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# Evaluation of Criminal Law Offices - Third Year

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# **Evaluation of Criminal Law Offices Third Year Report**

April 7, 2008

Submitted to:  
Legal Aid Ontario

Submitted by:

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

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# Executive Summary

## *A. Reports to Date from the Evaluation*

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.

LAO committed to ensuring that a major (three-year) independent evaluation of these CLOs was undertaken and made available to the general public. To-date, five reports have been produced by the team of senior private consultants and academics who were selected in the competition to conduct the evaluation:

1. an *Evaluation Framework* which clarified both the objectives, specific questions to be addressed and the methodology of the evaluation;
2. a *Nine Month Progress Report* (produced in March of 2005) which 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;
3. a “First Year” Report (December, 2005) that covered the operations of the CLOs from May 1, 2004 to June 30, 2005; and
4. a “Second Year” Report that covered the operations of the CLOs from July 2005 through June 2006.
5. the current, final, report, the “Third Year” Report which includes the operations of the CLOs through June 2007.

The processes leading to the *First*, *Second* and *Third* year reports are very similar.

All are based on intensive and extensive rounds 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 team 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 obtained and analyzed 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. Data on certificates issued to the CLOs is also contained in Peoplesoft. 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 50s” for certificate cases from the Barrie CLO (the latter two for all but the third year report). The evaluators were also encouraged to design and implement a Criminal Peer Review of the files of the CLO staff lawyers and of comparable defence counsel certificate files – the first in Ontario.

The basic formats of all three reports are very similar. However, while the first- and second-year reports were presented in one part, the third-year report is presented in three parts:

***Part 1: Highlights of Findings and Recommendations***

Chapter 1 is an overview and a detailed summary of the results and findings of the other chapters in Part 2 of the report. References are often provided to relevant sections and Figures in Part 2. That summary also contains most of the specific recommendations that follow from the evaluation. Chapter 1 also ends with a list of what the evaluators believe are the most important lessons learned from the evaluation.

***Part 2: Supporting Data and Analysis***

contains what in previous years would have been Chapters 2 through 6, each of which contains the more detailed data and analysis that underlies the major findings and recommendations. The reader interested in a specific finding highlighted in Part 1 is definitely encouraged to consult Part 2.

***Part 3: Appendices***

contains additional information and data and supplementary materials.

***B. Developmental Context of the Evaluation***

Given the novel and experimental nature of the CLO initiative and the uncertainty with respect to what could be achieved in what were known to be complex and at times hostile environments, LAO decided to proceed in an *exploratory* mode. LAO did set guidelines for the *types* of outcomes to be achieved and the *types* of processes to use, but allowed the local CLO directors considerable latitude and local autonomy in experimenting with different *levels* of outcomes and processes. The experience of the CLOs would then be closely monitored to collect the more specific and detailed information needed by LAO to set—at a later date—the appropriate *levels* of standards that would be needed and used for longer term planning, modification and management of the CLOs. Since this exploratory mode has continued throughout the three years of the evaluation, it has been impossible for the evaluation to make normative assessments—in particular, to go beyond assessing whether the CLOs were “doing the right things” to consider either whether they were doing “enough of those things” or whether they were “doing the things efficiently enough”.

On the other hand, LAO’s choice of an exploratory approach placed a different type of pressure on the evaluation, namely, undertaking the monitoring and collection of the types of information on “what was done and what was achieved” by the CLOs—the types of information needed to allow LAO to now undertake the concentrated internal analysis, planning and decision-making exercise needed to set standards, to assess CLO performance in terms of those standards, and to determine whether modifications are required to the CLO design if it is decided to continue the model into the future. Given the importance and nature of this LAO work to be supported, and uncertainty as to which areas would be seen as requiring specific attention, it was appropriate to err on the side of over-inclusion rather than under-inclusion of data and analysis. This evaluation report thus covers a broader range of issues in more detail than might normally be expected.

***C: Key Lessons Learned***

Chapter 1 summarizes the major findings that are supported by the detailed analysis and data in Part 2 of the evaluation. That section also contains some of the more specific recommendations that flowed from that work.



The following takes a broader perspective and extracts and presents a short list of what the evaluators believe are the most important lessons learned from the evaluation.

**1. Significant Value Added by the CLOs**

- a. **Finding:** The CLOs have in the three years since their inception provided valuable services to over 2,300 clients in their three communities. By providing legal assistance to those who would otherwise likely have appeared in court unrepresented, the CLOs have ensured a more fair and effective judicial process.
- b. **Recommendations:** That LAO
  - i. recognize the CLOs for their important achievements.

**Context**

This and the following findings and recommendations should, however, be placed in a context that includes:

- These offices have achieved this result in the face of a number of serious obstacles to their development, including:
  - Considerable resistance to their establishment and continued existence on the part of members of the local private bar
  - This resistance resulted in LAO placing a number of constraints on the CLOs that significantly handicapped their ability to operate effectively and efficiently (e.g., limiting advertising, prohibiting coordination between CLO and Duty Counsel services, having to devote considerable amounts of time to support a major independent evaluation effort)
  - In large part for the above reason, difficulty at the beginning in attracting staff in certain CLOs
  - Being implemented during a time when LAO was facing major challenges in the revamping of key automated information and communications support systems
  - Having to operate with (what was over time discovered to be) insufficiently clear central direction regarding key policies and practices.

The evaluation findings thus relate, not only to the CLOs *per se*, but also to the external and corporate environment in which the CLO model was implemented.

Within this context, the staff of the CLOs should be commended for the important results they have achieved.

It is within this context that the following key lessons learned are presented.

**2. Unmet need represented by Non-certificate Cases and Persons with Special Needs**

- a. **Finding:** The CLOs have clearly confirmed the existence of—and the benefit of addressing—a significant previously unmet need for legal services on the part of persons who qualify financially for legal aid but who do not receive such services

through the legal aid certificate system. The evaluation has also shown that the CLOs have been effective in providing legal and legal-support services to these groups.

Four types of needs can be identified:

- 1. Non-certificate Cases: Needs of specific cases that are denied legal aid certificates because they are unlikely to result in a custodial sentences,
- 2. Enhanced Services: Enhanced services needed by specific types of clients, especially those involving Aboriginal accused and accused with mental health issues.
- 3. Unserved Certificate Cases
- 4. Law Reform and Outreach: Need to address specific systemic issues, including special problems facing persons incarcerated in mega-jails.

The CLOs have clearly identified a general need for the first two types of services (*non-certificate* cases and *enhanced services* to specific cases). The evaluation report provides strong evidence that failure to address the needs of unrepresented persons in financial need who are refused certificates (because they are unlikely to receive a custodial sentence) potentially results in significant harm to those persons, and extra costs for the justice system. Similar legal aid support is required regarding persons with special needs.

(The third and fourth types of need are addressed in Lesson 3 later.)

**b. Recommendations:** That LAO

- i. Consider advocating (jointly with other Justice System stakeholders) for expansion of the criteria and funding for extending legal aid (via certificates) to financially needy persons and for certain special needs groups, especially mentally ill, indigenous persons and youth;
- ii. Explore alternative methods for improving services to financially needy persons (e.g., through CLOs, enhancing duty counsel, criminal clinics, merger of CLO with expanded salaried duty counsel in Barrie and elsewhere);
- iii. Clarify the extent to which the CLOs' should focus on meeting unmet needs for non-certificate cases; and
- iv. Enhance the specialized expertise that CLO staff already have in areas such as: serving indigent accused, the mentally ill, Indigenous persons and youth.

**3. Needs related to Certificate cases and Outreach/ Law Reform**

- a. **Finding:** The need for the CLO to address the third category (*certificate cases*) is not general, but does exist in specific areas of demonstrated needs unmet by the private bar. A particular need is also found for types of cases that the private bar finds difficult to handle within the financial constraints of the legal aid tariff (e.g., impaired driving cases). There is also a need for the CLOs to take on at least a small number of certificate cases for professional development reasons.

The need to provide the fourth type of service (*Law reform and Community Outreach and Education*) also clearly exists within each community. However, because of a shift in individual CLO priorities and practices over time away from non-casework activities, less attention was given to this area. Further experience and clarification of

priorities is needed before the CLOs' potential role(s) in Law Reform and Outreach is determined.

**b. Recommendations:** That LAO

- i. Clarify its policy regarding the numbers and types of certificate cases the CLOs should accept;
- ii. Explore the most efficient and effective way the CLOs can participate—jointly with other justice, LAO and NGO stakeholders—in law reform and outreach activities.

**4. Efficiency regarding Individual Cases**

**a. Finding:** The CLOs have demonstrated that they can handle and close individual cases in an efficient manner, a manner that compares favourably to the efficiency of the private bar in similar cases.

**b. Recommendation**

- i. That the CLOs be recognized as handling and closing individual cases in an efficient manner.

**5. Total Value of Services compared to Total Costs**

**a. Finding:** The CLOs have demonstrated that it would be extremely difficult under the existing tariff for a public or private office dedicated solely to providing the above four types of services to this clientele to be able to “break even” (i.e., “to earn” enough tariff fees to cover costs).

However, the challenge seems to be more with the hourly rate under the tariff than with the number of hours set for different tasks and types of cases.

First, the total imputed fees for the four primary services each of the CLOs offer fall considerably short of the total costs of operating each of those offices. In the absence of a clearer definition by LAO of the values it places on other services offered by the CLOs, it is unknown whether the values of these other services cover that shortfall. However, the CLOs have demonstrated the value of a number of “other” services, including:

- i. The CLOs have provided a environment that can be used to test out—on a limited scale—innovative approaches to the provision of services (for example, the use of Community Legal Workers as both community workers and for lawyer case management support, or different mixes of staff with different experiences)
- ii. Having available staff resources to pursue specific cases and/or law reform issues (e.g., the DNA litigation handled by the Ottawa CLO)
- iii. Being able to collect more complete data on certain types of operations to better understand costs and benefits of existing procedures (e.g., the onerous data collection borne by the offices for the evaluation to test out the time to complete certain tasks)
- iv. Providing a vehicle for testing and development of alternative monitoring, accountability and quality assurance strategies (e.g., peer review)

- v. To have available resources to test alternative partnerships and allocations of responsibility with other LAO organizations (e.g., exploring alternative relationships with duty counsel).

Second, the evidence shows that the average numbers of staff hours the CLOs need to handle and close cases are similar to (sometimes lower than) the number of hours that are billed by the private bar for similar cases. As well, the shortfall between the total CLO overall costs and the total CLO imputed value of handling cases, outreach and law reform activities cannot be accounted for entirely by atypical overheads or inefficiencies. It follows that the tariff rate used to calculate imputed value for the CLOs is not high enough to cover their normal overheads. (This argument has been made for some time by private firms—although many private firms also have a tradition of providing services *pro bono*—at least by undercharging (cash) clients or by providing more hours of service than they bill.)

**b. Recommendations:** That LAO

- i. Develop an explicit policy regarding whether, and if so to what extent, the costs of offices like the CLOs can exceed the measurable imputed values from the four core services they provide. Alternatively, LAO should develop a realistic notional value for the “other” services provided by the CLOs;
- ii. Review the adequacy of rates under the tariff.

**6. High Proportion of Time Spent on administrative and other activities**

**a. Finding:** The CLOs devote a high proportion of time to overhead activity.

Lawyers and/or CLWs in at least some CLOs spend a likely financially unsustainable proportion of their overall time on administrative and other non-billable activities not related to either specific cases or law reform or outreach)—sometimes in the order of 40% to 50%. Although some of this time relates to activities that would not normally be required in the private sector (e.g. supporting this evaluation and attending to matters related to broader LAO administrative issues), opportunities also exist for reducing this proportion.

**b. Recommendation:** that LAO

- i. Undertake a review of ways to reduce the time spent on these types of activities of the CLOs. Evidence is presented in the evaluation report to suggest that such a review should consider areas such as work standards (i.e., standards related to the volume of cases to be handled and quality control), management activities, allocation of work, and more efficient and effective support systems.

**7. Clarifying to CLO Staff the Mix of Services to be Offered**

- a. **Finding:** Different interpretations exist regarding the mix of services that were to be offered by the CLOs. However, as things progressed over the three year period, the CLOs tended to place higher priority on providing more traditional legal services to individual cases—and less priority to services such as outreach, public education, and to law reform and systemic reform. This lack of clarity regarding the desired mix of services is an impediment to effective management of resources and the ensuring of

accountability for achieving results. The uncertainty regarding expectations is also a detriment to the general quality of the staff work environment.

**b. Recommendations**

- i. Clarification is required from LAO regarding the preferred mix of services to be provided
- ii. Once clarification has been provided, modification of caseloads and business practices on the part of the CLOs will be required to match the priorities
- iii. LAO senior management should determine and communicate its expectation as to what percent of their time the CLOs should devote to activities such as: public legal education, law reform activities, outreach and developing collaborative strategies with other concerned groups of stakeholders (such as: CMHA, duty counsel, clinics).

**8. Considerable Variation Among CLOs**

- a. Finding:** There are considerable differences among the CLOs with respect to priorities and approaches. In the absence of clear statements of policies and procedures from corporate LAO, it is impossible to tell whether these differences are appropriate. However, some differences raise concerns on the part of the evaluators, and on the part of the staff of the different CLOs.

The evaluation report notes a considerable number of areas in which policies, strategic approaches and operational procedures vary significantly from one CLO to another. Specific examples given include: the mix of certificate and non-certificate files, the manner in which outreach/law reform is carried out, trends in costs per case, and workloads. To some extent it may have been appropriate to give the offices “free rein” to experiment with and to develop alternative approaches. However, development of policies and practices has been a “bottom-up, operations-driven” process, rather than a “top-down, corporate policy-driven” process. There has for some time been a need for more explicit direction from corporate LAO to provide vision, direction and management guidance as to what practices are acceptable and optimal, and which are not.

**b. Recommendations:** That corporate LAO:

- i. Provide clarification of policies and best practices
- ii. Enhance organizational structures for formulation, communication and management of policies
- iii. Provide (from corporate and from the region) stronger and clearer leadership with respect to direction, management and accountability, and quality control
- iv. Provide stronger substantive (criminal practice policy) leadership to and enhance management expertise of CLO directors
- v. Enhance accountability and quality assurance initiatives (including performance measurement and peer review).

**9. Quality of Case-Specific Services**

- a. Finding:** There is a strong consensus in the three communities that the CLO lawyers provide services in individual cases that compare in quality to those offered by members of the private bar providing similar services. However, some concerns have been raised regarding a limited number of specific areas.

As noted throughout the report, the analysis of data on performance from Legal Files, the Peer Review, and the interviews show that in many areas the CLO lawyers have achieved results for their clients that are as good as, and sometimes surpass, those typically achieved. However, those same three data sources have identified a limited number of concerns about specific operational issues. These issues are documented and discussed in more detail in later chapters of the report (issues ranging from documentation of cases, data recording practices, use of guilty pleas, etc.).

**b. Recommendations**

- i. That LAO senior management work with the directors of the CLOs to better understand and to remedy specific quality issues that are identified in this evaluation.

**10. Comparisons between CLOs and Private Bar require caution**

- a. **Finding:** There are a number of strong reasons that comparisons between the CLO offices and private criminal law offices should be made with caution. In particular, it is unfair to the CLOs and the private bar to assume that a “level playing field” exists—or that it should exist in terms of client outreach and visibility of the CLOs.

There are a number of areas in which comparisons with the private bar are appropriate (e.g., file documentation, hours per case, litigation strategies). However, (as noted earlier) the full report lists a number of areas that make comparisons between the two fraught with difficulties. For instance there are a number of ways in which either the CLOs or the private bar have advantages or handicaps vis à vis the other (e.g., the private bar do not have fixed salaries; the CLOs cannot as readily hire or fire staff to optimize returns on investment; the private bar can take on any type of family, civil or criminal case; the CLOs must focus on certain types of cases that are difficult to handle within the tariff). In those situations, a simple comparison of the CLOs and private bar may be inappropriate or even misleading.

**b. Recommendations**

- i. That future planning and communications regarding the CLOs recognize that the CLOs and the private bar in certain respects do not operate on a “level playing field”.

**11. Lessons learned regarding Management**

- a. **Finding:** A number of lessons have been learned in the last three years as to how management structures and practices (at different levels within LAO and the CLOs) could be enhanced to improve the effectiveness and efficiency of the CLOs and CLO-like initiatives.

**b. Recommendations: That LAO develop**

- i. Stronger and clearer direction from senior management and Area Directors to the CLOs
- ii. Enhanced management capabilities of CLO directors
- iii. Enhanced systems of accountability at all levels
- iv. Clarification of the role, and functioning, of the LACs
- v. Greater collaboration of other LAO providers with the CLO in their area

- vi. Greater collaboration with NGOs and other CJS stakeholders.

## 12. Lessons learned regarding operational practices and support systems

- a. **Finding:** A number of advisable improvements have been identified to operational practices and systems.
- b. **Recommendations: That LAO undertake**
  - i. Major review of Legal Files
  - ii. Reallocation of responsibilities regarding design and configuration and quality control regarding information systems
  - iii. Re-assessment of roles of CLWs and administrative assistants and regular supervision and feedback to both lawyers, CLWs and administrative staff
  - iv. Regular formal staff meetings, with periodic attendance at these meetings by the Area Director
  - v. Review of and staff training regarding effective methods for targeted outreach and law reform (adopting more effective methods of reform and development—including involvement of local NGOs and representatives of the private bar in all stages of the reform process (including the development of priorities).

## 13. Attention Needed to Human Resource issues

- a. **Finding:** A number of specific and general human resource management issues have been identified.

Many of these issues would be resolved if staff were given a clearer view of what was expected of them. Others have to do with the level of compensation paid, especially when compared to other jobs that are seen as comparable. Still others (e.g. those related to management and community development and organizing skills) would be relevant if one were asking the CLOs to take a stronger leadership role in their communities.

- b. **Recommendations: That LAO human resource staff**
  - i. Conduct interviews with staff to ensure the existence of organizational mechanisms to ensure continuation of a healthy and productive workplace;
  - ii. Conduct a review of the adequacy of CLO lawyer, CLW and support staff salaries.

## D: Overall Conclusion: Improved Access to Justice?

Given all of above, the CLO model is a promising approach to improving access to justice for financially needy persons. However, there is considerable variation with respect to how different parts of the model have been designed and implemented in each site. Important lessons have been learned, but considerable design and development work remains to be done.

# **Part 1: Highlights of Findings and Recommendations**



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## **Chapter 1: Highlights of Findings and Recommendations**

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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 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. This evaluation covers the work completed by the CLOs up to the end of June 2007.

An important aspect of the context for understanding the design and results of both the CLO initiative and this evaluation are the differing views that are held in different stakeholder communities about the “true purpose” and ultimate result of this service delivery innovation embodied in the CLOs. The view of the government and Legal Aid Ontario is described above. In contrast, some members of the private bar have from the outset opposed the CLOs. That viewpoint 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 some of the particular sites chosen by LAO for the CLOs were chosen as a

“strikebreaking” measure, since it was in those sites where the heaviest withdrawal of service occurred during the Ontario bar’s dispute with LAO over judicare tariff rates.<sup>1</sup>

This evaluation is an exploration of delivery of service issues and the operation of an alternative service delivery model that is, not only new to the three environments of the CLOs, but characterized by both strong support and strong opposition.

In addition, research to date has made it clear that the justice environments in all three sites are daunting. This includes 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.

All of these facts pose major challenges to an evaluation which will ultimately collect much of the empirical evidence needed to provide a factual basis for the debate.

### 1.2 Format of the 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 Provincial Advisory Committee (PAC) for the initiative. The report is thus organized according to the objectives which the CLOs are intended to achieve, and the impacts which they have had.

The basic structures of all three reports are all very similar. However, while the first- and second-year reports were presented in one part, the third-year report is presented in three parts:

***Part 1: Highlights of Findings and Recommendations***

is an overview that contains Chapter 1 which in turn contains a detailed summary of the results and findings of the other chapters in Part 2 of the report. References are often provided to relevant sections and Figures in Part 2. That summary also contains some of the more specific recommendations that follow from the evaluation. Chapter 1 also ends with a short list of what the evaluators feel are the most important lessons learned from the evaluation.

***Part 2: Supporting Data and Analysis***

contains what in previous years would have been Chapters 2 through 6, each of which contains the more detailed data and analysis that underlies the major findings and recommendations. The reader interested in a specific finding highlighted in Part 1 is encouraged to consult the information in Part 2.

***Part 3: Appendices***

contains additional information and data and supplementary materials.

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<sup>1</sup> On the other hand, one of the sites (Brampton) had a relatively low withdrawal of service during the dispute.

Part 2 of the report is divided into five chapters:

1. ***Chapter 2: CLO Objectives and Direction***  
describes in detail the four main groups of CLO objectives, and comments on the degree to which these objectives have been clearly articulated and have been incorporated into ongoing planning, management structures within the CLO and within communications with other stakeholder groups within each CLO community.
2. ***Chapter 3: Services to Individual Client Cases***  
focuses on overall objectives related to providing better access to legal services for clients through individual client cases. Special attention is given to assessing the demands for and levels of services provided, the types of cases opened, the specific services provided, and the quality of those services.
3. ***Chapter 4: Systemic Law Reform: Non-Casework (Outreach and Law Reform) Objectives***  
focuses on Systemic Law Reform objectives of the CLOs, objectives to enhance services to potential clients and client groups through non-case specific, outreach and law reform objectives (and through work on specific cases);
4. ***Chapter 5: Operational Impact: on the Justice System and on Specific Elements and Stakeholder Groups within the CJS***  
focuses on issues related to the impact of the CLOs on the institutions, processes and workloads of the different key stakeholder groups within the criminal justice system.
5. ***Chapter Six: Value for Money: Process Objectives***  
focuses on a number of process objectives—each of which impacts on the value of services provided and the degree to which the CLO represents an effective and efficient organization for achieving the previous substantive objectives. Specific Process Objectives relate to: leadership and direction, organization and responsibilities, tactics and procedures, resources, and support systems.

Within each of these chapters, the material is often 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?”*

### **1.3 Methodological Context of this Report**

LAO has committed to ensuring that a major (three-year) independent evaluation of these CLOs is undertaken and made available to the general public. To-date, five reports have been produced by the team of senior private consultants and academics who were selected in the competition to conduct the research:

## 1: Highlights of Findings and Recommendations

The first report 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 was a **Nine-Month Progress Report**. 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 a later than projected start-up in some of the CLO sites, and the 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 awaiting 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 third report was a **“First Year” Report** (December, 2005) that covered the operations of the CLOs from May 1, 2004 to June 30, 2005.

The fourth Report was this **“Second Year” Report** that covers the operations of the CLOs through June 2006.

The current report is the **“Third Year” Report**, the final report and one which includes the operations of the CLOs through June 2007.

The processes leading to the *First*, *Second* and *Third* year reports are very similar.

All are based on intensive and extensive rounds 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 team 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 obtained and analyzed 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 obtained data from the LAO financial systems, from a special database maintained locally at the Brampton CLO and from a database of “Form 50s” for certificate cases from the Barrie CLO (the latter two for all but the third year report).

Prior to completion of the *First Year* report, we were also informed that the Ministry of the Attorney General would 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 which LAO agreed to is in the *peer review* of CLO files. We had

originally hoped to obtain cooperation from the private bar in providing *peer review* access to information in their files that would provide a true comparative evaluation of the work of the CLOs. However, this cooperation was not forthcoming.

We have, for the three reports, also been successful in obtaining valuable data from a number of additional data files. The most significant—in addition to Legal Files—include:

- **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.
- **LAO Financial Data**
  - Data on the expenditures of and budgets for CLO offices from LAO central financial systems
- **Brampton CLO Access Data Base: (for the earlier reports only)**
  - 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. For all three reports the evaluation team sought to interview principally Criminal Justice System (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 good 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, as well as Provincial office staff.

In addition, for both the *Second Year* and *Third Year Reports* extra effort was made to make contact with members of the private bar. For instance, with respect to Ottawa, the evaluation team contacted representatives from CDLPA and the head of the local lawyers association in Ottawa and offered to meet with any private bar members they suggested, either individually or as part of a group meeting.

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 reach many stakeholders. In certain instances, we relied on the senior member of a particular group (for instance, the Regional Senior Justice) to canvass members of the group and to suggest a number of members who would be representative of the diversity of opinion that existed.

On occasion during the *Year Three* interviews, 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, brief

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

## 1: Highlights of Findings and Recommendations

interviews were conducted based on available time. In situations in which the interviewee's time was limited, they were asked only the most appropriate questions from the same interview guides. In a few cases, interviewees had only one or two things they wanted to say. However, most were full interviews of around an hour's duration. The evaluation team does not feel the varying lengths of interviews affected the reliability of the conclusions drawn on key issues. It should however be noted that for the *Year Two* interviews nearly all interviewers consented to interviews that ran between a half hour and an hour and a half, with some going longer. For the *Year Three* interviews, the interviews with some groups were shorter; however, certain interviews (in particular with LAO staff members) were considerably over an hour's duration.

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 were not included in the final interviews. During the round of interviews for the *First Year* report we interviewed the following numbers of CJS respondents at each site:

- in Barrie: 18 CJS respondents (4 Crowns, 2 judges, 2 duty counsel, 4 private bar members, 6 NGOs) plus 5 LAO/CLO officials
- in Brampton: 14 CJS respondents (5 Crowns, 2 judges, 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.

During the round of interviews for the current *Second Year* report we interviewed the following numbers of CJS respondents at each site:

- in Barrie: 14 CJS respondents (3 Crowns, 2 judges, 3 private duty counsel, 3 private bar members, 3 NGOs) plus 6 LAO/CLO officials
- in Brampton: 14 CJS respondents (5 Crowns, 3 judges, 6 private bar members) and 9 LAO/CLO officials—including 5 current staff of the CLO)
- in Ottawa: 15 CJS respondents (4 Crowns, 2 judges, 3 private bar members, 1 duty counsel, 4 NGO representatives, and 1 other court official) and 6 LAO/CLO officials.
- Provincial Office: numerous interviews with vice-presidents, managers, analysts and information systems personnel within LAO.

During the round of interviews for the current *Third Year* report we interviewed the following numbers of CJS respondents at each site:

- in Barrie: 10 CJS respondents (2 Crowns, 2 judges, 1 private duty counsel, 3 private bar members, 2 NGOs) plus 4 LAO/CLO officials
- in Brampton: 20 CJS respondents (1 Federal Crown<sup>3</sup>, 6 judges, 4 private bar members) and 9 LAO/CLO officials (including 5 current staff of the CLO)<sup>4</sup>
- in Ottawa: 10 CJS respondents (1 Crown, 1 judge, 4 private bar members, 4 NGO representatives) and 6 LAO/CLO officials.
- Provincial Office: numerous interviews with vice-presidents, managers, analysts and information systems personnel within LAO.

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.

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<sup>3</sup> Although repeated attempts were made to contact a number of provincial crowns in Peel, only one responded positively, and that one had not had sufficient contact with the CLOs during the last year.

<sup>4</sup> These numbers include stakeholders based in Orangeville, an area in which the Brampton CLO also provides services.

Other aspects of the project methodology will be described throughout the report.

### 1.4 Development of CLO Objectives and Protocols

In 2004, funding for what would 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 CLOs were one of ten proposed programs/program enhancements that were approved as operational strategies to realize the Federal and LAO Investment Fund objectives. In addition to the CLOs, these service strategies included:

- projects aimed at increasing LAO's duty counsel capacity,
- a project aimed at improving services in northern Ontario,
- improving services to homeless people in Toronto,
- increasing the capacity to conduct video applications for legal aid from clients in custody, and
- improving LAO's capacity to monitor and manage these projects.

The goal of the Investment Fund is "to address unmet needs in criminal legal aid (and civil legal aid in the Territories) through innovation" and to improve access to legal aid services, particularly at the early stages of the criminal justice system.

Collectively the ten projects funded by the federal investment fund were 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>5</sup>

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 with the Provincial Advisory Committee (PAC) and the three Local Advisory Committees (LACs) for the CLO initiative.

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<sup>5</sup> 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 changes noted:

- 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 Criminal Law Offices are staffed by persons who are employees of LAO. They 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.”  
[Emphasis added]

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

- The client’s needs;
- The possibility of a client obtaining a certificate;
- The office’s or lawyer’s prior relationship (if any) with a client;
- Case complexity;
- The office’s skills and specializations;
- 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).<sup>6</sup>

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;

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<sup>6</sup> Emphasis added to underscore the primary role to be taken by the Director in this area, but the important roles to also be played by a wide range of officials within LAO.



## 1: Highlights of Findings and Recommendations

- 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 *Legal Aid Services Act, 1998* 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 includes (*inter alia*) paying in installments for private bar representation, using duty counsel or using the CLO.

It is important to underline that 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. [Emphasis added] Accordingly, a *Service Objectives and Priorities* document was 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 an additional 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;

## 1: Highlights of Findings and Recommendations

- Persons with Aboriginal and visible minority backgrounds; and
- Services to persons who otherwise have difficulty accessing counsel.

The *Service Objectives and Priorities* documents each mention other objectives of the CLOs—objectives that relate to effecting more systemic improvements. These include:

- 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 accused persons 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 objectives:

- “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 Introduction to Each CLO (Provided by LAO)

In order to provide important context for this evaluation report, the CLO directors were asked by the evaluators to describe the roles of staff and processes employed. These descriptions were then received and consolidated by a fourth LAO official. The consolidated document is presented in this section in its original form.

*(The material provided by LAO begins here.)*

“It has been clear throughout the evaluation timeframe that while each office shares common objectives and goals, each office developed approach in order to best respond to client needs and regional differences. The following section describes how these offices operate (and in some instances, how the approach in each office differs).

In many ways, the CLOs in Ottawa and Brampton share many similarities. These offices have the same staffing components (three staff lawyers (including the Directors), a CLW and a support staff). They also operate in similar environments, large urban centres with one main courthouse, with client characteristics that are similar (mostly non-certificate clients). In contrast, the Barrie CLO has a slightly different staffing component (only 2 staff lawyers), serving a smaller city with 5 regional courthouses served. They also have clients that are mostly certificate clients, and the majority of their clients have some form of special needs (for example, they are in custody, and/or have mental health issues, and/or Aboriginal, etc.). These different environments have often necessitated different service delivery procedures.

In order to demonstrate these similarities and differences, the following sections will outline the typical procedures followed in each location for client intake.

### **Client intake and procedures in the Brampton CLO:**

- In Brampton, they rarely have in-custody clients, unless they are returning clients. Most clients either come to the office directly from the Area Office (by way of the “refusal letter”), or are referred from the CMHA (the Mental Health Courtworkers). If coming from the Area Office, the client must have a refusal letter or a certificate in hand, together with their disclosure. If they do not have these items, the Brampton CLO will not book an appointment for them. If they have gone to Legal Aid but have not yet received disclosure, then they may book the appointment for after their next court appearance.
- If they can see the client prior to the next court appearance, this is done. Otherwise, they book the client for the first available appointment slot (which may be several weeks in the future), and send them away with a letter to give to Duty Counsel on their next court appearance. The letter states that they have been approached by the client, but are not yet retained, and seeks a remand to a specified date.
- Once the appointment is made, the client’s identifying information is entered into Legal Files (LAO’s automated case file management system), a file number is generated, and a paper file created. That ensures that all subsequent work will be properly collected and docketed. The disclosure is given to the assigned lawyer or to the CLW to review prior to the appointment.
- If the client is referred from CMHA, then the Mental Health Courtworkers fax over to the Brampton CLO all the documentation that they have, usually including some medical documentation. The CMHA worker will have ensured that the client has completed the Legal Aid application and picked up the disclosure. They schedule these appointments for the earliest possible time – usually within two or three days.
- The Brampton CLO also assists a number of clients in Orangeville, since this area fits into their catchment area. If the client is a referral from the Orangeville AO, and if they cannot come to the Brampton CLO, a special video interview is arranged. The AO couriers the refusal letter and

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disclosure to us, and they interview the client via video on a day especially set aside for these appointments. At present, they do about two video appointments for Orangeville per week. These clients are rarely refused service once they have been interviewed. This is because our relationship with Orangeville Duty Counsel has not yet matured to the point where they can refer clients back to them for guilty pleas.

- When the client appears in the office, he is seen first by support staff who take basic information, using a standard Personal Information Sheet. Then, the client sees either a lawyer or the CLW, who will have reviewed the disclosure in advance of the meeting. The interview takes anywhere from 30 minutes to an hour, and may take longer if the client has mental health difficulties or is very emotional. If someone requires an interpreter, they will usually have brought a friend or relative with him. If this is impossible or inappropriate, then the interview will be done at the courthouse on the morning of the client's next court appearance. That allows the CLO to use the official court Interpreter who will have been provided (and paid for) by the Court itself.
- Following the interview, the client may be asked to sign one or more of the following forms:
  - 3 Medical Information Release Forms;
  - Designation of Counsel Form (to permit us to appear on behalf of particularly vulnerable clients, or clients in rehab);
  - (for impaired/over 80 charges) Impaired Questionnaire that they take with them, complete at home and drop off at office later (only if they think they may be able to plead them out to a HTA charge of "Careless driving")
- Depending on the outcome of the appointment, one of several things may happen next. If the client is not deemed a suitable candidate for the Brampton CLO services, then he will be given a letter stating that the CLO cannot assist him and recommending that he see duty counsel at his next court appearance. If the disclosure is complete and he wishes to plead guilty, then they will likely refer him to Duty Counsel, and will provide a letter which sets out pertinent facts useful to Duty Counsel when preparing sentencing submissions. The client is always told if this referral is likely to be made.
- If the client is accepted into the office, then he is introduced to the assigned lawyer or to the CLW and advised who will be attending his next court appearance with him. The client's next court date is diarized in the office's shared Outlook calendar, and the file is assigned by the Director to one of the lawyers, if that has not yet occurred.
- Usually, the disclosure is incomplete. A standard form letter is used, and faxed to the Crown's Office to request any outstanding items. A separate fax must be sent to the Police if requesting outstanding Video disclosure.
- On the next court date, someone from the office (usually the CLW, but possibly the lawyer assigned to the case) will attend. If necessary, the matter may be remanded to obtain outstanding disclosure. (The disclosure is rarely given out in court. The Crown's Office sends a fax advising that the disclosure is available, and someone must attend at their office to pick it up.)
- Once the disclosure is complete, then the assigned lawyer (or the CLW if scheduling requires it) will meet personally with a Crown Attorney at a resolution meeting (called a "CPT" in Ottawa). They will discuss the length of time needed for trial, along with resolution options. (In the case of drug charges, this resolution meeting must be done by telephone, because the Federal prosecutors do not maintain an office at the courthouse.) The matter usually needs a two-week remand at this point in order to get the client's instructions, especially if the client is not coming to court in person. Alternatively, the Crown will sometimes request information from the complainant, via the Officer In Charge, if a peace bond resolution is proposed, or if restitution might smooth the way to a withdrawal of charges. In that case, the matter will usually be adjourned for two to four weeks to receive the OIC's response.
- Many times, a representative of the CLO will return for this response, only to find out that the Crown is not yet ready to proceed. Then, they have to adjourn again for the pleasure of the Crown.
- It is also possible that when they go to court on a matter, the Crown does not have the file, or the Information is missing. In those cases, they either have to wait several hours for the missing documents to be found, or they are forced into an unwanted remand.

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- If the matter is possibly resolvable by way of a Mental Health Diversion, then matters usually have to be remanded several weeks in order to obtain medical reports prior to the resolution meeting. This can easily take a month or more. The matter may be remitted to Mental Health Court, which sits in a different courtroom on Tuesday and Thursday afternoons only. If the client enters the Mental Health Diversion program, his matter will be adjourned for about eight months for completion. If some other form of diversion is negotiated, a several-week remand may be sought to enable the client to complete the program or any conditions that the Crown is seeking.
- After the resolution meeting, the responsible lawyer will discuss the case with the client, and obtain instructions, the same day, if possible. If the client wishes to plead guilty, and the case is simple, the client may be referred to Duty Counsel to complete the plea. Duty Counsel will be fully briefed by letter concerning the nature of the plea, the Crown position on sentence and details about the client to assist with sentencing submissions.
- Where it would be inappropriate to refer the client to Duty Counsel (i.e., a long-standing relationship with the lawyer already exists, the client is physically or mentally fragile or the sentencing submissions are more complex than usual), the lawyer will either have the matter sent directly to the Plea Court for a guilty plea the same day, or will remand to another day for the plea if scheduling or the client requires it to be done later.
- In cases where there are instructions to set a trial date, the date is set immediately as soon as those instructions are received, sometimes immediately following the resolution meeting. Sometimes, the client will want time to consider his position, and the matter will be remanded for two weeks to obtain those instructions.
- If the trial to be set is expected to last a full day, then the Court requires that a Judicial Pretrial be held first, usually on a date three to six weeks in the future. The assigned lawyer will always attend the judicial pretrial, regardless of who made earlier appearances on the matter. The trial date itself will usually be set at the judicial pretrial, not in advance of it. Typically, the trial date itself will be eight to ten months in the future.
- If a client is re-arrested at any point during this procedure, then the assigned lawyer will attend a bail hearing for him and a new file will be opened. If the new matter occurs within three months of opening the first file, then the existing Legal Aid certificate will be amended to add the new charges, and the new matter will be considered part of the original file, even if it is handled completely separately. If the new charges are more than three months after the original ones, then the client needs to be re-assessed financially before they can open a new file for him. This follows LAO's broader procedures for certificates.
- Whoever has attended court for a client is responsible for entering that client's next court date into the shared Office Outlook calendar, and ensuring that it is noted in the client's file. If a trial date has been set, then a standard form letter is mailed to the client, advising him of the trial date and requesting that he inform us of any change in address or telephone number. At this time, other dates may also be entered into the shared Office Outlook calendar – tickler dates for meetings with the client, interim court appearances, filing dates for Charter Applications, reminders of outstanding disclosure, etc.
- The client is contacted by telephone, letter or both about six weeks before his trial to set up a trial prep meeting with the assigned lawyer. The lawyer will meet with the client a week or two before the trial to review the case and prepare him for testifying, if necessary.
- Following the trial and any subsequent sentencing hearings, the lawyer will complete a "case complexity" form and return the file to the support staff. She (or the CLW) will close the file in Legal Files, using the information on the case complexity form, and will prepare an account. Refusal cases have paper accounts prepared for them. Certificate matters are billed via Legal Aid Online. Then, closing letters and copies of the account are sent to the client, and the file is given a "closed file" number and put away.
- At regular office staff meetings (held every other week), scheduling is sorted out for both appointments and court appearances to ensure that the office maximises office efficiency. Since the Brampton Courthouse is notoriously badly run, it is possible to waste many hours there. It is usually not productive to send several people over to court with one or two files each. If one lawyer can deal with the files of another on a court day, that is the procedure. Some days, the CLW handles all the court appearances. Very occasionally, the support staff person may attend

court if they are over-committed. On any given court day, they may have matters in several different courtrooms (i.e., Youth Court, Drug Court, ordinary set-date court, Mental Health Court, judicial pretrials, etc.) Usually, more than one staff person will be over at the courthouse, dealing with several matters, and the clients will frequently need to be told in advance who they will be meeting, since it may not be the lawyer assigned to them. In addition, they may also have appearances in other courthouses. It is common for the Brampton CLO to have matters in Orangeville, Milton or Toronto several times per month.

### **Client intake and procedures in the Ottawa CLO:**

There are many similarities to the operations of the CLOs in Ottawa and Brampton. The following procedures are followed in Ottawa:

- The Ottawa CLO also get out of custody clients coming to the office with a refusal letter or a certificate in their hand. If they have not gone to Legal Aid first, they are sent there. Custody clients, on the other hand, sign up at the jail to have a video application or, if they are at the courthouse, LAO has a worker that does the application in the cells.
- Once they have a certificate or refusal letter, they can come to the office without an appointment. There is always someone there to do the initial intake interview, and the support staff or CLW (and in some instances, a volunteer student) are trained to do intake interviews. They have several sheets of paper that they go through with clients at the initial interview which include:
  - (i) Personal Information Sheet to use with Legal Files data;
  - (ii) Signing 3 Medical Information Release Forms;
  - (iii) Signing Designation of Counsel Form;
  - (iv) (for impaired/over 80 charges) Impaired Questionnaire that they take with them, complete at home and drop off at office later;
  - (v) Intake Information Sheet which has very clear parameters of confidentiality (i.e., whether we can leave a message on their telephone, whether we can mail them material at their address, etc.)

This interview takes between 10 and 15 minutes. Occasionally it takes longer if the client has mental health difficulties or is overly emotional. If someone requires an interpreter, if the person has come with an interpreter already (eg., friend), then they will be used. If not, they will arrange to have an interpreter brought in.

- Once the person is a client with the office, they send a form letter to the Crown's office stating they will be on record for this person, and also will make a formal disclosure request.
- Once they receive disclosure, the director assigns the file to one of the staff lawyers. Once the assigning has been done, the CLW is handed the file and further Legal Files updates are done. The CLW then calls the client and makes the initial appointment with the lawyer. These are traditionally 30 minutes in length but 60 minutes is left between appointments in case it takes longer. Typically, a further disclosure letter is made after speaking to the client.
- Once the lawyer meets with the client, a CPT is set in remand court at the next appearance. The lawyer attends the CPT, tells the client the outcome and on the next appearance, possibly a trial if all information has been collected.
- Traditionally, support staff attend Ottawa remand court for the day to day remands. Whoever does go to remand court, then comes back to the office and circulates throughout what the results of the court were. Additionally, the dates are recorded in the assigned lawyer's Outlook, on the main

calendar, on the client file and in Legal Files. Support staff can also go to mental health court if there is a simple issue to deal with. However, the lawyers tend to go to mental health court as the clients there have special needs and they typically use that opportunity to meet with the client and the mental health care worker at the same time.

- Ottawa has Mental Health Court and the CLO has numerous clients in there. The main difference in that court is that they are often waiting for doctor appointments or medical reports. The court has its own mental health clinic each Friday as well, so there may be adjournments to get an appointment there. Additionally, the CLO may have several clients being adjourned monthly for between 3 and 6 months to see how they progress, if they keep up with their medication, etc. This is not only done after a plea. It is possible that after that period of time, we could have the charges stayed or dropped to a peace bond.

### **Client intake and procedures in the Barrie CLO:**

As mentioned earlier, due to the differences in the regions and client base, the procedures followed in Barrie can differ from those followed in the other two locations. The main difference has to do with the number of clients that are in custody. Some differences in the intake and procedures in Barrie are highlighted below:

- Initial contact is made when the client contacts the office and the CLW (or in some cases the support staff) will do an intake with the client at that time to ascertain the client's circumstances. They will record whether the client is in or out of custody, status of bail if in custody, next Court date, outstanding charges, police force involved, any medical/mental health issues, medications and names of doctors and/or psychiatrists, as well as basic personal information required to open a name card in Legal Files.
- When the client is in custody contacts are made with possible sureties, or in the alternative, the CLW will contact the Salvation Army Bail Program to request that they interview the accused to ascertain if they qualify for the program. In addition, if the client has Mental Health issues the CLW liaise with the Canadian Mental Health Association (Court Workers, Case Managers, and ACT Team) to ensure that the client is going to have the necessary assistance upon release. When necessary, they also make telephone calls to arrange for temporary housing and/or residence for the clients upon release.
- The CLO will then have discussions with Crowns in bail Court to advise of bail plan and attempt to obtain their consent to release client in accordance with the plan which has been constructed
- The CLW or lawyer will attend at Court for in person and/or video remands, and attend for resolution meetings for clients in and out of custody
- The CLW will also do written requests for disclosure pre or post bail (especially urgent for clients in custody who do not want to wait until their first appearance date to be provided with disclosure)
- The CLW also will get releases/directions signed for medical reports and/or reports from social workers involved with clients; will liaise with social workers from CAS, Simcoe Community Services, New Friends of Children, etc. for clients involved with these agencies
- At an appropriate time, they will advise clients or when and/or where to make their legal aid application and if necessary provide contact information or in the alternative, if the client is in custody, contact Legal Aid to take a video application at CNCC.
- The CLW is also responsible for initiating contact with the Superintendent and/or Health Department at the jail to make sure clients are receiving the appropriate medical attention and/or the medications that they require (for clients with mental health issues this is required to ensure they are in a fit state when they attend at Court) and if necessary follow up with initial contact
- Other duties the CLW may perform include liaising with staff/forensic personnel from Penetang Mental Health Centre regarding interviews for clients regarding issues of fitness and arranging for beds for assessments when required, contacting the Court office to confirm client's Court dates, and when necessary, arranging for agents or instructions to duty counsel when neither the staff lawyers or CLW is able to attend in out of town Courts

All of the above is most often done long before we actually receive a certificate for the client and open a file. The ability to the CLO in Barrie to offer this level of service is unique to other law offices in the region, and also goes far beyond what is available to clients that may be seen, for example, by duty counsel.

## Unique Role of Support Staff and CLWs:

The CLOs are in the unique position to offer additional services, or provide services more efficiently, through the work of the support staff and the CLWs. As is demonstrated above, the CLOs are often able to use CLW or support staff to do things that lawyers would (and if this work was being done by the private bar on certificate, would most likely be billed at a lawyer's rate). Each CLO was asked to come up with a list of tasks that these staff members perform, which is presented below. This is only a partial list of tasks, but it emphasizes the important role they play in supporting the offices and providing services to the CLO clients.

