the extent to which the pilot projects have fulfilled these essential EDC functions.

3.2.1 Creation and carriage of files

File continuity, the practice of creating and maintaining written client files, is widely perceived as one of the main strengths of the EDC model.

At the time the EDC pilot projects were implemented, a mandatory practice of creating and maintaining written files pertaining to client matters was introduced. This practice is widely regarded as one of the model's most important advantages and as absolutely essential if duty counsel is to provide an efficient, effective service. Key informants reported that the existence of client files (what has



come to be known as *file continuity*) enables duty counsel to obtain an accurate understanding of prior appearances while eliminating the need for clients to repeat their stories to different counsel. It therefore results in a less stressful experience for clients and improves their sense of confidence in duty counsel and the legal system as a whole. Moreover, the standardized approach made possible by file continuity saves time and improves the consistency of the advice that duty counsel give to clients, ultimately resulting in fewer delays in the court process.

Retention and referral rates vary among EDC offices. London takes carriage of a larger proportion of cases than the other two sites.

While the creation of client files is done consistently across all three EDC sites, there are significant differences in retention and referral rates among the offices. High rates of referral characterize the Hamilton and Oshawa EDC offices. The Hamilton office, where there is one staff person and a large per diem panel, refers three-quarters of all cases; the Oshawa office refers two-thirds. Virtually at the opposite end of the spectrum, the two-staff model in London takes carriage of 58 percent of all cases and refers the remainder. In spite of anecdotal information suggesting that CFSA proceedings are often too complex, and the issues at stake too serious, to be handled by duty counsel, London retains almost as many CFSA proceedings as it refers.⁷ See Table 2.

	Hamilton (n=1,681)		London (n=1,642)		Oshawa (n=3,103)	
	CFSA (n=469)	All others (n=1,212)	CFSA (n=342)	All others (n=1,300)	CFSA (n=927)	All others (n=2,176)
Retained	17%	33%	48%	67%	23%	49%
Referred	83%	67%	52%	33%	77%	51%

Note: Referred cases include all those referred at least once. Some of these cases have been referred multiple times.

It is difficult to identify the reason for these differences among sites in the initial decision to retain or refer a case. Although the one-staff model certainly appears limited in its ability to take carriage of cases, retention rates are not necessarily related to the number of staff lawyers; if they were, the Oshawa office, with three staff lawyers, would have the highest retention rates. This is not, however, the case. In fact, Oshawa refers cases out almost as often as Hamilton. To some extent, it appears as though a unique “culture” has developed at each site that determines how duty counsel should handle various clients and various types of matters. It appears, for example, that London is more willing than the other

⁷ Because our preliminary analyses showed that CFSA matters are, not unexpectedly, handled differently by duty counsel than other types of family law proceedings, we have separated out CFSA from other types of proceedings in much of the analysis that follows.



two EDC offices to take on difficult or complex cases.⁸ Other factors, such as clients’ financial eligibility, differences among the three Legal Aid Area Offices in assessing clients’ eligibility for certificates, and court operations and scheduling practices, also probably have an impact on retention and referral rates.

3.2.2 Continuity of representation

A second distinguishing feature of the expanded duty counsel approach is the ability to provide continuity of representation through the scheduling routine and the availability of staff duty counsel at the court. Responses to the client feedback survey suggest that there may be some differences among the three EDC offices in their ability to maintain continuity of representation. More than half of respondents from London agreed that they saw the same duty counsel every time they came to court on their case, compared to almost half of Hamilton respondents who disagreed. However, the client feedback form does not distinguish between clients who were in court only once on their case and those who attended more than once. Thus, some clients may have been in court only once and still indicated having seen the same lawyer every time.

Table 3: I saw the same duty counsel every time I came to court on this case.

	Hamilton (n=95)	London (n=107)	Oshawa (n=90)
Agree	20%	55%	49%
Neutral	22%	20%	18%
Disagree	48%	18%	28%
No response/Not applicable	10%	8%	6%

Note: Column totals may sum to more than 100% due to rounding.

Table 4 below, which considers all files worked on for more than one day, confirms that there are indeed some differences among the offices in their ability to provide continuity of representation. The two-staff model in London was most successful at achieving lawyer continuity, while the three-staff model in Oshawa was somewhat unexpectedly the least successful. London maintained a single lawyer (either one staff or one per diem) on multiple-day files 49 percent of the time, compared to 43 percent of the time in Hamilton and 40 percent of the time in Oshawa. London was also the most successful at maintaining a single staff lawyer on multiple-day files, doing so 43 percent of the time. By comparison,

⁸ London also does not record a referral when clients advise that they do not wish to retain a private lawyer or apply for a certificate.



the one-staff office at Hamilton maintained a single staff lawyer on multiple-day files 41 percent of the time, while the three-staff office at Oshawa did so 36 percent of the time. It should be noted that staff turnover and the demands of the pilot project (i.e., the need to avoid conflict) have had an impact on lawyer continuity.



Table 4: Continuity of representation (number of lawyers working on file)			
Number of lawyers	Hamilton (n=574)	London (n=703)	Oshawa (n=1,016)
Staff only			
1	41%	43%	36%
2	--	--	13%
3	--	--	<1%
Per diem only			
1	2%	6%	4%
2	26%	19%	32%
3	5%	6%	7%
4	1%	1%	1%
5	1%	<1%	1%
6	--	<1%	--
Staff and per diem			
2	20%	20%	5%
3	4%	4%	1%
4	1%	1%	<1%
5	<1%	<1%	<1%
Total	101%	100%	100%
Note: Percentages are calculated out of all multiple-day files (i.e., all files worked on for more than one day). Totals may not sum to 100% due to rounding.			

Table 5 compares rates of lawyer continuity for staff and per diem duty files. Hamilton and London maintained a single staff lawyer in more than three-quarters of staff files, while Oshawa did so two-thirds of the time. Continuity of representation proved more elusive in the case of per diem files. In Hamilton, where there is a large per diem panel of approximately 60 lawyers, a single per diem worked on five percent of all per diem files. Even at the offices with considerably smaller per diem panels, however, achieving continuity of representation was more often than not impossible to achieve.



Table 5: Continuity of representation by staff or per diem duty counsel			
Number of lawyers	Hamilton	London	Oshawa
Staff files	(n=302)	(n=378)	(n=541)
1	77%	77%	67%
2	20%	20%	31%
3	3%	2%	2%
4	<1%	<1%	--
5	--	--	<1%
Total	101%	100%	100%
Per diem files	(n=272)	(n=325)	(n=475)
1	5%	16%	10%
2	73%	60%	73%
3	17%	20%	15%
4	3%	4%	2%
5	2%	1%	1%
6	--	<1%	--
Total	100%	101%	101%
All files	(n=574)	(n=703)	(n=1,016)
1	43%	49%	40%
2	45%	39%	51%
3	10%	10%	8%
4	2%	2%	1%
5	1%	<1%	1%
6	--	<1%	--
Total	101%	100%	101%
Note: Files are considered staff files or per diem files based on the first lawyer docketing on the file. Totals may not sum to 100% due to rounding.			

Key informants regard continuity of representation as desirable.

Key informants regard continuity of representation as a desirable feature of the expanded duty counsel approach, even as they acknowledged the limitations posed by per diem scheduling. While stakeholders recognized that continuity of representation both enhances clients' trust in duty counsel and improves the efficiency of the court process, they also observed that it should not be necessary to maintain the same lawyer on a case as long as file continuity is maintained and all duty counsel provide a consistent level of service. As we have already seen, file continuity is perceived as one of the most important strengths of the EDC model.

3.2.3 Document production

Document production is the third key function of duty counsel in the expanded model. As Table 6 below shows, the overall proportion of client time that duty counsel spend on document



production is quite small. The proportion is highest in London, where it reaches ten percent of client time. However, at all three locations, time spent on document production has tended to increase since the pilots were first implemented.

