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# Evaluation of Criminal Staff Offices - First Year

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# **Evaluation of Criminal Staff Offices First Year Report**

December 16, 2005

Submitted to:  
Legal Aid Ontario

Submitted by:

**Robert Hann,  
Joan Nuffield  
and  
Fred Zemans**

Robert Hann & Associates Limited

# Table of Contents

<b>EXECUTIVE SUMMARY .....</b>	<b>I</b>
<b>Chapter 1: Introduction .....</b>	<b>1</b>
1.1 Context: the Establishment of the Criminal Law Offices (the “CLOs”) .....	1
1.2 Approach to and Format of This Report .....	2
1.3 Methodological Context of this Report.....	3
1.4 Further Information on the CLOs .....	5
1.5 Acknowledgements .....	9
<b>Chapter 2: Substantive Objectives for Criminal Legal Aid Generally .....</b>	<b>10</b>
2.1 Introduction and Format of Chapter.....	10
2.2 Access to Service and Types of Needs Met .....	11
2.2.1 <i>Context: Trends in Certificate Cases Handled by the Private Bar</i> .....	12
2.2.2 <i>Certificate and Non-Certificate CLO cases</i> .....	13
a Trends in Mix of Certificate and Non-certificate .....	13
b Levels of Certificate Caseloads: Comparison CLOs to Private Bar .....	16
2.2.3 <i>What Types of Clients Are Being Serviced? To What Extent is the Service Meeting Unmet Needs?</i> .....	17
a General CLO Client Demographic Characteristics .....	18
b CLO Clients with Different Previous Criminal Histories .....	19
c Improving Access regarding Language Barriers .....	20
d Improving Access regarding Cultural Barriers .....	21
e Improving Access Regarding Special Needs.....	22
2.2.4 <i>Comparing CLOs and the private bar on meeting client needs</i> .....	23
2.2.5 <i>Specific Types of Offences Handled</i> .....	23
2.2.6 <i>Other Complexity Descriptors of CLO Cases</i> .....	28
2.2.7 <i>From Where are Referrals to the CLOs Coming?</i> .....	30
2.2.8 <i>Seriousness of CLO Cases: Crown’s Opening Position</i> .....	33
2.2.9 <i>Improving Access at Critical Stages in the Litigation Process</i> .....	33
2.3 Choice of Counsel .....	36
2.3.1 <i>Introduction: Choice of lawyer</i> .....	36
2.3.2 <i>Clients from Rural, Remote and Surrounding Areas</i> .....	36
2.3.3 <i>Choice of Counsel and Personal Characteristics</i> .....	37
2.4 Consistency and Continuity of Service .....	37
2.5 Access: Impact on Bar.....	38
2.6 Quality of Service .....	39
2.6.1 <i>Introduction</i> .....	39
2.6.2 <i>1. Experience at the bar</i> .....	40
2.6.3 <i>Assignment of Lawyers to Cases</i> .....	40
a Private Bar Certificate Cases .....	42
b All CLOs: Legal Files Data .....	43
c Barrie CLO: Form 50 Data .....	45
2.6.4 <i>Time spent on cases</i> .....	46
a Private Bar Certificate Cases .....	47
b All CLOs: Legal Files Data .....	48
c Barrie: Form 50 Data .....	50
2.6.5 <i>Expeditionousness</i> .....	51
a Rate of Disposition .....	52
b Time from First to Last Certificate Activity .....	53
c Brampton: Time from 1st Appearance to Disclosure .....	57

2.6.6 Independence.....	59
a Independence from Other Groups .....	59
b Independence in Offering a Spirited Defence .....	60
2.6.7 Important Access Issue Raised by Experience with Non-Certificate Cases.....	65
2.6.8 Client satisfaction.....	65
2.6.9 Continuing professional development .....	65
2.6.10 Other Dimensions of Quality.....	66
2.7 Value for Money .....	67
2.7.1 Comparing CLO and private bar hours and costs.....	67
a Fees for Service per Certificate Case .....	68
b Fees for Service Per CLO Non-Certificate Case .....	71
c Fees for Service Per Office .....	72
d CLO Expenses .....	75
2.7.2 Cost offsets.....	76
2.8 Concluding Comments .....	77
<b>Chapter 3: Non-Casework (Outreach and Law Reform) Objectives .....</b>	<b>79</b>
3.1 Introduction.....	79
3.2 Observations .....	80
3.2.1 Develop Innovative Partnerships With the Private Bar and Community Agencies In Order To Improve Bail, Sentencing and Disposition Planning for Criminal Accused.....	80
3.2.2 Establish Links to Improve Services to Clients with Intersecting Needs.....	81
3.2.3 Advancing the Administration of Justice.....	82
3.2.4 Assist LAO to Research and Benchmark Legal Needs, Legal Aid Services, Demands, and Costs .....	83
3.2.5 Assist LAO to Develop Justice System Policy and Advocacy.....	84
3.3 Concluding Comments .....	84
<b>Chapter 4: PROCESS OBJECTIVES .....</b>	<b>85</b>
4.1 Introduction and Format .....	85
4.2 Leadership and Direction.....	85
4.3 Organization and Responsibilities .....	88
4.4 Effective Strategies, Tactics and Procedures .....	89
4.5 Resources .....	89
4.6 Support Systems .....	91
4.7 Concluding Comments .....	92
<b>Chapter 5: Overall Impacts: On the Justice System and Specific Justice Groups .....</b>	<b>94</b>
5.1 Overall Trends.....	94
5.2 Impacts on the Court and the Players .....	94
5.2.1 Reducing Unrepresented Accused (UAs).....	95
5.3 Barrie.....	96
5.4 Brampton.....	96
5.5 Ottawa .....	97
5.6 Concluding Comments .....	97
<b>Chapter 6: Summary of Conclusions and Recommendations.....</b>	<b>98</b>
<b>Appendix A: Interview Questions About Impact on the Criminal Justice System (Chapter 5): Detailed Analysis of Responses.....</b>	<b>102</b>
A.1. Barrie .....	102
A.2. Brampton .....	105
A.3. Ottawa .....	106
<b>Appendix B: Interview Guides .....</b>	<b>108</b>

## Executive Summary

With funding assistance from the Federal government, Legal Aid Ontario (LAO) has funded three Criminal Law Offices (CLOs). These CLOs are staff offices with a mandate to supplement the *judicare* (certificate) service delivered by the private bar. They provide criminal representation to financially eligible accused in Barrie, Brampton and Ottawa.

This is the “First Year” Report in the three-year evaluation of the Criminal Law Offices (CLOs) and covers the operations of the CLOs from May 1, 2004 to June 30, 2005. It is the third major document emanating from the evaluation. The first document was an Evaluation Framework which clarified both the objectives, specific questions to be addressed and the methodology of the evaluation. The content and structure of this evaluation are reflected in this current report. The Second report (produced in March of 2005) was a nine month progress report that provided baseline statistical data on the environment of the CLOs and focused on the perceptions and expectations of LAO, the CLOs, and other stakeholders within the criminal justice environment in the three CLO sites.

Since the nine-month progress report, the evaluation has conducted a second intensive and extensive round of interviews in each of the sites, focusing on judges, crown attorneys, duty counsel, non-governmental organizations, the private bar, CLO staff, and others who have had experience working with the CLOs and observing their impacts on clients and the criminal justice system. The evaluation has also spent considerable time working with LAO staff to extract a considerably wider range of data from Legal Files, the main automated data base utilized by the CLOs and LAO to record, store, and report data on CLO operations. In addition, the evaluation has obtained additional important data from the PeopleSoft system that records information on certificates that are issued to clients to cover legal aid services provided by the private bar. As well, the evaluation has obtained data from the LAO financial systems, from a special database maintained locally at the Brampton CLO and from a database of form 50’s for certificate cases from the Barrie CLO.

All of this information considerably extends the information available to the evaluation and which is presented in this report.

Chapter 2 of the Report focuses on performance of the CLOs with respect to their specific objectives related to delivering client services—overall and with special emphasis on their work relating to individual client litigation files. Key observations and conclusions include:

### ***Justice Environment and level of Caseloads***

- Each of the CLOs has been implemented in an environment of moderately increasing trends in criminal certificates issued
- Caseloads (i.e. services provided to clients for specific court cases) have built up in each CLO, to the point where each CLO feels it is approaching capacity. Brampton and Barrie are handling caseloads above those of Ottawa.

### ***Filling Unmet Needs Generally***

- There are significant differences among the CLOs with respect to certificate/ non-certificate split of their caseloads.
  - In Brampton and Ottawa, caseloads are overwhelmingly made up of “non-certificate cases”.

- In Barrie, certificate cases are in the majority – many of them serious sex offences and accused who have mental health problems
- The report provides considerable information on the types of clients currently accessing and receiving services, including: gender, language, ethnic origin, types of offences, and whether the cases exhibit special legal issues such as problems with disclosure or layered legal issues such as immigration or refugee considerations.
- Unfortunately, the CLOs are not recording in Legal Files complete and sufficiently accurate data on key client characteristics that would allow them to show whether or not their clients came from key target groups.

### ***Impact on the Work of the Bar***

- Although there continues to be considerable resistance to the CLOs from the private bar, there is some evidence that the resistance is easing—at least to a limited extent. The majority perception is that the CLOs have not had a significant impact on the certificate work available to the bar. CLO certificate caseloads represent less than 1% of certificates issued to the private bar in Brampton and Ottawa. However, in Barrie the percentage is considerably higher, at 9%.

### ***Improving Client Access to services at Critical Stages in the Litigation Process***

- Criminal justice officials at the sites are mostly of the view that the CLOs are filling a gap in their local courts, providing assistance to accused who otherwise would have been unrepresented, and therefore would have either put the court and its officers through a difficult and time-consuming trial process, or would have pled guilty even though there may have been a viable defence and triable issues;
- As well, changes in the configuration of Legal Files and recording procedures will be required before it can provide reliable data on the extent to which the CLOs are providing key services at different points in the court litigation process (e.g. bail, plea negotiation, sentencing).

### ***Quality of Service***

- The evidence available, both data from interviews and data from the various automated information systems, shows no significant differences between the CLO certificate work and that of the private bar with respect to:
  - Assignment of lawyers to cases
  - Time spent on cases (if anything, the CLOs spend fewer hours)
  - The time elapsed from opening to closing a certificate file
- In Barrie and Brampton there is no evidence to support the concern that the CLO would be more likely to enter a guilty plea for certificate cases than would the private bar. Whether or not the current higher percent in Ottawa on certificate cases continues will be monitored during the next year of the evaluation.
- In general, CJS officials (e.g. judges, Crowns, duty counsel) were also mostly of the view that the quality of the CLOs' work was of the same or higher quality than that of the local private bar;

### ***Important Issue related to Non-certificate cases***

- The high percents of non-certificate cases taken on by the Brampton and Ottawa CLOs which are withdrawn or stayed strongly support the argument for having legal assistance available in such cases. (Previous research in this area suggests that if they had continued to be unrepresented, a high proportion of these accused would have pled guilty and been convicted.)

### *Value for Money*

- The report provides estimates of the “imputed” fees earned by the CLOs for non-certificate and certificate cases. The report also provides expenditure budgets for the CLOs. As would be expected during a start-up year for a legal office, the imputed fees are considerably less than the expenses. Whether this situation continues after the CLOs have “got on their feet” will be monitored by the evaluation. However, that monitoring will also require enhancements to the way data are recorded in Legal Files.

### *Non-Casework (Outreach and Law Reform) Objectives (Chapter 3 of the Report)*

- In the evaluation team’s opinion, each of the CLOs has, to date, chosen an appropriate strategy for the non-casework objectives in their own area. These strategies have all been different, and have been driven by the predominant concerns of the offices. Examples include special efforts: in Barrie, to develop new arrangements with mental health workers to deal with mentally disordered accused; in Brampton, to address systemic challenges related to the flow of cases through the courts; and in Ottawa, to enhance relationships with agencies involved in, for instance, bail supervision and diversion.
- All CLOs have made significant outreach efforts towards establishing the desired contacts and partnerships with the community.
- One of the CLOs, in Brampton, has also engaged in significant initiatives to address systemic problems in the local court environment.

Chapter 4 of the report explores the extent to which LAO and the CLOs are meeting a number of Process Objectives related to: leadership and direction, organization and responsibilities, tactics and procedures, resources, and support systems. In most of these areas, CLO performance was adequate or more than adequate.

### *Leadership and Direction*

- The role and mandate of the CLOs is not clear to many criminal justice officials at their local sites. **(Recommendation)** Clarification and communication of the role by LAO would be beneficial
- The analysis also showed some major differences in key areas of operations among the three CLOs, areas that include: the mix of certificate vs. non-certificate cases, the offence types of cases, way in which staff are assigned to cases, and the frequency with which different processes are used to resolve cases. This diversity may be beneficial. On the other hand, the diversity seems to have evolved from practice, not from explicit policy. **(Recommendation)** Again, a clarification of policy and operational direction by LAO would be beneficial.
- **(Recommendation)** Especially given the increased caseloads of the CLOs, there is a need for LAO-HQ to engage with the CLOs in a substantive policy discussion to guide future decisions about which cases each CLO decides to accept and which it decides to reject.

### *Procedures*

- The more quickly the CLO can get “on the record” for an accused, the greater the benefits to both the accused and the courts. **(Recommendation)** LAO should begin addressing ways in which referrals could be streamlined. Particular attention should be devoted to the low tolerance which many accused have for processes which may seem simple to others.

### *Resources and Support Systems*

- The CLOs feel that they are nearing capacity. **(Recommendation)** However, guidelines regarding what constitutes “capacity” have yet to be—and need to be—developed.

- The staff of each of the CLOs have received positive feedback from CJS officials interviewed. **(Recommendation)** However, continuing efforts should be made to enhance staff capabilities—especially for staff with less experience in the Criminal Justice environment
- Legal Files has provided considerable information to support CLO management and this evaluation. However, the past year has uncovered a number of areas that need improvement. **(Recommendation)** Of immediate need is a concerted effort by LAO planners to document the specific types of information needed from the system. The work of the evaluation and other LAO initiatives have already begun defining those needs. Following that, additional work is needed by computer programmers and operational staff to set up procedures and train staff in their use.

***Impact on the Court System (Chapter 5)***

Chapter 5 of the report explores issues related to the impact of the CLOs on the institutions, processes and workloads of the criminal justice system

- In our interviews last year, most private bar were opposed to the CLOs. Although the opposition may be abating somewhat, considerable opposition still exists.

This year, we were most interested in interviewing people who had actually interacted on cases with the CLOs in the larger court environment. Therefore, the bulk of our interviewees were CJS respondents – Crowns, judges, duty counsel, other court workers, and NGO workers who serve the courts’ “clients”. The officials who spoke to us from these stakeholder groups are overwhelmingly in favour of the existence of the CLO in their area, probably more so now than they were at the time it was just starting.



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## Chapter 1: Introduction

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### 1.1 Context: the Establishment of the Criminal Law Offices (the “CLOs”)

Governments everywhere, in Canada and around the world, are experimenting with innovative ways to deliver legal information, advice and representation to civil and family litigants, and to criminal accused who are in financially straitened circumstances. In Canada, provincial governments (which deliver legal aid) were forced into thinking about innovative service delivery in the 1990s, when the federal government placed hard caps (maximum amounts) on the monies it would contribute to legal aid costs in the provinces. Provincial governments are not alone in addressing these questions; the bar, the judiciary, and individual courthouses across the country are assessing the principles, practices and resource implications of changing the ways in which people who cannot afford, or otherwise do not have legal representation, can find some assistance.

This evaluation, which is ongoing until the fall of 2007, is of a service innovation funded by the federal government and implemented by Legal Aid Ontario (LAO). Legal Aid Ontario has established three Criminal Law Offices (CLOs), staff offices to supplement the judicare service delivered by the private bar by providing criminal representation to financially eligible accused in Barrie, Brampton and Ottawa. These offices were opened in the late spring and summer of 2004 to provide representation to financially eligible accused who were, in certain circumstances, unable to obtain a Legal Aid certificate because they did not meet the “loss of liberty” criterion, and to accused who were granted a certificate, as well as to perform related functions like outreach, partnerships for innovation and advocacy.

There are differing views in different communities about the “true purpose” and ultimate result of this service delivery innovation embodied in the CLOs. In particular, there has been opposition from the private bar from the inception of the CLOs. These differing viewpoints strongly colour how the different stakeholder groups in the broader court environment view the CLOs and their impact.

The private bar, which opposed and continues to oppose the CLOs, is to a large extent driven by the widespread conviction that the CLOs were established as part of a generalized LAO strategy to erode judicare; and that the three particular sites chosen by LAO for the CLOs were chosen as a “strikebreaking” measure, since it was in those three sites where the heaviest withdrawal of service occurred during the Ontario bar’s most recent dispute with LAO over judicare tariff rates.

This evaluation is thus an exploration of delivery of service issues and the operation of a new service delivery model – new, that is, to the three environments of the CLOs.

In addition, research to date has made it clear that the justice environments in all three sites are daunting, including robust population growth and growth in charges laid, high volumes, delays and backlogs in the courts, significant numbers of accused with special needs, and a legal aid system which is characterized by significant fiscal restraints. In this environment, criminal legal aid work by both the private bar and the CLOs is difficult.

This is the First Year Report in the three-year evaluation of the CLOs by Robert Hann & Associates Limited. It covers the first “year” of operations of the CLOs. Since the different CLOs started up on different dates, more accurately, the report covers the operations of the CLOs from May 1, 2004 to June 30, 2005.

## 1.2 Approach to and Format of This Report

This report reflects the mandate and structure of the Evaluation Framework previously prepared by the evaluators and agreed to by LAO, the CLOs and the Project Advisory Committee. The report is thus organized according to the objectives which the CLOs are intended to achieve, and the impacts which they have had.

Each chapter describes CLO activities, the challenges that have been faced, and the successes that have been achieved with respect to a different group of objectives.

- Chapter 2 focuses on overall objectives related to providing enhanced services to clients through work on individual cases
- Chapter 3 focuses on enhancing services to potential clients and client groups through non-case specific, outreach and law reform objectives;
- Chapter 4 focuses on process/organizational objectives for establishing an effective and efficient CLOs’
- Chapter 5 focuses on the impact of the CLO on the criminal justice system and on key stakeholder groups; and
- Chapter 6 concludes the report with a set of overall conclusions and recommendations.

Within each of these chapters, the material is presented as responses to particular questions related to CLO objectives. These questions correspond either to questions asked in the interviews or posed in the Evaluation Framework. They are set off from the text in the following example format:

*“Was the policy direction provided to the CLOs clear to CLO staff and to those elements in the CJS and larger community who needed to understand it?”*

This is a first year report and thus in many areas it is too early to reach firm conclusions and recommendations. Nonetheless, some tentative first-year conclusions have been reached. Where justified, a few initial recommendations from year one have also been put forward.

### 1.3 Methodological Context of this Report

This is the third major report from this evaluation. Two further reports will be forthcoming, a second year report, and a third year report.

The first report was an Evaluation Framework which clarified both the objectives, specific questions to be addressed and the methodology of the evaluation. As noted earlier, the content and structure of this evaluation are reflected in this current report.

The second report was a nine month progress report.<sup>1</sup> Given its early timing, that report focused on the results of a first round of interviews that probed the perceptions and expectations of LAO, the CLOs, and other stakeholders within the criminal justice environment in the three CLO sites. The report also provided statistical historical and baseline data on the socio-economic and criminal justice aspects of the different CLO sites. Finally, the report provided limited analysis of CLO caseloads and operations up to that point.

The scope of the nine-month report was limited by understandable challenges faced by Legal Aid Ontario in establishing the quite comprehensive data collection, storage and retrieval systems demanded for the evaluation. In particular, Legal Files, LAO's new system for capturing case and operational information on the CLOs, was experiencing the significant types of problems that are common to most implementations of new and complex automated information systems – especially in groups like the CLOs that are themselves in the early developmental stages. As well, the evaluation was still waiting a response to an outstanding request for data from the ICON system maintained by the Ministry of the Attorney General. These data were hoped to yield both background information on trends in court charges, persons and trends, as well as important specific case data on cases served by both the CLOs and the private bar.

The evaluation has also spent considerably time working with LAO staff to understand the strengths and weaknesses of the Legal Files data system and the data it contains. That work has resulted in the considerably more detailed information describing CLO clients, caseloads, and CLO activities that is presented in the current report. However, through the evaluation, a number of required changes to the configuration and data entry procedures in Legal Files have been identified—changes that will be necessary before the full range of information required by the evaluation is available. Although steps are underway to correct these changes, the fact that they have not yet been completed has unfortunately restricted the scope of the issues addressed in this time.

Since the last report, we have also been informed that the Ministry of the Attorney General will not be providing us with data from the ICON system. This represents a loss of a valuable data source. We have therefore had to explore alternative methods of obtaining key data and to some extent a rephrasing of the issues that can be addressed by the evaluation. One of the promising alternative approaches we are exploring is the area of peer review of CLO files—and hopefully obtaining cooperation from the private bar in providing access to information on their files that would provide a true comparative evaluation of the work of the CLOs. However, this cooperation has not yet been forthcoming. and the results of such an exercise will have to be deferred to the next report.

We have, however since the last report been successful in obtaining valuable data from a number of additional data files. The most significant include:

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<sup>1</sup> Hann, R.G., J.E. Nuffield and F. Zemans, "First Interim Progress Report" Evaluation of Criminal Staff Offices" (March 2005), available on the LAO website.

- **The PeopleSoft Certificate data base:** based on data provided by clients applying for legal aid certificates and private lawyers who accept those certificates. Information is included on:
  - Selected basic characteristics of all cases for which legal aid certificates are issued , and
  - Key activities undertaken, time docketed and billings for all certificate cases for which private bar members have submitted “Form 50” billings.
- **A sample of CLO Form 50’s:** based on data provided by CLOs (mainly Barrie) on certificate cases
  - A subset of Information similar to that provided by private lawyers through the PeopleSoft system.
- **LAO Financial Data**
  - Data on the expenditures of and budgets for CLO offices from LAO central financial systems
- **Brampton CLO Access Data Base: based on**
  - A special local data set created by the Brampton CLO to meet special planning and operational informational requirements.

However, interviews continue to be a valuable source of information for the evaluation. In this round of interviews, the evaluation team sought to interview principally CJS officials who had interacted with CLOs on individual cases in area courtrooms.

These “CJS respondents” include Crowns, Justices of the Peace, judges, duty counsel and other “court personnel”, as well as non-governmental (NGO) representatives who work in and around the court (on diversion programs, bail supervision programs, CSO and other pre- and post-charge programs, etc.)

To locate those officials who would have had the most direct interaction with the CLOs, we used a multiple search strategy. We independently contacted key personnel such as senior administrative officials (of Crown offices, judges, etc.) who were in a central position to know the developments in the court. We also asked the CLO Directors for the names of officials they interacted with most. In each instance, the names of additional useful contacts were obtained in an iterative process. Bar members were chosen for their leadership roles and their role in the court system (as duty counsel, etc.), as few of them would have interacted with the CLO on individual cases. We also interviewed CLO staff and Area Directors at each site.

The CJS personnel in these courts are very busy. A determined process of initial phone call, followed by faxed information and request for an interview, followed by one or more follow-up phone calls, were required to even reach many stakeholders.

On occasion, interviewers for the evaluation team were, once in direct contact with a potential interviewee, unable to get agreement for a full interview.<sup>2</sup> In these circumstances, team members asked for “as many minutes as you can give me”, and asked only the essentials. In one instance at each site, an interview of perhaps 60 seconds was granted; a few others were about five minutes. In a few cases, interviewees had only one or two things they wanted to say, and they used their time to say them. Most were full interviews, however, and we do not feel the varying lengths of interviews affected the reliability of the conclusions drawn on key issues.

In some instances, the CJS respondents we managed to contact essentially knew nothing about the CLO, or were so unclear about their mandate and had had so little interaction with the CLO that they

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<sup>2</sup> The interview guides for the different interviews are available on request.

were not included in the final interviews. In the end, we interviewed the following numbers of CJS respondents at each site:

- in Barrie: 18 CJS respondents (4 Crowns, 2 judges, no JPs, 2 duty counsel, 4 private bar members, 6 NGOs) plus 5 LAO/CLO officials
- in Brampton: 14 CJS respondents (5 Crowns, 2 judges, no JPs, 4 private bar members (who were also *per diem* duty counsel), and 3 other court staff) and 5 LAO/CLO officials
- in Ottawa: 15 CJS respondents (4 Crowns, 5 judges, no JPs, 1 private bar member, 2 duty counsel, 2 NGO representatives, and 1 other court official) and 5 LAO/CLO officials.

All of the above sources of information have been productive in providing information critical to the evaluation. We have also found it very valuable to have multiple sources of corroborating information on some of the more complex and contentious issues.

Other aspects of the project methodology will be described throughout the report. We now move to a fuller description of the CLOs.

## 1.4 Further Information on the CLOs

In 2004, three-year funding for what was to become the three Criminal Law Offices (CLOs) in Ontario began to flow to Legal Aid Ontario (LAO) from the federal government, under its Investment Fund for Criminal Legal Aid Renewal.

The goal of the Investment Fund is “to address unmet needs in criminal legal aid (and civil legal aid in the Territories) through innovation”. Its “objectives ... are:<sup>3</sup>

- to improve access to legal aid services, particularly at the early stages of the criminal justice system;
- to address the legal aid needs of federal priority groups (i.e., Aboriginal people, members of visible minority groups, and members of official language minority groups);
- to address other priorities such as service diversification, rural and remote service delivery, public legal education and information, and enhanced duty counsel service delivery; and
- to address the needs of legal aid clients with special needs (e.g., young persons, accused people who have low literacy, accused people who have drug or alcohol dependencies, mentally disordered accused people).”

Collectively, all of these investments in Legal Aid Renewal across Canada “are intended to:

- Reduce the numbers of unrepresented accused, particularly at the early stages of the criminal justice system;
- Develop more efficient and effective criminal legal aid services;
- Develop more integrated and reparative approaches, particularly for Aboriginal people;
- Develop innovative legal aid services for immigrants, refugees and members of visible minority groups;
- Improve access to legal aid services that are targeted to the special needs of legal aid clients (e.g. youth, mentally disordered accused; people with low literacy)
- Improve access to legal aid services for minority official language clients;
- Improve access to legal aid services in rural, remote and northern areas; and
- Improve access to public legal education and information.”

<sup>3</sup> All of the text in this section relating to the Investment Fund is taken from *Investment in Criminal Legal Aid Renewal*, a program description provided by the federal Department of Justice.

In order to receive monies from the Investment Fund, the innovation in service delivery must involve “one or more of the following changes:

- resolving a current or anticipated legal aid service delivery problem (within the scope of the Investment in Legal Aid Renewal objectives);
- improving the capacity of the legal aid plans to provide legal aid services;
- improving the quality and effectiveness of service delivery;
- reducing costs;
- leveraging support from NGOs and other community service groups involved in providing services to legal aid clients.”

Globally, the principles, scope of services and other aspects pertaining to the work of the CLOs are set out in the *Criminal Legal Aid Ontario Office Protocol*, a document finalized in October 2004 by LAO following a series of discussions over the previous several months with the Provincial Advisory Committee (PAC) and the three Local Advisory Committees (LACs) for the initiative.

The Criminal Law Offices are staffed by persons who are employees of LAO, and are intended to provide criminal legal representation and related services to criminal accused in the three areas (Barrie, Brampton and Ottawa) where they have been established. The *Protocol* states that the scope of services will depend on the specific needs of each of the three local communities, but in general may include:

- representation of criminal accused who have a legal aid certificate,
- representation for accused who do meet the financial eligibility requirements for legal aid, but do not meet the “loss of liberty” threshold for coverage, and “may face significant consequences such as loss of livelihood, loss of government benefits, loss of access to education, etc.”,
- representation for accused who do not meet the “loss of liberty” threshold for coverage, but do meet the financial eligibility requirements for legal aid, and “have a viable defence or a triable issue, or where the case presents an issue that is in the public interest to litigate.”

The *Protocol* states that “the Criminal Law Offices will strive to provide certificate services in areas of greatest client need, including – but not limited to – particularly vulnerable clients, including youth, the mentally disabled, Aboriginal accused, or accused who otherwise have difficulty accessing counsel.”

Concerning the acceptance of individual cases by the CLOs, the *Protocol* provides that the Director of the CLO has the authority to determine which cases the CLO accepts, and in making those decisions “will consider”:

- The client’s needs;
- The possibility of a client obtaining a certificate;
- The office’s or lawyers prior relationship (if any) with a client;
- Case complexity;
- The office’s skills and specializations; and
- The availability of private counsel.

The Protocol also states that in deciding whether to accept an individual case, the CLO Director will also consider “the office’s operating pressures and workload. There may at times be overriding practical or workload justifications for not accepting certain kinds of cases (such as long trials) if it means the office will be unable to serve other clients as a result.” The range of services is to be

determined by the Director in consultation with the local Area Director, LAO's Vice President – Client Services, and the office's Local Advisory Committee (LAC).

Certain principles governing the CLOs are set out in the *Protocol*. These include that:

- the primary duty of a CLO staff lawyer is to protect the interests of his or her clients in a manner consistent with any duties owed to the court and all applicable rules of professional conduct, including the duty to provide a vigorous and effective defence;
- the CLO staff lawyers are to maintain their professional independence and not to allow this duty to be compromised by the Crown, judiciary, Legal Aid Ontario, clients, or anyone else;
- the quality of their services is paramount;
- the client's right to choose his or her own counsel must be respected;
- LAO must ensure that there is a "level-playing field" between staff criminal lawyers and private counsel accepting certificates; and
- subject to certain minor exceptions, CLO staff lawyers, when providing criminal certificate services, are subject to the same regulations, rules, policies and practices, certificate time allocations and authorization/amendment rules as private lawyers accepting legal aid certificates, including restrictions on disbursements and funded travel, and the requirement to submit the same account forms as private lawyers.

Except in specific circumstances set out in the Act, relating to applicants with a physical or mental disability or another legal incapacity or inability to make a choice of counsel, LAO Area Directors, area office staff and duty counsel are prohibited from referring a certificate applicant to any individual lawyer, including an LAO criminal staff lawyer. When an applicant does not qualify for a certificate, but does qualify financially for legal aid, the Area Office may issue a "refusal letter" to him/her which sets out the choices which remain to the applicant, which include (*inter alia*) paying in installments for private bar representation, using duty counsel and using the CLO.

As noted above, each CLO is expected to provide a scope of services which will, to some extent, depend on the specific needs of each of the local communities. Accordingly, a *Service Objectives and Priorities* document has been created for each CLO. Each of these echoes some of the provisions noted above in the general *Protocol*, and each refers to providing high-quality, accessible legal aid services to financially-eligible criminal accused. Providing representation to "non-certificate clients" (who are financially eligible, but do not meet the "loss of liberty" criterion) is noted, as is representation to certificate clients in areas of client need in the area, "including but not limited to" particular groups of accused persons, which vary with the different CLOs.

In Barrie, the groups mentioned are:

- Persons with mental health issues;
- Aboriginal persons;
- Young persons in the criminal justice system;
- Persons incarcerated in local and regional correctional institutions;
- Persons with intersecting legal needs; and
- Services to persons who otherwise have difficulty accessing counsel.

The Barrie document also notes a final client group objective: "to further provide persons incarcerated in local and regional institutions with advocacy in regards to their treatment and basic human rights."

In Brampton, the groups mentioned are:

- Persons with mental health issues;
- Young persons in the criminal justice system;
- Persons incarcerated in local and regional correctional institutions;
- Persons with intersecting legal needs; and
- Services to persons who otherwise have difficulty accessing counsel.

In Ottawa, the groups mentioned are:

- Persons with mental health issues;
- Young persons in the criminal justice system;
- Persons incarcerated in local and regional correctional institutions;
- Persons with intersecting legal needs;
- Persons with Aboriginal and visible minority backgrounds; and
- Services to persons who otherwise have difficulty accessing counsel.

The *Service Objectives and Priorities* documents also each mention other objectives of the CLOs.

These are to:

- Develop innovative partnerships with the private bar and community agencies in order to improve bail, sentencing and disposition planning for criminal accused. (In Barrie, this is phrased somewhat differently: “Develop innovative relationships with the private bar, community agencies and the community in order to improve client services by assessing community programs which will support bail, sentencing and disposition planning.”);
- Establish links with local community legal clinics in order to improve coordination and services to clients with intersecting criminal/clinic law needs;
- Establish links with LAO’s Refugee Law and Family Law Offices in order to improve coordination and services to clients with intersecting criminal/refugee and criminal/family law needs (not applicable in Barrie);
- Promote and undertake litigation to advance the interests of LAO criminal accused in areas such as bail and new legislation. (In Barrie, this is phrased somewhat differently: “Promote and undertake litigation to advance the administration of justice.”);
- Assist LAO to research and benchmark legal needs, legal aid services, demands, and costs;
- Assist LAO to develop justice system policy and advocacy. (In Barrie, the above two objectives are combined and phrased somewhat differently: “Through participation in the evaluation process to research and benchmark legal needs, legal aid services, costs and contribute to the development of policy to improve LAO delivery of services to the community.”).

The Barrie document also states the following objective:

- “To provide public legal education, community development and law reform to the community in a number of ways:
  - Accessing through community groups and community partners forums to present public legal education;
  - To liaison with the different community groups and community partners to improve access to legal aid services to people, particularly those with specialised needs;



- To develop community partnerships with organisations such as Elizabeth Fry, Salvation Army, Native Centres, Canadian Mental Health Association, Children’s Aid Society, Organizations for Youth through one on one meetings and the establishment of the Advisory Committee;
- In partnership with our community partners to promote and develop projects that assist our client base in bail and sentencing planning;
- Within the legal community to promote continuing legal education for the staff of the CLO, Duty Counsel and the private bar;
- Participation in local advisory committees to advocate on behalf of our client base to promote efficient court management, alternatives in sentencing and the elimination of inequitable practices.”

## 1.5 Acknowledgements

This report has benefited significantly from the assistance of a wide number of people within LAO and within the many public and private groups who work with persons charged with Criminal offences. We have also benefited from discussions in the overall Project Advisory Committee (PAC) and Local Advisory Committees to each CLO. The Directors of the CLOs and their staff have also responded to the many requests for information and assistance from the evaluators. Computer programmers at LAO have also been of considerable assistance in working with us to overcome the challenges of making large automated information systems meet the needs of the evaluation. However, we would like to offer special thanks to Chris Staines of LAO who throughout the more recent parts of the evaluation has always been ready to offer critical and welcome direction, advice and practical assistance.

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## Chapter 2: Substantive Objectives for Criminal Legal Aid Generally

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### 2.1 Introduction and Format of Chapter

Certain overall dimensions of criminal legal aid service have been identified as essential to the evaluation of the CLOs and their comparison to the pre-existing situation and certificate service. This Chapter and the next will assess the achievement of these objectives.

One perspective on objectives is found in the guidelines for the federal program under which 3-year funding for the CLOs was provided to Legal Aid Ontario, the Investment Fund for Criminal Legal Aid Renewal. The goal of the Investment Fund is “to address unmet needs in criminal legal aid (and civil legal aid in the Territories) through innovation”. Its “objectives ... are:<sup>4</sup>

- to improve access to legal aid services, particularly at the early stages of the criminal justice system;
- to address the legal aid needs of federal priority groups (i.e., Aboriginal people, members of visible minority groups, and members of official language minority groups);
- to address other priorities such as service diversification, rural and remote service delivery, public legal education and information, and enhanced duty counsel service delivery; and
- to address the needs of legal aid clients with special needs (e.g., young persons, accused people who have low literacy, accused people who have drug or alcohol dependencies, mentally disordered accused people).”

Collectively, all of these investments in Legal Aid Renewal across Canada “are intended to:

- Reduce the numbers of unrepresented accused, particularly at the early stages of the criminal justice system;
- Develop more efficient and effective criminal legal aid services;
- Develop more integrated and reparative approaches, particularly for Aboriginal people;
- Develop innovative legal aid services for immigrants, refugees and members of visible minority groups;
- Improve access to legal aid services that are targeted to the special needs of legal aid clients (e.g. youth, mentally disordered accused; people with low literacy)
- Improve access to legal aid services for minority official language clients;
- Improve access to legal aid services in rural, remote and northern areas; and

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<sup>4</sup> All of the text in this section relating to the Investment Fund is taken from *Investment in Criminal Legal Aid Renewal*, a program description provided by the federal Department of Justice.

## 2: Substantive Objectives for Criminal Legal Aid Generally

- Improve access to public legal education and information.”

In order to receive monies from the Investment Fund, the innovation in service delivery must involve “one or more of the following changes:

- resolving a current or anticipated legal aid service delivery problem (within the scope of the Investment in Legal Aid Renewal objectives);
- improving the capacity of the legal aid plans to provide legal aid services;
- improving the quality and effectiveness of service delivery;
- reducing costs;
- leveraging support from NGOs and other community service groups involved in providing services to legal aid clients.”

The objectives of the CLOs in Ontario are set out in the *Criminal Legal Aid Ontario Office Protocol*, a document finalized in October 2004 by LAO following a series of discussions over the previous several months with the Provincial Advisory Committee (PAC) and the three Local Advisory Committees (LACs) for the initiative.

The Criminal Law Offices are staffed by persons who are employees of LAO, and are intended to provide criminal legal representation and related services to criminal accused in the three areas (Barrie, Brampton and Ottawa) where they have been established. The *Protocol* states that the scope of services will depend on the specific needs of each of the three local communities, but in general may include:

- representation of criminal accused who have a legal aid certificate,
- representation for accused who do meet the financial eligibility requirements for legal aid, but do not meet the “loss of liberty” threshold for coverage, and “may face significant consequences such as loss of livelihood, loss of government benefits, loss of access to education, etc.”,
- representation for accused who do not meet the “loss of liberty” threshold for coverage, but do meet the financial eligibility requirements for legal aid, and “have a viable defence or a triable issue, or where the case presents an issue that is in the public interest to litigate.”

The *Protocol* states that “the Criminal Law Offices will strive to provide certificate services in areas of greatest client need, including – but not limited to – particularly vulnerable clients, including youth, the mentally disabled, Aboriginal accused, or accused who otherwise have difficulty accessing counsel.” These are defined further in the mandate of each CLO, but for the sake of brevity are referred to here as “target groups”.

Each of these objectives will be examined in this and the next Chapter. The discussion has been divided into two chapters: in the current Chapter we examine substantive objectives which are common to all criminal legal aid service: access to justice, choice of counsel, consistency and continuity of service, quality service, value for money, and an effective result. In this Chapter the emphasis will, however, be on addressing the needs of individual clients through assistance in their particular case. The following chapter will address objectives related to more systemic issues and activities (such as: outreach, policy development, and aw reform).