Position	Tasks/Roles
CLW	<ul style="list-style-type: none"> <li>• Answering phones and scheduling appointments with clients</li> <li>• Appearing in set-date court, mental health court, youth court, etc.</li> <li>• Dealing with out of town remands and contacts</li> <li>• Client interviews</li> <li>• Client contact for lawyers</li> <li>• Case management of difficult clients, including mental health matters. This management typically includes meeting with support workers, arranging for assessments, following up with doctors or social service agencies and conducting case conferences with clients and others.</li> <li>• For clients in custody, contacting possible sureties, or alternatively the Salvation Army Bail Program to request assistance. For Mental Health clients, contacting the Canadian Mental Health Association (Court Workers, Case Managers, and ACT Team) to ensure that the client is going to have the necessary assistance upon release, arranging for temporary housing and/or residence for the clients upon release.</li> <li>• Diversion files (including attending resolution meetings, setting up diversion program and client follow-up) The CLW may handle the entire file from start to finish, under the supervision of the (nominally) assigned lawyer, usually the Director</li> <li>• Discussions with Crowns in bail Court to advise of bail plan and attempt to obtain their consent to release client in accordance with the plan which has been constructed</li> <li>• Do written requests for disclosure pre or post bail (especially urgent for clients in custody who do not want to wait until their first appearance date to be provided with disclosure)</li> <li>• POA and HTA offences when appropriate and as directed by the Director</li> <li>• Arranging community service for clients (when needed)</li> <li>• Initiate contact with the Superintendent and/or Health Department at the jail to make sure clients are receiving the appropriate medical attention and/or the medications that they require (for clients with mental health issues this is required to ensure they are in a fit state when they attend at Court) and if necessary follow up with initial contact</li> <li>• Advise clients or when and/or where to make their legal aid application and if necessary provide contact information or in the alternative, if the client is in custody, contact Legal Aid to take a video application</li> </ul>



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Position	Tasks/Roles
<b>CLW</b>	
	<ul style="list-style-type: none"> <li>• Liaising with staff/forensic personnel from institutions regarding interviews for clients regarding issues of fitness and arranging for beds for assessments when required</li> <li>• Contacting doctors for medical reports</li> <li>• Contacting clients for documents they need to provide the office</li> <li>• Getting Pre-sentence Reports</li> <li>• Setting resolution meetings and JPTs</li> <li>• Attending resolution meetings for lawyers when appropriate</li> <li>• Setting trial dates</li> <li>• Research into basic legal issues</li> <li>• Reviewing disclosure for missing items and following up with the Crown</li> <li>• Assisting the lawyers with trial preparation</li> <li>• Assisting in preparing appeal books</li> <li>• Outreach speaking engagements and liaison with CMHA</li> <li>• Supervising law students in non-law related tasks</li> <li>• Legal Files docketing of own and lawyers' case work and</li> <li>• Closing files on Legal Files when there is demand for extra assistance and entering accounts on Legal Aid Online.</li> <li>• General management of the office with regards to the support staff, ensuring all the duties are being handled appropriately and reporting to the Director if there needs to be changes</li> </ul>

Position	Tasks/Roles
<b>Support Worker</b>	
	<ul style="list-style-type: none"> <li>• Answering phones and scheduling appointments with clients</li> <li>• Supervising co-op students in administrative/clerical tasks</li> <li>• Opening files, both paper and Legal Files</li> <li>• Initial intake with clients</li> <li>• Initial intakes with community agencies regarding people in custody (post-certificate and pre-certificate),</li> <li>• Overseeing remand court dates</li> <li>• Attending remand court, mental health court, bail court as necessary</li> <li>• Updating staff Outlook calendars</li> <li>• Paper files and Legal Files management</li> <li>• Informing/reminding clients/community agency workers of court dates, sentencing dates by phone and by letters</li> <li>• Trial prepping of the files for the lawyers</li> <li>• File management</li> <li>• Preparing casebooks</li> <li>• Preparing charter applications and Typing Factums</li> <li>• Preparing appeal books</li> <li>• Arranging for service/filing of subpoenas, Applications, etc</li> <li>• Linking clients with Outreach Programmes</li> <li>• Following up on medical reports, and relaying lawyer instructions to clients</li> </ul>

## 1: Highlights of Findings and Recommendations

Position	Tasks/Roles
<b>Support Worker</b>	
	<ul style="list-style-type: none"> <li>• Instructing potential clients to apply for legal aid if certificate is not forthcoming , often repeat follow up.</li> <li>• Instructing clients how and where to apply for legal aid assistance.</li> <li>• Initiating legal aid applications by contacting LAO to have in-custody clients placed on list to be interviewed at the jail. Contacting Patient Advocate (i.e. at Penetang Mental Health Centre) to assist with legal aid applications for mental health clients. Inquiries to LAO as to status of legal aid applications.</li> <li>• Completing legal aid certificate amendment requests and follow up, and liaising with the area office to discuss issues that arise in this regard.</li> <li>• Inserts for the library</li> <li>• Legal Files docketing for lawyers who do not do their own dockets</li> <li>• Closing files on Legal Files and preparing paper accounts</li> <li>• Co-ordinating various administrative functions with CLW</li> </ul>

*(The material provided by LAO ends here.)*

## 1.6 Two Important Challenges to Evaluating the CLOs—and Interpreting the Results

Typically, evaluations consist of one or a number of different types of comparisons.

### 1.6.1 *Exploratory Design Strategy*

First, and perhaps ideally, the evaluation of the CLOs would consist of a set of *normative* comparisons. Actual CLO performance would be compared to expected performance. Expected performance would in turn have been defined at the outset in terms of clearly stated and communicated normative objectives and standards—with respect to both the **nature** and **levels** of both *outcomes* (the impacts of the CLO on its clients and stakeholders), and *processes* (the efficiency with which services were delivered). These normative objectives and standards would in turn have been determined by LAO from a combination of: broader LAO objectives, best practices of similar initiatives in other jurisdictions, theoretical analysis, available resources, and an understanding of what would likely be feasible within the environments in which the CLOs were to be established.

As shown in Section 1.4 above, LAO did provide at the outset considerable overall guidance in terms of the **nature** of outcomes that should be achieved and the **nature** of processes that should be used. (For instance, the CLOs were to take on both certificate and non-certificate cases; they were to handle specific cases, and to do community outreach in support of systemic law reform; and they were also to do their work with a mix of lawyers, community legal workers and administrative staff.) However as with many experimental initiatives, setting standards with respect to the **levels** of many outcomes and processes to be achieved was a considerably more difficult task—mainly because of the novelty of the CLO approach, the lack of alternative models upon which to base the design of the CLOs and the uncertainty with respect to what could be achieved in what were known to be complex and at times hostile environments (especially because of the likely non-supportive reception from the local private bar). Given this novelty and uncertainty, instead of setting detailed standards with respect to the expected **levels** of outcomes and processes, LAO decided to proceed in an *exploratory* mode—allowing the local CLO directors considerable latitude and local autonomy in experimenting with different levels of outcomes and processes. The experience of the CLOs would then be closely monitored to collect the more specific and detailed information needed by LAO to set—at a later date—the appropriate levels of standards that would be needed and used for longer term planning, modification and management of the CLOs.

Thus limited guidance was given by the LAO provincial office to the CLOs at the outset as to the **standard levels** expected for most outcomes and processes. (For instance, no guidance was available as to whether certificate cases should comprise 10% or 90% of a particular CLO's caseloads. Similarly, no guidance was provided as to whether work related to community outreach should comprise 20% or 50% of a CLO's total activity.) One major exception was in the area of budget, with firm numbers being specified for each type of staff and other line items. A second exception was that the CLOs had to follow all financial, informational technology, human resource and other policies and procedures general to the rest of LAO.

This flexibility as to levels of most outcomes or processes was a reasonable initial approach given the experimental and novel nature of the CLOs, and the desire to allow them to evolve in a manner best suited to the conditions specific to the particular local area served. However, since this situation continued throughout the three years of the evaluation, it was not possible for the evaluation to

undertake the first, normative, type of comparative analysis—i.e., to go beyond assessing whether the CLOs were “doing the right things” to determining either whether they were doing “enough of those things” or whether they were “doing the things efficiently enough”. (The same problem was also faced by the LAO provincial office in monitoring the success of the CLOs and the CLO directors in managing the day-to-day operations of the offices.) Thus, this evaluation report cannot make normative statements (from the perspective of LAO) as to the adequacy of CLO performance—or whether the CLOs were successful or not.

On the other hand, LAO’s choice of an exploratory approach placed a different type of pressure on the evaluation, namely, undertaking the monitoring and collection of the types of information on “what was done and what was achieved” by the CLOs—the types of information needed to allow LAO to now undertake the concentrated internal analysis, planning and decision-making exercise needed to set standards, to assess CLO performance in terms of those standards, and to determine whether modifications are required to the CLO design if it is decided to continue the current model into the future. Given the importance and nature of this LAO work to be supported, this resulted in the evaluation (in conjunction with LAO) being tasked with collecting data over the past three years in considerably more detail than would normally be required. Also, since it was not known beforehand which areas were likely to be sources of either positive or negative “lessons learned”, the evaluation was required to cast a broader net than normal in choosing what types of data to collect. The impact will be noted by the reader in two ways. First, the report covers in detail a very broad range of topics and this range is reflected in the length and detail of the report. Second, as a means of identifying potential areas of problems or exemplary practice, the report highlights the many significant changes in CLO activity and/or results over time, and/or differences from one CLO to another. However, it should be noted that highlighting those changes or differences does not necessarily mean that the issues or differences explored are a problem. For instance, differences from one CLO to another in how “outreach” is carried out may turn out to be entirely acceptable once LAO articulates its broader priorities for the CLOs. Thus, to facilitate the coming broader standard setting and problem analysis by LAO, the report errs on the side of over-inclusion of data and analysis.

### 1.6.2 *Comparative Models*

Evaluations also often attempt to compare the model being evaluated (the CLO) with other models for accomplishing the same outcomes. This type of comparison would be particularly useful for those interested in whether the levels and types of outcomes achieved by the CLOs could have been achieved more efficiently through some other means.

The *exploratory* approach adopted by LAO meant that there was the opportunity for significant variation in “models” from one CLO to another in terms of both types of outcomes and types of processes. These similarities and differences have been documented in the report.

However, it was anticipated at the outset that the evaluation would be able to compare the CLO model with other *non-CLO* models of criminal state-funded legal services. The natural question is how the CLOs compare to a similar private bar practice. However, despite considerable efforts, LAO and the evaluators were not able to obtain the co-operation of the private bar in any of the three sites in the collection of comparative information regarding similar private bar offices (either through the sharing of statistical data on case processing, work standards or costs of operations, or through their participation in the Peer Review sub-study of file documentation practices). Further, the data available on private bar cases that is available from the LAO “Peoplesoft/ Legal Aid Portal” data do not measure standards/outcomes in a comparable manner between the private bar and the CLOs, and do not contain sufficient data to ensure comparisons of cost data are based on comparable types of

CLO and private bar cases—moreover, the Peoplesoft data only cover certificate cases.<sup>7</sup> Thus, a comparison with the private bar model was not possible for this report.<sup>8</sup>

### 1.6.3 **Summary Comments**

This evaluation was of a scope and depth that far exceeds that of by far the majority of initiatives in the justice area. LAO in general, and the CLOs in particular, have clearly indicated their desire to be open and accountable for their efforts in this initiative. However, as with any evaluation, certain areas remain for others to complete.

Nonetheless, the evaluation has certainly been successful in collecting the information needed by LAO to embark on the next steps of developing and communicating the standards and guidelines needed to define the appropriate design of the CLO initiative, and to ensure its future effective and efficient management.

## 1.7 Summary of Results

The following section summarizes the key observations, findings and recommendations for which detailed supporting information is found in the (separately bound) Part 2 of this report. All references to Chapters and section numbers are references to material in Part 2 (Supporting Data and Analysis). This section is followed by section 1.8, which includes what in the view of the evaluators are the most important key lessons learned from the evaluation.

### 1.7.1 **Chapter 2: CLO Objectives and Direction**

Chapter 2: begins Part 2 of the Report with a discussion of the development of the initial CLO objectives and protocols. Since they are fundamental to the evaluation, those sections have been repeated above in section 1.4 to allow Part 1 of the report to stand alone.

The remainder of Chapter 2: focuses on observations and recommendations related to how these initial objectives and directions have been implemented in practice.

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<sup>7</sup> Information on court criminal case processing activity maintained by the Ontario Ministry of the Attorney General would also have been of assistance. However, efforts to gain access to that information were also unsuccessful.

<sup>8</sup> In the same way, it is difficult to compare the CLOs to other Legal Aid staff offices (Family Law Offices, Refugee Law Offices) or clinics, since the nature of the work is quite different.

***Section 2.2.1: What general strategy was initially in place to refine and clarify objectives?***

During the first year, most CLO staff felt that they understood what cases LAO wanted them to focus on. Staff also appreciated that LAO was willing to permit 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*. Throughout much of the first three years since the CLOs' inception, LAO has given relatively little further clarification to the broad policies and protocols set out initially in the *Protocol* and *Service Objectives and Priorities*. The result has been that refinements to the objectives and protocols have in large part been driven, not by top-down policy and management initiatives, but by a bottom-up, "operations driven" policy approach that reflects choices that are made at the front lines by the CLOs.

This approach is consistent with the numerous references in the *Protocol* to instances in which the Director of each CLO has the authority to make decisions such as whether or not to accept an individual case and the range of services (the latter in consultation with other LAO officials). However, it has remained unclear to what degree this authority and responsibility of each CLO Director extends to setting broader policy and process policies across all cases and activities within which individual operational decisions are made by the CLO directors. Certainly in light of the direction of broader recent management revitalization initiatives within LAO, one would expect a more instrumental role for senior management in setting such strategic overall-level planning parameters related to the CLOs. The CLOs would then be responsible for more operational-level management decisions within those parameters.

The CLOs have recently reached what the individual CLOs consider to be the capacity of their existing resources and have—or soon will have to—make choices among competing demands for their services. As well, more clarity is required from a management perspective and the perspective of creating a positive and productive staff workplace environment.

For these and other reasons, the evaluators believe

*It is necessary to develop greater clarity regarding the appropriate process within LAO for developing and communicating CLO strategic and policy level objectives generally and ensuring their achievement.*

*There is also a need to utilize that process to explore the numerous overall outcome and process areas identified in this report as requiring attention.*

***Section 2.2.2: Do the statements of Objectives specify in sufficient detail what is expected of the CLOs? What areas still need clarification or more specificity?***

In both the views of staff, and in the face of evidence of significant actual differences in practices from CLO to CLO and over time in the same CLO, further clarification is needed to policies and priorities.

*It is clear in the minds of the evaluators that there is a need to initiate a process to clarify specific CLO priorities—not only with respect to the types of cases, but regarding other matters as well. That review would inter alia include the areas*

*noted throughout this report, including the following specific areas identified in our year two year and three interviews as requiring attention:*

- *What types of cases to be given priority, or accepted, including*
  - *the appropriate mix of certificate and non-certificate cases*
    - *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) *develop and keep sharp the legal skills needed for certificate case representation;*
    - *the proper balance 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 and limited access to justice opportunities;*
  - *the criteria for CLOs' excluding or giving priority to certain offences;*
  - *whether changes are needed in the types of accused that should receive priority in each CLO*
- *Clear guidelines regarding the types of services to be offered by the CLO, including:*
  - *whether the CLOs should provide services from the beginning to the end of the judicial process (e.g. from bail to appeals)*
  - *clarification of the interrelationships of each CLO and its local duty counsel, and the allocation of responsibilities between them*
  - *clarification of the CLOs' responsibilities to be "innovative" in their methods of casework, law reform and community education<sup>9</sup>*
- *Guidelines for the allocation of time expectations for specific types of cases and tasks, including:*
  - *Whether CLO lawyers should be constrained by the tariff in their provision of legal services, and if so, under what circumstances*
- *Administrative procedures, including:*
  - *How CLWs and other support staff should docket their non-billable time to individual cases*
- *What should be the appropriate allocation of each CLO's total budget between providing criminal defence services to specific cases and other activities related to law reform, public legal education and systemic change, including:*
  - *What proportion of the CLWs' time should be allocated to systemic law reform and community outreach rather than support for individual casework?*
  - *Should responsibilities for community outreach, law reform and other non-specific casework be shared in a different way among lawyers and CLWs within each CLO?*

<sup>9</sup> The CLOs believe that LAO wants them to be "innovative" in their methods of casework, law reform and community education. However, LAO has given little indication as to the nature of these potential innovations. The CLO staff 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. Much of the casework innovation has been left to the community legal workers in Barrie, Brampton and Ottawa; unfortunately personnel turnovers in all three communities have caused problems in the developing of relationships with local service organizations.

***Section 2.2.3 Are the CLO objectives and priorities clearly understood—by persons within the CLO, by other groups within the community?***

Many instances were encountered by the evaluators in which members of external groups were unaware of key aspects of the purpose, priorities and practices of the CLOs—or worse, had inaccurate understandings of those purposes, priorities and practices.

Since those misunderstandings are often at the source of difficulties for the CLOs,

*It is recommended that efforts be made to develop and implement better mechanisms for communicating the purposes and practices of the CLOs to stakeholder groups in each community.*

***Section 2.2.4 What planning and management processes have been put in place to clarify and revise objectives, and to ensure that any changes are effectively communicated?***

Efforts have been made over the three-year life of the CLOs to ensure a better process for formulating policies and best practice procedures and there recently has been some improvement with respect to improving administrative and procedural policies. However, efforts are less promising with respect to developing an organizational structure and management processes for developing and implementing policies and procedures that relate to the legal and other substantive issues that required significant clarification.

*It is recommended that specific attention be given to developing improved structures and processes for developing and implementing—by senior levels of LAO—improved policies and procedures regarding legal and other substantive issues that are required to guide and facilitate the work of the CLOs.*

***Section 2.2.5 What management processes are in place to compare actual to expected performance—on both an ongoing and ad hoc basis?***

Setting the objectives and priorities is of course only the first step. For the process to have a real impact, LAO must have in place a process for monitoring performance, assessing that performance in light of objectives, and developing and implementing methods to address any problems identified.

On the one hand,

*By funding and co-operating fully with the current three-year evaluation, LAO has committed more resources to addressing these first tasks than most organizations commit to model offices. By publishing the results of the evaluation, LAO is also making a strong commitment to being accountable for its efforts in this area. The Peer Review process (part of the evaluation) is a particular example of LAO demonstrating its willingness to subject its internal work processes to a review by independent assessors, in this case members of the private bar.*



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However, improved internal planning and management processes—at the headquarters, area and CLO levels—are also needed to ensure that the lessons learned from such evaluations are communicated to staff and result in appropriate changes. Equally important is the development (and ongoing application) of sound operational management strategies and practices to ensure the creation and continuous improvement of a rewarding and productive work environment—an environment in which staff and other resources are effectively and efficiently focused on achieving priority LAO objectives for the CLOs.

There are many examples of CLO directors demonstrating sound operational management practices. The recent work of the Brampton CLO Director to develop and apply explicit criteria for managing their intake of cases is one. The high number of cases per lawyer handled by the Barrie CLO is another. The ability of the Ottawa CLO to establish itself in a hostile environment is still another.

*Although there is considerable variation among the three CLOs, section 2.2.5 and other parts of the report document a number of areas in which developmental work is indicated to strengthen management styles and practices—at different levels within LAO.<sup>10</sup>*

In by far the majority of our discussions with CLO and Area Directors they have agreed that improvements need to be made. More importantly, there is a desire to participate fully in making those improvements. Equally important, a number of staff on the front lines favour more opportunities to have their work monitored and to share lessons learned.<sup>11</sup> Unfortunately, progress in improving management processes—and the management training necessary to improve management skills—has been slower than expected.

*Priority attention is needed to addressing the management training needs of the CLO directors.*

The report concludes by addressing the argument that the CLOs are probably exhibiting a standard of planning and management that is typical—or better than that—of small private criminal law offices.

However, the point is made that:

*The CLO offices are publicly funded and therefore subject to possibly higher standards of accountability and management than similar size private law offices.<sup>12</sup>*

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<sup>10</sup> This need for improved management training in the CLOs reflects an analogous need currently being addressed throughout LAO.

<sup>11</sup> Clearly this review would be done in a manner that does not erode the CLO lawyers' appropriate independence in their decision-making in individual cases.

<sup>12</sup> This is one of the many areas in which the CLOs and the private bar *do not* operate on a "level playing field". Because of their being part of the public service, the CLOs are expected to meet (and must expend the resources to achieve) a higher standard of management and accountability than the private bar offices with which they are asked to compete (on both product and cost criteria).

### 1.7.2 Chapter 3: Services to Individual Client Cases

As noted earlier, the CLOs' efforts to achieve the objectives discussed in detail in Chapter 2: can be organized into four broad categories:

- Three related to handling individual client cases, including:
  - *Non-certificate Cases*: cases that are denied legal aid certificates because they are unlikely to result in a custodial sentence,
  - *Certificate Cases*: cases that have been granted legal aid certificates
  - *Enhanced Special Services*: providing enhanced services needed by specific types of cases, for instance those involving accused with mental health issues, and
- And a fourth category that take a more *systemic* approach, i.e., those that focus on broader groups of cases, stakeholders, or issues (through, for instance: outreach, policy development, and law reform).

Chapter 3: focuses on the first three categories of CLO activities. Systemic reform and outreach activities are addressed in Chapter 4:.

With respect to those three categories of activities, the information presented is especially important in supporting four of the evaluation's major findings:

- The CLOs have clearly confirmed the existence of—and benefit of addressing—the previously otherwise unmet significant need for legal services on the part of persons who qualify financially for legal aid but who do not currently receive such defence services through the legal aid certificate system;
- The CLOs have demonstrated that they can address those needs. The empirical data and the interviews with a range of stakeholders clearly indicate that in the absence of the CLOs, a significant number of accused persons would have potentially suffered serious negative consequences if they had not received adequate legal representation. The work of the CLOs has also reduced some of the difficulties and costs previously felt by the courts and other parts of the justice system caused by persons' appearing before the courts without legal representation;
- There are considerable differences among the CLOs with respect to priorities and approaches. Those differences are reflected mainly in the nature of cases handled but also in some aspects of how services are provided. To a large extent the differences are in response to the types of cases that request service from the CLOs and the court and legal environment in which the CLOs operate. However, certain differences also seem in part due to the different operational approaches adopted by the individual CLOs; and
- The CLO lawyers provide services in individual cases that are of similar to better quality to those offered by a typical member of the private bar. This is shown both with respect to the activities undertaken for cases, and with respect to the outcomes achieved.

The evidence to support these findings is organized around six questions, each given a separate section. The detailed evidence and analysis is provided in these sections. However, highlights of the key findings in each of those sections are presented here.

***Section 3.2: Context: How many cases in each site have recently received legal services from the private bar under legal aid certificates?***

To the extent that the CLOs have a mandate to provide services to clients who have obtained legal aid certificates, **the total number and nature of certificates** issued provides three important types of information: the size of the certificate program funded by LAO, the overall potential demand for private bar and CLO certificate services, and (when compared to the numbers of certificate cases actually opened by the CLOs) the potential impact of the CLOs on the certificate work of the private bar.<sup>13</sup>

As shown in Figure 3-1, the CLOs were implemented within the context of:

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

All three CLOs were therefore implemented in locations with stable or slightly increasing demands for one of the types of legal services that LAO expected the CLOs to provide.

Since the CLOs opened, the trends in certificates issued have exhibited different trends from one site to site another:

- In Barrie, since the CLO opened the quarterly and yearly trend has been decidedly upward. (The number issued in the third year of the CLO (2,626) was 36% above the number issued in the year before opening.)
- In contrast, in Brampton/Peel, although the number issued remained fairly level in the first year, the quarterly and yearly trends were decidedly downward during the next two years (decreasing 29%--from 945 in the last quarter of year one to 677 in the last quarter of year three. Alternatively, the number issued in year three (2,806) was 21% below the number issued in year one of the CLO.)
- However, in Ottawa, the number of certificates issued has continued fairly flat—with the yearly number issued in year three (4,004) being 6% below the number for year one, and the quarterly trend seen before and after opening usually oscillating between 967 and 1116.

*Thus, the potential workload exhibited by certificate cases has recently been growing in Barrie, stable in Ottawa, and falling in Brampton.*

It should, however, be noted that this information does not describe **unmet demand for services**, but the level of demand for legal services that has, in fact, been *actually met*, virtually in full by the private bar. Data on the extent of *unmet* demand for certificate cases (i.e. by persons who qualify but are unable to get a lawyer to accept the certificate) simply do not exist. Section Part 2: 3.2 does however examine in detail one indicator of demand unmet by the legal aid certificate system, namely the numbers of people refused

<sup>13</sup> Although they are the best indicators available to the evaluation, the number of certificates issued in the three sites are imperfect indicators of the number of certificate cases handled by the private bar in each of the areas served by the three CLOs. For instance, for the Barrie area, certificates are issued to lawyers from other areas for clients in the “Super Jail” in that area. Similarly, the boundaries of the Brampton area have also changed over the period considered. Of particular importance is that the Brampton jail (previously in the Peel/Brampton region) was closed with its functions transferred to the Maplehurst institution (in the Halton region).

certificates for different reasons. Of particular interest are the numbers of people who qualify financially for legal aid, but who (because of cost constraints on the LAO budget) are refused certificates because there is not a strong possibility they will go to jail if convicted. This “legal refusal” category in year three of CLO operations numbered just under 390 people in Barrie and Ottawa, and it was considerably above that number (682) in Brampton. In all sites these numbers were higher in year two—considerably higher—than in year one. Further, although the numbers fell in Brampton in year three, they continued their upward trend in both Barrie and Ottawa.

*The numbers of certificate applications refused by LAO for legal reasons are thus consistent with a significant potential unmet demand for representation services from the CLOs related to this group of non-certificate clients. This indicator of potential unmet demand is highest in Brampton, but growing in both Barrie and Ottawa.*

### ***Section 3.3: How many cases in each site have recently received legal services from the CLOs?***

The courts do not collect or report on the total numbers of accused persons who appear before them without a lawyer—let alone collect data on the numbers within this group who do or do not meet the financial criteria for a legal aid certificate. It is thus impossible to obtain empirical information on the potential unmet demand for CLO services related to non-certificate cases. On the other hand, the judiciary, the Crown attorneys, court administrators and others involved in the courts are unanimous in reporting that non-represented accused not only present significant operational and financial difficulties for the courts, but too often suffer unfairly and seriously because of their not having adequate legal representation.

Section 3.3 does however present detailed information on the **numbers of cases actually handled by the CLOs**, both certificate cases and cases that (although the accused qualified financially) would not have been represented under a certificate.

As shown in Figure 3-3, during the first two years of operations, each of the CLOs exhibited a trend in cases opened typical of a moderately successful new criminal law office.

The trends from quarter to quarter differed among the offices. However, generally, the Barrie and Brampton CLOs both experienced an initial period of growth in cases opened during year one which led to a level that was roughly maintained for years two and three (although Brampton caseloads did fall in the last two quarters of year three). The Ottawa CLO’s period of growth was slower and extended until the beginning of the third year, at which point it started to fall for the remainder of the year.

With respect to the absolute level of caseloads, throughout the last two years of the three-year period, Brampton has accepted higher levels of new cases than both Barrie and Ottawa.<sup>14</sup> Throughout the three years Barrie has had only two lawyers, compared to the

<sup>14</sup> It should however be noted that there is some variation in the way a “case” is defined in the three sites—in particular, a situation in which an accused with a still open group of charges (i.e. the “initial case”) comes to the CLO with a second group of charges. The Barrie CLO is very likely to add the second group of charges to the first case, resulting in only *one* case. In the Brampton CLO, if the second set of charges arrive more than three months after the first set of charges were opened, a second case would be created, resulting in *two* cases. Therefore, the caseload statistics for Barrie may be understated

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three in Brampton and Ottawa. Nonetheless, Barrie accepted more cases than Ottawa until the last quarter of the second year of operations--although Ottawa overtook Barrie after that. Nonetheless, even in year three, Barrie continued to close more cases per lawyer (126) than did either Brampton (115) or Ottawa (103).

The quarterly numbers of cases peaked at 129 in one quarter in year two for the Brampton CLO, but quarterly numbers of case opened otherwise ranged between 46 and 102 in the last two years. However, all three CLOs opened similar numbers of cases (about 60) during the last quarter of the period examined—again, despite Barrie having fewer lawyers.

Section 3.3 also examines trends in the numbers of cases *closed* by the CLOs.<sup>15</sup> By the end of year three, Brampton had closed considerably more files (778) than had Barrie (657, *albeit* with two lawyers), and both had closed considerably more files than had Ottawa (563).

Another interesting finding is that the number of files closed has increased each year in all three offices, but the increases are at considerably different rates. The result is that, although Barrie closed the most files in year one (178), Brampton closed the most files in both years two and three (329 and 345). However, in year three Ottawa closed nearly as many files (310) as Brampton (345) and more than Barrie (251, although Barrie continued to have only two lawyers). A number of factors could underlie these different rates of growth in closed cases. One relates to Barrie and Brampton reaching higher levels of caseloads earlier than Ottawa, another relates to Ottawa having staffing problems that delayed the closing of cases to later periods.

*These numbers on caseloads indicate that throughout the three years in all three sites there has been a significant demand demonstrated for the types of case-specific defence services the CLOs are providing.*

*The numbers of cases opened and closed also show that the CLOs have met the needs of a significant number of clients. (Since we were unable to obtain analogous numbers from the private bar, we cannot, however, comment on how these numbers compare to those met by a typical criminal law office.)*

*For a number of reasons, LAO provincial office did not establish a “standard caseload” level that the CLOs should meet, which makes any normative analyses of these data problematic. However, the levels and different trends in the caseloads handled do suggest it would be informative for LAO management to better understand the different internal and external situational, management and operational factors in each CLO that affected their relative efficiency at different points in time.*

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somewhat.

<sup>15</sup> There are a number of factors that have influenced the number of files opened and closed in the CLOs. For example, the Barrie CLO operates with two lawyer staff positions, and the other two CLOs have three. The Ottawa CLO, however, has operated with two lawyers during times of staff turnover. While the difference in staffing has probably impacted the office’s ability and practices related to opening and closing files, other factors have come into play, including previous history of the lawyers in the community, different levels of opposition from the local bar, different nature and level of the demand for services, client referrals, internal operational and management practices, etc.

Section 3.3 examines separately the **proportional trends in certificate and non-certificate cases opened**. Although the more detailed trends over time are of interest to those examining at an operational level the practices of the CLOs, the most significant policy level finding is that

*Throughout the three years of operation, certificate cases constituted a much higher proportion of the Barrie CLO's caseload (between 75% and 93% in different quarters in years two and three) than in Brampton (between 4% and 16%) and Ottawa (between 6% and 24%).<sup>16</sup>*

It should be noted that our interviews suggest that both the similarities and differences in the mixes—and to a lesser extent the levels—of caseloads do not seem to be the result of explicit policy guidelines of LAO head office, the local LAO Area Director or, for that matter, the CLOs. The general approach in all CLOs seemed over the first two years to have been reactive rather than proactive, taking the clients that “come in the door” while building their caseloads. In the third year, the approaches again seemed locally driven, but driven more by considerations related to workloads and local definitions of capacities than by centrally set policies.

Another example demonstrates the considerable difference among the CLOs with respect to how caseload priorities are defined. This example involves a comparison of the numbers of non-certificate cases accepted by the CLO (see Figure 3-3) with an (albeit rough) indicator of the potential demand for such non-certificate services, namely, the number of applications for Legal Aid Certificates (see Figure 3-2) which qualified financially but were refused a certificate for “legal reasons”<sup>17</sup> in both year two and year. That comparison shows that the number of non-certificate cases opened by Barrie was a much lower percent of the number of such certificate refusals (14% and 9% in the two years)—compared to Brampton (39% and 46%) or Ottawa (57% and 63%).

*The considerable variations from CLO to CLO in both the certificate/non-certificate mix of cases and the percent those cases represent of certificate applications refused may be appropriate if such variations reflected explicit headquarters LAO policies or guidelines.*

*Development and communication of explicit guidelines and criteria regarding the mix of certificate and non-certificate cases is an area to be addressed by LAO.*

At the outset, very general direction was given by LAO headquarters regarding the **groups of clients** (e.g., mentally ill and Aboriginal persons) to be targeted by each CLO.

The CLOs—especially Brampton and Barrie—have initiated efforts to develop their own specific triage criteria and procedures, and are developing, implicitly at least, notions of what constitutes capacity or optimal levels of operations. Strong local input is needed to ensure such protocols reflect local conditions and capabilities. However, the evaluators

<sup>16</sup> This finding is tempered by the fact that a significant (but unknown) percent of the Barrie “certificate” cases come in the CLO door before the application process has been completed—especially in situations involving mental health accused. In these cases, the Barrie CLO works with the client to obtain a certificate while simultaneously assisting the client. It is possible that these clients would have otherwise proceeded through the court process without getting a certificate (probably handled by duty counsel). This is significant because the Barrie CLO is able to respond to these clients with a certain level of expertise, and faster than they may have otherwise proceeded. In both Ottawa and Brampton, they do not see clients until after they have applied for a certificate, and have either been refused or obtained the certificate. There are also differences in Brampton because the LAO legal office has an officer in the courthouse that assists individual with Legal Aid applications.

<sup>17</sup> i.e., because they were unlikely to receive a custodial sentence.

have concluded that LAO should consider whether it would be more appropriate if the provincial office took a stronger role in their development—with respect to both the development process to be used and the overall LAO accountabilities and policy that they should incorporate.

Section 3.3 therefore recommends that:

*LAO should address the issue of whether sufficient specific central direction is provided to guide operational decision-making of the CLOs—especially regarding what levels should be regarded as either capacity or optimal levels of operations, and what criteria should be used in accepting and refusing different types requests for CLO representation in situations reaching those capacity and optimal levels<sup>18</sup>*

Next, whether the CLOs would have an appreciable impact on the **workload of the private bar** was a major concern initially expressed by the private bar, both provincially and locally. Although these concerns were far less prevalent by the interviews conducted in year three, information addressing the issue is presented in Section 3.3.

As indicated earlier, the numbers of certificates issued over the three years since the CLOs were opened generally increased in Barrie, decreased in Brampton, and stayed level in Ottawa. Many factors affect the numbers of certificates issued. However, these numbers (plus the relatively low certificate caseloads of the CLOs) suggest that the introduction of the CLOs was not associated with any changes (such as a change in LAO certificate granting policies and practices) that had any significant impact on the total number of certificates issued—and the overall workload from certificates of the private bar—in Barrie and Ottawa. Although the numbers of certificates issued fell during the latter part of the period in Brampton, it is also unlikely—especially given the very small number of certificate cases handled by the Brampton CLO—that the introduction of the CLO or any associated change in LAO certificate granting policy had a major influence on that downward trend.<sup>19</sup>

Looking at the question from another perspective, the Barrie CLO certificate cases represented roughly 8% of the total certificates in the Area during the first year and slightly below 8% during the second year and just below 7% in the third year. In contrast, in Brampton and Ottawa the CLOs accounted for close to only 1% of the total certificates issued in any of the three years.

In terms of percentages of the total certificate cases represented in each community, the CLOs in Brampton and Ottawa do not seem to have had a significant impact on the certificate work in their areas to date.

However, it should be noted that the Barrie CLO hired two lawyers who had a significant criminal certificate practice, one of whom had practiced in Simcoe County before he joined the CLO. It is therefore not accurate to characterize their caseloads within the CLO as entirely being taken from the other members of the private bar. Presumably some of the cases that these lawyers took on as “CLO” lawyers would have been taken on by them if they had remained in private practice—and would not have been available to other

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<sup>18</sup> It is recognized that any control over caseloads must be undertaken within the concept embodied in the *Legal Aid Act* of clients’ having a choice of counsel. Anybody can walk in the door and ask the CLO for help. Other considerations, including the special backgrounds and skills of the CLO lawyers, also have to be taken into account.

<sup>19</sup> ...especially since the three Brampton CLO lawyers represent only 2% of the criminal roster in that area.

members of the private bar. Similarly, if these CLO lawyers were to leave the CLO but continue to practice in Barrie, they would continue to be retained by a sizeable number of certificate clients.<sup>20</sup> Further, as noted elsewhere, a percentage of the CLO certificate clients would not have obtained certificates if they had not been assisted in doing so by the CLO. Instead they would have most likely been assisted by Duty Counsel.

Further analysis of the Barrie private bar certificate data shows that in 2006/07, 318 lawyers accepted certificates. The 181 certificates opened by the Barrie CLO therefore translate into each of those lawyers losing approximately half a certificate a year. Even achieving that level of average impact would be dependent on having each and every one of those 181 cases being picked up by the private bar if the CLO had not been in operation. (The more detailed discussion in section 3.3 also points out that a significant part of any potential workload loss would be concentrated in a very small number of firms that target certificate cases.)

In summary,

*The introduction of the CLOs does not seem to have had a significant impact on the total number of certificates—and workloads—of the private bar in any of the sites. In fact, in Barrie, which by far has had the greatest number of certificate cases handled by any of the CLOs, the total number of legal aid certificates handled by the private bar has increased substantially since the Barrie CLO was opened.*

### ***Section 3.4: What types of cases have received those services from the CLOs, and how does the mix compare to those provided service by the private bar? To what extent is the service meeting unmet needs?***

In addition to the general substantive case-specific objectives addressed in this Chapter, each CLO has objectives which are particular to it, including **targeting** their resources towards specific certificate and non-certificate client groups and strategies. As noted later, our interview data suggest that many workers in the justice environment in which the CLOs work continue to be unaware (even in the third year of their operation), 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.”*

*More effective efforts are needed to ensure that other stakeholders in the local court environment are aware of the types of accused persons whose needs the CLOs are trying to address.*

Background information on the period before the three CLOs were established generally notes that:

- **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:

<sup>20</sup> Nonetheless, as also noted later, it is unlikely that the Barrie CLO lawyers could take on as many certificate cases as private lawyers as they do as CLO staff, and break even financially.



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- 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 in LAO documents and by those interviewed 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 (in particular, clients whose immigration status would be affected by a conviction on even a relatively minor offence);
    - Persons with Aboriginal and visible minority backgrounds; and
    - Services to persons who otherwise have difficulty accessing counsel.

Section 3.4 provides information on the cases actually opened by the CLOs. That information has two purposes: to determine whether those cases reflect the original targeted groups and to determine whether other groups have come to the CLOs for services.

A broad range of **case characteristics** are examined. The following are among the most significant highlights of the analysis:

- A significant and increasing proportion (over 16% in year three) of CLO certificate clients in both Brampton and Ottawa have a first language other than the two official languages. This situation does not seem to be present in Barrie, as may be expected based on the population base. Clients with a first language other than English or French seem to be even more prevalent among the non-certificate cases in both Brampton and Ottawa (27% of the Ottawa clients in year one and at least 20% of the Brampton clients in year two). The significance of this is unclear especially since none of the CLO sites reported any difficulties in meeting the needs of translation or interpretation for their clients.

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- Although significant problems were encountered with data recording,<sup>21</sup>
  - in year three Aboriginal (North American Native) persons constituted a significant percentage of the Barrie non-certificate and certificate caseloads (26% and 25%), and
  - persons other than Aboriginals or Caucasians constituted very high percentages of the Brampton CLO caseloads—or over half in the third year for both non-certificate (50%) and certificate (55%). Although not as prevalent in Ottawa, non-Aboriginals/ non-Caucasians constituted roughly a quarter of that CLO's caseloads as well.
  - The interviews suggested that the CLOs were doing a credible job of meeting the needs of different cultural groups.
- With the caveat that the available evidence is again not ideal, certain differences do seem evident among the CLOs with regard to certain other demographic characteristics of their clients. For instance:
  - Barrie has
    - higher (than Brampton and Ottawa), and increasing, percents of certificate clients in institutions (61% in the third year),
    - higher, and increasing, percents of both non-certificate and certificate clients who have addictions issues (in year three a quarter of non-certificate cases and over a half of its certificate cases);
    - non-certificate and certificate cases which have a relatively high percent (compared to Brampton) of clients with social worker involvement (in year three, 33% of non-certificate and 45% of certificate cases);
    - both non-certificate and certificate cases with relatively higher percents exhibiting mental health difficulties.

Barrie therefore in terms of the important characteristics of institutionalization, addictions, social worker involvement and mental health difficulties, has a relatively difficult group of clients compared to the other two CLOs.

- in Ottawa
  - non-certificate cases and certificate cases had relatively higher percents of clients with geographic difficulties<sup>22</sup>
  - in year two, certificate cases had a relatively high percent in institutions, just over a quarter of such cases (but still less than in Barrie). However, in other years the percents were more in line with those in Brampton;
- in all three CLOs;
  - both non-certificate and certificate cases have a relatively high percent (i.e., often over 25%) of clients who were identified by the CLO as being difficult to contact—a characteristic that can add to the cost of dealing with these types of clients.

<sup>21</sup> This report documents the problems the evaluation has encountered regarding the quality and completeness of empirical data available. This includes data on many of the case characteristics (including ethnicity) considered here.

<sup>22</sup> i.e., geographic difficulties related to either the distance of the client from the local CLO office, or to the client accessing the courthouse.

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- The data underscore the prevalence of prior criminal records for CLO clients. This would be expected for certificate cases (since the prime indicator of a custodial sentence being likely is a prior conviction). However, what is somewhat surprising is that in year three a significant percentage of non-certificate clients in Barrie (26%), in Brampton (18%) and in Ottawa (22%) had prior convictions. It is possible that in some of these cases the prior criminal records might not be seen as likely having an impact on sentence for the current case (e.g., a prior record for marijuana possession for a current charge of break and enter). However, further exploration is indicated to ensure that such cases are the majority. Otherwise, this finding raises concerns for the likely consequences of conviction for these accused persons—who might have otherwise proceeded without legal representation.
- In particular, NGOs working with offenders were likely to say that the CLO was highly sensitive to the needs of its clients with respect to their needs in specific cases, and very reliable and responsive with the workers and the programs of the NGOs. The CLOs received especially complimentary comments from those working with clients with mental health issues.

*The data thus confirm that a significant proportion of both the certificate and non-certificate caseloads of the CLOs consist of cases with demographic, social and prior criminal history characteristics that are likely to introduce complexities and extra costs to the litigation process—a finding that has to be taken into account when budgeting for the CLO, and must be considered later in the value for money calculations.*

*The data also confirm that there are differences in the nature of the caseloads from one CLO to another, differences that would be important for tailoring the policies and operational practices to the clientele of different CLOs.*

Section 3.4 also explored the **mix of offences** handled, by both the private bar under the certificate program, and by the CLOs.

- In year two and three, the similarities among the CLOs with respect to offence mix far outweighed the differences. For instance, with respect to certificate cases, in year two and three, in all three CLOs:
  - Theft cases accounted for between 11% and 23% of cases opened,
  - Assault cases accounted for between 17% and 29% of cases opened, and
  - Impaired Driving cases accounted for between 3% and 13% of cases opened.
- when one compares the offence mixes of private bar certificate cases and CLO certificate cases in the same jurisdiction, one is struck as much by the similarities as the differences. For instance, during the past three years:
  - Assault cases accounted for between 17% and 20% of private bar cases in the three sites vs. between 17 and 29% for the three CLOs, and
  - Fail to Comply cases comprised between 17% and 21% of private bar cases vs. between 4% and 17% for the three CLOs.

With respect to the offence mix of non-certificate caseloads, there are many similarities among the CLOs. However, there are some differences, with the most marked in year three being (mindful of the relatively small number of non-certificate cases in Barrie):

## 1: Highlights of Findings and Recommendations

- In Brampton ,
  - narcotics-cocaine and heroin cases account for a higher percent of these caseloads than in Barrie and Ottawa (10% vs. 0% and 1%), and
  - assault cases account for a lower percent of these caseloads than in Barrie (25% vs. 47%).

With one exception, very little evidence is found that the offence mix of the CLO cases has changed from year to year. The exception is in relation to Impaired Driving cases which have comprised a smaller percent of the total caseloads over the years—for certificate cases in Barrie and for both non-certificate and certificate cases in Brampton and Ottawa. Interviews suggest that this shift away from impaired driving cases is a conscious decision at the local level to preserve resources for other less time-consuming cases. On the other hand, many interviews outside the CLO expressed the wish that the CLOs would take these cases because they could not be handled profitably within the financial constraints of the legal aid tariff.

*In summary, with respect to the offences they handle, there are more similarities than differences among the three CLOs..*

Section 3.4 also explored a number of factors that described the **complexity of CLO cases**. Data on some of these factors help to better understand the types of clients whose needs are being addressed by the CLOs—especially those included with the CLO target groups (for instance, the presence of issues related to intersecting legal needs such as: deportation, immigration, child protection, mental health, domestic violence). Data on other factors help understand the types of technical litigation issues that are presented in CLO cases in some sites more than others (e.g. disclosure problems, Charter issues, and motions). Examples of findings presented include:

- Brampton, compared to Barrie and Ottawa, reported a dramatically higher incidence of problems with disclosure;
- The Brampton CLO was less likely than the Barrie or Ottawa CLOs to cite the presence of “layered legal issues” as a factor especially relevant to the case; and
- In year three Barrie certificate cases were much more likely (25%) to require expert witnesses or expert evidence than were certificate cases in Brampton (6%) or Ottawa (3%).

The report also explores the Crown’s opening position, another useful indicator of the seriousness of a case,—and the potential risk of proceeding without representation. In Barrie, although in year two the Crown’s opening offer was a custodial sentence in only 10% of the non-certificate cases, that percentage had increased to 31% in year three. Further, in all three years, in over 80% of the certificate cases the Crown’s opening position was a custodial sentence. Thus, there is a considerable difference in level of seriousness between the typical non-certificate and certificate case (at least in the view of the Crown). However, a very sizeable percent of even the non-certificate cases handled by the Barrie CLO involve potentially very serious consequences for the accused.

*Data on the Crown’s opening position adds further weight to the contention that even for the non-certificate cases handled by the CLOs, there would be significant risks for the accused if he or she had proceeded without legal representation. The CLOs add considerable value to handling such cases.*

Data are also presented that are relevant for discussions about both the **time spent on files**, and the appropriateness of the **maximum hours which the Legal Aid tariff allows** lawyers to bill on individual cases, namely data on whether a discretionary increase in hours was needed over those allowed by the Legal Aid Tariff to complete the work necessary on the file. In Barrie, such discretionary increases were very rare in any year for non-certificate cases, and were required in between 8% and 20% of the certificate cases in different years. In Brampton and Ottawa such occurrences were more likely in year two than in year one for both non-certificate and certificate cases. However, in both non-certificate and certificate cases their frequency fell in year three. In year two they were considerably more frequent in Ottawa for both non-certificate cases (49% vs 3% in Barrie and 14% in Brampton) and for certificate cases (51% vs. 8% in Barrie and 27% in Brampton). However, in year three the Ottawa percentages were closer to those for the other two sites. The results may reflect differences in how the different CLOs have measured this variable, and in any case are far from conclusive. However, they do show some evidence that the tariff may be too low in some cases.

*More consistent data collection protocols and practices on the part of the CLOs is necessary before CLO practices at recording discretionary increases can be used to assess the appropriateness of the time standards set in the Legal Aid tariff.*

(Further information on the adequacy of the tariff is presented in later sections.)

### ***Section 3.5: What specific types of services are provided to those cases by the CLOs: Improving access at critical stages in the litigation process?***

Given the importance of having legal representation at various stages in the litigation process, Section 3.5 includes an examination of the **percent of time spent by CLO lawyers on different case-specific tasks**.

Unfortunately, the accuracy and consistency with which data are coded among CLOs limits the analysis to total time spent or to fairly broad groupings of tasks. However, a number of valuable types of analysis were still possible.

For instance, certificate cases are normally considered more serious than non-certificate cases—at least with respect to the likely outcome. It is therefore of considerable operational and policy interest that for cases closed in the third year in the Barrie CLO, the percent of time spent on certificate cases was almost identical to the percent such cases accounted for in the total caseload (i.e., 85% vs. 82%). In the Brampton CLO, the percent of the time worked that was accounted for by certificate cases (12%) was also similar to the percent of the total cases accounted for by such cases (9%). Only in Ottawa, was the percent of total time worked devoted to certificate cases greater than the percent such cases accounted for of the total caseload (23% vs. 13%).

There were also considerable similarities between the percentage allocations of total time to specific tasks for non-certificate cases compared to certificate cases.