	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Total
Hamilton	2%	3%	6%	8%	5%
London	9%	7%	13%	12%	10%
Oshawa	6%	6%	6%	7%	6%

Furthermore, and perhaps contrary to expectations, per diems and staff duty counsel actually spend similar proportions of their time at document production, except in Hamilton, where per diems are slightly less disposed than staff to produce documents. See Table 7.

	Staff	Per diem
Hamilton	4%	1%
London	5%	4%
Oshawa	3%	3%

The willingness of duty counsel to prepare documents may depend on concerns about liability, the nature of the proceedings, and the relationship between the EDC and the FLIC.

Anecdotally, it has been suggested that the willingness of duty counsel to prepare documents depends on several factors. For example, in Oshawa, there is reportedly concern about liability on the part of some members of the per diem panel, to the extent that certain per diems have refused to prepare documents and some have dropped off the panel altogether. The nature of the proceedings is also an important consideration in determining whether duty counsel will prepare documents. As key informants explained, preparing the necessary documents for CFSA matters requires time that duty counsel in most circumstances are not able to spend. Analysis confirms that duty counsel rarely produce documents for CFSA proceedings; of the three EDC sites, London is most inclined to prepare documents in child welfare matters.

Third, the nature of the relationship between each EDC office and the FLIC situated at their court may have some impact on the extent to which duty counsel prepare documents. While some key informants said the respective roles of duty counsel and FLIC advice counsel are clear – duty counsel assist clients appearing in court that day while FLIC advice counsel assist everyone else – others believe the reality is more ambiguous. They pointed out that occasionally, FLIC advice counsel may prepare documents for clients who are in court that day, and duty counsel may do the



same for clients who are not, particularly if the FLIC is busy and time permits. Duty counsel may also book appointments with clients in order to prepare documents between court appearances. Although most key informants were not particularly concerned about overlap between FLIC and EDC functions, some key informants said it could be eliminated through better coordination.

3.3 Case progress toward resolution

Key informants report that the EDC emphasis on resolution has led to fewer adjournments and more early stage settlement.

Together, the three enhanced functions of duty counsel in the expanded model of service – the capacity to create and carry client files, the ability to provide continuity of representation, and the capacity to produce documents – are intended to enable the model to advance client cases toward resolution. For many key informants, this emphasis on resolution is one of the distinct advantages of the EDC approach. Key informants told us that under the old duty counsel system, many duty counsel saw their role primarily as one of clearing the docket on a particular day, rather than promoting resolution. In the expanded model, by contrast, there is reportedly a high degree of settlement orientation among duty counsel, especially for financially eligible clients. Furthermore, key informants said that staff and per diem duty counsel are equally likely to promote settlement, which they attributed to per diem training by the EDC Coordinator. Overall, key informants said the expanded duty counsel approach has resulted in fewer adjournments and more early stage settlement. Although this evaluation lacks quantitative data against which the performance of the EDC offices in these respects could be compared, we can compare adjournment and resolution rates among the three offices. These comparisons are made in the sections that follow.

3.3.1 Adjournments

Retained cases are seldom adjourned in Hamilton.

As we saw previously, Hamilton is the least likely of the three EDC offices to retain client cases. However, those it does retain are seldom adjourned compared to retained cases in London and Oshawa. In Hamilton, CFSA and other types of proceedings are equally likely to be adjourned (about one-quarter of the time), but in London and Oshawa, CFSA cases stand a much higher chance of being adjourned than other types.⁹ In fact, in London, where

⁹ There are, however, few differences among the EDC offices in the proportion of referred cases that are adjourned. See Appendix E for the details.



duty counsel retain CFSA cases much more often than either of the other two sites, these cases are adjourned more than two-thirds of the time. See Table 8.

	Hamilton (n=480)		London (n=1,035)		Oshawa (n=1,271)	
	CFSA (n=81)	All others (n=399)	CFSA (n=165)	All others (n=870)	CFSA (n=214)	All others (n=1,057)
Never adjourned	74%	76%	32%	61%	45%	70%
Adjourned one or more times	26%	24%	68%	39%	55%	30%

The reasons for these cross-site differences in adjournment rates are not clear. The higher adjournment rates in London, and to some extent in Oshawa, may reflect the fact that they retain a greater proportion of cases, including some that are more difficult or complex. As with retention and referral rates, differences in court operations and scheduling are also a possible explanation.

3.3.2 Resolutions

Oshawa and London have higher overall resolution rates than Hamilton, due to a higher rate of temporary resolutions in CFSA matters.

Like referral and adjournment rates, rates of issue resolution vary among the three EDC offices. Oshawa and London achieve some issue resolution, either final or temporary, more than half the time (in 56 percent and 55 percent of cases, respectively), compared to one-third of the time in Hamilton.

The greater overall resolution rate in London and Oshawa is largely attributable to the higher rate of *temporary* resolutions in CFSA cases at those two sites compared to Hamilton. The latter seldom resolves issues temporarily, either in CFSA or other types of proceedings, but London and Oshawa do so in close to half of CFSA matters. Cross-site differences in *final* resolution rates are less dramatic. These rates are similar for CFSA cases, although differences are more pronounced for other types of proceedings. Of the three sites, Oshawa is somewhat more successful at achieving final resolutions. See Table 9 for the details.

	Hamilton (n=1,681)		London (n=1,642)		Oshawa (n=3,103)	
	CFSA (n=469)	All others (n=1,212)	CFSA (n=342)	All others (n=1,300)	CFSA (n=927)	All others (n=2,176)
Final resolution (some or all issues)	17%	25%	18%	29%	18%	39%
Temporary resolution only	13%	11%	48%	16%	46%	8%
No issues resolved	70%	64%	34%	54%	36%	53%

Note: Section totals may not sum to 100% due to rounding.



London is unique in resolving issues more often in cases it refers than those it retains.

Comparing resolution rates for retained and referred cases, as in Table 10 below, reveals further variation among the three offices. Whereas Hamilton seldom resolves issues in cases it refers, both London and Oshawa do so relatively often. These two sites are especially successful at securing temporary resolutions in CFSA proceedings before referring these cases elsewhere. However, London is unique in resolving issues more frequently in cases it refers than in those it retains.

Oshawa has the highest overall resolution rate for the cases it retains.

Of the three offices, Oshawa has the highest overall resolution rate (final and temporary) for the cases it retains, achieving this distinction mainly because it resolves more issues temporarily than does Hamilton. Hamilton and Oshawa have similar rates of final resolution in retained cases, although Hamilton is more likely to achieve final resolution in CFSA cases, whereas Oshawa is more likely to do so in other types of proceedings. London’s temporary resolution rate for retained cases is the highest of the three offices, but its rate of final resolution for these cases is lower than at the other sites. Perhaps as a consequence of London’s greater willingness to take carriage of files, it is less likely than the other two offices to reach a final resolution.

Table 10: Issue resolution for retained and referred cases

	Hamilton (n=1,681)		London (n=1,642)		Oshawa (n=3,103)	
	CFSA (n=81)	All others (n=399)	CFSA (n=165)	All others (n=870)	CFSA (n=214)	All others (n=1,057)
Retained cases						
Final resolution (some or all issues)	62%	48%	24%	36%	48%	59%
Temporary resolution only	5%	6%	35%	12%	28%	3%
No issues resolved	33%	46%	42%	52%	25%	38%
Referred cases						
	CFSA (n=388)	All others (n=813)	CFSA (n=177)	All others (n=430)	CFSA (n=713)	All others (n=1,119)
Final resolution (some or all issues)	8%	14%	12%	16%	9%	20%
Temporary resolution only	14%	13%	61%	26%	52%	13%
No issues resolved	78%	73%	27%	58%	39%	68%

Note: Section totals may not sum to 100% due to rounding.

