

**From Pilots**

**To**

**Practice:**

**Ontario's Family Law Experiments**

**April 1, 2003**

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## **FROM PILOTS TO PRACTISE: ONTARIO'S FAMILY LAW EXPERIMENTS**

### **Introduction**

In 2002, Legal Aid Ontario served more than a million clients. It relies on three service delivery methods. First, a certificate program in which individual clients who qualify under the financial eligibility and service coverage guidelines receive a certificate to retain a lawyer of their choice from the private bar to represent them in their legal matter. Second, there are 78 community based legal clinics using staff lawyers and community legal workers which provide advice and representation in clinic or poverty law matters such as employment insurance, social welfare entitlement, access to pension and disability benefits, access to public housing and tenant protection. Third, there is a system of duty counsel. Duty counsel provide advice and representation to otherwise unrepresented parties at court and provide advice at designated locations, in prisons and in mental hospitals.

This paper briefly describes the results of two major experiments undertaken by Legal Aid Ontario within two of the service delivery methods described above: the expanded duty counsel pilot implemented in three family courts and the family law office pilot organized in three diverse cities. The outcomes of these two experiments have profound implications for the future of legal aid service delivery methods in Ontario. The value of our learnings has transformed our experiments from pilot status to complementary forms of service delivery practice. The addition of alternative forms of service delivery provides improved opportunity for client access to justice.

## **PART I: EXPANDED DUTY COUNSEL**

Ontario is the only common law jurisdiction that makes significant use of duty counsel in family courts. In 2002, 175,000 Ontario residents were assisted by staff and private bar duty counsel in Ontario Family Courts. These projects are the first to expand and explore the limits of Ontario's duty counsel services in family courts.

Three pilot projects were established in 1999 in three different cities in Southern Ontario to test an expanded model of duty counsel service. They were evaluated by outside consultants and found to be of significant benefit. They have now been adopted as a permanent component of the Ontario Legal Aid service delivery system and have been approved by the Board as the basic model for family law duty counsel services.

### **Historical Context**

The normal family court duty counsel service provided in Ontario consists primarily of summary services including advice, adjournments, document review, and some assistance with the negotiation of interim orders dealing with matters such as child custody, access and child support. There was a wide variation in the services provided from location to location, and from day to day and lawyer to lawyer. These services were delivered almost exclusively by members of the private bar. There was little or no continuity of representation of the client. No files were opened or maintained and no information was transferred from one duty counsel to the next. Historically duty counsel had no capacity to produce documents. Many clients have literacy problems and, because of Ontario's diverse immigrant population, language barriers are limitations in duty counsel efforts.

The normal duty counsel system is very convenient for the courts. The lawyers are scheduled for either the morning or the entire day as needed. The system is flexible and cost effective; however, we know that about a quarter of their time is spent waiting for the matter to be called. Some of the lawyers provide a very high quality of service; however, consistency of quality is a problem in a strictly per diem model. While the services of traditional duty counsel are very important to the ongoing functioning of Ontario's Family Courts, there was significant scope for improvement. Overall the existing system provides a real opportunity for better client service.

### **Objectives of the Pilots**

The primary objective of the three pilots was to expand the scope and quality of duty counsel services in family court in four ways. First to provide continuity of representation so that a client would, as much as possible, be represented by the same lawyer at each court attendance. Second, to support the client in the litigation process by preparing the necessary documents. Family court litigation has become totally document driven in Ontario. It is impossible for a litigant to obtain relief in a family law matter in Ontario's court without the preparation, service and filing of significant documents. Third, to provide continuity of information and maintenance of documents/files. Fourth, the Expanded Duty Counsel was to operate with a new philosophy where duty counsel take responsibility for the client and the file and advance the case toward resolution whenever possible.

The second objective was to compare cost, time efficiencies, and quality of service among the three EDC models in the following ways. First, cost and time efficiency comparisons between the three distinct models. Second, cost and time efficiency comparisons between the EDC model and the traditional duty counsel service delivery. Third, compare the quality of service among the three EDC models.