*It is relevant from a policy and resource planning perspective especially that there are considerable similarities in the way CLOs allocate resources to certificate vs. non-certificate cases.*

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The **source of referrals** to the CLO was also explored. Of particular interest for non-certificate cases in Barrie was that in year three, the reason attributed for referral for 27% of cases was “specialized services available from the CLO only”—indicating that the CLO offered types of service not available from the private bar. This high percent for this reason was not found in the other two sites.

For certificate cases closed in year three a majority (89%) of the Barrie certificate cases came from a combination of:

- previous clients of the CLO (32%) or of the CLO lawyers when they were previously in private practice (5%),
- relationships with another CLO client (20%), and
- the fact that the CLO offered specialized services available in the CLO (32%).

*Data on sources and types of referrals require improvement for the Brampton and the Ottawa CLOs.*

*However, the data do show that Barrie is developing two key sources of clientele for ensuring the sustainability of the office, namely the perception that the CLO offers a service difficult to obtain elsewhere, and business from repeat clients.*

*The data also show that the CLOs operate under the considerable handicap of only rarely being referred cases from other criminal law offices (i.e., from members of the private bar).*

Next, some evidence was found that (according to information obtained from potential clients) the CLOs were handling cases that could not get representation otherwise—but only to a limited extent. In year three, only in Barrie was it indicated by clients for any cases (3% of the certificate cases) that they had come to the CLO because no solicitor would accept the certificate. However, in Barrie, that reason was given for 5% and 6% of the certificate cases in years one and two, and in Brampton that reason was given for 8% and 3% of the certificate cases in years one and two. (Given the data recording problems in Ottawa in all three years, analogous data for that CLO are unreliable.)

*Considerably more detailed, accurate and comprehensive data are needed to determine what percent of the CLOs caseload are cases that could not get representation elsewhere.*

Although the CLOs are rarely referred cases from members of the private bar, Section 3.5 shows that—

*Although a relatively infrequent occurrence (except in Ottawa in the first year)—the CLOs do refer cases to other bodies.*

Although the Barrie CLO was the least likely to **refer a case out** in year one and year two (3% and 1%), in year three 8% of its cases were referred out, a slightly higher percent than the other CLOs. Brampton referral-out practices have been fairly similar from year to year (7% or 8%). Finally, Ottawa has been referring out a smaller percentage each year, beginning with a relatively high 22% in year one, but lowering the percentage to 4% by year three. Two of the most frequent reasons given for referring the case out were that the accused had ceased to be financially eligible or was suitable for diversion and the CLO’s assistance was no longer needed. Whether or not the decrease

is due to fewer such cases appearing over time or a more effective screening mechanism being implemented by the CLO is unknown.

### ***Section 3.6: With what level of quality has the CLO provided these services?***

Quality of service is explored in Section 3.6 from various perspectives, including choice of lawyer, consistency and continuity of service, experience, enthusiasm, and effectiveness (outcome).

One of the concerns expressed early in the evaluation was that the CLO public lawyer model would reduce the **accused's choice of counsel**.

*The evaluation found no evidence that accused persons or any other group had any concern about the CLOs' impact on choice of counsel*

**Consistency and continuity** of service were other areas considered important to consider early in the development of the CLOs.<sup>23</sup>

Here as well,

*the evaluation found no evidence of any concerns regarding consistency and continuity of CLO services.*

Next, the evaluation explored early concerns that the CLO lawyers would be of a lower standard than private bar lawyers handling similar cases. Although there were some specific concerns expressed in one site early in the process, by late in year two the general perception from nearly all those consulted was that the CLO lawyers in all sites had **experience** and were of a quality similar to private bar members handling similar types of cases. The empirical evidence collected also generally supported this contention. For instance:

- Given the seniority of all the CLO lawyers in Barrie and Brampton, a CLO client there was at least as likely to get a senior lawyer as if the case were handled by a private firm. There have been significant changes in the mix of experience of Ottawa CLO lawyers over time, and by the third year, the same can be said for clients of the Ottawa CLO.
- For years one, two and three—the median (typical) number of hours per case for CLO cases has been equal or lower than for private bar certificate cases. However, where the number of hours has been lower, it is not lower to an extent that would cause concern from a quality of service point of view. (On the other hand, there have been differences in the levels and trends of hours spent per certificate and non-certificate case from one CLO to another. Exploring the factors underlying these differences and changes over time (such as: differences in caseloads, differences in efficiencies as the CLOs mature, or differences in local or LAO policies) would likely yield valuable information for improving the cost-effectiveness of the offices.)

<sup>23</sup> The evaluators interpreted these terms to cover: whether a client of the CLO would receive consistent advice and assistance throughout the litigation process from CLO staff; and whether this service would be provided in an efficient manner without breaks caused by miscommunication or unavailability of resources. The evaluators recognize that having the same lawyer throughout the process and having that lawyer do all tasks is one way of achieving these objectives. However, the evaluators would argue that there are other strategies (which the CLOs have utilized) for achieving these objectives in a more cost-effective manner.

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- In all three sites, especially in years two and three, those interviewed generally believed that CLO and roster cases took comparable lengths of time to proceed through the courts. The empirical data collected supported these general beliefs. More specifically, the relative times between first and last service in the three CLOs mirror the differences in the times for private bar certificate cases, with times to complete service shorter in Barrie. This reflects the fact that times to disposition are very strongly influenced by the general characteristics of the local court environment rather than the specific practices of a particular CLO office. Different results were obtained when one compared times in year one, year two and year three for the Barrie private bar and the Barrie CLO. For instance, in year one, the median time to complete service for the Barrie private bar cases was 11 weeks—compared to 11 weeks for certificate cases in the Barrie CLO. However, in year two, the median time for the private bar cases was 10 weeks, shorter than the 14 weeks for the Barrie CLO. In Year three the median time for the private bar cases was 9 weeks, again shorter than the 12 weeks for the Barrie CLO. Comparisons between the private bar and the CLOs in both Brampton and Ottawa must keep in mind the low numbers of certificate cases for the CLOs. However, that caution in mind, in year one the private bar and CLO times to complete service were very similar. In year two, the CLO times to complete service were slightly lower in both Brampton and Ottawa. In year three, the times for the CLO were shorter (than the private bar) in Brampton, but longer in Ottawa.
- No comparisons with the private bar can be made regarding the **elapsed time to dispose** of a non-certificate case. However, some *potential* concerns are raised by the data regarding increasing trends in the times taken by the CLOs to dispose of such cases. First, for all three CLOs, the time to complete service increased from year one to year two. Further, in Barrie and Brampton, the time to complete service continued to increase from year two to year three. For instance, the year one, two and three median times to complete service increased from 9 to 16 to 19 weeks for Barrie, from 9 to 18 to 21 weeks for Brampton, and changed from 16 to 21 to 20 weeks for Ottawa. Longer times to dispose of a case may be in the interests of some clients, and others may be beyond the control of the CLO.<sup>24</sup> However, increasing time delays may not be in the interest of many clients, and therefore further investigation by LAO of the reasons behind these increasing delays is warranted—perhaps in tandem with the establishment of caseload and workload standards.

It is also of considerable interest that for cases closed in year one in all three CLOs the median times to complete service for non-certificate cases were shorter than the times for certificate cases. However, in year two and three this result held some instances, but not in others. Better understanding why this has been the case and whether it is appropriate would be expected to be of interest to LAO.

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<sup>24</sup> ...for instance, they may be due to increasing court workloads, changed court scheduling practices, changes to delays in getting disclosure, or a more active attention to the needs of mental health clients (in turn leading to more remands for psychiatric assessments or pre-trial counseling)..



In summary,

*From the perspectives of qualifications and experience, and of the manner in which services were delivered, by the end of year three the CLO lawyers in all sites were of a quality similar to private bar members handling similar types of cases.*

- The evaluation also spent considerable effort to determine how much **time the CLO lawyers and other staff spent on individual cases**. This analysis was important for two main reasons: first to assess the cost and efficiency of CLO staff in handling individual cases, especially in reference to the private bar; and second, to explore the adequacy of the time standards in the legal aid tariff for certificate cases.

When data on billings by the private bar under the certificate program were examined it was found that in all three years the number of hours per case—both in total and for lawyers only—tended to be higher in Brampton and Ottawa (medians ranging from roughly 11 to 12 hours), and lower in Barrie (medians below 10 hours). Further, although in Barrie the average total numbers of hours billed per case remained roughly unchanged over the three years, the averages in both Brampton and Ottawa were increasing.

It is of considerable interest that for years one, two and three—the median (typical) number of hours per case for CLO cases has been equal or lower than for private bar certificate cases:<sup>25</sup>

- For Barrie, year one, two and three medians of 7.2, 7.9 and 7.7 lawyer hours per CLO case vs. medians of 9.5, 9.1 and 9.0 for private lawyer cases;
- For Brampton, medians of 7.6, 6.3 and 4.0 lawyer hours per CLO case vs. medians of 11.0, 11.4 and 11.0 for private lawyer cases; and
- For Ottawa, medians of 7.6, 6.8 and 6.4 per CLO case vs. medians of 11.0, 11.4 and 12.0 for private lawyer cases.

Where such comparisons were appropriate, similar results were found for identical types of offences.

*Thus—although the differences may be due to the CLOs' handling less complicated cases—the data on median lawyer hours per case do not support the argument that the CLO lawyers spend more time on cases than do their private bar counterparts.*

*In addition, this result also does not support arguments that the time standards allowed under the tariff require significant modifications—for the types of cases normally handled by the CLOs. However, the data presented earlier, on discretionary increases to the tariff, suggest that exceptions to the tariff maxima are an important part of the legal aid funding process, and that further research is needed to fully understand how these two sets of findings interrelate.*

<sup>25</sup> Since the CLOs do not take on very large criminal cases, it is more appropriate to use the median for these comparisons—rather than the means which would be strongly influenced (upwards) by the relatively small number of private bar larger cases. Later parts of the report use other statistical methods to account for such differences in mix of cases.

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Evidence was also found regarding differences from CLO to CLO, both in the levels and trends over time in the hours spent handling certificate cases. For instance, in each year the mean number of lawyer hours per certificate case has always been highest in Ottawa (15.2 in year three in Ottawa vs. 9.4 in Barrie and 7.4 in Brampton). However, with respect to the typical (median) number of hours spend for the *average* case; the Barrie CLO was highest in years two and three (7.9 and 7.7 hours for Barrie vs. 6.8 and 6.4 for Ottawa; and 6.3 and 4.0 for Brampton). Differences from site to site were also found in the trends in this cost indicator over the three years

*Exploring the factors underlying these differences and changes over time in CLO hours spent per certificate case (such as: differences in caseloads, differences in efficiencies as the CLOs mature, or differences in local or LAO policies) would likely yield valuable information for improving the cost-effectiveness of the offices.*

Section 3.6 also provides analogous data for non-certificate cases. A number of differences among the CLOs, and over time within the same CLO, are observed. For instance, in both year one and year two, the data suggest that overall, the typical (median) closed non-certificate cases in Ottawa received higher numbers of lawyer hours per case than in the Barrie and Brampton CLOs. However, the relative rankings shifted in year three, with Ottawa cases having the lowest mean and median number of hours—and Barrie cases received the highest.

Further, there are also differences from CLO to CLO regarding changes from year one through year three. For instance,

- In Barrie, the average time docketed per case increased steadily from year one to year two to year three for non-certificate cases. However, the median time decreased then increased;
- In contrast, in both Brampton and Ottawa, both the average time and median times docketed per case decreased from year one to year two, and again in year three for non-certificate cases.

*Exploring the factors underlying these differences and changes over time in CLO hours spent per non-certificate case (such as: differences in caseloads, differences in efficiencies as the CLOs mature, or differences in local or LAO policies) would likely yield valuable information for improving the cost-effectiveness of the offices.*

Differences from CLO to CLO were also found in the relative time docketed to certificate and non-certificate cases:

- Using the mean statistics as the criterion, in all three CLOs, considerably more time was docketed to the average certificate case than to the average non-certificate case (in the third year-- in Barrie, 9.4 hrs vs. 7.5 hours; in Brampton, 7.4 hours vs. 5.2 hours: and in Ottawa, 15.2 hours for certificate cases vs. 5.1 hours for non-certificate cases).
- Similar results were obtained using instead the typical or median case as the criterion. In all three CLOs considerably more time was docketed to the typical certificate case than to the typical non-certificate case. This difference was most evident in the third year in two of the CLOs—in Barrie, 7.7 hrs vs. 4.2 hours; and in Ottawa, 6.4 hours vs. 3.2 hours. (The

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difference in medians that year in Brampton was smaller, at 4.0 hours vs. 3.6 hours).

- The evaluation was also asked to look for evidence regarding the early concern expressed that the CLO lawyers would be restricted in their **ability to act independently** in their handling of individual cases (especially of other parts of LAO and the crown attorneys).

*No evidence was found that the CLO model resulted in any threats to the professional independence of the CLO lawyers.*

- Whether the CLOs are offering quality service—and whether their services are of value--can also be addressed from the **perspective of the results (withdrawals, pleas, trials) they obtain for their clients.**
  - For their **non-certificate cases**, in year one and year two, both Brampton and Ottawa showed similar – and high – rates of cases being either withdrawn or stayed by the Crown (55% and 58% for the Brampton CLO and 61% and 52% for Ottawa). The rates of withdrawal or stayed were lower in Barrie during the first year (33%) but at comparable levels to the other CLOs in year two (53%). While Barrie and Brampton stayed at those levels in year three, the rate fell to 35% in Ottawa. Nonetheless, even the rates in year three add support to the arguments first that the CLOs are offering quality service, and that legal assistance is required by non-certificate cases (especially since 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.) The drop in the rate for Ottawa in year three, if continued might however be a cause for concern.

Both Brampton and Ottawa cases also entered guilty pleas in similar percents of non-contested non-certificate cases. However, the rates in each CLO grew steadily over the three years:

- from 17% to 25% to 30% in Brampton, and
- from 14% to 26% to 38% in Ottawa.
- In Barrie, in year two the rate (14%) was at the year one levels for the other two CLOs, but in year three the rate had grown considerably (to 41%) to a level higher than the other CLOs.

The year two report noted that these “relatively low rates of guilty plea (in the first two years) again reinforce the potential value of representation in non-certificate cases, and confirm the fact that the CLOs are not becoming—as some predicted – ‘plea factories’.” However, the increase in the rate of pleading guilty in year three—especially in Ottawa, and even more so in Barrie—makes the argument less strong, and is a development that would warrant monitoring.

In summary,

*The evidence on results obtained for non-certificate cases:*

- *Indicate that the CLOs are in general offering quality service to their non-certificate clients*
- *Provide further evidence that these non-certificate cases have a significant*

*need for legal services (not otherwise met under the legal aid program).*

*However, it is recommended that LAO closely monitor certain recently observed trends (especially regarding the rate of withdrawal in Ottawa and the rate of guilty pleas in Barrie and Brampton).*

- For their **certificate** cases, in Barrie, year two CLO cases were considerably less likely than private bar cases to enter a guilty plea (19% vs. 45%).<sup>26</sup> (Elsewhere in this report, it is noted that the private bar cases in Barrie are considerably more likely to plead guilty than cases in either Brampton or Ottawa.)

In Brampton in year one the CLO exhibited lower propensities to plead guilty than did the private bar (13% vs. 26%). However, in year two their relative positions were reversed (45% and 24%) and in year two they were similar (30% vs. 24%).

These results contrast with those for Ottawa. There, in both year one and year two, the CLO was more likely than the private bar to plead guilty, and in year three equally likely (i.e. 50%, 44% and 29% vs. 30%, 29% and 27%).

In terms of propensity to plead guilty, only the practices of the Barrie CLO in year three are the source of potential concern.

- It is however evident, and the possible subject of concern from a policy/consistency perspective, that there are differences from CLO to CLO in the propensities to plead guilty, etc. For instance, in year two and three both Brampton and Ottawa had a significantly higher combined withdrawn and stayed rate (40% and 37% for Brampton, 41% and 50% for Ottawa) than did Barrie (8% and 11%).

At the same time, the Brampton and Ottawa CLOs had very similar (and decreasing) rates of pleading guilty (45% to 30% for Brampton, and 44% to 29% in Ottawa). However, the results were quite different for Barrie where, only 19% of the certificate cases were pled guilty in year two (with data for year 3 being unreliable).

As well, in year two the Barrie CLO was considerably more likely to take these certificate cases to trial than were the other two CLOs. In that year, the combination of Dismissed, Discharged or Acquitted, Reduced and Conviction outcomes was 73% for Barrie, compared to 15% for Brampton and 15% for Ottawa. However, in year three the rankings were reversed, with only 10% of Barrie cases going to trial, compared to 33% for Brampton and 31% for Ottawa.

Finally, there are also considerable differences from CLO to CLO in the proportions of certificate cases that resulted in a conviction in year two and

<sup>26</sup> The data for the Barrie CLO in year three regarding the proportion of cases that plead guilty is suspect—probably due to a change to an incorrect way of recording data on pleas and outcomes..

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three—either because of a guilty plea or a guilty verdict. Those percentages were 91% and 84% in the Barrie CLO, compared to 57% and 54% in Brampton, and 50% and 59% in Ottawa. These differences certainly merit further investigation.

In summary,

*The evidence on results obtained for certificate cases:*

- *Indicate that the CLOs are in general offering quality service to their certificate clients, results that are usually at least equal to those provided by the private bar*

*However, it is recommended that LAO closely monitor*

- *the manner (i.e., consistency from year to year)) with which guilty pleas are recorded in Barrie*
- *the sometimes considerable variation in guilty plea practices and results from one CLO to another.*

Finally, a relatively new (to Canada) technique, “**Peer Review**”, was used to test certain aspects of the quality of service offered by the CLOs. Section 3.6.9 discusses more thoroughly the Peer Review process, including the development, methodology, implementation and results of efforts to assess CLO performance using this technique.

The Peer Review process used in this evaluation was especially tailored by the evaluation to fit the Ontario litigation environment, but benefited greatly from the Peer Review processes that are extensively used in the United Kingdom and Scotland. Peer review of casework, both on an individual lawyer and a firm basis, has been shown in the United Kingdom to provide constructive feedback to individual legal providers and to law firms which are the providers of state-funded legal services.<sup>27</sup> Unlike in Ontario, all judicare and salaried legal aid providers in the United Kingdom, Wales and Scotland undergo periodic peer review.

File management is generally accepted as a central part of good lawyering, and may have important ramifications for the results in a case and for the client. While the Peer Review process does not evaluate actual performance, it offers a tool to determine whether appropriate standards of practice have been followed in the cases reviewed. Peer review of files is a valuable measurement tool since the documentation of a file is a valuable indicator to demonstrate the lawyer’s work in representing a client, and measuring this in a cost-effective manner. Each lawyer is also given an overall score using a five-point scale of (1) very poor (2) needs improvement (3) competent; (4) above average; and (5) excellent.

Peer Review considers how lawyers, whose files have been reviewed, deal with issues of timeliness vs. thoroughness, settlement vs. trial, the organization of their files, the appropriateness of the advice given.

<sup>27</sup> As Professor Alan Paterson, former Chair of the Law Department of Strathclyde University has observed: “a search through the literature suggests that the aspects of performance most often chosen for analysis by peer review include: accuracy, appropriateness and timeliness of advice; client care (taking adequate instructions and providing initial information concerning future actions, including client meetings); adequate, appropriate and timely fact gathering; adherence to the requirements of professional responsibility; appropriate strategy formation and execution; adequate staff supervision and case management, etc.”

## 1: Highlights of Findings and Recommendations

Specialists familiar with the relevant area of litigation are selected and trained to review the documentation in lawyers' case files. Based on this review and a subsequent interview with the lawyer being evaluated, a rating was determined regarding a number of specific service delivery areas. The specific areas considered for this evaluation include: the file, communications, information and fact gathering, advice and assistance, the work outcome and efficiency. (A copy of the form used by the Peer Reviewers is shown in Appendix A.)<sup>28</sup>

The Peer Review Form and Peer Review Guidelines were developed and refined through extensive consultation with Legal Aid Ontario, the directors and lawyers at each of the Criminal Law Offices and senior members of the criminal bar. Initial drafts of the Peer Review Form and Peer Review Guidelines were also made available to a number of organizations representing the criminal bar and feedback was actively solicited before these evaluation tools were finalized.

There are some limitations to the manner in which we were able to apply the Peer Review process to the review of CLO files. It should be noted that the original concept for peer review included a comparison of CLO lawyers performance to that of similarly experienced private bar lawyers. Although attempts were made to include members of the private bar and the CLOs in the process, unfortunately it proved impossible to assemble a group of experienced criminal lawyers who would serve as an appropriate comparison group to the CLO lawyers.

Finally, it is emphasized that, because of the focus of the Peer Review Process, recommendations flowing from that process do not focus on the actual delivery of criminal legal services but, rather, the importance of appropriately documenting a file at all stages of a case (as one reader has described it, "the ability to show [the lawyer's] work" rather than the actual work done. Since some of the files reviewed may have been from relatively simple cases, it may not have been appropriate to document these files to the extent required in the peer review guidelines. In these instances, it was impossible for the Peer Reviewers to determine the appropriateness of some decisions with certainty, given the limited information available in the files. However, the Peer Reviewers informally reported that in general, most cases case appeared to have been well-handled/managed based on outcomes.

It is our belief that this peer review process will provide the tools for and facilitate stronger documentation and thus better information for the lawyer and the client, should there be a need for further action.

The following section offers our general conclusions. As in the UK, a rating of 3—"competent"—was presumed to be the standard that most criminal legal aid practitioners would likely receive from Peer Review. Most lawyers, as would be expected, received this rating.

### ***Peer Review Findings:***

- *The average score of the eight lawyers who were evaluated by the Peer Reviewers indicated that the lawyers working at the Criminal Law Offices were providing legal services that slightly exceeded the standard that one would expect of reasonably competent criminal lawyers.*

<sup>28</sup> Appendix A also contains the full guidelines given the Peer Reviewers.

## 1: Highlights of Findings and Recommendations

- *Two of the lawyers evaluated were found to be providing competent to above average legal representation to their clients*
- *Four of the lawyers evaluated were found to be providing legal services just slightly better than one would expect from a reasonably competent criminal lawyer.*
- *One of the lawyers evaluated was found to be performing at just below the reasonable competence level, primarily because of significant concerns with the lawyer's file management practices. Although the lawyer obtained good results for the client, his file contents did not allow the Peer Reviewer to evaluate his case development.*
- *One of the CLO lawyers evaluated as needing improvement, particularly to bring his file documentation up to that of the competent level. This lawyer will need to make improvements to the documentation of his clients' files. The Peer Reviewer's major concerns focused on the "failure to obtain a written summary of the facts from the client." This made it difficult for the Peer Reviewer to determine whether or not the client had defences to the charges, including any Charter issues. However, the Peer Reviewer noted "that on the one file that I reviewed in relation to this lawyer which involved a contested trial, the lawyer appeared to do a good and competent job with a good result. In the files that I reviewed involving mental health issues, the lawyer did a good and competent job with good results."*

*In addition, the Peer Review process identified a number of specific strengths and weakness in the lawyers' files, and has therefore been a beneficial training, monitoring, and evaluation tool.*

Peer Reviewers identified **a number of strengths in the CLO lawyers' files:**

- quality of the results obtained by the lawyers for their clients;
- outcomes were as good as or better than expected in the circumstances;
- most of the files of lawyers with higher scores evidenced a clear appreciation of the relevant legal and factual issues in the case.

Peer review identified a number of **weaknesses** in a number of the CLO lawyers' files:

- lack of appropriate documentation in the files, including failure to adequately document development in the litigation process, including memos to file recording important details regarding court appearances, meetings with prosecutors, discussion with potential witnesses and, most importantly meetings and discussions with the client;
- early record of the client's "story" not transcribed or included in many files, making it difficult for the Peer Reviewer to determine whether a plea of guilty was appropriate or whether the case should have proceeded to trial;
- files not containing clear evidence of meaningful trial preparation;
- concerned about timing of and adequate preparation for guilty pleas.

*The results of the Peer Review process lead to the following recommendations:*

- *Legal Aid Ontario should to takes steps to standardize file management procedures at all three Criminal Law Offices. At present, practices vary dramatically from one office to the next. It*

*appears that the standard of practice, and particularly file management, of individual offices are determined by the practice habits of the Director of each office. The Peer Review process has identified clear standards and expectations with respect to both file management and client services. Ideally Legal Aid Ontario will continue the development and administration of quality assurance standards.*

- *Legal Aid Ontario should formalize guidelines and ensure that lawyers employed at the Criminal Law Offices are properly trained in appropriate file management procedures. This should include clear expectations regarding the sort of information that must be recorded in the file and the level of detail with which such information is recorded.*
- *Legal Aid Ontario should establish a format for periodic review of the files in concert with the lawyers to ensure that the guidelines are being followed. As well, periodic quality assurance visits, by either independent Peer Reviewers or a senior criminal lawyer with LAO, should be regular enough that problems or concerns are noticed early and addressed before they become entrenched.*

### ***Section 3.7: An important access issue regarding non-certificate cases. What can we say about whether the CLOs are addressing needs that have been unmet by other alternatives?***

As in the first and second year reports, the information presented in the preceding chapter on the characteristics, litigation process and results for non-certificate cases handled by the CLO raise a significant access to justice issue. First, the data collected on CLO cases clearly indicate that these cases exhibit characteristics that indicate the presence of legal issues and the need for the accused and the court to have legal advice available to the accused to help deal with these issues. For instance, sizeable numbers of these cases were identified as having triable legal issues.

Secondly, evidence is also presented that there is an opportunity for a well-advised accused to benefit from putting up a defence. One of the best examples is the evidence given of the opening position put forward by the Crown on these cases.

Finally, evidence is presented that having legal representation available does have an impact—as attested by the CLOs’ success (particularly in Brampton and Ottawa) in getting significant numbers of charges withdrawn or stayed and diverted.

All of this strongly suggests that

*There is a fundamental fairness issue raised by not providing legal assistance to those “non-certificate” accused not fortunate enough to be handled by the CLOs and unable to afford private counsel.*

Bluntly, in legal terms, these accused are considered to be not guilty—and/or, even if guilty, entitled to adequate legal defences. Prior to the arrival of the CLO, there was no means for these persons to be represented at trial; and many accused would have plead



guilty on the day of trial. This raises issues which go beyond how best to draw the line between services which are currently covered by legal aid and services which are not.

### 1.7.3 **Chapter 4: Systemic Law Reform: Non-Casework (Outreach and Law Reform) Objectives**

#### **Section 4.1: 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 and 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).

In addition, the CLOs are expected:

- 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.

All of these objectives can affect accused persons’ access to justice, either by developing new methods of interaction, or new ways of doing business.

*Over the three years of their operation, each CLO has developed close ties with agencies in their communities and are receiving direct requests for services.*

*This is particularly the case in Barrie and Brampton where the CLOs have, for instance, developed close relationships with local Canadian Mental Health Association staff.*

#### **Section 4.2: Observations from the Interviews**

During the first two years of interviews, we asked LAO and CLO staff, seven questions regarding each of the different 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?*

## 1: Highlights of Findings and Recommendations

- *what other strategies should be developed in the future? and*
- *is each of the goals still relevant and supportable? Should the goals be changed or reviewed?*

Before discussing the responses to these specific questions, a number of general observations should be highlighted.

- All of these objectives were considered to be worthwhile potential activities by those interviewed (including the CLOs, private lawyers, Judges, Crowns, NGO and private bar respondents) in each of the sites.
- Ambiguity exists with respect to certain objectives -- particularly law reform and test case litigation. Unresolved issues include:
  - how broadly criminal law reform should be defined in the context of the CLOs;
  - the appropriate amount of professional time to be allocated to systemic law reform issues; and
  - what are the appropriate strategies for initiation and implementation of a law reform agenda.
- All of the CLOs initially hired community legal workers who knew the social service environment of their area. The CLOs made good connections with relevant social services in their region. However, all three original CLWs have left and been replaced by CLWs who are now expected to focus primarily on case delivery issues with little time available for law reform or community outreach.
- In the final interviews, we heard about the desire for:
  - more frequent contacts and on-going collaboration between CLOs and NGOs;
  - leadership from CLO lawyers in local law reform projects;
  - the CLOs to develop not only a unique and distinct caseload but also law reform and community outreach strategies.

Thus,

*There is community support for a role of the CLO in Outreach and Law Reform efforts in their communities. However, there is considerable ambiguity—both within the CLO and the outside community—regarding both the intended extent and nature of that role.*

*As caseloads have increased, the role of the CLO in this area has diminished over time.*

### *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 diversion, sentencing and disposition planning for their clients. However, as regards bail programs, the CLOs have a much more restricted role. Due to the nature of their caseloads in Brampton and Ottawa, these CLOs have had very little involvement in bail hearings.

Many interviewees in these jurisdictions noted that addressing issues related to bail was an area adequately handled by Duty Counsel. The Barrie CLO continues to be involved in bail hearings because of its significant certificate practice which involves a large number of returning clients.

However,

*The CLOs have been involved in a limited number of initiatives to make systemic improvements to court-related services for the accused.*

Examples include, in conjunction with other criminal justice stakeholders in their area:

- In Barrie, initiating a number of community education programs for mental health and other social service workers in Simcoe County.
- In Barrie and Brampton, improving the communications and protocols for relationships with mental health workers—including referring mentally ill accused to the CLO by CMHA courtworkers. (The courtworkers praised the responsiveness of the CLO lawyers to their requests for representation.)
- In Brampton, developing—as an alternative to taking on many such cases on a non-certificate basis—a clinic for persons accused of impaired driving to provide summary advice to indigent accused who are unable to obtain a legal aid certificate despite being financially eligible. (This project assists both the unrepresented accused and the CLO (and potentially the private bar) in identifying impaired driving cases where there is a triable defence and counsel should be provided.)
- In Ottawa, delivering a training program to a variety of staff groups, including the John Howard and Elizabeth Fry Societies.

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

#### a. Links with NGOs and Clinics

The CLOs have the objectives of establishing links with local community legal clinics and NGOs in order to improve coordination and services to clients with intersecting criminal/clinic law needs. As well, the CLOs have the goal of 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).

Each CLO established a Local Advisory Committee (LAC) composed of representatives of the local criminal bar and NGOs, and the local LAO Area Director, and, in some instances, the clinic director and the Senior Duty Counsel. The LACs considered and confirmed each CLO's priorities and assisted in the integration of CLOs into the local social services network. However, as the CLOs developed, the LACs played a more limited role and LAC meetings became less frequent.

In year one, all the CLOs met with NGOs and clinics in their region, which serve the target groups mentioned in the CLOs' objectives. This created a base for the work that was done in subsequent years, however, it might be noted that continued outreach and engagement inevitably remains an ongoing need in all communities. In addition to the contacts by the Community Legal Workers, the CLO Directors all made contact with some or all of the community and LAO clinics in their area to discuss their respective mandates. All CLO directors, and some staff lawyers, were involved in local organizations involved with indigent accused, as well as various projects involving young offenders. Some staff lawyers sit on the on the boards of their local LAO clinics, as well as the boards of local community groups.

## 1: Highlights of Findings and Recommendations

*All of the CLOs actively participate in their local communities—although interviewees noted a decrease in outreach and other contacts after the first year.*

*Many interviewees stressed the importance of extensive outreach activities, and it is clear to the reviewers that*

*all CLO sites would have significantly benefited from the ability to conduct a more extensive outreach program in their communities and regions.*

Specifically, despite the general consensus (outside of the local bar) of the importance of outreach and the creation of information pamphlets, there are no CLO materials in circulation in the three CLO catchment areas. It is also believed that this situation has arisen because of opposition of the local private bar.<sup>29</sup>

*LAO should reassess the extent to which the CLOs or the CLOs with the support of CLEO will provide information brochures to their target clients and communities.*

### b. Links Among Legal Aid Clinics

In our *Year One* report, we noted that contact between legal aid clinics and the CLOs on specific cases did not seem to be taking place. There are now good working relationships between the legal clinics in Regional Municipality of Peel and the Brampton CLO. For example, there have also been some referrals by the clinics to the CLO.

*We encourage LAO's senior management to facilitate better collaboration between local legal aid service providers including staff offices, senior duty counsel, and the CLOs.*

### c The changing Role and Availability of the Community Legal Worker

CLWs continue to perform important work in supporting the case specific activities of the lawyers (e.g., arranging local support services and handling general case administration, scheduling and management matters). However, outreach to community-based organizations initiated in the first year, has dropped significantly. As caseloads have increased, the number of contacts, presentations and community legal projects has declined significantly during the last two years.

*Community legal workers and NGO stakeholders in all three communities expressed concern that non-casework objectives were not receiving the attention that they had in the first 18 months of the CLOs' operation.*

### d The manner in which Outreach is Carried Out

The importance of partnerships and stakeholder involvement in the development of outreach initiatives was raised on a number of occasions.

*It is recommended that LAO clarify the law reform and community outreach objectives and the expectation for all CLOs—and in particular, the CLW within the CLO.*

<sup>29</sup> As an example, the Brampton CLO was given 1000 brochures (in French and English) which we handed out liberally the first year. However, the private bar was very much opposed to their disseminating the brochure too widely. They would not allow it to be placed in the Duty Counsel or Area Offices, and when the CLO ran out of English brochures, the CLO was told that LAO would not print any more.

### *Advancing the Administration of Justice*

One of the objectives of the CLOs, is “promoting and undertaking litigation to advance the interests of LAO criminal accused in areas such as bail and new legislation.” Not surprisingly, there has been limited work in this area during the first three years, given the immediate responsibilities that were necessarily priorities in the setting up of and operating the CLOs. Some of the CLOs’ individual cases have involved challenges which have the potential to create broader change. However, “law reform litigation” in the sense that such litigation is intended to address a systemic unfairness, speak for a class of persons, or change the law has not occurred (with the possible exception of Ottawa with its “DNA litigation” (see below). It is also not clear whether support continues within LAO for this original objective for the CLOs, especially since the CLOs may not be ideally situated to address the objective and also because LAO already has a program to fund worthy test case legislation.

While it is not clear what role LAO will take in these initiatives in the future, interviewees in year three did, however, suggest a number of specific law reform areas in which all three CLOs could undertake systemic law reform efforts, including addressing on a more systemic basis:

- issues of racial profiling,
- issues facing persons facing deportation with criminal charges, and/or
- youth cases in which the accused’s family income is too high to qualify for legal aid but the parents are not willing to offer the accused financial support.

*The appropriateness and relative ability of the CLOs to take on systemic law reform projects is a matter that must be re-considered by LAO. If a decision is made to continue this objective for the CLOs, then more specific guidance is needed, as to how law reform projects might be selected and how much time and resources should/can be allocated to law reform submissions, test case litigation, and representation of new constituencies (e.g., reform efforts to assist inmates in provincial jails).*

As regards to effecting systemic change through other types of legal reform measures, all of the CLOs had members on their Local Advisory Committees (LACs) who recommended a role for the local CLOs in advocating and perhaps litigating issues on behalf of persons in custody—both sentenced and on remand.

*During the first year, Barrie CLO and its LAC members, with its proximity to the then privately run “Super Jail” in Penetanguishene, heard a series of complaints about the treatment of prisoners at the “Super Jail”. Championing of the prisoners’ cause was supported by all LAC members.*

With the change in management of the “Super Jail”, the concerns have subsided slightly. However, the need for addressing the issues in this large prison that is designed to be administered by a very small staff was raised by a number of respondents in the third year interviews. Lawyers, Crown and judges all agree that the 1200 inmates in this prison have legal and social needs that are not being addressed by LAO or the private bar.

## 1: Highlights of Findings and Recommendations

The Brampton CLO has championed the cause of getting remand prisoners in Brampton better telephone access to sureties and counsel. To date, however, no litigation or monitoring process has been undertaken by any of the CLOs to challenge the conditions of confinement or procedures at local institutions (as part of their law reform objectives).

It should also be noted that there are a number of approaches that might be taken with respect to championing prisoners' rights and issues on the part of many groups—and it is not clear what part the CLOs could most effectively play in those approaches.

*In light of the concerns expressed in the community and the role LAO sees for the CLOs for this type of work, it is recommended that LAO review the role the CLOs should continue to play regarding addressing prisoner's issues—on both a case-by-case and systemic level.*

During its first two years, the Brampton CLO also launched or joined in several 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 that could be undertaken to alleviate the problems. The CLO undertook a background study to shed light on the Disclosure situation in Peel. Details of the methodology may be found in Sec. 4.2.4.

*The work on disclosure conducted in Brampton is an example of the potential benefits that can be achieved through the CLOs. 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, were the Brampton CLO strategies to ensure fuller and more expeditious disclosure.*

Details of this study are also found in Sec. 4.2.4.

*In Ottawa during the second year, the Director of the CLO, with the support of LAO, took on the issue of "retroactive DNA". Retroactive DNA hearings were conducted on behalf of offenders [not all were inmates] who had been convicted of murder, manslaughter and serious sexual offences prior to 2000. At the time, the legislation permitted the right of the offender to challenge the Crown's request for a DNA sample. The Ottawa CLO Director was the designated duty counsel for these hearings. The initiative is representative of the types of reform efforts envisaged under this objective.*

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

All of the CLOs continue to allow LAO to use them as sounding boards and a source of advice on various matters, including the design of data systems to monitor and assess their effectiveness, and with respect to other potential criminal justice system reforms. The work of the CLO staff, and this evaluation should contribute to public policy discussions about the provision of criminal legal aid services in Ontario, and elsewhere in Canada. The data collected will be valuable to the Board of LAO in moving forward in addressing the unmet needs of disenfranchised groups who have benefited from the opening of the CLOs in Barrie, Brampton and Ottawa.

### **Section 4.3: Information from Legal Files**

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

One of the longer-term objectives of the CLOs is to assist LAO in obtaining information to help in estimating benchmark values for the time and costs required to provide different types of legal services. Our review of the systemic objectives discussed in the *Year One* report was severely restricted by limitations in the empirical information then available from the CLO Legal Files' docketing information system. While significant problems remain with respect to Legal Files' configuration and data entry procedures, certain types of analysis can still be pursued in this report, although we caution that parts of the data continue to exhibit problems.

*This review should assist the CLOs in identifying areas in which improvements to the non-case-specific activity data can be made. Areas still requiring improvement include:*

- *Ensuring that information for all staff is entered on a more complete set of the activities that are undertaken,*
- *Refining the system used to code the data so it can be used to produce reports of more value to managers, and*
- *Improving the accuracy and completeness with which data are recorded.*

#### *Time Spent on Different Types of Non-Case Specific Activities*

Part 2 of this report describes the information docketed in Legal Files to capture the total number of hours spent on non-case-specific activities by each staff member of the CLOs. Considerably more work is needed before the data are as complete and accurate as we would hope. Sec. 4.3.2 of the report describes the nature of the problems and the difficulties in retrieving meaningful data from Legal Files.

*Given problems evident in these data, it would be prudent for LAO management to undertake a very careful and detailed review of the practice and policies relating to the entering of this information into Legal Files before following up on it. Later comments call for a more comprehensive review of the Legal Files information system. However, as an interim observation, if LAO values this type of information, better procedures and policies would be needed to ensure such data are accurately, consistently and more completely collected.*

In Part 2 of the report, we have restricted our analysis to the Brampton data which appear to be the most accurate, though, even in this case, the figures may be misleading. For the Brampton CLO, starting in year one and continuing into year three, all staff in Brampton docketed a significant number of hours to non-case-specific activities. Despite this, the percentage of the lawyers' time devoted to law reform or outreach is extremely low. One is particularly surprised, given their initial mandate, at the low percentage of their time that the two CLWs spent on law reform (3% and 1% in the last years each worked).

In summary,

*the data show a surprisingly high percent of total time devoted to non-case specific activity –and a surprisingly low percent devoted to law reform and outreach.*

### *Estimates of the Value (Opportunity Cost) of Efforts expended on Non-Case Specific Activities*

One of the important avenues of research that was indicated in the first year report was the development of a more detailed understanding of the costs incurred and the value produced for systemic, law reform/outreach (and administrative) activity of the CLOs. It was intended that, once accurate data were obtained on the time spent on certain of these activities, one would use an appropriate hourly billing rate to estimate the value, or at least the “opportunity-cost” of the effort expended. Clearly, the quality of the time-spent data currently available makes this analysis less useful than hoped.

### ***Section 4.4: Concluding Comments***

At the end of the third year of operation, each of the CLOs finds itself struggling with the tension between managing a now heavier load of cases and the expectations, in the original mandate of the CLOs and now of their respective communities, to undertake work in the field of law reform and community education and outreach. This situation is complicated by the lack of clarification from LAO with respect to the allocation of priorities and the importance of outreach and law reform. Personnel issues including the departure of the original CLWs from each of the offices and the lack of clear allocation of responsibility in these fields are also problematic. (This has been particularly the case in Ottawa which has seen considerable turn-over in both CLWs and staff lawyers during the second and third years.)

In spite of all of the caveats above, the ground has been laid, through significant community-building efforts and the engagement of a wide variety of stakeholders, to develop important projects responding to the unmet needs particular to each community and to begin the work of systemic reform within the criminal justice system. For this effort to continue, LAO would have to reaffirm the type and extent of role the CLOs should continue to play in systemic law reform. If a substantial role is to continue, ongoing and enhanced leadership and commitment will be required from LAO working with the directors and staff of the CLOs.

## **1.7.4 Chapter 5: Operational Impacts: On the Justice System and Specific Justice Groups**

### ***Section 5.1: Introduction***

Other parts of this report focus on the effectiveness of CLO activities in handling specific client cases, and on the efficiency of specific CLO activities. This Chapter focuses on the impact of each of the CLOs on their local justice system and on the various stakeholders within that system.

### ***Section 5.2: Overall Trends***

In the first report prepared for this evaluation, our *Nine-Month Interim* report, we found that most private bar members were opposed to the CLOs, and most CJS officials and non-governmental organizations (NGOs) were in favour of a CLO in their area.



For the *Year One* report, we were most interested in interviewing people who had actually interacted on cases with the CLOs within the court environment. The bulk of our interviewees were CJS respondents – Crowns, judges, duty counsel and other court workers as well as NGO workers who serve the courts’ “clients”. The officials who spoke to us were generally in favour of the existence of the CLO in their area, more so than they were at the time the CLOs were just starting.

In both the *Second* and *Third Year* reports, we attempted to interview CJS respondents who had interacted with the CLOs, as well as a number of criminal lawyers in each of the three communities. We made every effort to speak to a cross-section of Crowns, private lawyers, duty counsel, judges, LAO area directors, and a representative group of NGO personnel in each community.

In these interviews—although there were some exceptions (primarily within the private bar)—we found a generally positive response to each CLO, particularly from the judges, Crowns and from NGOs working with the mentally ill, indigenous peoples and youth.<sup>30</sup> *There was a sense that the CLOs were becoming visible in their community and that they were beginning to create a role for themselves both within the justice and NGO communities.*

### ***Section 5.3: Important Context***

One has to be realistic when one assesses the impact of the CLOs on the justice system in a particular community or county. First, the efficiency and effectiveness of any justice system is dependent on the complex interaction of a myriad of factors, including competing cultures, resources and objectives. Second, tradition is a highly valued principle, and few justice systems are known for their willingness to embrace rapid change. In this context, it is unreasonable to expect a relatively small group of two or three lawyers that comprise a local CLO to have even a moderate, much less a significant, impact on the local administration of criminal justice.

As well, it is not surprising within the justice community to find different perspectives and opinions among different groups of stakeholders and among different individuals within each group. The following discussion highlights the major concerns articulated, these positions were neither unanimous, nor equally strong from one community to another.

### ***Section 5.4: Impacts on the Court Process and Workloads***

The impacts of the CLOs in the court system they serve are of several types. Overwhelmingly, the majority of CJS officials whom we interviewed continued to focus primarily on the CLOs’ impact on reducing the numbers of unrepresented accused (UAs) primarily in the provincial court and their work with respect to the special needs of the mentally ill, Aboriginal persons and young offenders.

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<sup>30</sup> It should also be noted that despite repeated attempts, only one provincial crown attorney in Brampton returned our requests for interviews with a positive response. The one who did respond had not had recent contact with the CLOs.

*Because the CLOs intervene on behalf of people who might otherwise be unrepresented, court personnel including senior judges, Crowns and a growing number of the private bar are generally favourable towards the CLOs, even where they have misgivings about the potential erosion of judicare and the certificate system.*

*It should be noted that many members of the private bar see the CLO as “just another law firm” handling legal aid cases, some on certificate, and the majority of their work being non-certificate cases in Brampton and Ottawa.*

*Many interviewees suggested that a significant benefit provided by the CLOs is their representation of accused persons who are financially eligible for legal aid but have been denied representation because there is little or no possibility of their “loss of liberty” if convicted. Such representation of accused who have been generally unrepresented is particularly important in light of the number of non-certificate accused that are not convicted, after representation by the CLOs.*

In addition to simply focusing on the CLOs’ benefit in reducing unrepresented accuseds (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 that provided by duty counsel. (Duty Counsel are not authorized to represent accused persons at trial.) Many CJS respondents suggested a reexamination of the concept of part-time duty counsel and emphasized the full-time accessibility of the CLOs was not available with duty counsel.
- A number of provincial and federal Crowns reacted favourably to the CLO model since it allowed for continuing and regular contact with the CLO lawyers from shortly after arrest through to informal or judicial resolution. The Crowns appreciated the presence of the CLO lawyers on committees dealing with the administration of justice issues, such as disclosure, diversion and the mentally ill.
- Cases moved ahead more predictably and consistently and trial scheduling problems were lessened.

*The representation by effective legal counsel of accused persons who would otherwise have appeared without legal representation means that the administration of justice is made more efficient.*

### **Section 5.5: Impact on Workloads**

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 NGOs – interacted with the CLO staff at all stages of the criminal justice system, including bail and bail planning (although to a lesser degree so in Brampton and

Ottawa), plea negotiations and plea court, remand court, pre-trials, trials, sentence planning and sentencing:

- *Most interviewees acknowledged that they noticed fewer Unrepresented Accuseds in the courthouse since the arrival of the CLO (though not much of an impact at the bail stage).*
- *Most judges and Crowns reported that their work was made “easier” by experienced lawyers being consistently present at more stages of the criminal process. (However, some noted that because of the small size of the CLOs, the impact was negligible.)*
- *Plea negotiations had fairer outcomes because of representation by the CLOs. A number of interviewees emphasized that represented accused were more likely to benefit from a Crown counsel pretrial or a judicial pretrial.*

### ***Section 5.6: Impact on the Quality of Legal Service Available Generally***

Before the CLOs opened, a number of predictions of negative impacts on the quality of legal service were put forward, including: a decrease in the quality of representation, shrinkage of the legal aid roster, reduced choice of counsel for accused persons.

*The vast majority of those interviewed in all three CLO sites felt that none of these negative predictions with respect to quality of legal services available generally had come to pass.*

*Virtually none of those interviewed recently, from all interviewee groups, felt there was evidence of either a shrinkage of the legal aid roster or reduced choice of counsel for accused persons.*

### ***Section 5.7: Impact on the Private Bar***

The interviewers asked whether respondents saw **negative** impacts from the CLO.