### 2.2 Access to Service and Types of Needs Met

Clearly, “access to justice”, broadly speaking, is a major aspect of the service the CLO provides. It is critical to assess the extent to which the CLOs in the three sites increased access to justice by

## 2: Substantive Objectives for Criminal Legal Aid Generally

providing services. It has already been seen that the fulfillment of access to justice objectives can take many forms, including:

- providing certificate service to persons who are unable to find private counsel in their local area to take the case;
- representing “non-certificate” cases – those accused who are financially eligible but not jail-bound – if they have a valid defence or triable issue;
- representing “non-certificate” cases – those accused who are financially eligible but not jail-bound – if the consequences of conviction would be significant for them; and
- providing certificate service to traditionally “under-serviced” client groups.

The following sections will address the various access to justice aspects of the CLOs’ mandates.

### 2.2.1 Context: Trends in Certificate Cases Handled by the Private Bar

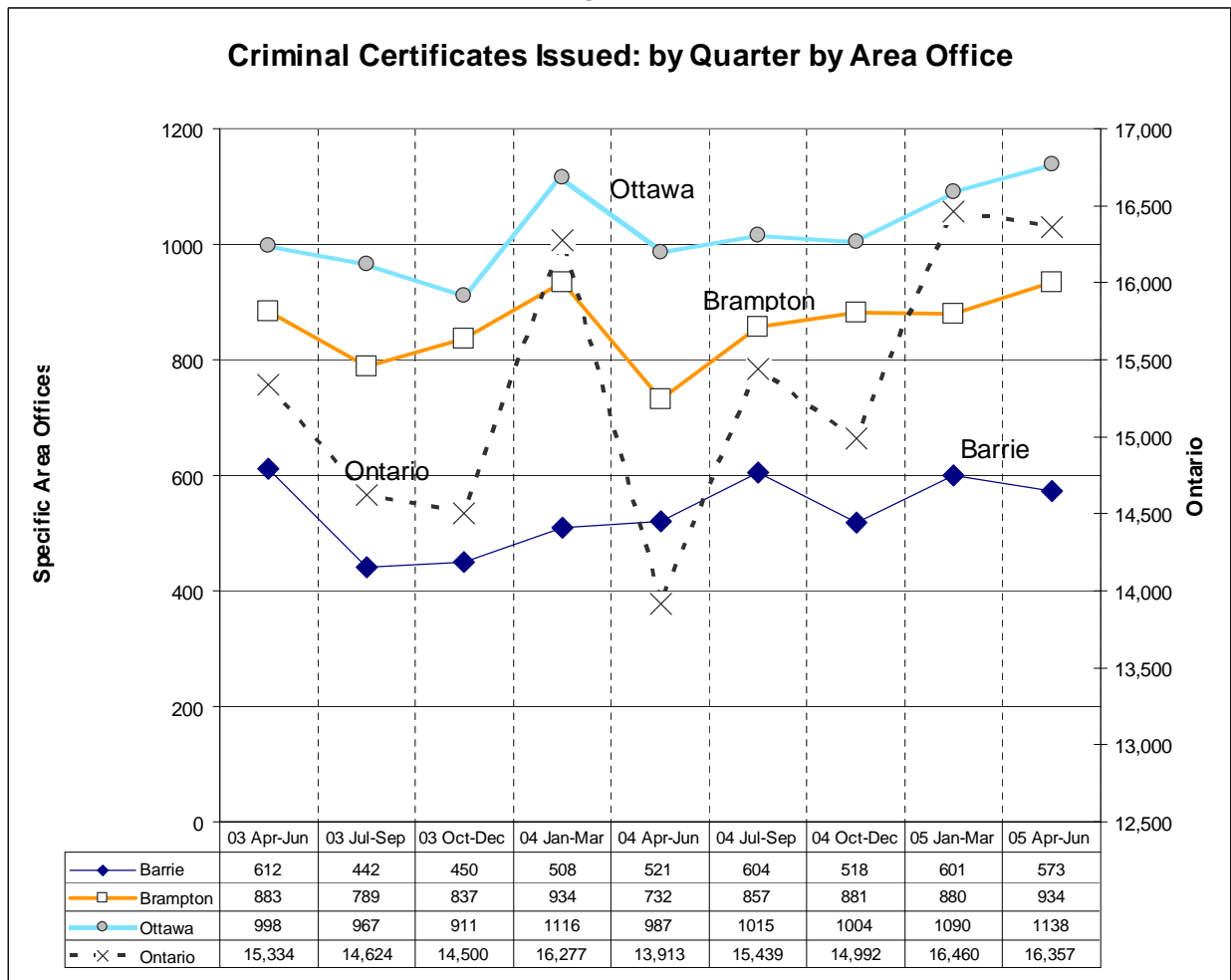
Legal Aid Ontario has recently implemented a new automated information system (PeopleSoft) for recording data related to applications for and lawyer billings on all Criminal Legal Aid Certificates accepted by members of the private bar and the CLOs’ staff lawyers. Using data from this system, Figure 2-1 documents trends in numbers of Criminal Legal Aid Certificates issued—in each location as well as throughout Ontario..

The data show that the CLOs have been implemented and continue to operate within the context of:

- A flat or very slightly increasing trend in certificates issued from April-June 2003 through January-March 2004 for Ottawa, Brampton and Barrie,
- A more volatile, but moderately increasing trend for the whole of Ontario.

All of the CLOs have therefore been operating in locations with stable or slightly increasing demands for one of the types of legal services that LAO wishes to help provide through them.

Figure 2-1



### 2.2.2 Certificate and Non-Certificate CLO cases

#### *a Trends in Mix of Certificate and Non-certificate*

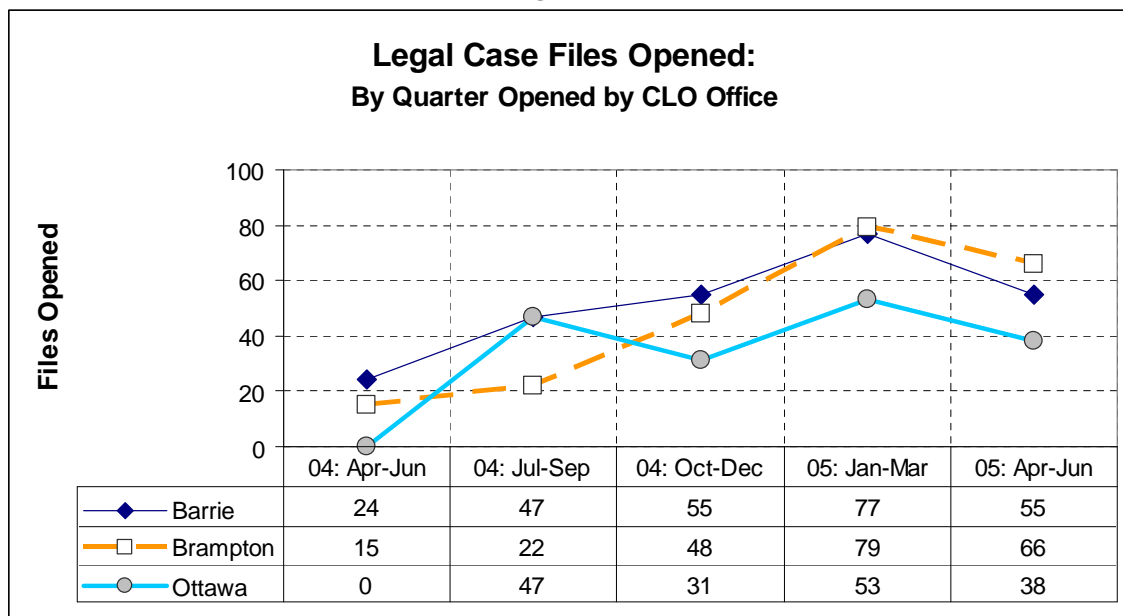
As shown in Figure 2-2, each of the CLOs has exhibited a trend in cases opened, typical of a moderately successful new law office. The trends do differ between the offices. In both Brampton and Barrie, the number of cases opened started low and steadily increased. However, the trend eventually reached a peak and in the last quarter of the first “year” of operations, these offices opened fewer cases than at the peak of the previous quarter.

Ottawa has exhibited a different growth pattern, with the caseload exhibiting an initial increase, followed by a fairly flat case development throughout much of the period.

Finally, Barrie and Brampton exhibited similar levels of caseloads—both considerably above those handled by Ottawa.<sup>5</sup>

<sup>5</sup> The next phase of the evaluation will monitor whether these differences in levels of caseloads continue, and if so, the factors explaining them.

Figure 2-2



The CLOs serve both certificate and non-certificate cases—and both are shown in the preceding Figure. To the extent that the CLO is in competition with other members of the private bar for the certificate work, it is not increasing access to service other than by adding the CLO lawyers to the pool of criminal lawyers accepting LAO certificates. However, the CLOs *would* be increasing access to justice if the CLOs were either providing services to certificate cases that would not have been taken up by the private bar, or were providing different types of needed services that were not available from the private bar.

As well, the CLOs were established by LAO to create a new criminal legal aid service for poor defendants in three Ontario cities. This service provides legal aid coverage (through the services of the CLO) for financially eligible accused who are not likely to go to jail if convicted. These “non-certificate” cases, who do not pass the “loss of liberty” criterion for the issuance of an LAO certificate for legal representation, would otherwise be served by free duty counsel (if they are willing to plead guilty), by paying private counsel, or not at all (if they wish to go to trial). In the sense that each CLO provides this service to “non-certificate” accused, it is by definition increasing access to justice in the area it serves.

The following three Figures show the trends in the certificate and non-certificate cases opened and the ratios of certificate cases to the total of certificate and non-certificate. There was wide variance in the number of cases served by the three CLOs and in the proportion of cases that received LAO certificates.

As shown in Figure 2-3, certificate cases constituted a much higher proportion of the Barrie CLO’s caseload (above 90% in all but the last quarter) than in Brampton (below 15% in the last three quarters) and in Ottawa (at or below 20% in the last three quarters). Barrie handled a steadily increasing number of new certificate cases from quarter to quarter—while no such increase was seen in Brampton and Ottawa.

With respect to non-certificate cases opened, there were three different patterns exhibited in the three sites:

- Barrie showed no increases until the last quarter shown.

## 2: Substantive Objectives for Criminal Legal Aid Generally

- Brampton showed a strong and steady increase in non-certificate cases (until a drop in the last quarter).
- Ottawa showed a fairly level trend throughout its first year.

Figure 2-3

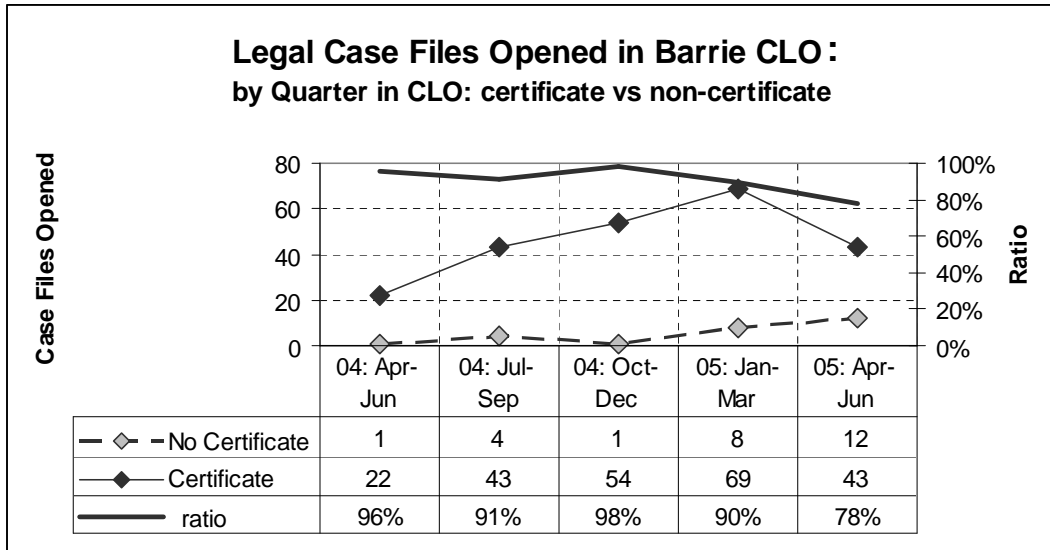


Figure 2-4

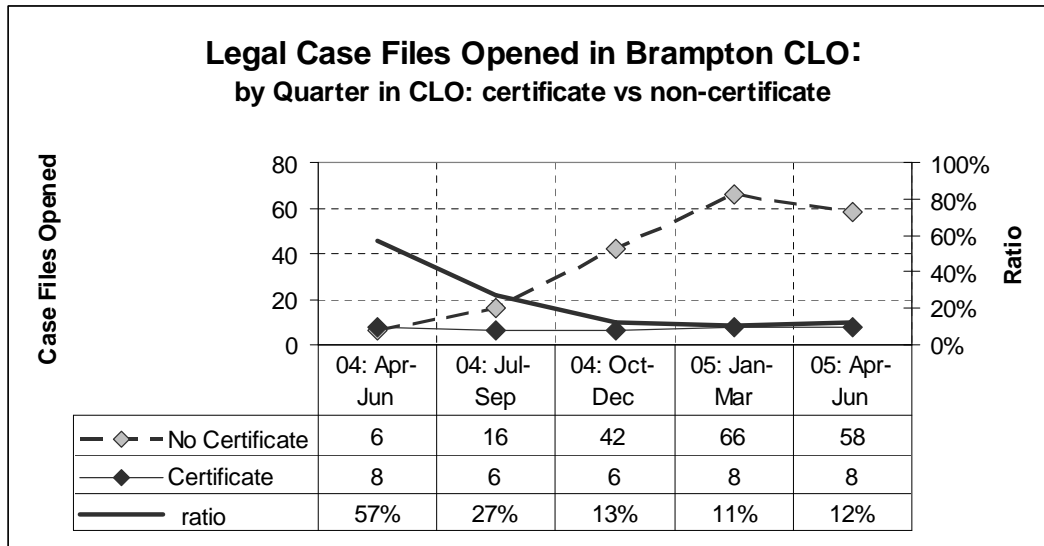
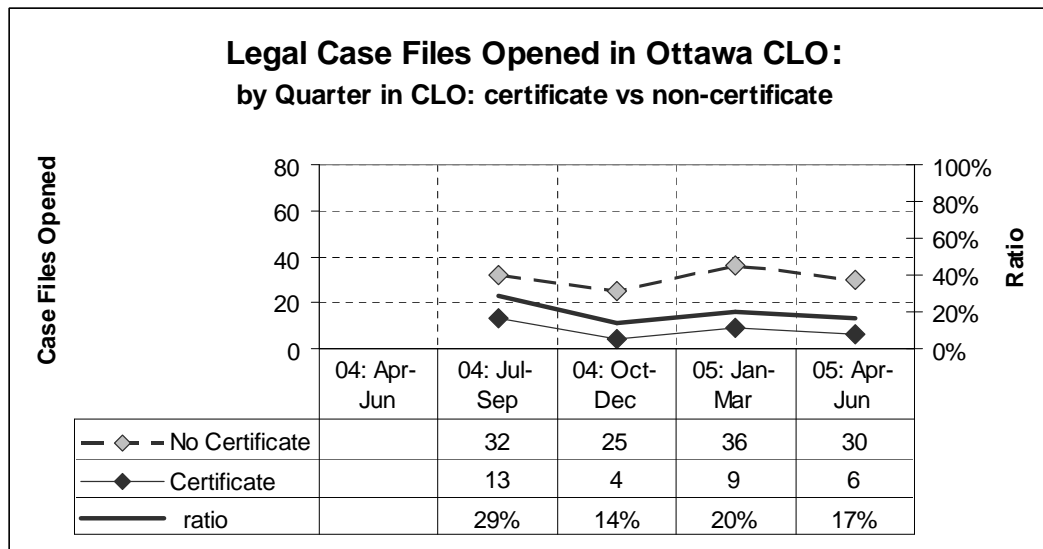


Figure 2-5



In summary, there are marked differences in the levels and nature of the caseloads in the three CLOs. It should be noted that the differences do not seem to be the result of explicit policy guidelines of the LAO head office, the local LAO Area Director or for that matter the CLOs. The general approach in all CLOs seems to have been reactive rather than proactive, and to take the clients that “come in the door.”

For instance, the Barrie CLO developed a significant caseload from the outset, principally representing persons on legal aid certificates. Much of this initial caseload came to the CLO because of the reputation of the director who has practiced in Simcoe County for over 10 years and had most recently been Senior Duty Counsel for Simcoe County. The caseload was quite diverse; it included numerous sexual assault charges that were undertaken—not only because of the perception (on the part of LAO and the CLO) that it was difficult to get the private bar to undertake these complex and time consuming cases on a legal aid certificate—but because of the personal interests of the staff lawyers.

This approach (and analogous reactive approaches in Brampton and Ottawa) seems understandable from an operational perspective in the early stages of setting up a law office, when it is critical from both a professional and financial bases to reach a sufficiently substantial core level of activity, as soon as possible. However, the issue is still open as to whether continuation of this approach will lead to the types of caseloads and impacts desired from an LAO policy perspective. The evaluation will during the second year be especially interested in whether a more proactive case selection protocol will be utilized—especially as the CLOs reach their operational capacity and must begin to select among alternative cases to handle.

#### *b Levels of Certificate Caseloads: Comparison CLOs to Private Bar*

*Did the CLOs provide representation to accused persons who were eligible for a legal aid certificate?*

The above data inform us about the number of certificate and non-certificate cases opened and closed since each CLO opened. It is not possible to draw inferences from the data about the extent to which the private bar might have accepted some or any proportion of these cases. This question will have to



## 2: Substantive Objectives for Criminal Legal Aid Generally

be addressed from other sources. The data do allow us to provide information relevant to two issues addressed later in this report, namely: whether the CLOs represent a threat to the private bar, and whether they can be expected to have a significant impact on access to justice and on other justice aspects in their communities.

As shown in Figure 2-6, the answer to each question may differ in each site. The Barrie CLO certificate cases represent approximately 9% of the total certificates in the Area, while the certificates cases of the Brampton and Ottawa CLOs comprise less than 1% of the total certificates issued.

**Figure 2-6**

<b>Comparison of Certificates Issued and CLO certificate Cases Opened in the 12 Month Period between July 1, 2004 and June 20, 2005</b>			
	<b>Barrie</b>	<b>Brampton</b>	<b>Ottawa</b>
<b>Total Certificates Issued</b>			
- number	2,296	3,552	4,247
<b>CLO Certificate Cases Opened</b>			
- number	209	28	32
- as percent of total Certificates Issued	9.1%	0.8%	0.8%

### 2.2.3 What Types of Clients Are Being Serviced? To What Extent is the Service Meeting Unmet Needs?

In addition to the general substantive objectives addressed in this Chapter, each CLO has objectives which are particular to it, and more specific as regards target certificate client groups and strategies than are the general objectives for criminal legal aid services delivery. As noted later, our interview data suggest that many workers in the justice environment of the CLOs are not aware of the CLOs' mission to provide certificate services "in areas of greatest client need, including – but not limited to – particularly vulnerable clients ... or accused who would otherwise have difficulty accessing counsel."

**In Barrie**, challenges are presented by a rapidly growing population in a large geographical area which encompasses or abuts two large institutions and an isolated Aboriginal community (Christian Island). In Barrie, the target groups mentioned are:

- Persons with mental health issues;
- Aboriginal persons;
- Young persons in the criminal justice system;
- Persons incarcerated in local and regional correctional institutions;
- Persons with intersecting legal needs; and
- Services to persons who otherwise have difficulty accessing counsel.

**In Brampton**, a rapidly growing community means that appearances on criminal charges have been increasing dramatically, well beyond the provincial average. In Brampton, the target groups mentioned are:

- Persons with mental health issues;
- Young persons in the criminal justice system;
- Persons incarcerated in local and regional correctional institutions;
- Persons with intersecting legal needs; and
- Services to persons who otherwise have difficulty accessing counsel.

**Ottawa** is the busiest LAO area in the province outside Metro Toronto. In Ottawa, the groups mentioned are:

- Persons with mental health issues;
- Young persons in the criminal justice system;
- Persons incarcerated in local and regional correctional institutions;
- Persons with intersecting legal needs;
- Persons with Aboriginal and visible minority backgrounds; and
- Services to persons who otherwise have difficulty accessing counsel.

Identifying the extent and nature of unmet needs is a difficult and complex task. One initial part of that task is to describe the types of clients and cases that are being referred to or are otherwise selecting the CLOs.<sup>6</sup> Such a description may also be useful in identifying whether otherwise unmet client needs have changed since the planning of the CLOs.

Describing the nature of the types of clients and cases served by the CLOs to-date will be the focus of the sections that follow.

The description of the nature of CLO clients is also an important aspect of describing the impacts of the CLOs on different client groups.

*a General CLO Client Demographic Characteristics*

Figure 2-7 (based on Legal Files data) shows that the CLO caseloads reflect the predominance of males among those accused of criminal offences. However, the significant proportions of females indicates that the CLOs are reaching that group as well. Similar gender proportions are found in each of the CLOs.

**Figure 2-7**

**Gender of Defendant Represented by CLO by Site by Whether Opened before or after Dec 31, 2004**

	Barrie		Brampton		Ottawa		All Sites: Whole Period
	May through Dec, 2004	Jan through June 2005	May through Dec, 2004	Jan through June 2005	May through Dec, 2004	Jan through June 2005	
Not coded	2%		12%	8%	1%	7%	5%
Female	33%	25%	32%	26%	33%	26%	29%
Male	65%	75%	56%	66%	65%	67%	67%
Cases Opened	126	132	85	145	78	91	657

Specific Client Files Cases opened to June 30, 2005. Created on Nov 23 using information extracted Nov 4.

Figure 2-8 (based on Legal Files data) provides interesting socio-economic information about the types of clients impacted by each CLO. It is important to note that a given factor will be indicated if it is relevant to the case, not merely if it is present in the case or the client.

<sup>6</sup> Clearly, the numbers of different types of cases accepted by the CLOs cannot be taken as a definitive indication of unmet needs. In fact, members of the private defence bar argue that they would be in competition with the CLO for many if not all of the cases taken by the CLO.

## 2: Substantive Objectives for Criminal Legal Aid Generally

It should also be noted that one should treat this data as illustrative as opposed to definitive—since some of the data does not seem to be as accurate or complete as would be hoped.<sup>7</sup>

Differences do seem evident among the CLOs:

- Barrie certificate cases have a high percent of clients in institutions (35%) and clients who have addictions issues (44%);
- Ottawa certificate cases have a relatively high percent of clients with social worker involvement (14%);
- Ottawa non-certificate cases have a relatively high percent of clients with geographic difficulties (8%); and
- Brampton cases—both non-certificate and certificate—have a relatively high percent of clients who were identified by the CLO as being difficult to contact (about one in five).

Figure 2-8

### Prevalence of Different Client-Related Case Complexity Factors in Closed Legal Case Files: By CLO Location by Whether or not Certificate or Not

	Barrie		Brampton		Ottawa		Total
	No Certificate	Certificate	No Certificate	Certificate	No Certificate	Certificate	
Client in Institution	5.9%	35.1%	0.0%	17.6%	1.1%	3.6%	16.3%
Addiction Issues	29.4%	44.1%	4.0%	5.9%	15.4%	21.4%	25.6%
Social Worker Involvement	5.9%	9.0%	2.0%	0.0%	11.0%	14.3%	7.7%
Poverty Issues	5.9%	14.4%	4.0%	0.0%	1.1%	0.0%	7.5%
Geographic Difficulties	0.0%	2.7%	2.0%	0.0%	8.8%	3.6%	3.6%
Other Difficult Client or Circumstances	5.9%	5.9%	9.9%	11.8%	12.1%	10.7%	8.6%
Difficulties Contacting Client	5.9%	16.0%	20.8%	29.4%	13.2%	3.6%	15.8%

*Closed Client Files Opened :to June 30, 2005 Only: Nov 24 run on information extracted on Nov 4, 2005*

#### *b CLO Clients with Different Previous Criminal Histories*

The CLOs are expected to enter specific data on Legal Files, describing the previous criminal history of each client. The data that have been entered are presented in Figure 2-9. However, the criminal histories of the CLOs' clients seems to have been seriously understated—especially for Barrie and Brampton (Ottawa data show 25% of their clients had a previous conviction, while both Barrie and Brampton, figures are much lower.) The data are presented without comment to flag for follow-up the collection of this critical information for the future.

<sup>7</sup> A number of Figures have been included in this first-year report that contain statistics that are questionable. We have done so to identify areas in which data recording in Legal Files needs to be checked by LAO, and possibly improved to allow the evaluation to address certain areas with more certainty in future reports.

## 2: Substantive Objectives for Criminal Legal Aid Generally

**Figure 2-9**

**Prevalence of Different Previous Conviction Factors as a Factor Significant in the Case: in Closed Legal Case Files:  
By CLO Location by Whether or not Certificate or Not (.0100 = 1.00%)**

		Barrie		Brampton		Ottawa	
		No Certificate	Certificate	No Certificate	Certificate	No Certificate	Certificate
Previous Conviction?	yes	11.8%	17.0%	1.0%	5.9%	24.2%	25.0%
	no or not specified	88.2%	83.0%	99.0%	94.1%	75.8%	75.0%
Previous Conviction: Relevant?	yes	5.9%	14.9%		5.9%	5.5%	7.1%
	null	94.1%	85.1%	100.0%	94.1%	94.5%	92.9%
Previous Conviction: Less than 5 years?	yes	5.9%	14.4%		5.9%	9.9%	14.3%
	null	94.1%	85.6%	100.0%	94.1%	90.1%	85.7%

Client Closed Files Opened:to June 30, 2005 Only: Nov 24 run on information extracted on Nov 4, 2005

### *c Improving Access regarding Language Barriers*

As was noted earlier, some of the “target groups” originally identified as potentially having “access to justice” challenges would include accused and their families who spoke languages other than those of the court and of most lawyers’ offices.

*Were clients able to communicate in their first language or with the assistance of an interpreter (including with legal and non-legal CLO staff)?*

Figure 2-10 shows that language or factors that would imply a language problem were cited as a significant factor in between one in 20 and one in 10 of the cases.

**Figure 2-10**

**Prevalence of Different Language-related Case Complexity Factors in Closed Legal Case Files:  
By CLO Location by Whether or not Certificate or Not (.0100 = 1.00%)**

	Barrie		Brampton		Ottawa		Total
	No Certificate	Certificate	No Certificate	Certificate	No Certificate	Certificate	
Need for Interpreter	.000	.021	.059	.059	.077	.036	.043
Other Communications Challenges	.000	.064	.010	.059	.132	.143	.068
Literacy Difficulties	.000	.053	.010	.059	.044	.071	.041
Victims of Torture	.000	.005	.000	.000	.000	.000	.002

Closed Client Files Opened:to June 30, 2005 Only: Nov 24 run on information extracted on Nov 4, 2005

CLOs were also asked to record the first language of defendants. Reliable data (Figure 2-11) were, however, only available at this time for Barrie and Ottawa.

Figure 2-11

**First Language of Defendant in Closed Legal Case Files:  
By CLO Location by Whether or not Certificate**

		Barrie		Ottawa	
		No Certificate	Certificate	No Certificate	Certificate
First Language	English	100.0%	97.3%	61.5%	75.0%
	French			8.8%	17.9%
	NULL		1.1%	5.5%	3.6%
	Other		1.6%	24.2%	3.6%

Client Closed Files Opened:to June 30, 2005 Only: Nov 24 run on information extracted on Nov 4, 2005

None of the CLO sites reported any difficulties in meeting the needs of translation or interpretation for their clients. In Barrie, as the data suggest, there was little call for interpretation, with all the non-certificate and over 97% of the certificate clients having English as their first language. The Brampton office had a considerable clientele with English as a second language, as did Ottawa. In Ottawa, the presence of Francophone and/or bilingual lawyers and community legal worker was an asset for Francophone clientele.

*d Improving Access regarding Cultural Barriers*

The original objectives of the Barrie and Ottawa CLOs emphasize the improvement of access to justice for aboriginals. However, it would also be reasonable to monitor whether the CLOs are addressing the special needs of other ethnic and cultural groups.

Data on this issue is provided in Figure 2-12 which lists different categories of ethno-cultural groups that are present in the CLO caseloads:

- About two-thirds of the caseload in Barrie and Ottawa are “white/Caucasian”, as compared to Brampton, where people of colour, and particularly African/Canadians or Blacks, make up a majority of the Brampton caseload;<sup>8</sup>
- There are a limited number of Portuguese and Mexican clients contacting the Barrie CLO, who are generally appearing in the Bradford satellite court.
- Aboriginal (North American Native) persons constitute a significant percentage of the Barrie caseload (about 15%), as compared to some 5% in Ottawa, and none of the caseload in Brampton.

<sup>8</sup> The CLOs actually use a more detailed specific coding system than shown here. However, there is some evidence that different specific codes are used in different sites—and that the coding systems have changed over time. Since this variable is especially important for identifying whether the CLOs are reaching specific target groups, the coding of this variable will be addressed in the next phase of the evaluation.

**Figure 2-12**  
**Ethnicity of Defendant Represented by CLO by Site by Whether Opened before or after Dec 31, 2004**

	Barrie		Brampton		Ottawa		All Sites, whole period
	May through Dec. 2004	Jan through June 2005	May through Dec. 2004	Jan through June 2005	May through Dec. 2004	Jan through June 2005	
Not Coded	9.0%	14.0%	17.0%	22.0%	5.0%	14.0%	14.0%
Caucasian/ White (non specific)	71.0%	67.0%	36.0%	40.0%	68.0%	59.0%	57.0%
Aboriginal	13.0%	16.0%	1.0%	0.0%	4.0%	0.0%	7.0%
African/Canadian or Black	3.0%	2.0%	24.0%	21.0%	18.0%	22.0%	14.0%
South East Asian	1.0%	0.0%	8.0%	8.0%	5.0%	0.0%	3.0%
Other	3.0%	1.0%	14.0%	9.0%	0.0%	5.0%	5.0%

*Closed Client Files Opened :to June 30, 2005 Only: Nov 24 run on information extracted on Nov 4, 2005*

### *e Improving Access Regarding Special Needs*

As noted above, the CLO certificate services are, to some extent, oriented towards special needs clientele – since their special needs often impact on their ability to obtain and interact with a lawyer. The governing *Protocol* mandates the CLOs to strive to provide certificate services “in areas of greatest client need, including – but not limited to – particularly vulnerable clients ... or accused who would otherwise have difficulty accessing counsel.”

*How well were CLOs able to respond to clients with unique issues in obtaining and retaining knowledgeable counsel (unique needs of Aboriginal, mentally ill, homeless and incarcerated persons)?*

The CLOs’ mandate extends to developing (or helping to develop) or (in Barrie) assessing community programs to meet the needs of their clients. This is reflected in some of the language of the *Service Objectives and Priorities* documents respecting each of the CLOs, though the manner in which services are delivered is not addressed specifically in those documents.

In many instances, the CLOs were initially unable to attract many clients from some of the target groups it was originally anticipated they might serve more often than other area lawyers. In other instances, the CLOs were successful in obtaining such clients, possibly in part from the outreach meetings with community groups. Again, the pattern varied with the individual CLOs.

The prevalence of language and ethno-cultural aspects of special needs were reviewed above—as was the prevalence of clients who were in custody. As regards **persons in local institutions** – both sentenced and unsentenced – all of the CLOs had members on their Local Advisory Committees (LACs) who advocated a role for the CLO in advocating and perhaps litigating for persons in custody. The Barrie CLO, with its proximity to the privately run “Superjail” in Penetanguishene, has heard a series of complaints about the treatment of prisoners at the “Superjail”, and its championing of their cause would be supported by several LAC members. Similar sentiments obtain – although probably to a lesser extent – for Brampton and Ottawa. To date, however, no litigation has been undertaken by any of the CLOs to challenge the conditions of confinement or procedures at local institutions.

## 2: Substantive Objectives for Criminal Legal Aid Generally

The Brampton CLO has, however, championed the cause of getting remand prisoners in Brampton better telephone access to sureties and counsel. More will be said about this later.

Interviewees were asked to state how well they thought the CLOs were **meeting the needs** of target groups who traditionally have had “difficulty accessing counsel”. Most interviewees said they did not know.

Of those who said they did know something of this (two interviewees in Ottawa), both rated the CLO highly in its meeting of target client needs. In addition, two other interviewees said the Ottawa CLO understood their clients more thoroughly than do some private counsel. In Ottawa, one NGO official said the CLO was more sensitive to, and “straight with” clients who had language or other communication difficulties; many private bar members will “be a no-show in court, or misinform the client about something, and then tell the client s/he [the client] misunderstood”.

### 2.2.4 Comparing CLOs and the private bar on meeting client needs

*How effectively did CLOs and roster work respond to clients’ non-legal (social, cultural, economic) and legal needs?*

Interviewees were asked how well they thought the CLO was responding to the needs of its certificate target clients. Most either knew nothing about the identity of the CLO’s certificate target clients or said they did not know how well the CLO was meeting the needs of these clients, or both. However, NGOs working with offenders were likely to say that the CLO was highly sensitive to the needs of its clients, and very reliable and responsive with the workers and the programs of the NGOs.

In Barrie, the NGOs working with mentally ill accused responded that the CLO was very responsive to and cooperative with its court workers. “They are well-prepared and do “excellent work; they are both top notch”. “I have seen them get the right judge”. Particular mention was made of the work done by the community legal worker and staff lawyer. Concern was expressed by one NGO worker with respect to slow response rate to their phone calls; that worker stated that one of the staff lawyers was providing very good service.

### 2.2.5 Specific Types of Offences Handled

There is interest in comparing the offence mix of CLO certificate cases to certificates handled by the private bar. Figure 2-13 provides the trends in the mix of certificate by offence category handled by the private bar in Barrie, Brampton and Ottawa, as well as across the entire province of Ontario.<sup>9</sup>

There was no marked change in the mix of cases over the three years sampled. There is a strong similarity between the certificates issued across Ontario and in the three communities, with respect to the offences defended under LAO certificates. For example:

- Approximately a quarter of the certificates were for assault cases, and
- Approximately 15% were theft related.

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<sup>9</sup> The offence categories used in the following tables and later in this report are the categories used in many LAO report. A listing of the specific offences found within each category can be found in <specify LAO document?>. It should, however, be noted that the titles of the headings are illustrative of the seriousness of the offences in that category. “Homicide” for instance includes attempted murder, manslaughter etc.

2: Substantive Objectives for Criminal Legal Aid Generally

Figure 2-13

Trends in Distribution of Certificates by Offence Category: By Fiscal Year Issued by Area Office

Offence Category	Barrie			Brampton			Ottawa			Ontario		
	2003/ 2004	2004/ 2005	2005/06 (to nov)	2003/ 2004	2004/ 2005	2005/ 06 (to nov)	2003/ 2004	2004/ 2005	2005/06 (to nov)	2003/ 2004	2004/ 2005	2005/06 (to nov)
Weapons offenses	3%	3%	3%	6%	7%	7%	4%	4%	4%	5%	5%	5%
Threatening	4%	3%	3%	3%	3%	3%	3%	3%	2%	3%	3%	3%
Theft	15%	16%	16%	13%	14%	13%	14%	15%	13%	13%	14%	14%
Sexual assault	5%	4%	4%	3%	3%	3%	2%	2%	2%	4%	4%	3%
Robbery	6%	3%	3%	8%	8%	6%	7%	6%	5%	6%	6%	6%
Other vehicle offenses	2%	2%	3%	2%	1%	1%	1%	1%	1%	1%	1%	1%
Other drug offenses	1%	1%	0%	1%	1%	1%	0%	0%	0%	1%	0%	0%
Other criminal	6%	7%	7%	3%	4%	3%	3%	4%	5%	3%	4%	4%
Narcotics - cocaine and heroin	8%	11%	11%	13%	15%	18%	8%	10%	11%	10%	12%	12%
Mischief	2%	2%	2%	2%	2%	2%	2%	2%	3%	2%	2%	2%
Impaired driving	4%	3%	4%	2%	2%	2%	3%	3%	3%	2%	2%	2%
Homicide	2%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Fraud	4%	3%	2%	4%	3%	3%	4%	3%	4%	3%	3%	3%
Fail to comply	8%	8%	10%	9%	10%	10%	12%	13%	15%	9%	10%	11%
Break and enter	11%	10%	8%	8%	6%	6%	9%	8%	8%	11%	10%	9%
Assault	22%	22%	23%	23%	20%	20%	26%	24%	21%	25%	24%	24%
<b>Total: All Offences</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>



Figure 2-14 provides comparable data for each of the CLOs—for both certificate and non-certificate cases. There are a number of interesting differences with respect to *certificate* cases:

- the Barrie CLO handled a relatively high percentage of sexual assault (5%, compared to none for the other CLOs) and failure to comply (29%, compared to 11% for Brampton) cases;
- the Brampton CLO handled a relatively high percentage of impaired driving (11%, compared to 3% for Barrie and Ottawa) and a relatively low percent of failure to comply cases (11%, compared to 29% for Barrie and 24% for Ottawa); and
- the Ottawa CLO also handled a relatively high percentage of failure to comply cases (24%).

**Figure 2-14**

**LAO Minor Aid Group of Most Serious Offence in Case by whether Certificate or not (by Site)**

	Barrie		Brampton		Ottawa	
	No Certificate	Certificate	No Certificate	Certificate	No Certificate	Certificate
Not recorded	5.0%	2.0%	10.2%	21.4%	5.8%	6.9%
Homicide		1.0%				
Sexual assault		5.4%				
Robbery		.5%				
Theft	5.0%	5.9%	15.6%	10.7%	13.6%	10.3%
Impaired Driving	20.0%	3.0%	11.6%	10.7%	17.5%	3.4%
Other Vehicle		3.9%	.7%	7.1%	1.0%	6.9%
Narcotics Cocaine & Heroin		1.0%	4.1%	7.1%	1.9%	
Assault	45.0%	30.5%	27.2%	17.9%	31.1%	20.7%
Fraud		4.9%	3.4%	7.1%	1.9%	3.4%
Other		4.4%	2.7%	3.6%	4.9%	
Threatening Death Bodily Harm		.5%	4.8%	3.6%	6.8%	6.9%
B& E	5.0%	3.0%	.7%			3.4%
Weapons Offences		1.5%	4.1%		1.0%	6.9%
Mischief	15.0%	2.0%	3.4%		6.8%	3.4%
Fail to Comply		29.1%	6.1%	10.7%	4.9%	24.1%
Other Drug	5.0%	1.5%	5.4%		2.9%	3.4%
All Offence Types Combined	20	203	147	28	103	29

Specific Client Files Cases open to June 30, 2005. Created on Nov 30 using information extracted Nov 4.