Key informants told us that several factors, including the complexity of the case, influence the likelihood of resolution. Simple, single-issue cases involving access, custody, or support are usually amenable to a speedy resolution, whereas resolution is more difficult to secure in child welfare cases. In any event, CFSA proceedings are often referred to Legal Aid for a certificate or to the private bar; in fact, key informants in London reported that resolutions in these matters are usually temporary – an observation that is certainly borne out by the London data presented above.



The psychological and emotional state of clients affects the likelihood of a settlement.

Key informants reported that resolution is more difficult to achieve in CFSA proceedings partly because of the more complex nature of these cases but also because they can be highly emotional experiences for the individuals involved. More broadly, the psychological and emotional state of clients is one of the most significant factors bearing on issue resolution. Many key informants reported that resolution is more likely when clients are well-rounded, mature, reasonable individuals with realistic expectations. A few key informants added that while some clients are simply not emotionally prepared to settle, others purposely avoid resolution in order to prolong their matter in the courts.

Key informants also noted that resolution may be impeded when the opposing party is unrepresented; when there are power imbalances or domestic violence issues present in the opposing parties' relationship; and when private counsel attends court without his or her client (in these instances, the matter is adjourned so private counsel can speak with the client and obtain instructions on how to proceed). Key informants in London said duty counsel do not usually have all the information needed to resolve a case when it is first initiated and therefore can typically only negotiate a temporary resolution at that stage. Some key informants noted that resolution is greatly facilitated by the availability of knowledgeable duty counsel who provide clients with consistent advice.

Reasons for cross-site differences in case processing may include dissimilar court operations and unique EDC “cultures” at each site.

All this being said, it remains extremely difficult to pinpoint the reasons for the divergences in resolution rates and other aspects of case processing among the three EDC offices that we described above. These differences seem to pervade all aspects of case processing, beginning with the initial decision to retain or refer a case. It appears as though a unique “culture” has developed at each site that determines how duty counsel should approach various clients and various types of matters. Although the data presented above could be interpreted in various ways, they could imply, for example, that the Hamilton and Oshawa EDC offices do not retain a case unless a final resolution seems likely, whereas London is more likely to retain matters that are more difficult to resolve. Of course, dissimilar court operations and scheduling practices at each of the three locations also have an impact on the way client matters progress through the court system.



3.4 Time spent per client file

London spends the most time per client file of the three EDC offices.

While not explicitly identified as one of the functions of duty counsel in an expanded model of service, spending time and effort on behalf of clients is implicit in the EDC approach. On average, London spends the most time per client file of the three EDC offices – 1.5 hours per file (90 minutes), compared to 1.2 hours (72 minutes) in Hamilton and 1.1 hours (66 minutes) in Oshawa. Put another way, duty counsel in London spend 18 minutes more per file than those in Hamilton and 24 minutes more per file than duty counsel in Oshawa. While these differences may not seem especially large on a per file basis, they are considerable when multiplied over large numbers of clients.

To some extent, the greater amount of time spent per file by duty counsel in London can be attributed to the larger average number of client visits per file there compared to the other two sites, as shown in Table 11 below. The higher number of client visits per file may, in turn, be a reflection of the fact that London takes carriage of a larger proportion of cases – including the more complex CFSA cases – than either of the other two sites. It also bears repeating that duty counsel in London are most inclined to prepare court documents for their clients, spending ten percent of client time engaged in this task, compared to six percent in Oshawa and five percent in Hamilton. Thus, one probable explanation for the greater amount of time spent per file in London is that duty counsel there are taking carriage of more files (including more complex files), seeing clients more often, and preparing more documents for these clients. In Oshawa, staff duty counsel reported some reluctance on the part of clients to schedule repeat visits.

	Client visits	Client files	Visits per file	Hours per file
Hamilton	2,928	1,681	1.74	1.2
London	3,133	1,642	1.91	1.5
Oshawa	4,579	3,103	1.48	1.1

It is worth noting that all three offices spend slightly more time on cases they refer than those they retain (see Table 12 below). While this may seem counter-intuitive, it suggests that the referral process – interviewing the client, assessing the case, and making an appropriate referral – can itself be rather time-consuming. In carrying out this assessment and referral function, duty counsel are providing a valuable service that facilitates the progress of clients’



legal proceedings through the family law system. It is also worth noting, however, that within each site, the difference in average time spent per file tends to be larger than the difference in median time spent per file when referred and retained cases are compared.¹⁰ This implies that duty counsel spend significantly more time on a relatively small number of exceptional cases, which due to their complexity are then referred elsewhere (which increases the average time spent per file for referred cases), but that the majority of cases, regardless of whether they are referred or retained, require approximately the same amount of duty counsel time.

Table 12: Time spent per file						
	Hamilton (n=1,681)		London (n=1,642)		Oshawa (n=3,103)	
	CFSA (n=469)	All others (n=1,212)	CFSA (n=342)	All others (n=1,300)	CFSA (n=927)	All others (n=2,176)
Not referred						
Mean	0.8	1.2	1.2	1.4	1.0	0.9
Median	0.7	0.8	0.9	1.0	0.9	0.8
Referred						
Mean	1.2	1.4	1.7	1.8	1.4	1.2
Median	0.9	1.0	1.1	1.2	1.1	0.9
Total						
Mean	1.1	1.3	1.4	1.5	1.3	1.1
Median	0.9	0.9	1.0	1.1	1.0	0.8

Staff duty counsel report spending approximately the same amount of time on all client matters.

This interpretation is lent credence by results from the interviews with staff duty counsel, who reported that while there are some exceptions, duty counsel spend approximately the same amount of time on all matters regardless of any case characteristics. This is because the tasks carried out by duty counsel – for instance, interviewing a client – always require approximately the same amount of time. Furthermore, staff in Hamilton and Oshawa (though not, it should be noted, in London) reported that the matters handled by duty counsel tend to be similar in terms of their level of difficulty. Duty counsel usually refer the more complex cases, and the more straightforward ones that they retain simply do not require more of their time.

¹⁰ Within each site, the difference in average time spent between referred and retained cases is approximately 24 minutes, whereas the difference in median time spent between referred and retained cases is approximately 12 minutes. There are a few exceptions as indicated in Table 12.



3.5 Client satisfaction with expanded duty counsel services

Most clients believe they received high quality service from duty counsel.

Given the EDC model's emphasis on spending time and effort on behalf of clients with the goal of advancing their cases toward resolution, client satisfaction is an important issue in this evaluation. Results from the client feedback survey demonstrate a consistently high level of client satisfaction with expanded duty counsel at all three EDC sites. Overall, clients in London expressed the greatest degree of satisfaction with the duty counsel services they received. Although it is worth noting that client satisfaction is highest at the EDC office that spends the most time with clients, it should also be borne in mind that the client survey did not canvass a random sample of clients, but rather a self-selected sample.

Duty counsel are widely regarded by respondents to the client survey as courteous and respectful. Large majorities (in the realm of 80 percent or more at all three sites) believe the duty counsel lawyer who served them *treated them with respect, responded to their concerns, and took enough time to listen to them*. Similarly, 80 percent of all respondents believe they received *quality service from the duty counsel lawyer*, a proportion that reached 84 percent in London. London respondents were also most likely to agree that the duty counsel lawyer *worked hard for them* (79 percent agreed, compared to 70 percent in Hamilton and 52 percent in Oshawa). On the other hand, respondents in London most often reported that they *did worse in their case than the duty counsel lawyer told them they would*. Eleven percent of London respondents agreed with this statement, compared to four percent in Hamilton and three percent in Oshawa. Oshawa respondents were most likely to disagree (61 percent, compared to 52 percent in Hamilton and 48 percent in London). However, a considerable proportion of respondents at all three sites were neutral.