*The great majority of respondents in all stakeholder groups said they had seen no negative impacts.*

Some private lawyers indicated that the CLOs took minor cases that would otherwise have provided an important learning experience for young lawyers in private firms. Other bar members, especially those who are on the executive of local and provincial bar associations, remain opposed on the grounds that the CLOs represent a potential erosion of judicare.

*By far the majority of the CJS interviewees (including senior members of the criminal bar) did not express any of these concerns. They pointed to the small size of the CLOs, the opening of new private law firms, the hiring of juniors in those firms, and the fact that the CLOs provide opportunities and training for new lawyers.*

A larger number (but still a minority) of interviewees suggested that the CLOs were setting new standards for representation in the types of cases they are handling.

*These interviewees remarked that the CLO lawyers are committed to high quality representation of disenfranchised accused who would previously have fallen through the cracks in the administration of criminal justice.*

A few bar members in each community continued to suggest that the quality of the CLO lawyers was lower than that in the private bar. They believed that a good criminal lawyer in private practice could certainly earn more than the CLO lawyers, and that the CLOs would therefore attract inferior counsel, and the caseload and cost pressures “might” produce “assembly-line justice”.

### ***Section 5.8: Impact on Other Clinics***

There was some concern expressed by the Ottawa criminal bar that the existence of the CLOs had had a negative impact on intake of non-certificate criminal cases at the University of Ottawa Student Legal Aid Clinic. There was a concern that the presence of the Ottawa CLO was diminishing the student learning opportunities. Some interviewees stated that law students could not generally be expected to provide the same level of representation as the more experienced lawyers of the CLO.

There is an opportunity for the CLOs to strengthen community legal aid resources through working collaboratively with the student legal aid clinics and with other community based legal service providers. During the last eighteen months, there has been collaboration between the Ottawa CLO and the Student Legal Aid Society at the University of Ottawa, including referral of some cases to the Ottawa SLASS when the CLO was understaffed in the winter and early spring of 2007.

### ***Section 5.9: Potential Areas of Improvement***

*In response to the question “how the CLO could best contribute to improving the justice system in this area”*

- *most interviewees indicated they should continue in their present mandate; i.e., the CLOs should continue to 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*

*Others suggested that:*

- *the CLO should confine itself to non-certificate clients;*
- *the CLO should take more serious cases and more cases of “hard to serve” clients;*
- *CLO lawyers should take more cases that are difficult to complete under the tariff regulations, like impaired driving cases;*
- *the CLO should undertake or become involved with local attempts at systemic reforms of the local justice system and undertake research projects on such issues as disclosure, bail reform and racial discrimination within the administration of justice.*

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

- *the CLO should get on the record sooner, to reduce early remands and improve representation at early stages in the criminal process;*
- *the means by which Unrepresented Accuseds (UAs) are referred to the CLO should be simplified -- some interviewees suggested that the current arrangement is too complicated for many UAs, who have a low tolerance for complexity and bureaucracy.*
- *the CLOs and their mandate should be better known and understood; they should be publishing brochures and perhaps comic books on the rights of the mentally ill and youth offenders and making them available throughout their communities;*
- *when practical, all CLOs should emulate the Brampton office and accept student interns from diverse cultural communities, who could assist in reaching out to local ethnic communities;*
- *in Barrie and Ottawa, a few interviewees suggested that the duty counsel function and the CLO function should be better integrated, or combined into an extended duty counsel function, similar perhaps to that in the Manitoba's legal aid system. One senior judge in Barrie spoke against integrating the Barrie CLO with Duty Counsel, as the judge felt that the CLOs' ability to provide representation at all stages of the criminal process was much more beneficial to the accused and to the administration of justice.*

### **Section 5.10: Concluding Comments**

This Chapter explores issues related to the impact of the CLOs on the institutions, processes and workloads of the criminal justice system. The consensus seems to be that CLOs have made a positive contribution to their communities. This is particularly the case with respect to their representation and responses to the needs of the mentally ill and Aboriginal communities and, to a lesser extent, younger persons. The expectation is that their work in this field can become an even more important asset to their communities.

#### **1.7.5 Chapter 6: Value for Money: Process Objectives**

Although the CLOs in general have proven to be *effective*, evidence is presented later in Chapter 6: to support efforts to improve the efficiency and cost/effectiveness of their operations. To be effective and efficient overall, the CLOs will have to have effective and efficient policies and practices in each of 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.

Chapter 2: addressed a number of issues related to the first of these areas, leadership and direction. This Chapter addresses the remaining four:

- Section 6.2: Organization and Responsibilities
- Section 6.3 Effective Strategies, Tactics and Procedures
- Section 6.4: Workloads and Resources
- Section 6.5: Support Systems

The Chapter concludes by providing information on a number of indicators on how well the CLOs are doing in providing services in a cost-effective, value-for-money manner:

- Section 6.6: Costs per Case and Value for Money

### ***Section 6.2: Organization and Responsibilities***

The evaluation first explored whether the CLO initiative reflected a clear and effective allocation of accountabilities and responsibilities for all essential tasks.

Positive observations from that analysis included:

*For the most part, all staff were very clear about their responsibilities in the organization.*

and

*The CLOs have, for the most part, developed good working relationships with key community groups with intersecting interests in serving their common clientele.*

However, two areas of concern deserve highlighting. First the CLOs initially had to face heated opposition from the private bar who strongly resented their establishment. This opposition has moderated, but the **relationship with the criminal bar** still poses a handicap for and hinders the effectiveness of the CLOs. Support from the private bar is, however, greater regarding certain types of CLO activities, including: non-certificate cases, cases not financially viable under the tariff, and other areas of unmet need.

*Assessments of the CLOs do therefore have to take into account the negative impact on their success due to resistance on the part of the private bar. The CLOs (and LAO more generally) have dedicated time and resources, as well as modified policies and operational procedures, to try to reassure and accommodate the private bar. The result has been a number of constraints on possible CLO practices that have negatively impacted on the ability of the CLOs to operate as effectively and efficiently as they might otherwise.*

*However, it is recommended that LAO and the private bar continue to discuss certain areas within the CLOs' current mandate that seem of mutual interest.*

The evaluation also notes that an area in which better co-operation would likely yield benefits is that of the CLO vis à vis **duty counsel**. As noted earlier, duty counsel are

not permitted to conduct trials in Ontario. Partly for historical reasons having to do with concerns of the private bar regarding changes to the private bar's role in the duty counsel system in those sites, in none of the sites was there an especially close working arrangement with the regional duty counsel's offices. As well, there would seem to be a number of opportunities for improving the effectiveness and cost efficiency of service to litigants and the courts through a sharing and possible reallocation of responsibilities between the two groups. Although it is likely that resistance to change from the private bar would exist, opportunities for greater efficiencies and economies of scale certainly exist for sharing duty counsel and CLO administrative support personnel, systems and facilities. The contact that the duty counsel gain from the accused persons very early in the litigation process would be expected to have value if available to the "CLO case" later. There would also seem ample opportunities for "duty counsel lawyers", since they are constantly at the court, to handle much more efficiently certain types of appearances in a "CLO case" as and when they are called to court, rather than the CLO lawyer or CLW having to make a special trip to court for that or a small number of cases (e.g., appearances earlier in the court litigation process or guilty pleas). Conversely, "CLO lawyers" might be available to handle "DCO" cases that require special expertise, or progress beyond a guilty plea. The previous success of earlier efforts to adopt alternative models of duty counsel services points to the feasibility and possibility of success for such re-engineering efforts.

*A rethinking of the relationship between the CLOs and duty counsel offices—especially from a cost-effectiveness perspective—is thus indicated.*

### **Section 6.3 Effective Strategies, Tactics and Procedures**

Next, the evaluation explored whether the CLOs combined and utilized all available resources in ways that best provided the services required to achieve objectives, at the corporate, management and individual level.

First, it should be understood that the CLOs from their inception have had to operate under the handicap of a number of administrative, case management and personnel issues, including equipment and systems problems, the continuing challenge of implementing and using Legal Files (the software program for recording case information) and initial difficulties at one office in finding staff (both lawyers and support workers).

*The evaluation results should be interpreted within the context that the CLOs were implemented and continued (more so in the earlier years) to operate under the handicap of a number of significant administrative, case management, personnel issues and computer system support issues.*

An area of special concern is the effect of the changing role of the CLWs. Over time, the responsibilities of the CLW have shifted more and more to providing case management support to the lawyers (e.g., collecting information and handling non-legal communications with clients, attending in court for scheduling appearances, ensuring all CLO staff are aware of upcoming dates related to cases) and assuming a major part of the administrative work related to entering data in Legal Files. This has

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severely restrained the CLW's ability to participate in the outreach activities that were initially to play a significant role in carving a distinct role for the CLOs. To a lesser extent, this shift has also reduced the time to work with various stakeholder groups to improve services to clients on a case-by-case basis—another way in which the CLOs were to offer an improvement on the traditional model of litigation services.

To a large extent, one of the more innovative strategies of the CLOs has been the use of the CLW in a lawyer case management support role—a role not present in most similar sized private criminal law offices.

*A review is therefore recommended of the roles to be played by the CLW, and the changes needed to allow the CLW to perform those roles effectively. That review would cover the full range of activities the CLWs now perform which add significant value to the function of the CLO: from conducting initial and interim interviews with clients, enlisting the assistance of a range of accused support groups, organizing and managing the case file for the lawyer, assisting in the preparation of files, attending in set-date courts, to various outreach activities.)*

### **Section 6.4: Workloads and Resources**

Concerns have been raised about whether the CLOs have reached capacity in terms of cases defended, and what should be done in response. However, this discussion is difficult because a definition has yet to be provided to the CLOs as to how *capacity* is to be defined. Although it was never raised in the interviews, a more important question is whether the CLOs are operating at a level that is *optimal*—a level that is more important from a cost-effectiveness perspective, and a level that in most organizations would most likely be quite different from capacity.

*An indication to each CLO is required from LAO headquarters as to what constitutes “capacity” and “optimal” levels of operations for casework, law reform and other non-case-specific activities. These definitions will also naturally lead to definitions of workload standards—both for the office and individual staff.*

As a beginning to developing those definitions, and the factors that have underlain growth in pending caseloads in the three sites, Section 6.4 describes considerable increase on the growth in and relationship among cases opened, closed, and pending in the CLOs since their inception. Highlights of that analysis include:

- All three sites have been able to keep their cases pending (a key measure of pending workload) under control.
- Further, all sites have demonstrated caseload management behaviour typical of groups that feel they have reached capacity. Although the patterns differ, in general, the level of pending cases reached a peak late in year two or early in year three. Efforts were then made to reduce the levels of cases pending during the last part of year three, presumably to a more manageable level. (Interviews confirm that the staff of the CLOs felt they were at or nearing capacity.)

However—especially after taking into account that the Barrie office has one fewer layers than the other two, and that there are significant differences from site-to-site in



the mix of case types within their caseloads—what is defined as capacity varies from one CLO to another.

As well,

*different CLOs adopted different strategies for reducing their lists of cases pending.*

For instance this result was achieved over the last year:

- In Barrie by continuing to close more certificate cases than were opened, even though the number of certificate cases opened were increasing during the latter part of the third year
- In Brampton in general by continuing to close more cases than were opened, and in addition in the last quarter in large part because the office tightened the acceptance policy (and thus restricted the numbers of non-certificate cases opened).
- In Ottawa not only by increases in the numbers of cases closed, but also by steady reductions from quarter to quarter in the numbers of cases opened.

*It is recommended that LAO planners and managers further investigate why the different CLOs have been exhibiting these different patterns in dealing with changing numbers of cases pending—and what the differences mean for issues such as the capacity and efficiency of the three CLOs.*

### **Section 6.5: Support Systems**

The evaluation considered whether the work of the CLO was 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.*

However, our focus was on the one area that seemed particularly problematic for the CLOs throughout their operations (although problems did abate somewhat as time passed).

We were repeatedly struck during our interviews with CLO staff by assertions that the main automated management information system, Legal Files, was not of significant use in supporting their day-to-day requirements related to specific cases. As well, the CLO Directors, Area Directors and Provincial Office senior managers consistently reported that Legal Files was not providing them with the management and planning information they needed. This is despite the considerable level of effort and irritation

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associated with entering data into it. Difficulties encountered throughout the project by LAO's and the evaluators' own efforts in attempting to obtain data from Legal Files can only support this sense of frustration.

*We would therefore recommend a review of whether Legal Files can fill the operational and planning needs of different levels of LAO staff, and if so what changes in procedures are needed to ensure that it fulfills those needs.*

*It would be expected that review would result in a solution that involves the CLWs and administrative staff spending considerably less time entering data, and more time performing valuable services to clients.*

However, it is also important to note that there were a number of serious organizational and substantive shortcomings in the way in which Legal Files was implemented (e.g. insufficient consultations with front line lawyer, CLW and administrative staff to determine how it would be most useful to define, collect and use data). As well, early on at least, the local and wide-area communications systems used to transfer data from the offices to LAO headquarters were far from adequate. Similarly, there continue to be unclear allocations of responsibility within LAO regarding tasks associated with ensuring accurate and complete coding of data (currently, responsibility for monitoring and addressing data quality issues seems to lie with evaluation or policy personnel, not with line personnel).

Therefore,

*we make the following specific observations and recommendations, that apply no matter whether Legal Files or any other software is chosen in the future:*

- 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 to the CLOs the substantive considerations regarding data collection and coding requirements that flow from overall LAO policy, planning and evaluation requirements – especially requirements related to how specifically staff time and activities should be docketed (i.e. recorded in Legal Files) 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 to LAO provincial staff the 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 –at both the CLO and headquarter levels.*
- 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 – or the replacement of Legal Files if it is found to be less appropriate than competing software systems.*

## **Section 6.6: Costs per Case and Value for Money**

Delivering services in a cost-effective manner is an important objective for LAO and the individual CLOs. Of particular interest is how the costs of delivering services through the CLOs compare to the costs of delivering similar services through private lawyers under the main available alternative, the LAO certificate program.

This section of the report explores four questions directly related to this objective.

### ***1. What challenges have to be kept in mind when assessing the efficiency, cost per case or value for money of the CLOs compared that of the certificate program?***

Section 6.6.2 provides an important context for the discussion by arguing that any analysis of “costs per case”, “cost-effectiveness” or “value for money” will be fraught with difficulty. The results of such analysis will be directly dependent on a number of assumptions, and in many instances it is currently unclear what assumptions would be correct. For instance, whether or not the value of CLO services exceeds the cost of operating the CLO offices depends directly on how one values (or does not value) different services they provide, and a consensus on those values does not currently exist, even within LAO.

*Comparisons of the CLOs with the private bar are particularly problematic and often misleading given the lack of a “level playing field” facing both groups. At best, the cost analyses presented here should be seen as only one of the types of information needed to make decisions regarding the CLOs at either the policy or operational level.*

### ***2. With respect to the individual cases handled, do the imputed value (fees) for CLO staff time devoted to handle and close individual cases (imputed CLO fees per case) exceed the fees per case that would be charged by the private bar under the certificate program)?***

#### ***• Certificate cases***

Section Part 2: 6.6.3 begins by examining the “imputed fees per case” devoted by the CLO to handling an individual certificate case (averaged over all certificate cases handled).<sup>31</sup> Although differences from one site to another may in part be explained by differences in the types of cases handled, considerable variation is found from one CLO to another, with respect to both imputed fees per case (Brampton is lowest) and

<sup>31</sup> The “imputed fees” for CLO staff time on a case is calculated by multiplying the staff hours docketed to a case by an hourly billing rate equivalent to what the staff lawyer or support person would get as a member of private law firm billing under the LAO certificate program. Note also that this “imputed fees per case” comparison considers only CLO imputed fees billable to handling specific cases. This measure of CLO cost per case does not include CLO imputed fees for other activities such as outreach, law reform, and general office overheads. The latter types of “total” costs per case are considered later.

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the trend in imputed fees per case (Brampton's are falling while Ottawa's are increasing).

Comparing these numbers to analogous statistics showing the mean and median amounts billed by private bar members for certificate cases shows that

*in each of the first, second and third years the total fees billed by the private bar per individual case were higher than the average imputed CLO fees per case for individual certificate cases. (For example, using data for cases closed in the third year, a comparison of the median fees for private bar cases with the median imputed fees for CLO cases yields estimates of: \$933 vs. \$378 for Brampton; \$765 vs. \$708 for Barrie; and \$972 vs. \$542 for Ottawa.)*

*On this measure of value for money—or of the efficiency with which they handle individual cases—the CLOs therefore compare favourably to the private bar.*

It is however argued that this type of comparison does not take into account the fact that the private bar often handle larger, more serious, complex and time consuming cases than do the CLOs.<sup>32</sup> For instance, in 2006/07 the imputed fees for roughly 25% of the certificate cases were \$768 or more for the Brampton CLO and \$1,068 or more for the Ottawa CLO. However, the fees for considerably higher percentages of private bar cases in Brampton and Ottawa were above those amounts, respectively. (However, in Barrie, the percentages of CLO and private bar cases with fees over about \$1150 were very similar.)

A second analysis was therefore undertaken that excluded the private bar cases that were larger than most of those handled by the CLOs. Since only roughly 5% of the imputed fees per case for CLO cases were over \$2,500, this second comparison excluded cases over \$2,500 both from the CLO and from the private bar cases.

Thus,

*on this second measure of average fees per individual case handled which considers only cases comparable in size to those handled by the CLO, the imputed fees per case for each of the three CLOs therefore compared favourably to the fees per case of the private bar—although the differences between the CLOs and private bar were larger in Brampton and Ottawa. (For example, using data for cases closed in the third year, a comparison of the median fees for private bar cases with the median imputed fees for CLO cases yields estimates of: \$831 vs. \$368 for Brampton; \$748 vs. \$702 for Barrie; and \$881 vs. \$520 for Ottawa.).*

The fees per case for specific offence types were also examined. For both CLO and private bar certificate cases, significant differences were found in CLO imputed fees per case and private bar fees per case from one offence type to another.

*Comparisons of fees per case data among different service providers or different locations therefore clearly need to consider whether or not the two providers and/or locations are providing services to the same mix of case types*

<sup>32</sup> Section Part 2: 3.6.2c provides an explanation of the various statistics (medians, percentiles, etc. used in this section.

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A second observation for private bar certificate cases is that for certain offence types, there are considerable variations among the Barrie, Brampton and Ottawa areas. These variations may indicate substantive differences in local conditions that account for the differences in fees per case, or may indicate areas or specific offence types in which one might focus initiatives to reduce costs. Alternatively, very low costs/fees per case might also indicate offence types for which the returns earned by the private bar are relatively low under the tariff and thus represent a potential target area for the CLOs.

Although the low numbers of CLO cases involving many offence types made such comparisons inappropriate,

*in all instances in which such a comparison was possible, the average CLO imputed fees per individual certificate case was lower than the fee per case of the private bar for comparable offence types. This conclusion applies whether one uses the mean or median as the measure of comparison. This third type of comparison thus also shows the CLOs in a favourable light with respect to the specific case resources required to handle and close a specific case..*

In summary:

*The CLO imputed fees per case (i.e., fees for time docketed to a specific case—and excluding provision for costs of outreach, law reform and general administration)—both in general and for specific offence types--compares favourably to the fees billed by the private bar for similar cases under the certificate program..*

### • Non-certificate Cases

The information related to non-certificate cases handled by the CLOs is also of significance from a policy and operational perspective. For instance,

*On average, the imputed value/fees of time spent by the CLO on individual non-certificate cases is considerably less than the imputed fees for time spent on individual certificate cases.*

The mean imputed fees per individual non-certificate case over the past two years have ranged from \$419 in year three in Ottawa to \$698 in Barrie in the same year, considerably below the mean fees for certificate cases (over the three years, mean fees for certificate cases were \$641 for Barrie, \$787 for Brampton, and \$993 for Ottawa).

If conformity to uniform standards from site to site is an objective of LAO, it is of interest from an overall policy and management perspective that

*there are differences from one CLO to another with respect to the imputed fees per case for time spent on non-certificate cases—and the trends over time in these specific fees per case follow different directions in different sites..*

For instance, in year one the mean fee per case was highest in Ottawa (\$854) and lowest in Barrie (\$538). However, in year three, the rankings were reversed. Third, there are differences that warrant exploration in the imputed fees per case for cases of different offence types—within sites and among sites.

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Although the imputed fee per case for non-certificate cases may be in the \$500 to \$600 range, for a sizeable proportion this is not the case.

*Thus, LAO planners and managers must allow for the fact that a small but important percent of non-certificate cases involve more complex legal and factual issues and require considerably more effort than the average or typical non-certificate case.*

### **3. With respect to the overall commitment of public expenditures to fund the CLOs, does the value of services they provide cover those expenditures?**

This section of the report begins by examining trends in different *overall* expenditures to operate the CLOs. Because they account for a high percentage of total costs, staffing levels have a major impact on trends in total costs. Barrie (with only two lawyers) has had the lowest (and falling) total costs, Brampton has had the highest (and fairly steady) costs, and Ottawa has had steadily increasing costs that started lower and are now close to the level of Brampton.

Part two of the report provides more detail on these costs and their trends. For instance, key to the growth in staffing costs was the fact that LAO gave all staff (not just CLO staff) a cost of living increase in years one and two, and then a larger salary increase in year three. Another example is the fact that the budget of the Brampton CLO office was burdened by what is accepted as more office space than they would have wished.

The discussion of value for money and costs per case is then broadened to consider “costs per case” where the costs considered are not only those required to handle specific cases but also costs of other external services such as outreach and general overhead costs. Starting in year one and extending to the third quarter of year two, in all three offices total overall costs per case were falling. After that point, costs per case followed no particular trend from quarter to quarter. Comparing the full third year to the full second year, the mean total costs per case: in Barrie, fell by 20% (from \$1,771 to \$1,422); in Brampton, remained roughly unchanged (\$1,550 and \$1,577); and in Ottawa, fell by 28% (from \$2,201 to \$1,589).

If one combines the data for all three sites and compares the mean total cost per case of all CLO cases to the mean fee per case of all private bar certificate cases, one finds the results to be close.<sup>33</sup> The Barrie average (mean) costs per CLO case are considerably above those of the private bar (Barrie CLO, \$1,422 vs. \$1,102 for the private bar). However the average mean costs of both the Brampton and Ottawa CLOs are below those for the private bar (Brampton, \$1,577 vs. \$1,845; and Ottawa, \$1,589 vs. \$1,792).

However, the third year report adopts a revised measure that recognizes that the private bar certificate cases include cases that are more complex and expensive to handle than those handled by the CLOs. When those private bar certificate cases (i.e., those over \$2,500) are excluded from the analysis--i.e., when one compares more similar cases—one finds a different result for the last two years. Specifically, in all three CLOs the total overall average cost per case was considerably higher (i.e., by about 50% in Brampton and by a higher percent in Barrie and Ottawa) than that for a private bar certificate case. More specifically,

<sup>33</sup> The fee per case for a private lawyer case under the certificate program is the “total cost per case” for those cases to LAO.

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- for Barrie, the CLO expenditures per case for the last two years averaged \$1,589—compared to private bar certificate per case fees (for cases under \$2,500) of \$869 and \$857 in the two years;
- for Brampton, the CLO expenditures per case for the last two years averaged \$1,564—compared to private bar certificate per case fees (again, for cases under \$2,500) of \$1,010 and \$1,000; and
- for Ottawa, the CLO expenditures per case for the last two years averaged \$1,817 and ranged from \$1,196 to \$3,164—compared to private bar certificate per case fees (for cases under \$2,500) of \$1,017 and \$1,029.

Thus although the CLOs have lower fees billed for each individual case,

*the overall total cost of running the offices (i.e., including the costs of outreach and administrative overhead as well as the cost of handling specific cases) is higher on a per case basis than the fees billed by private lawyers on a comparable certificate case.*

(However, in this and other parts of the cost and costs per case analysis, we reiterate that overall total costs per case comparisons between the CLOs and private bar cases are quite frequently misleading. In particular, one should avoid the notion that the two types of offices operate on a “common playing field”.<sup>34</sup>)

The evaluation then shifts from a discussion of “costs per case” to a discussion of the more comprehensive concept of “value for money” or “value for expenditures”.

The discussion starts by noting that

*there clearly continues to be a considerable shortfall between the billings accrued for case-specific activity and the total expenditures on the CLO offices. Only in Barrie in the third year did the total accrued fees (i.e., adding in the tariff value of the hours spent on non-case specific activities) surpass half of the total expenditures on the office.*<sup>35</sup>

The report then explores the value added by the CLOs through other non-case specific services such as law reform and outreach. For the Barrie and Brampton CLOs, there are significant variations from year to year in the total amounts of time for these non-case specific activities. Second, there are even more significant differences in the time recorded from one CLO to another—with Barrie recording significantly lower amounts of time for these non-case specific activities than Brampton and Ottawa. (It should however be noted that it is strongly suspected that the low amounts for Barrie may be to a large extent reflect data recording problems.)

Nonetheless,

*when one adds the value of these non-case specific services, the shortfall between imputed value for services and total expenditures is narrowed—but not*

<sup>34</sup> The full report lists a number of ways in which either the CLOs or the private bar have advantages or handicaps vis à vis the other (e.g. the private bar do not have fixed salaries; the CLOs cannot as readily hire or fire staff to optimize returns on investment; the private bar can take on any type of family, civil or criminal case; the CLOs must focus on certain types of cases that are difficult to handle within the tariff). In those situations, a simple comparison of the CLOs and private bar may be inappropriate or even misleading.

<sup>35</sup> Comparing total imputed fees accrued from case-specific CLO activity in year three with total CLO Expenditures (for all case-specific and other activities) yields: \$206,538 vs. \$355,585 for Barrie; \$188,958 vs. \$533,016 for Brampton; and \$188,958 vs. \$492,684 for Ottawa.

*appreciably. The total value of services provided by the CLOs does not in any year exceed two-thirds of the expenditures on the CLOs.<sup>36</sup>*

Although the shortfall might be narrowed by reducing the quite substantial overheads borne by the CLOs or by re-engineering certain processes, it is unlikely that any such efforts would eliminate it. Given the relatively minor levels of resources devoted to outreach and law reform during recent years, reductions in those areas also cannot be seen as opportunities to eliminate the shortfall.

The analysis thus supports the argument that

*the CLOs have demonstrated that it would be extremely difficult for a public or private office dedicated solely to providing legal aid services to a comparable clientele being able to break even under the existing tariff.*

*However, given the earlier analysis that demonstrates that the CLOs were in large part able to handle and complete their cases within the tariff's time standards, it is the hourly rates in the tariff, not the time expectations, that would seem to be responsible for this result.*

However, given the fact that the evaluators also heard many times from members of the private bar that the tariff hours were also inadequate for certain types of cases, further investigation is indicated.

(It is however also important to note that the CLOs add value to LAO in a number of other ways not considered here—and that extra value may or may not cover the shortfall discussed here. This point is expressed in more detail under “lesson 5” in section 1.8 following.)

#### ***4. What opportunities exist to improve the efficiency or cost-effectiveness of the CLOs?***

The cost per case discussion ends by noting the role quite considerable overhead burdens play in accounting for the higher total costs per case for CLOs. Overhead activities (when valued at normal billing rates) in most years accounted for over 40% of the work undertaken—and for some years in both Brampton and Ottawa accounted for over 50% of the value of the work.

*Clearly, a review of ways to reduce the overhead burden on the CLOs is in order.*

Elsewhere in this report suggestions are made that such a review should consider work standards (i.e., standards related to the volume of cases to be handled and quality assurance standards), management activities, allocation of work, and more efficient and effective support systems.

<sup>36</sup> Comparing total imputed fees accrued from all case-specific, legal education and outreach CLO activity in year three with total CLO Expenditures (for all case-specific and other activities) yields: \$221,951 vs. \$355,585 for Barrie; \$227,310 vs. \$533,016 for Brampton; and \$205,748 vs. \$492,684 for Ottawa.



## 1.8 Context and Key Lessons Learned

The previous section presented a summary of the major findings that are supported by the detailed analysis and data in Part 2 of the evaluation. That section also contained some of the more specific recommendations that flowed from that work.

This section takes a broader perspective and extracts and presents a short list of what the evaluators feel are the most important lessons learned from the evaluation.

The following takes a broader perspective and extracts and presents a short list of what the evaluators believe are the most important lessons learned from the evaluation.

### 1. Significant Value Added by the CLOs

- a. **Finding:** The CLOs have in the three years since their inception provided valuable services to over 2,300 clients in their three communities. By providing legal assistance to those who would otherwise likely have appeared in court unrepresented, the CLOs have ensured a more fair and effective judicial process.
- b. **Recommendations:** That LAO
  - iii. recognize the CLOs for their important achievements.

### Context

This and the following findings and recommendations should, however, be placed in a context that includes:

- These offices have achieved this result in the face of a number of serious obstacles to their development, including:
  - Considerable resistance to their establishment and continued existence on the part of members of the local private bar
  - This resistance resulted in LAO placing a number of constraints on the CLOs that significantly handicapped their ability to operate effectively and efficiently (e.g., limiting advertising, prohibiting coordination between CLO and Duty Counsel services, having to devote considerable amounts of time to support a major independent evaluation effort)
  - In large part for the above reason, difficulty at the beginning in attracting staff in certain CLOs
  - Being implemented during a time when LAO was facing major challenges in the revamping of key automated information and communications support systems
  - Having to operate with (what was over time discovered to be) insufficiently clear central direction regarding key policies and practices.

The evaluation findings thus relate, not only to the CLOs *per se*, but also to the external and corporate environment in which the CLO model was implemented.

Within this context, the staff of the CLOs should be commended for the important results they have achieved.

It is within this context that the following key lessons learned are presented.

2. **Unmet need represented by Non-certificate Cases and Persons with Special Needs**

- a. **Finding:** The CLOs have clearly confirmed the existence of—and the benefit of addressing—a significant previously unmet need for legal services on the part of persons who qualify financially for legal aid but who do not receive such services through the legal aid certificate system. The evaluation has also shown that the CLOs have been effective in providing legal and legal-support services to these groups.

Four types of needs can be identified:

- 1. Non-certificate Cases: Needs of specific cases that are denied legal aid certificates because they are unlikely to result in a custodial sentences,
- 2. Enhanced Services: Enhanced services needed by specific types of clients, especially those involving Aboriginal accused and accused with mental health issues.
- 3. Unserved Certificate Cases
- 4. Law Reform and Outreach: Need to address specific systemic issues, including special problems facing persons incarcerated in mega-jails.

The CLOs have clearly identified a general need for the first two types of services (*non-certificate* cases and *enhanced services* to specific cases). The evaluation report provides strong evidence that failure to address the needs of unrepresented persons in financial need who are refused certificates (because they are unlikely to receive a custodial sentence) potentially results in significant harm to those persons, and extra costs for the justice system. Similar legal aid support is required regarding persons with special needs.

(The third and fourth type of need are addressed in Lesson 3 later.)

b. **Recommendations:** That LAO

- i. Consider advocating (jointly with other Justice System stakeholders) for expansion of the criteria and funding for extending legal aid (via certificates) to financially needy persons and for certain special needs groups, especially mentally ill, indigenous persons and youth;
- ii. Explore alternative methods for improving services to financially needy persons (e.g., through CLOs, enhancing duty counsel, criminal clinics, merger of CLO with expanded salaried duty counsel in Barrie and elsewhere);
- iii. Clarify the extent to which the CLOs' should focus on meeting unmet needs for non-certificate cases; and
- iv. Enhance the specialized expertise that CLO staff already have in areas such as: serving indigent accused, the mentally ill, Indigenous persons and youth.

3. **Needs related to Certificate cases and Outreach/ Law Reform**

- a. **Finding:** The need for the CLO to address the third category (*certificate cases*) is not general, but does exist in specific areas of demonstrated needs unmet by the private bar. A particular need is also found for types of cases that the private bar finds difficult to handle within the financial constraints of the legal aid tariff (e.g., impaired driving cases). There is also a need for the CLOs to take on at least a small number of certificate cases for professional development reasons.

The need to provide the fourth type of service (*Law reform and Community Outreach and Education*) also clearly exists within each community. However, because of a shift in individual CLO priorities and practices over time away from non-casework activities, less attention was given to this area. Further experience and clarification of priorities is needed before the CLOs' potential role(s) in Law Reform and Outreach is determined.

**b. Recommendations:** That LAO

- i. Clarify its policy regarding the numbers and types of certificate cases the CLOs should accept;
- ii. Explore the most efficient and effective way the CLOs can participate—jointly with other justice, LAO and NGO stakeholders—in law reform and outreach activities.

#### 4. Efficiency regarding Individual Cases

**a. Finding:** The CLOs have demonstrated that they can handle and close individual cases in an efficient manner, a manner that compares favourably to the efficiency of the private bar in similar cases.

**b. Recommendation**

- i. That the CLOs be recognized as handling and closing individual cases in an efficient manner.

#### 5. Total Value of Services compared to Total Costs

**a. Finding:** The CLOs have demonstrated that it would be extremely difficult under the existing tariff for a public or private office dedicated solely to providing the above four types of services to this clientele to be able to “break even” (i.e., “to earn” enough tariff fees to cover costs).

However, the challenge seems to be more with the hourly rate under the tariff than with the number of hours set for different tasks and types of cases.

First, the total imputed fees for the four primary services each of the CLOs offer fall considerably short of the total costs of operating each of those offices. In the absence of a clearer definition by LAO of the values it places on other services offered by the CLOs, it is unknown whether the values of these other services cover that shortfall. However, the CLOs have demonstrated the value of a number of “other” services, including:

- i. The CLOs have provided a environment that can be used to test out—on a limited scale—innovative approaches to the provision of services (for example, the use of Community Legal Workers as both community workers and for lawyer case management support, or different mixes of staff with different experiences)
- ii. Having available staff resources to pursue specific cases and/or law reform issues (e.g., the DNA litigation handled by the Ottawa CLO)
- iii. Being able to collect more complete data on certain types of operations to better understand costs and benefits of existing procedures (e.g., the onerous

- data collection borne by the offices for the evaluation to test out the time to complete certain tasks)
- iv. Providing a vehicle for testing and development of alternative monitoring, accountability and quality assurance strategies (e.g., peer review)
  - v. To have available resources to test alternative partnerships and allocations of responsibility with other LAO organizations (e.g., exploring alternative relationships with duty counsel).

Second, the evidence shows that the average numbers of staff hours the CLOs need to handle and close cases are similar to (sometimes lower than) the number of hours that are billed by the private bar for similar cases. As well, the shortfall between the total CLO overall costs and the total CLO imputed value of handling cases, outreach and law reform activities cannot be accounted for entirely by atypical overheads or inefficiencies. It follows that the tariff rate used to calculate imputed value for the CLOs is not high enough to cover their normal overheads. (This argument has been made for some time by private firms—although many private firms also have a tradition of providing services *pro bono*—at least by undercharging (cash) clients or by providing more hours of service than they bill.)

**b. Recommendations:** That LAO

- i. Develop an explicit policy regarding whether, and if so to what extent, the costs of offices like the CLOs can exceed the measurable imputed values from the four core services they provide. Alternatively, LAO should develop a realistic notional value for the “other” services provided by the CLOs;
- ii. Review the adequacy of rates under the tariff.

### 6. High Proportion of Time Spent on administrative and other activities

**a. Finding:** The CLOs devote a high proportion of time to overhead activity.

From our (admittedly preliminary) consultations with private lawyers, the high proportions of their time devoted by CLO staff to overhead activities—at least in Brampton and Ottawa—would not be financially sustainable in small law firms. For instance, in year 3 in Brampton, the hours spent on “overhead” activities accounted for: 56% of a “normal work year” for the director, 41% and 29% for the two staff lawyers, and 44% for the CLW. These high proportions also clearly handicap the CLOs’ abilities to free up time for value generating external activities.

The evaluation recommends a review of ways to reduce the overhead burden on the CLOs. Evidence is presented elsewhere in this report to suggest that such a review should consider areas such as work standards (i.e. standards related to the volume of cases to be handled), management activities, allocation of work, and more efficient and effective support systems.

**b. Recommendation:** that LAO

- i. Undertake a review of ways to reduce the time spent on these types of activities of the CLOs. Evidence is presented in the evaluation report to suggest that such a review should consider areas such as work standards (i.e., standards related to the volume of cases to be handled and quality control),

management activities, allocation of work, and more efficient and effective support systems.

**7. Clarifying to CLO Staff the Mix of Services to be Offered**

- a. **Finding:** Different interpretations exist regarding the mix of services that were to be offered by the CLOs. However, as things progressed over the three year period, the CLOs tended to place higher priority on providing more traditional legal services to individual cases—and less priority to services such as outreach, public education, and to law reform and systemic reform. This lack of clarity regarding the desired mix of services is an impediment to effective management of resources and the ensuring of accountability for achieving results. The uncertainty regarding expectations is also a detriment to the general quality of the staff work environment.
- b. **Recommendations**
  - i. Clarification is required from LAO regarding the preferred mix of services to be provided
  - ii. Once clarification has been provided, modification of caseloads and business practices on the part of the CLOs will be required to match the priorities
  - iii. LAO senior management should determine and communicate its expectation as to what percent of their time the CLOs should devote to activities such as: public legal education, law reform activities, outreach and developing collaborative strategies with other concerned groups of stakeholders (such as: CMHA, duty counsel, clinics).

**8. Considerable Variation Among CLOs**

- a. **Finding:** There are considerable differences among the CLOs with respect to priorities and approaches. In the absence of clear statements of policies and procedures from corporate LAO, it is impossible to tell whether these differences are appropriate. However, some differences raise concerns on the part of the evaluators, and on the part of the staff of the different CLOs.

The evaluation report notes a considerable number of areas in which policies, strategic approaches and operational procedures vary significantly from one CLO to another. Specific examples given include: the mix of certificate and non-certificate files, the manner in which outreach/law reform is carried out, trends in costs per case, and workloads. To some extent it may have been appropriate to give the offices “free rein” to experiment with and to develop alternative approaches. However, development of policies and practices has been a “bottom-up, operations-driven” process, rather than a “top-down, corporate policy-driven” process. There has for some time been a need for more explicit direction from corporate LAO to provide vision, direction and management guidance as to what practices are acceptable and optimal, and which are not.

- b. **Recommendations:** That corporate LAO:
  - i. Provide clarification of policies and best practices
  - ii. Enhance organizational structures for formulation, communication and management of policies
  - iii. Provide (from corporate and from the region) stronger and clearer leadership with respect to direction, management and accountability, and quality control

- iv. Provide stronger substantive (criminal practice policy) leadership to and enhance management expertise of CLO directors
- v. Enhance accountability and quality assurance initiatives (including performance measurement and peer review).

## 9. Quality of Case-Specific Services

- a. **Finding:** There is a strong consensus in the three communities that the CLO lawyers provide services in individual cases that compare in quality to those offered by members of the private bar providing similar services. However, some concerns have been raised regarding a limited number of specific areas.

As noted throughout the report, the analysis of data on performance from Legal Files, the Peer Review, and the interviews show that in many areas the CLO lawyers have achieved results for their clients that are as good as, and sometimes surpass, those typically achieved. However, those same three data sources have identified a limited number of concerns about specific operational issues. These issues are documented and discussed in more detail in later chapters of the report (issues ranging from documentation of cases, data recording practices, use of guilty pleas, etc.).

- b. **Recommendations**

- i. That LAO senior management work with the directors of the CLOs to better understand and to remedy specific quality issues that are identified in this evaluation.

## 10. Comparisons between CLOs and Private Bar require caution

- a. **Finding:** There are a number of strong reasons that comparisons between the CLO offices and private criminal law offices should be made with caution. In particular, it is unfair to the CLOs and the private bar to assume that a “level playing field” exists—or that it should exist in terms of client outreach and visibility of the CLOs.

There are a number areas in which comparisons with the private bar are appropriate (e.g., file documentation, hours per case, litigation strategies). However, (as noted earlier) the full report lists a number of areas that make comparisons between the two fraught with difficulties. For instance there are a number of ways in which either the CLOs or the private bar have advantages or handicaps vis à vis the other (e.g., the private bar do not have fixed salaries; the CLOs cannot as readily hire or fire staff to optimize returns on investment; the private bar can take on any type of family, civil or criminal case; the CLOs must focus on certain types of cases that are difficult to handle within the tariff). In those situations, a simple comparison of the CLOs and private bar may be inappropriate or even misleading.

- b. **Recommendations**

- i. That future planning and communications regarding the CLOs recognize that the CLOs and the private bar in certain respects do not operate on a “level playing field”.

## 11. Lessons learned regarding Management

- a. **Finding:** A number of lessons have been learned in the last three years as to how management structures and practices (at different levels within LAO and the CLOs) could be enhanced to improve the effectiveness and efficiency of the CLOs and CLO-like initiatives.
- b. **Recommendations: That LAO develop**
  - i. Stronger and clearer direction from senior management and Area Directors to the CLOs
  - ii. Enhanced management capabilities of CLO directors
  - iii. Enhanced systems of accountability at all levels
  - iv. Clarification of the role, and functioning, of the LACs
  - v. Greater collaboration of other LAO providers with the CLO in their area
  - vi. Greater collaboration with NGOs and other CJS stakeholders.

## 12. Lessons learned regarding operational practices and support systems

- a. **Finding:** A number of advisable improvements have been identified to operational practices and systems.
- b. **Recommendations: That LAO undertake**
  - i. Major review of Legal Files
  - ii. Reallocation of responsibilities regarding design and configuration and quality control regarding information systems
  - iii. Re-assessment of roles of CLWs and administrative assistants and regular supervision and feedback to both lawyers, CLWs and administrative staff
  - iv. Regular formal staff meetings, with periodic attendance at these meetings by the Area Director
  - v. Review of and staff training regarding effective methods for targeted outreach and law reform (adopting more effective methods of reform and development—including involvement of local NGOs and representatives of the private bar in all stages of the reform process (including the development of priorities).

## 13. Attention Needed to Human Resource issues

- a. **Finding:** A number of specific and general human resource management issues have been identified.

Many of these issues would be resolved if staff were given a clearer view of what was expected of them. Others have to do with the level of compensation paid, especially when compared to other jobs that are seen as comparable. Still others (e.g. those related to management and community development and organizing skills) would be relevant if one were asking the CLOs to take a stronger leadership role in their communities.

- b. **Recommendations: That LAO human resource staff**
  - i. Conduct interviews with staff to ensure the existence of organizational mechanisms to ensure continuation of a healthy and productive workplace;
  - ii. Conduct a review of the adequacy of CLO lawyer, CLW and support staff salaries.

### **Overall Conclusion: Improved Access to Justice?**

Given all of above, the CLO model is a promising approach to improving access to justice for financially needy persons. However, there is considerable variation with respect to how different parts of the model have been designed and implemented in each site. Important lessons have been learned, but considerable design and development work remains to be done.

### **1.9 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 Provincial 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 and analysts 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. Members of the senior management of Legal Aid Ontario have also always responded positively to our requests for information and assistance. However, we would like to offer special thanks to Chris Staines of LAO who throughout the last three years has always been ready to offer critical, helpful and welcome direction, advice and practical assistance.



# **Evaluation of Criminal Law Offices Third Year Report**

## **Part 2: Supporting Data and Analysis**

Submitted to:  
Legal Aid Ontario

Submitted by:

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## Introduction to Part 2

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.

LAO has committed to ensuring that a major (three-year) independent evaluation of these CLOs is undertaken and made available to the general public. To-date, five reports have been produced by the team of senior private consultants and academics who were selected in the competition to conduct the research. This is Parts 2 and 3 of the fifth and final report of the evaluation.

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 Provincial 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.

The basic structures of all three reports are all very similar. However, while the first and second year reports were presented in one part, the third year report is presented in three parts:

***Part 1: Highlights of Findings and Recommendations***

an overview that contains Chapter 1 which in turn contains a detailed summary of the results and findings of the other chapters in Part 2 of the report. References are often provided to relevant sections and Figures in Part 2. That summary also contains some of the more specific recommendations that follow from the evaluation. Chapter 1 also ends with a short list of what the evaluators feel are the most important lessons learned from the evaluation.

***Part 2: Supporting Data and Analysis***

contains what in previous years would have been Chapters 2 through 6, each of which contains the more detailed data and analysis that underlies the major findings and recommendations. The reader interested in a specific finding highlighted in Part 1 is definitely encouraged to consult the information in Part 2.

***Part 3: Appendices***

contains additional information and data and supplementary materials.

Part 2 of the report is divided into five chapters:

- ***Chapter 2: CLO Objectives and Direction***

describes in detail the four main groups of CLO objectives and comments on the degree to which these objectives have been clearly articulated and have been incorporated into ongoing planning, management structures within the CLO and within communications with other stakeholder groups within each CLO community.

- ***Chapter 3: Services to Individual Client Cases***

focuses on overall objectives related to providing better access to legal services for clients through individual client cases. Special attention is given to assessing the demands for and levels of services provided, the types of cases opened, the specific services provided, and the quality of those services.

- ***Chapter 4: Systemic Law Reform: Non-Casework (Outreach and Law Reform) Objectives***

focuses on Systemic Law Reform objectives of the CLOs, objectives to enhance services to potential clients and client groups through non-case specific, outreach and law reform objectives (and through work on specific cases);

- ***Chapter 5: Operational Impact: on the Justice System and on Specific Elements and Stakeholder Groups within the CJS***

focuses on issues related to the impact of the CLOs on the institutions, processes and workloads of the different key stakeholder groups within criminal justice system.

- ***Chapter Six: Value for Money: Process Objectives***

focuses on a number of process objectives—each of which impacts on value of services provided and the degree to which the CLO represents and effective and efficient organization for achieving the previous substantive objectives. Specific Process Objectives relate to: leadership and direction, organization and responsibilities, tactics and procedures, resources, and support systems.

Within each of these chapters, the material is often 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?”*

## **Table of Contents for Part 2.**

A full detailed table of contents for Part 2 of the report can be found at the beginning of Part 1 (presented as a separate document).

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## Chapter 2: CLO Objectives and Direction

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### 2.1 Development of CLO Objectives and Protocols

In 2004, three-year funding for what would 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 CLOs were one of ten proposed programs/program enhancements that were approved as operational strategies to realize the Federal and LAO Investment Fund objectives. In addition to the CLOs, these service strategies included:

- projects aimed at increasing LAO's duty counsel capacity,
- a project aimed at improving services in northern Ontario,
- improving services to homeless people in Toronto,
- increasing the capacity to conduct video applications for legal aid from clients in custody, and
- improving LAO's capacity to monitor and manage these projects.

The goal of the Investment Fund is “to address unmet needs in criminal legal aid (and civil legal aid in the Territories) through innovation” and to improve access to legal aid services, particularly at the early stages of the criminal justice system.

Collectively the ten projects funded by the federal investment fund were 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>37</sup>

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<sup>37</sup> 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 changes noted:

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 with the Provincial Advisory Committee (PAC) and the three Local Advisory Committees (LACs) for the CLO initiative.