When compared to private bar certificate cases, the CLOs' certificate cases exhibit both similarities and differences:

- In Barrie, the CLO and the private bar handled similar percentages of sexual assault cases (roughly 5%);
- In both Brampton and Ottawa, the CLOs handled similar percentages of theft and assault cases while the Barrie CLO had a lower percentage of theft cases and a higher percent of assault cases;
- In both Barrie and Ottawa, but not Brampton, the CLOs handled a higher percentages of failure to comply cases.

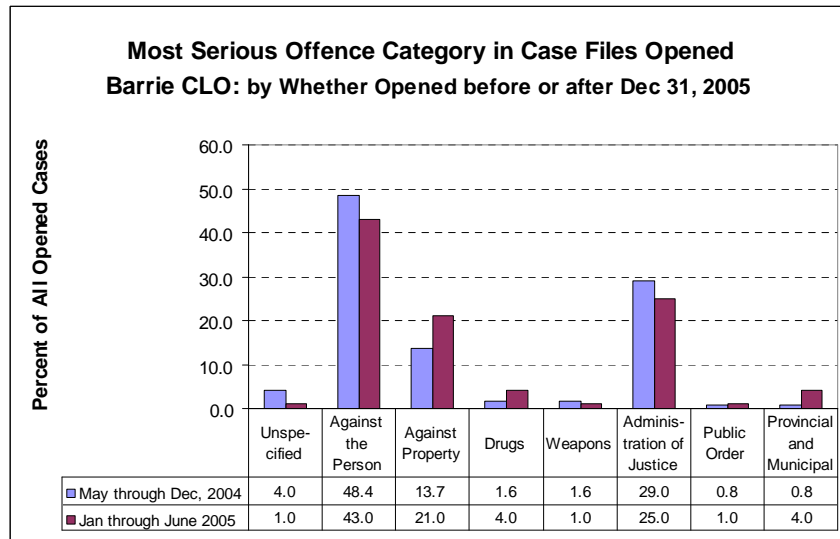
Figure 2-14 also provides a number of interesting comparisons among the CLOs with respect to *non-certificate* cases. Ottawa and Brampton have very similar caseload percentages. The most marked

## 2: Substantive Objectives Generally

difference is the relatively high proportion of the assault cases handled by the Barrie CLO (45%) as compared to close to 30% for Brampton and Ottawa. If the number of Barrie non-certificate cases increases these comparison could quickly change.

Since the CLOs have only recently opened, it is important to consider whether there have been shifts in the types of cases opened over time by the CLOs. Figure 2-15, Figure 2-16, and Figure 2-17 graphically compare the mix of offences among the cases opened during the first six months as compared to the second six months of the CLO's operation. Figure 2-18 provides a more detailed exposition of the data underlying these graphics. No significant changes were observed.

**Figure 2-15**



**Figure 2-16**

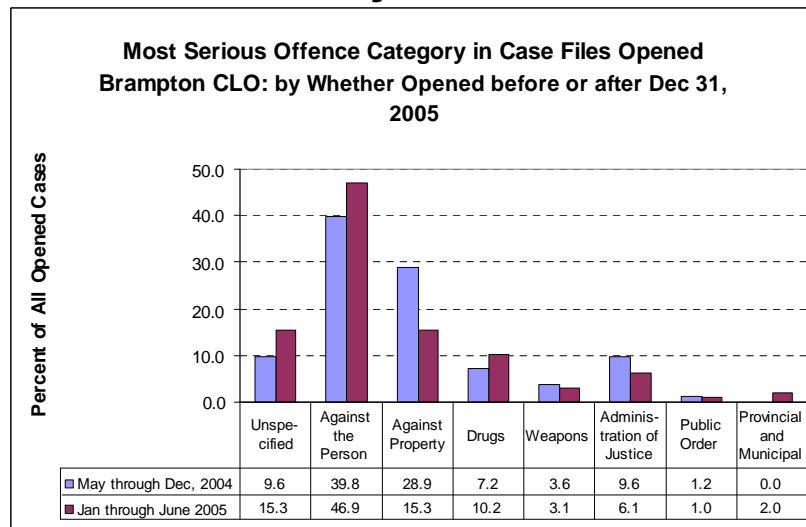


Figure 2-17

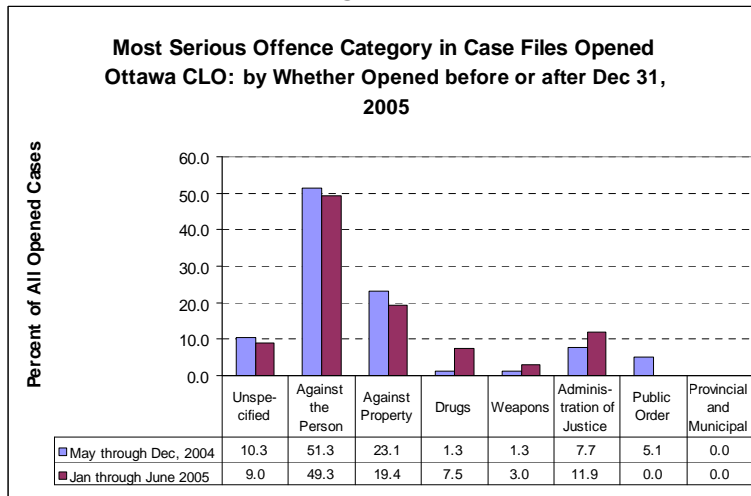


Figure 2-18

**Most Serious Offence Category in Case Files Opened by Site by Whether Opened before or after Dec 31, 2004**

		Barrie		Brampton		Ottawa	
		May through Dec, 2004	Jan through June 2005	May through Dec, 2004	Jan through June 2005	May through Dec, 2004	Jan through June 2005
		Col %	Col %	Col %	Col %	Col %	Col %
Unspecified		4.0%	1.0%	9.6%	15.3%	10.3%	9.0%
	Total	4.0%	1.0%	9.6%	15.3%	10.3%	9.0%
Against the Person	Homicide	.8%	1.0%				
	Sexual assault	5.6%	4.0%				
	Robbery	.8%			1.0%		
	Impaired Driving	4.8%	4.0%	10.8%	12.2%	14.1%	14.9%
	Other Vehicle		3.0%				4.5%
	Assault	32.3%	31.0%	25.3%	26.5%	29.5%	23.9%
	Other	3.2%		1.2%	1.0%		
	Threatening Death Bodily Harm	.8%		2.4%	6.1%	7.7%	6.0%
	Total	48.4%	43.0%	39.8%	46.9%	51.3%	49.3%
Against Property	Theft	6.5%	5.0%	16.9%	12.2%	11.5%	11.9%
	Fraud	3.2%	6.0%	8.4%		2.6%	1.5%
	Other		1.0%			1.3%	
	B& E	1.6%	5.0%	1.2%			1.5%
	Mischief	2.4%	4.0%	2.4%	3.1%	7.7%	4.5%
	Total	13.7%	21.0%	28.9%	15.3%	23.1%	19.4%
Drugs	Narcotics Cocaine & Heroin		2.0%	1.2%	7.1%		3.0%
	Other Drug	1.6%	2.0%	6.0%	3.1%	1.3%	4.5%
	Total	1.6%	4.0%	7.2%	10.2%	1.3%	7.5%
Weapons	Weapons Offences	1.6%	1.0%	3.6%	3.1%	1.3%	3.0%
	Total	1.6%	1.0%	3.6%	3.1%	1.3%	3.0%
Administration of Justice	Other Vehicle			1.2%			
	Other	1.6%		1.2%			
	Fail to Comply	27.4%	25.0%	7.2%	6.1%	7.7%	11.9%
	Total	29.0%	25.0%	9.6%	6.1%	7.7%	11.9%
Public Order	Other	.8%	1.0%	1.2%	1.0%	5.1%	
	Total	.8%	1.0%	1.2%	1.0%	5.1%	
Provincial and Municipal	Other Vehicle	.8%	4.0%		2.0%		
	Total	.8%	4.0%		2.0%		

Cases opened to June 30, 2005. Created on Nov 6 using information extracted Nov 4.

### 2.2.6 Other Complexity Descriptors of CLO Cases

Figure 2-19 presents information that helps provide a fuller picture of the types of cases handled by the CLOs. Again the data relates, to whether the factor was noted by the CLO lawyer as being a factor in the case—not only whether the factor is present in the case. Thus, the percentages are likely to understate the percent of cases having these characteristics.

Data on some of these factors help to better understand the types of clients whose needs are being addressed by the CLOs (for instance, the presence of issues related to: deportation, immigration, child protection, mental health, domestic violence). Data on other factors helps understand the types of technical litigation issues that are presented in CLO cases (e.g. disclosure problems, charter issues, and motions).

Again, one is struck by the differences among the CLOs. For instance:

- Brampton, compared to Barrie and Ottawa, cites a dramatically high incidence of problems with disclosure (41% of certificate cases and 35% of non-certificate cases);
- Barrie cites a comparably higher incidence of *Charter* issues requiring specialized legal services for certificate cases (15%);
- Brampton experiences a much higher likelihood of issues related to special applications or motions (29%);
- Barrie cites a much higher incidence of mental health difficulties—for both non-certificate (29%) and certificate (40%) cases; and
- Barrie exhibits a considerable higher proportion of domestic violence cases among its non-certificate cases (29%)—whereas Brampton cites very few or no such incidences.

**Figure 2-19**

**Prevalence of Different Legal Case Complexity Factors in Closed Legal Case Files:  
By CLO Location by Whether or not Certificate or Not (.0100 = 1.00%)**

	Barrie		Brampton		Ottawa		Total
	No Certificate	Certificate	No Certificate	Certificate	No Certificate	Certificate	
Problems with Disclosure?	.059	.106	.347	.412	.044	.000	.152
Charter Issues: Specialized Legal Services Required	.000	.154	.050	.059	.055	.036	.093
Specialized Legal Expertise: Special Applications or Motions	.000	.043	.030	.294	.033	.000	.043
Expert Witnesses or Evidence Needed	.000	.016	.030	.059	.033	.036	.025
Layered Legal Issues: Deportation	.000	.005	.000	.059	.022	.000	.009
Layered Legal Issues: Other Immigration or Refugee	.000	.005	.010	.059	.110	.000	.029
Layered Legal Issues: Child Welfare/protection	.000	.074	.000	.000	.066	.107	.052
Child Protection Issue	.000	.053	.000	.000	.044	.036	.034
Mental Health Difficulties	.294	.399	.089	.176	.220	.286	.271
Domestic Violence	.294	.176	.040	.000	.176	.143	.140

Closed Client Files Opened: to June 30, 2005 Only: Nov 24 run on information extracted on Nov 4, 2005

The information in Figure 2-20 regarding the presence of triable issues is particularly interesting with respect to the importance of addressing an unmet need by extending the caseload to non-certificate cases. Over 40% of the Barrie and 34% of the Ottawa non-certificate caseloads were flagged as containing triable factual issues. As will be seen later in the discussion of case outcomes, this finding is one of many relevant to the issue of the appropriate scope of legal assistance availability.

Figure 2-20

**Prevalence of Triable Issues as a Significant Factor in Closed Legal Case Files:  
By CLO Location by Whether or not Certificate or Not (.0100 = 1.00%)**

		Barrie		Brampton		Ottawa	
		No Certificate	Certificate	No Certificate	Certificate	No Certificate	Certificate
Triable Issues	Factual Issues	41.2%	12.2%	2.0%	11.8%	34.4%	32.1%
	Legal/Charter Issues		3.2%	5.0%	5.9%	5.6%	3.6%
	Other		.5%				
	NULL	58.8%	84.0%	93.1%	82.4%	60.0%	64.3%

Client Closed Files Opened:to June 30, 2005 Only: Nov 24 run on information extracted on Nov 4, 2005

### 2.2.7 From Where are Referrals to the CLOs Coming?

CLO staff (other than in Barrie) report that most of their referrals come via the “refusal letters” sent by LAO to accused who qualify financially for legal aid, but do not meet the “loss of liberty” criterion. LAO tells the accused in these letters that they do not qualify for a legal aid certificate, but that they have options if they wish the help of a lawyer, including entering into a payment plan with a private lawyer, speaking to duty counsel, and going to the CLO.<sup>10</sup>

In Barrie and Brampton, a small number of cases have been received under section 85(2) of the *Legal Services Act*, when duty counsel identified accused who were mentally disordered to a degree that they were not able to select counsel for themselves. In Barrie, a number of cases have been referred by the court workers of the Canadian Mental Health Association. In Ottawa, the CLO is beginning to get more cases from calls placed by persons in custody who find their names from a list of criminal lawyers available from the police.

There appear to be major problems with the way the important ‘reason for referral’ variable has been coded. Barrie and Ottawa data has been excluded from Figure 2-21 and Figure 2-22 since

- Except for Brampton non-certificate cases, in a very high percent of cases, this variable was not coded. The coding improved in Ottawa in the second six months, but a high percent of cases still had no reason for referral data.

In contrast, the data in Figure 2-23 is more informative—although only percentages shown for Brampton are reliable. That Figure lists specific groups who have referred cases to the CLOs. Although major improvements are needed in the completeness with which data are recorded, there is evidence that the CLOs are starting to get referrals from a wide range of sources—including a significant percent from the bar in Barrie. Nonetheless, by far the majority of cases are some variation of “self-referrals”, that is clients who find the CLO on their own after getting a certificate refusal letter from LAO.

<sup>10</sup> Accused refused Legal Aid get two documents, the official “refusal letter” and a second document itemizing options for the accused. Among these options are retaining a private lawyer, another is approaching the CLO. In Ottawa, the second document was not made available until August, 2004.

**Figure 2-21****Reason for Referral by CLO by Site by Whether  
Opened before or after Dec 31, 2004**

	Brampton	
	May through Dec. 2004	Jan through June 2005
Not Specified	8%	12%
Another Client of CLO	1%	1%
Area Office List	7%	6%
Case type not handled by practice	1%	
Cold Call		
Geographical limitation	1%	
No solicitor will accept certificate	2%	1%
Non-certificate matter	34%	79%
Sec 85.2 LASA		
Specialized services-CLO only	45%	1%
Cases Opened	85	145

Specific Client Files Cases opened to June 30, 2005.  
Created on Nov 23 using information extracted Nov 4.  
Reasons included in 'Specialized services - CLO' may vary from one CLO to another, but likely include specialized legal expertise in the CLO office & CLO accepts refused applications for certificates, etc.

**Figure 2-22****Reason for Referral by CLO by Site by Whether  
Opened before or after Dec 31, 2004**

	Brampton	
	Whether or not Certificate Issued	
	No Certificate	Certificate
Not Specified	5%	28%
Another Client of CLO	1%	6%
Area Office List	2%	28%
Case type not handled by practice	1%	
Cold Call		
Geographical limitation		3%
No solicitor will accept certificate	1%	8%
Non-certificate matter	74%	11%
Sec 85.2 LASA		
Specialized services-CLO only	18%	17%
Cases Opened	188	36

Specific Client Files Cases opened to June 30, 2005.  
Created on Nov 23 using information extracted Nov 4.  
Reasons included in 'Specialized services - CLO' may vary from one CLO to another, but likely include specialized legal expertise in the CLO office & CLO accepts refused applications for certificates, etc.

## 2: Substantive Objectives Generally

**Figure 2-23**

**Person Who Referred Case to CLO \* Whether or not Certificate Issued \* CLO Site  
Crosstabulation**

% within Whether or not Certificate Issued

CLO Site			Whether or not Certificate Issued		Total		
			No Certificate	Certificate			
Barrie	Person Who Referred Case to CLO	>>Not Recorded	34.6%	64.5%	61.5%		
		Aboriginal Court Worker		5.6%	5.1%		
		Area Office List		1.3%	1.2%		
		Bail Supervisor		.4%	.4%		
		Barrister & Solicitor		.4%	.4%		
		Brock Youth Employment Resource Centre		.4%	.4%		
		Children's Aid Society, Barrie	3.8%		.4%		
		Cold Call		.4%	.4%		
		Crown Attorney		.4%	.4%		
		Duty Counsel	3.8%	.9%	1.2%		
		Elizabeth Fry Society of Simcoe County	3.8%	.4%	.8%		
		Georgian Bay Native Friendship Centre	3.8%	.4%	.8%		
		Handout-Legal Aid Ontario: What Can You Do Now?	3.8%	.4%	.8%		
		Human Services & Justice System Coordina	7.7%	7.4%	7.4%		
		Legal Aid Ontario Area Office	11.5%		1.2%		
		New Friends Of Children		.9%	.8%		
		Previous Client - CLO		.4%	.4%		
		Private Lawyer	7.7%	12.6%	12.1%		
		Probation	3.8%		.4%		
		Salvation Army Correctional & Justice Services	3.8%	.9%	1.2%		
		Self Referral/After LAO Refusal Letter	3.8%		.4%		
		Self Referred- after LAO Refusal Letter		.4%	.4%		
		Simcoe Legal Services	7.7%	.9%	1.6%		
		Supervisor		.9%	.8%		
		Total			100.0%	100.0%	100.0%
		Brampton	Person Who Referred Case to CLO	>>Not Recorded	68.1%	61.1%	67.0%
A. Grenville and William Davis Courthouse	2.1%			8.3%	3.1%		
Area Director	.5%				.4%		
Attorney at Law	1.1%			5.6%	1.8%		
Barrie CLO	1.1%			2.8%	1.3%		
Downtown Legal Services	.5%				.4%		
Duty Counsel	.5%				.4%		
Duty Counsel Burlington	1.6%			2.8%	1.8%		
Halton Community Legal Services				2.8%	.4%		
John Howard Society				2.8%	.4%		
Private Lawyer	1.1%			8.3%	2.2%		
Self Referred- after LAO Refusal Letter	23.4%			5.6%	20.5%		
Total				100.0%	100.0%	100.0%	
Ottawa	Person Who Referred Case to CLO			>>Not Recorded	15.4%	25.0%	17.4%
				Duty Counsel	15.4%	9.4%	14.2%
		Family Law Office		3.1%	.6%		
		Family/Friend	.8%	3.1%	1.3%		
		Judge	1.6%		1.3%		
		Private Bar	5.7%	3.1%	5.2%		
		Return Client	3.3%	12.5%	5.2%		
		Self Referred/After LAO refusal letter	57.7%	43.8%	54.8%		
Total			100.0%	100.0%	100.0%		

N.B. the percentages shown in the above chart for Barrie and Ottawa are unreliable. The row headings for those two CLOs do, however, suggest the range of sources of referral. It should also be noted that the categories used to code referral sources require adjusting.



### 2.2.8 Seriousness of CLO Cases: Crown's Opening Position

An important indicator of the seriousness and complexity of the cases taken on by the CLO would be the opening position indicated by the Crown. Unfortunately, as shown in Figure 2-24, for all except non-certificate cases in Barrie, in by far the majority of cases the CLOs did not record this information—and the data should be considered as unreliable and is presented to highlight the need for improvements in collecting this information.

Even with these low reporting rates, the Figure does point to some issues that may need to be explored, including that the Ottawa Crowns may be considerably less likely to offer custody as an opening position for certificate cases than do the Crowns in Barrie or Brampton.

### 2.2.9 Improving Access at Critical Stages in the Litigation Process

There are certain stages in the criminal process which are critical to the accused, both in themselves and in determining the eventual outcome of the case. These include arrest or summons; release from pretrial custody (bail); diversion or prosecution; guilty plea or trial; and sentence planning. Depending on when along this continuum the accused has access to counsel, and how, the experience and outcome may be profoundly affected. Duty counsel is available in Ontario criminal courts from the time of arrest until plea, but not thereafter at trial, to represent accused who do not wish to plead guilty. In rare circumstances, a judge may page a duty counsel into court to “assist” briefly (but not represent the accused) in a trial.

*Were clients able to obtain legal assistance at all stages in the criminal process?*

Unfortunately, changes are required in the ways in which information is recorded in Legal Files before that system can provide reliable information on the extent to which the CLOs provide specific services at different points in the litigation process. Fortunately—in large part through the data collection efforts required for the evaluation—the problem has been identified, and steps are being taken to rectify the situation.

Interviews with CLO and LAO officials suggest that clients come to the CLO at different stages in the criminal process. The pattern varies somewhat.

- Most clients contact the Barrie CLO upon the client being refused Legal Aid, after the first or second appearance. As the CLO has become more involved in mental health cases, the office has been retained at any early stage – generally upon referral from the CMHA. This has allowed the CLO to begin to assist a growing number of mentally ill clients facing criminal charge with their bail application. The Barrie CLO will represent accused mentally ill adult and juvenile clients through all aspects of their proceedings;
- In Brampton, the CLO normally was retained after the first or second appearance, usually through the LAO refusal letter. Both because of the nature of the cases and because of this timing, the CLO only occasionally received a case in time for the bail stage; most bail was handled by duty counsel. (The LAO application process has become more effective since the placement of LAO application staff in the Brampton courthouse to handle both in-custody and out-of-custody cases.) Once the case is with the CLO, all services are available;

Figure 2-24

**Crown Opening Position in Closed Legal Case Files:  
By CLO Location by Whether or not Certificate or Not**

		Barrie		Brampton		Ottawa	
		No Certificate	Certificate	No Certificate	Certificate	No Certificate	Certificate
Diversion, restitutions, community service etc.	Diversion	5.9%	.5%	1.0%	5.9%	5.6%	
	Donation					1.1%	
	Suspended Sentence	5.9%		1.0%		3.4%	7.1%
	Anger Management			1.0%			
	Community Service						3.6%
	Donation and Community Service					1.1%	
	DVP Candidate			1.0%			
	<b>Total</b>	<b>11.8%</b>	<b>.5%</b>	<b>4.0%</b>	<b>5.9%</b>	<b>11.2%</b>	<b>10.7%</b>
Discharge, Probation, Fine, Driving Prohib etc.	Absolute or Conditional Discharge		.5%				
	Conditional Discharge	11.8%					
	Conditional Discharge & Probation	11.8%		1.0%		2.2%	
	Conditional Discharge, EIP, & Probation					5.6%	
	Driving Prohibition	5.9%	.5%				
	Fine					4.5%	3.6%
	Fine & Probation		1.1%	3.0%		5.6%	
	Probation	17.6%	1.1%				
	s. 810 Peace Bond					2.2%	3.6%
	Cond'l Discharge, Probation, Anger Mgmt, Donation					1.1%	
	Fine and Driving Prohibition			1.0%			
	Probation and CSO			1.0%			
	Suspend Sentence, Probation & Conditions		.5%			1.1%	3.6%
	<b>Total</b>	<b>47.1%</b>	<b>3.7%</b>	<b>5.9%</b>		<b>22.5%</b>	<b>10.7%</b>
Custody	Penitentiary Sentence					1.1%	
	Possible Custodial Sentence			4.0%	11.8%		
	Prison & Probation	5.9%	11.2%		5.9%	1.1%	
	Prison (2 yrs less a day)		11.2%				3.6%
	<b>Total</b>	<b>5.9%</b>	<b>22.3%</b>	<b>4.0%</b>	<b>17.6%</b>	<b>2.2%</b>	<b>3.6%</b>
Unknown or not specified	unknown	5.9%					
	Not specified			47.5%	35.3%		
	NULL	29.4%	73.4%	38.6%	41.2%	64.0%	75.0%
	<b>Total</b>	<b>35.3%</b>	<b>73.4%</b>	<b>86.1%</b>	<b>76.5%</b>	<b>64.0%</b>	<b>75.0%</b>

Closed Client Files Opened: to June 30, 2005 Only: Nov 24 run on information extracted on Nov 4, 2005

- In Ottawa, interviews suggest that the pattern of cases fall into three groups:
  - the largest group is cases which come via the LAO refusal letter (non-certificate cases), increasingly in time for bail (it can take up to a week to get a bail hearing in Ottawa);
  - more cases are being picked up by the CLO at an early stage. The CLO lawyers are now on “the list” made available to arrested persons, of criminal lawyers willing to accept calls from detention. Since the summer of 2004, there have been more calls to the CLO from “the list”;
  - finally, cases in which the CLO gets called in to assist on a trial which is beginning in a day or two.

Once the case is with the CLO, all services are available.<sup>11</sup>

Our interview data also make it very clear that having access to one’s own counsel through the CLO affected whether or not, and how, a Crown/counsel pretrial or a judicial pretrial meeting was held. The Crowns and judges we spoke to vary as to whether, and how, they will conduct a **pretrial** with an unrepresented accused. Some simply do not do them; others try to bring duty counsel in to assist the unrepresented accused (UA); others will do them with UA, more likely on the record or in full court. One Ottawa judge – who will not do a judicial pretrial with an unrepresented accused – added that Judicial Pre-trials (JPTs) are very helpful to the accused.

Interviewees were asked what impacts the CLO had had on “their job, their work”, as well as on the local justice system. The CJS respondents – mostly Crowns, judges and non-governmental groups (NGOs) – interacted with the CLO staff at all stages of the criminal justice system, including bail and bail planning, plea negotiations and plea court, remand court, pretrials, trials, sentence planning and sentencing. Their responses suggest that:

- all but a few (some of whom do not understand the CLO mandate) acknowledge that they have noticed fewer unrepresented accused (UAs) in the courthouse since the arrival of the CLO (though not so much at bail);
- Crowns and judges in particular said that their job was made easier by not having to deal with so many UAs;
- Direct interactions, and especially trials, with unrepresented accused are not only exceedingly difficult, usually more time-consuming, and painful for all concerned – they also raise fairness issues for the accused;
- The duty counsel function was undergoing a profound shift in Brampton throughout the initial period of CLO implementation, and for that reason it was difficult for interviewees to separate out the impacts of the CLO on the duty counsel functions in that site from other developments;
- In Ottawa, however, interviewees reported some relief for duty counsel. Most thought the effects on their workload would be minimal; the main relief was from now having an option to send cases for which there was previously no remedy – trials for financially eligible accused who are not facing a jail term. Duty counsel in Ottawa still get paged into trials, but reportedly much more now for accused who are not financially eligible for legal aid.

More detail will appear later in this report about interviewees’ perceptions of the impacts of the CLOs on these aspects.

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<sup>11</sup> Attempts will be made in subsequent stages of the evaluation to have the CLOs record more specifically and completely when in the litigation process the CLOs open their involvement in the case. It would then be possible to undertake analysis of the impact of how early in the process a case is opened on the court decisions such as pleas and adjournments—and the number of hours, and bills between private bar and CLOs.

## 2.3 Choice of Counsel

### 2.3.1 Introduction: Choice of lawyer

The bar argues that the CLO model restricts the accused's choice of counsel by not making the service available through certificates to the local bar – i.e., to get the services, the accused must use one of the lawyers of the CLO. In contrast, LAO argues that the CLO increases the accused's choice of counsel by increasing the coverage available, and by adding a new choice of service type (i.e., staff vs. *judicare*).

*Were clients able to obtain the services of the lawyer they wanted?*

Whenever a potential client mentions another lawyer to the CLO, the CLO calls that lawyer to ensure that s/he is aware of the client's situation, and to send the client back if that is appropriate.

Client preferences as to the CLO lawyer they are assigned, as well as previous work which a lawyer has done with an accused, will be taken into account in triage. However, the CLO's caseload work is assigned by the Director based on lawyer strengths and caseload/stage at the time of intake.

### 2.3.2 Clients from Rural, Remote and Surrounding Areas

*Were clients able to obtain accessible and proximate counsel, or were significant numbers of clients forced to use counsel at some distance from their home or the facility where they were being held?*

In the Barrie CLO, the Director primarily takes cases in Orillia and northern Simcoe County, while the second staff lawyer handles cases primarily from Barrie, Bradford and Collingwood. This initial division of districts was based on both the area of residence and the director's prior legal experience in Simcoe County. The second staff member had previous experience with mental health law cases and has developed a practice in the CLO with mentally ill adults and youth; the Director also has experience with sexual assaults offences.

In Brampton, each of the CLO lawyers has been accepting a few out-of-town cases, which come via the LAO refusal letter. CLO lawyers will travel outside of Peel when the client has a nexus to Peel, or when the matters come from the Oakville or Orangeville area offices, that are within the Brampton catchment area. In order to minimize travel expenses, where possible, the CLO Director assigns lawyers who live in the community closest to the court.

The Ottawa office has taken a few cases of accused who were from outside the local Area Office's catchment (and referred by other Area Directors, mostly in Pembroke), primarily for the reason that there was no local private bar member willing to take the case. Again, it is impossible to say whether another (i.e., non-CLO) private bar member could have been found in the immediate CLO area to take the certificate matters in outlying areas. However, it would be useful to LAO to get information from the CLO lawyers on the additional costs (in time and fax/telephone/travel and other disbursements) when a local lawyer takes an out-of-town case. This would form part of the "benchmarking" objective for the CLOs.

### 2.3.3 Choice of Counsel and Personal Characteristics

*Were clients' needs with respect to gender, culture and race of counsel able to be met either by roster lawyers or the CLOs?*

None of the CLO lawyers are from within any of the “target groups” identified as having special access to justice needs. Their gender makeup – two of the CLO offices have lawyers of only one gender – may also matter to and affect some clients. However, all three offices do have at least one staff member of each gender. In the Simcoe County CLO, the two lawyers are both male and the community legal worker and administrative assistant are female. There was some concern expressed by an NGO, that primarily deals with women in the criminal justice system, that the NGO preferred to deal with the CLO community legal worker.

## 2.4 Consistency and Continuity of Service

Consistency and continuity of service are another dimension of a good legal aid service. How did the CLOs compare to the private bar?

*Were there significant differences between the continuity of legal services provided by the CLOs and roster counsel, i.e., were clients able to have the same counsel represent them throughout their proceeding(s)?*

In this respect, the CLOs are roughly the same as other smaller law firms – there are some stand-ins for court appearances, because of scheduling conflicts and the need for efficiency, but the same lead lawyer directs the case. In the Barrie CLO, there are some stand-ins for court appearances, but the two lawyers tend to handle their own caseload and seldom take each other’s cases in the satellite courts of Simcoe County. The Ottawa CLO, because of the newness of its junior lawyers, co-counsels more than the others.

The CLOs tend to have a strong coordinating role for the community legal worker. In all sites, the community legal worker does most of the intake, answers most queries, and lines up sureties or supervision for bail (where applicable). The community legal worker also may schedule early resolution discussions between Crowns and the CLO lawyers, and handle set date court and remands.

An unsolicited comment about continuity in the Brampton office by one Crown attorney was that the CLO was “better organized and more accessible” than most of the private bar.

*Did the CLO model affect clients' ability to obtain the services of the same lawyer on their next case?*

In this respect, again, the CLOs are not in much different a position from other law firms. A repeat offender, on a second offence, may wish to obtain the services of the same counsel since the client feels that a rapport and trusting relationship has been developed. Will the CLO respond to this request despite that lawyer being overloaded? If the case does not fit well with the priorities which the CLO is pursuing, will the client be encouraged to go elsewhere? Will the previous lawyer take on the case and delegate some or all of the appearances to a junior lawyer or a colleague but nonetheless

remain the principal contact? As yet, there is no indication of whether clients' ability to retain the same CLO lawyer again will be affected, or how.

## 2.5 Access: Impact on Bar

Impacts of the CLOs on the private bar are critically important. If the CLOs threaten the viability and strength of the bar or its willingness to do legal aid work, that will reduce access to justice.

*Had clients who retained the CLO staff lawyers been unable to obtain representation from roster lawyers?*

Interviewees were asked what impacts the CLO was having on the private bar, including on the roster. First, interviewees were asked to estimate the proportion of **certificate** cases in which “the CLO [is] competing directly with private bar members?” Most CJS respondents said they did not know, though competition for certificate service was noted as being generally brisk in each community.

Interviewees were also asked to estimate the proportion of **non-certificate** cases in which “the CLO [is] competing directly with private bar members – i.e., in what proportion would the client have no difficulty finding and paying for a lawyer from the private bar?” Again, most CJS respondents did not know.

- in Barrie, the CJS respondents indicated that they had no knowledge of the non certificate cases, but several indicated that they encouraged the CLO to take on non certificate cases where the client could not afford counsel;
- in Brampton, none of the CJS respondents ventured a guess, though most indicated that the CLO filled a gap in service;
- in Ottawa, 9 out of 13 CJS representatives who answered the question said they did not know. Of the remaining four representatives, three said that in virtually none of the cases would the CLO be competing, and one said in some there would be competing. Of the four interviewees who interacted most with, and best knew the financial circumstances of non-certificate accused, three said virtually none of these persons would be retaining counsel. An increase (of an undetermined size) in *pro bono* work by the Ottawa criminal bar was noted, however, by a couple of those interviewed.

*What was the impact of the CLOs on the size and participation of the roster?*

Did the first year's operation of the CLOs cause lawyers in private practice to curtail their legal aid work?

In Barrie and Simcoe County there was general agreement from the private bar and the Area Director that the legal aid roster – criminal lawyers willing to do criminal work on a legal aid certificate – has not dropped. Several respondents indicated that in the last few years that there have been a number of younger lawyers who have set up practice in the County undertaking both duty counsel and criminal legal aid work. Area Directors in Brampton and Ottawa report that the size of the private criminal defence roster has not shrunk since the CLO openings. Ottawa firms were also reported to be hiring, and some new calls were setting up new practices.

Unfortunately, accurate and reliable data was not available at time of writing due to the recent implementation of a new certificate data system (PeopleSoft) and the conversion of data entry to LAO online.

Interviewees were also asked “what specific impacts the CLO has had on the bar?”

- In Barrie, members of the private bar respondents all indicated that the CLO had had no impact on their practices. There is no indication that the CLO has provoked lawyers to leave the Legal Aid Roster. In fact, there are younger lawyers entering the practice of criminal law in Simcoe County and putting their names on both the Duty Counsel Roster and the Legal Aid Roster;
- In Brampton, only five CJS representatives ventured a view on this question; four said none, and one said that the bar feared the CLO would turn into a “U.S.-style public defender system”. The bar members tended to the view that any cases taken by the CLO from private bar members was too many, and that the CLO should stick to cases for which there was no competition;
- Of the 14 Ottawa CJS representatives who were not private practitioners, five said “none” or “not much”, one mentioned the conflict related to the adversity of many in the bar to the CLO, and the others said they did not know.

## 2.6 Quality of Service

### 2.6.1 Introduction

It is important for the evaluation to address comparisons between the quality of the service provided by the CLOs, and that provided by the private bar. Quality of service is a dimension which can be approached from various perspectives, including experience, enthusiasm, and effectiveness (outcome). Outcomes will be discussed in a later section of this Chapter.

As many of our interviewees pointed out, there is enormous variance within the private bar in the years, experience, quality and passion they bring to the work. Many preferred to think of the CLO-private bar comparison in terms of the *range* of quality in the private bar, which some were at pains to point out is broad. Thus, the CLO was to be compared to the “Bell curve” of the private bar – in the large middle range of service, or in the smaller extremes. Thus, in the interview comparisons which follow, assertions that there was no difference between the CLO and the private bar along a given dimension includes those who simply said “the same as the private bar” and those who said “the same as the middle range of the private bar”.

Others expressed comparisons while qualifying them in terms of experience, e.g., comparing the CLO lawyers to “lawyers in the private bar of a comparable number of years’ experience”.

### 2.6.2 1. Experience at the bar

*Were CLOs able to recruit and retain staff lawyers with comparable years of experience to roster lawyers?*

In Barrie both the director and the lawyer are experienced lawyers; the Director has practiced criminal law in Simcoe County for over a decade and the staff lawyer has practiced criminal law in Toronto for over fifteen years.

In Brampton, all the CLO lawyers are experienced lawyers. The Director has been practicing since 1987, based in Toronto but always with a significant proportion of cases in Peel; with the exception of two years' experience as a duty counsel in Oshawa, her experience has always involved dealing in Peel. The two staff lawyers have practiced in Peel for 11 years and 7 years, respectively. All three have more experience, in fact, than much of the relatively young Peel bar.

In Ottawa, the picture is very different. Two of the three Ottawa lawyers are very junior members of the bar; one had never practiced criminal law before joining the CLO. The Director was called to the bar in 1990, whereupon she began practicing in Ottawa, but subsequently worked in England and Wales for eight years before returning in 2004.

When asked about the skills and capacities of the CLO staff, five interviewees in Ottawa commented on the inexperience of the two juniors in the Ottawa CLO. Two of them indicated that this inexperience had led to problems of juniors accepting plea bargains which were not as favourable to the accused as they could have been. The Director suggests that this may have been a problem at first, but not any longer.

*Were senior counsel assigned when required by the case?*

In Barrie both counsel are senior; the staff lawyer is actually more experienced than the Director, and generally considered a very knowledgeable lawyer.

All Brampton counsel are senior. Some, however, have more experience than others in certain areas – one has more experience with mental health issues, for example, and that lawyer tends to take on more such cases than do the others.

In Ottawa, because of the inexperience of the junior lawyers, the Director assumed the lead counsel role for more cases than any of the others, and also took on the most serious or complicated cases.

### 2.6.3 Assignment of Lawyers to Cases

The data available through the LAO/CLO Legal Files data base and the LAO Province-wide PeopleSoft Certificate system can be used to compare CLO assignment of lawyers to cases to those of private law firms.

However, before presenting Figures based on that data, it should be noted that the Figures often present, not one, but a range of statistics to describe a certain issue. This is done mainly because certain statistics (such as the average or mean) often give misleading impressions of the data. However, as well, different statistics are appropriate for answering different questions.



Table 1 following provides a brief description of the definitions and use of each of the statistics presented in later Figures. The first two columns of the table also provide an example from a Figure presented later to facilitate the explanation.

Table 1.