### **EDC Team Description**

Each EDC team was composed of a private bar panel of lawyers acting as daily or per diem duty counsel, one or more staff duty counsel to act as a duty counsel and as team co-ordinator, and a support staff person to act as administrative assistant. Each office was equipped with a computerized client and file tracking system. One purpose of the computerized system was to check for possible conflict of interest of representation of different sides or parties in the same proceeding. The other purpose was to track the clients, the lawyers and the services provided. Each office also maintained a conventional paper filing system for the documents for each client. Client information was recorded on a standardized “Client Interview” document.

Teams were established to utilize the flexibility of the private bar combined with the stability of staff lawyers and clerical support. These structures enabled the teams to provide continuity of representation, enhanced conflict prevention, established file maintenance, implemented document production and introduced management reporting.

### **Three Models**

In Hamilton the team was composed of 60 panel lawyers, one staff lawyer, and one support person. In London the team was composed of 15 panel lawyers, two staff



lawyers, one support person. In Oshawa the team was composed of 22 panel lawyers, three staff lawyers, one full-time and one part-time support person.

### **Client Characteristics**

Duty counsel services in Ontario are subject to a financial eligibility test. The income and asset limits are roughly similar to those in the certificate program. Clients who are not financially eligible for the full expanded duty counsel service receive a partial service restricted to 20 minutes of procedural advice and representation on an adjournment or the negotiation of a consent order if it can be accomplished quickly. Financially eligible clients receive much fuller representation including representation at the argument of a motion if proceeding on affidavit evidence. Representation at a trial is beyond the scope of either normal or expanded duty counsel services.

Fifty-four percent of the clients seen in the pilots were financially eligible for the full service. Of these thirty-six percent were on social assistance and therefore automatically eligible. The average income of eligible clients was \$1,100 per month (Cdn.) while the average monthly income of those who were financially ineligible was \$3,330 per month (Cdn.). Of eligible clients 60% are female, while of the ineligible clients 60% are male.

Expanded Duty Counsel represented clients in the full spectrum of Ontario family matters. Normal inter-party disputes over custody, access and child support represented 42% of the clients. Child protection matters comprised 26%. One fifth of the matters were motions to change existing orders dealing with custody, access or child support. Another 7% of the matters were child support enforcement proceedings brought by the governmental agency called the “Family Responsibility Office”.

## **Findings**

The overall quality of service delivered by the Expanded Duty Counsel was very high. Eighty percent of clients reported that they were treated with respect, had their needs responded to, were given ample time to be heard, received an explanation on how the court process worked and, received quality service.

Clients in London reported that 55% saw the same duty counsel on each visit. The London team has the highest staff per diem continuity and achieved the highest level of document production. The London office also has the highest overall client satisfaction rating of 82%.

In Oshawa 49% of clients reported they saw the same duty counsel on return visits. The Oshawa office achieved an overall client satisfaction rating of 76%.

In Hamilton, the office with only one staff lawyer, only 20% of clients indicated they saw the same lawyer on return visits. Even so, the overall client satisfaction level was high at 79%.

Hamilton saw the most clients per lawyer, per day at 5.9 clients compared to 4.4 in London, and 4.1 in Oshawa. On the other hand London retained 63% of these clients represented initially. Oshawa retained 41% and Hamilton only 29%. The balance of clients were: referred for a certificate if financially eligible and the matter was complex; or were referred to the private bar if not financially eligible; or were referred to another relevant service such as mediation.

Continuity of representation within the staff lawyer complement was between 67% and 77% compared to the private bar duty counsel of 5% of the cases in Hamilton, 16% in London, and 10% in Oshawa.

Document production occupied between 3% and 6% of staff lawyers' time and between 1% and 4% of per diem lawyers' time, depending on the site. The efforts of the duty counsel model in document production can be further expanded.