The Criminal Law Offices are staffed by persons who are employees of LAO. They 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.” [Emphasis added]

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

- The client’s needs;
- The possibility of a client obtaining a certificate;
- The office’s or lawyer’s prior relationship (if any) with a client;
- Case complexity;
- The office’s skills and specializations;
- 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). [Emphasis added]

- 
- 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.

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 *Legal Aid Services Act, 1998* 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 or using the CLO.

It is important to underline that 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. [*Emphasis added*] 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 an additional 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 each mention other objectives of the CLOs—objectives that relate to effecting more systemic improvements. These include:

- 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 accused persons 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 objectives:

- “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.”

## 2.2 Moving from Theory to Practice

The discussion now moves from what the objectives are in theory to how they are reflected in the day-to-day planning, management and operations of the CLOs. Given the challenging environments in which the CLOs operate, the effectiveness of the transition from theory to practice is particularly important.. In this report the evaluation focuses on four important aspects of this transition:

- What general strategy was initially in place to refine and clarify objectives?
- Do the statements of objectives specify in sufficient detail what is expected of the CLOs? What areas still need clarification or more specificity?
- Are the CLO objectives and priorities clearly understood—by persons within the CLOs, and by other groups within each of their communities?
- What planning and management processes have been put in place to clarify and revise objectives, and to ensure that any changes are effectively communicated?
- What management processes are in place to compare actual to expected performance—on both an ongoing and *ad hoc* basis?

### 2.2.1 ***What general strategy was initially in place to refine and clarify objectives?***

During the first year, most CLO staff felt that they understood what cases LAO wanted them to focus on. Staff also appreciated that LAO was willing to permit 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*.

Throughout much of the first three years since the CLOs' inception, LAO has given relatively little further clarification to the broad policies and protocols set out initially in the *Protocol* and *Service Objectives and Priorities*. Interviews and observations suggest that this was primarily for the following reasons.

- During the first year at least, most CLO staff felt that they understood what the priorities were, for instance what cases LAO wanted them to focus on.



- Staff also appreciated that LAO seemed willing to permit each of the CLOs to find its own way and develop its own priorities within its own environment. From LAO's perspective, this was an approach that had worked well in other initiatives.
- LAO felt that it would be beneficial for each CLO to develop a better understanding of the needs and challenges in each community before LAO significantly intervened or altered policies and protocols.
- During the first one and one half years at least, the CLOs were operating below what both the CLOs and LAO felt to be the CLO's potential caseload capacity: having to choose between different areas of activity did not arise. The CLOs could handle nearly all of the accused that "came in the door", as well as undertake an amount of community outreach.<sup>38</sup>
- The CLOs operate within a general legal culture which affords considerable latitude to individual lawyers by virtue of their professional experience and status—especially as regards their choice of size and nature of caseload and the services offered..
- LAO generally has a corporate culture of management that has a process for identifying problems and issues—particularly in regards to work on individual cases and administrative issues—that relies on lawyers, community legal workers and administrative staff closer to the front lines bringing problems to the attention of more senior members of the LAO administration.
- Finally, LAO generally operates within a very tight budget environment. The resources were simply not there to devote (what is now seen as) sufficient senior management effort to providing overall leadership and direction to the CLO operations, and to developing extensive monitoring and management systems and procedures.

The result has been that reconsideration and potential refinements to the objectives and protocols of the CLOs have in large part been driven, not by top-down policy and management initiatives, but by a bottom-up, "operations driven" policy approach that largely reflects the choices that are made at the front lines by the CLO directors. For example, the specific mix of certificate and non-certificate cases is determined by the mix of cases that each CLO accepts--and the caseload mix varies significantly from CLO to CLO. Similarly, the allocation of staff effort to either case-specific work or to systemic law reform/outreach activities is driven by decisions at the local level—and again the mix has varied significantly from CLO to CLO.

Overall, the management approach taken to-date has worked in an adequate manner--although it is at times difficult for CLO directors to operate without a clear understanding of the priority objectives of LAO senior management. There are some exceptions, but as will be shown later in this report, the CLOs have during their first three years achieved many successes and provided good criminal services to many accused who might otherwise have been unrepresented at various stages of the litigation process.

However, mainly because the CLOs have by now reached what the individual CLOs consider to be the capacity of their existing resources and have been making, or soon will be required to make choices among competing demands for their services, and because more clarity is required from a staff workplace and management point of view, but for other reasons as well, the evaluators believe the initiative could benefit from a revised approach to clarifying objectives and ensuring their achievement.

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<sup>38</sup> Later sections note that what constitutes the actual or official definitions of *capacity* or *optimal*" levels of CLO operations have not been developed or communicated.

### 2.2.2 ***Do the statements of Objectives specify in sufficient detail what is expected of the CLOs? What areas still need clarification or more specificity?***

As noted above, the *Year One* report noted that most CLO staff felt they understood the policies and priorities they were meant to follow.

During year two, and into year three, there certainly continued to exist a common understanding of the general direction to be taken by the CLOs. However, on a more specific level, the consensus is not so clear. When asked generally during the year two and three interviews if further clarification were needed with respect to policies and priorities, a minority of staff said “no”. However, a sizeable majority said that such clarification was needed. When pressed (moderately) and given specific examples of areas in which help might be useful, nearly all CLO staff and Area Directors described specific areas needing clarification (see below for examples).

It is also certainly clear from the empirical evidence presented in subsequent chapters that there are significant actual differences from CLO to CLO in areas such as those already mentioned (i.e., the types of cases handled and the emphasis given to systemic law reform activities). These differences cannot be explained by only differences in the local court environments.

As well, certain developments are occurring that affect the attention given to certain objectives. For instance, with the increasing caseloads, the demands on the CLWs to provide support to the lawyers in tasks related to individual cases have also increased. The net impact has been that the CLWs have considerably less time to undertake systemic law reform and outreach activities—to the extent that the decrease in attention to the latter area has been noticed by numerous CJS persons interviewed in all the communities. Thus in this case, allowing day-to-day operational pressures rather than policy to dictate CLO activities may (*or may not*) have led to perhaps unintended results.

Finally, in our interviews with individual CLO directors, lawyers and staff, and with different senior LAO managers, we were given inconsistent views on certain CLO priorities. For instance, although the predominant view is that the CLO should focus on relatively minor cases at the lower court level, one interviewee felt the CLO should do more summary appeal work. Others questioned whether the CLOs should be handling certain types of offences, in particularly impaired driving.

The evaluators believe that there is a need to initiate a process to clarify CLO priorities—not only with respect to the types of cases defended, but regarding other matters as well. That review would *inter alia* address the areas noted through out this report, including the following issues identified in our year two interviews and repeated in our year three interviews as requiring attention:

- What types of cases to be given priority, or accepted, including:
  - the appropriate mix of certificate and non-certificate cases
    - 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) develop and strengthen the CLO lawyers’ skills needed for certificate case representation;
    - the proper balance 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 and limited access to justice opportunities;
  - the criteria for CLOs’ excluding or giving priority to certain offences;
  - whether changes are needed in the types of accused that should receive priority in each CLO

- Clear guidelines regarding the types of services to be offered by the CLO, including:
  - whether the CLO should provide services from the beginning to the end of the judicial process (e.g., from bail to appeals)
  - clarification of the interrelationships of the CLOs and their local duty counsel, and the allocation of responsibilities between them
  - clarification of the CLOs' responsibilities to be “innovative” in their methods of casework, law reform and community education<sup>39</sup>
- Guidelines for the allocation of time expectations for specific types of cases and tasks, including:
  - Whether CLO lawyers should be constrained by the tariff, and if not, under what circumstances
- Administrative procedures, including:
  - How should CLW and other support staff docket non-billable time to individual cases.
- What should be the appropriate allocation of the total budget between handling specific cases and activities relating to law reform, public legal education and systemic change, including:
  - What proportion of the CLWs' and lawyer's time should be allocated to systemic law reform/ community outreach vs. support for individual case work
  - Should responsibilities for outreach and other non-specific casework activities be shared in a different way among CLWs and lawyers within a CLO?

### ***2.2.3 Are the CLO objectives and priorities clearly understood—by persons within the CLO, by other groups within the community?***

Clear communication of the mandate of each CLO is a prerequisite to ensuring cooperation and collaboration from outside groups whose cooperation and support may be instrumental to the CLO's success. The mandate of the various CLOs was not clear to many of the CJS representatives interviewed. This situation was as prevalent in year three as it was in year two.

In our previous reports, we indicated that many CJS interviewees were unable to state clearly what the CLOs were mandated to do, and did not know the proportion of their cases that were certificate or non-certificate. In our year two and year three interviews, we found that there was a general understanding that the CLOs were taking a mix of cases with considerable emphasis on those clients who were falling through the cracks--many of whom were financially eligible for a legal aid certificate but not eligible because they did not meet the loss of liberty criterion. However, when asked which specific client groups were being targeted by a CLO, many interviewees were unable to answer.

We also noticed in our interviews in year two a number of instances in which a negative perspective on the CLOs was based on the interviewees' understanding of the CLO objectives that was at variance with LAO's. For instance, some interviewees (from a number of different stakeholder groups) felt that the CLOs were originally established to focus almost exclusively on non-certificate cases. Others were not aware that the certain CLOs were to focus on specific types of defendants (e.g., Aboriginal or mentally ill accused). Negative comments and lack of understanding of the goals of the CLOs were generally rarer in the year three interviews. Clearing up such misconceptions might modify opinions, or would at least focus discussion on real points of disagreement.

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<sup>39</sup> The CLOs believe that LAO wants them to be “innovative” in their methods of casework, law reform and community education. However, LAO has given little indication as to the nature of these potential innovations. The CLO staff 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. Much of the casework innovation has been left to the community legal workers in Barrie, Brampton and Ottawa; unfortunately personnel turnovers in both communities have caused problems in the developing of relationships with local service organizations.

#### **2.2.4 *What planning and management processes have been put in place to clarify and revise objectives, and to ensure that any changes are effectively communicated?***

The need to devote effort to clarifying CLO objectives was identified in the *Year One* report. Over the second and third years, as CLO caseloads were reaching, or were at, capacity, some CLO staff also suggested that the time had come for LAO to become more involved with assisting the CLOs in deciding how to determine their caseload priorities, community outreach and law reform activities. The Barrie LAO Area Director and CLO director met on a periodic basis and discussed administrative matters and some discussions were held with respect to caseload priorities. In Brampton, the Area Director, the Supervisory Duty Counsel and the Directors of the two closest Legal Aid Clinics also meet on a regular basis to discuss caseload and other regional issues. The Ottawa CLO Director and the Area Director also met regularly to discuss administrative and caseload matters.

Given the perception that CLOs are reaching capacity, many of the staff lawyers have recognized that they must become more strategic about prioritizing their caseloads and their law reform activities. There has therefore been some limited discussion within the CLOs among the staff and the CLO directors, and with the Local Area Advisory Committees, Area Directors and the provincial offices with respect to priorities.<sup>40</sup>

A number of specific options have also been tentatively explored. One of the continuing concerns of the CLO staff is vetting and potentially refusing representation of potential clients who have been refused a legal aid certificate, although financially eligible. Because of its growing caseload the Brampton office is asking virtually all of its new clients to bring all disclosure documents provided to them by the Crown, to their first appointment so that the CLO lawyers are able to determine the utility of the CLO's undertaking representation. The Brampton office has also developed a triage protocol to screen new cases.

LAO senior management have also recognized the need to establish clearer policies, including in the area of case selection, and the need for close consultation with the local CLOs (and Area Directors) in the policy setting process. However, LAO—consistent with recommendations in the *Year One and Year Two* evaluation reports—also recognized that there was a need for such an effort to be directed and managed by senior levels of management, to ensure that the CLO priorities reflected broader and longer-term policies of LAO. Importantly, LAO also recognized that planning and carrying out such an exercise would also require assigning responsibility for such a task to an official in a senior position, a position with responsibilities extending to the staff offices, including the CLOs.

This recognition corresponds with observations in the *First and Second Year* reports that the CLOs would also benefit from having a single identifiable reporting relationship within LAO. At the time, there is no one person at LAO who is responsible for the CLOs; many take an interest, and several senior officials have played important leadership and support roles with respect to the CLOs. In particular, the CLOs were fortunate to have access to the time and leadership of the VP for Client Legal Services. However, it has often been unclear who was the “go-to” person for a given CLO issue at LAO. Since a single senior administrator did not exist to provide administrative and strategic

<sup>40</sup> It is also recognized that more efficient methods for achieving objectives must also be explored. For instance, the CLOs might learn from the most successful LAO clinics how benefit by training and effectively utilizing volunteers, students and paralegals to effectively dealing with caseload and community outreach.

leadership to the CLOs, an initiative was begun within LAO to establish and staff such a position. Unfortunately, budget cuts meant this initiative had to be cancelled earlier in year two.

In November 2006, LAO announced the establishment of a new position, the Associate Vice-President for Client Legal Services, effective January 2007. One of the responsibilities of the new Associate VP was to be the operational support for the staff offices. It was expected that the creation of this new senior management position would lead to significant improvements in clarifying the future direction of the CLOs. However, the Associate VP position was lost in a major reorganization of LAO that was implemented in spring 2007. Under this reorganization, which gives greater emphasis to co-ordinating services within regions than to specific functional or service lines across regions, the links between the CLOs with other LAO staff offices, clinics and duty counsel—and potentially with other community based groups—might be strengthened. However, it is not clear how links among the three CLOs and senior administration of LAO—and other mechanisms for resolving common substantive issues they face—will be appropriately strengthened, since they are in different regions.

A separate recent corporate initiative may show promise for addressing some of the administrative and management issues facing the CLOs, an initiative focusing on strengthening accountability and cost-effectiveness within LAO broadly. Nonetheless, such an initiative does not address the many substantive issues of legal service delivery policy (e.g., appropriate mix of cases to accept, and services to offer) that are fundamental to the future direction of the CLOs' future—and are raised throughout this report.

There are obviously key roles to be played by LAO senior management, the Area Directors and CLO staff in future objectives clarification exercises. However, it is also recommended that such a process also involve representatives from the broader local community. For instance, Crowns in both Barrie and Brampton have encouraged their local CLOs to continue to develop their caseloads and expertise in the complex and difficult area of mental health law, an area that is of limited interest to most legal aid practitioners. Others such as Senior Duty Counsel, community clinic directors, local and regional Student Legal Aid societies (in Ottawa only) and members of the local bar could also play a useful role. A specific example of the success possible would be the strong formal relationships the Barrie and Brampton CLOs have developed with the local workers from the Canadian Mental Health Association.

### ***2.2.5 What management processes are in place to compare actual to expected performance—on both an ongoing and ad hoc basis?***

Setting the objectives and priorities is of course only the first step. For the process to have a real impact, LAO must have in place a process for monitoring performance, assessing that performance in light of objectives, and developing and implementing methods to address any problems identified.

By funding and co-operating fully with the current three-year evaluation, LAO has committed more resources to addressing these first tasks than most organizations commit to model offices. In publishing the results of the evaluation, LAO is also making a strong commitment to being accountable for its efforts in this area.

However, internal planning and management processes are also needed to ensure that the lessons learned from the evaluation are communicated to staff and result in appropriate changes. Equally important is the development (and ongoing application) of sound operational management strategies and practices to ensure the continuous improvement of a rewarding and productive work environment

in which staff and other resources are effectively and efficiently focused on achieving priority LAO objectives for the CLOs.

There are many examples of CLO directors demonstrating sound operational management practices. The recent work of the Brampton CLO Director to develop and apply explicit criteria for managing their intake of cases is one. The high number of cases per lawyer handled by the Barrie CLO is another (but one that still requires management attention). The ability of the Ottawa CLO to establish itself in a hostile environment is another. There are also examples of improvements from year to year. For instance, the Brampton CLO reports that they meet as an office twice monthly, largely as a result of comments made in the 2nd year report. (It was also noted that they believed that it has improved staff morale, and overall management of the office.)

Although there is considerable variation among the three CLOs, there are a number of areas in which developmental work is indicated to strengthen management styles and practices.

For example, in the second and third round of interviews, CLO staff were asked to comment on whether certain specific management methods were in place to ensure quality control of case work. They were asked “What methods and processes are used to ensure quality control in casework”. They were further asked:

- Is there routine and formal case conferencing
- Do you observe other CLO staff in and around the court
- Do you review case files and make suggestions.

Analogous questions were asked at the Area Director and the Vice-President level.

In all three CLO sites, certain of the above activities did occur, but in many instances, they seemed to occur at best in an *ad hoc*, and not in a comprehensive or routine, manner. There was also little change in responses with respect to these specific areas from year two to three. For instance, senior LAO managers, including the Area Directors indicated they did not have available the types of management statistical reports that would allow them to adequately monitor either caseloads or CLO performance.

CLO Directors’ and Area Directors’ approaches to assessing the achievement of each CLO’s objectives have generally been quite informal. Again there is variation among CLOs, but the CLO Directors tend to focus on the management of individual cases and allocate varying, but generally limited, amounts of time to bringing staff together to reflect upon and reassess current caseload and law reform priorities. The Area Directors use their contacts within the broader local justice environment to obtain feedback on the CLOs, and, in some instances, to discuss caseload strategies. In year two and even more so in year three, less time seems to have been expended on the non-caseload service objective and priorities. In Brampton, the Area Director does bring together the various LAO services providers on a regular basis. In the other sites, although the Area Director and CLO Director speak periodically or even often, those discussions of operational and human resource issues—and inter-relationships with other LAO offices—tend to be somewhat informal and irregular, or when specific issues arise.

The extent to which current management practices and capabilities have resulted in significant problems is admittedly still somewhat unclear, and would seem to vary from CLO to CLO. However, such problems (for instance: the timely entry of data into information systems, and the quality of management and evaluation information provided regarding caseload and outreach activities—to both

the CLO Directors and to Area and other senior LAO managers) do indicate that some further attention is required to administrative and managerial issues.

In the majority of our discussions with CLO and Area Directors they have generally agreed that improvements need to be made. More importantly, there is a desire to participate fully in making those improvements. Equally important, a number of staff on the front-lines favour more opportunities to have their work monitored and to share lessons learned. Unfortunately, progress in improving management processes—and the management training necessary to improve management skills—has generally been slower than expected.<sup>41</sup>

Granted, with the existing limited resources available within LAO, it might be impossible to utilize management systems that are typical of a modern government-funded office. It might, for instance, only be possible to depend on junior staff identifying problems when they occur to the next most senior persons (or their colleagues).

One could also argue that the CLOs are achieving at least the standard typically achieved by similar small private law offices. However, it could equally be argued that the strategic and operational management and administrative practices in most small private law offices also do not achieve the standards of what would be considered a “a modern office” in the public sector or in other parts of the private sector. However, since the impacts of those practices are felt only by the private lawyers and staff running those offices, their not achieving the standards *of a modern office* is not a problem from a social policy perspective. However, the CLO offices are funded totally by public funds, and the fiduciary nature of this relationship means that the expectations of the clients, the staff and the public must therefore be considerably higher than that of similar size private law offices.

Finally, it should be noted that there are significant costs and risks involved in not adopting a regularized pro-active approach to operational management of the CLOs—in particular, lost opportunities to improve the skills of staff, and to demonstrate the full potential of the CLO model for delivering criminal legal services.

### 2.3 Conclusions

The main findings and conclusions of this chapter are presented in Section 1.7.1 of Chapter 1 earlier.

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<sup>41</sup> This need for improved management training in the CLOs reflects an analogous need currently being addressed throughout LAO.

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## Chapter 3: Services to Individual Client Cases

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### 3.1 Introduction, Format and Highlights

#### 3.1.1 *Focus and Findings Supported*

As noted earlier, the CLOs' efforts to achieve the objectives discussed in the previous Chapter can be organized into four broad categories:

- Three related to handling individual client cases, including:
  - *Non-certificate Cases*: cases that are denied legal aid certificates because they are unlikely to result in a custodial sentences,
  - *Certificate Cases*: cases that have been granted legal aid certificates
  - *Enhanced Special Services*: providing enhanced services needed by specific types of cases, for instance those involving accused with mental issues, and
- And a fourth category that takes a more *systemic* approach, i.e., those that focus on broader groups of cases, stakeholders, or issues (through, for instance: outreach, policy development, and law reform).

The current chapter focuses on the first three categories of CLO activities. More systemic activities are addressed in Chapter 4 following.

With respect to those three categories of activities, the information presented will be especially instrumental in supporting four of the major evaluation findings presented in Chapter 1:

- The CLOs have clearly confirmed the existence of—and benefit of addressing—the previously otherwise unmet significant need for legal services on the part of persons who qualify financially for legal aid but who do not receive such services through the legal aid certificate system;
- The CLOs have also demonstrated that they can address those needs;
- There are considerable differences among the CLOs with respect to priorities and approaches; and
- The CLO lawyers provide services in individual cases that are of similar to better quality to those offered by a typical member of the private bar.



#### 3.1.2 **Format**

The evidence to support these findings is organized around six questions, each given a separate section.

- Section 3.2: Context: How many cases in each site have recently received legal services from the private bar under legal aid certificates?
- Section 3.3: How many cases in each site have recently received legal services from the CLOs?
- Section 3.4: What types of cases have received those services from the CLOs, and how does the mix compare to those provided service by the private bar? To what extent is the service meeting unmet needs?
- Section 3.5: What specific types of services are provided to those cases by the CLOs: Improving access at critical stages in the litigation process?
- Section 3.6: With what level of quality has the CLO provided these services?
- Section 3.7: An important access issue regarding non-certificate cases. What can we say about whether the CLOs are addressing needs that have been unmet by other alternatives?

### **3.2 Context: How Many Cases in Each Site have Recently Received Legal Services from the Private Bar under Legal Aid Certificates?**

The CLOs have, during their first three years, attempted to address the needs of two main types of cases:

- “non-certificate” cases (cases which meet the financial criteria for receiving legal aid, but do not qualify for a certificate on other grounds—such as a high likelihood that the accused if convicted would receive a custodial sentence).
- “certificate” cases (i.e. cases in which the accused meets the financial criteria and has obtained a certificate from Legal Aid Ontario to obtain a private lawyer or a CLO lawyer of the client’s choosing for legal services).

Data are presented later on the numbers of non-certificate cases actually handled by the CLOs. However, information on cases handled is only a proxy for the potential numbers of such cases—and we are unsure how accurate a proxy it is. Unfortunately, sufficiently reliable and complete data for individuals not assisted by the CLOs who fall within this category of “potential demand” for service in each site are simply not available. The courts do not collect or report on the total numbers of accused persons who appear before them without a lawyer—let alone collect data on the numbers within this group who appear without a lawyer and do or do not meet the financial criteria for a legal aid certificate. It is even further beyond the realm of possibility to obtain data on a third group of accused,

those who qualify for legal aid on financial grounds, but are refused a certificate on other grounds, but then who do in fact ultimately get representation from a private lawyer. This lack of basic information makes it impossible to provide as much important information as would be preferred on a key aspect of the potential demand for this type of CLO service.

The potential demand for services represented by *certificate cases* is mainly a function of charges laid or new proceedings heard in the Ontario Courts. Although data were not available to the evaluation from the courts as to recent trends in proceedings, it is understood that charges and proceedings have in most courts increased steadily, increases that translate into increases in the demand for certificates. These increases in *demands* for certificates do not translate precisely into increases in the numbers of certificates *issued*.<sup>42</sup> Nonetheless, trends in certificates *issued* is a reasonable (and the best available to the evaluation) proxy for trends in the potential demand for those certificates.

Accurate data are available on the numbers of “certificate” cases *issued*, specifically the Criminal Legal Aid Certificates issued—in each of the CLO locations as well as throughout Ontario.<sup>43</sup> However, before discussing these data, it should be noted that although they are the best indicators available to the evaluation, the number of certificates issued in the three sites are imperfect indicators of the number of certificate cases handled by the private bar in each of the three areas served by the CLOs. This happens because certificates issued by a particular area office may or may not be dealt with by courts within the area. For instance, for the Barrie area, certificates are issued to lawyers from other jurisdictions for clients housed in the “Super Jail” in that area. Similarly, the closure of the Brampton jail (previously in the Peel/Brampton region) has shifted certificates issued to the Maplehurst institution (in the Halton region).

As shown in Figure 3-1 the CLOs were implemented within the context of:

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

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

During the first year of operation of the CLOs, these trends continued.

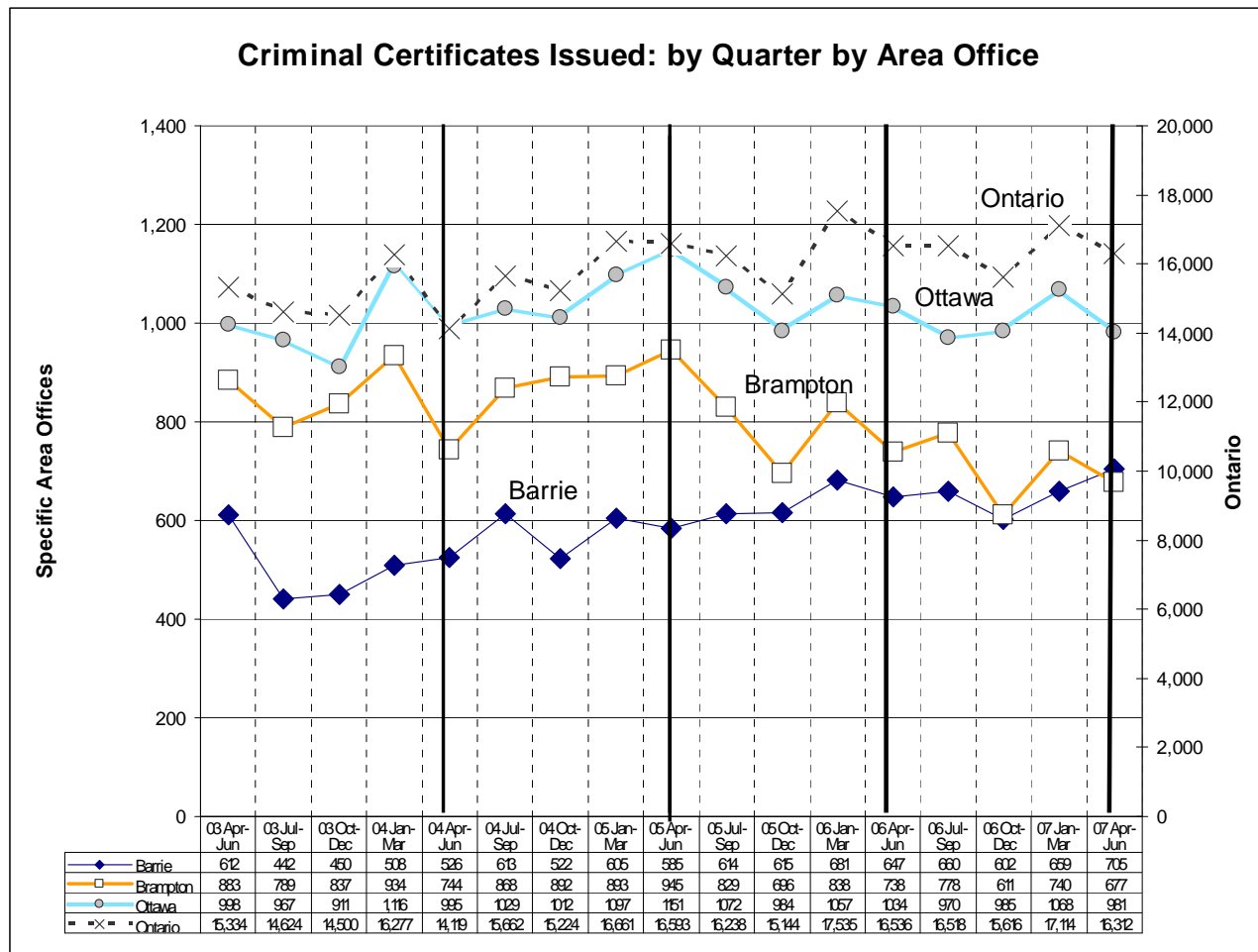
During the second and third year, the fairly flat trend in certificates issued continued in Ottawa. However, Barrie in year two and three has experienced a moderately higher (compared to year one) and increasing level of certificates issued. In direct contrast, in year two the numbers of certificates issued in Brampton was moderately *below* the levels of the first year—and the levels in year three decreased again.

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<sup>42</sup> Since Legal Aid budgets have not increased at the pace of proceedings laid, increases in the numbers of certificates *issued* will not keep pace with increases in the *demand* for certificates—with the difference accounted for by a proportionately greater increase in *refusals*.

<sup>43</sup> These data come from automated information system (PeopleSoft) implemented by LAO to record data related to applications for and lawyer billings on all Criminal Legal Aid Certificates accepted by members of the private bar. The CLOs’ staff lawyers also recently began entering data into the system for certificate cases.

Figure 3-1



It should, however, be noted that this information is not on *unmet* demand for services, but on the level of demand for legal services that has, in fact, been *actually met*, virtually in full by the private bar. Such data are therefore directly relevant for considering the size and volume of legal aid activity that now has to be funded through Legal Aid Ontario. The data are also relevant for estimating the potential workloads of the CLOs, if the CLOs are to provide—even to a very limited degree—an alternative choice to accused persons for handling these types of cases, or an additional source of service if the private bar cannot keep up with rising demands for these types of cases. Finally, such data are relevant for comparing the relative size of any CLO certificate caseloads and those of the private bar.

However, these types of statistics are only loosely indicative of the *unmet* demand that exists, for instance, for CLOs:

- providing certificate service to persons who are unable to find private counsel in their local area to take the case; and/or
- providing certificate service to traditionally “under-served” client groups.

Unfortunately, data on the extent of *unmet* demand for certificate cases based on valid scientific data collection methods simply do not exist, and the cost of collecting such data is beyond the capacity of this evaluation. One must therefore be content at this point in reporting on the few pieces of empirical evidence that do exist and the perceptions of those who have familiarity with the local situations.

### 3.2.1 LAO Refusal Letters

A second informative source of information is the set of statistics from Legal Aid Ontario that document the proportion the certificates issued (discussed in the previous section) comprise of all of the applications for legal aid. As shown in Figure 3-2 a sizeable proportion of applications do result in certificates being issued. However, the proportion resulting in certificates is considerably higher in Ottawa (90% in year one, 86% in year two and 84% in year three), as compared to in Barrie (74%, 71% and 74%) and Brampton (72%, 62% and 62%). Further, as seen in these statistics, the proportions of applications granted in all three sites fell from year one to year two. That decline continued in Ottawa in year three, but the percent increased in year three in Barrie and stayed constant in Brampton.

The Figure gives three reasons for refusals: *financial reasons*, *legal reasons* and *abandoned or unknown*. *Legal reasons* is of special interest to estimating the potential demand for the services of the CLOs, since those applications represent people who qualify financially for legal aid but fail to qualify for reasons such as the further “loss of liberty” restrictions. These thus are very poor persons whose application has been refused probably because there is not a strong possibility they will go to jail if convicted. (This group is probably a main source of the persons who become non-certificate clients of the CLOs. Evidence will also be given later that these people also have a strong need for legal representation.)

**Figure 3-2**  
**Criminal Certificates Issued & Applications Refused By Area Office (July 2004 - June 2005)**

	Total Applications	Certificates Issued		Refused: Financial reason		Refused: Legal reason		Refused: Abandoned or unknown		Total Refused	
Barrie	3,151	2,325	73.8%	278	8.8%	263	8.3%	285	9.0%	826	26.2%
Brampton	5,093	3,598	70.6%	514	10.1%	573	11.3%	408	8.0%	1,495	29.4%
Ottawa	4,779	4,289	89.7%	153	3.2%	192	4.0%	145	3.0%	490	10.3%
Other	66,652	53,920	80.9%	3,599	5.4%	4,222	6.3%	4,648	7.0%	12,732	19.1%

**Criminal Certificates Issued & Applications Refused By Area Office (July 2005 - June 2006)**

	Total Applications	Certificates Issued		Refused: Financial reason		Refused: Legal reason		Refused: Abandoned or unknown		Total Refused	
Barrie	3,575	2,557	71.5%	338	9.5%	330	9.2%	350	9.8%	1,018	28.5%
Brampton	5,013	3,101	61.9%	733	14.6%	757	15.1%	422	8.4%	1,912	38.1%
Ottawa	4,853	4,148	85.5%	231	4.8%	347	7.2%	137	2.8%	715	14.7%
Other	69,260	55,627	80.3%	3,996	5.8%	4,819	7.0%	4,808	6.9%	13,622	19.7%

**Criminal Certificates Issued & Applications Refused By Area Office (July 2006 - June 2007)**

	Total Applications	Certificates Issued		Refused: Financial reason		Refused: Legal reason		Refused: Abandoned or unknown		Total Refused	
Barrie	3,584	2,637	73.6%	307	8.6%	388	10.8%	252	7.0%	947	26.4%
Brampton	4,662	2,874	61.6%	762	16.3%	682	14.6%	344	7.4%	1,788	38.4%
Ottawa	4,818	4,063	84.3%	258	5.4%	385	8.0%	112	2.3%	755	15.7%
Other	70,441	56,277	79.9%	4,171	5.9%	5,276	7.5%	4,717	6.7%	14,164	20.1%
All Areas	83,505	65,851	78.9%	5,498	6.6%	6,731	8.1%	5,425	6.5%	17,654	21.1%

Finally, it is important to note the absolute size of this “legal refusal” category in year three—just under 390 people in Barrie and Ottawa, and considerably above that number (682) in Brampton. In all sites these numbers were higher in year two—considerably higher—than in year one. Further, although the numbers fell in Brampton in year three, they continued their upward trend in both Barrie and Ottawa.

The numbers are thus consistent with a growing demand for services from the CLOs related to this group of potential clients.

### **3.3 How Many Cases in Each Site Have Recently Received Legal Services from the CLOs?**

#### **3.3.1 *Trends in Numbers and Mix of Certificate and Non-certificate Cases Opened***

##### *a Total Caseloads: Certificate and Non-certificate combined*

As shown in Figure 3-3, during the first two years of operations, each of the CLOs exhibited a trend in cases opened typical of a moderately successful new law office.<sup>44</sup> The trends did, however, differ among the offices.<sup>45</sup>

In both Barrie and Brampton, during the first year the number of cases opened started low and steadily increased. However, this increase continued only until the second last quarter (January to March of 2005) of the first “year” of operations. In both CLOs, the number of cases opened dropped slightly in the April-June quarter of 2005. At the end of the first year (i.e., at June 2005), the levels of cases opened by quarter were almost identical in Barrie and Brampton—both above those in Ottawa.

During the second and third year, Barrie, Brampton and Ottawa followed different paths. In Barrie, the number of cases opened remained virtually constant from quarter to quarter during the second year, and then fell during the first half of the third year before increasing again to levels just below those in the second year.

In contrast, Brampton experienced a major spike in cases opened in the first quarter of the second year (cases opened almost doubled). However, the numbers of cases opened were lower in subsequent two quarters—at a level approximating the peak level of the first year.<sup>46</sup> Then the numbers of cases opened increased substantially during the first half of the third year, before again falling in each of the last two quarters of the year.

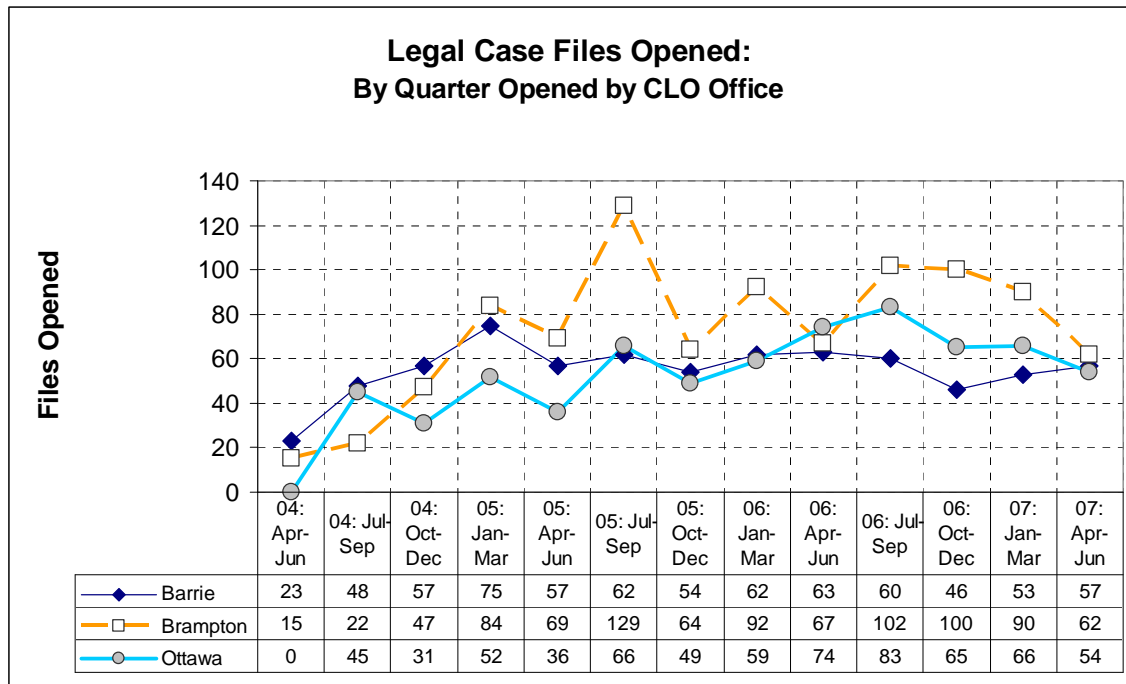
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<sup>44</sup> It should however be noted that there is some variation in the way a “case” is defined in the three sites—in particular, a situation in which an accused with a still open group of charges (i.e. the “initial case”) comes to the CLO with a second group of charges. The Barrie CLO is very likely to add the second group of charges to the first case, resulting in only *one* case. In the Brampton CLO, if the second set charges arrive more than three months after the first set of charges were opened, a second case would be created, resulting in *two* cases. If the Brampton procedure is correct, then the caseload statistics for Barrie are understated somewhat.

<sup>45</sup> Note that in year two the Barrie office has also provided information on a number of special assists offered to clients. A small number of these assists might have better been recorded as “client files” and included in the tables of opened and closed cases that were presented in the year two report.

<sup>46</sup> However, as shown in Chapter 6 later (in a section on workloads and resources), the workload of the office—as shown by the number of cases still being processed—was increasing dramatically in year two.

Figure 3-3



Ottawa has exhibited a slightly different growth pattern, with the caseload in year two exhibiting an initial increase followed by a modest drop, and then a gradual increase over the last two quarters of the year. This increasing trend continued to the end of the first quarter of year three. However, caseloads then began a downward trend for the remaining three quarters of year three.

What is interesting is that all three CLOs had very similar numbers of cases opened in the last quarter of both the second year and the third year—despite the fact that Barrie had one fewer lawyer positions (2 vs. 3) than did Brampton and Ottawa (although Ottawa was short-staffed by one for much of the last quarter of both years). It is also noteworthy that—compared to the last quarter of year two—in all three CLOs, the number of cases opened was lower in the last quarter of year three. This may be a coincidence, but it is possible that all three were reacting to what they felt were increasing capacity constraints.

The CLOs have therefore been successful in attracting reasonable numbers of cases requiring assistance—demonstrating a reasonable demand for the types of case-specific services they are providing.

#### *b Non-certificate vs. Certificate*

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 do not receive certificates, since they are not likely to go to jail if convicted. Two such types of cases are of particular interest:

- Those who have a valid defence or triable issue, and
- Those for whom the consequences of conviction would be significant for them (e.g. deportation, loss of job, loss of educational opportunities).

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 (i.e. paid for by Legal Aid) “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.<sup>47</sup>

The following four Figures show the trends in the certificate and non-certificate cases opened in each CLO and the ratios of certificate cases to the total of certificate and non-certificate cases.

Figure 3-4 presents data for each year and for the total over both years. Figure 3-5, Figure 3-6, and Figure 3-7 provide more detailed data for each quarter, separately for each CLO.

As shown in Figure 3-4, over the first full two years of operation, Brampton had opened the highest number of cases (589), followed closely by Barrie at (501). Ottawa had opened 412. By the end of year three the difference between the number of cases opened by Brampton (943) and the other two CLOs had widened. However, the difference between Barrie and Ottawa had narrowed considerably (717 in Barrie and 680 in Ottawa). (N.B. Barrie had only two lawyers covering a large geographic area.) There are also differences from one CLO to another in the mix of their caseloads between non-certificate and certificate cases. In Brampton and Ottawa, non-certificate cases have accounted over the three years for just over four out of every five cases opened. In Barrie, the situation is reversed, with 85% percent of the cases opened being certificate cases.

**Figure 3-4**

**Files Opened per Year by Whether or Not Certificate**

SiteIDN			Year 1 (April 04> June 05)		Year 2 (July 05> June 06)		Year 3 (July 06> June 07)		Total	
			#	%	#	%	#	%	#	%
Barrie	Whether or not Certificate Issued	Not known yet	1	0%			1	0%	2	0%
		No Certificate	25	10%	46	19%	34	16%	105	15%
		Certificate	234	90%	195	81%	181	84%	610	85%
	Total		260	100%	241	100%	216	100%	717	100%
Brampton	Whether or not Certificate Issued	Not known yet	14	6%	9	3%	2	1%	25	3%
		No Certificate	192	81%	298	85%	317	90%	807	86%
		Certificate	31	13%	45	13%	35	10%	111	12%
	Total		237	100%	352	100%	354	100%	943	100%
Ottawa	Whether or not Certificate Issued	No Certificate	126	77%	199	80%	241	90%	566	83%
		Certificate	38	23%	49	20%	27	10%	114	17%
	Total		164	100%	248	100%	268	100%	680	100%

Files Opened: to June 30, 2007. Table produced August 31, 2007.

With respect to **Certificate Cases** the more detailed quarterly data shown in the next three figures reflect this considerable variance in the number of cases served by the three CLOs and in the proportion of the caseloads that were certificate as opposed to certificate cases.

<sup>47</sup> The separate question of whether the CLO model is a cost-effective method of providing this additional value will—to the extent possible at this stage in the evaluation—be addressed later.

As shown in Figure 3-5, throughout the three years of operation, certificate cases constituted a much higher proportion of the Barrie CLO's caseload than in Brampton and Ottawa. ( This finding is, however, tempered by the fact that a significant (but unknown) percent of the Barrie "certificate" cases come in the CLO door before the application process has been completed—especially in situations involving mental health accused. In these cases, the Barrie CLO works with the client to obtain a certificate while simultaneously assisting the client. It is possible that these clients would have otherwise proceeded through the court process without getting a certificate (probably handled by duty counsel). This is significant because the Barrie CLO is able to respond to these clients with a certain level of expertise, and faster than they may have otherwise proceeded. This is one factor that leads to an increase in the number of certificate cases handled in Barrie. In both Ottawa and Brampton, they do not see clients until after they have applied for a certificate, and have either been refused or obtained the certificate. There are also differences in Brampton because the LAO legal office has an officer in the courthouse that assists individual with Legal Aid applications.)

Barrie had an especially high proportion in the first year—above 90% in all but the last quarter. Certificate cases then did account for a lower percent of cases opened during the last three quarters of the second year and the first quarter of the third year (between 76% and 81%). However, most recently during the last three quarters of year three, the percent increased—reaching 93% by the end of the year. In terms of absolute numbers of cases opened, Barrie opened a steadily increasing number of new certificate cases from quarter to quarter during the first 3 quarters it was open. However, the number opened per quarter remained very stable during the next 6 quarters of the shown—i.e., to the 1<sup>st</sup> quarter of the third year. The next quarter in year three then showed a drop, followed by a trend upward in the last two quarters of year three back to the higher levels seen earlier at the beginning of year two.

In contrast, in Brampton, certificate cases have continued throughout the two years to constitute a relatively small percent of cases opened, after the first two quarters never rising above 16%. The absolute numbers of cases opened per quarter has also been low, but at slightly higher levels during the second year and third year (i.e. between 8 and 17 except for the two quarters when the number dipped sharply to 4 (6% and 4% of the total cases opened those quarters)).

In Ottawa the proportion of cases accounted for by certificate cases in the first two years stayed between that in Barrie and Brampton (i.e. usually between 13% and 29%). The proportion did spike to 33% in the October to December quarter of the second year, but this was due more to a decrease in the number of non-certificate cases opened that quarter (than to an increase in the number of certificate cases). Since the last two quarters of the second year, the percent of all cases opened accounted for by certificate cases has been at its lowest since the opening of the CLO—dropping to 6% of all cases during the last two quarters of the third year (only 4 and 3 cases).

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

- Barrie has shown low levels throughout the two years, with a modest upward trend starting during year two (reaching only 15 during the last quarter of that year). However, in year three the number fell fairly steadily, to 4 in the last quarter shown;
- Brampton initially demonstrated a strong upward trend in non-certificate cases, reaching 66 cases opened in January through March 2005. However, except for a spike in July through September of 2005, the number fell back to the 50 to 74 level until the end of year 2. Finally, the number rose to the 86 to 92 range for the first three quarters of the third year, before dropping down to the year two level in the last quarter shown.



- Ottawa (except for a spike July through September of 2005) showed a fairly level trend throughout the first 6 quarters shown in the chart. However, starting in the last two quarters of the second year an upward trend developed, a trend that continued through the first quarter of year 3 and reached a peak of 71 cases that quarter. Ottawa (as did Barrie and Brampton) then began a downward trend in non-certificate cases opened during the last three quarters of year three, finishing at 51 at the last quarter shown.