Notes on Definitions and Interpretations of Different Statistics			
Weeks between first and last service offered on a legal aid certificate		Definition of the statistic	What the statistic is useful for describing
25 <sup>th</sup> percentile	4	<ul style="list-style-type: none"> <li>At least 25% of the 1,912 cases had 4 weeks between first and last service. (and less than 25% had 3 or fewer weeks)</li> <li>Alternatively, at least half the 1,912 cases had at 11 weeks or more between first and last service.</li> </ul>	<ul style="list-style-type: none"> <li>describing how fast the quickest quarter of the cases are processed</li> </ul>
Median	11	<ul style="list-style-type: none"> <li>At least half the 1,912 cases had 11 weeks between first and last service. (and less than half had 10 or fewer weeks)</li> <li>Alternatively, at least half the 1,912 cases had at 11 weeks or more between first and last service.</li> </ul>	<ul style="list-style-type: none"> <li>Describing the “typical” time – the time that (roughly speaking) exceeds and is exceeded by half the cases</li> <li>This measure is not influenced by atypically small or long times for a few cases</li> </ul>
75 <sup>th</sup> percentile	25	<ul style="list-style-type: none"> <li>At least 75% of the 1,912 cases had 25 weeks between first and last service. (and less than 75% had 24 or fewer weeks)</li> <li>Alternatively, at least 25% of the 1,912 cases took 25 weeks or more between first and last service</li> </ul>	<ul style="list-style-type: none"> <li>Describing how fast the slowest quarter of cases are processed</li> </ul>
95 <sup>th</sup> percentile	53	<ul style="list-style-type: none"> <li>At least 95% of the 1,912 cases had 25 weeks between first and last service. (and less than 95% had 52 or fewer weeks)</li> <li>Alternatively, at least 95% of the 1,912 cases took 53 weeks or more between first and last service</li> </ul>	<ul style="list-style-type: none"> <li>Describing how long the longest small group of cases is taking</li> </ul>
Mean (or average)	18	<ul style="list-style-type: none"> <li>If you added up all the 1,912 times between first and last service and then divided the total by 1,912, you would get the average of 18 weeks.</li> </ul>	<ul style="list-style-type: none"> <li>The average time taken—with no regard to whether the average is influenced by particularly quick or long times</li> </ul>
Valid N	1,912	<ul style="list-style-type: none"> <li>The number of cases for which we have data on the time between first and last service</li> </ul>	<ul style="list-style-type: none"> <li>Important to indicate whether the sample size is large enough to be trusted to yield generalizable results</li> </ul>

Using a specific simple example to illustrate the issue, assume we have data on 10 cases that take the following number of weeks from 1<sup>st</sup> to last appearance: 1,2,3,5,5,5,5,5,5,60. In this example, the *mean* or average time taken is  $((1+2+3+5+5+5+5+5+5+60)/10 =) 9.6$  weeks. This *mean* is obviously misleading if taken as describing the average or typical case. In fact, no case takes close to 9.6 weeks. The problem is that the one 60 week case has an inordinately large influence on the calculations for the *mean*. When situations like this might be present and a measure representing the “typical” case is needed, a more appropriate measure would be the median, in this case “5”. Other measures are used for different purposes. For instance, the 95<sup>th</sup> percentile (60 in this case) would be useful to see how many weeks are taken by the small group (5%) of cases that take the longest.

*a Private Bar Certificate Cases*

As shown in Figure 2-25, the certificate data show some differences from one area office to another. In all areas shown, the majority of private bar cases billing LAO on certificates show one lawyer assigned to the file – with at least 75% of certificates in Barrie, Brampton and “other” parts of the province showing only 1 lawyer.<sup>12</sup> Ottawa does, however, show a tendency to have more than one lawyer per certificate—with at least 25% of the certificates showing two or more lawyers.

**Figure 2-25<sup>13</sup>****Legal Aid Certificates Issued and Billed: Number of Lawyers per Certificate: by Area Office**

	Barrie	Brampton	Ottawa	Other	Total: All Areas
Percentile 25	1.00	1.00	1.00	1.00	1.00
Median	1.00	1.00	1.00	1.00	1.00
Percentile 75	1.00	1.00	2.00	1.00	1.00
Percentile 95	2.00	3.00	3.00	3.00	3.00
Mean	1.20	1.32	1.53	1.30	1.32
Valid N	N=1912	N=2932	N=4218	N=50412	N=59474

Certificates billed from May 1, 2004 to June 30, 2005

Since legal aid certificate billing rates depend on lawyer seniority, the same data source can be used to explore the seniority of the lawyers who work on private bar certificate cases. Figure 2-26 shows that that in all areas, at least 25% of the certificates were filed by lawyers who were not in the most senior levels (i.e. who billed at rates below the \$88 per hour maximum). However, at least 50% of the certificates were associated with a lawyer billing at the higher \$88 to 93 legal aid certificate rate.

**Figure 2-26****Legal Aid Certificates Issued and Billed: Maximum Lawyer Rate per Certificate: by Area Office**

	Barrie	Brampton	Ottawa	Other
\$70 or less	0%	0%	0%	0%
over \$70 to \$74: mode = \$73	13%	10%	9%	11%
over \$74 to \$80: mode = \$79	1%	3%	1%	1%
over \$80 to \$84: mode = \$83	19%	26%	17%	16%
over \$84 to \$88: mode = \$87	4%	4%	4%	3%
over \$88 to \$93: mode = \$92	63%	56%	68%	65%
over \$93				3%

Certificates billed from May 1, 2004 to June 30, 2005

<sup>12</sup> Although the CLOs do take on certificate work, the PeopleSoft system has not entered data on their certificate cases. Data from the PeopleSoft system is therefore equivalent to “private lawyer-only” data.

<sup>13</sup> In Charts based on the PeopleSoft certificate data, the column labeled “other” refers to parts of the province other than the Brampton, Barrie and Ottawa office areas.

Another perspective for examining the allocation of lawyers to certificate work is to ask how many legal aid certificates are handled by private lawyers. As shown in Figure 2-27, there are differences from one geographic area to another. On average, Ottawa lawyers tend to submit billings on more certificates (mean = 35 certificates per lawyer) than do those in Brampton and Barrie (mean = 28 and 27). This difference is, however, due to a few lawyers in Ottawa skewing the mean by handling a relatively very large number of cases—with the 75th percentile being considerably higher in Ottawa than in Brampton and Barrie. The upshot is that the typical or median lawyer in Brampton handles more cases (14) than does the typical lawyer in either Barrie or Ottawa (11).

The median and mean number of certificates per lawyer in all three CLO areas is at or above that in the amalgamation of all other locations in the Province.

Figure 2-27

**Number of Legal Aid Certificates Issued and Billed per Lawyer: by Area Office**

		Last Area Office			
		Barrie	Brampton	Ottawa	Other
Number of Certificates per Lawyer	Mean	27	28	35	27
	Minimum	1	1	1	1
	Percentile 25	2	4	2	2
	Median	11	14	11	9
	Percentile 75	37	36	54	33
	Percentile 95	115	117	132	112
	Maximum	190	185	218	583
	Mode	1	1	1	1

Certificates becoming effective and billed from May 1, 2004 to June 30, 2005

*b All CLOs: Legal Files Data*

Figure 2-28 uses the information available from the CLO Legal Files data base to describe the assignment of both lawyers and non-lawyers to certificate and non-certificate cases CLO cases.

Looking first at the number of lawyers assigned to certificate cases, one sees differences among the three CLOs. Specifically, Ottawa is more likely than the other two CLOs to have only a single lawyer handle a certificate case (93% vs. almost identical 70% and 71% for Barrie and Brampton). This is somewhat in contrast with what was found earlier for the private bar in Ottawa (the latter being more likely than in the other sites to have multiple lawyers handling a case).<sup>14, 15</sup>

Compared to private bar cases, both Barrie and Brampton CLO cases have the same median number of lawyers assigned to cases. Using the 75% percentile to compare the number of lawyers in CLO and private bar certificate cases would also suggest similarities between the two groups.

<sup>14</sup> It should be noted that this analysis does not take into account the amount of time different lawyers spend on each file—or the services offered by each. The current state of the Legal Files data base does not yet support this level of analysis.

<sup>15</sup> On the other hand, as was noted earlier, the Ottawa CLO director counsels staff more frequently than in the other CLOs. It appears that this counseling activity is not being docketed to the individual client files in Legal Files.

Figure 2-28 also shows the differences in protocols for allocating staff between the two sites with respect to certificate and non-certificate cases. In Barrie and Brampton, a higher proportion of non-certificate cases are handled by single lawyers than of certificate cases. In fact, in Barrie nearly all (94%) of the non-certificate cases are handled by single lawyers. In Ottawa, because so many certificate cases are handled by a single lawyer, a lower percent of non-certificate cases (compared to certificate cases) are represented by a single lawyer.

Figure 2-28

**Descriptors of CLO Staff Assignment to Closed Legal Case Files:  
By CLO Location by Whether or not Certificate or Not**

		Barrie		Brampton		Ottawa	
		No Certificate	Certificate	No Certificate	Certificate	No Certificate	Certificate
Number of Clients in Case	1.00	100.0%	100.0%	97.0%	100.0%	100%	100%
	2.00			3.0%			
Total # of CLO Staff Assigned to Case	1.00			82.5%	64.7%	85.6%	92.9%
	2.00	11.8%	26.6%	16.5%	35.3%	14.4%	7.1%
	3.00	82.4%	51.1%	1.0%			
	4.00	5.9%	21.8%				
	5.00		.5%				
# of CLO Staff Lawyers Assigned to Case	.00			4.0%		1.1%	
	1.00	94.1%	69.7%	79.2%	70.6%	84.6%	92.9%
	2.00	5.9%	28.7%	15.8%	29.4%	14.3%	7.1%
	3.00		1.6%	1.0%			
# of CLO Staff Paralegals Assigned to Case	.00	11.8%	36.2%	100%	100.0%	100%	100%
	1.00	88.2%	63.8%				
# of other Specified types of CLO Staff Assigned to Case	.00			100%	94.1%	100%	100%
	1.00	100.0%	99.5%		5.9%		
	2.00		.5%				
# of Non-CLO Counsel for Co-Accused	.00	100.0%	99.5%	100%	100.0%	100%	100%
	2.00		.5%				

Closed Client Files Opened: to June 30, 2005 Only: Nov 24 run on information extracted on Nov 4, 2005

Table excludes 7 Brampton and 1 Ottawa closed cases with missing data for lawyers assigned to case

(N.B. There are some issues with the accuracy of the above Legal Files Data. For instance, it is unlikely that only Barrie assigned community legal workers (paralegals in the chart) to cases. The numbers are also low since CLOs often do not docket in Legal Files hours spent by Community legal workers and support staff on specific cases to specific cases. Rather, they are docketed to more general categories of activity.)

The data in Figure 2-29 can be used to indicate the relative seniority of lawyers assigned as lead to CLO certificate and non-certificate cases.

In Barrie, since both lawyers are relatively senior, the CLO by definition assigns a senior lawyer to a higher percent of the certificate cases than occurs for private bar certificate cases in the Barrie area (at least half). It should, however, be noted that—although the two lawyers split the certificate cases relatively equally—one of the lawyers handles roughly double the number of non-certificate cases.

## 2: Substantive Objectives Generally

In Brampton, the two more senior lawyers again handle the lead in over half (roughly 75%) of the certificate cases—again comparing well to the private bar. (It should, however, be noted that even the least senior lawyer has considerable number of years experience.) There are differences between the lead assignments for certificate and non-certificate cases. One of the senior lawyers (not the Director) handles roughly half of the non-certificate cases, with the remainder split roughly equally between the other two lawyers (one senior – the Director – one less senior). In contrast, the director handles the highest proportion of the certificate cases, although the majority are divided equally between the other two lawyers.

Ottawa employs yet another model, with the one senior lawyer (the Director) taking the lead in the highest percent of both non-certificate and certificate cases.

**Figure 2-29**

**Primary Lawyer Assigned to Closed Legal Case Files:  
By CLO Location by Whether or not Certificate or Not**

		Barrie		Brampton		Ottawa	
		No Certif- icate	Certif- icate	No Certif- icate	Certif- icate	No Certif- icate	Certif- icate
Primary Lawyer in Case	.00			5.9%	11.8%		
	Carl Garland	35.3%	54.8%				
	Vince Zenobio	64.7%	45.2%				
	Alan Smith			51.5%	23.5%		
	Heather Daigle			20.8%	23.5%		
	Paula Beard			21.8%	41.2%		
	Karen Jones					49.5%	60.7%
	Sonya Notturmo					28.6%	28.6%
	Tanya Dupuis					22.0%	10.7%

Closed Client Files Opened:to June 30, 2005 Only: Nov 24 run on information extracted on Nov 4, 2005

### *c Barrie CLO: Form 50 Data*

A direct comparison to the private bar certificate data can be made in the case of the Barrie CLO, because that CLO submitted a reasonably complete set of Form 50's. The data from these forms were specially coded for this report.

Figure 2-30 and Figure 2-31 show that the Barrie CLO presents a very similar picture to that of the private bar with respect to the number of lawyers per certificate and assignment of different levels of lawyers to cases.

**Figure 2-30**

**Legal Aid Certificates Issued and Billed: Number  
of Lawyers per Certificate: by Area Office**

	Barrie
1.00	55.2%
2.00	44.8%
# of Certificates	145

Certificates billed from May 1, 2004 to June 30, 2005

However, as shown by Figure 2-31, the two lawyers in the Barrie CLO each handle a significantly higher number of certificate cases than does the average or typical private lawyer in the Barrie area (mean=19, median = 7: see Figure 2-27).

**Figure 2-31**

**Number of Legal Aid Certificates Issued and  
'Billed' per Lawyer: by LAO Criminal Law Office**

	Barrie
Carl Garland	92
Vince Zenobio	62
Karen Jones	.

Certificates becoming effective and 'billed'  
from May 1, 2004 to June 30, 2005

#### 2.6.4 Time spent on cases

The amount of time which CLOs spent on their cases was also of interest as a point of comparison to the private bar.

*Did CLO lawyers and roster lawyers expend comparable amounts of time on similar tasks and cases?*

The interviewees were asked how they thought the CLO compared to the private bar in terms of “how much time they spend on their cases”. This issue is of particular interest for several reasons.

- one of the less prominent objectives of the CLO project is to “benchmark” legal services for LAO. That is, LAO will be using the information submitted by the CLOs on the amount of time and disbursements they spend on cases in order to assist LAO to review and if warranted adjust the allowable tariff hours and disbursement levels;
- the private practice of criminal law is, except for all but the most successful, a difficult and constantly “bottom-line oriented” practice, especially when (interviewees on all sides will admit) legal aid work is part of the mix. So when members of the private bar see LAO employees on salary, not worrying about overhead and billings, having anything which remotely resembles “the luxury of extra time” to spend on cases, it is irksome at best.
- at the other end of that continuum, there are concerns that the CLOs may become mediocre or worse – “plea factories” which attract lawyers for the wrong reasons, or can only attract and hold good lawyers for short periods.

In Barrie, the CLO is perceived as generally spending a reasonable amount of time on its cases. There was some concern expressed as to whether one of the lawyers was spending sufficient time in preparing cases. The judges interviewed stated that they perceived the CLO lawyers as well prepared. Concern was expressed by one Crown Attorney that s/he does not hear from the CLO lawyers sufficiently between court appearances; s/he perceives this as an indication that the CLO is not monitoring and following up on cases sufficiently between hearing dates. Another Crown indicated that s/he was surprised that there have been only a limited number of requests for additional disclosure from the CLO, including in impaired cases which are very technical cases. (In such cases, the Crowns often receive both requests for additional disclosure and, in some cases, *Charter* applications. The particular Crown indicated that s/he had no knowledge of *Charter* applications brought by the CLO.

The Canadian Mental Health Association’s senior courtworker indicated that she perceived that the CLO was spending an appropriate amount of time on case preparation.

In Brampton, only two CJS representatives ventured an opinion on how the CLO compares in terms of the amount of time spent on cases; one said the CLO seems to spend more time on its cases, and the other said “the same or more”.

In Ottawa, all but four of the CJS respondents ventured no opinion on how the CLO compared to the private bar in terms of “how much time they spend on their cases”; the remainder indicated they thought the CLOs spent more time on their cases than did the private bar (one even complained of certain “hopeless” points being “hacked to death”). Two general theories were proposed to account for this; when asked, most interviewees suggested that perhaps both factors were in play:

- The first theory was that perhaps the Ottawa CLO had fewer cases than most private bar members, and was thus able to prepare more and spend more time in court.
- The second was that the CLO is not paid via the restrictions on payment in the tariff system, and thus has no interest in manipulating cases and processes for payment purposes.

This issue will be revisited later, under “Value for Money”.

#### *a Private Bar Certificate Cases*

Since estimates are not yet available from the private bar regarding actual hours spent per case on certificate cases (data from the private records of private law firms would be needed to determine whether hours billed to LAO on certificates are below the hours actually worked on the file), the data on hours billed LAO on certificates must serve as the best approximation available. The following three Figures provide estimates of the amount of time private bar members bill: in total, and separately for lawyers’ and students’/clerks’ time. As can be seen, the number of hours per case—both in total and for lawyers only—tends to be higher in Brampton and Ottawa (medians of roughly 11 hours), and lower in Barrie (median of below 10 hours).

The reverse picture is shown for student/clerical hours for the typical case—i.e. when one uses the median hours as the statistic for comparison.<sup>16</sup>

**Figure 2-32**

#### **Legal Aid Certificates Issued and Billed: Total Hours Billed: by Area Office**

		Barrie	Brampton	Ottawa	Other	Total: All Areas
Total Hours Billed	Percentile 25	6.50	8.10	8.00	6.50	6.60
	Median	9.60	11.00	10.97	9.50	9.70
	Percentile 75	15.00	17.50	17.06	15.00	15.27
	Percentile 95	32.74	47.74	37.51	35.50	36.24
	Mean	14.30	18.04	15.16	15.14	15.25
	Valid N	N=1912	N=2932	N=4218	N=50412	N=59474

Certificates billed from May 1, 2004 to June 30, 2005

<sup>16</sup> Subsequent reports will explore—once the number of cases is high enough to support such an analysis—whether these results differ for different types of cases.

Figure 2-33

**Legal Aid Certificates Issued and Billed: Lawyer Hours Billed per Certificate: by Area Office**

	Barrie	Brampton	Ottawa	Other	Total: All Areas
Percentile 25	6.50	8.00	8.00	6.50	6.60
Median	9.60	11.00	10.95	9.40	9.60
Percentile 75	15.00	17.50	17.00	15.00	15.20
Percentile 95	32.53	47.56	37.50	35.30	36.00
Mean	14.25	17.91	15.10	15.05	15.17
Valid N	N=1912	N=2932	N=4218	N=50412	N=59474

Certificates billed from May 1, 2004 to June 30, 2005

Figure 2-34

**Legal Aid Certificates Issued and Billed: Student Hours Billed per Certificate: by Area Office**

	Barrie	Brampton	Ottawa	Other	Total: All Areas
Percentile 25	1.22	1.15	1.00	1.00	1.00
Median	5.00	2.61	2.45	2.50	2.50
Percentile 75	11.60	6.00	4.88	6.00	6.00
Percentile 95	19.12	15.56	21.52	20.82	20.44
Mean	6.81	6.93	7.79	6.25	6.37
Valid N	N=37	N=171	N=92	N=2128	N=2428

Certificates billed from May 1, 2004 to June 30, 2005

*b All CLOs: Legal Files Data*

The following two Figures provide comparable data on lawyer time per case for CLO cases –Figure 2-33 for certificate cases and Figure 2-36 for non-certificate cases. Although the data are shown in more detail—i.e. for each of a number of offence types—the first observation is that (using the data in Figure 2-33 as a comparison) both the mean (average) and median (typical) number of hours per case for CLO cases is lower than for private bar certificate cases:

- For Barrie, median of 7.15 lawyer hours per CLO case vs. median of 9.6 for private lawyer cases;
- For Brampton, median of 7.60 vs. 11.00; and
- For Ottawa, median of 9.80 vs. 10.95.

Thus, the data do **not** support the argument that the CLO lawyers spend more time on cases than do their private bar counterparts.

The data in Figure 2-35 also provides comparison data for the three CLOs. However, those wishing to make such comparisons should take into account the different mixes of offences in the three locations, and that for many individual offences the numbers of cases are too low to allow valid comparisons. However, it can be seen that overall, the typical case in Ottawa is associated with a higher number of lawyer hours (median = 9.8) than in Brampton or Barrie (medians of 7.6 and 7.15).



Figure 2-35

**Mean and Median Total Number of Billable Lawyer Hours Per Certificate Case: Summary Statistics By Offence Category by Site**

	CLO Site								
	Barrie			Brampton			Ottawa		
	Mean	Median	# of Cases	Mean	Median	# of Cases	Mean	Median	# of Cases
.00	4.85	4.85	2	14.01	6.30	4	9.80	9.80	1
Sexual assault	12.26	11.80	9	.	.		.	.	
Robbery	18.20	18.20	1	.	.		.	.	
Theft	6.59	6.50	12	11.95	11.95	2	6.93	6.93	2
Impaired Driving	5.88	5.65	4	12.30	12.30	1	39.75	39.75	1
Other Vehicle	8.61	7.10	8	17.50	17.50	1	9.90	9.90	2
Narcotics Cocaine & Heroin	10.80	10.80	2	.	.		.	.	
Assault	8.88	7.20	52	12.52	7.60	3	11.15	11.23	4
Fraud	10.94	10.00	8	10.55	10.55	1	18.55	18.55	1
Other	11.51	9.45	8	4.50	4.50	1	.	.	
Threatening Death Bodily Harm	13.60	13.60	1	.	.		8.15	8.15	2
B& E	11.96	14.80	5	.	.		5.40	5.40	1
Weapons Offences	5.60	5.60	1	.	.		10.10	10.10	2
Mischief	10.73	6.65	4	.	.		12.35	12.35	1
Fail to Comply	7.51	5.55	54	17.93	17.93	2	8.01	5.55	7
Other Drug	13.00	12.30	3	.	.		15.95	15.95	1
Total	8.85	7.15	174	13.21	7.60	15	10.90	9.80	25

Specific Closed Certificate Client Files Cases opened to June 30, 2005. Created on Nov 22 using information extracted Nov 21.

Figure 2-36 provides analogous data for non-certificate cases. First, a comparison with data in Figure 2-35 shows that—with a very few exceptions—the CLOs allocate fewer hours to dealing with non-certificate cases than with certificate cases of similar offence type. (In fact, only for Brampton “other cases” were both the median and mean hours higher for non-certificate cases.)

Secondly, again the data suggest that non-certificate cases in Ottawa receive slightly higher numbers of lawyer hours per case than in the other two CLOs (median of 7.05 vs. medians of 6.55 and 5.60).

Figure 2-36

**Mean and Median Total Number of Billable Lawyer Hours Per Non-Certificate Case: Summary  
Statistics By Offence Category by Site**

	CLO Site								
	Barrie			Brampton			Ottawa		
	Mean	Median	# of Cases	Mean	Median	# of Cases	Mean	Median	# of Cases
.00	6.80	6.80	1	8.55	3.80	5	12.30	11.25	5
Theft	.	.		6.38	5.20	15	5.25	4.28	12
Impaired Driving	5.20	5.20	2	8.96	6.70	8	21.23	17.35	12
Other Vehicle	.	.		11.70	11.70	1	4.20	4.20	1
Narcotics Cocaine & Heroin	.	.		1.60	1.60	1	9.63	9.63	2
Assault	6.24	7.30	7	7.47	6.35	24	9.77	7.05	25
Fraud	.	.		6.22	3.90	3	.30	.30	1
Other	.	.		7.25	7.15	3	10.73	9.95	5
Threatening Death Bodily Harm	.	.		6.98	8.40	5	7.09	7.20	7
B& E	10.75	10.75	1	.	.		.	.	
Weapons Offences	.	.		6.14	5.10	5	4.60	4.60	1
Mischief	5.90	5.90	2	8.73	6.70	3	7.09	5.78	6
Fail to Comply	.	.		2.65	3.00	4	6.55	6.68	4
Other Drug	3.00	3.00	1	3.99	4.25	6	5.30	5.30	2
Total	6.17	6.55	14	6.86	5.60	83	10.05	7.05	83

Specific Closed Non-Certificate Client Files Cases opened to June 30, 2005. Created on Nov 22 using information extracted Nov 21.

*c Barrie: Form 50 Data*

Data from the "Form 50s" coded for Barrie CLO certificate cases provide a more direct comparison to the private bar in Barrie. The evidence supports the assertion that the CLOs show fewer "total" hours per case than are shown on Form 50s for private bar cases in the Barrie Area, for instance:

- median number of total hours per case of 7.57 for the Barrie CLO vs 9.60 hrs for private bar cases, and
- mean number of hours of 10.01 vs 14.30.

Figure 2-37

**Legal Aid Certificates Issued and Billed': Total Hours Billed: by LAO CLO**

		Barrie
Total Hours Billed	Percentile 25	5.10
	Median	7.57
	Percentile 75	11.87
	Percentile 95	25.60
	Mean	10.01
	# of Certificates	N=145

Certificates becoming effective from May 1, 2004 to June 30, 2005 and 'billed' to LAO by November 8, 2005.

Comparison of lawyer hours per case gives a similar result:

- median number of lawyer hours per case of 7.40 for the Barrie CLO vs 9.60 hrs for private bar cases, and
- mean number of hours of 9.91 vs 14.25.

**Figure 2-38**

**Legal Aid Certificates Issued and 'Billed': Lawyer Hours 'Billed' per Certificate: by LAO CLO**

	Barrie
Percentile 25	5.05
Median	7.40
Percentile 75	11.60
Percentile 95	25.54
Mean	9.91
# of Certificates	N=145

Certificates becoming effective from May 1, 2004 to June 30, 2005 and 'billed' to LAO by November 8, 2005.

### 2.6.5 Expeditiousness

*Did CLO and roster cases take comparable lengths of time to proceed through the courts?*

The CLOs are geared towards four case management objectives which tend to affect the expeditiousness of case processing:

- diversion of suitable clients from a “full court press” (i.e. pursuit of the charge through the full court process to conviction and sentence);
- early resolution or an early request for a trial date;
- connecting clients with as many community resources as possible, which will address their needs and (hopefully) affect their likelihood both of receiving a more favourable result from the justice process, and of recidivating; and
- vigorously pursuing triable issues and viable defences in non-certificate cases.

The time taken for clients to complete diversion programs (community service, restitution, etc.) can actually draw out the length of a case, but they save court time and appearances. As will be described later under “Value for Money”, the CLO approach to early case intervention and preventive services may have analogous cost implications, for both the courts and for the CLO workers.

The interviewees were asked how they thought the CLO compared to the private bar in terms of “how expeditiously their cases proceed through the courts” and “how often they ask for remands because they are not prepared to proceed”.

In Barrie, there was agreement by most Crown Attorneys that the CLO’s number of requests for remands was normal or comparable to private lawyers. A prosecutor expressed concern that the CLO was asking for too many remands because they had not had time to prepare; a duty counsel indicated that the CLO had requested more remands because “they are swamped”. The judges interviewed

indicated that there were a small number of requests for remands by the CLO lawyers; they stated that there was “a reasonable amount” and another judge state “no more or less than other counsel”.

In Brampton, the Director and one Crown suggested that the only difference between CLO and private bar cases in the number of remands is in the reduction in the number of remands in which the accused says he has retained a lawyer, but there is no lawyer on record (since no retainer has actually been paid). Once there is a lawyer on record, according to both, there is no difference in the number of remands. However, among the seven CJS respondents who addressed the question of frequency of remands, four thought there was no difference between the CLO and the private bar, two said the CLO asked for remands “much less often”, and one did not know.

In Ottawa, CJS interviewees (seven out of ten who ventured an opinion other than that they did not know) said that the CLO cases had fewer remands. This many attributed to the CLO’s relative independence from the tariff system, and their lack of need to, e.g., (in the words of one judge) “continually remand the case in order to justify 5 hours of preparation time; the private bar uses every stupid excuse they can to delay a case”. Others said that the CLO’s workload meant that CLO lawyers were not backlogged with other cases which would require more remands.

Interviewees were also asked how the CLO compared to the private bar in terms of “how expeditiously their cases proceed through the courts”.

- In Barrie, one CLO lawyer stated the CLO cases proceed through the courts “more expeditiously than those of private lawyers as the CLO in some cases does not wait for a retainer before proceeding.”
- In Brampton, CJS respondents said either that they did not know or that the CLO cases moved as fast as did the private bar’s cases – “as fast as the Crown moves”, in short. However, one respondent thought the CLO cases moved more expeditiously;
- in Ottawa, 14 CJS respondents answered the question; eight said they did not know, five said the CLO cases proceeded “the same or more expeditiously” than the private bar’s, one said the CLO was the same, and one said the CLO was faster. Of three persons who ventured an opinion on whether UA or CLO trials and pretrials take longer (this question was not specifically asked), two interviewees suggested that the CLO matters took less time than UA matters, and meant less work for them. However, one judge (also quoted above) complained that some CLO matters take longer, because the lawyer is “over-prepared” and is “hacking to death” the issues.

### *a Rate of Disposition*

The following Figure begins the empirical description of the time taken to dispose of CLO cases. Again, there are significant differences among the different sites. CLO cases in Brampton clearly take longer to close than do cases in the Barrie and Ottawa CLO. For instance, of all cases opened in the first quarter of 2005 (i.e. January to March), a much lower percent had been closed by the time the data was sampled (i.e. November 4, 2005) in Brampton (49%) than in Ottawa (76%) and Barrie (87%).

The speed at which files are closed is of course not only dependent on the aggressiveness of the CLO, but is also to a very large extent dependent on the delays endemic to the local court process. At times it is also not in the interests of the client or justice generally to move the case too quickly. (i.e. “Justice rushed” is often “justice crushed”.) Since our other observations did not lead us to suspect the efficiency of the Barrie CLO’s case management procedures, we conclude that the data in this table

better indicate the possibility of a relatively more challenging systemic delay problem in the Brampton court that has to be considered in assessing the Brampton CLO's efforts at providing expeditious justice. However, further information will be presented on this later.

Figure 2-39

Current (as of Nov 2005) 'Open/Closed' File Status by Quarter File Opened (by Site)

SITEIDN		Quarter File Opened										Total Opened	
		2 Q 04		3 Q 04		4 Q 04		1 Q 05		2 Q 05		#	%
		#	%	#	%	#	%	#	%	#	%		
Barrie	Still Open	3	13%	6	13%	9	16%	10	13%	24	44%	52	20%
	Closed	20	87%	41	87%	46	84%	67	87%	31	56%	205	80%
	Total	23	100%	47	100	55	100%	77	100%	55	100%	257	100%
Brampton	Still Open	2	14%	4	18%	11	23%	38	51%	51	77%	106	47%
	Closed	12	86%	18	82%	37	77%	36	49%	15	23%	118	53%
	Total	14	100%	22	100	48	100%	74	100%	66	100%	224	100%
Ottawa	Still Open			5	11%	2	7%	11	24%	18	50%	36	23%
	Closed			40	89%	27	93%	34	76%	18	50%	119	77%
	Total			45	100	29	100%	45	100%	36	100%	155	100%

Client Files Opened:ro June 30, 2005 Only: Nov 6 run on information extracted on Nov 4, 2005

### *b Time from First to Last Certificate Activity*

A more direct measure of expeditiousness of case processing is the time between start to finish of the litigation process. Such time intervals could be estimated from the ICON automated data base operated by the courts. Unfortunately, LAO and the evaluation were denied access to that data base. In addition, the current configuration of the Legal Files data base does not allow us to calculate the time between opening a file and the final court activity (since the date of the later is not coded or accessible).<sup>17</sup> This problem is being corrected, but not in time for this report.

A comparison among CLOs and with private bar cases will have to wait until our next report.

However, as a proxy for private bar cases, we can use information from the PeopleSoft system for cases billed from May 1, 2004 to June 30, 2005. This information is presented now as important contextual information for understanding the court environment within which the CLOs must operate.

#### **b.i Private Certificates**

For all private bar certificate cases billed in the time period, the next three Figures provide information on the time between the first and last activity the lawyer billed for on the file. The information is presented in different ways and in different levels of detail to accommodate the special interests of different readers.

We will concentrate on the summary information in Figure 2-42 which shows that private bar certificate cases in Ottawa and Brampton tend to take longer to complete than those in Barrie. The differences between Ottawa (median and mean of 19 and 26 weeks) and Barrie (median and mean of 11 and 18 weeks) are especially pronounced.

<sup>17</sup> Legal Files makes readily available only the date on which data entry in Legal Files is "closed"—a date that might be weeks or months after litigation activity has been completed.

Figure 2-40

## Legal Aid Certificates Issued and Billed: Time Between First and Last Service Offered: by Area Office

	Barrie	Brampton	Ottawa	Other	Total: All Areas
0 to 7 days	5.8%	5.9%	4.5%	4.9%	5.0%
over 1 to 2 weeks	6.2%	4.8%	3.9%	4.6%	4.6%
over 2 to 3 weeks	6.4%	3.1%	2.5%	4.1%	4.0%
over 3 to 4 weeks	5.2%	3.7%	3.1%	4.1%	4.0%
over 4 to 8 weeks	16.1%	11.4%	10.9%	13.1%	13.0%
over 8 to 12 weeks	11.9%	10.1%	9.9%	11.4%	11.3%
over 12 to 16 weeks	8.5%	8.7%	8.8%	9.6%	9.4%
over 16 to 20 weeks	7.0%	6.9%	6.6%	8.0%	7.8%
over 20 to 26 weeks	8.5%	8.3%	7.7%	10.0%	9.7%
over 6 months to 9 months	11.6%	13.8%	16.8%	14.1%	14.2%
over 9 to 12 months	7.2%	10.4%	13.4%	7.9%	8.4%
over 1 to 1.5 years	4.3%	10.0%	9.3%	6.3%	6.6%
over 1.5 to 2 years	1.0%	2.1%	2.2%	1.4%	1.5%
over 2 years	.2%	.7%	.6%	.5%	.5%
# of Certificates	1831	2727	4075	48407	57040

Certificates billed from May 1, 2004 to June 30, 2005

Figure 2-41

## Legal Aid Certificates Issued and Billed: Time (Days) Between First and Last Service Offered: by Area Office

	Barrie	Brampton	Ottawa	Other	Total: All Areas
Percentile 25	28	35	53	40	40
Median	77	112	135	104	105
Percentile 75	177	247	274	208	214
Percentile 95	372	472	468	423	428
Mean	123	164	179	146	149
Valid N	N=1912	N=2932	N=4218	N=50411	N=59473

Certificates billed from May 1, 2004 to June 30, 2005

Figure 2-42

## Legal Aid Certificates Issued and Billed: Time (weeks) Between First and Last Service Offered: by Area Office

	Barrie	Brampton	Ottawa	Other	Total: All Areas
Percentile 25	4	5	8	6	6
Median	11	16	19	15	15
Percentile 75	25	35	39	30	31
Percentile 95	53	67	67	60	61
Mean	18	23	26	21	21
Valid N	N=1912	N=2932	N=4218	N=50411	N=59473

Certificates billed from May 1, 2004 to June 30, 2005

### b.ii Barrie CLO

As noted earlier, the evaluation also had access to data from a set of Form 50s filled out for the Barrie CLO. The next three Figures are based on that data. Although the sampling frame is different from that for the private bar cases, a comparison of the CLO and private bar data shown in Figure 2-45 shows considerable similarities between the Barrie CLO and Barrie private bar in handling certificate cases. For instance, although the median time between first and last certificate activity is 13 weeks for the Barrie CLO and slightly lower at 11 weeks for the private bar certificates, the mean time between first and last certificate activity is 16 weeks for the Barrie CLO and slightly *higher* at 18 weeks for the private bar certificates—indicated that the private bar (but not the CLO) cases contain a significant number of longer cases that are affecting the mean.

**Figure 2-43**

**Legal Aid Certificates Issued and 'Billed': Time Between First and Last Service Offered: by LAO CLO**

	Barrie
0 to 7 days	2.1%
over 1 to 2 weeks	3.5%
over 2 to 3 weeks	5.0%
over 3 to 4 weeks	2.1%
over 4 to 8 weeks	17.0%
over 8 to 12 weeks	17.7%
over 12 to 16 weeks	11.3%
over 16 to 20 weeks	6.4%
over 20 to 26 weeks	17.7%
over 6 months to 9 months	12.1%
over 9 to 12 months	4.3%
over 1 to 1.5 years	.7%
# of Certificates	141

Certificates becoming effective from May 1, 2004 to June 30, 2005 and 'billed' to LAO by November 8, 2005.

**Figure 2-44**

**Legal Aid Certificates Issued and 'Billed': Time (Days) Between First and Last Service Offered:by LAO CLO**

	Barrie
Percentile 25	46
Median	93
Percentile 75	163
Percentile 95	298
Mean	112
# of Certificates	N=144

Certificates becoming effective from May 1, 2004 to June 30, 2005 and 'billed' to LAO by November 8, 2005.

Figure 2-45

<b>Barrie: Legal Aid Certificates Issued and "Billed": Time (weeks) Between First and Last Service Offered: Comparison CLO and Private Bar Certificate Cases</b>		
	<b>Barrie CLO Sample of Form 50's</b>	<b>Private Bar Certificates</b>
Percentile 25	6	4
Median	13	11
Percentile 75	23	25
Percentile 95	43	53
Mean	16	18
# of Certificates	N= 144	N=1,912
	sample	All certificates
Certificates becoming effective from May 1, 2004 to June 30, 2005 and billed to LAO by November 8, 2005		

### **b.iii Brampton: Time Between Opening and Resolution of Cases**

Data available from the local "Access" data base<sup>18</sup> maintained by the Brampton CLO are of considerable use in providing data on the time to resolve cases by the Brampton CLO—and comparing those times to private bar certificate cases.

Figure 2-46 and Figure 2-47 provide information on the time between their opening and obtaining a resolution of a case for closed Brampton CLO cases—separately for non-certificate and certificate cases.

First, comparing the information on certificate cases to that presented earlier (Figure 2-42) on private bar certificate cases in Brampton, one finds an interesting result. The private bar seems to resolve a greater number of cases earlier (private bar 25<sup>th</sup> percentile and median of 5 and 16 weeks, compared to Brampton CLO 25<sup>th</sup> percentile and median of 13 and 26 weeks). However, the private bar and the CLO seem to take similar times to resolve the long cases (equal 75<sup>th</sup> percentiles of 35 weeks)—and the private bar takes longer to resolve the longest cases (95<sup>th</sup> percentile of 67 weeks vs only 39 weeks for the CLO).

In other words, the private bar seems more likely than the CLO to resolve a higher proportion of cases early, but those that are not resolved very quickly take longer to resolve by the private bar than by the CLO. Hopefully, information provided later on the use of early resolution techniques such as guilty pleas will shed more light on this result.

For now, it should also be noted as an overall result that the average (mean) times are virtually identical for CLO and private bar cases.

<sup>18</sup> The Brampton CLO has created a specialized data base (written in Microsoft Access) to collect and report certain special types of information needed by the staff to manage their cases and caseloads.