In a typical day a private bar duty counsel will spend 37% of her time interviewing the client and reviewing the file, 13% in court, 10% in negotiations, 3% preparing documents, 11% performing administrative tasks such as reporting on the clients services performed and 26% in "down time" or waiting for the matter to be called into court.

In a typical day a staff duty counsel will spend 26% of her time interviewing clients and reviewing the file, 6% in court, 6% in negotiations, 4% preparing documents and 58% in administration. At face value the direct service time for per diem duty counsel is higher than staff and staff administration time is higher than the administrative and downtime of per diem duty counsel. A great deal of effort was extended by staff in organizing per diem duty counsel time to be as efficient as possible in terms of client time. In addition, the higher administration time of staff also reflects efforts within the court system to improve the partnership with courts and enhance the efficiency of court procedures.

In relation to costs the evaluation found that the cost per visit ranged between \$78 and \$94 per visit. The London pilot was the most expensive but also the pilot with the highest average client visit time and the highest level of document production. This compares to \$92 per visit at our per diem comparator site.

### **Conclusions**

Overall the evaluation report concludes that the pilots were successful. Key informants were unanimous in their opinion that the expanded approach to duty counsel services is a significant improvement. Stakeholders reported that file continuity is absolutely essential

if duty counsel is to provide efficient and effective service. Continuity of representation enhances client trust and improves efficiency and is seen as desirable but not essential.

The stakeholders report that the supervisory function of the staff duty counsel contributes to better organization of schedules and accountability of the service. It creates a higher degree of consistency of legal advice, a greater orientation to settlement of the proceeding, fewer adjournments, and more expeditious court process. Overall it provides a better quality of client service.

The EDC models combine the flexibility of the private bar in scheduling and cost efficiency and the stability of the staff system in continuity of service, promoting resolution of issues, and enhancing the quality of service provided.

### **Conclusions and Recommendations**

The evaluation report concludes that the expanded duty counsel model is capable of successfully delivering an appropriate and useful service to a significant number of family law matters.

The report suggests that the EDC model be adopted as a basic design for duty counsel services in family courts in Ontario and goes on to provide eleven specific and detailed recommendations for further development. It is fair to say that these findings represent a significant development of our knowledge and new methods to deliver legal aid services in family law in common law jurisdictions.

## **PART II: FAMILY LAW OFFICES**

### **Introduction**

Since the inception of Legal Aid in Ontario in 1967, family law services have been delivered almost exclusively by the private bar through certificates issued to individual litigants who select the private bar lawyer of their choice. While duty counsel are available in provincial family courts the dominant form of family law service has been through the certificate program. Certificates were initially issued for the more serious family law matters, particularly for divorce and property division. As family law was reformed in Ontario in the 1970's and 1980's certificate coverage was expanded to include issues such as custody, access, child support, and spousal support.

Following the publication of the *Report of the Ontario Legal Aid Review, 1997*, prepared under the leadership of Professor John McCamus, the Ontario Legal Aid Plan (as Legal Aid Ontario was then called) initiated three pilot projects in the delivery of family law certificate services that utilized staff lawyers versus the traditional private bar model.

Legal Aid Ontario opened family law offices in Toronto, Ottawa and Thunder Bay to test the possibility of delivering services to clients using staff lawyers.

### **Objectives**

The overall goals of these staff pilot projects were to see if access to services could be improved, to see if services could be provided more cost efficiently and to see if the quality of service provided could be improved.

The primary objective of the pilots was to compare the family law staff offices with the judicare model of legal aid service delivery in terms of average case cost and in terms of service quality. Second, the objective was to compare the quality of service among the

three staff offices and to compare the cost and time efficiencies of the three staff office models.

### **Evaluation**

The evaluation of these offices is the first family law research in Ontario that addresses the issue of judicare versus the staff model. It is also the first evaluation to develop a methodology of assessing the complexity of the cases and caseloads for comparison between the staff model and the private bar model.