Duty counsel also scored highly on questions related to their explanations of clients' legal proceedings. Approximately three-quarters of respondents in Hamilton and Oshawa said duty counsel explained to them *how the court works and what they were supposed to do*, compared to 85 percent in London. About two-thirds of respondents overall said the duty counsel lawyer *told them what the possible outcomes of their case might be* (69 percent in London, 65 percent in Hamilton, and 59 percent in Oshawa). Respondents were least likely to report that the duty counsel lawyer told them *what decision the judge would probably make in their case*. About 40 percent of respondents in London and Hamilton and one-third of those in Oshawa said duty counsel



had told them what the judge's decision in their case would likely be. For more detailed results from the client feedback survey, consult Appendix C.

3.6 Court, bar, and other stakeholder satisfaction

File continuity, continuity of representation, and an emphasis on resolution are perceived as important advantages of the EDC model.

This evaluation found a high degree of satisfaction with expanded duty counsel not only among clients, but also among judges, members of the family law bar, court personnel, and other stakeholders. Key informants at all three sites regard the expanded duty counsel model implemented at their court as an improvement over the old per diem system and mentioned numerous advantages of the EDC approach. As we have previously noted, file continuity is perceived as one of the most important perceived benefits of the EDC model and as absolutely essential if duty counsel is to provide an efficient, effective service. Continuity of representation is also regarded as desirable, although many key informants noted that for scheduling reasons, it is not always possible to maintain the same lawyer on a case. Key informants singled out the expanded duty counsel emphasis on resolution as another important advantage of the model, observing that it has resulted in more early stage settlement and fewer adjournments.

The supervisory role of the EDC Coordinator has resulted in better organization, scheduling, accountability, and consistency of advice.

The supervisory function played by the EDC Coordinator is perceived as another important benefit of the expanded duty counsel approach. Key informants at all three EDC locations reported that the presence of a Coordinator has resulted in better organization, scheduling, accountability, and consistency of advice. Some key informants also observed that the Coordinator is very knowledgeable about the entire family law court system and acts as an important resource for other counsel. At all three EDC locations, key informants observed that per diem duty counsel are much more conversant with court procedures and requirements than they were when the pilots were first implemented as a result of the training provided by staff duty counsel. Their greater familiarity with these procedures and requirements has, in turn, resulted in more consistent advice and expedited the court process. However, a few key informants said the tariff for per diem duty counsel work remains a barrier to attracting high quality, experienced lawyers.

The EDC model has led to a more expeditious court process and a better quality of client service.

Taken together, key informants believe that these features of the expanded duty counsel model – file continuity, improved organization, accountability, and consistency of advice through the coordinator role, and a new orientation toward resolution on the part of both staff and per diem duty counsel – have resulted in a



more expeditious court process and a better quality of client service. In fact, key informants were unanimous in their opinion that the expanded approach to duty counsel service delivery is a significant improvement over the traditional per diem model. All key informants believe a mixed EDC model (consisting of both staff and per diem duty counsel) is appropriate.



4.0 Analysis of EDC cost

This section of the report presents evaluation findings related to the cost of the expanded duty counsel model. It includes a discussion of the ratio of client time to administration and downtime; a comparison of overall costs; and a comparison of costs per client visit and per client file. Cost data for Barrie, which operates with per diem duty counsel only, are presented by way of comparison.

4.1 Distribution of time

Hamilton is unique in spending a majority of time on client-related tasks.

The way duty counsel allocate their time between client-related activities and administration/downtime is an important factor determining the cost of the EDC offices. Table 13 below shows the distribution of duty counsel time between April 1, 2001 and March 31, 2002. During this period, the majority of duty counsel time in Hamilton (56 percent) was docketed to client-related tasks, whereas administrative tasks and downtime accounted for the greater proportion of duty counsel time in Oshawa and London (55 percent and 54 percent, respectively).

	Hamilton	London	Oshawa
Client time	56%	46%	45%
Administration	29%	44%	48%
Downtime	15%	10%	7%
Total	100%	100%	100%

Per diems at all three locations devote most of their time to client activities, but this is true of staff only in Hamilton.

Although per diems can devote most of their time to client-related activities – at least 60 percent at all three EDC sites – staff duty counsel are in quite a different position, since their responsibilities include more extensive administrative work than is expected of per diems. The staff duty counsel in Hamilton divides his time more or less equally between client activity and administration/downtime and, like per diem duty counsel, spends the majority of his time (53 percent) on the former. In London and Oshawa, on the other hand, staff duty counsel docket over 60 percent of their time as administration and downtime. See Table 14 for the details.

	Hamilton	London	Oshawa
Staff			
Client time	53%	39%	33%
Administration	47%	59%	67%
Downtime	<1%	2%	<1%
Per diem			
Client time	60%	61%	67%
Administration	10%	12%	12%



Downtime	30%	27%	21%
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4.1.1 Client time

More detailed analysis of client time shows that the majority is, as would be expected, dedicated to interviewing clients and reviewing files. Cross-site differences in the distribution of client time are minor, with duty counsel in Hamilton most likely to attend court, those in Oshawa most likely to negotiate, and those in London most likely to prepare documents. See Table 15 for more information.

	Hamilton		London		Oshawa	
	CFSA	All others	CFSA	All others	CFSA	All others
Interview client/review file	56%	61%	60%	65%	54%	57%
Attend court	31%	21%	15%	8%	23%	16%
Negotiation	11%	11%	19%	14%	22%	17%
Prepare documents	1%	6%	6%	12%	1%	9%
Other	--	2%	1%	1%	1%	1%
Total	99%	101%	101%	100%	101%	100%

Note: Totals may not sum to 100% due to rounding.

As might be expected, there are some differences in the way staff and per diem duty counsel spend their time. In general, staff duty counsel devote a smaller proportion of their time to client-related activities than do per diems, largely because of their administrative responsibilities. Document production is the only exception. See Table 16 below for the details.

	Hamilton		London		Oshawa	
	Staff	Per diem	Staff	Per diem	Staff	Per diem
Interview client/review file	34%	34%	25%	38%	18%	38%
Attend court	8%	18%	3%	8%	6%	12%
Negotiation	6%	6%	5%	11%	6%	13%
Prepare documents	4%	1%	5%	4%	3%	3%
Other	1%	1%	--	--	1%	--
Total client time	53%	60%	39%	61%	33%	67%
Admin/downtime	47%	40%	61%	39%	67%	33%
Total	100%	100%	100%	100%	100%	100%

4.1.2 Administration time and downtime

Administration consumes a significant portion of staff time, particularly for the offices with more than one staff duty counsel;



as previously noted, staff duty counsel in Oshawa and London spend 67 percent and 61 percent of their time, respectively, on administrative duties, compared to 47 percent in Hamilton. Table 17 shows a more detailed breakdown of time spent by staff on administrative tasks and downtime. Note that downtime is negligible for staff.

	Hamilton	London	Oshawa
Statistics and docketing	13%	10%	4%
Office management	7%	11%	18%
General administration	3%	10%	18%
EDC meetings and preparation	6%	10%	6%
Other meetings and preparation	2%	3%	2%
FLIC advice	2%	--	1%
Education and research	2%	3%	2%
Duty counsel management and training	1%	2%	3%
Duty counsel advice	1%	--	--
Downtime	<1%	2%	<1%
Vacation	9%	8%	11%
Illness	1%	3%	1%
Total administration time	47%	61%	67%
Client time	53%	39%	33%
Total	100%	100%	100%

In London and Oshawa, staff duty counsel spend a considerable portion of their time at office management and general administration.