Figure 3-5

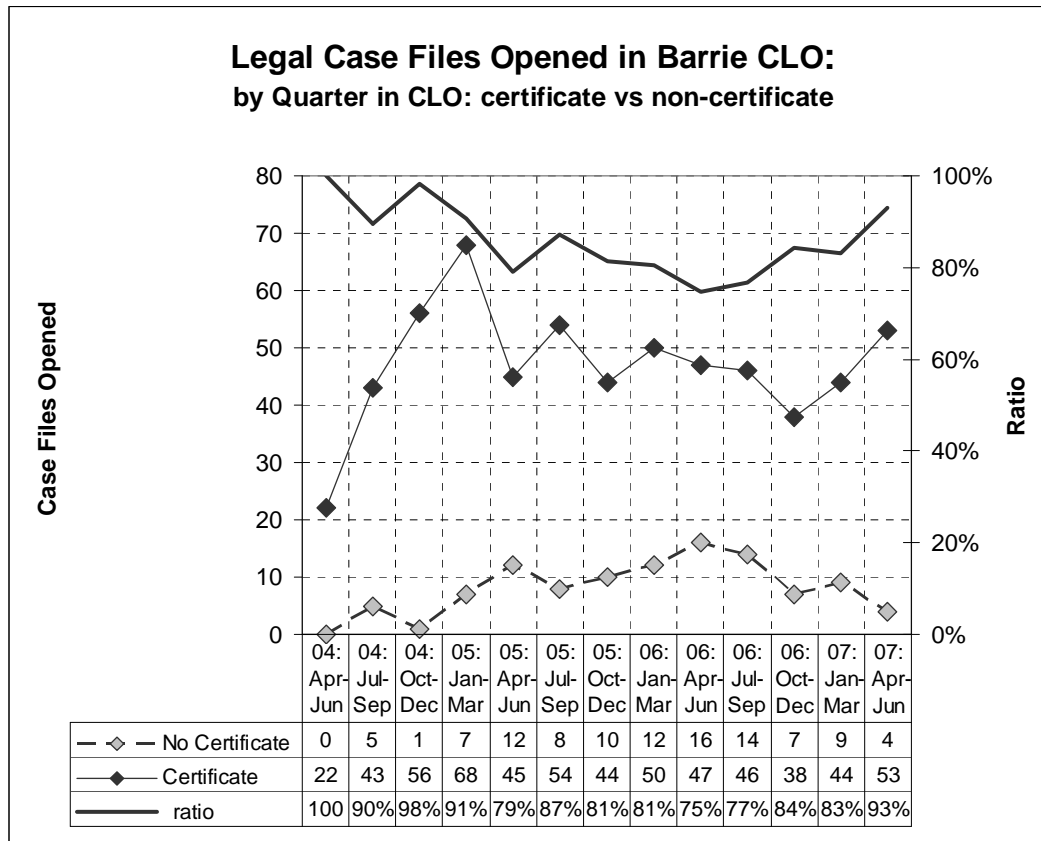


Figure 3-6

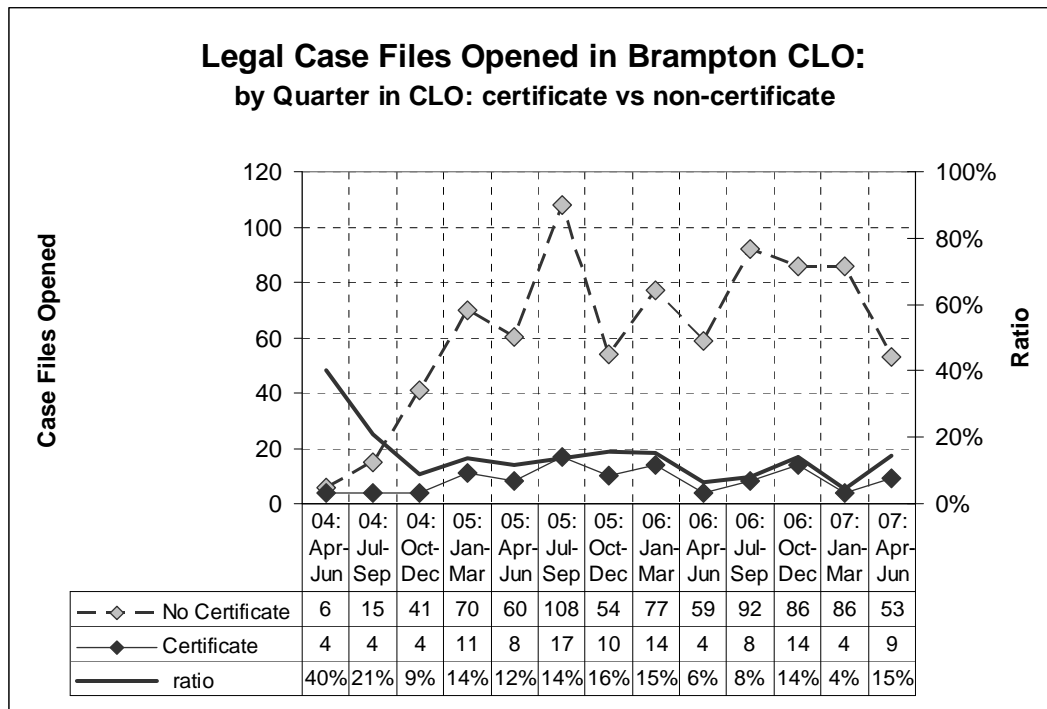
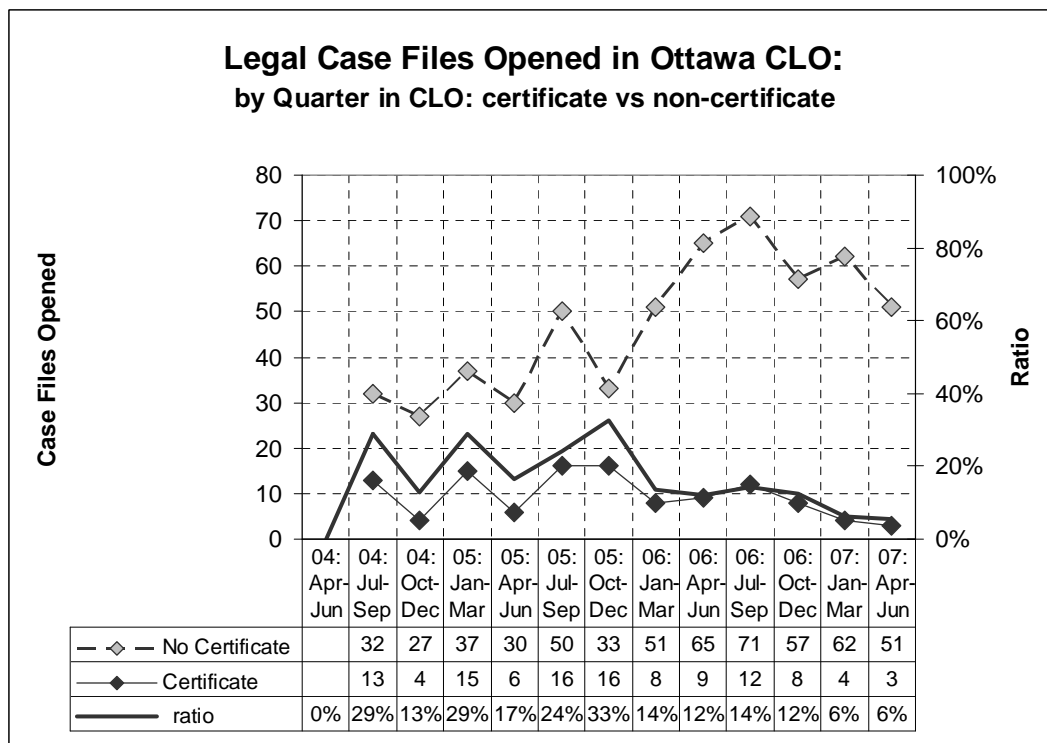


Figure 3-7



In addition, it is relevant that, compared to the number of applications for legal Aid Certificates (see Figure 3-3 earlier) which were refused a legal aid certificate for “legal reasons”, in both year two and year 3 the numbers of non-certificate cases taken on by the Barrie Office represented much lower percents (14% and 9%) than in either Brampton or Ottawa. The numbers of non-certificate cases opened in Brampton represented 39% and 46% of the refusals for legal reasons. In Ottawa the analogous percents were even higher at 57% in year two and 63% in year three.

Clearly, the number of “refusals for legal reasons” is an imperfect measure of potential demand for service from non-certificate cases.<sup>48</sup> However, it is an indicator that should be considered. With this caveat, we note that the variance just noted is quite considerable--and is certainly not driven by any central policy. The low percent for Barrie also suggests that the low percent of caseloads represented by non-certificate cases in Barrie is not driven by there being low numbers of people refused for legal aid (for legal reasons).

In summary, in some areas such as convergence in the number of cases opened per quarter, there are marked similarities from one site to another. On the other hand, in other areas such as the mix of certificate and non-certificate cases, there are marked differences in the levels and nature of the caseloads in the three CLOs. It should be noted that in both instances, our interviews suggest that both the similarities and 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 over the first two years to have initially been reactive rather than proactive, and to take the clients that “come in the door” while building their caseloads. In the third year, the approaches again seemed locally driven, but driven more by considerations related to workloads and capacities than by centrally promulgated policies.

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.

In the *First Year* report, it was noted that this approach (and analogous reactive approaches in Brampton and Ottawa) seemed 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 basis to reach as soon as possible a sufficiently substantial level of core activity. However, it was also noted that 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. During the second year the evaluation was especially interested in whether a more proactive case selection protocol would be utilized—especially if the CLOs reached their operational capacity and had to begin to select among alternative cases to handle.

During the second year, Barrie placed strong emphasis on focusing on specific target groups when accepting clients—especially with regard to Aboriginal, in-custody and mental health clients.

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<sup>48</sup> While most refusals can be seen as potential non-certificate clients, we don’t know that for sure about all, as there could be many reasons they are turned down (e.g., they wanted to change solicitors and LAO denied the change), and also because those turned down could have other options besides the CLO (such as: finding money to pay a private lawyer, or (if they were refused because they were likely not going to go to jail and they wanted a lawyer to do a guilty plea) using duty counsel).

An interesting exercise was also initiated by the Brampton CLO director to begin to develop criteria for exercising “triage” on new cases. It thus appears that both CLOs were starting to explicitly exercise specific policies for concentrating on specific types of cases. As the CLOs started to approach what they felt was capacity, these same criteria would have an influence on which cases were accepted or turned away.

During the third year, clear direction from headquarters as to the numbers and specific types of cases to take on was still not evident.<sup>49</sup> Any major developments or strengthening of triage criteria from the Ottawa CLO was also not explicit or operational. However, during the third year, Barrie continued their focus on mental health and aboriginal clients (by the third year, half of their clients were aboriginal, in institutions, and/or had mental health issues). As the Brampton CLO approached what they felt to be capacity, the Director developed a quite explicit procedure to ensure that the CLO became more proactive in focusing on target client groups. By the end of the year in Brampton, application of the criteria was beginning to have an impact on the numbers and types of cases accepted. As an example, the CLO was considerably less likely to offer full services for impaired driving cases. Instead, in most cases, the office offers only an initial consultation and advice session and, if the breath readings are 120 or lower, the office will assist the person in attempts to get the charge reduced to *careless driving* (based on a “Carter defence”) by obtaining an expert’s report in aid of negotiation with the Crown. Since Duty Counsel are not able to access an expert, or pay for his report, this assistance, while limited, is much more than the unrepresented accused could normally get.

#### 3.3.2 ***Trends in Numbers and Mix of Certificate and Non-certificate Cases Closed***

Figure 3-8 provides another perspective for measuring the level of service provided by the CLO’s, namely cases *closed*. Interestingly, although it was shown earlier that at the end of year two the Brampton CLO led the other CLOs with respect to the number of cases *opened*, the Barrie CLO was virtually tied with the Brampton office with respect to cases *closed* (406 and 433). The Ottawa CLO remained the lowest volume CLO at the end of year two with a considerably lower 273 cases closed.

The Barrie CLO, however, operates with one fewer lawyer. On a per lawyer basis, in year two Barrie closed considerably more cases than the other two CLOs (203 per lawyer for Barrie vs. 144 per lawyer for Brampton, and 91 per lawyer for Ottawa).

In year three, Brampton again closed more cases than the other two (345) – and now the Ottawa CLO closed more than Barrie (310 vs. 251).

On the more relevant per lawyer measure, in year three, Barrie continued to close more cases per lawyer (126) than did either of the other sites (Brampton, 115; and Ottawa, 103). However, the per lawyer figures in the three CLOs in year three are within a much narrower range than in year two.

By the end of year three, Brampton had closed more files (778) than had Barrie (657), and both had closed considerably more files than had Ottawa (563).

Another interesting finding is that the number of files closed has increased each year in all three offices, but the increases are at considerably different rates. The result is that, although Barrie closed the most files in year one (178), Brampton closed the most files in both years two and three (329 and 345). In year three Ottawa closed nearly as many files (310) as Brampton (345) and more than Barrie

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<sup>49</sup> It is recognized that any control over caseloads must be undertaken within the concept embodied in the *Legal Aid Act* of clients’ having a choice of counsel. Anybody can walk in the door and ask the CLO for help. Other considerations, including the special backgrounds and skills of the CLO lawyers, also have to be taken into account.

(251). A number of reasons are possible for the different rates of growth in closed cases. One relates to Barrie and Brampton reaching (what they felt locally was) capacity earlier than Ottawa, another relates to Ottawa having staffing problems that delayed the closing of cases to later periods. As well, Barrie had only two lawyers and was without a paralegal for at least four months, and Brampton was without a CLW for a period during year three.

The mix of cases between certificate and non-certificate cases shown for closed cases is similar to that shown earlier for opened cases.

**Figure 3-8**

**Files Closed per Year by Whether or Not Certificate**

SiteidN			Year 1 (April 04> June 05)		Year 2 (July 05> June 06)		Year 3 (July 06> June 07)		Total	
			#	%	#	%	#	%	#	%
Barrie	Whether or not Certificate Issued	Not known yet	1	1%			1	0%	2	0%
		No Certificate	11	6%	39	17%	46	18%	96	15%
		Certificate	166	93%	189	83%	205	81%	560	85%
	Total		178	100%	228	100%	252	100%	658	100%
Brampton	Whether or not Certificate Issued	Not known yet	9	9%	6	2%	7	2%	22	3%
		No Certificate	85	82%	275	84%	307	89%	667	86%
		Certificate	10	10%	48	15%	31	9%	89	11%
	Total		104	100%	329	100%	345	100%	778	100%
Ottawa	Whether or not Certificate Issued	No Certificate	68	76%	139	76%	270	87%	477	82%
		Certificate	21	24%	45	24%	40	13%	106	18%
	Total		89	100%	184	100%	310	100%	583	100%

Files Opened and Closed through June 30, 2007. Table produced August 31, 2007.

### 3.3.3 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 Figures document 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 be addressed from other sources. The data do allow us to provide information relevant to two issues addressed later in this report, namely: to what extent the CLOs represent a significant 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 3-9, the answer to each question may differ in each site. The Barrie CLO certificate cases represented just over 8% of the total certificates in the Area during the first year and slightly under 8% during the second year and just under 7% in the third year. In contrast, in Brampton and Ottawa the CLOs only accounted for close to 1% of the total certificates issued in any of the three years in their community.

Figure 3-9

Comparison of Certificates Issued and CLO Certificate Cases Opened Each 12 Months in the 36 Month Period between July 1, 2004 and June 20, 2007											
	Barrie				Brampton				Ottawa		
	July 2004 > June 2005	July 2005 > June 2006	July 2006 > June 2007		July 2004 > June 2005	July 2005 > June 2006	July 2006 > June 2007		July 2004 > June 2005	July 2005 > June 2006	July 2006 > June 2007
<b>Total Certificates Issued</b>											
- number	2,296	2,569	2,626		3,552	3,112	2,806		4,247	4,162	4,004
<b>CLO Certificate Cases Opened</b>											
- number	212	195	181		30	40	35		34	46	27
- as percent of total Certificates Issued	8.5%	7.6%	6.9%		0.8%	1.3%	1.2%		0.8%	1.1%	0.7%

In terms of percentages of the total represented by their certificate cases, the Brampton and Ottawa CLOs have not had a significant impact on the certificate work in their areas to date.

A further analysis of the Barrie certificate data shows that in 2006/07, 318 different private bar lawyers accepted certificates.<sup>50</sup> The 181 certificates opened by the Barrie CLO therefore translate into each of the private bar lawyers losing roughly half a certificate a year. Even achieving that level of average impact would be dependent on having each and every one of the 181 cases being picked up by the private bar if the CLO had not been in operation.

However, there is the possibility that the impact might be focused unevenly on different members of the private bar. Further analysis was therefore undertaken and it was found that, of the 318 lawyers who accepted certificates in Barrie that year:

- 282 were issued 1-9 certificates
- 11 were issued 10 to 19 certificates
- 1 was issued 20 to 29 certificates
- 24 were issued 30 to 100 certificates, and
- 4 were issued over 100 certificates.

It is unclear based on this data who would be impacted most by the Barrie CLO, lawyers that accept only a few certificates a year, or those that accept many. On the other hand, the possibility remains that a significant percent of the certificates accepted by the Barrie CLO would not have been picked up by the private bar.

Finally, it should also be noted that the Barrie CLO hired lawyers who had previously practiced in the Barrie area, and who had a significant criminal certificate practice before they joined the CLO. It is therefore not accurate to characterize their caseloads within the CLO as entirely being taken from the private bar. Presumably some of the cases these lawyers took on as “CLO” lawyers would have been taken on if they had remained private lawyers—and thus would still not be available to other members of the private bar. Similarly, if the CLOs were to close, it should be assumed that the (previously CLO) lawyers would continue to take a sizeable number of certificates as private bar members, and

<sup>50</sup> The total number of lawyers listed here in Barrie working on certificate cases may be slightly undercounted. The total of 318 Lawyers was obtained by counting the number of distinct lawyer numbers that were provided to LAO when a certificate was accepted. It is possible that number of lawyers in a firm may work on a file, however only one lawyer number is recorded for each file.

the impact of the closing of the offices on the rest of the private bar would be thereby limited. Further, as noted elsewhere, a percentage of the CLO certificate cases would not have obtained certificates if they had not been assisted in doing so by the CLO. Instead they would have most likely been assisted by Duty Counsel.

## **3.4 What Types of Cases have Received Services from the CLOs, and How Does the Mix Compare to that Provided Service by the Private Bar? To What Extent is the Service Meeting Unmet Needs?**

In addition to the general substantive case-specific objectives addressed in this Chapter, each CLO has objectives which are particular to it, including targeting their resources towards specific certificate and non-certificate client groups and strategies. As noted later, our interview data suggest that many workers in the justice environment in which the CLOs work continue to be unaware, even in the third year of their operation, 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 general, those stakeholders who are directly involved with a particular issue (e.g. judges, crown and court workers involved in a mental health court) are well aware of the work of the CLO with respect to that particular issue. Others who are not involved themselves in a particular area are not aware of the CLO work in that area. This lack of knowledge generally about the work of the CLOs may affect the support they receive from a broader constituency—one who might support certain types of CLO activities even if they themselves were not involved in them.

**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 in LAO documents and by those interviewed 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 (in particular, clients whose immigration status would be affected by a conviction on even a relatively minor offence);
- 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>51</sup> Such a description may also be useful in identifying whether otherwise unmet client needs have changed since the planning of the CLOs.

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

#### 3.4.1 ***Providing 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)?*

CLOs were also asked to record the first language of defendants. Although some underreporting of data in Brampton was noted (approximately 8% of files had no information on language), the data that is available (Figure 3-10) does indicate that a significant and increasing proportion (over 16% in year three) of CLO certificate clients in both Brampton and Ottawa have a first language other than the two official languages. This situation does not seem to be present in Barrie.

Clients with a first language other than English or French seem to be even more prevalent among the non-certificate cases in both Brampton and Ottawa (27% of the Ottawa clients in year one and at least 20% of the Brampton clients in year 2). The prevalence of a high percentage of clients with English not as a first language was a factor leading to the Brampton office hiring a summer student of South Asian background in year one (20% of the clients of LAO in Peel are South Asian). This person was not retained because funding was not available and, the current lack of such a person was raised in the year two interviews. Nevertheless, the Brampton CLO continues to make a concerted effort to recruit volunteers (primarily co-op students) from linguistic or cultural backgrounds which mirror their client base. However, with a small staff and the unavailability of additional funding for another lawyer or support positions, the difficulties of having a representative staff are recognized.

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<sup>51</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 continue to argue that they would—especially if the tariff allowed them to take “non-certificate cases”—be in competition with the CLO for many if not all of the certificate and non-certificate cases taken by the CLO.



Figure 3-10

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

SiteidN			No Certificate			Certificate		
			Year Closed			Year Closed		
			Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Barrie	First Language	English	100.0%	100.0%	95.7%	97.6%	95.2%	95.6%
		French					2.1%	
		Other			4.3%	1.8%	1.1%	1.5%
		Not Coded				.6%	1.6%	2.9%
	Total		11	39	46	166	189	205
Brampton	First Language	English	69.4%	68.7%	76.9%	80.0%	77.1%	67.7%
		French			.7%		2.1%	
		Other	14.1%	19.6%	14.3%	20.0%	12.5%	16.1%
		Not Coded	16.5%	11.6%	8.1%		8.3%	16.1%
	Total		85	275	307	10	48	31
Ottawa	First Language	English	64.7%	71.2%	75.9%	76.2%	66.7%	57.5%
		French	8.8%	12.9%	14.1%	19.0%	22.2%	20.0%
		Other	26.5%	15.8%	8.1%	4.8%	11.1%	17.5%
		Not Coded			1.9%			5.0%
	Total		68	139	270	21	45	40

Client Closed Files Opened: to June 30, 2007. Table produced August 31, 2007.

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 over 95% of both the non-certificate and the certificate clients having English as their first language in all years. In Ottawa, the presence of Francophone and/or bilingual lawyers and community legal worker was an asset for Francophone clientele.

### 3.4.2 Providing 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 3-11 which lists different categories of ethno-cultural groups that are present in the CLO caseloads.

*N.B. In interpreting Figures such as this one and others following in this report, the reader must keep in mind that where a table contains data on only a small number of cases, the percentage distributions of those cases could change significantly if one or two cases changed values. In the following charts, one must keep this in mind especially when comparing percentage distributions shown for Barrie non-certificate, Brampton certificate and Ottawa certificate cases.*

*Taking an example from the following Figure it is perfectly true that 6% of the 16 Brampton Certificate cases opened in the second year were African-Canadian. However, if one more of the 16 had been an African-Canadian, that percentage would increase to 12% (i.e. by  $1/16^{\text{th}} = 6.25\%$ ).*

*One must therefore be careful in drawing conclusions from small differences in percentage distributions between groups with small numbers and other groups.*

CLO staff reported difficulties defining, and/or identifying ethnicity of clients in many circumstances, which led to a large group of unknown or not coded data. For example, data on ethnicity was not recorded in year two for large proportions (25%) of Brampton certificate cases. Similarly data on ethnicity was not recorded by the Ottawa CLO in year two and three for over one in five non-certificate cases and in year two for 29% of its certificate cases. With the above caveat and these missing data problems in mind, comments on the data are presented with caution.

- First, in year two and year three roughly two-thirds of the Barrie non-certificate and certificate caseloads were recorded as “white Caucasian”.
- Second, in year three Aboriginal (North American Native) persons constituted a significant percentage of the Barrie non-certificate and certificate caseloads (26% and 25%).
- Finally, persons other than aboriginals or Caucasians constituted very high percentages of the Brampton CLO caseloads—or over half in the third year for both non-certificate (50%) and certificate (55%). Although not as prevalent in Ottawa, non-aboriginals/ non-caucasians constituted roughly a quarter of that CLOs caseloads as well.

The interviews indicated that the judiciary and local bar is very aware that Barrie CLO is more involved with representing the North American Native community, particularly in the Midland area. The CLO staff has been making an effort to develop a better understanding of history and cultural of the local Indigenous communities and has contacts with the restorative justice program of the Mnjikaning first nation and has encouraged community-based friendship circles as an alternative dispute resolution for some criminal matters, as well as developing closer relationships with the Barrie and Midland Friendship Centres.

In the Ottawa year two interviews, when asked what types of accused the CLO had handled, none of the interviewees mentioned any specific ethnic group, and only one mentioned the related category of accused, “with English as a second language”. Further, when asked whether they were aware that the CLO was targeting special groups such as “mentally challenged, aboriginals, persons who don’t speak English as their first language”, only two responded they were aware of those priorities.

(Although “English as a second language” was not mentioned as among the target groups in the official documents establishing the Ottawa CLO, the special needs of the French community in Ottawa are considered of particular importance in that area—and were mentioned by those interviewed. )

A small number of CJS and LAO interviewees did, however, specifically mention a particular group, Somalian women, as a group with special needs that required addressing. In addition, mention was made by a CLO staff member of the importance of ongoing CLO efforts (discussed later) to reach the aboriginal community—and of the difficulties in doing so. Finally, the special needs of residents of Nunavut who had been transferred to serve sentences in the local detention centre were also mentioned.<sup>52</sup>

In Brampton, the CLO is noted for handling cases that fall through the cracks and representing persons of all ethnic backgrounds, who were financially eligible but unable to get a legal aid certificate. The Peel Courthouse is populated by a significant percentage of persons of colour and the CLO is perceived as handling a cross section of minor cases involving those persons. The CLO staff indicated that one of the office’s priorities is the social vulnerable and particularly those accused

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<sup>52</sup> These Nunavut residents are a special group within the “aboriginal” target group—and have special needs given their geographical separation from all other normal support systems, in addition to the cultural differences and the special problems faced by inmates in institutions.

where English is a second language. Although precise figures are not readily available, the Director of the Brampton CLO estimates that

“Probably 50 per cent of the accused appearing in Brampton are ‘visible’ minorities...However, the range of “visible” minorities is large – I suspect that virtually every ethnic, linguistic and cultural group is represented. On any given day, the Interpreter’s Office has a list of 10 – 20 different languages being supplied for courtrooms. Our office has certainly represented people from every corner of the globe.”

The majority of those interviewed in Brampton, even in year three, were unaware of the specific groups targeted by the CLO. (This should however be counterbalanced by the frequently voiced view that “a majority of the people in the Peel courthouse are from a minority”. )

Thus, although not mentioned in official documents as an official target group for the Brampton CLO, the CLO recognizes that to be successful in its community, it must be capable of serving a variety of ethnic and cultural groups. Interviews suggest it is doing well in this regard.

Figure 3-11

**Ethnicity of Defendant Represented by CLO by Certificate or Not by Year File Closed (by Site)**

CLO Site		Whether or not Certificate Issued					
		No Certificate			Certificate		
		Year Closed			Year Closed		
		Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Barrie	Aboriginal		5%	26%	17%	13%	24%
	Caucasian (non specific)	100%	77%	57%	69%	68%	58%
	Other than Caucasian or Aboriginal		8%	13%	4%	6%	4%
	Not Coded		10%	4%	10%	13%	14%
	Total	11	39	46	166	189	205
Brampton	Aboriginal			0%	10%	2%	
	Caucasian (non specific)	39%	42%	42%	70%	42%	39%
	Other than Caucasian or Aboriginal	56%	45%	50%	20%	31%	55%
	Not Coded	5%	12%	8%		25%	6%
	Total	85	275	307	10	48	31
Ottawa	Aboriginal	7%	4%	4%		7%	10%
	Caucasian (non specific)	65%	58%	46%	62%	42%	48%
	Other than Caucasian or Aboriginal	22%	17%	24%	33%	22%	28%
	Not Coded	6%	22%	25%	5%	29%	15%
	Total	68	139	270	21	45	40

Specific Client Files Opened: to June 30, 2007 only. Table produced August 31, 2007.

### 3.4.3 Providing Access to Accused with Different General Demographic Characteristics

Figure 3-12 (based on Legal Files data) shows that the CLO caseloads continue to reflect the predominance of males among those accused of criminal offences.<sup>53</sup> However, the significant proportions of females (between a quarter and a third of all cases) indicate that the CLOs are definitely reaching that group as well. Similar gender proportions are found in Brampton and Ottawa, with Barrie seeming to have a slightly higher proportion of males within its caseloads.

Figure 3-12

Gender of Defendant Represented by CLO by Site by Half Year Opened

SiteidN		Jan to June: 2004	July to Dec: 2004	Jan to June: 2005	July to Dec: 2005	Jan to June: 2006	July to Dec: 2006	Jan to June: 2007
Barrie	Female	35%	35%	24%	27%	23%	30%	28%
	Male	57%	65%	76%	72%	76%	70%	70%
	Not coded	9%			1%	1%		2%
	Cases Opened	23	105	132	116	125	106	110
Brampton	Female	7%	41%	26%	33%	36%	34%	33%
	Male	87%	58%	71%	64%	61%	65%	66%
	Not coded	7%	1%	3%	3%	3%	1%	1%
	Cases Opened	15	69	153	193	159	202	152
Ottawa	Female		32%	27%	30%	29%	32%	3%
	Male		67%	69%	57%	67%	59%	20%
	Not coded		1%	3%	14%	4%	9%	78%
	Cases Opened		76	88	115	133	148	120

Specific Client Files Cases opened to June 30, 2007. Table produced August 31, 2007.

*Note to readers: Please note that in this and certain of the Figures following, statistics are provided that show the percents of cases for which data has not been collected, or for which seemingly inaccurate data is provided—for instance because data is not entered or coded in a way that is useful). These Figures are provided “as is” since one of the important objectives of this interim report is to identify improvements still needed in the data collection efforts of the CLOs.*

CLOs were also asked to record the marital status of their clients. Such data would be expected to be of particular use for identifying the types of supports (or more likely, lack of supports) available for activities such as diversion and sentencing planning. Figure 3-13 shows that in Barrie, between a half and two-thirds of the clients were single and less than one in five were living with a partner.<sup>54</sup> In Brampton only about a third of the clients were recorded as being single. The largest (and growing to over half) portion were recorded as being “other”. In Ottawa, a picture similar to Barrie was obtained, although certainty is reduced because for between the second year and the first half of the third year since during that period marital status was not recorded by the CLO for between 12% and 26% of the cases. The data for the last quarter of the year is useless since data was not recorded for 81% of the cases.

<sup>53</sup> Ottawa clearly was having difficulties coding accurate data for this variable in the last half of year three.

<sup>54</sup> The category, “other” includes: lives with parents, separated, widowed, divorced, engaged, in relationship, lives with extended family, lives with foster parent, lives with friend..

Figure 3-13

**Marital Status of Defendant Represented by CLO by Half Year File Opened (by Site)**

CLO Site		Jan to June: 2004	July to Dec: 2004	Jan to June: 2005	July to Dec: 2005	Jan to June: 2006	July to Dec: 2006	Jan to June: 2007
Barrie	married or common law	17%	18%	14%	16%	19%	17%	14%
	single	57%	41%	58%	62%	56%	64%	52%
	Other	17%	41%	27%	21%	22%	16%	29%
	not recorded	9%		1%	1%	3%	3%	5%
	Opened Cases	23	105	132	116	125	106	110
Brampton	married or common law		12%	8%	7%	8%	6%	5%
	single	73%	59%	42%	39%	32%	32%	30%
	Other	20%	25%	47%	50%	55%	60%	63%
	not recorded	7%	4%	3%	3%	5%	2%	3%
	Opened Cases	15	69	153	193	159	202	152
Ottawa	married or common law		18%	9%	12%	12%	7%	2%
	single		46%	48%	36%	53%	59%	12%
	Other		34%	26%	26%	23%	18%	6%
	not recorded		1%	17%	26%	12%	15%	81%
	Opened Cases		76	88	115	133	148	120

Specific Client Files Cases opened to June 30, 2007. Table produced August 31, 2007.

Figure 3-14 (based on Legal Files data) provides additional socio-economic information about the types of clients impacted by each CLO.

*N.B. It is important to note that a given factor was recorded by the CLOs if it was considered relevant to the case, not merely if it was present in the case or the client.*

*It should also be noted that one should treat this data as illustrative as opposed to definitive—since, as was found in the First and Second Year reports, some of the data do not seem to be as accurate or complete as would be hoped. There are still some variables not being entered accurately; however things have improved since year 1. This does however make comparisons or identification of trends difficult.*

*An added consideration is that, for variables such as “poverty”, the condition applies to all the clients of a CLO. Thus in this context, it would be understandable if staff were to indicate this condition only in circumstances of extreme poverty (and then only relative to the other clients). For instance, Brampton is not likely to indicate poverty as a relevant issue unless the defence is hampered by the client’s homelessness.*

Even taking into account the above *caveats*, differences do seem evident among the CLOs:

- Barrie has
  - Higher (than Brampton and Ottawa), and increasing, percents of certificate clients in institutions (61% in the third year),

### 3: Services to Individual Client Cases

- Higher, and increasing, percents of both non-certificate and certificate clients who have addictions issues (in year three a quarter of non-certificate cases and over a half of its certificate cases);
  - non-certificate and certificate cases which have a relatively high percent (compared to Brampton) of clients with social worker involvement (in year three, 33% of non-certificate and 45% of certificate cases);
  - both non-certificate and certificate cases with relatively higher percents exhibiting mental health difficulties.
- in Ottawa
    - non-certificate cases and certificate cases had relatively higher percents of clients with geographic difficulties
    - in year two certificate cases had a relatively high percent in institutions, just over a quarter of such cases (but still less than in Barrie). However, in other years the percents were more in line with those in Brampton;
  - in all three CLOs;
    - both non-certificate and certificate cases have a relatively high percent (i.e. often over 25%) of clients who were identified by the CLO as being difficult to contact—a characteristic that can add to the cost of dealing with these types of clients..

**Figure 3-14**  
**Prevalence of Different Client-Related Case Complexity Factors in Closed Legal Case Files:**  
**By CLO Location by Whether or not Certificate Case**

		No Certificate			Certificate		
		Year Closed			Year Closed		
		2004/5	2005/6	2006/7	2004/5	2005/6	2006/7
Barrie	Client in Institution	0%	5%	4%	37%	55%	61%
	Addiction Issues	36%	15%	28%	42%	44%	54%
	Social Worker Involvement	0%	18%	33%	7%	17%	45%
	Poverty Issues	9%	15%	22%	14%	16%	22%
	Geographic Difficulties	0%	3%	2%	4%	5%	3%
	Other Difficult Client or Circumstances	9%	0%	9%	7%	6%	5%
	Difficulties Contacting Client (diffic1)	9%	15%	28%	17%	32%	33%
	Mental Health Difficulties	27%	41%	57%	40%	52%	67%
	Closed Cases	11	39	46	166	189	204
Brampton	Client in Institution	0%	1%	1%	20%	10%	10%
	Addiction Issues	4%	4%	8%	10%	13%	26%
	Social Worker Involvement	2%	2%	7%	0%	6%	6%
	Poverty Issues	5%	5%	16%	0%	4%	19%
	Geographic Difficulties	2%	4%	3%	10%	4%	6%
	Other Difficult Client or Circumstances	13%	16%	17%	30%	23%	39%
	Difficulties Contacting Client (diffic1)	21%	23%	24%	10%	42%	39%
	Mental Health Difficulties	11%	9%	14%	0%	23%	19%
	Closed Cases	85	275	307	10	48	31
Ottawa	Client in Institution	1%	2%	0%	5%	27%	8%
	Addiction Issues	21%	13%	12%	19%	27%	20%
	Social Worker Involvement	10%	11%	6%	14%	20%	3%
	Poverty Issues	1%	3%	5%	0%	0%	10%
	Geographic Difficulties	12%	22%	7%	5%	9%	8%
	Other Difficult Client or Circumstances	15%	27%	11%	10%	33%	13%
	Difficulties Contacting Client (diffic1)	13%	32%	20%	5%	40%	28%
	Mental Health Difficulties	26%	22%	16%	24%	33%	13%
	Closed Cases	68	139	270	21	45	40

Closed Client Files Opened: to June 30, 2007 Only: Table produced August 31, 2007.

In summary, even though the data is not completely reliable, in all three locations (but more so in Barrie), the clients of the CLO could be defined as “difficult”. These clients typically take up more time than the average client, and may be less attractive clients for the private bar. Even though the conclusion cannot be inferred that these clients would go otherwise under-represented, they are potentially time consuming and more costly to deal with than the typical criminal client.

Further, Barrie in terms of the important characteristics of institutionalization, addictions, social worker involvement and mental health difficulties has a relatively difficult group of clients compared to the other two CLOs.

### 3.4.4 ***Providing Access to Clients with Different Previous Criminal Histories***

The CLOs are expected to enter specific data in Legal Files that describes the previous criminal history of each client. The data that have been entered are presented in Figure 3-15.

Brampton CLO staff indicate that a low rate of prior convictions was reflective of the Brampton clientele in year one and year two. However, clients with previous convictions were considerably more prevalent (especially for certificate cases) in year three. However, even in year three Brampton certificate cases were less likely (45%) to have had a previous conviction than were Barrie clients (77%). On the other hand, both were more likely to have previous records noted for certificate cases in year three than were Ottawa CLO clients (35%).

The data does, however, underscore the prevalence of prior criminal records for CLO clients. This would be expected for certificate cases (since the prime indicator of a custodial sentence being likely is a prior conviction). However, what is somewhat surprising is that in year three in Barrie (26%) and in Brampton (18%) and in Ottawa (22%), a significant percentage of non-certificate clients had prior convictions. It is possible that in some of these cases the prior criminal records might not be seen as likely having an impact on sentence for the current case (e.g. a prior record for marijuana possession for a current charge of break and enter). However, further exploration is indicated to ensure that such cases are the majority. Otherwise, this finding raises concerns for the likely consequences if convicted for these accused persons (since even if they are not likely to receive custodial sentences, having a prior conviction will usually result in a more serious non-custodial sentence)—who might have otherwise proceeded without legal representation.

(Of course, many criminologists would also argue that another conviction for someone with a prior conviction, while regrettable, may in fact not be as serious a consequence for them as would a first conviction *for another person*. In contrast, if someone who has no record ends up getting convicted, then he has been dealt a serious consequence. Case law and criminological research consistently points out that the very fact of a conviction is, all by itself, a punishment.)



Figure 3-15

**Prevalence of Different Previous Conviction Factors in Closed Legal Case Files:  
By CLO Location by Whether or not Certificate Case**

SiteIDN			No Certificate			Certificate		
			Year Closed			Year Closed		
			Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Barrie	Previous Conviction:	yes, cognate		10%	4%	1%	40%	14%
	Cognate?	No.	100%	90%	96%	99%	60%	86%
	Previous Conviction?	yes		18%	26%	1%	49%	77%
		No.	100%	82%	74%	99%	51%	23%
	Previous Conviction:	yes		13%	4%	1%	44%	12%
	Less than 5 years?	No.	100%	87%	96%	99%	56%	88%
Closed Cases			11	39	46	166	189	205
Brampton	Previous Conviction:	yes, cognate		4%	6%	10%	8%	23%
	Cognate?	No.	100%	96%	94%	90%	92%	77%
	Previous Conviction?	yes		7%	18%	10%	8%	45%
		No.	100%	93%	82%	90%	92%	55%
	Previous Conviction:	yes		3%	6%		8%	26%
	Less than 5 years?	No.	100%	97%	94%	100%	92%	74%
Closed Cases			85	275	307	10	48	31
Ottawa	Previous Conviction:	yes, cognate		6%	9%		24%	10%
	Cognate?	No.	100%	94%	91%	100%	76%	90%
	Previous Conviction?	yes	1%	13%	22%		36%	35%
		No.	99%	87%	78%	100%	64%	65%
	Previous Conviction:	yes		4%	4%		22%	10%
	Less than 5 years?	No.	100%	96%	96%	100%	78%	90%
Closed Cases			68	139	270	21	45	40

Client Files Opened and Closed Before June 30, 2007 only. Table produced August 31, 2007.

### 3.4.5 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 non-certificate and certificate target groups. As noted earlier, in both year two and year three, unless they were directly involved in dealing with targeted groups themselves, most people (from all stakeholder constituencies) interviewed still either knew nothing about the groups being targeted by the CLO --or said they did not know how well the CLO was meeting the needs of these client groups, or both. As noted elsewhere, increasing this awareness might improve the general support for the CLO in the Community.

At the same time, however, NGOs working with offenders were likely to say that the CLO was highly sensitive to the needs of its clients with respect to their needs in specific cases, and very reliable and responsive with the workers and the programs of the NGOs.

In Barrie in both years two and three, 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." Particular mention was made of the work done by the former community legal worker with both youth and the mentally disabled. One Duty Counsel emphasized that the CLO was undertaking important work, addressing the issue of the criminalization of the mentally ill. Another Duty Counsel emphasized that mentally ill are not adequately dealt with either

by the private bar or Duty Counsel and expressed the opinion that one CLO lawyer is “truly spectacular” in dealing with mentally ill accused. The Barrie CLO was also commended for taking on difficult and under-funded certificate sexual assaults cases. (However, the Barrie CLO’s caseload of sexual assault cases has diminished over time.) As well, the Barrie CLO was commended for beginning to address the needs of the borderline mentally ill accused, who are “often homeless lost souls who are frequently arrested for petty crimes.” These individuals “are constantly arrested for petty offences and cannot get bail.” A number of these accused are Aboriginal people and they respond to the assistance of the Native Courtworker and the CLO staff.

In Brampton there is still a lack of clarity (among CJS interviewees) about the clients that are being targeted by the CLO. In the year two and three interviews, one Crown indicated that the Brampton CLO cases ranged across the board from mischief to aggravated assaults. Another Crown stated that the CLO represents “those person who qualify for legal aid assistance but who are not eligible for a certificate as there is little or no possibility of loss of liberty”. In the year two and three interviews, most of the CJS interviewees agreed with the opinion that the Brampton CLO was principally targeting non-certificate cases of accused persons who were financially eligible. In both years two and three the majority of CJS respondents also understood that Brampton CLO was handling mental health cases. Other groups mentioned were young offenders, and new immigrants.

In year three especially, it was clear that those who specialized in the mental health area (i.e., judges, mental health workers, private lawyers) were certainly aware of and spoke positively about the CLOs role in the area. Similarly, those who worked in areas in which the CLO lawyers appeared less frequently were less likely to know of the CLOs work in other areas. For instance, those who worked most frequently in the trial courts which did not focus on mental health issues were much less likely to know of the work of the CLOs Community Legal Worker, or the CLO work generally in the Mental Health area. For instance, this second group would not have been aware that the Brampton CLO has recently (after the end of year three) been working with the various stakeholders to develop a formal protocol for the referral of cases from the local NGO specializing in mental health services.

In Ottawa in year two and year three, again the most common position was lack of knowledge about who the target clients were. Concern was expressed the Ottawa CLO was not visible and that it should be encouraged to prepare brochures about its services that would be available in shelters, community centres and from Duty Counsel and NGOs. The judiciary commented that they would like the CLO to have greater visibility.

Further, as with many issues, there were a variety of opinions among those interviewed respecting how well the CLOs addressed particular groups of special needs clients—with members of the same stakeholder group often disagreeing. For instance, there was general consensus among the NGOs and some CJS interviews that the original community legal worker at the Ottawa CLO was very effective in understanding the special needs of accused persons and in working with different support groups to address those groups in support of the accused’s court case. Some believed that similar expertise did exist within the private bar, and that if it were not exercised, it was because the economic pressures of handling cases within the Legal Aid tariff made it impossible to do so. (It is recognized that, in Ottawa, there are a number of private criminal lawyers specializing in the legal problems of the mentally ill.)

### 3.4.6 *Specific Types of Offences Handled*

#### *a Certificate Cases*

There is interest in comparing the offence mix of CLO certificate cases to certificates handled by the private bar. Figure 3-16 provides the trends in the mix by offence category of certificate cases handled by the private bar in Barrie, Brampton and Ottawa, as well as across the entire province of Ontario.<sup>55</sup>

There was no marked change in the mix of cases over the three years sampled. There is also 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>55</sup> The offence categories used in the following tables and later in this report are the categories used in many LAO reports. A listing of the specific offences found within each category is available separately from LAO. 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.

It should also be noted that in this table, when a case had more than one type of offence, the offence type judged most serious was used to represent the case.

### 3: Services to Individual Client Cases

Figure 3-16

#### Trends in Distribution of Certificates Issued by Offence Category: By CLO Fiscal Year (July-June) Issued by Area Office

Offence Category	Barrie					Brampton					Ottawa					Ontario			
	2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007		2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007		2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007		2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007
Weapons offenses	3%	3%	3%	3%		6%	6%	7%	7%		4%	4%	4%	4%		4%	5%	5%	5%
Threatening	3%	3%	3%	3%		3%	3%	3%	3%		3%	3%	2%	2%		3%	3%	3%	3%
Theft	15%	16%	15%	14%		13%	14%	13%	12%		15%	15%	15%	16%		14%	14%	13%	13%
Sexual assault	5%	4%	3%	3%		3%	3%	3%	3%		2%	2%	2%	2%		4%	4%	3%	3%
Robbery	5%	4%	3%	3%		8%	7%	6%	9%		6%	6%	5%	5%		6%	6%	6%	6%
Other vehicle offenses	2%	2%	2%	2%		1%	1%	1%	1%		1%	1%	1%	1%		1%	1%	1%	1%
Other drug offenses	1%	1%	0%	0%		1%	1%	1%	0%		0%	0%	0%	0%		1%	0%	0%	0%
Other criminal	6%	7%	8%	7%		3%	4%	4%	5%		4%	4%	5%	5%		4%	4%	6%	5%
Narcotics - cocaine and heroin	9%	10%	13%	14%		13%	16%	17%	15%		9%	11%	13%	15%		11%	12%	13%	13%
Mischief	2%	2%	2%	3%		2%	2%	2%	2%		2%	2%	3%	3%		2%	2%	2%	2%
Impaired driving	4%	3%	4%	2%		2%	2%	2%	3%		3%	2%	2%	2%		2%	2%	2%	2%
Homicide	1%	1%	1%	1%		1%	1%	1%	1%		2%	1%	1%	1%		1%	1%	1%	1%
Fraud	4%	3%	3%	3%		4%	3%	3%	3%		3%	3%	4%	4%		3%	3%	2%	2%
Fail to comply	8%	9%	10%	12%		10%	10%	9%	8%		13%	14%	13%	11%		10%	10%	10%	10%
Break and enter	11%	10%	8%	8%		7%	6%	5%	4%		9%	9%	7%	8%		11%	10%	9%	9%
Assault	21%	23%	21%	22%		23%	20%	23%	22%		25%	22%	22%	20%		25%	24%	23%	23%
<b>Total: All Offences</b>	100%	100%	100%	100%		100%	100%	100%	100%		100%	100%	100%	100%		100%	100%	100%	100%

*N.B. the fiscal years shown correspond to "CLO years", i.e., July through June.*

Figure 3-17 provides comparable data for each of the CLOs—for both certificate and non-certificate cases. It should be noted that there are a relatively small number of certificate cases in Ottawa and Brampton, and a small number of non-certificate cases in Barrie. The reader is reminded of the earlier *caveat* regarding drawing interpreting percentages from small numbers of cases. Specifically, any change in percentage from one year to the next may correspond to different results for only a small number of cases.

In year two and three, the similarities among the CLOs with respect to offence mix far outweighed the differences. For instance, with respect to *certificate cases*, in year two and three, in all three CLOs:<sup>56</sup>

- Theft cases accounted for between 11% and 23% of cases opened,
- Assault cases accounted for between 17% and 29% of cases opened, and
- Impaired Driving cases accounted for between 3% and 13% of cases opened.