Figure 2-46

**Brampton CLO Closed Cases: Time Between Opening Case and Resolution by Whether or not Certificate Case**

	Not Certificate	Certificate	Total: All Areas
over 3 to 4 weeks	9.8%	7.7%	9.4%
over 4 to 8 weeks	6.8%	3.8%	6.3%
over 8 to 12 weeks	11.3%	7.7%	10.7%
over 12 to 16 weeks	13.5%	11.5%	13.2%
over 16 to 20 weeks	11.3%	11.5%	11.3%
over 20 to 26 weeks	15.0%	15.4%	15.1%
over 6 months to 9 months	20.3%	42.3%	23.9%
over 9 to 12 months	8.3%		6.9%
over 1 to 1.5 years	3.8%		3.1%
# of Cases	133	26	159

Closed Cases opened from May 1, 2004 to June 30, 2005  
Based on Information Provided using Brampton CLO Special Data base.

Figure 2-47

**Time (weeks) Between Opening and Resolution:  
by whether or not Certificate Case**

	Not Certificate	Certificate	Total
Percentile 25	9	13	9
Median	18	26	18
Percentile 75	31	35	35
Percentile 95	52	39	48
Mean	22	24	22

Closed Cases opened from May 1, 2004 to June 30, 2005  
Based on Information Provided using Brampton CLO  
Special Data base.

*c Brampton: Time from 1st Appearance to Disclosure*

Earlier mention was made of the importance of having data on the court environment in evaluating the work of the CLOs. The lack of data from the government court ICON information system does put limits on what can be said in this area. However, we fortunately do have information from the local Brampton Access data base that sheds light on one important aspect of the court environment, namely, the provision of disclosure by the police and the crown.

The following two figures provide information on the time that elapses between the first appearance (close to the time when the CLO usually opens the case) and the provision of disclosure.<sup>19</sup> The figures clearly highlight a major challenge faced by the CLO in providing expeditious justice to their clients and to the public. For more than half of both the certificate and non-certificate cases, fully 18 or more weeks pass between first appearance and the provision of disclosure. For at least 25% of the certificate cases, this delay was at least 45 weeks.

<sup>19</sup> Minor apparent inconsistencies are present between the two Figures due to differences in the cases for which data used in the different tables is missing.

Figure 2-48

**Brampton CLO Cases: Time Between First Appearance and Disclosure Complete by Whether or not Certificate Case**

	Not Certificate	Certificate	Total: All Areas
over 2 to 3 weeks		5.9%	1.2%
over 3 to 4 weeks	1.5%		1.2%
over 4 to 8 weeks	7.6%	23.5%	10.8%
over 8 to 12 weeks	18.2%	5.9%	15.7%
over 12 to 16 weeks	16.7%	5.9%	14.5%
over 16 to 20 weeks	13.6%	11.8%	13.3%
over 20 to 26 weeks	16.7%	17.6%	16.9%
over 6 months to 9 months	6.1%		4.8%
over 9 to 12 months	9.1%	17.6%	10.8%
over 1 to 1.5 years	7.6%	5.9%	7.2%
# of Cases	66	17	83

Cases opened from May 1, 2004 to June 30, 2005

Based on Information Provided using Brampton CLO Special Data base.

Figure 2-49

**Brampton CLO Cases: Time (weeks) Between First Appearance and Disclosure Complete by Whether or not Certificate Case**

	Not Certificate	Certificate	Total: All Areas
Percentile 25	12	8	12
Median	18	19	18
Percentile 75	27	45	28
Percentile 95	72	.	73
Mean	24	27	24
Valid N	N=67	N=17	N=84

Cases opened from May 1, 2004 to June 30, 2005

Based on Information Provided using Brampton CLO Special Data base.

The impact of this delay on court and CLO resources can be seen readily from the data in Figure 2-50. Nearly a third (29%) of the cases required the convening of and attendance at either 2 or 3 appearances before disclosure was available.

Figure 2-50

**Brampton CLO Cases: Number of Appearances Before Disclosure Complete by Whether or not Certificate Case**

	Not Certificate	Certificate	Total: All Areas
0	9.1%	11.8%	9.6%
1	33.3%	47.1%	36.1%
2	28.8%	17.6%	26.5%
3	12.1%	11.8%	12.0%
4	7.6%		6.0%
5	4.5%		3.6%
6	4.5%	11.8%	6.0%
# of Cases	66	17	83

Cases opened from May 1, 2004 to June 30, 2005 with disclosure complete and data on number of appearances available.

Based on Information Provided using Brampton CLO Special Data base.

## 2.6.6 Independence

### *a Independence from Other Groups*

*Were CLO staff lawyers restricted in their ability to act “independently” in providing quality legal representation at any stage of the proceedings (e.g., through caseload or budgetary pressure, working relationships with Crowns, etc.)?*

Independence takes many forms – independence from any inappropriate pressure from the Area Director and other LAO officials; from generalized and unreasonable caseload pressure; and from other CJS sectors.

None of the Area Directors, to whom the CLO Directors report, see their role as in any way to direct the casework of the CLO (which would interfere with and jeopardize the right to counsel), including by telling the CLO to do more with less, not refuse certain cases, etc. Except in Barrie, LAO and CLO staff reported no problems in response to a question about “pressure of any kind from LAO for the CLO to achieve greater efficiencies that would affect the quality of the service the CLO provided”.

There have, however, been discussions with all the CLOs about the caseload size which LAO would be expecting the CLOs to handle. That being said, when a CLO Director has said “it’s hard to judge, but our caseload seems to be getting near to capacity”, or “our caseload is beyond capacity”, LAO has not disagreed. In Barrie, there is a recognition, on the part of the CLO staff and the Area Director, that the CLO’s current caseload is at full capacity and that it is crucial to begin to develop priorities both in terms of casework and its public legal education and outreach. The Barrie CLO has recently been informed that despite, its large caseload, LAO will not provide funding for an additional staff lawyer.

In terms of the relationship with Crowns, in our first round of consultations (before the CLOs were fully under way), fears were expressed about the possibility that CLO personnel would suffer from either “too cozy” or “too coercive” a relationship with Crowns. Junior CLO staff might be outgunned by senior (and more highly paid) Crowns; or CLO staff might “go along to get along” more than the private bar. None of the LAO or CLO employees felt there was any suggestion of either phenomenon

at any of the CLOs. In Ottawa, persons who mentioned the junior lawyers' bargaining with the bar attributed any deficiencies to inexperience, not coercion or coziness. In Barrie, there was universal recognition by all interviewees that there had been no problems in the relationships between the CLO staff and the various provincial Crowns. There was agreement that there were appropriate relations between Crowns, prosecutors and the CLO staff lawyers and community legal workers. In Brampton, pressure from the CLO on the Crown office, among other area justice partners, has kept the relationship from becoming "cozy".

### *b Independence in Offering a Spirited Defence*

*How did the outcomes of CLO cases compare to similar roster cases at all stages, with particular reference to, e.g.:*

- *was bail granted on consent or granted after a contested hearing?*
- *did CLO lawyers plead cases out (as opposed to going to trial) earlier or at a higher rate than the private bar, and if so why?*

No information is available on bail strategies used by the CLOs.

Interviewees were asked to rate the CLO service against that of the private bar (i.e., same, better or worse, etc.), in terms of:

- "how likely they are to go to trial" and
- "how effective they are in obtaining the best possible result for their cases".

In Barrie,

- some of the CLO staff and private lawyers indicated that the CLO staff lawyers are not as likely to go to trial as a private lawyer would be and that they are more willing to work through a reasonable plea bargain.
- The Director considers that the CLO staff are likely to go to trial where appropriate; the staff lawyer speculated that the CLO would go to trial in about 15 to 20% of its cases.
- Several Crowns indicated that the CLO goes to trial in an appropriate number of cases; however, other Crowns felt that that CLO has a pattern of settling at trial.
- The private bar interviewed felt that the CLO did not "cave on its case" and "on average were not dump trucks – not caving". Another experienced criminal lawyer felt that neither of the CLO lawyers showed a strong propensity to take cases to trial.
- Most interviewees either had no comment or indicated that CLO lawyers were comparable with the private bar with respect to their effectiveness in seeking the best possible result for their clients. The mental health courtworker considered the CLO to be effective; another NGO interviewed considered the CLO "fair". Crowns seem generally to perceive the CLO lawyers as "about the same" or slightly below the norm of the private bar; the opinion of the private bar ranged from good to below average. Duty Counsel interviewed indicated that the CLO lawyers were "quite effective" and "put their all into it". The judges stated that the CLO lawyers were about the "middle of the curve" and that "they both do a good job".

In Brampton,

- four CJS respondents who spoke to the issue said they did not know how the CLO compared to the private bar in terms of "how likely they are to go to trial"; two suggested they were the same as the private bar in this respect;

- two CJS respondents said they did not know how the CLO compared in terms of “how effective they are in obtaining the best possible result for their clients”; two said “very”; one said “more effective”, and one said the CLO was the same as the private bar in this respect, “except for one CLO lawyer who gets the Crown’s back up”.

In Ottawa,

- eleven CJS respondents who spoke to the issue said they did not know how the CLO compared to the private bar in terms of “how likely they are to go to trial”; three said they were the same; and one said they were more likely to go to trial;
- seven CJS respondents said they did not know how the CLO compared in terms of “how effective they are in obtaining the best possible result for their clients”; five said they were the same as the private bar; and one said the CLO was “very good”.

**b.i Resolution Process: Private Certificates**

Figure 2-51 presents information on the resolution process used in cases billed by the private bar between May 1, 2004 and June 30, 2005.<sup>20</sup> Although the likelihood of contesting a case is an imperfect measure of the strength of the defence offered, it is a relevant consideration. It is especially relevant in the current context where the concept of the CLOs has been criticized on the grounds that they would be more likely to “plead out” cases than is the private bar.

This data source shows considerable variation in types of resolution among the sites.<sup>21</sup> For instance:

- In Barrie, a lower percentage of cases are withdrawn by the Crown (35% compared to 50% and 51% for Brampton and Ottawa);
- However, Guilty Pleas are much more prevalent among private bar cases in Barrie (52% versus 29% and 33% for Brampton and Ottawa);
- Barrie and Ottawa have the lowest rates of contested cases (13% and 16%). The rate in Brampton is 21%.

**Figure 2-51**

**Private Bar Certificate Cases: Type of Resolution by Site (excluding no plea)**

	Barrie	Brampton	Ottawa	Other
Withdrawn	35%	50%	51%	44%
Guilty Plea	52%	29%	33%	41%
Contested	13%	21%	16%	16%

*Certificates billed from May 1, 2004 to June 30, 2005*

<sup>20</sup> The most serious outcome recorded for any offence is used for certificates that include multiple offences.

<sup>21</sup> These rates are calculated after excluding the “no plea” cases.

### b.ii Resolution Process: CLOs

Comparable data are available in Figure 2-52 from the Legal Files Data base for two of the CLOs—separately for certificate and non-certificate cases.<sup>22</sup>

First consider the statistics for **non-certificate** cases.

For their non-certificate cases, both Brampton and Ottawa achieved similar – and high – rates of cases being either withdrawn or stayed by the Crown (58% for Brampton and 53% for Ottawa). These high percents suggest the need for legal assistance to non-certificate cases; previous research in this area suggests that if they had continued to be unrepresented, a high proportion of these accused would have pled guilty and been convicted.

Both Brampton and Ottawa also entered guilty pleas in a similar percent of non-contested cases (20% and 23%).

Figure 2-52<sup>23</sup>

Most Serious Outcome of Closed Cases by Certificate or Not (by Site)

	Brampton		Ottawa	
	No Certificate	Certificate	No Certificate	Certificate
Withdrawn	53.2%	35.7%	49.3%	30.4%
Withdrawn Pending Completion of Conditions			2.8%	
Dismissed and Acquitted	10.4%	7.1%	4.2%	4.3%
Absolute Discharge	1.3%			
Conditional Discharge	3.9%			
Stayed	5.2%	21.4%	4.2%	4.3%
Reduced-conviction on lesser charge	1.3%			
Plead Guilty	19.5%	28.6%	22.5%	47.8%
Convicted	5.2%	7.1%	16.9%	13.0%
Cases	77	14	71	23

Closed Client Files Opened: to June 30, 2005 Only: Nov 6 run on information extracted on Nov 4, 2005

Excluding cases in which outcome not specified, or client absconded or changed solicitor or which were not completed by CLO

Differences between the CLOs are, however, apparent with respect to **certificate** cases. Brampton has a significantly higher combined withdrawn and stayed rate (57%) than does Ottawa (35%). At the same time, the Brampton CLO is considerably less likely (29%) to plead guilty in certificate cases than is the Ottawa CLO (48%).<sup>24</sup>

These statistics can also be compared to the earlier data (Figure 2-51) for private bar certificate cases.

<sup>22</sup> Legal Files Data on case resolution process for Barrie requires attention to ensure its accuracy and completeness.

<sup>23</sup> In Barrie, the form 50s were used instead (see Figure 2-53 below) because the data from that source appeared to be more accurate.

<sup>24</sup> One should, however, consider these results in light of the sentences received by these cases. Later reports will explore this issue when the numbers of cases are high enough to support such an analysis.

In Brampton, the CLO and the private bar exhibit similar percentages for withdrawn plus stayed resolutions (58% for the CLO vs. 50% for the private bar). The CLO and the private bar also exhibit almost identical propensities to plead guilty in the case (29%).

These results contrast with those for Ottawa. There, the Ottawa CLO has to date exhibited a considerably lower rate of withdrawals plus stayed resolutions for certificate cases (35%) compared to the private bar (51%). The CLO also has pled guilty to a higher percent of its certificate cases than has the private bar (48% versus 33%). It should, however, be highlighted that these percentages are based on relatively low numbers of cases—14 in Brampton and 23 in Ottawa. An additional small number of cases receiving either a guilty plea or a not guilty plea could alter the percentages significantly. Whether or not similar trends will persist as the numbers of cases become larger will be monitored during the next phases of the evaluation.

### b.iii Resolution Process: Barrie CLO

The following figure provides analogous statistics for Barrie which can be obtained from the sample of Form 50s that were filed for certificate cases.<sup>25</sup>

**Figure 2-53**

**Legal Aid Certificates Issued and 'Billed':  
Plea by by LAO CLO**

		Area
		Barrie
Withdrawal of all charges	Col %	58.0%
Guilty plea	Col %	32.8%
Contested trial	Col %	9.2%
Total	Count	131
	Row %	94.9%

Sample of Certificates becoming effective from May 1, 2004 to June 30, 2005 and 'billed' to LAO by November 8, 2005. Excluding cases in which Plea not specified

Comparing all three CLOs, Barrie had the lowest percent of certificate cases resulting in contested trials (9%), Brampton the next lowest (14%), and Ottawa the highest (17%).

The Barrie CLO entered a guilty plea to a similar percent of certificate cases as did Brampton (33% vs. 29% – and less than the 48% for Ottawa). Barrie CLO certificate cases also exhibited a similar percentage to Brampton with respect to the total of withdrawn and stayed resolutions (58% vs. 57%).

Compared to the private bar, the Barrie CLO had a similar percent of certificate cases contested (13% for the private bar, 9% for the CLO). However, the Barrie CLO certificate cases exhibited a much higher percent of withdrawals (58%) compared to the private bar (35%). The converse of this was a much lower rate of guilty pleas for the Barrie CLO than for the Barrie private bar (33% vs. 52%).

In summary, in Barrie and Brampton there is no evidence to support the concern that the CLO would be more likely to enter a guilty plea for certificate cases than would the private bar. As noted above, whether or not the current higher percent in Ottawa continues will be monitored during the next year of the evaluation.

<sup>25</sup> (This sample of Form 50s is biased toward the earlier part of the first three quarters of operations.)

#### b.iv Sentences of CLO Cases

(In interpreting the dispositions and sentences received by closed cases, the reader is reminded at the outset to interpret these results in the context of the percent of cases receiving convictions.)

Figure 2-54 utilizes data from Legal Files to describe the types of dispositions and sentences received by closed cases. As has been found elsewhere in this report, there are similarities but also important differences among the three CLOs. For instance, none of the *non-certificate* cases in Barrie or Brampton received a prison sentence, and only one case in Ottawa did so.

**Figure 2-54**

**Most Serious Disposition of Closed Cases by Certificate or Not (by Site)**

	Barrie		Brampton		Ottawa	
	Not Certificate	Certificate	Not Certificate	Certificate	Not Certificate	Certificate
unspecified-incl. not convicted	47.1%	14.4%	48.5%	64.7%	44.0%	35.7%
Discharge (incl. absolute and conditional)	5.9%	1.6%	9.9%	5.9%	11.0%	3.6%
Diversion (incl DVP and MH)		2.7%	10.9%		2.2%	
Suspended Sentence	5.9%	4.8%	2.0%		1.1%	7.1%
Restorative (Bond, Comm Serv, Donations, Restitution)	11.8%	3.7%	14.9%	5.9%	23.1%	17.9%
Conditional Sentence		4.8%	1.0%			3.6%
Fine	5.9%	2.1%	3.0%		6.6%	7.1%
Time Served or Intermittent		10.6%			1.1%	
Probation	17.6%	16.0%	5.9%		8.8%	17.9%
Fine and Probation	5.9%	1.1%	4.0%		1.1%	3.6%
Possible Custodial				5.9%		
Prison (2yr LD)		12.8%		5.9%		
Prison & Fine		.5%		5.9%		
Prison & Probation		24.5%		5.9%	1.1%	3.6%
Penitentiary		.5%				
Cases	17	188	101	17	91	28

Closed Client Files Opened:ro June 30, 2005 Only: Nov 6 run on information extracted on Nov 4, 2005

On the other hand, there were significant differences among the sites regarding the likelihood of receiving prison sentences for *certificate* cases—with the likelihood ranging from 36% in Barrie, to 24% in Brampton, to only 4% in Ottawa. An additional 11% of Barrie cases received time served or intermittent prison sentences.

Fine and Probation as the most serious sentences (separately and together) were a much more prevalent disposition for non-certificate cases in Barrie (24%) than in either Brampton (10%) or Ottawa (10%). On the other hand, Fine and Probation were received with almost equally likelihood in Barrie and Ottawa (17% and 21%), but with more frequency than in Brampton (10%).



Finally, restorative and diversion sentences were received more frequently in Brampton and Ottawa (26% and 25%) compared to in Barrie (12%).

Obviously, many factors play a part in the types of sentences that are obtained in CLO cases—including many characteristics of the prosecution and judicial environment over which the CLOs have little control. During the next near the evaluation will, however, attempt to better explore the role these factors and CLO expertise and policies play in influencing the types of dispositions received.

### 2.6.7 Important Access Issue Raised by Experience with Non-Certificate Cases

The information presented in the preceding chapters on the characteristics, litigation process and results for non-certificate cases handled by the CLO raise a profound access to justice issue. The CLOs' success (as seen in Brampton and Ottawa, especially) in getting significant proportions of charges withdrawn or stayed strongly suggests that there is a fundamental fairness issue raised by not providing legal assistance to those cases not fortunate enough to be handled by the CLOs. Bluntly, in legal terms, these people are not guilty. Prior to the arrival of the CLO, there was no means for these persons to be represented and argue their case at trial; and many would have “folded on the day of trial”. This raises issues which go beyond how best to draw the line between services which are covered by legal aid and services which are not.

### 2.6.8 Client satisfaction

Some legal aid experts suggest that “consumer surveys” should be used more in order to evaluate what clients need and how well the service is delivered to them; others suggest that most criminal legal aid clients are not in a good position to judge the quality of the legal services they consume.

*How did clients perceive the responsiveness, timeliness and effectiveness of their counsel (client would/would not use same lawyer again)?*

The CLOs distribute client satisfaction surveys to their clients when the case is closed and the statement of “billings” is copied to the client. As of yet, there are not enough completed surveys to generalize from. Further information will be available in the next evaluation report.

### 2.6.9 Continuing professional development

*Did CLO lawyers receive comparable continuing education and supervision to roster lawyers?*

Like all practicing lawyers in Ontario, the CLO's lawyers are expected by the Law Society to engage in annual professional development.

CLO lawyers have been barred from being full members of the local criminal lawyers' association. This means, among other things, that in Ottawa, they are not welcome to participate in certain local functions which have a professional development components, such as certain conferences. However, other opportunities are available and these are identified by the lawyers as opportunities they would like to use as part of their annual professional development. The principal issue, according to some

interviewees, is that the budget of the CLOs does not allow for extensive professional development. This impact on the CLO budget will be monitored during the next year of the evaluation.

### 2.6.10 Other Dimensions of Quality

*How did the CLO cases compare to the private bar along dimensions of quality of service?*

In addition to the measures discussed above, interviewees were asked to rate how the CLO compared to the local private bar in terms of:

- “how well prepared their cases are for court”
- “how well they argue their clients’ cases”
- “how aggressively they seek the best possible result for their clients”, and
- “how skillfully they deal with diversion personnel, Crowns, judges, and other court personnel”.

In Barrie, there were some differences in opinion with respect to how well prepared the CLO lawyers were for their cases. One judge said that when counsel proceeds they are prepared; the other judge said that the CLO lawyers’ preparation was generally comparable to the “middle of the curve” of the private bar. The Crown Attorneys interviewed varied in their perspectives: several Crowns indicated that they perceived the CLO lawyers as “generally fairly well-prepared – about the same as private lawyers; one CA indicated that s/he felt that CLO was generally well-prepared while a Duty Counsel felt that they were “prepared” and the volume of cases was too much thus requiring too frequent requests for adjournments.” Private lawyers agreed that the staff lawyer was well prepared but some expressed concern about whether the Director had assumed too many responsibilities and was overloaded.

The Barrie Director indicated that the CLOs spent more time on a file because the nature of the practice requires “handholding and more bail and sentencing preparation”. The community legal worker indicated that obtaining medical reports and other information for sentencing often caused delays.

In Brampton, varying numbers of CJS respondents responded to each question:

- on “how well prepared their cases are for court”, five said the CLO was the same as the private bar (or in the middle of the curve for the private bar), one said “very”, and one said “much more prepared” than the private bar;
- on “how well they argue their clients’ cases”, five said the CLO were the same, one did not know, and one said the CLO argues “forcefully”;
- on “how aggressively they seek the best possible result for their clients”, two said they did not know, two said the CLO were the same as the private bar, one said the CLO were “very professional”, and two said the CLO were the same as the private bar, except for one lawyer, who was “too aggressive” and “tried things the private bar would not try”;
- on “how skillfully they deal with diversion personnel, Crowns, judges, and other court personnel”, two said they did not know, two said the CLO were the same as the private bar, one said they were better, and three said they were “good” or “very good”. One judge went on to say the CLO were very good at cross-examination, and that their “experience and diplomacy is very obvious”.

One Brampton judge said the difference between the CLO and the private bar is that the CLO comes prepared for court. This judge went on to opine that the private bar in Brampton is generally too busy,

has too many cases to be focused and well-prepared on each, and is lacking in the “fearlessness” required for an excellent defence (specifically, the Brampton bar is not as willing as it should be to reject Crown offers and go to trial). Because the CLO is not driven by the bottom line, they tend to be more focused, prepared and able to push the defence to its limits.

In Ottawa, varying numbers of CJS respondents responded to each question:

- on “how well prepared their cases are for court”, five said they did not know, five said the CLO was the same as the private bar (or in the middle of the curve for the private bar), three said the CLO were the same or better, and one said the CLO were better than the private bar. One said if anything, the CLO lawyers were “over-prepared”;
- on “how well they argue their clients’ cases”, seven said they did not know, three said the CLO were the same, two said they were better, one said they were the same or better, and three said only that they were “good” or “very good” at arguing cases;
- on “how aggressively they seek the best possible result for their clients”, five said they did not know, six said the CLO were the same as the private bar, and two said they were “the same or better”. In addition, two said they were “good” or “very good”;
- on “how skillfully they deal with diversion personnel, Crowns, judges, and other court personnel”, four said they did not know, six said the CLO were the same as the private bar, one said they were the same or better, and one said they were better.

Other measures of “quality of service” are presented throughout this report.

## 2.7 Value for Money

### 2.7.1 Comparing CLO and private bar hours and costs

*How did CLO expenditures on fees, disbursements, administration compare to similar roster cases?*

*What were the comparative costs per case – controlling for activity type and level, case type and complexity?*

*Did the CLO model result in savings to LAO as compared to the pre-existing situation? Where did those savings occur, e.g., in travel costs, etc.?*

“Value for money” is a key area to be explored by the evaluation. Two main types of information are needed for this exploration:

- Estimates of the value of the different CLO services that are delivered, and
- Estimates of the cost of delivering those different services.

The usefulness of such information will, of course, be enhanced if one can compare both the value and the costs to the value and costs of delivering *comparable* services through alternative mechanisms (for instance, the existing certificate system).

By intention and practice, the CLOs could deliver a very different mix of services than are delivered by alternative delivery mechanisms (such as private bar offices). Two obvious examples include the CLO’s providing services for non-certificate cases and providing outreach and law reform services not provided by private bar offices.

An important prerequisite for answering the “value for money” for *comparable services* question is therefore the ability to allocate both value and costs of CLO services to the delivery of different specific types of services.

The current configuration of Legal Files and the procedures used for docketing staff time to different specific services represents a strong initial step in providing the time-related value and cost information we need. However, at least four enhancements to the configuration and procedures are needed before Legal Files can provide the information needed for the value for money part of the evaluation.

- First, the system is considered at present to acceptably record the total time spent on client litigation files—especially by lawyers. However, the system does not yet allocate in sufficient detail and specificity that total time among specific client-related functions and services (e.g. attending bail hearings or preparing sentencing plans).
- Second, improvements are required to better ensure that non-lawyer time is fully allocated to client litigation files.
- Third, significant improvements are required to develop consistent procedures to ensure fuller recording of staff time to non-client-specific litigation functions (such as various specific law reform and outreach activities).
- Fourth, improvements are required to ensure that staff—especially lawyers in certain CLOs—docket their administrative (including travel) time to specific administrative tasks.

Work is proceeding on all these fronts and it is expected that the required data will be available for subsequent evaluation reports. However, at this time, attempting a significant value for money analysis—including, for instance, calculations of summary measures such as cost per case—would be premature.

(It should also be noted that since most of the information available is for a period when the CLOs were in their initial start-up period, any analysis from that period would be of limited use in describing the situation under conditions of normal operations.)

On the other hand, significant progress has been made in collecting and analyzing basic data that will form the core of future work in this area.

Specifically in this section, we will present data on:

- “Imputed” Fees for service per certificate case (CLO and private lawyers)—a proxy for the value of client litigation file work.,
- “Imputed” Fees for service per non-certificate case,
- “Imputed” Fees earned in total per CLO office, and
- CLO budgets.

### *a Fees for Service per Certificate Case*

#### **a.i Imputed Fees per certificate cases for CLO: Legal Files Data**

The best indicator of the value of litigation services in the private sector is the amount clients are willing to pay for them, or—in the case of certificate cases—the amount for which lawyers are willing

## 2: Substantive Objectives Generally

to provide the service. In the private sector, this concept is best measured by the fees earned or the amount paid by LAO for certificate work.

Since CLOs do not actually bill their clients, their fees must be imputed by multiplying an estimate of the hourly billing rate LAO would accept if they were private lawyers by the number of hours actually worked on the file.

Figure 2-55 begins the analysis by presenting the mean and median “imputed” total (i.e. lawyer plus community legal worker) fees for the CLOs, separately for each of a number of categories of offences. Given the relatively small number of certificate cases handled by Brampton and Ottawa for individual offence categories, it would be inappropriate to compare these figures among the three sites. However, as the caseloads increase over the next years of operations, such a comparison will be possible in later reports. At this point, we do however note that the overall average per certificate case ranges from \$830 in Barrie to \$1,205 in Brampton—with the median ranging from \$699 in Barrie to \$859 in Ottawa. On the other hand, given the differences in the total fees per case, one should consider the impact on the mix of cases in the different CLOs on their average total fees per case.

**Figure 2-55**

**Mean and Median Total Imputed Fees Per Certificate Case: Summary Statistics By Offence Category by Site**

	Barrie			Brampton			Ottawa		
	Mean	Median	# of Cases	Mean	Median	# of Cases	Mean	Median	# of Cases
unspecified	\$604	\$432	16	\$1,007	\$552	6	\$493	\$496	3
Sexual assault	\$1,235	\$1,409	9	.	.		.	.	
Robbery	\$2,612	\$2,612	1	.	.		.	.	
Theft	\$670	\$609	12	\$1,051	\$1,051	2	\$670	\$670	2
Impaired Driving	\$500	\$470	4	\$1,427	\$1,427	1	\$2,942	\$2,942	1
Other Vehicle	\$824	\$675	8	\$1,389	\$1,389	1	\$998	\$998	2
Narcotics Cocaine & Heroin	\$994	\$994	2	.	.		.	.	
Assault	\$854	\$739	52	\$1,568	\$728	3	\$1,022	\$882	4
Fraud	\$926	\$859	8	\$915	\$915	1	\$1,507	\$1,507	1
Other	\$1,110	\$906	8	\$559	\$559	1	.	.	
Threatening Death Bodily Harm	\$1,132	\$1,132	1	.	.		\$724	\$724	2
B& E	\$1,122	\$1,397	5	.	.		\$459	\$459	1
Weapons Offences	\$547	\$547	1	.	.		\$957	\$957	2
Mischief	\$957	\$578	4	.	.		\$1,214	\$1,214	1
Fail to Comply	\$716	\$592	54	\$1,676	\$1,676	2	\$722	\$581	7
Other Drug	\$1,182	\$977	3	.	.		\$1,300	\$1,300	1
<b>Total</b>	<b>\$830</b>	<b>\$699</b>	<b>188</b>	<b>\$1,205</b>	<b>\$728</b>	<b>17</b>	<b>\$916</b>	<b>\$859</b>	<b>27</b>

Specific Closed Certificate Client Files Cases opened to June 30, 2005. Created on Nov 22 using information extracted Nov 21.

Includes cases with missing charge data

### a.ii Imputed Fees: Barrie Form 50 Data

An alternative measure of the total fees per case for Barrie certificate cases is available from the separate sample of Form 50s submitted for a sample of Barrie cases. (Barrie was the only office that submitted a complete enough sample of Form 50's to be usable.) Those estimates—shown in Figure 2-56—also have value as a check on the accuracy of the Legal Files based estimates. Given the different samples of cases used to calculate the figures in Figure 2-55 and Figure 2-56, the latter lend credence to the Legal Files estimates.

(However, it should be remembered that the CLOs are expected to follow the same LAO rules for billing as are members of the private bar. The data from the Form 50's filed by both the private bar and the CLOs reflects this.)

**Figure 2-56**

**Legal Aid Certificates Issued and 'Billed':  
Total Fees 'Billed' per Certificate: by LAO CLO**

	Barrie
Percentile 25	\$449
Median	\$682
Percentile 75	\$1,033
Percentile 95	\$2,075
Mean	\$863
# of Certificates	N=145

Certificates becoming effective from May 1, 2004 to June 30, 2005 and 'billed' to LAO by November 8, 2005.

### a.iii Fees Per Certificate Case for Private Bar Cases: PeopleSoft Data

Using the PeopleSoft data base on certificates billed during a period compatible with the first year operations of the CLOs, one can calculate comparable estimates of total fees for certificate cases handled by private bar lawyers.

As shown in Figure 2-57, in each of the comparable sites, the total fees billed by the private bar per case were higher than the imputed CLO fees:

- In Barrie, the mean CLO imputed fee per case was \$830 compared to \$1,322 for the private bar (medians of \$699 vs. \$831);
- In Brampton, the mean CLO imputed fee per case was \$1,205 compared to \$1,631 for the private bar (medians of \$728 vs. \$979); and
- In Ottawa, the mean CLO imputed fee per case was \$916 compared to \$1,422 for the private bar (medians of \$859 vs. \$967).

**Figure 2-57****Legal Aid Certificates Issued and Billed: Total Fees Billed per Certificate: by Area Office**

	Barrie	Brampton	Ottawa	Other	Total: All Areas
Percentile 25	\$582	\$706	\$684	\$600	\$600
Median	\$831	\$979	\$967	\$831	\$845
Percentile 75	\$1,297	\$1,518	\$1,483	\$1,311	\$1,339
Percentile 95	\$2,821	\$4,267	\$3,325	\$3,123	\$3,186
Mean	\$1,322	\$1,632	\$1,400	\$1,422	\$1,428
Valid N	N=1912	N=2932	N=4218	N=50412	N=59474

Certificates billed from May 1, 2004 to June 30, 2005

The following Figure provides comparable data separately for lawyer fees.

**Figure 2-58****Legal Aid Certificates Issued and Billed: Lawyer Fees Paid per Certificate: by Area Office**

	Barrie	Brampton	Ottawa	Other	Total: All Areas
Percentile 25	\$554	\$665	\$646	\$569	\$582
Median	\$813	\$914	\$886	\$813	\$823
Percentile 75	\$1,256	\$1,398	\$1,372	\$1,247	\$1,247
Percentile 95	\$2,633	\$3,521	\$2,871	\$2,801	\$2,835
Mean	\$1,171	\$1,406	\$1,216	\$1,219	\$1,227
Valid N	N=1912	N=2932	N=4218	N=50412	N=59474

Certificates billed from May 1, 2004 to June 30, 2005

*b Fees for Service Per CLO Non-Certificate Case*

Figure 2-59 presents analogous imputed fees data for CLO non-certificate cases. The differences in fees for these cases among CLOs and among different offences parallels the differences in hours spent per case (that have been discussed above in Section 2.6.4b. ).

Figure 2-59

**Mean and Median Total Imputed Fees Per Non-Certificate Case: Summary Statistics By Offence Category by Site**

	Barrie			Brampton			Ottawa		
	Mean	Median	# of Cases	Mean	Median	# of Cases	Mean	Median	# of Cases
unspecified	\$628	\$647	4	\$531	\$341	16	\$648	\$345	13
Theft	.	.		\$707	\$516	15	\$453	\$382	12
Impaired Driving	\$493	\$493	2	\$898	\$631	8	\$1,733	\$1,470	12
Other Vehicle	.	.		\$1,014	\$1,014	1	\$323	\$323	1
Narcotics Cocaine & Heroin	.	.		\$224	\$224	1	\$763	\$763	2
Assault	\$631	\$675	7	\$736	\$643	24	\$843	\$665	25
Fraud	.	.		\$582	\$381	3	\$101	\$101	1
Other	.	.		\$775	\$740	3	\$945	\$735	5
Threatening Death Bodily Harm	.	.		\$614	\$698	5	\$661	\$716	7
B& E	\$993	\$993	1	.	.		.	.	
Weapons Offences	.	.		\$573	\$424	5	\$451	\$451	1
Mischief	\$596	\$596	2	\$787	\$575	3	\$586	\$456	6
Fail to Comply	.	.		\$233	\$270	4	\$757	\$670	4
Other Drug	\$330	\$330	1	\$476	\$434	6	\$467	\$467	2
Total	\$614	\$665	17	\$653	\$558	94	\$824	\$591	91

Specific Closed Non-Certificate Client Files Cases opened to June 30, 2005. Created on Nov 22 using information extracted Nov 21.

Includes cases with missing charge data

### *c Fees for Service Per Office*

By aggregating the imputed fees per case, estimates were possible of the total imputed fees for each of the CLOs for client litigation file related work. Two sets of estimates of fees are shown. Figure 2-60 provides estimates for closed cases only. Figure 2-61 provides estimates for closed cases plus interim work on cases that are still open.

As shown in Figure 2-60, the estimates of total fees for closed cases vary considerably from \$82,501 in Brampton to double that amount in Barrie (\$175,717). There are also considerable differences from office to office in the percents of imputed fees that are obtained from certificate work—with by far the majority of imputed fees in Barrie coming from certificate work, and roughly one quarter of the imputed fees in Brampton and Ottawa coming from certificate work.

A different picture is shown when imputed fees for cases that are still open are added to those for closed cases. As shown in Figure 2-61, the totals now roughly double for Brampton (from \$82,501 to \$161,469) and nearly triple for Ottawa (from \$100,235 to \$271,267). However, the totals increase proportionately much less for Barrie. Clearly, Ottawa has considerably more “work in process” than do the other two sites.

However, the conclusions regarding the percent of fees derived from certificate and non-certificate work are similar whether one uses data from only closed cases or all cases.



Figure 2-60

## Total Imputed Fees for Closed Cases: By Certificate or Not by Site

		Barrie		Brampton		Ottawa	
		Total Fees	# of Cases	Total Fees	# of Cases	Total Fees	# of Cases
Whether or not Certificate Issued	Duty Counsel Work or unspecified	\$9,012	1	\$665	1	\$527	2
	No Certificate	\$10,434	17	\$61,347	94	\$74,967	91
	Certificate	\$156,071	188	\$20,489	17	\$24,742	27
all cases		\$175,517	206	\$82,501	112	\$100,235	120

Specific Closed Client Files Cases opened to June 30, 2005. Created on Nov 22 using information extracted Nov 21.

Includes cases with missing charge and certificate data

*(Please note that in this and the following figure, the “Duty Counsel Work” was done from May-Aug 2004 only. None has been done since.)*

Figure 2-61

## Total Imputed Fees for Opened and Closed Cases: By Certificate or Not by Site

		Barrie		Brampton		Ottawa	
		Total Fees	# of Cases	Total Fees	# of Cases	Total Fees	# of Cases
Whether or not Certificate Issued	Duty Counsel Work or unspecified	\$9,012	1	\$8,909	6	\$149,837	11
	No Certificate	\$15,934	26	\$113,338	180	\$94,786	123
	Certificate	\$209,855	231	\$39,222	36	\$26,643	31
all cases		\$234,801	258	\$161,469	222	\$271,267	165

Specific Client Files Cases opened to June 30, 2005. Created on Nov 22 using information extracted Nov 21. Includes cases with missing charge and certificate data

Of course, there is considerable interest in how these numbers (and other numbers presented in this report) compare to analogous figures from the private bar. Unfortunately, a mechanism acceptable to the private bar has not yet been found to collect such figures. At this time, therefore, we are limited to estimates of the total amount of certificate billings by members of the private bar (for a period comparable to the previous Figure). Unfortunately, these figures relate to individual lawyers, and not to law firms—and law firms do typically handle work in addition to the certificate work. Nonetheless, the data in Figure 2-62 is a start to the data we will be trying to collect over the remainder of the project.