As Table 17 shows, a much higher proportion of staff time is spent in London and Oshawa on office management and general administration compared to Hamilton. In Hamilton, ten percent of total staff time is spent on these two tasks put together, whereas in London it is 21 percent and in Oshawa, 36 percent. Put another way, the proportion of staff time that is apparently required for office management and general administration grows by more than ten percent with each additional staff duty counsel. Anecdotally, staff duty counsel in Oshawa suggested that the high proportion of staff time spent on administration at that site may be related to the number of clients. The Oshawa office has one support person despite having approximately double the number of clients as Hamilton and London. Staff duty counsel in Oshawa, therefore, devote time to administrative functions such as data entry that at the other locations are performed by the support staff. Staff duty counsel in Oshawa reported that the time they spend on administration is not, however, detracting from their ability to meet clients' needs.



Per diem downtime is lowest in Oshawa.

Per diems at all three offices spend similar proportions of their time at general administration. However, per diem downtime, which is probably the most important factor determining the cost of the EDC offices, is somewhat lower in Oshawa (21 percent of total per diem time) than in Hamilton and London (30 percent and 27 percent, respectively). See Table 18.

	Hamilton	London	Oshawa
General administration	10%	12%	12%
Downtime	30%	27%	21%
Client time	60%	61%	67%
Total	100%	100%	100%

Downtime is partly the result of court scheduling and the need to avoid conflict. The EDC offices have been devising ways of reducing downtime based on their unique circumstances.

To a considerable extent, downtime is the result of two factors over which the EDC offices have no control: court scheduling and the need to maintain per diem duty counsel at the court in the event of a conflict. Devising ways of reducing the amount of downtime based on the circumstances at their particular courts has been a concern of staff duty counsel throughout the pilot projects. For example, Oshawa assigns clients to staff duty counsel first, schedules per diems to start later in the morning than staff, and sends per diems away at the earliest opportunity. Oshawa also reported having made efforts to improve docketing to ensure that per diems record all the time they spend with clients. In Hamilton, per diems are likewise sent away if it is not busy or are asked to assist with document production or in the FLIC.

Like the other two sites, staff in London reported sending per diems away when they are not needed but noted that private counsel and certificate lawyers expect to be out of court by 1:00 p.m. London, therefore, makes more duty counsel available in the mornings to assist clients and is generally successful at clearing the dockets by 1:00, with the exception of matters scheduled for 2:30. Duty counsel are not as busy in the afternoons but are able to spend more time with each client. London staff suggested that downtime could be reduced further through more coordination of services between the FLIC and the EDC, and through duty counsel assisting the FLIC in the afternoons.

The experience of the EDC pilot projects underlines the need for flexibility in per diem scheduling in expanded duty counsel models, as a means of reducing downtime and thereby costs.



4.2 Comparison of EDC activity and costs

In Hamilton, the number of client visits has been steadily increasing over time and has been accompanied by increases in client hours, per diem hours, and per diem costs.

Table 19 (next page) summarizes quarterly activity at the three EDC offices for the one-year period from April 1, 2001 to March 31, 2002. In Hamilton, the number of client visits has been steadily increasing over the twelve-month period and has been accompanied by a corresponding increase in client hours, per diem hours, and per diem costs.¹¹ A similar pattern has not prevailed in London and Oshawa, where the number of client visits has not grown steadily over time but instead has increased in some quarters and declined in others.

Furthermore, although in Hamilton and Oshawa, there is a positive relationship between the number of client visits on the one hand and client hours, per diem hours, and per diem costs on the other (i.e., as the number of client visits increases, so do client hours, per diem hours, and per diem costs), this has not necessarily been the case in London. For example, between the first and second quarters in London, client visits decreased, but total client hours increased, as did per diem hours and per diem costs. In the third quarter, client visits increased and so did client hours, but per diem hours and costs declined. We were told that the unexpected increase in per diem hours and costs in the second quarter in London was due to the absence of staff duty counsel for part of that period.

Table 19: Summary of quarterly EDC activity					
	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Total
Hamilton					
Number of staff client visits	278	352	368	529	1,527
Number of per diem client visits	255	287	423	436	1,401
Total client visits	533	639	791	965	2,928
Number of client hours	423.5	486.0	569.6	590.2	2,069.2
Per diem hours	368.5	431.9	501.9	519.8	1,821.7
Per diem costs	\$23,630.19	\$27,695.36	\$32,048.22	\$33,065.69	\$116,439.45
London					
Number of staff client visits	465	312	531	459	1,767
Number of per diem client visits	306	353	367	340	1,366
Total client visits	771	665	898	799	3,133
Number of client hours	548.2	570.7	704.0	661.4	2,484.3
Per diem hours	394.4	483.6	413.2	409.6	1,700.8
Per diem costs	\$26,157.90	\$31,965.17	\$27,232.37	\$27,188.89	\$112,544.33
Oshawa					
Number of staff client visits	566	580	520	677	2,343
Number of per diem client visits	501	571	496	668	2,236
Total client visits	1,067	1,151	1,016	1,345	4,579
Number of client hours	860.6	870.6	812.7	997.1	3,541.0
Per diem hours	680.6	693.4	598.0	724.3	2,696.2
Per diem costs	\$43,671.29	\$44,720.92	\$38,685.97	\$46,525.07	\$173,603.24

¹¹ As of August 1, 2002, the hourly rate for per diem duty counsel increased from \$57.00 to \$70.35.



Oshawa serves the most clients and employs the most full-time duty counsel each day, but Hamilton has the highest client to lawyer ratio.

Daily EDC activity is summarized in Table 20. As the largest EDC office, Oshawa serves the most clients on a daily basis. It handles an average of 18.9 client visits per day, compared to 12.8 in London and 12.1 in Hamilton. Oshawa also employs the largest number of full-time duty counsel – an average of 4.6 full-time lawyers each day, compared to 3.0 in London and 2.1 in Hamilton. However, duty counsel in Oshawa each assist fewer clients per day than duty counsel at the other two sites. On average, in the last quarter of this analysis, each duty counsel in Oshawa assisted 4.6 clients each day, compared to 4.4 in London and 7.3 in Hamilton. Note that in Hamilton, the average number of clients per duty counsel per day has been increasing over four quarters. These data, along with anecdotal information, would seem to indicate that the Hamilton EDC office may be reaching capacity in terms of the number of clients it serves. However, we have no real understanding of what full capacity might be for any of the EDC offices.

Table 20: Summary of daily activity					
	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Total
Hamilton					
Average number of client visits per day	8.9	10.5	13.2	15.8	12.1
Average number of full-time duty counsel per day	1.9	2.0	2.2	2.3	2.1
Average number of clients per lawyer per day	4.9	5.2	6.1	7.3	5.9
London					
Average number of client visits per day	12.4	10.7	15.0	13.1	12.8
Average number of full-time duty counsel per day	3.0	3.1	3.1	3.0	3.0
Average number of clients per lawyer per day	4.4	3.4	5.2	4.4	4.4
Oshawa					
Average number of client visits per day	17.8	18.6	16.9	21.7	18.9
Average number of full-time duty counsel per day	4.6	4.6	4.5	4.7	4.6
Average number of clients per lawyer per day	3.8	4.0	3.8	4.6	4.1

4.2.1 Comparison of EDC costs

The costs of the three EDC offices from April 1, 2001 to March 31, 2001 are shown in Table 21. Total costs are lowest in Hamilton and highest in Oshawa. See Appendix D for quarterly data on costs for the three EDC sites and for the comparison site at Barrie. Appendix E contains the formula used to calculate costs for the EDC offices and for Barrie.

Table 21: Costs of EDC offices						
Site	Overhead	Fees	Appearance fees	Client cost	Downtime/ admin cost	Total cost
Hamilton	\$45,878.36	\$170,797.09	\$12,600.00	\$129,666.75	\$99,608.70	\$229,275.45
London	\$44,936.25	\$232,860.08	\$15,600.00	\$139,184.32	\$154,212.01	\$293,396.33
Oshawa	\$55,634.94	\$331,303.30	\$19,920.00	\$193,288.32	\$213,569.92	\$406,858.24

Notes: Data for the EDC offices are for April 1, 2001 to March 31, 2002.