The conclusions of the study, however, allow us to move beyond the competitive paradigm between the private bar and staff delivery systems. Different models of service delivery are complementary to the diversity of client need and are essential to the enhanced responsiveness of legal aid systems.

### **Description of the Offices**

Each of the offices was designed to be somewhat proportionate to the size of the community it was serving. In order to be able to compare the services provided by the office and the private bar, the offices were kept small enough that the majority of the family law certificate service in each community would continue to be provided by the private bar. The Toronto office at full complement is comprised of six lawyers, three paralegals and two support staff. The Ottawa office was comprised of three lawyers, two paralegals and one support staff. In Thunder Bay the office complement was two staff lawyers, two paralegals and one support staff.

Each office is located in the downtown area of the city. The Ottawa and Thunder Bay offices are close to the Legal Aid office and the courts. The Toronto office is close to the

downtown area office and to the downtown courts but is some distance from the suburban courts and area offices.

### **Client Profile**

The demographic profile of clients in the family law offices compared to the demographic profile of clients serviced by the private bar is similar. They are 64%-74% female, on average between 32-37 years of age and between 88%-99% Canadian citizens. In Thunder Bay 10% of the clients are self-identified as Aboriginal compared to 5% in the private bar. The clients are between 85%-97% residents of Ontario and between 94%-99% English-speaking, 85% to 90% of the clients are eligible for non-contributory certificates and between 39%-57% are in receipt of social assistance.

### **Case Mix**

The caseload is divided into four categories: normal family law, child protection, motions for change or variation applications and other. An examination of the caseloads of the family law offices and the private bar indicates that the caseloads were very similar. There is a slightly higher percentage of child protection cases in the caseloads of the private bar in each community.

### **Quality of Service**

Client satisfaction with service quality is high for both the family law offices and for the private bar at about 80%. Differences in client satisfaction between the private bar and the FLOs are marginal. The Toronto and Thunder Bay family law offices received a slightly higher satisfaction rating than the private bar in these cities. The Ottawa office received a slightly lower satisfaction rating than the private bar. The largest difference

between offices was 9% between the family law office in Ottawa and the family law office in Thunder Bay which was not considered significant.

Key informant interviews indicated that the family law offices contributed significantly to the overall quality of the service. In particular the offices provide a high quality service and more accountability. Staff was described as competent and helpful and the offices were seen as positive additions to the communities. Stakeholders observed improved continuity and consistency of service. The offices were also seen as providing improved access to service as they were responsive to all comers. Stakeholders perceived the family law offices as accepting a higher proportion of the most demanding clients in all three communities.

### **Concerns Raised**

During the interviews respondents expressed the following concerns: the Toronto private bar do not want the staff model to replace the private bar. Private bar lawyers are concerned that the court knows clients are legally aided when represented by the family law office. The private bar is concerned that family law office clients have an unfair advantage in that they might be able to obtain additional hours of service more easily than the private bar. Clients were concerned that the catchment area was too restricted for the family law offices in Ottawa and Thunder Bay. A concern was expressed about the location and visibility of the Toronto family law office in a downtown office building. More advertising and outreach was recommended for the Thunder Bay office.

### **Case Complexity**

One of the most interesting aspects of the evaluation of the offices is the development of case complexity assessment methodology. Case complexity was considered a critical



issue in the evaluation because understanding complexity of the caseloads between the family law offices and the private bar would contribute to an informed comparison of cost and quality. The comparison of caseloads between private bar and staff lawyers has been a contentious issue in previous studies because complexity or differences between cases was not included in the methodology. This evaluation did ground breaking work in determining complexity as a central component of the methodology and analysis. The complexity assessment process detected differences between caseloads at three levels: aggregate comparisons of caseloads, comparisons of context, legal issues and characteristics of the opposing side, and by comparisons of 61 individual factors (see Appendix: Complexity Checklist for Review of Completed Case Files).