Figure 3-17

Barrie CLO: Groups of Most Serious Offence in Case by Whether or not Certificate Case and Year Opened

	No Certificate				Certificate			
	Year Open			Total	Year Open			Total
	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)		Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	
Homicide					1%			0%
Sexual assault	4%	2%	3%	3%	10%	6%	2%	6%
Robbery					2%	1%	2%	1%
Theft	8%	20%	3%	11%	24%	22%	20%	22%
Impaired Driving	24%	11%	3%	11%	5%	7%	3%	5%
Other Vehicle		2%		1%	3%	3%	1%	2%
Narcotics Cocaine & Heroin		2%		1%	4%	3%	5%	4%
Assault	40%	35%	47%	40%	25%	24%	29%	26%
Fraud	4%	4%	9%	6%	5%	1%	4%	3%
Other	4%	13%	21%	13%	6%	9%	7%	7%
Threatening Death Bodily Harm		4%	3%	3%	2%	4%	2%	3%
B& E		2%	6%	3%	2%	3%	3%	3%
Weapons Offences						1%	1%	0%
Mischief	12%	2%	3%	5%	1%	2%	1%	1%
Fail to Comply					9%	13%	17%	12%
Other Drug		2%	3%	2%	1%	1%	1%	1%
Provincial and Municipal	4%			1%	1%	1%	3%	2%
Closed Cases	25	46	34	105	234	195	181	610

Cases opened to June 30, 2007. Table produced October 24, 2007.

<sup>56</sup> Again, in this table, when a case had more than one type of offence, the offence type judged most serious was used to represent the case. The order of seriousness of offence categories is reflected in the order of the rows of the Figure.

### 3: Services to Individual Client Cases

**Brampton CLO: Groups of Most Serious Offence in Case by Whether or not Certificate Case and Year Opened**

	No Certificate				Certificate			
	Year Open			Total	Year Open			Total
	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)		Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	
Sexual assault			0%	0%	3%		6%	3%
Robbery		0%	1%	1%		2%	6%	3%
Theft	20%	24%	23%	23%	16%	22%	17%	19%
Impaired Driving	16%	13%	6%	11%	23%	16%	3%	14%
Other Vehicle	2%	3%	2%	2%		2%	3%	2%
Narcotics Cocaine & Heroin	5%	12%	10%	10%	13%	9%	9%	10%
Assault	27%	23%	25%	25%	16%	20%	17%	18%
Fraud	3%	4%	4%	4%	3%	7%	3%	5%
Other	9%	7%	9%	8%	10%	2%	11%	7%
Threatening Death Bodily Harm	4%	3%	3%	3%	3%	4%	14%	7%
B& E	1%		1%	0%	3%			1%
Weapons Offences	4%	4%	3%	3%	3%		3%	2%
Mischief	4%	3%	4%	4%		4%		2%
Fail to Comply	1%		1%	0%	6%	7%	6%	6%
Other Drug	5%	1%	3%	3%			3%	1%
Provincial and Municipal	1%	3%	4%	3%		4%		2%
Closed Cases	192	298	317	807	31	45	35	111

Cases opened to June 30, 2007. Table produced October 24, 2007.

**Ottawa CLO: Groups of Most Serious Offence in Case by Whether or not Certificate Case and Year Opened**

	No Certificate				Certificate			
	Year Open			Total	Year Open			Total
	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)		Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	
Sexual assault						2%		1%
Robbery						4%		2%
Theft	19%	23%	17%	20%	21%	20%	11%	18%
Impaired Driving	19%	12%	8%	12%	11%	8%	4%	8%
Other Vehicle	1%	2%	2%	1%		4%		2%
Narcotics Cocaine & Heroin	2%	1%	1%	1%				
Assault	28%	30%	29%	29%	24%	20%	19%	21%
Fraud	2%	5%	5%	4%		6%	7%	4%
Other	5%	11%	6%	7%	5%	8%	11%	8%
Threatening Death Bodily Harm	10%	5%	3%	5%	8%	6%	4%	6%
B& E		2%	1%	1%	3%		15%	4%
Weapons Offences	2%	2%	1%	1%	11%	2%		4%
Mischief	6%	3%	4%	4%	8%	4%	7%	6%
Fail to Comply	3%	2%	2%	2%	8%	10%	4%	8%
Other Drug	4%	2%	1%	2%				
Provincial and Municipal	2%	2%	20%	9%	3%	4%	19%	7%
Closed Cases	126	199	241	566	38	49	27	114

Cases opened to June 30, 2007. Table produced October 24, 2007.

private bar certificate cases (see Figure 3-18) and CLO certificate cases in the same jurisdiction, one is struck as much by the similarities as the differences. For instance, during the past three years:

- Assault cases accounted for between 17% and 20% of private bar cases in the three sites vs. between 17 and 29% for the three CLOs, and
- Fail to Comply cases comprised between 17% and 21% of private bar cases vs. between 4% and 17% for the three CLOs.

Figure 3-18

**Legal Aid Certificates Issued and Billed: LAO Major Offence Category by Area Office**

		Area Office				Total
		Barrie	Brampton	Ottawa	Other	
Homicide	Col %	.7%	.6%	.6%	.6%	.6%
Sexual assault	Col %	2.9%	2.8%	1.3%	3.2%	3.0%
Robbery	Col %	3.3%	6.8%	4.7%	5.6%	5.5%
Theft	Col %	13.8%	12.6%	14.1%	12.8%	12.9%
Impaired Driving	Col %	3.0%	2.3%	2.3%	2.0%	2.0%
Other Vehicle	Col %	2.7%	1.3%	1.8%	1.8%	1.8%
Narcotics Cocaine	Col %	4.9%	5.8%	3.8%	5.1%	5.0%
Assault	Col %	20.0%	19.3%	17.7%	21.5%	21.1%
Fraud	Col %	4.2%	4.8%	5.2%	3.7%	3.9%
Other	Col %	5.8%	6.2%	7.9%	6.2%	6.3%
Threatening Death	Col %	4.9%	4.5%	4.4%	4.5%	4.5%
B&E	Col %	7.6%	4.9%	5.6%	7.6%	7.4%
Weapons Offences	Col %	2.4%	5.3%	2.4%	3.1%	3.1%
Mischief	Col %	2.7%	2.6%	3.2%	2.3%	2.4%
Fail to Comply	Col %	17.0%	14.0%	20.8%	15.3%	15.7%
Other Drug	Col %	4.0%	6.3%	4.1%	4.6%	4.7%
Total	Count	5583	6454	9713	122899	144649
	Row %	3.9%	4.5%	6.7%	85.0%	100.0%

Certificates billed from May 1, 2004 to June 30, 2007

*b Non-certificate cases*

Figure 3-17 also provides a number of interesting comparisons among the CLOs with respect to *non-certificate* cases. Again, there are many similarities among the CLOs with regarding the mixes of offences within their caseloads. However, there are some differences (mindful of the relatively small number of non-certificate cases in Barrie), with the most marked in year three being:

- In Brampton ,
  - narcotics-cocaine & heroine cases account for a higher percent of these caseloads than in Barrie and Ottawa (10% vs. 0% and 1%), and <sup>57</sup>
  - assault cases account for a lower percent of these caseloads than in Barrie (25% vs. 47%).

*c Changes: Year Three vs. Year Two and One*

It is also of interest to consider whether there have been shifts in the types of cases opened over time within each of the CLOs. The Figures just considered provide Year One, Two and Three comparisons within each CLO for specific offence categories. Figure 3-19 provides analogous comparisons, also

<sup>57</sup> The high incidence in Brampton is very likely due to the proximity of Pearson International Airport.

separately for non-certificate and certificate cases, but for broader categories of offences. With one exception, very little evidence is found that the offence mix of the CLO cases has changed from year to year. The exception is in relation to Impaired Driving cases which have comprised a smaller percent of the total caseloads over the years—for Certificate cases in Barrie and for both non-certificate and certificate cases in Brampton and Ottawa.

That said, there are different changes that have occurred within different CLOs, but many of the differences are simply a result of minor shifts, which may appear more dramatic since there are such a small number of cases.

Figure 3-19

Groups of Most Serious Offence in Case by Whether or not Certificate Case and Year Opened

CLO Site			No Certificate			Certificate		
			Year Open			Year Open		
			Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Barrie	Offence Group	Against the Person	44%	41%	53%	40%	35%	35%
		Impaired Driving	24%	11%	3%	5%	7%	3%
		Against Property	24%	28%	21%	32%	28%	29%
		Drugs		4%	3%	5%	4%	6%
		Weapons					1%	1%
		Administration of Justice				10%	14%	18%
		Other	8%	15%	21%	8%	11%	8%
	Not Specified						1%	
Opened Cases			25	46	34	234	195	181
Brampton	Offence Group	Against the Person	31%	27%	30%	23%	27%	43%
		Impaired Driving	16%	13%	6%	23%	16%	3%
		Against Property	28%	32%	32%	23%	33%	20%
		Drugs	10%	13%	14%	13%	9%	11%
		Weapons	4%	4%	3%	3%		3%
		Administration of Justice	1%		1%	6%	7%	6%
		Other	11%	9%	11%	10%	4%	14%
	Not Specified	1%	3%	4%		4%		
Opened Cases			192	298	317	31	45	35
Ottawa	Offence Group	Against the Person	37%	35%	32%	32%	33%	22%
		Impaired Driving	19%	12%	8%	11%	8%	4%
		Against Property	26%	33%	28%	32%	31%	41%
		Drugs	6%	3%	2%			
		Weapons	2%	2%	1%	11%	2%	
		Administration of Justice	3%	2%	2%	8%	12%	4%
		Other	6%	13%	7%	5%	12%	11%
	Not Specified	1%	2%	20%	3%	2%	19%	
Opened Cases			126	199	241	38	49	27

Cases opened to June 30, 2007. Table produced August 31, 2007.



### 3.4.7 Other Complexity Descriptors of CLO Cases

Figure 3-20 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—especially those included with the CLO target groups listed in Chapter 2 earlier (for instance, the presence of issues related to intersecting legal needs such as: 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).

The *Year One* and *Year Two* reports noted a number of differences among the CLOs. Some of these differences have continued into year three, some have not. For instance:

- Brampton, compared to Barrie and Ottawa, in year two continued to report a dramatically higher incidence of problems with disclosure (40% of non-certificate cases and 48% of certificate cases). Year three continued to see a higher problem rate for Brampton, but the differences were not as great since the rate fell considerably in Brampton (to 13% of non-certificate cases and 26% of certificate cases);
- Barrie and Ottawa in year two exhibited a relatively higher proportion of domestic violence cases among their non-certificate cases (26% and 20%)—whereas Brampton cited fewer (8%) such cases. In year three, the Barrie rate remained high (at 24%) but the rate in Ottawa fell to 16%—resulting in only Barrie being higher than the other two;
- The Brampton CLO was less likely than the Barrie or Ottawa CLOs to cite the presence of “layered legal issues” as a factor especially relevant to the case; and
- In year three Barrie certificate cases were much more likely (25%) to require expert witnesses or expert evidence than were certificate cases in Brampton (6%) or Ottawa (3%).

### 3: Services to Individual Client Cases

**Figure 3-20**

Prevalence of Different (Grouped) Legal Case Complexity Factors 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		
	Year Closed			Year Closed			Year Closed			Year Closed			Year Closed			Year Closed		
	2004/ 2005	2005/ 2006	2006 / 2007	2004 / 2005	2005 / 2006	2006 / 2007	2004 / 2005	2005 / 2006	2006 / 2007	2004 / 2005	2005 / 2006	2006 / 2007	2004 / 2005	2005 / 2006	2006 / 2007	2004 / 2005	2005 / 2006	2006 / 2007
Problems with Disclosure?	0%	10%	7%	8%	19%	12%	38%	40%	13%	30%	48%	26%	4%	4%	2%	0%	16%	0%
Special Legal Services or Expertise	0%	8%	0%	16%	12%	14%	5%	8%	10%	20%	6%	10%	7%	9%	2%	0%	11%	3%
Expert Witnesses or Evidence Needed	0%	8%	15%	2%	14%	25%	6%	5%	7%	0%	8%	6%	1%	7%	2%	0%	7%	3%
Layered Legal Issues including Child Protection	0%	3%	11%	8%	13%	11%	1%	3%	7%	0%	6%	6%	16%	11%	10%	10%	9%	28%
Domestic Violence	27%	26%	24%	16%	20%	19%	6%	8%	13%	0%	10%	3%	18%	20%	16%	14%	18%	18%
Number of Cases	11	39	46	166	189	204	85	275	307	10	48	31	68	139	270	21	45	40

Figure 3-21 examines another variable which indirectly addresses the issue of the complexity of the cases handled by the CLO, the prevalence of a discretionary increase over the fee tariff being requested for the file.

In year two such requests were considerably more frequent in Ottawa for both non-certificate cases (49% vs. 3% in Barrie and 14% in Brampton) and for certificate cases (51% vs. 8% in Barrie and 27% in Brampton). However, in year three the Ottawa percentages were closer to those for the other two sites.

(This data is also relevant for later discussions about both the time spent on files, and the appropriateness of the maximum times which the Legal Aid tariff allows lawyers to bill on individual cases. The results, may reflect differences in how the different CLOs have measured this variable, and in any case are far from conclusive. However, they do show some evidence that the tariff may be low in certain instances.) (More evidence related to this issue is provided later.)

Figure 3-21

Prevalence of Discretionary Increase in Closed Legal Case Files:  
By CLO Location by Whether or not Certificate or Not

SiteidN			No Certificate			Certificate		
			Year Closed			Year Closed		
			Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Barrie	Discretionary Increase Requested	Yes		3%		16%	8%	20%
		No or not coded	100%	97%	100%	84%	92%	80%
	Total	Count	11	39	46	166	189	205
Brampton	Discretionary Increase Requested	Yes	5%	14%	11%		27%	3%
		No or not coded	95%	86%	89%	100%	73%	97%
	Total	Count	85	275	307	10	48	31
Ottawa	Discretionary Increase Requested	Yes	31%	49%	10%	14%	51%	13%
		No or not coded	69%	51%	90%	86%	49%	88%
	Total	Count	68	139	270	21	45	40

Client Closed Files Opened and closed to June 30, 2007. Table produced August 31, 2007.

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

An additional important indicator of the seriousness and complexity of the cases taken on by the CLO is the opening position indicated by the Crown. The *Year One* report reported that, for all except non-certificate cases in Barrie, in by far the majority of cases the CLOs did not record this information. As shown in Figure 3-22 Barrie has further improved its coding of this variable for both non-certificate and certificate cases to the point where data for both are useable. However, the same cannot be said for the Brampton and Ottawa CLO data and the data for those sites have to be considered unreliable. (That data is nonetheless presented to emphasize the need for improvements in collecting this information.<sup>58</sup>)

<sup>58</sup> Those "improvements" include better definition of what data is to be recorded for this variable, and whether one can adequately describe the phenomenon in question with the alternative codes allowed. For instance, on viewing the above paragraph, one CLO director pointed out, "If we did not code opening position on files, then it is likely that we did not get opening positions on those files. Federal Crowns do not provide screening forms (where the opening position is usually presented). Youth matters do not get forms, either (at least in XXXX). Where we do get screening forms, they sometimes only specify "jail or no jail". So the lack of "opening position" is not necessarily a failure of data collection. We could have provided the Crown's position after a Resolution Meeting (called a "Crown Pretrial" in YYYY), but that is their "best offer", not their "opening position".

The Barrie data does reveal some interesting information. For instance,

- In Barrie, although in year two in only 10% of the non-certificate cases the crown's opening offer was a custodial sentence, that percentage had increased to 31% in year three.
- Further, in all three years, in over 80% of the certificate cases the crown's opening position was a custodial sentence.

Thus, there is a considerable difference in level of seriousness between the typical non-certificate and certificate case (at least in the view of the crown). However, a very sizeable percent of even the non-certificate cases handled by the Barrie CLO involve potentially very serious consequences for the accused.

In addition, even with these low reporting rates, the Figure does point to some issues that may need to be explored, including that the Ottawa Crowns (at least in year two) may be considerably more likely than those in Barrie or Brampton to offer an opening position of diversion, restitution, community service or withdrawn charges—for both non-certificate and certificate cases.<sup>59</sup>

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<sup>59</sup> The Brampton CLO Director pointed out that “...in Brampton we will no longer accept clients who are offered those positions, so if we saw screening forms with those opening positions on them, we turn the client back to duty counsel in most cases. This will affect the numbers for year 3.”

### 3: Services to Individual Client Cases

Figure 3-22

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

SiteidN			No Certificate			Certificate		
			Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Barrie	No Conviction	Diversion		5.1%			.5%	.5%
		Total		5.1%			.5%	.5%
	Discharge or Conviction: No Custody	Absolute or Conditional Discharge				.6%		
		Conditional Discharge	9.1%	2.6%		.6%		.5%
		Conditional Discharge & Probation	18.2%	12.8%	6.7%			
		Driving Prohibition	9.1%	5.1%	2.2%	.6%		
		Fine		7.7%	8.9%		2.6%	
		Fine & Probation		5.1%	17.8%	.6%	1.1%	.5%
		Probation	18.2%	17.9%	8.9%	1.8%	3.2%	2.4%
		Suspended Sentence	9.1%					.5%
		Suspend Sentence, Probation & Conditions		15.4%	17.8%	.6%	.5%	2.0%
		Cond Discharge, Probation, Anger Manage			4.4%			.5%
		Conditional Sentence		5.1%	2.2%			
		Total	63.6%	71.8%	68.9%	4.8%	7.4%	6.3%
	Conviction: Custody	Penitentiary Sentence				.6%	1.1%	
		Prison & Fine		2.6%				1.0%
		Prison & Probation	9.1%	5.1%	31.1%	57.2%	73.5%	86.3%
		Prison (2 yrs less a day)		2.6%		26.5%	10.1%	1.5%
		Total	9.1%	10.3%	31.1%	84.3%	84.7%	88.8%
	Other	Pre-sentence Report	9.1%				1.1%	.5%
		Total	9.1%				1.1%	.5%
	Unknown or not specified	unknown		5.1%			1.1%	1.0%
		Unknown or unspecified	18.2%	7.7%		10.8%	5.3%	2.9%
		Total	18.2%	12.8%		10.8%	6.3%	3.9%
	Number of Cases		11	39	46	166	189	205

Closed Client Files Opened and closed by June 30, 2007. Table produced December 20, 2007.

### 3: Services to Individual Client Cases

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

SiteidN			No Certificate			Certificate		
			Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Brampton	No Conviction	Diversion	2.4%	2.9%	6.0%	10.0%	2.1%	
		Anger Management	1.2%		.3%			
		Community Service			.7%			
		DVP Candidate	1.2%		.3%			
		Restitution		.7%				
		withdrawn following g/p to HTA			.3%			
		Total	4.7%	3.6%	7.6%	10.0%	2.1%	
	Discharge or Conviction: No Custody	Conditional Discharge		.7%	4.3%			
		Conditional Discharge & Probation	1.2%	1.8%	2.0%			
		Conditional Discharge, EIP, & Probation			.3%			
		Fine		.7%	2.3%		2.1%	3.6%
		Fine & Probation	3.5%	1.1%	.7%		2.1%	
		Probation			3.6%		2.1%	7.1%
		s. 810 Peace Bond			.7%			
		Suspended Sentence	3.5%	.7%	2.0%			
		Fine and Driving Prohibition		4.7%	6.3%	10.0%	4.3%	3.6%
		Probation and CSO	1.2%		1.0%			
		Suspend Sentence, Probation & Conditions		3.6%	16.6%		6.4%	3.6%
		Absolute Discharge		.4%	.3%			
		Cond Discharge, Probation, Anger Manage	1.2%		.3%			
		Discharge		.4%				
		Total	10.6%	14.2%	40.4%	10.0%	17.0%	17.9%
	Conviction: Custody	Possible Custodial Sentence	5.9%	4.0%	1.3%	20.0%	8.5%	3.6%
		Prison & Fine			.3%		6.4%	
		Prison & Probation		1.1%		10.0%	6.4%	21.4%
		Total	5.9%	5.1%	1.7%	30.0%	21.3%	25.0%
	Unknown or not specified	Unknown or unspecified	78.8%	77.1%	50.3%	50.0%	59.6%	57.1%
		Total	78.8%	77.1%	50.3%	50.0%	59.6%	57.1%
	Number of Cases		85	275	307	10	48	31

Closed Client Files opened and closed by June 30, 2007. Table produced December 20, 2007.

### 3: Services to Individual Client Cases

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

SiteidN			No Certificate			Certificate		
			Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Ottawa	No Conviction	Diversion	7.5%	5.8%	1.1%		4.4%	
		Donation	1.5%	.7%	.4%			
		Community Service		.7%			2.2%	
		Donation and Community Service	1.5%		.7%			
		Restitution		1.4%	.4%		2.2%	
		Charge(s) Withdrawn		9.4%	.7%		4.4%	
		Total	10.4%	18.0%	3.4%		13.3%	
	Discharge or Conviction: No Custody	Conditional Discharge		2.9%	.4%			2.6%
		Conditional Discharge & Probation	3.0%	6.5%	1.1%		4.4%	
		Conditional Discharge, EIP, & Probation	3.0%	2.9%		5.0%		
		Fine	3.0%	12.2%	1.9%	5.0%		
		Fine & Probation	6.0%	1.4%	.4%		2.2%	
		Probation		1.4%	.4%	5.0%		
		s. 810 Peace Bond	4.5%	9.4%	2.2%		4.4%	
		Suspended Sentence	3.0%	3.6%	4.9%	10.0%	4.4%	
		Cond'l Discharge, Probation, Anger Mgmt, Donation				5.0%		
		Suspend Sentence, Probation & Conditions		5.8%	1.9%		11.1%	2.6%
		Absolute Discharge			.7%			
		Cond Discharge, Probation, Anger Manage		.7%	.7%			
		Conditional Sentence		2.2%			2.2%	2.6%
		Fine, Probation & Restitution		.7%				
		Total	22.4%	49.6%	14.6%	30.0%	28.9%	7.7%
	Conviction: Custody	Penitentiary Sentence	1.5%				4.4%	2.6%
		Prison & Probation	1.5%	.7%			15.6%	
		Prison (2 yrs less a day)					8.9%	
		Total	3.0%	.7%			28.9%	2.6%
	Unknown or not specified	Unknown or unspecified	64.2%	31.7%	82.1%	70.0%	28.9%	89.7%
		Total	64.2%	31.7%	82.1%	70.0%	28.9%	89.7%
	Number of Cases		68	139	270	21	45	40

Closed Client Files opened and closed by June 30, 2007. Table produced December 20, 2007.

### 3.5 What Specific Services are Provided to Cases by the CLOs: Improving Access at Critical Stages in the Litigation Process

#### 3.5.1 *Importance of Early and Continuing Representation*

There are certain stages in the criminal process which are critical to the accused, both per se 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 (i.e., 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.

Our interview data make it very clear that having access to one’s own counsel has an impact on the accused.<sup>60</sup> For instance, interviewees indicated that representation 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 (UA). Some simply do not do them; others try to bring duty counsel in to assist the 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.

#### 3.5.2 *At what Point in the Legal Process Do Clients Come to the CLO?*

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

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 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 charges 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. There was some concern expressed that, with the Brampton CLO’s caseload approaching its limit, it is

<sup>60</sup> The impacts of the accused’s having legal representation on different stakeholders in the Criminal Justice System is discussed later in Chapter 5.



becoming more difficult for unrepresented accused to get access to the CLO lawyers, until after disclosure. (The Brampton CLO, in the second year, introduced a requirement that all applicants for representation should attend their first interview with the disclosure document that they have received from the Crown's office.)

- In Ottawa, interviews suggest that there is considerable variation in when the CLO first comes in contact with the case. For some cases, the first contact could come after quite a few court appearances. On the other hand, the first contact could be the setting—"off the record"—of a trial date.
- However, most CLO cases:
  - Have already had 1 or two court appearances,
  - Have already had a bail hearing,
  - Have been to the Legal Aid office and received a refusal letter, and
  - Have not yet had a trial date set.

#### 3.5.3 *From Where and Why are Referrals to the CLOs Coming?*

Closely related to *when* cases are referred to the CLOs is *from where* and *why* cases are referred. As documented in earlier evaluation reports, 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>61</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 and the Barrie Native Friendship Centre. In Ottawa, in year one the CLO was 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. A continuation of this trend was not noted in year two and year three interviews.<sup>62</sup>

Attempts have been made to capture empirical data on the reasons for and sources of referral for each case file opened by the CLO. Major problems were initially encountered with the way the important 'reason for referral' variable was coded (or rather *not* coded) for Barrie and Ottawa. However, in year two Barrie and Ottawa improved considerably their coding of the important variable for both non-certificate and certificate cases. Unfortunately in year three, as shown in Figure 3-31, for a large percent of cases Ottawa again failed to record a reason for referral (for 45% of the non-certificate cases and 100% of certificate cases).

<sup>61</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.

<sup>62</sup> After Year 3, the Brampton CLO was receiving an increased number of referrals directly from the CMHA.

Figure 3-23

**Referral Information on Files Closed Between April 1, 2004 and June 30, 2007****Referrals by Referral Reason by Year Closed**

	Non-Certificate Files					Certificate Files			
	Closed 2004/05	Closed 2005/06	Closed 2006/07	Total		Closed 2004/05	Closed 2005/06	Closed 2006/07	Total
<b>Barrie Criminal Law Office</b>									
Another Client of CLO	4%	2%	0%	2%		11%	12%	20%	13%
Area Office List	4%	0%	0%	1%		6%	6%	5%	6%
Cold Call	0%	2%	0%	1%		3%	1%	0%	1%
Conflict of interest	0%	0%	0%	0%		0%	0%	0%	0%
Court order removing solicitor on record	0%	0%	0%	0%		0%	1%	0%	0%
Geographical limitation	0%	0%	0%	0%		0%	0%	0%	0%
No Referral or Referral Reason Indicated	20%	4%	0%	7%		35%	15%	3%	21%
No solicitor will accept certificate	0%	0%	0%	0%		5%	6%	3%	5%
Non-certificate matter	48%	80%	69%	69%		0%	1%	0%	0%
Previous Client - CLO	0%	2%	4%	2%		2%	26%	32%	17%
Previous Client - Private Practice	0%	2%	0%	1%		9%	4%	5%	6%
Sec 85.2 LASA	0%	0%	0%	0%		0%	0%	0%	0%
Specialized services-CLO only	24%	7%	27%	16%		28%	28%	32%	29%
Cases Closed	25	46	26	97		235	193	116	544
<b>Brampton Criminal Law Office</b>									
Another Client of CLO	1%	0%	0%	0%		4%	0%	0%	2%
Area Office List	1%	3%	1%	2%		25%	18%	0%	20%
Case type not handled by practice	1%	0%	0%	0%		0%	0%	0%	0%
Cold Call	0%	0%	0%	0%		0%	3%	17%	3%
Geographical limitation	0%	0%	0%	0%		2%	0%	0%	1%
No Referral or Referral Reason Indicated	2%	9%	6%	6%		16%	36%	50%	27%
No solicitor will accept certificate	1%	0%	1%	0%		8%	3%	0%	5%
Non-certificate matter	78%	85%	91%	85%		20%	6%	0%	13%
Previous Client - CLO	0%	3%	2%	2%		2%	15%	25%	9%
Previous Client - Private Practice	1%	0%	0%	0%		10%	6%	0%	7%
Specialized services-CLO only	17%	0%	1%	5%		14%	12%	8%	13%
Cases Closed	183	303	195	681		51	33	12	96
<b>Ottawa Criminal Law Office</b>									
Area Office List	0%	1%	0%	0%		11%	31%	0%	18%
Case type not handled by practice	0%	0%	0%	0%		3%	0%	0%	1%
Cold Call	0%	1%	0%	0%		0%	4%	0%	2%
No Referral or Referral Reason Indicated	35%	9%	45%	28%		44%	33%	100%	49%
No solicitor will accept certificate	1%	0%	1%	0%		0%	2%	0%	1%
Non-certificate matter	59%	87%	54%	68%		25%	11%	0%	14%
Previous Client - CLO	2%	3%	1%	2%		8%	18%	0%	11%
Previous Client - Private Practice	2%	0%	0%	1%		8%	0%	0%	3%
Cases Closed	124	188	170	482		36	45	17	98

For non-certificate cases, in year two in all three CLOs in by far the majority of cases the main reason cited for referral is that the case simply did not have a certificate. In year three, the same reason was cited for the largest percentage of non-certificate cases for Barrie and Brampton.

However, in Barrie the CLO now recorded that for 27% of the non-certificate cases the reason for referral was “specialized services available from the CLO only”.

For certificate cases, the results are more informative—and show differences from one CLO to another. For instance, in year three:

- In Barrie, a majority (89%) of the certificate cases closed came from a combination of:
  - previous clients of the CLO (32%) or of the CLO lawyers when they were previously in private practice (5%),
  - relationships with another CLO client (20%), and
  - the fact that the CLO offered specialized services available in the CLO (32%).
- In Brampton, the low numbers of certificate cases dictate that the statistics should be treated with caution, but
  - Previous clients of the CLO or of the lawyers from their previous practices accounted for sizeable percents of certificate clients (25%),
  - A proportionally larger (compared to Barrie) proportion came from cold calls (17%), and
  - the fact that the CLO offered specialized services available in the CLO (8%).

In year three, only in Barrie was it indicated for any cases (3% of the certificate cases) that they had come to the CLO because no solicitor would accept the certificate. However, in Barrie, that reason was given for 5% and 6% of the certificate cases in years one and two, and in Brampton that reason was given for 8% and 3% of the certificate cases in years one and two. (Given the data recording problems in Ottawa in all three years, analogous data for that CLO is unreliable.)

#### 3.5.4 *Who is Referring Cases to the CLOs?*

One can also get a better understanding of how early in the judicial process an accused reaches the CLO—and what services are needed—from knowledge of the specific group from which referrals come. The type of information that we have tried to capture in Figure 3-24 would also provide information useful in understanding the types of contacts, awareness and acceptance that has been established in different parts of the local community.

The completeness with which these data is collected has improved considerably from year to year in the Barrie CLO, with such data being missing in year three for only an insignificant percent of both certificate and non-certificate cases. For all three years the Brampton CLO has also recorded these data with a high level of completeness for non-certificate cases (which comprise by far the majority of their caseloads). However, in year three the Ottawa CLO did not record a reason for referral for a high proportion of referrals (42%).

Figure 3-24

**Referral Information on Files Closed Between April 1, 2004 and June 30, 2007****Referrals by Referral Source by Year Closed**

	Non-Certificate Files					Certificate Files			
	Closed 2004/05	Closed 2005/06	Closed 2006/07	Total		Closed 2004/05	Closed 2005/06	Closed 2006/07	Total
<b>Barrie Criminal Law Office</b>									
Community Organizations	20%	20%	38%	25%		6%	21%	25%	15%
Area Office or other Legal Aid	28%	61%	50%	49%		6%	12%	8%	9%
Other Lawyer	8%	0%	0%	2%		9%	2%	0%	5%
Another Client Of CLO	4%	2%	8%	4%		4%	11%	20%	10%
Previous Client of CLO	4%	2%	4%	3%		15%	27%	32%	23%
Previous Client-Private Practice	0%	4%	0%	2%		2%	6%	6%	4%
Cold Call	0%	2%	0%	1%		2%	1%	0%	1%
Crown Attorney	0%	0%	0%	0%		0%	1%	0%	1%
Duty Counsel	8%	4%	0%	4%		1%	5%	5%	3%
Probation	4%	0%	0%	1%		0%	0%	0%	0%
Judge	0%	0%	0%	0%		0%	0%	1%	0%
Unknown	24%	4%	0%	8%		53%	14%	3%	28%
Cases Closed	25	46	26	97		235	193	116	544
<b>Brampton Criminal Law Office</b>									
Community Organization	2%	0%	1%	1%		10%	9%	0%	8%
Duty Counsel	9%	0%	0%	2%		4%	3%	8%	4%
Other Lawyer	1%	0%	0%	0%		4%	0%	0%	2%
Area Office or other Legal Aid	24%	0%	0%	6%		12%	0%	0%	6%
Refusal Letter/Self Referred	58%	88%	91%	81%		27%	30%	0%	25%
Another Client Of CLO	1%	0%	0%	0%		4%	0%	0%	2%
Previous Client of CLO	1%	3%	2%	2%		4%	21%	42%	15%
Unknown	4%	8%	6%	7%		35%	36%	50%	38%
Cases Closed	183	303	195	681		51	33	12	96
<b>Ottawa Criminal Law Office</b>									
Duty Counsel	15%	4%	1%	6%		11%	2%	0%	5%
Family Law Office	0%	1%	0%	0%		3%	0%	0%	1%
Family/Friend	1%	0%	0%	0%		3%	0%	0%	1%
Judge	2%	0%	0%	0%		0%	0%	0%	0%
Private Bar	6%	3%	0%	2%		3%	4%	0%	3%
Return Client	3%	1%	0%	1%		14%	0%	0%	5%
Self Referred/After LAO refusal letter	60%	83%	58%	68%		47%	49%	0%	40%
Unknown	14%	9%	42%	22%		19%	44%	100%	45%
Cases Closed	124	188	170	482		36	45	17	98

However, some information can be gleaned from the data available. For instance in year three,

- the Barrie CLO
  - received half of its non-certificate cases from the area office (through the refusal letter), but a very sizeable 38% from community organizations;
  - Also received a sizeable proportion (25%) of its certificate cases from community organizations. In addition, sizeable proportions were received through their being previous clients of the CLO (32%) or through referrals from other CLO clients (20%); and
  - Were referred no cases in year three from the private bar.

From our interview data it is also clear that because of the way the Brampton CLO has set up its procedures, the majority of its clients come to the office after they have received the refusal letter from the area office, i.e., the CLO does not accept a client until after the potential client has gone through the Area Office and has been refused (or gets) a certificate. The Ottawa CLO reports that they do things in a similar fashion.

In general, according to the CLO Directors, referral reasons are often not available or clients are self-referred.

#### *a Who is Referring Cases to the CLOs?*

An issue not explored in the *year one* and *year two* evaluation reports is the opposite of that just discussed, namely, “How Often do the CLOs refer cases to other bodies?”.

As shown in Figure 3-25, although relatively infrequent (except in Ottawa in the first year), the CLOs do refer cases to other bodies. Although the Barrie CLO was the least likely to refer a case out in year one and year two (3% and 1%), in year three 8% of its cases were referred out, a slightly higher percent than the other CLOs.

Brampton referral out practices have been fairly similar from year to year (7% or 8%).

Ottawa has been referring out a smaller percentage each year, beginning with a relatively high 22% in year one, but lowering the percentage to 4% by year three.<sup>63</sup> Whether or not the decrease is due to fewer such cases appearing over time, or a more effective screening mechanism being implemented by the CLO is unknown.

Figure 3-25

#### **Whether or not Case Referred out of CLO: by Year Closed, by CLO**

CLO Site			Year Closed			Total
			Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	
Barrie	Was Case Referred Out?	No	97%	99%	92%	96%
		Yes	3%	1%	8%	4%
	Total	Count	178	228	251	657
Brampton	Was Case Referred Out?	No	93%	94%	93%	93%
		Yes	7%	6%	7%	7%
	Total	Count	104	329	345	778
Ottawa	Was Case Referred Out?	No	78%	90%	96%	91%
		Yes	22%	10%	4%	9%
	Total	Count	89	184	310	583

Tables produced September 23, 2007 using data extracted August 23, 2007

Given the small number of cases involved in most years (and the obvious missing data problems for Barrie in year three), the information on reasons for referral out shown in Figure 3-26 must be used with caution.

However, the client ceasing to qualify for legal aid was a factor in roughly a quarter of the referral outs in Brampton in all three years and in Ottawa in year two—and in over half the referral outs in Ottawa

<sup>63</sup> An examination of the year one Ottawa cases was inconclusive as to the reasons for the high referral out rate. However, it seems that most were because the potential client ceased to qualify for legal aid.

in year one. In Brampton, nearly half of the referral outs in years two and three were because the case was suitable for diversion and the CLO's assistance was no longer needed.

Although the data is not shown here, partial information was also available on to whom the case was referred out.

For all three years combined:

- In Barrie, most of the referrals were to private law offices.
- In Brampton, roughly half of the referrals were to duty counsel. However, a sizeable proportion was to private law offices.
- Data was not recorded for a majority of the Ottawa CLO referral outs. However, in roughly a third it was noted that the referral had been to a private bar office.

Figure 3-26

Reason for Referral out of CLO: by Year Closed, by CLO

CLO Site			Year Closed			Total
			Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	
Barrie	Reason for Referral Out	Case suitable for diversion-CLO not need			5%	4%
		Case to be transferred out of jurisdiction	20%		5%	7%
		Client ceases to qualify for Legal Aid			5%	4%
		Client Changed Lawyers		33%	26%	22%
		Conflict of interest		33%	5%	7%
		Court order removing solicitor of record	80%	33%	11%	26%
		Unknown			42%	30%
	Total	Count	5	3	19	27
Brampton	Reason for Referral Out	Case suitable for diversion-CLO not need	29%	43%	42%	40%
		Case type not handled by practice		5%	8%	6%
		Client ceases to qualify for Legal Aid	29%	19%	25%	23%
		Client Changed Lawyers	14%	24%	17%	19%
		Conflict of interest		10%		4%
		Court order removing solicitor of record	14%		4%	4%
		Geographical limitation			4%	2%
		Unknown	14%			2%
	Total	Count	7	21	24	52
Ottawa	Reason for Referral Out	Case type not handled by practice	5%			2%
		Case/Circumstances suitable for SLASS	5%		8%	4%
		Client ceases to qualify for Legal Aid	55%	26%		31%
		Client Changed Lawyers	25%	53%	85%	50%
		Conflict of interest		21%	8%	10%
		Unknown	10%			4%
	Total	Count	20	19	13	52

Cases Referred out: Tables produced September 23, 2007 using data extracted August 23, 2007

### 3.5.5 Time Allocated to Different Tasks for Certificate and Non-Certificate Cases

Important to understanding what services are offered is an understanding of how much time the CLOs spent delivering different types of services.

The *First Year* report noted that changes were required as to how information was recorded in Legal Files before that system could provide reliable information on the extent to which the CLOs provide specific services at different points in the litigation process—and the time devoted to those services. Considerable improvements were made during the second and third years. However, considerable work remains to be done before that data can be used to understand how the CLO staff allocates their time between different types of work at different stages in the litigation process. Most importantly, LAO needs to revisit whether the categories used by staff to categorize their time allow the type of analysis that LAO might wish to undertake. For instance, if LAO were interested in whether the CLOs spent a substantial amount of time providing services to cases early in the litigation process (e.g. in assignment court, setting dates, handling bail matters), analysts could sum up all the staff time docketed to those categories of activities—as is done in the first two broad categories in Figure 3-27.<sup>64</sup> That would result in an estimate that Barrie CLO staff spent roughly  $(10 + 3 =) 13\%$  of its time in activities pertaining to work normally undertaken earlier in the litigation process.<sup>65</sup> However, when this result was reviewed with Barrie staff it was found that much of the work they did early in the litigation process was instead recorded by their staff as “contact with client (either in person or other)”. Unfortunately, client contact that occurred later in the litigation process was also recorded as “contact with client”. Since it was impossible from the way the data was recorded to determine what part of this substantial portion (23%) of their time was spent early rather than late in the litigation process, it was impossible to address (from the empirical data) the question of interest. Further more detailed analysis of the data in Figure 3-27 suggests other areas in which the codes used to record the data need reviewing, and suggests that more work is needed to ensure more consistency from CLO to CLO in the manner in which they record their time among the categories.

For now, the accuracy and consistency of the data suggest that statistics on the allocation of staff time such as those shown in Figure 3-27 should be treated only as general indicators of broad categories of behaviour—and with considerable caution.

With that caveat in mind, first consider the information in the last three rows on time spent for the different groups of cases. A number of interesting findings present themselves. There are, for instance, interesting differences from CLO to CLO in the relative time docketed to non-certificate and certificate cases:

<sup>64</sup> Statistics in that Figure are based on the billable time lawyers docketed to specific cases that were closed in either the first, second or third year. The percentages indicate the proportion of that total time spent on the different specific tasks shown as row headings—and for broader groupings of those tasks. Results are shown separately (in different columns) for each CLO, for non-certificate and certificate cases, and by year closed. The last three rows of the Figure also present in each column the total numbers of hours spent on that group of closed cases, the number of cases closed, and the average hours per case.

As a specific example, Ottawa lawyers with respect to cases closed in the second year (2005/6) docketed 852 hours to the 139 non-certificate cases that were closed that year, 7.0 hours per case on average. Of those 852 hours, 4% were docketed to the specific task of “Attending Crown and Judicial Pre-trials” (CPTs and JPTs), and 26% of the 852 hours were devoted to the broader category, Other Pre-trial Preparation.

<sup>65</sup> Which activities fell within these broad categories was determined in consultation with the CLO directors. However, during the review process of earlier drafts of this document, it became apparent that modifications are required. For instance, one CLO director indicated that in that CLO “an 810 or other diversion is not an early attendance! Usually we have to fight pretty hard for those diversions and sometimes we don’t get them until the trial date. They belong under “plea and hearing related”. ..... if a client comes to us with a Crown opening position of “diversion”, we do not take him on.”

To begin, the total time docketed to each group (column) of cases generally reflects the caseload numbers presented earlier. Thus,

- The Barrie CLO lawyers in total docketed considerably more hours (1,800 to cases closed in the second year and 1,800 to cases closed in the third) than the other CLOs to closed certificate cases (370 and 225 hours in Brampton and 384 and 438 hours in Ottawa);
- The reverse was true for non-certificate cases, with Brampton devoting the most billable hours to cases closed in the second and third years (1,509 and 1,578), Ottawa devoting the second most (852 and 1,495) and Barrie devoting the fewest (237 and 337).

Of course, these differences and changes over time in each CLO could be due to a number of factors, including: differences in the level and nature of caseloads and/or differences in efficiencies as the CLOs mature, and/or differences in local practices or LAO policies.

It is also evident that:

- The percentage split of hours between non-certificate and certificate cases roughly reflected the percentage split of those caseloads in each of the CLOs.
- On the other hand, there are variations in how close these splits were reflected. For instance, one would expect that since certificate cases are generally more serious (at least with respect to potential outcome), the percent of time spent working on such cases would be considerably larger than the percent of time such cases comprised of the total caseloads. For cases closed in the third year in the Barrie CLO, the percent of time spent on certificate cases was, however, almost identical to the percent such cases accounted for in the total caseload (i.e., 85% vs. 82%). In the Brampton CLO, the percent of the time worked that was accounted for by certificate cases (12%) was also similar to the percent of the total cases accounted for by such cases (9%). Only in Ottawa, was the percent of time worked devoted to certificate cases greater than the percent such cases accounted for of the total caseload (23% vs. 13%).

(Further comparisons of the CLOs in terms of average times per case is deferred to Section 3.6.3b later.)



### 3: Services to Individual Client Cases

Figure 3-27

#### Distribution of CLO Lawyer Billable Time Spent on Specific Tasks Related to Closed Cases: by Whether or Not Certificate by Year Closed

#### Distribution of CLO Lawyer Billable Time Spent on Specific Tasks Related to Closed Cases: by Whether or Not Certificate by Year Closed

	Barrie							Brampton							Ottawa					
	No Certificate			Certificate				No Certificate			Certificate				No Certificate			Certificate		
	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)		Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)		Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Selected Early Attendances	10%	11%	15%	9%	12%	10%		4%	9%	16%	1%	8%	14%		11%	8%	8%	12%	8%	7%
(including: 810s, all other diversions, assignment court-Superior, Set Date/remand, status hearing-readiness)																				
Bail Related: Attendances	6%	1%	2%	5%	4%	3%		1%	1%	1%	0%	4%	7%		4%	3%	2%	1%	11%	3%
(including: bail hearings, bail review, bail variation)																				
Contact wih Client	28%	17%	22%	25%	23%	23%		15%	12%	16%	14%	10%	12%		20%	23%	18%	22%	24%	15%
Contact Client: In Person	26%	16%	21%	21%	21%	21%		13%	9%	11%	8%	7%	8%		16%	18%	11%	18%	19%	10%
Contact Client: Other	2%	2%	1%	4%	3%	2%		2%	2%	6%	6%	3%	5%		4%	5%	7%	4%	5%	4%
Contact with Others	8%	6%	10%	7%	6%	12%		3%	4%	4%	4%	5%	4%		7%	7%	4%	10%	6%	4%
Contact Crown: Excluding CPTs )	5%	4%	5%	4%	4%	6%		—	—	1%	1%	—	—		3%	2%	2%	5%	1%	1%
Contact: Other	2%	2%	1%	2%	2%	1%		2%	3%	—	2%	3%	—		3%	3%	—	5%	3%	1%
(including court personnel, duty counsel, expert witness, family/employers, NGO, community agency, police, other)																				
Other Pre-trial Preparation	19%	34%	29%	21%	22%	25%		21%	23%	26%	28%	28%	36%		26%	26%	30%	28%	25%	40%
Trial Preparation: All Other Matters	11%	25%	22%	15%	12%	18%		15%	15%	18%	24%	13%	27%		22%	21%	23%	25%	19%	36%
(including charter motions, case preparation, case conferences)																				
Attending Crown and Judicial Pre-Trials	8%	9%	5%	6%	7%	2%		6%	7%	7%	4%	10%	7%		4%	4%	5%			
Plea and Hearing Related	19%	18%	14%	24%	22%	17%		23%	30%	26%	23%	20%	20%		21%	23%	22%	20%	17%	23%
(including: guilty plea, time at court, drug treatment court, preliminary inquiry, trial, sentencing, youth court conf and disp rev, appeals)																				
Billable Travel Related	0%	4%	3%	3%	5%	2%		1%	3%	1%	2%	1%	2%		1%	6%	8%	2%	4%	3%
Unspecified or Other	10%	8%	5%	6%	6%	8%		32%	19%	9%	28%	23%	5%		8%	5%	8%	5%	5%	4%
Total (hours)	67	237	337	1,378	1,800	1,880		502	1,509	1,578	81	370	225		566	852	1,495	161	384	438
Number of cases	11	39	46	166	189	205		85	275	307	10	48	31		68	139	270	21	45	40
hours per case	6.1	6.1	7.3	8.3	9.5	9.2		5.9	5.5	5.1	8.1	7.7	7.3		8.3	6.1	5.5	7.7	8.5	11.0

Billable Time spent on all cases opened and closed up to June 30, 2007. Table produced October 29, 2007

Attempts to delve deeper into the percentage of the total time spent that is allocated by the Brampton CLO between the different tasks and groups of tasks in years two and three were hampered by the much higher (compared to Barrie and Ottawa) proportion of the docketing time not allocated to a specific task in year two--19% of the non-certificate time and 23% of the certificate time. This is a result of Brampton using a more general coding system until a more specific docket coding protocol was adopted mid-way through the second year. Fortunately, the percents of time unallocated were reduced significantly in year 3.

First, using the data for all three years for Barrie and Ottawa, and the last year only for Brampton, the data as coded suggests that a relatively small percentage of lawyer time in each of the CLOs was spent in tasks that were related to contesting a case – i.e. only a portion of the roughly 20% of time designated as *plea and hearing related*. Other broad groupings of tasks that consumed relatively large amounts of lawyer time in year three were *contact with client* (ranging from 12% (Brampton certificate) to 23% (Barrie certificate) and *other pre-trial preparation* (ranging from 40% (Ottawa certificate) to 25% (Barrie certificate)).