Hours per visit are similar among the three EDC offices and the comparison site.

Table 22 compares client hours, client visits, hours per visit, and cost per visit for each of the three pilot project sites and the comparison site at Barrie.¹² Client hours per visit are highest in Barrie and lowest in Hamilton, a somewhat surprising result given that an important part of the mandate of the expanded duty counsel model is to spend more time and effort on behalf of clients than is possible in the traditional model. Admittedly, the discrepancy in time spent between Barrie and Hamilton is small; it amounts to only 12 minutes. At the same time, however, 12 minutes multiplied by the total number of clients over the course of a year amounts to a significant figure.

Among the three EDC offices, the difference in time spent per visit is a mere six minutes. As noted elsewhere in this report, staff duty counsel at all three locations confirmed that, albeit with some exceptions, all matters take more or less the same amount of time for duty counsel to deal with. Furthermore, complex cases are usually referred to the private bar or for a legal aid certificate, and those that are retained are relatively simple and do not require more duty counsel time. It is also possible that duty counsel who work in an expanded model acquire extensive knowledge of and expertise in particular areas of family law, both through their experience and through duty counsel training, and are therefore able to deal with matters more expeditiously than duty counsel in a strictly per diem model – which clearly has positive implications for the EDC approach in general.

Site	Client hours	Client visits	Hours per visit	Cost per visit
Hamilton	2,069.2	2,928	0.7	\$78.30
London	2,484.3	3,133	0.8	\$93.65
Oshawa	3,541.0	4,579	0.8	\$88.85
Barrie	530.0	625	0.9	\$92.42
Prov. Family Court per diem duty counsel	N/A	N/A	N/A	\$66.69
Prov. Family Court per diem duty counsel w/o staff	N/A	N/A	N/A	\$69.85

Notes: Data for the EDC offices and provincial data are for April 1, 2001 to March 31, 2002. Data for Barrie are for January 1, 2001 to March 31, 2001. For the purpose of the cost comparison, it was determined that provincial administrative costs in the per diem model are equal to provincial administrative costs in the EDC model. Because these costs were determined to be equal, they were not included in the cost calculation.

¹² Just as for the Refugee Law Office and Family Law Office evaluations, it was determined for the purpose of the cost comparison that provincial administrative costs in the per diem model are equal to provincial administrative costs in the EDC model. Because these costs were determined to be equal, they were not included in the cost calculation. The cost figures for the EDC offices, therefore, include the additional administrative costs that are associated with operating these offices on the expanded model.



Cost per visit is lowest in Hamilton and has been decreasing over time as the number of clients increases.

Turning now to cost, Table 22 shows that of the three EDC offices and the control site, total cost per visit is lowest in Hamilton (\$78.30), followed by Oshawa (\$88.85), Barrie (\$92.42), and London (\$93.65). Thus, the EDC offices are comparable to the control site at Barrie in terms of cost per visit; cost per visit is lower than Barrie’s at two of the EDC offices and approximately equal to Barrie’s at the third. On the other hand, all three EDC offices as well as Barrie have costs per visit that are higher than the provincial figure for Family Court per diem duty counsel (\$66.69 per visit) and higher than the provincial figure for Family Court per diem duty counsel in areas without staff duty counsel (\$69.85 per visit).

Examining trends over time, as in Table 23 below, shows that in Hamilton, the number of client visits has steadily increased over four quarters, while cost per visit has declined, suggesting that Hamilton has become more efficient over time.¹³ However, a similar overall pattern of declining cost per visit in the context of an increasing number of clients has not prevailed in Oshawa and London. See Appendix D for a detailed quarterly analysis.

Table 23: Quarterly analysis of client visits and cost per visit					
	Apr-Jun	Jul-Sep	Oct-Dec	Jan-Mar	Total
Hamilton					
Number of client visits	533	639	791	965	2,928
Cost per visit	\$97.26	\$87.49	\$76.18	\$63.50	\$78.30
London					
Number of client visits	771	665	898	799	3,133
Cost per visit	\$92.57	\$116.06	\$80.67	\$90.62	\$93.65
Oshawa					
Number of client visits	1,067	1,151	1,016	1,345	4,579
Cost per visit	\$95.58	\$89.52	\$95.47	\$77.95	\$88.85

Oshawa has the lowest average cost per file and spends the least amount of time on each one.

Looking at cost on a per file rather than a per visit basis, Table 24 below shows that Oshawa spends the fewest hours per file and has the lowest average cost per file. Hamilton’s average cost per file is slightly more than Oshawa’s, and it spends a fraction more time on each one.

The London EDC has the highest average cost per file of the three offices. This higher cost appears to be the outcome of several factors, including per diem downtime and the greater amount of time that London spends on each file. As we have seen, duty counsel in London are taking carriage of more files (including more complex files such as CFSA), seeing clients more often, and preparing more documents for their clients than the other two

¹³ The increasing number of client visits in Hamilton is due increased referrals to duty counsel by the local Area Office.



offices. This level of service is reflected in the greater amount of time that London spends per file and therefore its higher cost. It is important to appreciate that compared to the other two sites, the London EDC office is doing more for its clients at an additional cost of approximately forty dollars per file.

Site	Client files	Hours per file	Visits per file	Average cost per file
Hamilton	1,681	1.2	1.74	\$136.39
London	1,642	1.5	1.91	\$178.68
Oshawa	3,103	1.1	1.48	\$131.12

Comparative cost per file data are not available because the regular per diem duty counsel service does not include a file management system.



5.0 Profiles of the three EDC offices

The preceding sections of this report have described and analysed the three expanded duty counsel offices in relation to each other. While comparative analysis is helpful in understanding how the offices stack up against each other in a variety of ways, it may also obscure the unique strengths and weaknesses of each EDC model. The purpose of this section is to highlight these strengths and weaknesses before drawing final conclusions and recommendations in section 6.0.

5.1 Profile of the Hamilton EDC

The EDC office in Hamilton consists of one staff duty counsel, a large per diem panel comprised of approximately 60 lawyers, and 1.5 support persons. Within the period of time analysed in this report, the Hamilton EDC handled a total of 1,681 client files, of which 58 percent involved clients who met the financial eligibility requirements for full duty counsel assistance.

One of the most striking features of this model is its high referral rate. Hamilton refers 75 percent of all cases, either to the private bar or for a certificate, and takes carriage of the remaining quarter. But although Hamilton retains a relatively small proportion of client files, those it does retain appear to progress through the court system toward resolution. Three-quarters of Hamilton's retained cases are never adjourned, regardless of whether CFSA or other types of proceedings are involved, and 55 percent of its retained cases result in a final resolution. Given its low retention rate, however, Hamilton's high rate of final resolution for retained cases represents a small number of actual cases. Furthermore, because Hamilton is unlike the other two offices in seldom resolving issues in cases it refers and rarely securing temporary resolutions, its overall resolution rate – 33 percent – is lower than it is elsewhere.

Of the three EDC offices, the Hamilton model is closest to operating at what might be conceived as full capacity, although we have a limited understanding of what full capacity might be for any of the three offices. Duty counsel in Hamilton are unique in spending a majority of their time on client-related tasks; this is true not only of the per diem duty counsel but also of the staff. The staff duty counsel in Hamilton devotes less than half his time to administrative duties and only about ten percent of all administrative time to office management and general



administration. These figures are considerably lower than either of the other two offices.

Of the three offices, Hamilton is also closest to approaching full capacity in terms of the number of clients it assists on a daily basis. The number of client visits has steadily increased in Hamilton over the four quarters included in this analysis and has been accompanied by a steady increase in the number of clients assisted by each lawyer each day. Over the entire period of this analysis, Hamilton duty counsel each assisted on average 5.9 clients per day, compared to 4.1 in Oshawa and 4.4 in London. In the last quarter of this analysis, duty counsel in Hamilton each assisted on average 7.3 clients per day, compared to 4.6 in Oshawa and 4.4 in London—the highest ratio of the three EDC offices by a considerable margin. Additionally, cost per visit has declined over time as the number of client visits has increased and, indeed, is lower than the other EDC offices and the comparison site at Barrie. Although per diem downtime is 30 percent in Hamilton, higher than the other two offices, these data would suggest that the Hamilton office has been relatively successful at optimizing its operations.