The context of litigation lists 19 separate factors which may contribute to complexity including abuse, addiction, need for interpreter, number of parties, serial lawyers being retained, and other cultural, language and communication barriers.

Legal issues addressed include custody, access, child support, spousal support, property and constructive trusts, child protection and the need for restraining orders.

Complexity factors grouped under the characteristics of the opposing side include, for example, opposing counsel being unreasonable or inexperienced, failure to disclose financial information, being self-represented, being self-employed or being non-resident in Ontario. The 61 possible characteristics of a family law case were developed through a consultative process with experts in the field and were considered relevant and accurate indicators of complexity for this study.

The results of the analysis indicated there is a statistically significant difference between the complexity of caseloads in the family law office in Toronto compared to the private

bar in Toronto. For the family law office in Ottawa and Thunder Bay, the differences in average complexity ratings were not considered to be statistically significant. However as the timeframe for the evaluation of the offices was limited to three years, it is possible that the most lengthy cases were underrepresented in the sample that was evaluated. It may be that these most complex cases are underrepresented as more complex cases will generally be of longer duration than simpler cases. As a result of the significant difference between the complexity ratings in Toronto, the costs of that family law office were adjusted downward by 18%.

### **Cost Comparison**

The evaluation report established that family law offices are cost competitive at adequate levels of productivity. Second, the evaluation established that there was a relationship between cost and quality. As the efficiency of staff models decreased, clients reported that quality increased. Put another way, as staff spent more time on the files, the level of client satisfaction increased.

The Toronto office spent 79.3% of its costs on certificate work in its 3<sup>rd</sup> year of operation and achieved an overall cost per case of \$1,857 when adjusted for complexity, compared to \$1,700 per case for the private bar in Toronto. The Ottawa office spent 87% of its costs on certificate work in 2000-2001 and 90.6% of its cost on certificate work in 2001-2002. In the first year its cost per case was \$1,128 compared with \$1,540 for the private bar. The second year its cost per case was \$1,603 compared to \$1,577 for the private bar. This reflects the increasing complexity and cost of longer cases. In Thunder Bay the office spent 84.8% of its costs on certificate work and achieved an overall cost per case of \$1,719 versus \$1,437 for the private bar in the same two-year period.

In addition to certificate work, family law offices were accountable for non certificate work such as uncontested divorces, and family violence special duty counsel authorizations. The Toronto office non certificate work is represented in 14% of total office costs compared to 4.8% and 3% in Ottawa and Thunder Bay respectively.

In relation to pilot specific tasks such as public relations, provincial office meetings, advisory committee support and pilot documentation the offices spent between 4.6% and 10% of their overall costs.

### **Learnings and Conclusions**

The family law offices have received favourable support from the private bar, the area directors and local stakeholders. The private bar representatives particularly support the improvement in access to legal representation for particularly difficult and demanding legal aid clients. Local advisory committees to the family law offices support maintaining this new service delivery model.

Management infrastructure is necessary for the successful operation of staff models. They are not self-managing units and require accountability and service delivery targets for case-openings, case-closings and staff productivity. The continuance of client satisfaction measures are important to maintaining the quality of effort and efficiency of staff models.

### **Conclusions**

Legal Aid Ontario has accepted the results of the evaluation of the pilot projects and concludes family law offices help meet our client needs. They will continue as part of the array of legal aid service delivery options. One complementary advantage is the development of specializations such as child welfare. Other advantages include better co-

ordination of local family law services to promote a seamless network of services between staff offices, duty counsel, advice lawyers, and as needed with the private bar. The offices collaborate with community legal clinics and other community service agencies to ensure multi-faceted client needs are addressed. They provide flexible responses to client service needs in areas where there are particular challenges such as special populations, areas of specialty, or shortages in the availability of the private bar. Additionally staff offices act as LAO's window into the family law justice system, into the overall changing needs of clients and, into local dynamics and stakeholder groups. They are a valuable source of information about local issues and local client needs. Finally they are a resource to LAO management and the LAO Board in giving advice to the Attorney General on family law justice issues.