Figure 2-62

## Total Amount Billed per Lawyer: by Area Office

		Last Area Office			
		Barrie	Brampton	Ottawa	Other
Total Fees Billed	Mean	\$35,216	\$37,739	\$48,412	\$33,870
	Minimum	\$185	\$0	\$74	\$0
	Percentile 25	\$2,744	\$5,000	\$1,584	\$2,545
	Median	\$15,015	\$18,378	\$14,234	\$11,369
	Percentile 75	\$49,863	\$53,506	\$72,957	\$44,756
	Percentile 95	\$137,038	\$175,551	\$165,837	\$133,670
	Maximum	\$261,049	\$212,444	\$611,053	\$990,103

Certificates becoming effective and billed from May 1, 2004 to June 30, 2005

Figure 2-63 begins the task of allocating the different fees or values to specific services offered by showing estimates of the total fees earned by each of the CLOs for work on different offence types. The figure also explores the different contributions to fees by CLO lawyers and by other CLO staff. One observation is the almost identical (roughly 15%) proportion that non-lawyer imputed fees contribute to the total fees earned in each CLO office.

Figure 2-63

## Total Imputed Fees for Lawyers and Non-Lawyers: By Offence Category by Site

	Barrie		Brampton		Ottawa	
	Total Fees: Lawyer	Total Fees: Non-lawyer	Total Fees: Lawyer	Total Fees: Non-lawyer	Total Fees: Lawyer	Total Fees: Non-lawyer
unspecified	\$11,616	\$9,578	\$13,046	\$1,485	\$7,302	\$2,599
Sexual assault	\$9,033	\$2,085	.	.	.	.
Robbery	\$1,512	\$1,100	.	.	.	.
Theft	\$6,631	\$1,413	\$10,491	\$2,219	\$5,673	\$1,101
Impaired Driving	\$2,937	\$48	\$7,309	\$1,303	\$21,751	\$1,992
Other Vehicle	\$6,352	\$237	\$2,343	\$59	\$1,773	\$545
Narcotics Cocaine & Heroin	\$1,969	\$18	\$133	\$91	\$1,422	\$105
Assault	\$43,430	\$5,407	\$18,799	\$4,238	\$21,322	\$3,852
Fraud	\$7,215	\$196	\$2,427	\$235	\$1,392	\$215
Other	\$8,098	\$784	\$2,204	\$679	\$3,963	\$760
Threatening Death Bodily Harm	\$1,130	\$2	\$2,978	\$92	\$4,868	\$1,205
B& E	\$6,385	\$216	.	.	\$399	\$60
Weapons Offences	\$517	\$30	\$2,551	\$316	\$1,832	\$534
Mischief	\$4,798	\$222	\$2,177	\$185	\$4,262	\$752
Fail to Comply	\$34,614	\$4,067	\$4,128	\$158	\$6,223	\$2,099
Other Drug	\$3,245	\$631	\$1,990	\$864	\$1,961	\$273
all cases	\$149,483	\$26,034	\$70,577	\$11,924	\$84,145	\$16,091

Specific Closed Client Files Cases opened to June 30, 2005. Created on Nov 22 using information extracted Nov 21.

Includes cases with missing charge and certificate data

Figure 2-64 extends the analysis to explore which combinations of offences and certificate/ non-certificate types contribute most to the imputed revenues of each office. Some clear differences are apparent. For instance, the two groups of cases that contribute the most to total imputed revenue:

## 2: Substantive Objectives Generally

- In the Barrie CLO, are certificate assault cases (\$44,418) and certificate fail to comply cases (\$38,682):
- In the Brampton CLO, are non-certificate assault cases (\$17,670) and non-certificate theft cases (\$10,607):
- In the Ottawa CLO, are non-certificate assault cases (\$21,085) and non-certificate impaired driving cases (\$20,801).

**Figure 2-64**

**Total Imputed Fees for CLO: By Offence Type by Certificate or Not by Site**

	Barrie			Brampton			Ottawa		
	No Certificate	Certificate	Total	No Certificate	Certificate	Total	No Certificate	Certificate	Total
unspecified	\$567	\$913	\$1,480	\$4,041	\$4,703	\$8,744	\$5,173	\$724	\$5,897
Sexual assault	.	\$11,118	\$11,118	.	.	.	.	.	.
Robbery	.	\$2,612	\$2,612	.	.	.	.	.	.
Theft	.	\$8,043	\$8,043	\$10,607	\$2,103	\$12,710	\$5,433	\$1,341	\$6,774
Impaired Driving	\$987	\$1,999	\$2,986	\$7,186	\$1,427	\$8,613	\$20,801	\$2,942	\$23,743
Other Vehicle	.	\$6,589	\$6,589	\$1,014	\$1,389	\$2,403	\$323	\$1,995	\$2,318
Narcotics Cocaine & Heroin	.	\$1,987	\$1,987	\$224	.	\$224	\$1,527	.	\$1,527
Assault	\$4,418	\$44,418	\$48,836	\$17,670	\$4,703	\$22,372	\$21,085	\$4,090	\$25,175
Fraud	.	\$7,411	\$7,411	\$1,746	\$915	\$2,661	\$101	\$1,507	\$1,608
Other	.	\$8,883	\$8,883	\$2,324	\$559	\$2,883	\$4,723	.	\$4,723
Threatening Death Bodily Harm	.	\$1,132	\$1,132	\$3,071	.	\$3,071	\$4,625	\$1,448	\$6,073
B& E	\$993	\$5,608	\$6,601	.	.	.	.	\$459	\$459
Weapons Offences	.	\$547	\$547	\$2,867	.	\$2,867	\$451	\$1,915	\$2,365
Mischief	\$1,193	\$3,826	\$5,019	\$2,362	.	\$2,362	\$3,513	\$1,214	\$4,727
Fail to Comply	.	\$38,682	\$38,682	\$933	\$3,352	\$4,286	\$3,030	\$5,052	\$8,082
Other Drug	\$330	\$3,546	\$3,876	\$2,855	.	\$2,855	\$934	\$1,300	\$2,235
<b>Total</b>	<b>\$8,488</b>	<b>\$147,315</b>	<b>\$155,803</b>	<b>\$56,899</b>	<b>\$19,150</b>	<b>\$76,049</b>	<b>\$71,719</b>	<b>\$23,986</b>	<b>\$95,705</b>

Specific Closed Client Files Cases opened to June 30, 2005. Created on Nov 22 using information extracted Nov 21.  
Includes cases with missing charge and certificate data

### *d CLO Expenses*

The other side of the value for money question is the expenses budgeted and incurred by the CLOs. As noted earlier, although we have to-date been able to collect the budget by category of expenditure, the CLO data systems do not yet support the allocations of expenditures to the provision of specific services. Nonetheless, the budget information presented in Figure 2-65 is an important step in the value for money analysis.<sup>26</sup>

Other than note that the budget for Brampton is above that for the other two sites (a fact that is due in large part to additional staff and occupancy costs), only one further comment will be made at this time about the expenses.

That comment is that, for each of the CLOs, the expenses are considerably above the “imputed” fees earned (for both closed and still open cases) that have been calculated earlier in Figure 2-62. Some loss in the first year of operations is to be expected in any new start up operation. As well, the revenue estimates do not include values for any of the non client file work (e.g. the outreach and law reform

<sup>26</sup> Please note that LAO does not keep track separately for each CLO office of expenditures on centrally provided services such as Information Technology, Finance and Human Resources. We have added an 8% (of other expenses) estimate to conform to LAO rules of thumb used in other analysis.

work undertaken by the CLOs). Nonetheless, the differences between revenues and expenses is sizeable and will require careful monitoring during the next year of the evaluation.

**Figure 2-65**  
**CLO Operating Expenses May 2004 through June, 2005**

	Barrie/ Simcoe	Brampton/ Peel	Ottawa/ Carleton	Total
TOTAL OPERATING (incl. Shared Services)	\$433,395	\$507,770	\$398,763	\$1,339,928
A: Human Resource Expenditures	\$332,821	\$348,523	\$282,177	\$963,521
B: Office Expenses	\$20,281	\$26,211	\$32,303	\$78,794
C: Occupancy: Subtotal	\$45,553	\$94,403	\$50,519	\$190,475
D. Miscellaneous	\$2,637	\$1,020	\$4,226	\$7,884
D. Shared Services (est @ 8%)	\$32,103	\$37,613	\$29,538	\$99,254

### 2.7.2 Cost offsets

In some of the initial discussions of the original model for the CLOs, there was some support for creating offices which would offer a different type of service than “just another law firm”. Rather, this view had it, the CLOs would be geared towards the creative use of community legal worker and community resources to (1) resolve cases and divert them at an early stage to community programs, and (2) provide the services which may address client needs and/or disputes and (hopefully) prevent recidivism. These strategies may save court time in the end, though they can be more time-intensive in the first instance for the CLOs. Certainly, members of the private bar do not see such efforts as “cost savings”, but rather activities for which they too would like to be able to afford staff positions.

*What were the cost savings, if any, gained by the CLOs through innovative solutions such as new scheduling arrangements; flexibility in the use of staff lawyers and duty counsel; avoidance of delays; coordination of first appearances, set dates, guilty pleas?*

Barrie has made very good use of an experienced and well-regarded community legal worker who had considerable experience in the Simcoe County criminal justice system prior to joining the CLO staff. Barrie lawyers have utilized the community legal worker effectively. As she lives in Barrie, she often makes appearances and requests for adjournment when the CLO lawyers are appearing in one of the satellite courts.

The community legal worker is able to become involved with client before bail and to immediately organize a medical assessment. She is often contacted directly by CMHA case workers and, on occasion, by Duty Counsel. She is significantly involved in preparing both bail and sentencing hearing and assisting the accused to retain or obtain employment and to develop an appropriate proposal to put to the Crown and to the Court with respect to bail, sentencing and probation. The community legal worker has assumed responsibility for closing files and entering the final data. The community legal worker was commended by many of those in the Criminal Justice System who were interviewed. The CLO expressed concern that she recently has been excluded from interviewing clients in the Barrie jail and we understand that this situation is being explored by the CLO Director and the Area Director. The community legal worker attends courts to seek remands and also conducts preliminary meeting with Crowns with respect to diversion and potential plea bargains.

The Brampton CLO believes it has achieved sizable efficiencies in its own operations through the recently increased use of the community legal worker to do intake, case preparation, case management (for deadlines, etc.), as well as a large number of court appearances. For instance, in Brampton, cases

are normally adjourned for two to three weeks. Although CLO lawyers would otherwise normally be able to proceed with a productive court appearance after this interval, at times other parties cannot provide information required within that period. For instance, an appointment with the Crown could not be arranged until a longer period had elapsed. The result would be that the next court appearance would result only in a request for another adjournment. The CLO has attempted to alleviate this problem by arranging telephone resolutions with the Crown. Alternatively, where appropriate, the CLO lawyer would ask for a longer remand, perhaps in return for a commitment to either present (at the next appearance) an early resolution for approval at the next appearance, or to present an indication that the case is ready to set a date for trial. The community legal worker next sets a date for a telephone resolution discussion with the Crown, with the staff lawyers—or sometimes the community legal worker—handling diversion. The net effect is the elimination of a non-productive court appearance.

*Were efficiencies achieved through the allocation of activities to lawyers and community legal workers at the CLOs?*

In all of the CLOs, a very significant portion of the community legal worker's time is spent in data entry duties. It is doubtful that that is a cost-effective use of the time of persons with the qualifications they have—especially the comparable savings that could result from more intensive use of the community legal workers to take on some of the tasks now done by the lawyers. This is, however, not to say that the community legal worker could be productively occupied in data quality control and data analysis and report preparation functions.

## 2.8 Concluding Comments

This Chapter of the Report focuses on performance of the CLOs with respect to their specific objectives related to delivering client services—overall and with special emphasis on their work relating to individual client litigation files. Key observations and conclusions include:

### *Justice Environment and level of Caseloads*

- Each of the CLOs has been implemented in an environment of increasing trends in criminal certificates issued
- Caseloads (i.e. services provided to clients for specific court cases) have built up in each CLO, to the point where each CLO feels it is approaching capacity. Brampton and Barrie are handling caseloads above those of Ottawa.

### *Filling Unmet Needs Generally*

- There are significant differences among the CLOs with respect to certificate/ non-certificate split of their caseloads.
  - In Brampton and Ottawa, caseloads are overwhelmingly made up of “non-certificate cases”.
  - In Barrie, certificate cases are in the majority – many of them serious sex offences and accused who have mental health problems
- The report provides considerable information on the types of clients currently accessing and receiving services, including: gender, language, ethnic origin, types of offences, and whether the cases exhibit special legal issues such as problems with disclosure or layered legal issues such as immigration of refugee considerations.
- Unfortunately, the CLOs are not recording in Legal Files complete and sufficiently accurate data on key client characteristics that would allow them to show whether or not their clients came from key target groups.

### ***Impact on the Work of the Bar***

- Although there continues to be considerable resistance to the CLOs from the private bar, there is some evidence that the resistance is easing—at least to a limited extent. The majority perception is that the CLOs have not had a significant impact on the certificate work available to the bar. CLO certificate caseloads represent less than 1% of certificates issued to the private bar in Brampton and Ottawa. However, in Barrie the percentage is considerably higher, at 9%.

### ***Improving Client Access to services at Critical Stages in the Litigation Process***

- Criminal justice officials at the sites are mostly of the view that the CLOs are filling a gap in their local courts, providing assistance to accused who otherwise would have been unrepresented, and therefore would have either put the court and its officers through a difficult and time-consuming trial process, or would have pled guilty even though there may have been a viable defence and triable issues;
- As well, changes in the configuration of Legal Files and recording procedures will be required before it can provide reliable data on the extent to which the CLOs are providing key services at different points in the court litigation process (e.g. bail, plea negotiation, sentencing).

### ***Quality of Service***

- The evidence available, both data from interviews and data from the various automated information systems, shows no significant differences between the CLO certificate work and that of the private bar with respect to:
  - Assignment of lawyers to cases
  - Time spent of cases (if anything, the CLOs spend fewer hours)
  - The time elapsed from opening to closing a certificate file
- In Barrie and Brampton there is no evidence to support the concern that the CLO would be more likely to enter a guilty plea for certificate cases than would the private bar. Whether or not the current higher percent in Ottawa on certificate cases continues will be monitored during the next year of the evaluation.
- In general, CJS officials (e.g. judges, crowns, duty counsel) were also mostly of the view that the quality of the CLOs' work was of the same or higher quality than that of the local private bar;

### ***Important Issue related to Non-certificate cases***

- The high percents of non-certificate cases taken on by the Brampton and Ottawa CLOs which are withdrawn or stayed strongly supports the argument for having legal assistance available in such cases. (Previous research in this area suggests that if they had continued to be unrepresented, a high proportion of these accused would have pled guilty and been convicted.)

### ***Value for Money***

- The report provides estimates of the “imputed” fees earned by the CLOs for non-certificate and certificate cases. The report also provides expenditure budgets for the CLOs. As would be expected during a start-up year for a legal office, the imputed fees are considerably less than the expenses. Whether this situation continues after the CLOs have “got on their feet” will be monitored by the evaluation. However, that monitoring will also require enhancements to the way data are recorded in Legal Files.

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## Chapter 3: Non-Casework (Outreach and Law Reform) Objectives

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### 3.1 Introduction

This Chapter addresses the achievement of the following non-casework objectives of the CLOs, as set out in the *Service Objectives and Priorities* documents.

- To develop innovative partnerships with the private bar and community agencies in order to improve bail, sentencing and disposition planning for criminal accused. (In Barrie, this is phrased somewhat differently: “Develop innovative relationships with the private bar, community agencies and the community in order to improve client services by assessing community programs which will support bail, sentencing and disposition planning.”);
- To establish links with local community legal clinics in order to improve coordination and services to clients with intersecting criminal/clinic law needs;
- To establish links with LAO’s Refugee Law and Family Law Offices in order to improve coordination and services to clients with intersecting criminal/refugee and criminal/family law needs (not applicable in Barrie).

All of these objectives can affect accused persons’ access to justice, either by developing new methods of interaction, new programs, or new ways of doing business. Referrals to specific lawyers are rarely made by community agencies, although some do inform clients of the existence of the CLO service and send clients to LAO for assessment, or refer clients to the CLO in certain circumstances.

In addition, the CLOs are expected to assist LAO

- To assist LAO to research and benchmark legal needs, legal aid services, demands, and costs, and
- To assist LAO to develop justice system policy and advocacy.

The following information related to the CLOs efforts with respect to the above objectives is based primarily on interviews with LAO and CLO staff and with LAC members (including NGOs). Most CJS respondents (with the exception of LAC members) were completely unaware of the CLO’s activities in respect of these objectives.

Our review of this area for this report is also restricted because of limitations to the empirical information that is currently available from the CLO Legal Files docketing information system—in

particular, information related to the amount of time CLO staff on specific types of Outreach and Law Reform efforts.<sup>27</sup> As with certain other areas, improvements to the Legal Files configuration and data entry procedures are underway. Those enhancements will allow a fuller analysis in later reports.

On the other hand, perhaps the most important reason for giving this area less attention in this first year report is that the CLOs seem to be progressing quite well in this area.

## 3.2 Observations

We asked LAO and CLO staff, for each of these non-casework objectives,

- *what activities had the CLO undertaken in pursuit of these goals?*
- *how did the CLO decide which groups and individuals to partner with on each?*
- *how effective have the activities been?*
- *what have been the most effective strategies?*
- *what challenges have been raised by these activities?*
- *will the strategies change in future? and*
- *is each of the goals still relevant and supportable? Should the goals be changed or reviewed?*

However, before discussing the responses to these specific questions, two general observations should be highlighted.

- First, each of these goals is still considered by the CLOs to be worthwhile.
- Second, all of the CLOs were fortunate to have found, in their community legal workers, persons who already knew the social service environment of their area sufficiently to understand the available resources to which CLO clients could connect.

### 3.2.1 Develop Innovative Partnerships With the Private Bar and Community Agencies In Order To Improve Bail, Sentencing and Disposition Planning for Criminal Accused.

All the CLOs support and make active use of community programs for bail, diversion, sentencing and disposition planning for their clients.

As yet, none of the CLOs has played a major role in improving or creating new *programs* of these types in their area. However, they have attempted to address innovative *procedures* to streamline, expedite and move matters forward. For example, the Ottawa CLO delivered a training program to bail supervision staff to assist them in being more effective when presenting cases in court.

In Brampton, considerable work has been done to try to address certain key procedures at critical stages in Peel (see below). In Barrie, an innovative partnership with local CAMH officials has led to productive ways of doing business. The Barrie community legal worker has been able to become involved with clients before bail and to immediately organize a medical assessment. She is often contacted directly by CAMH case workers and, on occasion, by Duty Counsel. The community legal worker and the staff lawyer are involved in preparing for both bail and sentencing hearings, and in assisting the accused to retain or obtain employment and to develop an appropriate proposal to put

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<sup>27</sup> It can however be stated that the CLOs spent considerably less time on these non-casework objectives than they do on handling specific legal cases.



to the Crown and to the Court with respect to bail, sentencing and probation. The CLO expressed concern that the community legal worker recently has been excluded from interviewing clients in the Barrie jail and we understand that this situation is being explored by the CLO Director and the Area Director. The CLO and CAMH have initiated a community education program for mental health workers in Simcoe County, that is detailed below.

### 3.2.2 Establish Links to Improve Services to Clients with Intersecting Needs

The CLOs have the objective of establishing links with local community legal clinics in order to improve coordination and services to clients with intersecting criminal/clinic law needs; and establishing links with LAO’s Refugee Law and Family Law Offices in order to improve coordination and services to clients with intersecting criminal/refugee and criminal/family law needs (not applicable in Barrie)

The Director of the Ottawa CLO estimates that 20-25% of the CLO’s clientele have a family matter or a poverty (homelessness) matter at the same time as their criminal matter.

The CLOs have all taken the approach of meeting with NGOs and clinics which serve the target groups mentioned in their objectives. In addition to the contacts by the Community Legal Worker, the CLO Directors have all made contact with some or all of the community and LAO clinics in their area to discuss their respective mandates.

In both Ottawa and Brampton, the CLOs’ public education program was aimed broadly at local advocacy and service groups with a particular focus on offender programs, social services, poverty, community health, immigration, or ethno-cultural issues. Getting known by the workers who provide services to the target groups was considered the best means to reaching and making their clientele aware of legal aid services. These presentations to NGOs – over 30 at both sites – explain legal aid in general terms, and the new availability of criminal legal aid to non-certificate accused through the CLO. In Brampton, the CLO is focusing on agencies helping youth, immigrant communities, and the homeless, in an attempt to assess how to better serve this clientele. The following list of groups to whom presentations were made by the Ottawa Community Legal Worker illustrates the extent and range of the effort being made in this area:

**Figure 3-1**

<b>Presentations Done by the Ottawa CLO Community Legal Worker</b>		
<ul style="list-style-type: none"> <li>• House of Hope</li> <li>• Causeway Work Center</li> <li>• Capital City Mission</li> <li>• The Men's Mission</li> <li>• The Salvation Army</li> <li>• Youth Services Bureau</li> <li>• Center 507</li> <li>• Elizabeth Fry Society</li> <li>• Shepherds of Good Hope</li> <li>• MAP Ottawa</li> <li>• Overbrook Forbes</li> </ul>	<ul style="list-style-type: none"> <li>• Community Resource Centers</li> <li>• Sandy Hill Community Health Center</li> <li>• The Well</li> <li>• Cornerstone</li> <li>• YSB-Drop In</li> <li>• Intake Workers Meeting- From all the Community Resource Centres</li> <li>• La Soupe</li> <li>• Centre 454</li> <li>• Ottawa Salus</li> </ul>	<ul style="list-style-type: none"> <li>• Odawa Native Friendship Centre</li> <li>• Ottawa Community Care Access Centre</li> <li>• YMCA</li> <li>• YSB- Young Women's Centre</li> <li>• Somali Family Centre</li> <li>• West End Youth Service Provider Network</li> <li>• Blair Court Community House</li> <li>• Carlington Act Team</li> <li>• Caldwell Family Centre</li> </ul>

The Barrie CLO’s most significant success in this area has been in its developing relationship with the Canadian Mental Health Association (CMHA). A representative of CMHA has been a Local Advisory Committee Member since its inception and has assisted both the CLO and members of the

private bar to respond to the needs of the mentally ill. In addition, the Barrie CLO hired, as its second staff lawyer, an experienced criminal lawyer with considerable experience and understanding of both the legal and human needs of the mentally ill. As well, the CLO's community legal worker had worked for the Elizabeth Fry Society and also had experience working with mentally ill accused .<sup>28</sup>

The CLOs are also becoming involved in joint initiatives or initiatives of other agencies. For instance, the Barrie CLO participated in a noon-hour meeting of mental health workers, with over 45 in attendance. The meeting was hosted by Simcoe County Human Services & Justice Coordination Committee and was funded by the Ministry of Health and Long Term Care. It is anticipated that further such continuing education sessions will be jointly organized by the CMHA and the CLO for other mental health workers in Simcoe County who could not be accommodated at the first meeting.

The Barrie CLO would like to continue its outreach to both Aboriginal persons and to young persons involved with the criminal justice system. The CLO has made some contacts with Aboriginal communities both on Christian Island and the Rama reserve but has not had the time recently to continue to develop these relationships.

Many feel there is a continuing need in Simcoe County for more legal assistance for young people and specifically for young offenders, both in terms of representation and public legal education. The CLO director is an active board member of the Simcoe County Children's Aid Society and the staff lawyer is a member of the board of Newpath Youth & Family Services and also of PARS, which offer a sentencing and counseling programmes to men dealing with domestic abuse charges. Several of the interviewees encouraged the use of the web and the development of a CLO Website that would provide legal information specifically targeted to both young people and to the NGOs, teachers, probation officers and police that deal with them.

With respect to all sites, being permitted to distribute a CLO pamphlet to these groups would have assisted the outreach effort. Unfortunately at the time of writing, in all three sites no CLO pamphlet was in circulation in the CLO area. The local bar associations have opposed such pamphlets as unfair (because private bar members cannot afford pamphlets) and "touting". As we saw from the first round of interviews, in the summer and fall of 2005, however, another prominent opinion is that a service funded by taxpayers should be "permitted" – and possibly even obliged – to advise the public of its services.

Contact between clinics and the CLO on specific cases does not seem to be frequent, or necessary.

#### 3.2.3 Advancing the Administration of Justice

The CLOs have the objective of promoting and undertake litigation to advance the interests of LAO criminal accused in areas such as bail and new legislation. (As noted above, in Barrie, this is phrased somewhat differently: "Promote and undertake litigation to advance the administration of justice.")

None of the CLOs has, as yet, undertaken any "law reform litigation" in the sense that it is intended to address a systemic unfairness, speak for a class of persons, or change the law. However, some of the CLOs' individual cases have involved challenges which have the potential to create broader change. It was noted that the limits on the CLOs' ability to undertake appeals has perhaps limited the extent to which these cases will generate broader change.

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<sup>28</sup> The work of the CLO with the mentally ill has also been facilitated by the CMHA receiving funding (not from the CLO or LAO) for additional courtworkers.

In addition, the Brampton CLO has launched or joined in three *administrative* initiatives intended to address practices or policies in the larger Brampton courthouse which have a systemic impact.

Disclosure is one of the chronic issues in the Brampton courthouse, and the CLO offered to assist with any systemic effort which could be undertaken to alleviate the problems. The CLO undertook a background study to shed light on the Disclosure situation in Peel. The method was twofold. First, the CLO's community legal worker surveyed certain police forces as to their practice for providing information to the Crown for disclosure at first appearance, and for other police services, he canvassed the actual disclosure received on the cases of the Brampton CLO in the files opened as of July 31, 2005. Second, he compared, again for each separate police service, the information provided by the Crown for disclosure at first appearance. Several key pieces of information which were provided by the Peel Regional Police Force were not included in the disclosure by the Peel Crown Attorney's Office. In approximately 55% of Brampton CLO cases, additional disclosure is required beyond that provided at first appearance. The findings of this research were shared with the Peel Criminal Lawyers Association, the Crown's office in Peel, the Peel regional police, and the Director of Crown operations for the Central West Region.

Arising out of the findings of this study, the CLO has devised a standard practice and forms for the initial as well as "second request" (if required) for additional disclosure from the Crown. A CLO database has been set up in part to track the time and the additional appearances which pass before disclosure is complete. This practice and data will continue to be used to address the disclosure issue.

In addition, the Brampton CLO is working on a proposal for changing the trial date selection process in Peel. The current procedure is extremely time-consuming for defence lawyers, who are required now to proceed physically to various points within the courthouse, queue up and obtain the information or decision they need. This process can easily consume half a day of a lawyer's time. A new proposal has been devised which would take some of the burden off defence counsel and allow the process to proceed without the "walkabout".

The Brampton CLO has also been exploring options to support development of a proposal for addressing the difficulties which accused in custody have in contacting sureties for bail.

#### 3.2.4 Assist LAO to Research and Benchmark Legal Needs, Legal Aid Services, Demands, and Costs

One of the more longer term objectives of the CLOs is to assist LAO in obtaining information to help assist in estimating benchmark values for the time and costs required to provide different types of legal services.

Providing benchmarking information in many areas will require configuring the CLO management and time docketing system (Legal Files) in a manner that will ensure it is capable of collecting, storing and reporting the specific types of information required for LAO benchmarking. In addition, procedures must be designed and staff trained to the standard necessary to ensure the completeness and quality of the data required. As noted in key places throughout this report, a strong start has been made in this area. However, needed improvements have been identified and work is still underway to effect those improvements. Until that work is completed, addressing the benchmarking objectives of the CLOs will be delayed.

In addition, as part of the benchmarking effort, the intent was to have the CLOs forward "Form 50s" to LAO Headquarters for entry into the same system (PeopleSoft) that captures equivalent Form 50s

from the private bar through the LAO Web portal. This process would be especially important to providing information that is comparable to that provided by the private bar on certificate cases—at least until such information could be reliably and accurately be produced by Legal Files.

Unfortunately, Form 50s were only available from a substantial sample of Barrie cases (but very few from the last quarter of the first year operations) and around 10 Ottawa cases. Although special efforts were made by LAO to convert these Form 50s to electronic format in special files for this evaluation report, there do not seem to be in place ongoing procedures for ensuring that Form 50's are submitted in a timely fashion (especially by the Brampton and Ottawa CLOs), and are routinely entered into the PeopleSoft system.

The evaluation will, however, continue to monitor efforts in this area.

#### 3.2.5 Assist LAO to Develop Justice System Policy and Advocacy

(In Barrie, the above two objectives are combined and phrased somewhat differently: “Through participation in the evaluation process to research and benchmark legal needs, legal aid services, costs and contribute to the development of policy to improve LAO delivery of services to the community.”).

All of the CLOs have allowed LAO to use them as sounding boards or a source of advice on various matters, from the ideal setup of duty counsel services, to the design of data systems to monitor and assess their effectiveness, other potential criminal justice system reforms.

Future reports will monitor the CLOs evolving and more longer term role in this area.

### 3.3 Concluding Comments

In the evaluation team's opinion, each of the CLOs has, to date, chosen an appropriate strategy for the non-casework objectives in their own area. These strategies have all been different, and have been driven by the predominant concerns of the offices.

In Barrie, the rapid growth in the CLO's cases, and the relatively serious nature of those cases, has been the most salient factor for that office. Because many of these cases have come to involve mentally disordered accused, new arrangements and partnerships with local CAMH workers have evolved, which have the potential to improve case processing.

In Brampton, the sheer volume of cases and administrative difficulties in the Brampton courthouse have presented the CLO with the challenge of addressing systemic problems. Unlike the private bar, the CLO is well situated to devote some of its resources to opening up a broader front on these issues, and because the buildup in the Brampton caseload was much more gradual than in Barrie, the Brampton CLO has been active on these fronts.

Ottawa is in a different situation again regarding effecting systemic change. The one challenge has been to enhance the capabilities of the junior CLO lawyers. However, the Ottawa CLO has, nonetheless, made excellent progress in establishing good relationships with the community agencies with which it routinely interacts, such as bail supervision and diversion programs for assisting clients. It is probably also fair to say that as the CLO continues to build greater credibility, it will be in an even better position to influence the larger environment.

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## Chapter 4: PROCESS OBJECTIVES

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### 4.1 Introduction and Format

To be effective and efficient overall, the CLOs will have to have effective and efficient policies and practices in each of five areas. The key evaluation questions are grouped below under these five areas: leadership and direction; organization and responsibilities; effective strategies, tactics and procedures; resources; and support systems. Decisions and activities in one area often have significant impacts on the effectiveness of decisions and activities in other areas. All five areas will affect the sustainability and resiliency of the model.

### 4.2 Leadership and Direction

The CLOs and LAO, must provide effective leadership and support to encourage and guide the planning and day-to-day work of all groups who might contribute to the success of the unit.

*Was the policy direction provided to the CLOs clear to CLO staff and to those elements in the CJS and larger community who needed to understand it?*

Most CLO staff felt they knew what cases LAO wanted them to focus on and appreciated, to some extent, that LAO had permitted each of the CLOs to find its own way within its own environment and within the guidelines set out in the *Protocol and Service Objectives and Priorities*. However, now that their caseloads were reaching or at capacity, many felt that the time had come for LAO to become more involved with assisting the CLOs in deciding how to focus their caseload. The CLOs believe that LAO wants them to be “innovative” in their methods, though LAO has given little indication as to the nature of this innovation. The CLOs appear to want more feedback from LAO (as well as from the larger criminal justice environment) on how they are doing with their case mix and with innovation.

Clear communication of the mandate is obviously a prerequisite to ensuring its translation into action—especially action from outside groups whose cooperation and support may be instrumental to the CLO’s success. The mandate of the CLOs was not clear to most of the CJS representatives interviewed. Most CJS interviewees were unable to state clearly what the CLOs were mandated to do, and could not venture a guess as to the proportion of their cases that were certificate or non-certificate. To some extent, this lack of clarity is understandable. A lack of clarity about the CLO mandate is not an issue in certain circumstances; Crowns interact with CLO lawyers as they would with any other

defence counsel, when and as they appear for the accused. To the extent that lack of clarity might affect the way in which the court and LAO/CLO operations mesh, however, they are important.

Two of the CLO Directors (Brampton and Ottawa) have been collaborating on a CLO Office Procedures Manual which consolidates and clarifies current CLO operational principles and policies.

Certain LAO policy issues that benefit from attention by senior LAO officials were raised in these interviews with the different groups:

- the work of the CLOs raises a fundamental fairness issue regarding the current LAO coverage criterion which makes non-“loss of liberty” accused ineligible for both certificate service and duty counsel representation at trial. With high percentages of these “non-certificate” cases being withdrawn or stayed as CLO lawyers move to defend them, questions arise as to the protections required for these cases as well as certificate cases;
- unlike for certificate clients, there is no provision for non-certificate clients who are just above the financial eligibility cutoff to enter into payment agreements to reimburse LAO for some part of the cost of their representation;
- the CLOs are not supposed to do s. 810 (peace bond) cases or appeals from summary convictions, for reasons which are essentially administrative in nature;
- LAO and the CLOs have also had discussions over whether the CLO should assist accused who were in unusual situations and not normally covered – such as one case in which two out of three co-accused were represented, and their defence was that the third (unrepresented) was responsible.<sup>29</sup>

As the CLO caseloads continue to grow, each CLO will – separately and in discussion with LAO and their LAC – need to make decisions about either dedicating more resources to the CLO, or prioritizing cases for CLO assistance. There are important policy considerations involved in some of the criteria which are under review, including:

- the extent to which the CLOs should take certificate cases for which the private bar is competing, in order to either (a) provide a better service for hard-to-serve clients, or (b) build and keep sharp the legal skills needed for certificate cases;
- the proper balance or mix in the CLO caseload between certificate clients – those with more access to justice issues and those without – and non-certificate clients who have triable issues or a valid defence;
- the relationship between the CLO and duty counsel, including the extent to which the CLO should take cases which duty counsel can handle just as well; and
- the amount of time the CLO should be spending on non-casework objectives, such as public legal education.

Since the CLOs’ inception, LAO has given relatively little broad policy input to the CLOs on the kinds of cases they should prioritize or begin refusing once caseloads justify being more selective. In part, this reflects LAO’s initial approach of allowing the individual CLOs the flexibility to find their own way and respond to emerging situations. Now a stronger leadership role may be in order.

*What assistance and support did the CLOs receive from the organized legal profession – Criminal Lawyers Association, local bar, Ontario Bar Association, the Law Society of Upper Canada?*

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<sup>29</sup> As would be expected, as with most studies of legal aid, concerns were also raised that the financial cutoff for legal aid eligibility is too low – too many people do not qualify financially.

*Were CLOs research memos, motions, trial and appellate briefs and precedents made available to the local bar, LAO research centres, and the criminal bar?*

Far from “assistance and support”, the organized legal profession in Ontario initially offered opposition to the CLOs and their mandate (suggesting that members of the private bar could have been offered the opportunity to provide non-certificate service). In addition, the CLO lawyers have been excluded from full—or in some cases any—membership in their local Criminal Lawyers’ Associations, and over the first year of CLO operation, the organized bar has opposed certain practices, including:

- allowing LAO to mention the CLO in its “refusal letter” to non-certificate cases;
- allowing CLO lawyers to be on “the list” of criminal lawyers given to arrested persons;
- allowing the CLOs to describe their services in an information pamphlet;
- allowing the CLO lawyers to participate in Bar and Bench Committees; or
- allowing the CLOs to continue with certain innovative practices (such as interviewing clients in the Barrie county jail prior to bail).

In the year and a half since the CLOs began operating, we detect that the tone and intensity of the private bar’s opposition to the CLOs has moderated somewhat—albeit not to the extent the CLOs would hope. In large part, this is undoubtedly due to the fact that the CLO continue to make efforts to work with the private bar, and also because most bar members have not had their practices affected in any appreciable way by the introduction of the CLO. Our interviews suggest, in fact, that there is increasing recognition and acceptance of the CLOs. The CLO staff members have continued to be good colleagues, responding to requests for assistance for clients and seeking the advice and assistance of the criminal bar in appropriate circumstances. The CLOs exchange precedents and legal research with some members of the criminal bar.

Nonetheless, there is still considerable way to go to establishing a positive overall relationship with the bar. There is still a vocal and significant number of private bar members strongly opposed. In addition, the Simcoe County Criminal Lawyers’ Association continues to exclude the CLO staff from membership. Ottawa CLO lawyer face similar exclusions, and CLO lawyers in Brampton have been denied full membership in their criminal lawyers’ association. In addition, the County and District Law Presidents’ Association (CDLPA) still prints items in their newsletters that are very critical of the CLOs, even calling for their demise.

*What support did the CLOs receive from LAO?*

The CLOs are currently receiving very good and helpful legal research from the LAO LAW, a group within LAO that is available to provide legal research and advise support to LAO lawyers. The Barrie CLO in particular has requested research from the LAO LAW for a number of major cases in regard to sentencing and applications for disclosure and has received both memoranda and facts that have been utilized on major cases. These are the key areas where assistance is required from LAO-HQ with respect to casework.

The CLOs could also use further assistance from both LAO and the provincial government in promoting services which would assist clients, including further mediation and diversion programs, appropriate services for Aboriginal clients, as well as diagnostic and therapeutic treatment facilities for adults and youth with emotional and mental illnesses.

The CLOs would also benefit from having a single identifiable reporting relationship within LAO. At present, there is no one person at LAO who is responsible for the CLOs; many take an interest, and

several have a role vis-à-vis the CLOs. It is often unclear who is the “go-to” person for a given CLO issue is at LAO.

*Was there an effective process for periodic assessment of the achievement of objectives?*

Interview data suggest that Area Directors’ and CLO Directors’ style and activities for assessing the achievement of objectives was mostly fairly informal. The Directors tend to focus on the management of individual cases. The Area Directors use their contacts within the greater justice environment to obtain feedback on the CLOs. In two sites, the Area Director and CLO Director speak regularly if somewhat informally, to discuss operational issues as they arise. One of the Area Directors regularly reviews Legal Files monthly statements as well.

Two of the Area Directors indicated that they wish to come to a clearer notion in their own minds about their proper role vis-a-via the CLO. Among the possibilities under consideration are: an annual review of goals by the CLO staff, the Area Director and the LAC; weekly reviews of current casework; priority setting for new caseload; and administrative matters.

### **4.3 Organization and Responsibilities**

The CLO must ensure that there is a clear and effective allocation of accountabilities and responsibilities for all essential tasks.

*Did all CLO staff have clear written statements of their responsibilities?*

There are no formal job descriptions for the CLO positions, although all staff were very clear about their responsibilities in the organization at the time of the interviews. However, the draft Office Procedures Manual provides direction for the overall work and that of each position.

*Were there effective partnerships and processes for obtaining the necessary contributions from external groups?*

The CLOs have, for the most part, developed good working relationships with key community groups with intersecting interests in serving their common clientele. NGOs working with the CLOs tended to rate them highly on cooperative relationships, including being reliably accessible by telephone, returning phone calls, being available at short notice to talk, giving sufficient advance notice of important dates and requirements, understanding their clients and the appropriate services for them.