The apparent time and cost advantages of the one-staff model should, however, be weighed against client service considerations, particularly in light of the principles and objectives of the expanded duty counsel approach. Although other interpretations are certainly possible, the Hamilton data could imply that the one-staff model does not take carriage of a case unless it is comparatively simple and/or a final resolution seems likely. But by focusing its efforts on relatively simple cases that stand a good chance of reaching a final resolution, the one-staff model may be forgoing the opportunity to assist clients whose legal proceedings could benefit from expanded duty counsel services. It could be argued, for example, that resolving issues on a temporary basis and resolving issues before referring cases elsewhere are both valuable outcomes for clients and should be pursued within an expanded duty counsel model. A one-staff model may not, in other words, realize the full potential of the expanded duty counsel approach.

5.2 Profile of the London EDC

The EDC office in London consists of two staff duty counsel, a small per diem panel (between 12 and 15 lawyers), and one support person. Within the period of time analysed in this report, the London EDC handled a total of 1,642 client files, of which 57



percent involved clients who met the financial eligibility requirements for full duty counsel assistance.



London's high case retention rate sets it apart from the other two EDC offices. London takes carriage of 58 percent of all client cases, a larger proportion by far than either of the other two sites, which are alike in referring the majority of cases. Anecdotal information suggesting that CFSA cases are often too complex, and the issues at stake too serious, to be handled by duty counsel, does not, moreover, seem to deter London from taking on such cases; on the contrary, it retains almost as many CFSA cases as it refers. The apparent consequences of London's willingness to retain cases are, first, a higher adjournment rate than either of the other two offices (bearing in mind that adjournments are also influenced by court scheduling); and second, a lower rate of final resolution for the cases it retains.

However, London frequently secures temporary resolutions, and it frequently resolves issues in cases it refers. It therefore achieves some resolution (either final or temporary) 55 percent of the time, considerably more often than in Hamilton. London is also the most inclined of the three offices to prepare court documents, and it sees clients more often on a per file basis than the other sites and spends the most time on each file. Although the client survey was not based on a representative sample, it should be noted in this context that London respondents expressed the greatest degree of satisfaction with the duty counsel services they received.

These efforts on behalf of clients may be possible in London because this model is not close to full capacity in the number of clients it serves. Each duty counsel in London assists on average 4.4 clients per day, a ratio that has remained relatively constant over the period of this analysis and that is considerably lower than in Hamilton. Furthermore, whereas duty counsel in Hamilton devote most of their time to client-related activities, those in London spend a slight majority of their time (54 percent) performing administrative functions, a proportion that for staff exceeds 60 percent. The operation of the London EDC office is therefore characterized by certain inefficiencies in the use of staff time, which has implications for its associated costs. In fact, London's average cost per visit and its average cost per file are the highest of the three EDC offices.

The EDC office in London appears to have taken a substantially different approach to delivering expanded duty counsel services than either of the other two sites. In some respects – in its greater willingness to take carriage of client files, to devote time to client files, and to prepare documents – the London office best reflects the principles of the expanded duty counsel approach. The London model is not, however, without its costs. Given court operations



and the volume of clients at the London court, a two-staff model may not be the best approach to delivering expanded duty counsel services at that site.

5.3 Profile of the Oshawa EDC

The EDC office in Oshawa consists of three staff duty counsel, a per diem panel of approximately 22 lawyers, and one support person. Within the period of time analysed in this evaluation, the Oshawa EDC handled a total of 3,103 client files, of which 48 percent involved clients who met the financial eligibility requirements for full duty counsel assistance.

Despite having three lawyers on staff, the Oshawa EDC office refers two-thirds of all client files. Although other interpretations are possible, part of the explanation for this referral rate, which is almost as high as that of the one-staff model in Hamilton, may be Oshawa's greater ratio of financially ineligible clients compared to the other two offices. Of the cases Oshawa retains, most (60 percent) are never adjourned, and 54 percent end in a final resolution. Thus, the Oshawa office is similar to Hamilton in taking carriage of a relatively small proportion of cases, which then go on to progress through the court system. However, Oshawa also resembles the London office in certain respects; it often secures temporary resolutions and frequently achieves resolution before referring cases elsewhere. As a consequence, Oshawa has the highest overall resolution rate of the three offices. It achieves some resolution in 56 percent of all client files, just a fraction more often than London and considerably more often than Hamilton.

Of the three offices, the three-staff model in Oshawa appears to be the furthest from capacity in terms of clients served. Duty counsel in Oshawa each served on average 4.1 clients per day over the period of this analysis, fewer than either of the other two sites (although this ratio grew to 4.6 clients per lawyer in the last quarter). Duty counsel in Oshawa also see clients less often, and spend less time per client file, than either London or Hamilton. Furthermore, a majority of duty counsel time in Oshawa (55 percent) is devoted to administrative tasks, a proportion that for staff reaches two-thirds of all time docketed. Of the total time that staff devote to administrative functions, office management and general administration account for more than one-third. When compared with about one-fifth in London and ten percent in Hamilton, this seems to suggest that the ratio of staff time required for office management and general administration grows by more than ten percent with each additional staff duty counsel.



Anecdotally, staff duty counsel in Oshawa suggested that the high proportion of staff time spent on administration at that site may be related to the number of clients. The Oshawa office has one support person despite having approximately double the number of clients as Hamilton and London. Staff duty counsel in Oshawa, therefore, devote time to administrative functions such as data entry that at the other locations are performed by the support staff. This is clearly not the optimal way to employ staff duty counsel time and suggests that three staff are probably too many at this particular location.

The Oshawa EDC office has a considerably lower cost per client file than London and a slightly lower cost per file than Hamilton. This low per file cost is attributable primarily to this model's relative success at minimizing per diem downtime; per diem downtime amounts to just over 20 percent of total per diem time, seven percent lower than London and ten percent lower than Hamilton. As in Hamilton, however, Oshawa's apparent cost advantage must be balanced against client service considerations.



6.0 Conclusions and recommendations

There is a high level of support for the expanded duty counsel model among clients and stakeholders. A large majority of client survey respondents (80 percent) believe that they received quality service from the duty counsel lawyer, and similar majorities believe that the duty counsel lawyer who served them treated them with respect, responded to their concerns, took enough time to listen to them, and explained to them how the court works and what they were supposed to do. Although results from the client survey were quite consistent across all three pilot project sites, clients of the London EDC office expressed the greatest degree of satisfaction with the duty counsel services they received.

There is a strong consensus among stakeholders that the expanded duty counsel approach has clear advantages compared to the traditional per diem model. File continuity, or the practice of opening and maintaining written client files, is regarded as one of the most important. File continuity reportedly enables a more standardized approach that saves time, improves the consistency of advice that duty counsel give to clients, and ultimately results in fewer delays in the court process. It is widely regarded as absolutely essential if duty counsel is to provide an efficient, effective service over time.

Stakeholders also see continuity of representation as desirable. They acknowledged that lawyer continuity enhances clients' trust in duty counsel and improves the efficiency of the court process, but also observed that it should not be necessary to maintain the same lawyer on a case as long as file continuity is maintained and all duty counsel provide a consistent level of service. This evaluation found some differences among the EDC offices in their ability to provide lawyer continuity. The two-staff model in London was the most successful at maintaining a single lawyer on multiple-day files, while the Oshawa office was the least likely to do so despite having three lawyers on staff. Clearly, continuity of representation is for scheduling reasons more difficult to achieve for per diem duty counsel than for staff. Factors such as staff turnover and the demands of the pilot (i.e., the need to avoid conflict) have also affected the ability of the EDC offices to achieve continuity of representation.