In conclusion, the FLOs demonstrated that staff lawyers provide high quality, cost-effective service to legal aid clients. They are part of Ontario's developing legal aid system.

# Appendix

**EVALUATION OF LAO STAFF**  
**FAMILY LAW OFFICES**

**COMPLEXITY CHECKLIST FOR REVIEW**  
**OF COMPLETED CASE FILES**

**File identification**

Client Name \_\_\_\_\_ LAO file# \_\_\_\_\_

Lawyer Name \_\_\_\_\_ Date of file review \_\_\_\_\_

Location of file: Toronto \_\_\_\_\_ Ottawa \_\_\_\_\_ Thunder Bay \_\_\_\_\_ FLO or private bar \_\_\_\_\_

<b><u>Legal Issues Addressed in Case</u></b>	<b><u>Absent</u></b>	<b><u>Present but of little or no impact</u></b>	<b><u>Significant impact on conduct of case</u></b>
<u>Custody</u>			
- moving from joint to sole			
- mobility issues			
- jurisdictional dispute			
- abduction – Hague Convention			
- Children’s lawyer			
<u>Access</u>			
- supervised			
- denial of access			
<u>Child Support</u>			
- basic			
- extraordinary expenses			
- undue hardship claim			
- establishing income			
- 3 year averaging/imputing income			
- need for cross-exams on income			
<u>Spousal Support</u>			
<u>Property</u>			
- constructive trust			
<u>Restraining Order</u>			
<u>Exclusive Possession</u>			

<b><u>Legal Issues Addressed in Case</u></b>	<b><u>Absent</u></b>	<b><u>Present but of little or no impact</u></b>	<b><u>Significant impact on conduct of case</u></b>
Child Protection			
- allegations			
- supervision			
- society wardship			
- with access			
- without access			
- crown wardship			
- hard line, zero tolerance by CAS			
- number of parties			
<b><u>Characteristics of Opposing Side</u></b>			
Opposing counsel unreasonable, inexperienced, intransigent, slow, overworked unresponsive, lacking technical programs (to calculate hardship under Child Support Guidelines, or spousal support tax impact), pursuing frivolous claims,			
Serial lawyers			
Failure to disclose financial info			
Late disclosure requiring adjournment			
Need for cross-examinations			
Self represented			
Self employed			
Unemployed			
Province/country of residence not Ontario			

To the best of your knowledge, was the opposing side in this case represented by:

- A lawyer from the Family Law Office \_\_\_\_\_
- A private lawyer on a legal aid certificate \_\_\_\_\_
- A lawyer retained privately by the client \_\_\_\_\_

<u>Context</u>	<u>Absent</u>	<u>Present but of little or no impact</u>	<u>Significant impact on conduct of case</u>
Abuse			
Addiction issues / medication			
Social worker involvement			
Culture/language/other communication barriers (impaired hearing, illiteracy, etc.)			
Need for interpreter			
Poverty issues (no phone/address)			
Emotional/physical state of client and/or spouse			
Extended family/friends involvement – supporting affidavits, etc.			
Number of parties			
Lack of disclosure by own client			
Serial applications/layered legal issues ie. Criminal, protection and family law			
Previous relevant court actions – need to get and review file, other evidence, etc.			
Serial lawyers prior to being retained			
Inherent court delays - waiting time, adjournments, lost files, - uneven application of Rules/procedures by counter staff			
Strange/unexpected judicial decisions			



LAO - limited hours for basic certificate			
LAO - requirement to request discretionary increases			
LAO - time constraints			

Approximately how many hours did you work on this certificate? \_\_\_\_\_

Approximately how many hours did you bill to Legal Aid Ontario for this work? \_\_\_\_\_

**OTHER COMMENTS:**

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