*Were intake and triage services efficient, timely and knowledgeable?*

No criticisms of the intake or triage processes were offered or found. The CLOs are making excellent use of their skilled and knowledgeable community legal worker staff for both intake and triage, and in many cases beyond.



## 4.4 Effective Strategies, Tactics and Procedures

The CLO must combine and utilize all available resources in ways that best provide the services required to achieve objectives, at the corporate, management and individual level.

*Did the CLOs effectively use traditional and innovative service delivery methods?*

The CLOs use a mix of the traditional practice of criminal law and innovations made possible through community legal workers and community partnerships, as well as creative attention to the broader challenges of the clientele and the court.

(This aspect of the CLO operations has not been stressed in the first year of the evaluation—mainly because this is not an area that has been identified in our research as being of concern.)

## 4.5 Resources

LAO and the CLOs must ensure that the appropriate levels of resources are available, and that those resources have the required capabilities.

*Were staffing levels adequate to achieve the objectives?*

As the CLOs' caseloads were gradually growing, staffing levels were more than adequate. As the CLOs each passed the one-year mark in operations, the situation was changing, however, and as of November, 2005, the Barrie CLO now considers itself at or above capacity. It should, however, be noted that operational standards for what constitutes "capacity" are as yet not developed making it difficult for the evaluators to assess whether the statement is true—of Barrie or of the other CLOs.

*Were gaps in the competencies of staff in relevant areas identified?*

*Were competencies improved where required (including, e.g. by training, mentoring)?  
Was ongoing supervision effective?*

*Were staff lawyers provided with a supportive working environment with appropriate supervision, continuing education, salary, recognition and feedback?*

The three CLOs are each in a different situation with respect to the **experience** of their lawyers (all the community legal workers are highly experienced). This translates into different requirements for training, **supervision**, mentoring and review.

In Brampton, for example, all three lawyers are experienced not just in the practice of criminal law, but in the complexities of its practice in the Brampton courthouse. They need little or no ongoing or formal supervision, just clarification, information, or a second opinion on an as-needed basis. The CLO staff discuss complex cases and difficult clients when issues arise.

In Barrie, the two lawyers, the community legal worker are all experienced in criminal law. They are well known and respected within Simcoe County and the second staff lawyer is an experienced criminal lawyer who has considerable experience in working with mentally ill accused. The CLO staff discuss complex cases and difficult clients whenever possible or when a major case is being prepared and argued. During the early months of the Barrie CLO, the Director reviewed all files, but

he has not been able to allocate time to monitor or review the cases of his colleagues because of pressures on the Director's time and his own heavy caseload and regular court appearances.

In Ottawa, the inexperience of the junior lawyers made – and continues to make – the situation very different. As CLO/LAO personnel in Ottawa put it themselves, the junior lawyers are “still finding their feet”. As a couple of the CJS respondents put it, they are in the same situation as any junior lawyer in private practice, learning mostly on the job. The Ottawa CLO needs to continue to invest in a strong program of on-the-job training and active supervision/mentoring in order to continue to bring the junior lawyers along. The CJS respondents we interviewed commented favourably on the hard work, passion, dedication and preparation of all the CLO lawyers; only the experience – which is best gained on the job – is at issue. One Ottawa judge said of one of the juniors at the CLO, “She’s going to be a great lawyer one day.”

It probably would have been preferable for the CLO Director to have co-counselled even more with the junior lawyers, and to have held strategic meetings to brief all staff on how to conduct each type of case as it arose – disclosure issues, defences, court norms, the case law, etc., perhaps team-counselling the first of each type of case. Certainly there is a need for increased file supervision; reviewing case strategies, co-appearing at applications and trials and giving ongoing feedback to the junior lawyers.<sup>30</sup>

The Ottawa CLO and LAO should develop a plan for addressing the juniors’ continuing needs—and their desires—for upgrading their skills and capabilities; in so doing, it will be necessary to review the time and resources available to address them, and helpful to use models from other LAO programs and initiatives such as those used in clinical law programs at various universities.

The salary issue was raised in interviews by a few CLO and CJS interviewees. As noted earlier, the concern is that the salary levels for the CLO positions may not be high enough to retain good people for long. Higher salaries for similar positions in Crown, LAO and other offices may cause staff from within the CLO to be tempted to seek jobs elsewhere. The CLOs did lose one staff lawyer (in Brampton) during the first year (1 of 8 in total for all three CLOs). However it is not clear how important salary was in that case. The person did however initially to another job within LAO. On the subject of salary, the members of the bar suggest that the best people will always be attracted to private practice because of the higher earning potential. Those members also have an understandable degree of resentment towards anyone doing the same work they do—at any salary—but (in their view) without the many headaches and pressures of running a business. In our first round of consultations, however, several bar members did acknowledge the value of the training received in junior bar positions within CLO.

The recognition factor is important internally to the CLOs, because the external environment is unlikely to provide it, or in some cases is openly hostile. This goes along with mentoring for junior staff in particular.

*Did CLO and LAO management develop appropriate responses to administrative, caseload, personnel, independence, quality of service and worker satisfaction issues?*

Each of the CLOs has addressed a number of administrative, case management and personnel issues, including equipment and systems problems, the continuing challenge of Legal Files, the software program for recording case information, and initial difficulties at one office in finding the best support worker for the job. These are to some extent predictable and normal growing pains which have been

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<sup>30</sup> In making this recommendation, the evaluators recognize that the Ottawa Director already counsels more than in the other CLOs.

handled as well as could be expected. The community legal worker in Barrie is still burdened with considerable administrative duties, however, and, if possible, alternatives should be found to this arrangement.

*Was office space, both at the CLO offices and in satellite and court locations adequate?*

*Was office equipment adequate?*

*Were there gaps in resources for necessary travel?*

Office space for the CLOs was close to area courthouses, and (much to the disgust of private bar members) more than adequate in two out of three locations. Office equipment was not always adequate—there were complaints about some machines and software. Budgets for disbursements did not present a problem, although more autonomy would have been useful at the beginning for certain services, such as transcripts, which are often needed on an urgent basis.

## 4.6 Support Systems

The work of the CLO must be facilitated by efficient management and administrative support systems. This will include development and maintenance of:

- *Automated Systems for managing individual cases (case management systems)*
- *Manual Records Management systems (for individual cases)*
- *Systems for Docketing CLO activity in individual cases*
- *Statistical systems for managing the overall CLO caseload (caseload management systems)*
- *Financial systems*
- *Communications systems.*

To date, the evaluation has focused on the main automated system used by the CLOs to collect, store and report information to support day to day case-specific decision making. This system, “Legal Files” is also relied on for supplying statistical information to support policy, planning and evaluation activities—including the current evaluation.

From our intensive first hand involvement with the design and operation of Legal Files, and extensive and intensive discussions with LAO staff involved with the design, implementation and operation of the system, we make the following observations and recommendations:

- 1) The positive potential of Legal Files should be recognized.
- 2) It should be recognized that the implementation of any major system is usually fraught with difficulties.
- 3) Strong efforts have been made by CLO staff to make the system work..

Nonetheless

- 4) There is a need for LAO senior headquarters staff and planners to better specify substantive considerations regarding data collection and coding requirements that flow from overall policy, planning and evaluation requirements – especially requirements related to how specifically staff time and activities should be docketed to case-specific functions, and

requirements related to how non-case specific law reform and outreach activities should be docketed.

- 5) There is a need for CLO directors to better specify substantive considerations regarding data collection and coding requirements that flow from day to day management decision-making (especially in the above areas).
- 6) There is a need for organizational mechanisms to be set up to collect and monitor the continuing currency of these substantive policy, evaluation planning and management requirements. The lead responsibility for this function should be within the planning (not computer operations) part of LAO headquarters. This function should also include responsibility for signing off on changes to Legal Files protocols that will affect the types of reports that can be produced.
- 7) The responsibilities for ensuring data quality within Legal Files have to be defined and centralized.
- 8) There is a need (after, and only after, the substantive requirements have been better specified) to conduct a review to assess and reengineer if necessary the operational procedures for collecting for and reporting data from Legal Files.

## 4.7 Concluding Comments

This Chapter of the report explores the extent to which LAO and the CLOs are meeting a number of Process Objectives related to: leadership and direction, organization and responsibilities, tactics and procedures, resources, and support systems. In most of these areas, CLO performance was adequate or more than adequate.

### *Leadership and Direction*

- The role and mandate of the CLOs is not clear to many criminal justice officials at their local sites. (**Recommendation**) Clarification and communication of the role by LAO would be beneficial.
- The analysis also showed some major differences in key areas of operations among the three CLOs, areas that include: the mix of certificate vs. non-certificate cases, the offence types of cases, way in which staff are assigned to cases, and the frequency with which different processes are used to resolve cases. This diversity may be beneficial. On the other hand, the diversity seems to have evolved from practice, not from explicit policy. (**Recommendation**) Again, a clarification of policy and operational direction by LAO would be beneficial.
- (**Recommendation**) Especially given the increased caseloads of the CLOs, there is a need for LAO-HQ to engage with the CLOs in a substantive policy discussion to guide future decisions about which cases each CLO decides to accept and which it decides to reject.

### *Procedures*

- The more quickly the CLO can get “on the record” for an accused, the greater the benefits to both the accused and the courts. (**Recommendation**) LAO should begin addressing ways in which referrals could be streamlined. Particular attention should be devoted to the low tolerance which many accused have for processes which may seem simple to others.

### *Resources and Support Systems*

- The CLOs feel that they are nearing capacity. (**Recommendation**) However, guidelines regarding what constitutes “capacity” have yet to be—and need to be—developed.
- The staff of each of the CLOs have received positive feedback from CJS officials interviewed. (**Recommendation**) However, continuing efforts should be made to enhance

staff capabilities—especially for staff with less experience in the Criminal Justice environment

- Legal Files has provided considerable information to support CLO management and this evaluation. However, the past year has uncovered a number of areas that need improvement. **(Recommendation)** Of immediate need is a concerted effort by LAO planners to document the specific types of information needed from the system. The work of the evaluation and other LAO initiatives have already begun defining those needs. Following that, additional work is needed by computer programmers and operational staff to set up procedures and train staff in their use.

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## Chapter 5: Overall Impacts: On the Justice System and Specific Justice Groups

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### 5.1 Overall Trends

In our interviews for the nine-month interim report, most private bar members were opposed to the CLOs, and most CJS officials were in favour of the one in their area. This year, we were most interested in interviewing people who had actually interacted on cases with the CLOs in the larger court environment. The bar were therefore not so prominent in our interviews on this round, though bar members were consulted. However, the bulk of our interviewees were CJS respondents – Crowns, judges, duty counsel, other court workers, and NGO workers who serve the courts’ “clients”. The officials who spoke to us are overwhelmingly in favour of the existence of the CLO in their area, probably more so now than they were at the time it was just starting.

The impacts of the CLOs on their local court and the players in it are summarized below. Readers who are interested in further detail on the responses to the applicable questions are referred to Appendix A.

### 5.2 Impacts on the Court and the Players

The impacts of the CLOs in the court system they serve are of several types. Overwhelmingly, the CJS officials whom we interviewed focused primarily on the CLOs’ impact in reducing the numbers of unrepresented accused (UAs) in the court. In addition, some interviewees suggested secondary benefits from the CLOs, including:

- The CLOs provide accused with more choice of counsel;
- Pressure on duty counsel was slightly relieved – principally in that duty counsel are no longer faced without options when confronted by a UA who wishes to go to trial;
- Shedding further light on the appropriateness of LAO’s “loss of liberty” criterion (accused who are unlikely to go to jail if convicted are not eligible for legal aid in Ontario, even if they qualify financially). Significant proportions of these persons are not guilty, if the rates of withdrawals and stayed charges among these CLO cases are an indication (see Figure 2-52 and Figure 2-53);
- A few interviewees suggested that the CLOs were setting a new standard for criminal defence work – one which was more “fearless”. These respondents were concerned about the erosion of the quality of legal aid criminal defence work generally.

### 5.2.1 Reducing Unrepresented Accused (UAs)

Crowns, judges and other court personnel who must sometimes deal with UAs are appreciative of almost any initiative which will relieve them of this problem. Because the CLOs represent people who might otherwise be unrepresented, court personnel generally favour the innovation, even where they have misgivings about erosion of the judiciary and certificate system. Not all CJS respondents saw this aspect, but those who did not also did not understand the CLOs' mandate very well, and tended to see the CLO as "just another law firm".

In addition to simply indicating that the CLO's benefit was in reducing UAs, some CJS respondents cited specific aspects related to this principal impact. These included:

- The CLOs were able to provide a more thorough, prepared, integrated and complete service than duty counsel. Duty counsel are not authorized to represent accused persons at trial in Ontario. In addition, several interviewees indicated that the CLO lawyers were able to "spend more than ten minutes" with the accused – duty counsel tend to be very busy;
- The administration of justice had, to the extent that the CLO represented otherwise unrepresented accused, been streamlined and made more efficient;
- Cases moved more predictably and consistently, and trial scheduling problems were lessened;
- The work of court personnel was made "easier" (mentioned particularly in Ottawa and Brampton);
- Plea negotiations had fairer outcomes (although some Crowns will not engage in plea negotiations with – nor even speak to – a UA, and a couple of Crowns noted that the junior lawyers at the Ottawa CLO had not had the experience to bargain effectively at first);
- Some suggested that the accused was more likely to benefit from a Crown/counsel pretrial or a judicial pretrial as a result of having representation (some Crowns and judges will not do pretrials with a UA);
- Some interviewees suggested that the CLOs provided more specialized expertise for certain client groups and in certain aspects, such as for mentally ill clients or in client-specific planning.

The interviews also asked whether respondents saw negative impacts from the CLO. The great majority of respondents in all stakeholder groups said they had seen none. Of those who pointed to a negative effect,

- A few interviewees from all stakeholder groups said they feared (rather than reported having seen) the loss of work to the bar, shrinkage of the legal aid roster, reduced choice of counsel for accused persons, or the further downstream erosion of judiciary;
- A few bar members suggested that the quality of the CLO lawyers was lower – since a good criminal lawyer in private practice could certainly make more than the CLO lawyers, the service would attract only inferior counsel, and the bureaucratic pressures would produce "assembly-line justice";

When asked “how the CLO could best contribute to improving the justice system in this area”, most interviewees indicated they should continue in their present mandate. Others (a minority of respondents) suggested:

- the CLO should confine itself to non-certificate clients;
- the CLO should take more serious cases, or more cases of “hard to serve” clients;
- the CLO should specialize in those cases which present an unmet need for legal services (“cases that fall between the cracks”), or cases from marginalized and typically under-represented groups;
- the CLO should undertake more systemic reforms of the local justice system.

Suggestions for changes or improvements to the CLO service included the following:

- the CLO should get on the record sooner, in order to reduce early remands and improve representation at early stages;
- the means by which UAs are referred to the CLO should be simplified; some interviewees suggested that even the current setup is too complicated for many UAs, who have a low tolerance for complexity and frustration;
- the CLOs and their mandate should be better known; and understood;
- in Barrie and Ottawa, a few interviewees suggested that the duty counsel function and the CLO function be better integrated, or combined into an extended duty counsel function, similar perhaps to that in Manitoba’s legal aid system;
- a few interviewees expressed concern about the salary levels at the CLOs, saying they were too low to keep good candidates, and too low compared with the Crown office.

### 5.3 Barrie

Many of the local criminal lawyers whom we interviewed last year were opposed to the CLOs, since they saw the CLOs as potentially impacting on their practices or on the number of lawyers willing to undertake criminal legal aid work. This year, representatives of the criminal bar are acknowledging that the CLO is neither affecting their criminal practice nor reducing the number of criminal lawyers willing to take legal aid certificate cases. The increase in the low-income population in Simcoe County and the increase in recently minted lawyers may have changed the issues within these communities as to the potential role (s) for the new CLO office.

Some interviewees who were concerned about the current workload pressures on and the continuation of the CLO service suggested that the CLO cut their caseload unless they are able to hire another staff lawyer. They suggested that the CLO may need to close intake of new clients for a period of time to have an opportunity to reflect on their caseload priorities and to deal with their current caseload.

### 5.4 Brampton

In Brampton, stakeholder opinion seems to be driven primarily by one factor: the overwhelming pressures and problems of the Brampton courthouse. Even those interviewees who were and still are offended by the creation of the CLO in Brampton could see a useful role for it in the Brampton courthouse, though they differed somewhat on what that role should be. From other interviewees in Brampton, there were many comments to the effect that the sheer size and volume of the courthouse’s business meant that any assistance in “streamlining” its operations – i.e., by representing people who



would otherwise be unrepresented – was welcome. “Any initiative is welcome – there are not too many cooks in the kitchen,” said one. Said another, “You need as many bodies as you can get to serve this court.”

Those who had the most interactions with the Brampton CLO said they helped fill a definite gap in representation service. How they defined the gap varied – several focused on mental health-related cases, others on non-certificate cases which went to trial, others mentioned cases which the private bar did not want (primarily money-losers and difficult clients), and one said “cases that fall between the cracks”.

Some of those who favour the CLO had rather effusive language to sum up their views. One judge said, “I’m a big fan. They are another important branch of the system. Justice is available through this.” Said one Crown, “They are a Godsend.” A second Crown said, “It’s a tremendous benefit.”

### 5.5 Ottawa

In Ottawa, reaction to the CLO among CJS representatives has been generally positive, as officials recognize that there is a role for the CLO – one which affects the ability of the courts and their officers to do their job more efficiently. No one genuinely doubts the passion and motivation of the Ottawa CLO lawyers, though the experience of the junior lawyers is troubling for some. This places a greater burden on the Director and LAO to ensure that the juniors get as much training, support, mentoring, feedback, and encouragement as possible until they have fully “found their feet”.

### 5.6 Concluding Comments

This Chapter explores issues related to the impact of the CLOs on the institutions, processes and workloads of the criminal justice system

- In our interviews last year, most private bar were opposed to the CLOs. Although the opposition may be abating somewhat, considerable opposition still exists.
- This year, we were most interested in interviewing people who had actually interacted on cases with the CLOs in the larger court environment. Therefore, the bulk of our interviewees were CJS respondents – Crowns, judges, duty counsel, other court workers, and NGO workers who serve the courts’ “clients”. The officials who spoke to us from these stakeholder groups are overwhelmingly in favour of the existence of the CLO in their area, probably more so now than they were at the time it was just starting.

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## Chapter 6: Summary of Conclusions and Recommendations

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This is the “First Year” Report in the three-year evaluation of the Criminal Law Offices (CLOs) and covers the operations of the CLOs from May 1, 2004 to June 30, 2005.

Chapter 2 of the Report focuses on performance of the CLOs with respect to their specific objectives related to delivering client services—overall and with special emphasis on their work relating to individual client litigation files. Key observations and conclusions include:

### *Justice Environment and level of Caseloads*

- Each of the CLOs has been implemented in an environment of increasing trends in criminal certificates issued
- Caseloads (i.e. services provided to clients for specific court cases) have built up in each CLO, to the point where each CLO feels it is approaching capacity. Brampton and Barrie are handling caseloads above those of Ottawa.

### *Filling Unmet Needs Generally*

- There are significant differences among the CLOs with respect to certificate/ non-certificate split of their caseloads.
  - In Brampton and Ottawa, caseloads are overwhelmingly made up of “non-certificate cases”.
  - In Barrie, certificate cases are in the majority – many of them serious sex offences and accused who have mental health problems
- The report provides considerable information on the types of clients currently accessing and receiving services, including: gender, language, ethnic origin, types of offences, and whether the cases exhibit special legal issues such as problems with disclosure or layered legal issues such as immigration of refugee considerations.
- Unfortunately, the CLOs are not recording in Legal Files complete and sufficiently accurate data on key client characteristics that would allow them to show whether or not their clients came from key target groups.

### *Impact on the Work of the Bar*

- Although there continues to be considerable resistance to the CLOs from the private bar, there is some evidence that the resistance is easing—at least to a limited extent. The majority perception is that the CLOs have not had a significant impact on the certificate work available to the bar. CLO certificate caseloads represent less than 1% of certificates issued to the private bar in Brampton and Ottawa. However, in Barrie the percentage is considerably higher, at 9%.

### ***Improving Client Access to services at Critical Stages in the Litigation Process***

- Criminal justice officials at the sites are mostly of the view that the CLOs are filling a gap in their local courts, providing assistance to accused who otherwise would have been unrepresented, and therefore would have either put the court and its officers through a difficult and time-consuming trial process, or would have pled guilty even though there may have been a viable defence and triable issues;
- As well, changes in the configuration of Legal Files and recording procedures will be required before it can provide reliable data on the extent to which the CLOs are providing key services at different points in the court litigation process (e.g. bail, plea negotiation, sentencing).

### ***Quality of Service***

- The evidence available, both data from interviews and data from the various automated information systems, shows no significant differences between the CLO certificate work and that of the private bar with respect to:
  - Assignment of lawyers to cases
  - Time spent on cases (if anything, the CLOs spend fewer hours)
  - The time elapsed from opening to closing a certificate file
- In Barrie and Brampton there is no evidence to support the concern that the CLO would be more likely to enter a guilty plea for certificate cases than would the private bar. Whether or not the current higher percent in Ottawa on certificate cases continues will be monitored during the next year of the evaluation.
- In general, CJS officials (e.g. judges, crowns, duty counsel) were also mostly of the view that the quality of the CLOs' work was of the same or higher quality than that of the local private bar;

### ***Important Issue related to Non-certificate cases***

- The high percents of non-certificate cases taken on by the Brampton and Ottawa CLOs which are withdrawn or stayed strongly supports the argument for having legal assistance available in such cases. (Previous research in this area suggests that if they had continued to be unrepresented, a high proportion of these accused would have pled guilty and been convicted.)

### ***Value for Money***

- The report provides estimates of the “imputed” fees earned by the CLOs for non-certificate and certificate cases. The report also provides expenditure budgets for the CLOs. As would be expected during a start-up year for a legal office, the imputed fees are considerably less than the expenses. Whether this situation continues after the CLOs have “got on their feet” will be monitored by the evaluation. However, that monitoring will also require enhancements to the way data are recorded in Legal Files.

### ***Non-Casework (Outreach and Law Reform) Objectives (Chapter 3 of the Report)***

- In the evaluation team's opinion, each of the CLOs has, to date, chosen an appropriate strategy for the non-casework objectives in their own area. These strategies have all been different, and have been driven by the predominant concerns of the offices.
- All CLOs have made significant outreach efforts towards establishing the desired contacts and partnerships with the community.
- One of the CLOs, in Brampton, has also engaged in significant initiatives to address systemic problems in the local court environment.

Chapter 4 of the report explores the extent to which LAO and the CLOs are meeting a number of Process Objectives related to: leadership and direction, organization and responsibilities, tactics and procedures, resources, and support systems. In most of these areas, CLO performance was adequate or more than adequate.

### ***Leadership and Direction***

- The role and mandate of the CLOs is not clear to many criminal justice officials at their local sites. **(Recommendation)** Clarification and communication of the role by LAO would be beneficial.
- The analysis also showed some major differences in key areas of operations among the three CLOs, areas that include: the mix of certificate vs. non-certificate cases, the offence types of cases, way in which staff are assigned to cases, and the frequency with which different processes are used to resolve cases. This diversity may be beneficial. On the other hand, the diversity seems to have evolved from practice, not from explicit policy. **(Recommendation)** Again, a clarification of policy and operational direction by LAO would be beneficial.
- **(Recommendation)** Especially given the increased caseloads of the CLOs, there is a need for LAO-HQ to engage with the CLOs in a substantive policy discussion to guide future decisions about which cases each CLO decides to accept and which it decides to reject.

### ***Procedures***

- The more quickly the CLO can get “on the record” for an accused, the greater the benefits to both the accused and the courts. **(Recommendation)** LAO should begin addressing ways in which referrals could be streamlined. Particular attention should be devoted to the low tolerance which many accused have for processes which may seem simple to others.

### ***Resources and Support Systems***

- The CLOs feel that they are nearing capacity. **(Recommendation)** However, guidelines regarding what constitutes “capacity” have yet to be—and need to be—developed.
- The staff of each of the CLOs have received positive feedback from CJS officials interviewed. **(Recommendation)** However, continuing efforts should be made to enhance staff capabilities—especially for staff with less experience in the Criminal Justice environment
- Legal Files has provided considerable information to support CLO management and this evaluation. However, the past year has uncovered a number of areas that need improvement. **(Recommendation)** Of immediate need is a concerted effort by LAO planners to document the specific types of information needed from the system. The work of the evaluation and other LAO initiatives have already begun defining those needs. Following that, additional work is need by computer programmers and operational staff to set up procedures and train staff in their use.

### ***Impact on the Court System (Chapter 5)***

Chapter 5 of the report explores issues related to the impact of the CLOs on the institutions, processes and workloads of the criminal justice system

- In our interviews last year, most private bar were opposed to the CLOs. Although the opposition may be abating somewhat, considerable opposition still exists.
- This year, we were most interested in interviewing people who had actually interacted on cases with the CLOs in the larger court environment. Therefore, the bulk of our interviewees were CJS respondents – Crowns, judges, duty counsel, other court workers, and NGO workers who serve the courts’ “clients”. The officials who spoke to us from these

## 6: Overall Conclusions & Recommendations

stakeholder groups are overwhelmingly in favour of the existence of the CLO in their area, probably more so now than they were at the time it was just starting.

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## Appendix A: Interview Questions About Impact on the Criminal Justice System (Chapter 5): Detailed Analysis of Responses

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The following are summaries of the responses to various questions posed of the Criminal Justice System respondents who were interviewed for the evaluation. These individuals are Crowns, judges, duty counsel, other court workers, and NGO workers who serve the courts' "clients". Although efforts were made to interview justices of the peace as well, none agreed at any of the three sites. In some cases, not all of the CJS respondents who were interviewed addressed each question in the full questionnaire; only those who addressed the question are reflected in what appears below.

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### A.1. Barrie

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In Barrie, a number of CJS respondents answered questions about the CLO and its impacts:<sup>31</sup>

- 15 stated that there were positive impacts of the CLO; 9 said that there were fewer unrepresented accused at various stages of the criminal justice process; 7 stated that had been able to provide accused better representation than the local Duty Counsel Service; one added that the CLO lawyer had stepped in where the DC was having difficulty with a mentally ill person who was detained; 5 stated that they thought that more mentally ill persons were represented by the CLO at bail hearings; 5 stated there were fairer outcomes of plea negotiations; 12 persons said that clients have more choice of counsel; 10 persons said that clients have more access to specialized legal expertise, particularly in mental health issues; 9 persons saw more innovative approaches to client services being developed by the office, particularly in client-specific planning by the office community legal worker; 5 persons said that pressure on Duty Counsel was slightly relieved or that Duty Counsel work was otherwise enhanced; three persons said that there was better collaboration with Duty Counsel; three said that they were not aware of a positive impact and saw the CLO as no different from the private bar; one said that s/he had not seen any positive impact but if the data indicated the persons who were not able to secure counsel had been represented by the CLO, that s/he would consider that a positive impact; and one said that s/he was not aware of the CLO but would see outreach to young offenders as a positive impact.
- 4 spoke to the negative impact of the CLO; all 4 were concerned about the negative impact on the bar – particularly the younger bar and the concentration on certificate cases; 12 said that they saw no negative impacts from the operation of the CLO; 3 persons believed that the local bar had lost work; one person said that the legal aid roster had shrunk and that clients had less choice of counsel; no interviewees believe that CLO clients have lower levels of services e.g. "assembly-line justice"; one stated that the CLO staff are lower quality lawyers; no interviewees believe that there were problems in the relationships between the CLO and the local Crowns.

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<sup>31</sup> We have attempted to provide "counts" of the numbers of interviewees who provided different opinions on issues. It should, however, be noted that some of those interviewed either submitted to only a short interview, or indicated that they felt unable to add value to our knowledge by answering certain questions.

- When asked if they had any concerns about the cases being handled by the CLOs, 14 CJS representatives said they did not, and one said that the CLO should not do certificate matters; 3 CJS representative said that CLO should take more non-certificate cases and that the complex cases should be handled by the private bar. One said that the CLO should put more energy into representing youth and young adults. The CLO should represent these clients as they are often refused an LAO certificate because of non-disclosure of their parents' economic circumstances.
- 15 spoke to the specific impact the CLO has had on their work or job; 6 said that CLO assisted and represented hard to deal with clients incapable of giving instructions and with the growing mentally ill population; 4 persons said that CLO had assisted the administration of justice by representing persons who were previously unrepresented -- they emphasized the mentally ill and youth ; 1 person said that the CLO had helped to educate him on the legal system and lawyer's role in representing Crown Wards in difficulty with the criminal justice system; 5 persons indicated that CLO had no impact on their work.
- 12 spoke to the specific impact on the justice system; 7 said that there had been no impact; 2 said there was more expeditious justice in Simcoe County because of additional representation; 3 said the CLO had created a "wedge" between the staff and the criminal bar; one said that there had been little impact to date but noted the need for more focussed advocacy and representation of various constituencies whose needs the were often not appropriately responded to by either the bench or the criminal bar.
- 7 spoke to the specific impact of the CLO on the local bar; 2 said that there was an improving relationship and some referral between the private bar and the CLOs; 4 said that there was continuing animosity and tensions between the private bar and the CLOs; one said that the CLO was perceived as an insult to the independence of the bar;
- 11 spoke to the impact of the CLO on Duty Counsel ; 3, including 2 Duty Counsel, indicated that they saw some collaboration including referrals of mental health and Indigenous persons to the CLO; one spoke highly of the community legal worker's relationship with the local bands and the First Nations police; two mentioned that the CLO provided another option for unrepresented youth appearing in the criminal justice system; one said that there was no impact by the CLO on handling mentally ill clients or sexual assault cases.
- when asked "how best the CLO could contribute to improving the justice system in the area", 16 CJS representatives answered: 5 indicated that the CLO should determine what are the gaps and fill them with quality legal services; 1 indicated that the CLO should set priorities and handle cases that they can handle well such as impaired driving and offences against the administration of justice; 6 said the CLO should place greater emphasis on the representation of marginalized and under-represented litigants i.e. Indigenous people, youth, women and the mentally ill; 3 persons said that they were concerned about burn-out of the staff and that the CLO must set clear priorities; 2 said that the CLO should undertake more systemic reforms and develop a more carefully orchestrated and systemic approach to social justice; one person said that the CLO should work with the growing number of new Canadians and immigrants moving into Simcoe County; 3 said that the CLO should be

providing more continuing legal education and consider creating an interactive website to provide information on the areas of the criminal justice that the CLO specializing in.

- Some interviewees who were concerned about the continuation of the CLO service suggested that the CLO cut their caseload unless they are able to hire another staff lawyer; the CLO may need to close intake of new clients for a period of time to have an opportunity to reflect and deal with their current caseload; and another suggestion was for the CLO to work more collaboratively with the Duty Counsel on a more systemic approach to the unmet needs of low-income person in Simcoe County.
- When asked if they had any concerns about the kinds of cases “which are NOT being handled by the CLO, i.e., cases which you think they SHOULD be handling, or handling more, but are not” 18 CJS responded. 10 said that they had no concerns about the types of case that are being handled by the CLO; one said that the CLO should continue its investigation into inmate issues at the mega-goal ; one said that women in homeless shelters often fall through the cracks and need representation in criminal matters; one said that mental health, young people and Native people should comprise the CLO agenda; one said that the CLO should focus on less traditional criminal cases – Aboriginal issues in remote areas and Aboriginal young people who have difficulties with the law in Midland and Barrie and that the CLO should begin to reach out to the growing number of persons of colour who are coming before the Simcoe County Criminal courts; two said that there continues to problems of unrepresented accused in the Barrie and satellite criminal courts.
- When asked how “large or significant” the CLO’s impact has been 16 CJS representative responded; 8 said that their had been impact; 3 persons said that their had been a great or notable impact to the persons on the fringes of society, such as the mentally ill; 3 persons said that there was some impact by providing services to persons who might not have had lawyers; 5 persons said the CLO has made a limited impact and 3 persons stated that the CLO had little or no impact; and 2 persons said that they were neutral on this question.
- When asked “how best the CLO could contribute to improving the justice system in the area, 14 CJS representatives responded; several of the responses similar to those previously mentioned; the NGO’s stressed the need for the CLO continue doing what they are doing in the area of mental health, youth, women and Indigenous people and stressed more community education; several Crowns stressed the need for greater visibility of the staff lawyers in their courts between appearance dates and in support of the work of the CLO community legal worker; encouragement for more systemic approaches to the problems of women, youth and Indigenous people in addition to their developing involvement with the mentally ill; and the private criminal lawyers emphasized the importance of determining the gaps and filling those gaps; the judges emphasized the need to provide legal assistance to the self-represented litigant.
- 18 CJS representatives responded to a question also asked in the first year’s interviews: “Do you oppose the CLO as it is currently organized and funded?”; only two said “yes” and but indicated that if the office concentrated on filling the cracks that need to be filled that they would not oppose the Simcoe County CLO.



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## A.2. Brampton

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In Brampton, varying numbers of CJS respondents answered summary questions about the CLO and its impacts:

- 6 spoke to the positive impacts of the CLO; 4 said they had to deal with fewer unrepresented accused in the courthouse, at various stages; 3 said the CLO takes cases that “fall through the cracks”; one said that cases moved more predictably and consistently when the CLO was available; one pointed to fewer delays in trial start-up; one said the CLO “removes problem cases” by representing them;
- 5 spoke to the negative effects of the CLO; all said there were none, one adding “or none that are real”;
- when asked if they had any concerns about the types of cases being handled by the CLO, six interviewees responded, all to say they had no concerns; addressing the types of cases not being handled, or not as much by the CLO, one suggested they do more serious cases, one suggested they do more cases in custody, and several suggested the CLO handle more mental health issues, although only one of the CLO lawyers is perceived as having a lot of experience in this area;
- 5 spoke to the “specific impact which the CLO has had on your work/your job”; three said it made their jobs easier, one said there was no effect, and one pointed to the avoidance of matters involving unrepresented accused;
- impacts on “the local justice system” essentially amounted to the benefits of having fewer unrepresented accused in the courthouse – greater efficiency and “streamlining” the process (5 responses);
- specific effects on the local bar to date could not be pinned down by any CJS respondents; most who spoke to it referred to fears of possible downstream developments, such as expansion of the CLO function to a more widespread “public defender system”;
- three out of four CJS respondents who addressed the impact on the duty counsel function said the CLO essentially changed nothing that was not already in flux (the DCO in Brampton is undergoing an enormous shift in the use and deployment of duty counsel, which most interviewees felt was finally on the right track);
- when asked “how best the CLO could contribute to improving the justice system in the area”, five CJS respondents said the CLO should continue with its present mandate; one said it should do more serious cases; one said it should “take leadership” in the mental health area; and two felt that it should become more integrated with the duty counsel function;
- 6 addressed the question of how “large or significant” the CLO’s impact had been; two said the impact was “not significant”; one said it was “fairly significant”; one said it was “significant”; one ventured that 10% of case-managed cases were being affected; and the

last said that the CLO is handling “lots”, but “it is such a large jurisdiction” that the effect is hard to assess;

- some made suggestions for improvements to the CLO’s mandate and operations, including:
    - “remove the impediments to assisting everyone”;
    - duty counsel should be permitted to refer cases directly to the CLO for trials;
    - get the CLO involved and on the record faster;
    - keep the CLO out of certificate matters;
    - physically relocate the CLO to the courthouse.
  - a few interviewees felt that the DCO was the real area in Brampton that needed any and all available resources which could be summoned to assist; some of these persons suggested that the CLO should in some way be more integrated into the duty counsel function, though none seemed sure quite how;
  - three out of four bar members (per diem duty counsel) who were consulted were opposed to the CLO as currently constituted; the fourth had adopted a “wait and see” position.
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### A.3. Ottawa

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In Ottawa, varying numbers of CJS respondents answered summary questions about the CLO and its impacts:

- 11 spoke to the positive impacts of the CLO; 7 said they had to deal with fewer unrepresented accused in the courthouse, at various stages; 5 said that representation at trial was available to accused who do not wish to plead guilty; 2 said that the CLO acted as a referral resource to duty counsel; two were unable to name a positive impact or said the evidence was not yet in (one of these was unclear on the CLO mandate); two said that pretrials were more available, and more useful, to accused who had representation; and one said that the CLO serves to focus a spotlight on the justice interests of non-certificate clients;
- 11 spoke to the negative impacts of the CLO; 7 said there were none of which they were aware, and 4 pointed to the negative atmosphere within the bar surrounding the CLO issue;
- when asked if they had any concerns about the cases being handled by the CLO, 11 CJS representatives said they did not, and one said that the CLO should not do certificate matters;
- 15 spoke to the “specific impact which the CLO has had on your work/your job”; 7 pointed to dealing with fewer unrepresented accused, one adding that the difference was significant, and two saying it was relatively minor; 5 said the CLO had made their job easier; one pointed to a shorter work day because of the presence of the CLO; two pointed to the use by the CLO of the services of his/her agency, and the CLO’s support to the agency’s program (through training in effective testifying, etc.); and one said simply that the impact was “very little”.
- impacts on the “local justice system” and “indigent accused” were judged to be essentially the same as those noted above – essentially amounting to fewer UAs in the courthouse; 2 said that the justice system was “less inefficient” as a result of the CLO;

## A: Interview Questions About Impact on CJS

- 9 spoke to the “specific impacts of the CLO on the local bar”; 4 said they did not know; 3 said the effect was none; two said it was very little (It would be useful here to remember that in this round of interviews, we concentrated on Judges, Crowns, nongovernmental agencies and other members of the Criminal Justice System—and less so on members of the bar.);
- impacts on duty counsel were addressed by 14 CJS respondents; 5 said they did not know; 4 thought the CLO would have reduced the DC workload; 3 noted that DC still appeared to do most bail proceedings; one said “none”; and one noted that DCs now had an option to refer accused who did not wish to plead guilty;
- when asked “how best the CLO could contribute to improving the justice system in the area, 13 CJS representatives gave an answer; 8 said they should continue doing what they were doing, and/or expand their services to more clientele; 2 said they did not know; 2 said they should give legal advice; and one said they should “provide criminal defence for the poor”;
- when asked if they had any concerns about the kinds of cases “which are NOT being handled by the CLO, i.e., cases which you think they SHOULD be handling, or handling more, but are not”, 9 said they did not, but 4 said the CLO should do more cases generally, and the following additional suggestions were made by at least one respondent: more youth cases; more trials in DWI and family violence cases; more fraud cases; and a challenge to wrongful arrest practices;
- when asked how “large or significant” the CLO’s impact had been, 6 said it had been relatively small, especially given the caseload at the courthouse; 2 said they did not know; 1 said it was “not huge”; and responding at a qualitative level, one NGO worker said the effect on the NGO’s client base was “huge” in terms of the quality of the service offered and the results obtained in individual cases;
- some made suggestions for improvements to the CLO’s mandate and operations, including:
  - make it mandatory for the CLO to step in at trial to represent UAs;
  - keep salaries at a level which will be high enough to retain good staff, including both lawyers and community legal workers (two people also raised unfavourable comparisons with certain Crown or other LAO salary levels, to which CLO workers might be lured);
- concerns raised about the CLO included its relationship to duty counsel and whether DC and CLO functions should be merged into a single office (suggested by 3 respondents); finding ways to make the process for accessing the CLO less complex and confusing for clients, who tend to have a low tolerance for confusion; a concern about the suitability of the CLO lawyers to do mental health matters; and bar concern about the quail and unfair advantages of, and “touting” by, the CLO;
- 11 CJS representatives responded to a question also asked in the first year’s interviews: “Do you oppose the CLO as it is currently organized and funded?”; only one said “yes”.