Stakeholders perceive the supervisory function of the EDC Coordinator as another important benefit of the expanded duty counsel approach. The presence of a Coordinator has resulted in better organization, scheduling, accountability, and consistency of



advice. The EDC approach has also reportedly led to a high degree of settlement orientation among both staff and per diem duty counsel and has resulted in fewer adjournments and more early stage settlement. Key informants emphasized that, together, these features of the expanded duty counsel approach – file and lawyer continuity; improved organization, accountability, and consistency of advice through the Coordinator role; and a new emphasis on resolution – have resulted in a more expeditious court process and a better quality of client service compared to the traditional model.

Despite this strong endorsement for the expanded duty counsel model on the part of stakeholders, there are important differences among the three offices. In some respects, the two-staff model in London best reflects the client service principles of the expanded duty counsel model. Its high case retention rate certainly distinguishes it from the other two sites. London retains almost 60 percent of all client files, whereas Hamilton and Oshawa refer the majority to the private bar or for a legal aid certificate (three-quarters and two-thirds of all cases, respectively). Partly as a result of its greater willingness to take carriage of files, including some that are presumably more complex, London sees clients more often on a per file basis than the other two sites and spends more time on each file.

The London office is also the most inclined of the three to prepare documents. However, at all three EDC locations, the amount of time that duty counsel spend on document production has tended to increase since the pilots were first implemented. Furthermore, per diems and staff actually spend similar proportions of their time at document production, except in Hamilton, where per diems are slightly less disposed than staff to produce documents. The willingness of per diem duty counsel to prepare documents is encouraging, especially given initial resistance to the idea on the part of some members of the family law bar. While concerns about liability continue to influence the willingness of some per diem duty counsel to prepare documents, staff reported that these concerns have mostly abated. However, there continues to be reluctance to prepare documents in CFSA proceedings due to the time required. Finally, some key informants suggested better coordinating and integrating EDC and FLIC functions to improve document production as well as other services for clients.

The evaluation also found substantial differences in resolution rates among the three offices. Because Hamilton and Oshawa are more discriminating than London about the cases they retain, they are more successful at achieving a final resolution in these cases. Overall, however, Oshawa and London have considerably higher



resolution rates than Hamilton, mainly because they, unlike Hamilton, frequently secure temporary resolutions and frequently resolve issues before referring them out. Although other interpretations are possible, this suggests that the one-staff model in Hamilton, to a greater extent than the other offices, may be focusing its efforts primarily on simple matters where there is a good chance of achieving a quick resolution. In doing so, the Hamilton model may be forgoing the opportunity to assist clients whose legal proceedings could benefit from expanded duty counsel services.

Of the three EDC offices, the Hamilton model is closest to operating at what might be conceived as full capacity. Duty counsel in Hamilton are unique in spending a majority of their time on client-related tasks; at the other two offices, the opposite is true. Having more than one staff duty counsel seems to create inefficiencies in the use of staff time, at least given the volume of clients at the pilot project sites; staff in London and Oshawa devote more than 60 percent of their time to administrative functions. Of the three offices, Hamilton is also closest to approaching capacity in the number of clients it assists on a daily basis. In the last quarter of this analysis, on average, Hamilton duty counsel each assisted 7.3 clients per day, compared to 4.4 in London and 4.6 in Oshawa. In London, staff duty counsel have taken advantage of the time they have available to schedule repeat appointments, to prepare court documents, and to spend more time on each client file, but in Oshawa there is reportedly reluctance on the part of clients to schedule repeat visits.

The Oshawa EDC office has been the most successful of the three pilots at minimizing per diem downtime, which is probably the most important determinant of cost. Per diem duty counsel in Oshawa docket just over 20 percent of their time as downtime, compared to 30 percent in Hamilton and 27 percent in London. Although other factors also influence cost, it is not coincidence that cost per client file is lowest in Oshawa. To a considerable extent, downtime is the result of two factors over which the EDC offices have no control – court scheduling and the need to maintain per diem duty counsel at the court in the event of a conflict. However, all three offices have been devising ways of reducing the amount of downtime based on the situation at their particular courts. Their experience has shown that flexibility in per diem scheduling and responsiveness to particular circumstances is essential to reducing per diem downtime and cost.



While each of the EDC models has unique strengths and weaknesses, it is important to appreciate that all three are providing enhanced duty counsel services to clients at costs that are comparable to those of the traditional per diem model. In fact, two of the EDC sites – Hamilton and Oshawa – have total costs per visit that are lower than that of the control site at Barrie, and London’s cost per visit is only marginally higher than Barrie’s. In light of the numerous advantages of the expanded duty counsel approach, therefore, including improved client service, file continuity, continuity of representation, better organization and accountability, and an emphasis on resolution, this evaluation found a strong rationale for continued implementation of expanded duty counsel services across the province.

- Recommendation** 1. The expanded approach to duty counsel service delivery has clear advantages over the traditional per diem model, including improved client service, file and lawyer continuity, improved organization and accountability, and emphasis on resolution, at costs that appear to be comparable to those of the traditional per diem approach. Legal Aid Ontario should therefore proceed with implementation of expanded duty counsel at other locations across the province.
- Recommendation** 2. Given volume of clients, size of the per diem panels, and court operations, the evidence from this evaluation suggests that a two-staff duty counsel EDC office is the most appropriate model for the Hamilton, London, and Oshawa locations.
- Recommendation** 3. The EDC Coordinator is indispensable to the efficient and effective functioning of the expanded duty counsel model. Any new expanded duty counsel office should be staffed by a Coordinator whose role it should be to manage the EDC office and to train, schedule, and supervise duty counsel on the per diem panel.
- Recommendation** 4. Any new expanded duty counsel office requires a client management information system and administrative support staff to facilitate record-keeping, maintain efficiency, and support ongoing performance measurement.
- Recommendation** 5. The creation and maintenance of client files is essential to providing efficient and effective duty counsel services in the expanded model, and is a requisite for continuity of representation. Maintaining file continuity should be a requirement of any new expanded duty counsel office.



- Recommendation 6.** Continuity of representation enhances client trust in duty counsel and, like file continuity, contributes to the provision of efficient and effective duty counsel services. Any new expanded duty counsel office should endeavour to achieve continuity of representation to the extent possible, recognizing that it will be more easily attainable for staff than for per diem duty counsel.
- Recommendation 7.** Comprehensive training for per diem duty counsel is essential to the success of the expanded duty counsel approach. At any new expanded duty counsel office, the Coordinator should be responsible for providing orientation training to all lawyers on the duty counsel panel and for providing ongoing training as necessary.
- Recommendation 8.** Duty counsel training should include an emphasis on advancing cases toward resolution as the central principle of the expanded duty counsel approach.
- Recommendation 9.** Legal Aid Ontario should explore ways of facilitating document production to ensure that duty counsel in the expanded model carry out this function to the greatest possible extent. Possibilities include continued development of document templates and examination of the respective roles of the EDCs and the FLICs in terms of document production.
- Recommendation 10.** More generally, Legal Aid Ontario should examine the respective roles of expanded duty counsel and FLIC advice counsel, with a view to identifying any potential client service and cost efficiencies that may be obtained through greater coordination or integration of services between the EDC and the FLIC.
- Recommendation 11.** Flexibility in per diem scheduling, taking into account court scheduling, daily number of client visits, and other relevant factors is essential to the expanded duty counsel approach as a means of reducing per diem downtime and thereby controlling costs. Any new expanded duty counsel office needs to devise a flexible approach to per diem scheduling that responds to the particular circumstances prevailing at the court at which it is located.



APPENDIX A

Evaluation Framework