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## Appendix B: Interview Guides

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This appendix contains

- B1. Interviewee instructions common to all interviews
- B2. Questionnaire to Criminal Justice System Personnel
- B3. Questionnaire to CLO staff
- B4. Questionnaire to CLO Directors
- B5. Questionnaire to LAO Area Directors.

### B.1 Common Instructions to Interviewers for all Interviews

1. All interviews are to be anonymous, and stressed as such to each potential interviewee. To ensure anonymity, assign each interviewee at your site a unique number, e.g., BR001. Write the interviewee's number only (not the name) on the notes you take. Keep the concordance listing between interviewee names and numbers in a separate document that you share with no one.
2. Read the introduction and the questions exactly as drafted. *Do not read the instructions in italics: they are to guide you, the interviewer.*
3. Do not vary from the given order of questions. However, if the interviewee “gets ahead of” the questions, do not stop him/her, but when the applicable question comes up in the interview schedule, say, “We have already touched on the subject of this next question [to some extent], but I will ask it in case there is anything you would like to add to your previous comments on the subject.”
4. Where the instructions say “*Probe*”, first listen to and record the interviewee’s unsolicited response. Then ask about each of the items after “*Probe*”. However, if the instructions say “*Do not probe*”, do not ask about the items listed thereafter – just let the interviewee talk – but record the responses about each item listed (i.e., we are interested only in unsolicited viewpoints).
5. Take notes on responses as close to verbatim as possible. If you are uncomfortable with your note-taking abilities, you may ask the interviewee if they would consent to being taped. Stress that the tape will be destroyed as soon as you have made up your notes.
6. If the interviewee asks you questions about the purpose, method, procedures, topics, etc., of the evaluation, answer them. If you are unsure about the response to any question, tell the interviewee you are not sure but will get back to them. However, do not answer questions about possible conclusions already drawn by the evaluation – only material already released in an interim report may be discussed.
7. Strictly avoid making assertions of your own about the issues in the evaluation, arguing with the interviewee, or agreeing with the interviewee. However, in certain circumstances (i.e., if you really are uncertain), it is acceptable to ask for clarification from the interviewee about the source of some assertions, e.g., “I am not sure I understand why you say that, could you elaborate?” or “When you say . . ., are you speaking from personal observation, or is this something you have heard or are concerned about, without knowing for sure it is happening?” Above all, do not appear to have made up your own mind already.
8. Type up interview notes as soon as possible.
  - Arrange the material within the template, i.e., insert responses under each of the question and sub-question headings.
  - Place direct quotes in “quotation marks”.
  - Any additional information or impressions you wish to offer may be added at the end of the notes.
  - Send a copy of your interview notes electronically to the other two core team members.

## B.2 Questionnaire to Criminal Justice System Personnel

Site (circle one)      Barrie/Newmarket      Brampton      Ottawa      General

Interview Date \_\_\_\_\_

Interviewer \_\_\_\_\_

Interviewee's Number \_\_\_\_\_

Interviewee's Position \_\_\_\_\_

Interviewee's Organization/Professional Affiliation

\_\_\_\_\_

Interviewee's Phone \_\_\_\_\_

Interviewee's email address \_\_\_\_\_

**INTRODUCTION:**      *Read verbatim to the interviewee.*

Hello, my name is \_\_\_\_\_ and I am part of a private, independent research team conducting an evaluation on behalf of Legal Aid Ontario. The evaluation covers the three sites – Barrie, Brampton and Ottawa – where LAO has established a Criminal Law Office. The evaluation takes place over a three-year period, concluding in the late fall of 2007, and includes periodic interviews with persons like yourself, surveys of clients, as well as analysis of data about cases served by the CLOs.

This interview is private and anonymous. What that means is that, although what you tell me may be used and even quoted in our reports, your name will never appear in any report. I will not attribute to you anything that you say to me, either in writing or orally, even with other members of the evaluation team.

Do you have any questions before we begin? [*Answer any questions*]

Q.1      May I first ask how long you have been working in the criminal justice system in [*site name*], in one capacity or another?      \_\_\_\_\_ years

Q.2      How familiar would you say you are with the work of the CLO?

### **CLIENT REPRESENTATION**

Q.3      [*Target Clients*] Please tell me what kinds of cases and situations you think have been the primary focus of the CLO during its first year? [*Do not probe*]

Q.4      To be sure nothing is missed, I am going to read you a list of particular case and situation types, and ask you if you think the CLO has handled cases or situations of this type in the past year – more than other types. [*Do not press if they say they have not seen enough to generalize.*]

CASE TYPE	YES	MINOR (slightly more)	NO	SPECIFY/COMMENTS
Non-certificate cases, i.e., financially eligible but not LOL				
Any particular charge type, e.g., DWI, sexual assault, etc.				
Cases in rural/remote/surrounding areas				
First offenders				
Clients from specific ethnic or cultural backgrounds				
Cases with mental health issues				
Young offenders				
Prison law/other Institutional law				
Layered legal issues				
Other cases/situations				

Q.5 What proportion of the CLO’s clients to date would you say have been eligible for or have been on a Legal Aid certificate?

Q.5a To what extent would the CLO be competing with the private bar for these certificate cases?

Q.6 Now I would like to ask about the non-certificate clients of the CLO. To what extent is the CLO competing directly with private bar members – i.e., what proportion of the CLO’s non-certificate clients to date would you say are cases in which the client would have no difficulty finding and paying for a lawyer from the private bar?

Q.7 Do you have any concerns or questions about the types of cases being handled by the CLO?

Q.8 Do you have any concerns or questions about the types of cases which are NOT being handled by the CLO, i.e., are there case types which you think they SHOULD be handling, or handling more, but are not?

**QUALITY OF CLO WORK**

Q.10 To what extent have you had an opportunity to directly observe the CLO staff in action, handling cases?

Q.11 Where have you observed them? (*check all that apply*)

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> bail court                          | <input type="checkbox"/> plea negotiation                    | <input type="checkbox"/> sentencing            |
| <input type="checkbox"/> plea court                          | <input type="checkbox"/> Crown-counsel pre-trial             | <input type="checkbox"/> judicial pre-trial    |
| <input type="checkbox"/> remand court                        | <input type="checkbox"/> trial                               |  |
| <input type="checkbox"/> case referrals (interviewee to CLO) | <input type="checkbox"/> case referrals (from CLO)           |  |
| <input type="checkbox"/> bail supervision program            | <input type="checkbox"/> diversion program                   |  |
| <input type="checkbox"/> sentencing program                  | <input type="checkbox"/> mental health issues cases          |  |
| <input type="checkbox"/> other specialty cases               | <input type="checkbox"/> liaison to jailed accused or sent'd |  |
| <input type="checkbox"/> outreach                            | <input type="checkbox"/> advocacy                            | <input type="checkbox"/> education             |
| <input type="checkbox"/> professional development            | <input type="checkbox"/> program development                 | <input type="checkbox"/> other (specify below) |
- 

Q.12 I am now going to ask you for your observations about how the CLO compares to private bar members in each of a number of areas. First I will ask you about how the CLO compares with respect to certificate cases, then with respect to non-certificate cases.

For certificate, cases, how does the CLO compare to the private bar with respect to:

- a. How often they ask for remands because they need more time to prepare
- b. How well prepared their cases are for court
- c. How well they argue their clients' cases
- d. How aggressively they seek the best possible result for their clients
- e. How likely they are to go to trial
- f. How skilfully they deal with Crowns, judges, diversion personnel, and other court personnel
- g. How much time they spend on their cases
- h. How expeditiously their cases proceed through the courts
- i. How effective they are in obtaining the best possible result for their clients

Now for non-certificate cases, how does the CLO compare to the private bar with respect to:  
**(repeat list)**

Q.13 Are there any unique, or especially well-developed, skills or capacities which you think the CLO brings to its work?

Q.14 Are there any skills, capacities or experience which you would say need improvement in the work of the CLO which you have seen to date? (*Get a sense of how widespread are these gaps.*)

Q.14a (***Only if interviewer notes gaps above***) Can you give me an example of how these gaps in skills or experience have affected the performance of the CLO staff?

Q.14b The CLO is also tasked with paying particular attention to special-needs groups such as mentally challenged accused, aboriginals, persons who don't speak English or French as their first language, etc.

- i. Were you aware that the CLO was targeting any of these groups?

ii. How well does the CLO meet the needs of these groups?

**OTHER CLO OBJECTIVES AND ACTIVITIES**

Q.15 As you may know, the CLO also has a mandate to pursue other goals. I am going to read you a list of these goals, and for each of them, ask you:

- what strategies you are aware of that the CLO has undertaken in pursuit of these goals
- how effective the strategies have been
- what have been the most effective strategies, and
- what challenges have been raised by these strategies.

Goals:

- A. Outreach to the community to improve access to justice, esp. to under-served groups and special-need clients
- B. Improve or assess (globally) bail, diversion, sentencing or disposition planning and programs
- C. Coordinate with other legal clinics, and improve services to clients with intersecting legal needs
- D. Promote and undertake litigation to advance the administration of justice
- E. Promote continuing legal education for CLO, DC and private bar
- F. Advocate for justice improvement for their client base
- G. Public legal education

**IMPACTS**

Now I would like to ask you about your perceptions of the CLO’s impacts.

Q.16 [*Positive Impacts*] Are there any positive impacts that you believe have come out of the operation of the CLO?

Q.17 [*If the above answer is “yes”*] What are those positive impacts? Do not probe. The list below is to help you organize your reporting of this interview.

FACTOR	YES	NO	SPECIFICS/COMMENTS
Clients represented who would not have been able to find lawyer to take their certificate (specify, e.g. in remote areas)			
Certificate-ineligible accused better represented than by DC service			
More accused granted bail			
Fairer outcomes of plea negotiation			
More clients able to go to trial represented			
Clients have more choice of counsel			
Clients have access to more specialized legal expertise, e.g., in mental health issues, prison law			



Clients represented at more stages in criminal process			
Pressure on DC reduced, or DC work otherwise enhanced			
Better collaboration and flexibility with DC function			
More/better public legal education			
More law reform litigation			
More innovative approaches, e.g., increased diversion options, client-specific planning			
Other positive impacts			
Other comments			

Q.18 [Negative Impacts] Are there any negative impacts that you believe have come out of the operation of the CLO?

Q.19 [If the above answer is “yes”] What are those negative impacts? *Do not probe. The list below is to help you organize your reporting of this interview.*

FACTOR	YES	NO	SPECIFICS/COMMENTS
Local bar has lost work (which lawyers affected most?)			
Roster has shrunk			
Clients have less choice of counsel			
CLO clients have lower quality service, e.g., “assembly-line justice”			
CLO staff are lower quality/inexperienced, etc.			
CLO-Crown relationship is too cozy or too coercive			
Other negative impacts			
Other comments			

Q.20 [Impacts on Groups] What impact do you think the CLO has had on ....

- a. Your work / your job?
- b. The local justice system?
- c. The local bar?
- d. Duty counsel?

- Q.20a (*Ask only of duty counsel*) Do you have any suggestions for refinements to the way in which Duty Counsel and CLO staff interact, cooperate or work together?
- Q.22 OVERALL, how large or significant has the impact of the CLO been on the justice system in this area?
- Q.23 How best could the CLO contribute to improving the Justice System in (site name)?
- Q.24 Do you have any other concerns about the CLO that we have not discussed, or any areas for improvement within the CLO?
- Q.25 Do you oppose the CLO as it is currently funded and organized? [*If the interviewee asks what is meant by the last phrase, say: "Funding for a three-year period was obtained from the federal government. The offices are given an annual operating budget which covers the fixed salaries of staff, as well as operating expenses for the year."*]
- Q.26 What else needs saying here that we have not discussed?

That concludes the interview. I want to thank you very much for your time.

### **B3. Questionnaire to CLO staff**

Site (circle one)      Barrie/Newmarket      Brampton      Ottawa      General

Interview Date \_\_\_\_\_

Interviewer \_\_\_\_\_

Interviewee's Number \_\_\_\_\_

Interviewee's Position \_\_\_\_\_

Interviewee's Organization/Professional Affiliation

\_\_\_\_\_

Interviewee's Phone \_\_\_\_\_

Interviewee's email address \_\_\_\_\_

INTRODUCTION:      *Read verbatim to the interviewee.*

This interview is private and anonymous. What that means is that, although what you tell me may be used and even quoted in our reports, your name will never appear in any report. I will not attribute to you anything that you say to me, either in writing or orally, even with other members of the evaluation team.

Do you have any questions before we begin? [*Answer any questions*]

#### **CLIENT REPRESENTATION (CASEWORK)**

- Q.1a    What are the largest (by volume) sources of referrals to the CLO?
- Q.1b    At what stage in the case does the CLO usually pick up the case (i.e., before or after arraignment, bail, etc.)?
- Q.1c    Would it be fair to say that you catch cases in time to represent them at bail only occasionally at most?
- Q.2a    Based on your experience so far, which clients and cases would you say reflect the areas of greatest unmet need in [this area] – cases which tended to be unrepresented or under-represented by duty counsel or the private bar?
- Q.2b    To what extent is the CLO currently filling those areas of unmet need, or conversely, to what extent is there still lots of unmet need?
- Q.3    Is the current mix of CLO cases a good one? Would you like to see it change?
- Q.4    Are there case types which you think the CLO should be handling, or handling more, but is not?

Q.4a Is the CLO currently at capacity (handling as many cases as it reasonably can)? If not, and you can handle more, what more can be done to attract clients?

Q.6 What is your impression about how the CLO compares to private bar members in this area in terms of:

- a. How often the CLO asks for remands because the CLO is not ready to proceed
- b. How well prepared the CLO's cases are for court
- c. How well the CLO argues its clients' cases
- d. How aggressively the CLO seeks the best possible result for its clients
- e. How likely the CLO is to go to trial
- f. How skilfully the CLO deals with diversion personnel, Crowns, judges, and other court personnel
- g. How much time the CLO spends on its cases
- h. How expeditiously the CLO cases proceed through the courts
- i. How effective the CLO is in obtaining the best possible result for its clients

Q.6a Are there any differences between certificate cases and non-certificate cases on any of the above dimensions?

### **OTHER CLO OBJECTIVES AND ACTIVITIES**

Q.7 Of the CLO's other goals:

- what activities has the CLO undertaken in pursuit of these goals
- how did you decide which groups and individuals to partner with on each
- how effective have the activities been
- what have been the most effective strategies
- what challenges have been raised by these activities, and
- will the strategies change in future?
- Is each of the goals still relevant and supportable? Should the goals be reviewed or changed?

Goals:

- A. Outreach to the community to improve access to justice, esp. to under-served groups and special-need clients
- B. Improve or assess (globally) bail, diversion, sentencing or disposition planning and programs
- C. Coordinate with other legal clinics, and improve services to clients with intersecting legal needs
- D. Promote and undertake litigation to advance the administration of justice
- E. Promote continuing legal education for CLO, DC and private bar
- F. Advocate for justice improvement for their client base
- G. Public legal education

### **POLICY / OPERATIONAL ISSUES**

Policy Environment

Q.10 Are there any LAO policies respecting the CLOs which you feel require elaboration or clarification? *[If an example is sought, say: "e.g., how much time you should spend on non-casework objectives; whether you should do prison law; who are "special needs clients"; etc.]*

Q.10a Is it clear to you which kinds of cases LAO wants you to focus on?

Q.11 Reverse question – are there any LAO or government policies which impinge on the CLO which you feel are or could become a problem?

#### Staffing

Q.17 Looking back, were there any gaps in the original skill sets or experience which you brought to the job? How have these been addressed?

Q.17a What further training, skills building, mentoring, etc. would you like in future?

Q.18 Are there any skills, capacities or experience which you would like to see the CLO enhance or build on in the future?

Q.19 Are there any unique, or especially well-developed, skills or capacities which you think the CLO brings to its work, such as sensitivity in working with immigrant or ESL clients, or client-specific planning for bail and sentencing?

Q.22 Is the distribution of work among CLO staff ideal, or are there distributions of work which you have had to arrange out of necessity? (*If clarification is sought, say: "For example, are there tasks being assigned to certain people out of necessity, and not because their talents are best used for these purposes?"*)

#### Quality, Quality Control and Benchmarking

Q.23 What methods and processes are used to ensure quality control in casework?

Q.24 Probe [*for the following items, if not covered in last Question*]:

- a. Is there routine and formal case conferencing?
- b. Do you observe CLO staff in and around court?
- c. Do you review case files and make suggestions?

Q.28 Have you ever felt that there was pressure of any kind from LAO to achieve greater efficiencies that would jeopardize the quality of the service the CLO provides? [*If yes*] How has the CLO responded to this pressure, and have the results been satisfactory to you?

Q.29 Do you feel you get enough feedback and direction to do your job effectively? What form does it take?

#### Visible Support and Partnerships

Q.30 Are there any areas where you would like to receive more help, support or direction from LAO, at any level, with individual cases? What areas are those? (*e.g., legal research from LAO-HQ, etc.*)

Q.30a Are there any areas where you would like to receive more general help, support or direction from LAO, at any level (i.e., not with individual casework)? What areas are those? (*e.g., technical assistance, etc.*)

**IMPACTS**

Now I would like to ask you about your perceptions of the CLO’s impacts.

Q.35 Globally, what would you say are the positive impacts that you believe have come out of the operation of the CLO to date? *Do not probe. The list below is to help you organize your reporting of this interview.*

FACTOR	YES	NO	SPECIFICS/COMMENTS
Clients represented who would not have been able to find lawyer to take their certificate (specify, e.g. in remote areas)			
Certificate-ineligible accused better represented than by DC service			
More accused granted bail			
Fairer outcomes of plea negotiation			
More clients able to go to trial represented			
Clients have more choice of counsel			
Clients have access to more specialized legal expertise, e.g., in mental health issues, prison law			
Clients represented at more stages in criminal process			
Pressure on DC reduced, or DC work otherwise enhanced			
Better collaboration and flexibility with DC function			
More/better public legal education			
More law reform litigation			
More innovative approaches, e.g., increased diversion options, client-specific planning			
Other positive impacts			
Other comments			

Q.36 Are there any negative impacts that you believe have come out of the operation of the CLO?

Q.37 What do you say in response to the following alleged “negative impacts” said by some to be caused by the CLO?

FACTOR	YES	NO	SPECIFICS/COMMENTS
Local bar has lost work (which lawyers affected most?)			
Roster has shrunk			
Clients have less choice of counsel			
CLO clients have lower quality service, e.g., “assembly-line justice”			
CLO staff are lower quality/inexperienced, etc.			
CLO-Crown relationship is too cozy or too coercive			
Other negative impacts			
Other comments			

Q.38 What specific impacts do you think the CLO has had on ....

- a. The local justice system?
- b. Duty counsel?
- b. The local bar?
- c. Indigent accused in the area?

Q.39 OVERALL, how large or significant has the impact of the CLO been on the justice system in [site name]?

Q.40 Based on the experience so far, what would you say is the most significant contribution that the CLO will ultimately make (e.g., responding to unmet need or under-representation of accused; testing a new service delivery model; benchmarking; law reform; etc.)?

Q.40a Is that the most useful contribution it could and should make?

Q.41 Do you have any concerns about - or on behalf of! - the CLO that we have not discussed?

Q.42 What else needs saying here that we have not discussed?

That concludes the interview. I want to thank you very much for your time.

Directors

#### **B4. Questionnaire to CLO Directors**

Site (circle one)      Barrie/Newmarket      Brampton      Ottawa      General

Interview Date \_\_\_\_\_

Interviewer \_\_\_\_\_

Interviewee's Number \_\_\_\_\_

Interviewee's Position \_\_\_\_\_

Interviewee's Organization/Professional Affiliation  
\_\_\_\_\_

Interviewee's Phone \_\_\_\_\_

Interviewee's email address \_\_\_\_\_

INTRODUCTION:      *Read verbatim to the interviewee.*

This interview is private and anonymous. What that means is that, although what you tell me may be used and even quoted in our reports, your name will never appear in any report. I will not attribute to you anything that you say to me, either in writing or orally, even with other members of the evaluation team.

Do you have any questions before we begin? [*Answer any questions*]

#### **CLIENT REPRESENTATION (CASEWORK)**

- Q.1a    What are the largest (by volume) sources of referrals to the CLO?
- Q.1b    At what stage in the case does the CLO usually pick up the case (i.e., before or after arraignment, bail, etc.)?
- Q.2a    Based on your experience so far, which clients and cases would you say reflect the areas of greatest unmet need in [this area] – cases which tended to be unrepresented or under-represented by duty counsel or the private bar?
- Q.2b    To what extent is the CLO currently filling those areas of unmet need, or conversely, to what extent is there still lots of unmet need?
- Q.3     Is the current mix of CLO cases a good one? Would you like to see it change, and if so, how?
- Q.4     Are there case types which you think the CLO should be handling, or handling more, but is not?
- Q.4a    Is the CLO currently at capacity – i.e., handling as many cases as it reasonably can? If not, and you can handle more, what more can be done to attract clients? If yes, what cases do you think you will identify for potential refusals of service in future, should the need arise?



Directors

Q.5 What process do the CLO and LAO use to assess the achievement of casework objectives? Is it sufficient? *[If a definition is sought of “casework objectives”, say: “To provide independent, quality representation and related services to target clients, within the applicable LAO frameworks for criminal defence work.”]*

Q.6 What is your impression about how the CLO compares to private bar members in this area in terms of:

- a. How often you ask for remands because the CLO is not ready to proceed
- b. How well prepared the CLO's cases are for court
- c. How well the CLO argues its clients' cases
- d. How aggressively the CLO seeks the best possible result for its clients
- e. How likely the CLO is to go to trial
- f. How skilfully the CLO staff deal with diversion personnel, Crowns, judges, and other court personnel
- g. How much time the CLO spends on its cases
- h. How expeditiously the CLO's cases proceed through the courts
- i. How effective the CLO is in obtaining the best possible result for its clients

Q.6 Are there any differences between certificate and non-certificate cases in any of the above dimensions?

**OTHER CLO OBJECTIVES AND ACTIVITIES**

Q.7 Of the CLO's other goals:

- what activities has the CLO undertaken in pursuit of these goals
- how did you decide which groups and individuals to partner with on each
- how effective have the activities been
- what have been the most effective strategies
- what challenges have been raised by these activities, and
- will the strategies change in future?
- Is each of the goals still relevant and supportable? Should the goals be changed or reviewed?

Goals: (taken from Service Objectives and Priorities)

- A. Outreach to the community to improve access to justice, esp. to under-served groups and special-need clients
- B. Improve or assess (globally) bail, diversion, sentencing or disposition planning and programs
- C. Coordinate with other legal clinics, and improve services to clients with intersecting legal needs
- D. Promote and undertake litigation to advance the administration of justice
- E. Promote continuing legal education for CLO, DC and private bar
- F. Advocate for justice improvement for their client base
- G. Public legal education

Q.8 What specific types of information do you need to periodically assess how the CLO is doing with these other objectives [non-casework]?

**POLICY / OPERATIONAL ISSUES**

Policy Environment

Q.9 What aspects of the [site name] court environment have the most effect on the CLO's ability to achieve its objectives?

Directors

Q.10 Are there any LAO policies respecting the CLOs which you feel require elaboration or clarification? *[If an example is sought, say: “e.g., how much time you should spend on non-casework objectives; whether you should do prison law; who are “special needs clients”; etc.]*

Q.10a Is it clear to you which kinds of cases LAO wants you to focus on?

Q.11 Reverse question – are there any LAO or government policies which impinge on the CLO which you feel are or could become a problem?

Choice, Continuity and Consistency

Q.12 How are decisions made as to which CLO lawyer will take on a new case, i.e., based on what criteria?

Q.13 Were the CLO’s clients always able to obtain the services of the CLO lawyer they wanted?

Q.14 Are there any problems raised by the number of CLO clients who have come from outlying areas, as a result of being unable to find counsel in their local area?

Q.15 How often was a CLO client represented in different court proceedings by a different CLO lawyer (i.e., not his/her original or primary counsel)? How was the client affected?

Q.16 Does the CLO model affect clients’ ability to obtain the services of the same lawyer on their next case?

Staffing **[get job descriptions]**

Q.17 Were there any gaps in the original skill sets or experience of the CLO staff which presented challenges to the CLO’s operation? How have these been addressed?

Q.18 Are there any skills or capacities which you would say are still, currently less well-developed in the CLO, which in future you would like to see addressed?

Q.19 Are there any unique, or especially well-developed, skills or capacities which you think the CLO brings to its work, such as sensitivity in working with immigrant or ESL clients, or client-specific planning for bail and sentencing?

Q.20 I believe that all of the CLO’s original professional (non-secretarial) staff are / are not still with you. Is that right?

*[If there have not been staff turnovers, skip to the next question.]*

*[If there have been staff turnovers] What were the reasons for the staff turnovers, and how were they addressed?*

Q.21 Could the CLO run more efficiently or effectively if you had a different mix of staff skills or positions? *[If clarification is sought, say: “for example, are there tasks being assigned to certain people out of necessity, and not because their talents are best used for those tasks?”]*

Q.22 blank

Quality, Quality Control and Benchmarking

Directors

- Q.23 What methods and processes are used to ensure quality control in casework?
- Q.24 Probe [*for the following items, if not covered in last Question*]:
- Is there routine and formal case conferencing within the CLO?
  - Do you mentor and observe CLO staff in and around court?
  - Do you review case files and make suggestions?
  - Does the Area Director play a role in quality assurance?
- Q.25 Do you have all the information you need to periodically assess how well the CLO is doing in its casework? [*If no*] What more would you like?
- Q.26 How often does LAO review the CLO's billings forms (Form 50) and ask questions about the number of hours, or the disbursements, spent on cases? [*If yes*] Has this created any problems for the CLO?
- Q.27 Has any work formally begun on the "benchmarking" of legal aid costs through the work of the CLO? Why/why not?
- Q.28 Have you ever felt that there was pressure of any kind from LAO to achieve greater efficiencies that would jeopardize the quality of the service the CLO provides? [*If yes*] How have you responded to this pressure, and have the results been satisfactory to you?
- Q.29 Do you feel you get enough feedback and direction to do your job effectively?

Visible Support and Partnerships

- Q.30 Are there any areas where you would like to receive more help, support or direction from LAO, at any level, with individual cases? What areas are those? (e.g., legal research from LAO-HQ, etc.)
- Q.30a Are there any areas where you would like to receive more general help, support or direction from LAO, at any level (i.e., not with individual casework)? What areas are those? (e.g., technical assistance, etc.)
- Q.31 Are there any areas where you would like to receive more help, support or direction from other sectors in the provincial government – say for example from MAG – at any level? What areas are those?
- Q.32 When we were originally discussing the CLO concept, there was talk of having the CLO and the private bar share significant research memos, briefs and precedents, to everyone's mutual benefit. *Stop laughing!* Is anything of that kind happening?

Budgeting and Administration

- Q.33 Have there been any administrative or financial burdens, problems or challenges which have affected the CLO in significant ways?
- Q.34 If the climate were ripe for a real partnership with the private bar, what additional communication, cooperation and sharing between the CLO and the bar would be needed to achieve the CLO's casework and non-casework objectives?

Directors

**IMPACTS**

Now I would like to ask you about your perceptions of the CLO’s impacts.

Q.35 Globally, what would you say are the positive impacts that you believe have come out of the operation of the CLO to date? *Do not probe. The list below is to help you organize your reporting of this interview.*

FACTOR	YES	NO	SPECIFICS/COMMENTS
Clients represented who would not have been able to find lawyer to take their certificate (specify, e.g. in remote areas)			
Certificate-ineligible accused better represented than by DC service			
More accused granted bail			
Fairer outcomes of plea negotiation			
More clients able to go to trial represented			
Clients have more choice of counsel			
Clients have access to more specialized legal expertise, e.g., in mental health issues, prison law			
Clients represented at more stages in criminal process			
Pressure on DC reduced, or DC work otherwise enhanced			
Better collaboration and flexibility with DC function			
More/better public legal education			
More law reform litigation			
More innovative approaches, e.g., increased diversion options, client-specific planning			
Other positive impacts			
Other comments			

Q.36 Are there any negative impacts that you believe have come out of the operation of the CLO?

Q.37 What do you say in response to the following alleged “negative impacts” said by some to be caused by the CLO?

## Directors

FACTOR	YES	NO	SPECIFICS/COMMENTS
Local bar has lost work (which lawyers affected most?)			
Roster has shrunk			
Clients have less choice of counsel			
CLO clients have lower quality service, e.g., "assembly-line justice"			
CLO staff are lower quality/inexperienced			
CLO-Crown relationship is too cozy or too coercive			
Other negative impacts			
Other comments			

Q.38 What specific impacts do you think the CLO has had on ....

- a. The local justice system?
- b. Duty counsel?
- c. The local bar?
- d. Indigent accused in the area?

Q.38a Do you have any suggestions for refinements to the way in which Duty Counsel and CLO staff interact, cooperate or work together?

Q.39 OVERALL, how large or significant has the impact of the CLO been on the justice system in this area?

Q.40 Based on the experience so far, what would you say is the most significant contribution that the CLO will ultimately make (e.g., responding to unmet need or under-representation of accused; testing a new service delivery model; benchmarking; law reform; etc.)?

Q.40a Is that the most useful contribution it could and should make?

Q.41 Do you have any concerns about - or on behalf of! - the CLO that we have not discussed?

Q.42 What else needs saying here that we have not discussed?

That concludes the interview. I want to thank you very much for your time.

Directors

## **B5. Questionnaire to LAO Area Directors.**

Site (circle one)      Barrie/Newmarket      Brampton      Ottawa      General

Interview Date \_\_\_\_\_

Interviewer \_\_\_\_\_

Interviewee's Number \_\_\_\_\_

Interviewee's Position \_\_\_\_\_

Interviewee's Organization/Professional Affiliation

\_\_\_\_\_

Interviewee's Phone \_\_\_\_\_

Interviewee's email address \_\_\_\_\_

**INTRODUCTION:**      *Read verbatim to the interviewee.*

This interview is private and anonymous. What that means is that, although what you tell me may be used and even quoted in our reports, your name will never appear in any report. I will not attribute to you anything that you say to me, either in writing or orally, even with other members of the evaluation team.

Do you have any questions before we begin? [*Answer any questions*]

### **CLIENT REPRESENTATION (CASEWORK)**

- Q.1      Based on your experience, which clients and cases would you say reflect the areas of greatest unmet need in (site name) – cases which tended to be unrepresented or under-represented by duty counsel or the private bar?
- Q.2      To what extent is the CLO currently filling those areas of unmet need, or conversely, to what extent is there still lots of unmet need?
- Q.3      Is the current mix of CLO cases a good one? Would you like to see it change, and if so, how?
- Q.4      Is the CLO currently at capacity (handling as many cases as it reasonably can)? If not, and they can handle more, what more can be done to attract clients?
- Q.5      What process does LAO use to assess the achievement of casework objectives? Is it sufficient? [*If a definition is sought of "casework objectives", say: "To provide independent, quality representation and related services to target clients, within the applicable LAO frameworks for criminal defence work."*]
- Q.6      What is your impression about how the CLO compares to private bar members in (site name) in terms of:

Directors

- a. How often they ask for remands because they are not ready to proceed
- b. How well prepared their cases are for court
- c. How well they argue your clients' cases
- d. How aggressively they seek the best possible result for your clients
- e. How likely they are to go to trial
- f. How skilfully they deal with Crowns, diversion personnel, judges, and other court personnel
- g. How much time they spend on their cases
- h. How expeditiously their cases proceed through the courts
- i. How effective they are in obtaining the best possible result for their clients

Q.6a Are there any differences between certificate and non-certificate cases on any of the above dimensions?

**OTHER CLO OBJECTIVES AND ACTIVITIES**

Q.7 What methods and processes does LAO use for assessing how the CLO is doing at achieving its other (non-casework) objectives?

Q.8 Of the CLO's other goals:

- what have been the most effective strategies
- what challenges have been raised by these strategies, and
- will the strategies change in future?
- Is each of the goals still relevant and supportable? Should the goals be changed or reviewed?

Goals: (taken from Service Objectives and Priorities)

- A. Outreach to the community to improve access to justice, esp. to under-served groups and special-need clients
- B. Improve or assess (globally) bail, diversion, sentencing or disposition planning and programs
- C. Coordinate with other legal clinics, and improve services to clients with intersecting legal needs
- D. Promote and undertake litigation to advance the administration of justice
- E. Promote continuing legal education for CLO, DC and private bar
- F. Advocate for justice improvement for their client base
- G. Public legal education

**POLICY / OPERATIONAL ISSUES**

Policy Environment

Q.9 What aspects of the [site name] court environment have the most effect on the CLO's ability to achieve its objectives?

Q.10 Are there any LAO policies respecting the CLOs which you feel require elaboration or clarification? *[If an example is sought, say: "e.g., how much time you should spend on non-casework objectives; whether you should do prison law; who are "special needs clients"; etc.]*

Q.11 Reverse question – are there any LAO or government policies which impinge on the CLO which you feel are or could become a problem?

Choice, Continuity and Consistency

Directors

Q.12 Are there any problems raised by the number of CLO clients who have come from outlying areas, as a result of being unable to find counsel in their local area?

Staffing

Q.13 Were there any gaps in the original skill sets or experience of the CLO staff which presented challenges to the CLO's operation? How have they been addressed?

Q.14 Are there any skills or capacities which you would say are still, currently less well-developed in the CLO, which you would like to see addressed in the future?

Quality, Quality Control and Benchmarking

Q.15 What are LAO's methods and processes for ensuring quality control in CLO casework?

Q.15a Probe [*for the following items, if not covered in last Question*]:

a. Is there routine and formal case conferencing within the CLO?

b. Does the CLO Director mentor and observe staff in and around court?

c. Does the CLO Director review case files and make suggestions?

d. Do you, as Area Director, do any of the above (observing, reviewing)?

Q.16 Do you have all the information you need to periodically assess the quality of CLO casework (representation and case planning\programming)? [*If no*] What more would you like?

Q.17 Does LAO review the CLO's billings forms (Form 50) and ask questions about the number of hours, or the disbursements, spent on cases? [*If yes*] What issues has this process raised?

Q.18 Has any work formally begun on the "benchmarking" of legal aid costs through the work of the CLO? Why/why not?

Q.19 Have you ever felt that there was pressure of any kind from LAO for the CLO to achieve greater efficiencies that would affect the quality of the service the CLO provides? [*If yes*] How have you and the CLO responded to this pressure, and have the results been satisfactory to you?

Q.20 What kind of formal feedback and direction do you give to the CLO Director, and how regularly?

Visible Support and Partnerships

Q.21 Are there any areas where you think LAO should be giving the CLO more help, support or direction, at any level, with individual cases? What areas are those? (e.g., legal research from LAO-HQ, etc.)

Q.21a Are there any areas where you think LAO should be giving the CLO more general help, support or direction from LAO, at any level (i.e., not with individual casework)? What areas are those? (e.g., technical assistance, etc.)



Directors

Q.22 Are there any areas where you think the CLO should be getting more help from other sectors in the provincial government – say for example from MAG – at any level? What areas are those?

Budgeting and Administration

Q.23 Have there been any administrative or financial burdens, problems or challenges which have affected the CLO in significant ways?

Q.23a If the climate were ripe for a real partnership with the private bar, what additional communication, cooperation and sharing between the CLO and the bar would be needed to achieve the CLO's casework and non-casework objectives??

**IMPACTS**

Now I would like to ask you about your perceptions of the CLO's impacts.

Q.24 Globally, what would you say are the positive impacts that you believe have come out of the operation of the CLO to date? *Do not probe. The list below is to help you organize your reporting of this interview.*

FACTOR	YES	NO	SPECIFICS/COMMENTS
Clients represented who would not have been able to find lawyer to take their certificate (specify, e.g. in remote areas)			
Certificate-ineligible accused better represented than by DC service			
More accused granted bail			
Fairer outcomes of plea negotiation			
More clients able to go to trial represented			
Clients have more choice of counsel			
Clients have access to more specialized legal expertise, e.g., in mental health issues, prison law			
Clients represented at more stages in criminal process			
Pressure on DC reduced, or DC work otherwise enhanced			
Better collaboration and flexibility with DC function			
More/better public legal education			
More law reform litigation			
More innovative approaches,			

Directors

e.g., increased diversion options, client-specific planning			
Other positive impacts			
Other comments			

Q.25 Are there any negative impacts that you believe have come out of the operation of the CLO?

Q.26 What do you say in response to the following alleged “negative impacts” said by some to be caused by the CLO?

FACTOR	YES	NO	SPECIFICS/COMMENTS
Local bar has lost work (which lawyers affected most?)			
Roster has shrunk			
Clients have less choice of counsel			
CLO clients have lower quality service, e.g., “assembly-line justice”			
CLO staff are lower quality/inexperienced, etc.			
CLO-Crown relationship is too cozy or too coercive			
Other negative impacts			
Other comments			

Q.27 What impact do you think the CLO has had on ....

- a. The local justice system?
- b. Duty counsel?
- c. The local bar?
- d. Indigent accused in the area?

Q.28 OVERALL, how large or significant has the impact of the CLO been on the justice system in this area?

Q.29 Based on the experience so far, what would you say is the most significant contribution that the CLO will ultimately make? [e.g., responding to unmet need or under-representation of accused; testing a new service delivery model; benchmarking; law reform; etc.]?

Q.29a Is that the most useful contribution the CLO could and should make?

Q.30 Do you have any concerns about the CLO that we have not discussed?

Directors

Q.31 What else needs saying here that we have not discussed?

That concludes the interview. I want to thank you very much for your time.