On the other hand, the data as coded suggests that very little of the CLO lawyer's time is devoted to the earliest steps in the litigation process—i.e. initial appearances prior to getting legal assistance and bail. However, the reader is reminded that a substantial part of the time coded in other categories (e.g., “contact with client”) may also be time spent earlier in the litigation process.

Using the year three data, within each CLO, it is of considerable practical interest that there are appear to be considerable similarities between the allocation of total time for non-certificate cases compared to certificate cases.<sup>66</sup> For instance,

- In Ottawa, in year three, the CLO allocated lawyer time among most of the main categories of tasks very similarly for non-certificate and certificate cases (e.g., for *selected early attendances*, 8% for non-certificate and 7% for certificate; and for *contact with client*, 18% vs. 15%. The greatest differences were only 10 percentage points—for *other pre-trial preparation*, 30% vs. 40%)
- In Brampton, as with Ottawa, the percentages were similar for all categories of task except one. Here again the greatest differences were only 10 percentage points—again for *other pre-trial preparation*, 26% vs. 36%)
- In Barrie, no major differences were seen any category.

Secondly, overall, there are striking similarities from one CLO to another in the proportions of time docketed to the different groups of tasks—for both non-certificate and certificate cases. However, there are a small number of differences, for instance, the data as coded shows that:

- The Barrie CLO—for certificate cases only—allocates a considerably lower proportion of the total lawyer time to *other pre-trial preparation* (25% vs. 36% for Brampton and 40% for Ottawa), and
- (Although the caseloads are small for Barrie), the Barrie CLO tends in non-certificate cases to allocate a lower proportion of billable time to *plea and hearing related* tasks (14% vs. 26% and 22% for Brampton and Ottawa).

Finally, overall—within the Barrie and Ottawa CLOs—according to this data there is considerable stability from year two to year three in the percents of time allocated to the different categories of

<sup>66</sup> Since time docketing practices would be expected to be consistent within a particular CLO, comparisons within a CLO or comparisons over time for the same CLO would be more valid than comparisons between CLOs.

tasks.<sup>67</sup> However—keeping in mind the sometimes small numbers of cases involved—there are some exceptions:

- For instance, in Ottawa, with respect to time docketed to certificate cases, a higher proportion was devoted to *other pre-trial preparation in year three* (40%, rising from 25% in year two).

As with differences and changes over time in the absolute time spent on cases, these analogous similarities and differences regarding allocation of that time could also be due to a number of factors (again, including: differences in caseloads, differences in efficiencies as the CLOs mature, or differences in local or LAO policies). The reader is also reminded of the work needed to improve the accuracy and completeness of the data coding. Nonetheless, even with these limitations, the data do point to certain areas that should be further monitored by CLO and LAO management.

## 3.6 With What Level of Quality has the CLO Provided Case-Specific Services?

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 choice of lawyer, consistency and continuity of service, experience, enthusiasm, and effectiveness (outcome). Each of these perspectives will be discussed in the following sections.

### 3.6.1 *Choice of lawyer*

#### *a Choice Generally*

The private bar has argued 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 private 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. The preference of the client is taken into account, but it is not seen as an overriding consideration.

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<sup>67</sup> The major change from one year to another in the proportion of data missing makes year-to-year comparisons very difficult for the Brampton CLO.

#### *b 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, Midland and northern Simcoe County--and some cases in Barrie; 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 lawyer 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. Therefore, when these cases present themselves, the experience of the lawyers is a consideration for the assignment of the case.

In Brampton, for the first two years each of the CLO lawyers had been accepting a few out-of-town cases, which come via the LAO refusal letter. CLO lawyers would travel outside of Peel when the client had a connection 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. During the third year the Brampton CLO has started a special initiative to support clients whose cases are heard in the Orangeville court. The Director provides this service by traveling to Orangeville for limited specific times each week. Judges and representatives from other stakeholder groups in Orangeville reported that the presence of the CLO lawyer provided a value added to both the litigants and the court process in Orangeville.<sup>68</sup>

In year two The Ottawa office (mainly the director) took cases 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. In the year three, one of the lawyers from the Ottawa office has on a weekly basis been representing clients in Perth, Pembroke and other communities in the Ottawa Valley.

#### *c 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" ethnic or cultural groups identified as having special access to justice needs. However, all three offices do have at least one staff member of each gender. In the Barrie CLO, the two lawyers are both male and the community legal worker and administrative assistant are female. One NGO that primarily deals with women in the criminal justice system indicated in the first year that the NGO preferred to deal with the CLO's female community legal worker. The gender issue was not raised in any interviews in Ottawa—where for the first two years of operation all three CLO lawyers were women, but now consists of both male and female lawyers. The Brampton CLO has from day one had two female and one male lawyers—and the front line support staff consist of one female and one male.

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<sup>68</sup> In this report, data on these Orangeville clients are amalgamated with data on other Brampton CLO clients.

That being said, no stakeholders raised concerns that the CLOs were unable to meet the clients' needs based on these criteria.

#### *d Consistency and Continuity of Service*

Consistency and continuity of service are other important dimensions 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.

During the first year, the Ottawa CLO, because of the newness of its junior lawyers, co-counseled more than the others. On the other hand, during the second year interviews, comments were made by a number of members of the bench and of the crown's office that the CLO lawyers did not seem to have as much authority to act on behalf of "their firm" as did similarly experienced members of private firms. This at times resulted in delays in negotiation processes to get approval or a second opinion "back at the office". The third year interviews indicated that with three senior lawyers all carrying a full and varied caseload, the CLO was moving towards a full caseload. This experience is important to those in the future who are considering the pros and cons of different staffing mixes for similar initiatives in a difficult environment such as Ottawa was when the CLO was established.

The CLOs tend to have a strong coordinating role for the community legal worker. In all sites, the community legal worker (often together with the administration person in Brampton) does most of the intake, answers most client 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. The CLO thus plays an essential role in ensuring continuity of service by ensuring continuity of information flow through the different steps in the litigation process—and among the different CLO staff involved in the process for any case.

In Ottawa in fact the role of the CLW had changed considerably from year one to year three—with the CLW's role in years two and three focusing far more on providing support to the individual lawyers in handling their cases (e.g. ensuring dates are kept, documents are filed, arranging contacts with community agencies), and supporting and managing the administrative aspects of the case management process generally.

In Brampton also the CLW's role in year two and three has become more one of assistance to the lawyers in managing their cases and in providing direct non-legal support services to their clients. The CLW—often sharing the work with the administrative assistant does, for instance, handles much of the initial contact with and interviewing of the client (for non-legal information). The downside is that the increase in these responsibilities has curtailed significantly the CLW's ability to undertake other roles such as outreach.

*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 also not in much different a position from other law firms. A returning client, on a new 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, insufficient information is available to indicate whether clients' ability to retain the same CLO lawyer again will be affected, or how. However, the data presented earlier (see Figure 3-24) on percents of referrals from previous clients (for year two and three certificate cases, 32% and 23% in Barrie, 42% and 15% in Brampton) do support the fact that previous CLO clients are not being denied the opportunity of re-retaining CLO counsel they have retained before.<sup>69</sup>

It is, however, of interest that interviews in Brampton indicate that it is continuity of information regarding a case that is considered important, and that can be obtained through good communications mechanisms among the CLW, administrative assistant and staff lawyers. Having the same lawyer at all functions involving a client is neither essential or necessarily cost-effective to ensure continuity of service. In any case, the evaluation found no evidence of any concerns regarding consistency and continuity of CLO services.

### **3.6.2 Qualifications and Experience of Legal Service Provided**

#### *a Introduction*

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".

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<sup>69</sup> Data from the Ottawa CLO on this variable were unusable.

*b 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 practised criminal law in Simcoe County for over a decade and the staff lawyer has practised criminal law in Toronto for over fifteen years.

In Brampton, all the CLO lawyers are experienced lawyers. The Director has been practising 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 12 years and 8 years, respectively. All three have more experience, in fact, than much of the relatively young Peel bar.

In Ottawa, the picture has been very different. The director has over 15 years experience, and half of that time was spent in Ottawa). Initially, there were two junior lawyers, who have since been replaced by more senior lawyers. The first junior lawyer was replaced by a senior lawyer had over 15 years experience, much of it within a legal aid environment in another province. The other junior lawyer moved to private practice in the late fall of 2006 and was eventually replaced by another senior lawyer – also with over 15 years in criminal experience both in both legal aid and as a Crown in New Brunswick. Unfortunately this lawyer has recently left the CLO to join the Ottawa Crown's office.

In the first and second year interviews with members of the bar, bench and crown counsel, it was noted that the Ottawa CLO lawyers, especially the younger ones, did not have as much experience as many members of the private bar. However, with respect to the remaining younger CLO lawyer, it was also noted that all lawyers go through an initial developmental phase and the CLO lawyer seemed to be progressing well and subsequent to her leaving the office she received a good peer review report. In the third year interviews there were no concerns raised about the legal services provided by the the three lawyers working in the Ottawa CLO during the summer of 2007.

*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 also senior lawyers. 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. It was the general overwhelming feeling among those interviewed that all of the Brampton CLO lawyers were certainly competent to handle the types of cases that came to the CLOs attention.

In Ottawa, because of the inexperience of the junior lawyers, during the first year, 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. However, as shown in the next sections, there does seem to have been a shift in year two and three, with the other lawyers taking the lead in a greater percent of the cases.

### *c Assignment of Lawyers to Cases*

In the third year, all three CLO offices were staffed by senior counsel, and thus no issues relating to counsel assignment were noted. As each lawyer has their own areas of expertise, where possible, they will be assigned to cases where their experience can be utilized. For example, one staff lawyer in Brampton tends to deal with more mental health cases. The only area of concern relating to assignment of cases and seniority was noted in the first two years in Ottawa, before the replacement of the original junior counsel with more senior ones.

#### **3.6.3 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 could be irksome at best—and comments about an “uneven playing field” are not rare.
- at the other end of that continuum, at the start of the CLOs concerns were raised by a few members of a number of stakeholder groups (including the private bar, judiciary and crowns) that the CLOs may become mediocre or worse – “plea factories” which attract lawyers for the wrong reasons, or can only attract and old good lawyers for short periods.

The following chapters highlight the findings that respond to the concerns noted here.

#### *a Private Bar Certificate Cases*

In Barrie, the CLO is perceived as generally spending a reasonable amount of time on its cases. There was some concern expressed in the first year, as to whether one of the lawyers was spending sufficient time in preparing his cases. In the third year interviews the judges interviewed stated that they perceived the CLO lawyers as well prepared – one senior judge and one courtworker, each stated that the CLO lawyers were better prepared than the private bar appearing before them in Simcoe County. One Crown reiterated the need for the CLO to devote more time to the youth court. Duty Counsel thought that, generally, the CLO lawyers were spending about the same amount of time as private lawyers on their cases. In year three, one private lawyer and one senior judge expressed concern that, with the heavy caseload being carried by the Barrie CLO, the two lawyers did not have sufficient time to prepare for their cases. Another courtworker indicated that she still felt that the CLO was spending an appropriate amount of time on case preparation, and that the lawyers were very receptive to the requests from CMHA and the need of the mentally ill, at various stages of the criminal process.



In Brampton, in the year two interviews<sup>14</sup> representatives of criminal justice system organizations expressed an opinion on how the CLO compares in terms of the amount of time its lawyers spend on their cases. A duty counsel, a Crown and a senior defence counsel stated that they believe that the CLO lawyers are able to and do spend more time on many of their cases than private lawyers; all other respondents indicated that they perceived the CLO lawyers spend about the same amount of time as private defence counsel on their clients' cases. In the year three interviews virtually all those interviewed felt that on all the criteria noted (time spent on their case, being prepared, arguing their case, etc.) the CLO lawyers performed at least as well as the typical member of the private bar.

In Ottawa, during the first year 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 that the CLOs spent more time on their cases than did the private bar. In year two, most CJS representatives (judges, crowns, private bar members) interviewed did venture an opinion, and the general consensus was that CLO lawyers spend as much time as the private bar, with a sizeable proportion believing they spent more time preparing. NGOs who dealt with the CLO lawyers in arranging support plans for diversion and sentencing discussions were particularly positive about the time the CLW spent assisting their clients—and indicated that the level of effort compared favourably to that expended by many members of the private bar. In year three there was general agreement amongst CJS and NGO interviewees that the CLO lawyers were well prepared for their court appearances and seemed to be spending about the same amount of time, if not more, than the private bar on their cases.

As in the first year, a sizeable proportion—but not all—of those interviewed had the perception that not having the strictures of having to make a profit (or stick to the tariff guidelines regarding billable hours) did allow the CLO lawyers to spend more time preparing a case than did private bar members .

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

#### *b Private Bar Certificate Cases*

As noted in the *First Year* report, 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 data provided 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. Although efforts continued to get obtain support from the private bar in getting such information, this challenge continued into the second year of the evaluation.

The following Figure provides estimates of the amount of time private bar members bill. As can be seen, in all three years the number of hours per case tended to be higher in Brampton and Ottawa (medians ranging from roughly 11 to 12 hours), and lower in Barrie (medians below 10 hours).

Figure 3-28 also provides evidence of an important difference between the three sites. In Barrie the total number of hours billed per case was fairly static over the three years. However, in Brampton this stability was evident for the lower half of the cases (i.e. little change in the median), but because of changes in the top half of the cases (in terms of hours billed) the mean number of hours per case increased steadily (from 19 to 22 to 24 hours) over the three years. In Ottawa this steady increase in numbers of hours billed was seen in both the lower and upper half of the cases—with the mean number of hours also increasing steadily (from 16 to 18 to 23 hours).

Figure 3-28

Legal Aid Certificates Issued and Billed: Total Hours Billed: by Area Office by Year of Last Service

		Barrie			Brampton			Ottawa			Other		
		July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07
Total Hours Billed	Percentile 25	6.50	6.50	6.50	8.50	8.55	8.60	8.30	8.67	8.93	6.60	6.83	6.91
	Median	9.53	9.10	9.00	11.00	11.50	11.30	11.04	11.47	12.07	9.62	10.00	10.15
	Percentile 75	14.90	14.37	14.00	17.80	19.35	19.35	17.54	18.20	19.20	15.44	15.50	15.50
	Percentile 95	31.40	32.49	31.30	50.38	58.95	53.02	38.90	44.53	43.02	37.00	37.50	38.66
	Mean	14.68	21.23	13.66	19.05	22.46	23.61	15.70	18.32	22.78	15.65	16.45	17.05
Valid N		N=1719	N=2021	N=1843	N=2409	N=2128	N=1917	N=3545	N=3373	N=2795	N=41397	N=43339	N=38163

Certificates billed from May 1, 2004 to June 30, 2007 (excluding appeals and opinions)

### *c All CLOs: Legal Files Data*

The following two Figures provide comparable data on lawyer time per case for CLO cases –Figure 3-29 for certificate cases and Figure 3-30 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 3-28 as a comparison)—for years one, two and three—the median (typical) number of hours per case for CLO cases has been equal or lower than for private bar certificate cases:<sup>70</sup>

- For Barrie, year one, two and three medians of 7.2, 7.9 and 7.7 lawyer hours per CLO case vs. medians of 9.5, 9.1 and 9.0 for private lawyer cases;
- For Brampton, medians of 7.6, 6.3 and 4.0 lawyer hours per CLO case vs. medians of 11.0, 11.4 and 11.0 for private lawyer cases; and
- For Ottawa, medians of 7.6, 6.8 and 6.4 per CLO case vs. medians of 11.0, 11.4 and 12.0 for private lawyer cases.

Thus—although the differences may be due to the CLOs handling less complicated cases, the data do **not** support the argument that the CLO lawyers spend more time on cases than do their private bar counterparts.<sup>71</sup>

Section 3.5.5 has already presented a comparison of the three CLOs in terms of the average time spent per certificate case in year one, two and three.

The data in Figure 3-29 provide a more detailed comparison, i.e. by offence type and with medians as well as mean times. However, those wishing to make such comparisons should take into account the different mixes of offences in the three locations, and note that, for many individual offences, the numbers of cases are too low to allow valid comparisons.

That caveat kept in mind, it can be seen that, overall, in each year the mean number of lawyer hours per certificate case has always been highest in Ottawa (15.2 in year three in Ottawa vs. 9.4 in Barrie and 7.4 in Brampton). However, with respect to the typical (median) number of hours spend for the *average* case, the Barrie CLO was highest in years two and three (7.9 and 7.7 hours for Barrie vs. 6.8 and 6.4 for Ottawa, and 6.3 and 4.0 for Brampton).

Finally, there are also differences from CLO to CLO regarding changes from year one to year two to year three. For instance,

<sup>70</sup> Since the CLOs do not take on very large criminal cases, it is more appropriate to use the median for these comparisons—rather than the means which would be strongly influenced (upwards) by the relatively small number of private bar larger cases.

<sup>71</sup> The reader is however referred as well to analysis later (section 6.6.3) that excludes larger cases from the Private bar data.

- In Barrie, both the average and median time docketed per case increased slightly from year one to year two, but then decreased in year three for certificate cases (the mean from 8.8 to 9.9 to 9.4, the median from 7.2 to 7.9 to 7.7);
- In contrast, in Ottawa, the average time docketed per case increased moderately from year one to year two (10.3 to 11.5) and then increased again substantially in year three (to 15.2). However, it is clear that this increase was due to an increase in the largest cases, since the median number of hours actual *decreased* each year.
- The Brampton CLO demonstrated yet a different experience—with both the average and median number of hours per certificate case falling from year one to year two to year three for certificate cases (from 9.9 to 9.1 to 7.4 for the average, and 7.6 to 6.3 to 4.0 hours for the median).

Exploring the factors underlying these differences and changes over time (such as: differences in caseloads, differences in efficiencies as the CLOs mature, or differences in local or LAO policies) would likely yield valuable information for improving the cost-effectiveness of the offices.

Figure 3-29 <sup>72</sup>**3-32 Mean and Median Total Number of Billable Lawyer Hours Per Certificate Case: Summary Statistics By Offence Category by Year Close by Site**

CLO Site		Year Closed								
		Year 1 (April 04> June 05)			Year 2 (July 05> June 06)			Year 3 (July 06> June 07)		
		Mean	Median	# of Cases	Mean	Median	# of Cases	Mean	Median	# of Cases
Barrie	Homicide	18.3	18.3	1	8.7	8.7	1	.	.	.
	Sexual assault	15.1	14.5	11	22.2	14.1	18	24.1	21.9	8
	Robbery	16.2	15.2	3	12.1	9.0	3	8.4	8.4	2
	Theft	9.0	6.4	45	9.1	7.9	45	7.8	6.0	40
	Impaired Driving	5.4	5.2	7	9.1	8.9	14	15.2	13.5	8
	Other Vehicle	5.9	4.5	4	10.4	7.7	4	8.3	7.5	4
	Narcotics Cocaine & Heroin	6.4	6.3	6	11.3	11.1	7	5.8	5.1	8
	Assault	8.8	7.5	43	9.2	8.1	40	10.5	9.1	60
	Fraud	9.2	9.2	6	12.4	11.2	6	7.3	7.3	5
	Other	9.5	6.8	9	7.7	6.2	13	9.3	7.7	17
	Threatening Death Bodily Harm	12.4	5.2	3	7.3	6.7	8	11.1	7.9	5
	B& E	6.5	6.1	4	6.7	7.6	4	8.7	6.1	7
	Weapons Offences	.	.	.	.	.	.	9.1	9.1	2
	Mischief	5.1	3.9	3	8.0	8.0	1	13.1	11.7	4
	Fail to Comply	5.6	4.7	17	5.8	5.5	20	5.7	6.2	31
	Other Drug	18.0	18.0	1	4.8	2.9	3	.	.	.
	Provincial and Municipal	4.2	2.9	3	2.0	2.0	2	4.0	3.5	4
	Total	8.8	7.2	166	9.9	7.9	189	9.4	7.7	205
Brampton	Sexual assault	.	.	.	26.6	26.6	1	7.9	7.9	1
	Robbery	.	.	.	.	.	.	14.4	14.4	2
	Theft	16.1	15.2	3	11.4	7.3	6	6.6	6.5	8
	Impaired Driving	15.1	15.1	1	8.0	4.3	11	5.5	4.0	3
	Other Vehicle	.	.	.	9.1	9.1	1	.	.	.
	Narcotics Cocaine & Heroin	.8	.8	1	11.6	11.2	4	3.0	2.4	5
	Assault	5.1	5.1	2	6.9	3.9	9	18.6	5.1	5
	Fraud	.	.	.	11.1	5.3	3	3.4	3.4	1
	Other	7.7	7.7	2	6.4	6.4	1	2.0	1.2	3
	Threatening Death Bodily Harm	.	.	.	6.2	6.1	3	.0	.0	1
	B& E	.	.	.	14.4	14.4	1	.	.	.
	Weapons Offences	.	.	.	5.8	5.8	1	.	.	.
	Mischief	.	.	.	9.7	9.7	2	.	.	.
	Fail to Comply	8.9	8.9	1	7.1	7.1	4	3.8	3.8	2
	Provincial and Municipal	.	.	.	9.5	9.5	1	.	.	.
	Total	9.9	7.6	10	9.1	6.3	48	7.4	4.0	31
Ottawa	Sexual assault	.	.	.	40.1	40.1	1	.	.	.
	Robbery	.	.	.	12.4	12.4	2	.	.	.
	Theft	11.2	9.1	4	9.8	6.8	9	4.8	4.3	8
	Impaired Driving	15.7	4.9	3	11.5	8.3	3	16.5	16.5	2
	Other Vehicle	.	.	.	9.4	9.4	1	6.2	6.2	1
	Assault	11.9	8.3	4	20.5	12.0	7	36.9	7.6	9
	Fraud	.	.	.	12.1	12.1	2	10.1	6.5	3
	Other	6.1	6.1	1	12.4	12.1	4	6.3	5.8	4
	Threatening Death Bodily Harm	12.8	12.8	1	3.7	3.1	4	7.6	7.6	2
	B& E	.	.	.	5.4	5.4	1	3.7	4.9	3
	Weapons Offences	14.7	14.7	2	10.2	13.2	3	.	.	.
	Mischief	4.3	4.3	2	3.8	3.8	2	4.8	4.8	2
	Fail to Comply	3.4	2.5	3	9.9	7.8	4	10.7	10.7	2
	Provincial and Municipal	9.8	9.8	1	2.0	2.0	2	21.4	21.6	4
	Total	10.3	7.6	21	11.5	6.8	45	15.2	6.4	40

Specific Closed Certificate Client Files Cases opened and closed by June 30, 2007. Table produced October 25, 2007.

<sup>72</sup> In this and a number of Figures following, the second line of the title of the figure contains a second number (in this case, “3-32”) that differs from the Figure Number in the first line. The number in the second line is for use only in retrieving the SPSS programming syntax used to create the table.

Figure 3-30 provides analogous data for non-certificate cases. First, in both year one and year two, the data suggest that overall, the typical (median) closed non-certificate cases in Ottawa received higher numbers of lawyer hours per case than in the Barrie and Brampton CLOs. However, in year three, Ottawa cases received the lowest mean and median number of hours—and Barrie cases received the highest.

Secondly, there are also differences from CLO to CLO regarding changes from year one to year two to year three. For instance,

- In Barrie, the average time docketed per case increased steadily from year one to year two to year three for non-certificate cases. However, the median time decreased then increased;
- In contrast, in both Brampton and Ottawa, both the average time and median times docketed per case decreased from year one to year two, and again in year three for non-certificate cases.

Thirdly, overall, there are interesting differences from CLO to CLO in the relative time docketed to certificate and non-certificate cases:

- Using the mean statistics as the criterion, in all three CLOs, considerably more time was docketed to the average certificate case than to the average non-certificate case (in the third year-- in Barrie, 9.4 hrs vs. 7.5 hours; in Brampton, 7.4 hours vs. 5.2 hours; and in Ottawa, 15.2 hours for certificate cases vs. 5.1 hours for non-certificate cases).
- Similar results were obtained using instead the typical or median case as the criterion. In all three CLOs considerably more time was docketed to the typical certificate case than to the typical non-certificate case (in the third year-- in Barrie, 7.7 hrs vs. 4.2 hours; in Brampton, 4.0 hours vs. 3.6 hours; and in Ottawa, 6.4 hours vs. 3.2 hours).

Finally, looking at specific offences, a comparison with data in Figure 3-29 for those offence types containing at least 5 cases shows that—with no exceptions—the CLOs allocate fewer hours to dealing with non-certificate cases than with certificate cases of similar offence type.

As above, these differences and changes over time could be due to a number of factors, including: differences in caseloads, differences in efficiencies as the CLOs mature, or differences in local or LAO policies—and further examination is warranted.

Figure 3-30

**3-33 Mean and Median Total Number of Billable Lawyer Hours Per Non-Certificate Case: Summary Statistics By Offence Category by Year Close by Site**

CLO Site		Year Closed								
		Year 1 (April 04> June 05)			Year 2 (July 05> June 06)			Year 3 (July 06> June 07)		
		Mean	Median	# of Cases	Mean	Median	# of Cases	Mean	Median	# of Cases
Barrie	Sexual assault	.	.		16.6	16.6	1	10.5	10.5	2
	Theft	.	.		5.4	2.3	6	5.9	5.3	6
	Impaired Driving	5.3	5.6	3	14.0	6.7	3	13.0	8.6	6
	Other Vehicle	.	.		2.0	2.0	1	.	.	
	Narcotics Cocaine & Heroin	.	.		.4	.4	1	.	.	
	Assault	5.1	5.4	5	5.4	4.4	15	8.2	6.9	17
	Fraud	.	.		6.9	6.9	1	1.7	1.3	3
	Other	10.3	10.3	1	7.4	2.6	5	6.0	4.8	7
	Threatening Death Bodily Harm	.	.		8.6	8.6	2	3.4	3.4	1
	B& E	.	.		3.0	3.0	1	5.5	5.5	2
	Mischief	7.0	7.0	1	7.6	7.6	2	4.3	4.3	2
	Other Drug	.	.		1.5	1.5	1	.	.	
	Provincial and Municipal	6.8	6.8	1	.	.		.	.	
	Total	6.0	6.8	11	6.5	4.5	39	7.5	5.5	46
Brampton	Sexual assault	.	.		.	.		7.6	7.6	1
	Theft	6.0	5.6	22	5.4	3.9	63	4.4	2.4	70
	Impaired Driving	6.0	3.5	7	10.8	5.4	43	5.8	3.3	32
	Other Vehicle	7.7	7.7	2	7.6	8.6	3	5.3	6.1	10
	Narcotics Cocaine & Heroin	3.8	3.8	1	4.7	2.9	32	5.5	3.4	31
	Assault	7.5	6.8	30	5.3	5.1	57	5.3	4.5	84
	Fraud	8.5	8.5	2	7.1	3.4	11	5.1	4.0	13
	Other	6.8	6.8	6	6.8	3.8	25	4.2	4.3	26
	Threatening Death Bodily Harm	8.9	5.2	5	6.9	5.5	8	5.8	4.4	6
	B& E	.	.		5.1	5.1	1	.	.	
	Mischief	4.3	4.3	1	5.8	3.9	11	8.5	3.5	10
	Other Drug	4.1	4.5	3	6.0	4.1	8	2.9	3.0	5
	Provincial and Municipal	.0	.0	1	.0	.0	2	6.8	1.6	4
	Robbery	.	.		.	.		7.1	4.4	4
	Weapons Offences	5.8	6.7	3	3.5	2.9	11	6.6	4.3	11
	Fail to Comply	5.0	5.0	2	.	.		.	.	
	Total	6.6	6.0	85	6.3	4.1	275	5.2	3.6	307
Ottawa	Theft	6.0	4.8	14	3.9	3.1	33	4.0	2.7	54
	Impaired Driving	23.8	20.1	9	13.3	9.9	22	8.7	3.9	25
	Other Vehicle	4.2	4.2	1	17.6	17.6	1	.0	.0	4
	Narcotics Cocaine & Heroin	17.2	17.2	1	2.8	2.8	1	3.1	3.4	3
	Assault	8.7	8.0	19	9.3	6.8	40	4.9	3.5	90
	Fraud	.	.		9.6	9.5	4	6.7	3.3	18
	Other	10.8	8.5	4	5.8	3.0	12	9.3	5.4	18
	Threatening Death Bodily Harm	7.9	8.2	8	11.0	6.1	7	4.6	4.1	12
	B& E	.	.		.1	.1	1	9.0	10.7	5
	Mischief	7.5	6.7	5	7.0	6.5	4	2.8	1.9	12
	Other Drug	13.0	8.0	3	5.9	6.0	4	6.4	2.1	3
	Provincial and Municipal	5.9	5.9	2	6.1	6.0	3	1.3	.3	16
	Weapons Offences	5.3	5.3	1	2.6	2.4	3	2.1	2.5	4
	Fail to Comply	20.1	20.1	1	7.3	5.9	4	2.9	2.5	6
	Total	10.4	7.9	68	8.0	5.2	139	5.1	3.2	270

Specific Closed Non-Certificate Client Files Cases opened and closed by June 30, 2007. Table created on October 10, 2007.

### 3.6.4 *Expeditionousness*

*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 expeditionousness 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 expeditionously their cases proceed through the courts” and “how often they ask for remands because they are not prepared to proceed”.

In Barrie in years two and three, the majority of CJS interviewees, agreed that the CLO’s number of requests for remands was comparable to those of private lawyers during the second year; several duty counsel and a senior criminal defence lawyer stated that the CLO requested more remands than the private bar because of its large caseload, and the large geographic area covered by only two lawyers.

In Brampton in year two, among the 17 CJS respondents who addressed the question of frequency of remands, 11 stated that there was no difference between the CLO and the private bar; two Crowns responded that the CLO asked for fewer remands than the private bar, and four did not know. In year three, respondents from all stakeholder groups generally felt that the CLO lawyers performed similar to the private bar with respect to procedural matters affecting the speed of litigation.

In Ottawa, *in the first year* CJS interviewees said that the CLO cases had fewer adjournments. In the second and third year, CJS interviewees were of the view that the CLO was either less likely or equally likely to ask for an adjournment—compared to the private bar. Two NGO interviewees indicated in the third year that the CLO lawyers asked for fewer adjournments than the private bar.. This view many again attributed to the CLO’s relative independence from the tariff system and therefore were able to spend more time on a case. (This is in fact a misconception since the CLOs do in fact try to stay within the tariff, and, as shown earlier, the time the CLOs spend on a case compares favourably to that spent by members of the private bar.)

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

In Barrie, there was some concern, in the second and third year, that the office was carrying a heavy caseload. As well, serving Barrie and the satellite courts was felt to be extremely difficult with only two lawyers and an experienced community legal worker. There was concern expressed by a duty counsel that the CLO lawyers were not as expeditious as the private bar because of the heavy work load and because they only have two lawyers. The judges interviewed in both the second and third years indicated that there were a small number of requests for remands by the CLO lawyers; they stated that they perceived the CLO lawyers generally handled cases expeditiously and, on some occasions, more expeditiously than the private bar. One CLO lawyer emphasized that the CLO cases proceed through the courts “more expeditiously than those of private lawyers because the CLO, in some cases, does not wait for a retainer before proceeding.”

In Brampton, CJS respondents were generally positive about how expeditiously the CLO’s cases proceeded through the courts; three said that they did not know; eleven indicated the CLO cases moved as fast as did the private bar’s cases – “as fast as the Crown moves”, in short. However, one judge and one Crown stated that, in their opinion, the CLO cases moved more expeditiously through the courts than those represented by the private bar. As noted earlier, in year three, respondents from all stakeholder groups generally felt that the CLO lawyers performed similar to the private bar with respect to procedural matters affecting the speed of litigation.

In Ottawa, in year one, of the 14 CJS respondents who 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.<sup>73</sup> In year two, the predominant opinion was that the CLO and the private bar performed roughly equally on this criterion. In year three one senior counsel in Ottawa indicated that the CLO lawyers were proceeding more expeditiously with their cases than the private bar.

#### *a Time-Specific 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 and the relative differences seem to have remained unchanged over the last two years.

The year two report found that “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 the second year of operations (i.e. 3 Q5 – July through September of 2005) in Brampton, 75% had been closed by the end of the second year (i.e. June 30, 2006) – a lower percent than in Ottawa (82%), and a much lower percent than in Barrie (92%).” If a year later, we now examine cases opened a year later (i.e. in the first quarter of the third year of operations (3Q6), in Brampton 81% had been closed by the end of the third year (i.e. June 30, 2007)—a lower percent than in Ottawa (87%) and Barrie (92%).

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, for instance delays in obtaining disclosure. As well, longer delays might be due to the court and various stakeholders paying more attention to the needs of specific groups of clients (e.g., better addressing the needs of mental health clients will very likely lead to more remands for psychiatric assessments or pre-trial counseling). 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 we did not observe any

<sup>73</sup> In the first year, 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 arguing the issues far longer than would be needed.



problems with the Brampton 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 3-31**  
**Files Opened from the 2<sup>nd</sup> quarter of 2004 through the 2<sup>nd</sup> quarter of 2005**

**Current (as of June 30, 2007) 'Open/Closed' File Status by Quarter File Opened (by Site)**

SiteidN		Quarter File Opened									
		2 Q 04		3 Q 04		4 Q 04		1 Q 05		2 Q 05	
		#	%	#	%	#	%	#	%	#	%
Barrie	Still Open at June 30, 2007										
	Closed at June 30, 2007	22	100%	48	100%	57	100%	75	100%	57	100%
	Total	22	100%	48	100%	57	100%	75	100%	57	100%
Brampton	Still Open at June 30, 2007									1	1%
	Closed at June 30, 2007	10	100%	19	100%	45	100%	81	100%	67	99%
	Total	10	100%	19	100%	45	100%	81	100%	68	100%
Ottawa	Still Open at June 30, 2007							1	2%		
	Closed at June 30, 2007			45	100%	31	100%	51	98%	36	100%
	Total			45	100%	31	100%	52	100%	36	100%

Client Files opened by June 30, 2007. Table produced August 31, 2007.

**Files Opened from the 3<sup>rd</sup> quarter of 2005 through the 2<sup>nd</sup> quarter of 2006**

**Current (as of June 30, 2007) 'Open/Closed' File Status by Quarter File Opened (by Site)**

SiteidN		Quarter File Opened							
		3 Q 05		4 Q 05		1 Q 06		2 Q 06	
		#	%	#	%	#	%	#	%
Barrie	Still Open at June 30, 2007					2	3%		
	Closed at June 30, 2007	62	100%	54	100%	60	97%	63	100%
	Total	62	100%	54	100%	62	100%	63	100%
Brampton	Still Open at June 30, 2007	4	3%	3	5%	3	3%	5	8%
	Closed at June 30, 2007	121	97%	61	95%	88	97%	58	92%
	Total	125	100%	64	100%	91	100%	63	100%
Ottawa	Still Open at June 30, 2007	1	2%	1	2%	3	5%	10	14%
	Closed at June 30, 2007	65	98%	48	98%	56	95%	64	86%
	Total	66	100%	49	100%	59	100%	74	100%

Client Files opened by June 30, 2007. Table produced August 31, 2007.

### Files Opened from the 3<sup>rd</sup> quarter of 2006 through the 2<sup>nd</sup> quarter of 2007

Current (as of June 30, 2007) 'Open/Closed' File Status by Quarter File Opened (by Site)

SiteidN		Quarter File Opened								Total Opened	
		3 Q 06		4 Q 06		1 Q 07		2 Q 07		#	%
		#	%	#	%	#	%	#	%		
Barrie	Still Open at June 30, 2007	5	8%	5	11%	15	28%	32	56%	59	8%
	Closed at June 30, 2007	55	92%	40	89%	38	72%	25	44%	656	92%
	Total	60	100%	45	100%	53	100	57	100%	715	100%
Brampton	Still Open at June 30, 2007	19	19%	31	31%	42	47%	54	87%	162	18%
	Closed at June 30, 2007	81	81%	69	69%	48	53%	8	13%	756	82%
	Total	100	100%	100	100%	90	100	62	100%	918	100%
Ottawa	Still Open at June 30, 2007	11	13%	16	25%	20	30%	34	63%	97	14%
	Closed at June 30, 2007	72	87%	49	75%	46	70%	20	37%	583	86%
	Total	83	100%	65	100%	66	100	54	100%	680	100%

Client Files opened by June 30, 2007. Table produced August 31, 2007.

#### *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 have been estimated from the ICON automated data base operated by the courts. Unfortunately, LAO and the evaluation were denied access to that data base. As well, the manner in which the date the file opened and closed is in Legal Files data base makes it extremely difficult (if not impossible) to calculate with sufficient confidence the time between opening a file and the final court activity.<sup>74</sup>

However, we can use, as a proxy, estimates of the time between first and last service in private bar cases (from the PeopleSoft system) and in CLO cases (from the Legal Files System). This information also provides 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 3-34 which shows that private bar certificate cases in Ottawa and Brampton tend to take longer to complete than those in Barrie. In the first year, the differences between Ottawa (median and mean of 20 and median of 26 weeks) and Barrie (median and mean of 11 and 18 weeks) were the most pronounced. However, between year

<sup>74</sup> For instance, one has difficulty defining when a file is opened (e.g. first contact with client? once they come from AO with refusal letter? date referred by mental health worker?). As well, although theoretically one could estimate the date of closing from the date at which staff docket time for "attendance at trial" or "attendance at sentencing", attempts to use this variable did not convince the evaluators that one could assume this data was of adequate accuracy or reliability.

one and year two, the delays in Brampton increased while those in Barrie and Ottawa remained fairly stable or even decreased. The result is that in the second year, Brampton had the longest delays, and the differences between Brampton (median and mean of 21 and 28 weeks) and Barrie (median and mean of 10 and 17 weeks) were the most pronounced. In year three delays in Brampton grew even longer and the differences between Brampton and Barrie were even wider (with a median and mean in Brampton of 25 and 30, and a median and mean in Barrie of 9 and 16).

### 3: Services to Individual Client Cases

Figure 3-32

**Legal Aid Certificates Issued and Billed: 3-35: Time Between First and Last Service Offered: by Area Office by Year Last Service Offered**

	Barrie			Brampton			Ottawa			Other		
	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07
0 to 7 days	6.2%	6.3%	6.5%	6.2%	5.0%	4.3%	4.3%	3.6%	3.4%	4.6%	4.8%	4.8%
over 1 to 2 weeks	6.2%	6.7%	6.5%	5.0%	3.7%	3.2%	3.4%	3.4%	3.1%	4.6%	4.4%	4.5%
over 2 to 3 weeks	6.8%	6.1%	5.7%	3.4%	2.8%	2.4%	2.5%	3.8%	2.6%	4.0%	3.9%	4.0%
over 3 to 4 weeks	4.7%	5.8%	6.4%	3.3%	2.2%	1.9%	3.1%	2.6%	2.6%	4.0%	3.9%	4.0%
over 4 to 8 weeks	15.3%	17.8%	19.8%	11.6%	9.9%	8.2%	10.3%	11.4%	11.4%	12.9%	13.3%	13.4%
over 8 to 12 weeks	11.6%	12.2%	13.3%	8.6%	8.8%	8.9%	9.8%	10.2%	10.6%	11.1%	11.0%	11.1%
over 12 to 16 weeks	8.7%	8.9%	8.4%	7.5%	7.6%	7.3%	8.6%	9.6%	9.6%	9.5%	9.9%	9.1%
over 16 to 20 weeks	6.7%	6.7%	7.1%	6.5%	6.8%	6.4%	6.7%	7.4%	8.7%	8.0%	8.1%	8.0%
over 20 to 26 weeks	9.4%	7.9%	7.5%	8.3%	8.2%	6.9%	7.8%	9.3%	10.1%	10.4%	9.7%	9.9%
over 6 months to 9 months	12.5%	8.9%	9.7%	15.4%	19.8%	19.2%	16.6%	13.5%	14.5%	14.5%	14.4%	14.3%
over 9 to 12 months	6.4%	5.9%	4.6%	10.8%	10.6%	14.7%	14.4%	11.4%	10.0%	8.0%	7.9%	8.3%
over 1 to 1.5 years	4.3%	4.9%	3.4%	10.2%	10.2%	12.0%	9.5%	9.5%	8.9%	6.3%	6.0%	6.1%
over 1.5 to 2 years	1.2%	1.3%	.8%	2.4%	2.8%	2.7%	2.2%	3.2%	2.0%	1.6%	1.8%	1.6%
over 2 years	.1%	.7%	.4%	.8%	1.6%	1.8%	.6%	1.0%	2.4%	.5%	1.0%	1.0%
# of Certificates	1646	1962	1779	2253	2038	1831	3433	3278	2739	39949	42247	37296

Certificates billed from May 1, 2004 to June 30, 2007 (excluding appeals and opinions)

Figure 3-33

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

		Barrie		Brampton		Ottawa		Other	
		July 04 through June 05	July 05 through June 06	July 04 through June 05	July 05 through June 06	July 04 through June 05	July 05 through June 06	July 04 through June 05	July 05 through June 06
= "Time between First & Last Service (days)"	Percentile 25	28	28	35	56	57	53	42	43
	Median	80	70	119	149	142	128	108	108
	Percentile 75	180	160	259	274	284	273	214	215
	Percentile 95	372	406	488	538	471	514	430	456
	Mean	123	121	171	197	185	181	150	164
	Valid N	N=1707	N=1814	N=2387	N=1866	N=3524	N=3041	N=40887	N=37449

Certificates billed from May 1, 2004 to June 30, 2006 (excluding appeals and opinions)

### 3: Services to Individual Client Cases

Figure 3-34

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

		Barrie			Brampton			Ottawa			Other		
		July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07
= "Time between First & Last Service (weeks)"	Percentile 25	4	4	4	5	8	9	8	8	9	6	6	6
	Median	11	10	9	17	21	25	20	19	19	15	15	16
	Percentile 75	26	23	21	37	39	43	40	39	37	30	31	31
	Percentile 95	53	58	51	70	76	76	67	74	76	61	64	63
	Mean	18	17	16	24	28	30	26	26	38	21	23	22
	Valid N	N=171 9	N=2021	N=1843	N=2409	N=212 8	N=1917	N=3545	N=3373	N=2795	N=4139 7	N=433 39	N=3816 3

Certificates billed from May 1, 2004 to June 30, 2007 (excluding appeals and opinions)

#### **b.ii CLO Certificate Cases**

Figure 3-35 presents analogous information for the CLOs. Results for certificate cases will be discussed first—keeping in mind the fact that, because of the low numbers of certificate cases in Brampton and Ottawa, changes for a small number of cases could cause major changes in the summary statistics for those sites.

First of all, the relative times between first and last service in the three CLOs mirror the differences in the times shown previously for private bar certificate cases, with times to complete service shorter in Barrie. This reflects the fact that times to disposition are very strongly influenced by the general characteristics of the local court environment rather than the specific practices of a particular CLO office.

Next, different results were obtained when one compared times in year one with times in year two and three for the Barrie private bar and the Barrie CLO. For instance, in year one, the median time to complete service for the private bar cases was 11 weeks (see Figure 3-34). For the Barrie CLO, the median time in year one for certificate cases was equal at 11 weeks. However, in year two, the median time for the private bar cases was 10 weeks, shorter than the 14 weeks for the Barrie CLO. In Year three the median time for the private bar cases was 9 weeks, again shorter than the 12 weeks for the Barrie CLO.

Comparisons between the private bar and the CLOs in both Brampton and Ottawa must keep in mind the low numbers of certificate cases for the CLOs. However, that caution in mind, in year one the private bar and CLO times to complete service were very similar. However, in year two, the CLO times to complete service were slightly lower in both Brampton and Ottawa. In year three, the times for the CLO were shorter (than the private bar) in Brampton, but longer in Ottawa.

Figure 3-35

**Closed CLO Cases: Time (weeks) Between First and Last Service Offered: by Whether or Not Certificate by Year Closed**

SiteidN		Not Certificate			Certificate		
		Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Barrie	Percentile 25	4	7	10	4	5	4
	Median	9	16	19	11	14	12
	Percentile 75	17	36	33	18	28	27
	Percentile 95	.	74	62	33	59	56
	Mean	11	22	23	12	20	17
	Valid N	N=11	N=39	N=46	N=166	N=189	N=204
Brampton	Percentile 25	3	7	8	11	6	12
	Median	9	18	21	17	19	23
	Percentile 75	17	35	42	32	35	43
	Percentile 95	28	51	65	.	60	59
	Mean	11	22	27	21	23	26
	Valid N	N=85	N=275	N=307	N=10	N=48	N=31
Ottawa	Percentile 25	6	9	9	13	7	14
	Median	16	21	20	19	17	30
	Percentile 75	23	40	37	34	35	50
	Percentile 95	44	55	59	43	56	80
	Mean	17	25	24	21	22	34
	Valid N	N=68	N=139	N=270	N=21	N=45	N=40

Closed Client Files Opened and Closed to June 30, 2007 only. Table produced August 31, 2007.

### **b.iii CLO Non-Certificate Cases**

The analogous statistics for non-certificate CLO cases in Figure 3-35 is interesting from at least two perspectives.<sup>75</sup> First, for all three CLOs, the time to complete service increased from year one to year two. Further, in Barrie and Brampton, the time to complete service continued to increase from year two to year three. For instance, the year one, two and three median times to complete service increased from 9 to 16 to 19 weeks for Barrie, from 9 to 18 to 21 weeks for Brampton, and changed from 16 to 21 to 20 weeks for Ottawa.

It is also of considerable interest that for cases closed *in year one* in all three CLOs the median times to complete service for non-certificate cases were shorter than the times for certificate cases. However, in *year two* and *three* this result held some instances, but not in others. It is unclear why this has been the case.

#### *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 for year one 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.

<sup>75</sup> The statistics for Barrie should be interpreted keeping in mind the low numbers of non-certificate cases.

The following two figures provide information on the time that elapsed between the first appearance (close to the time when the CLO usually opens the case) and the provision of disclosure.<sup>76</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.

Figure 3-36

**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 3-37

**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 3-38. Nearly a third (29%) of the cases in the first year required the convening of and attendance at either two or three appearances before disclosure was available.

<sup>76</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 3-38

**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.

### 3.6.5 *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 telling the CLO to do more with less, or not to refuse certain cases, etc. Except in Barrie (where there is one less staff person than in the other offices), 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 has been at full capacity for most of the second and third year and that it is crucial to continue to develop priorities in terms of casework, and with respect to public legal education and outreach. The Barrie CLO was informed during the second year, that despite, its large caseload, LAO will not provide funding for an additional staff lawyer. During the recent illness and ultimate departure of its community legal worker, the Barrie CLO felt it was necessary to close intake, except for special needs and previous clients. Since the fall of 2007, the Barrie CLO staff has been discussing how intake of new cases can be better managed.

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 interviewed felt there was any suggestion of either phenomenon at any of the CLOs. In all three CLOs, there was universal recognition by all interviewees that there had been no problems in the relationships between the CLO staff and the various provincial and federal Crowns. There was agreement that there were appropriate relations between Crowns, prosecutors and the CLO staff lawyers and community legal workers.

#### *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.:*

- *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?*

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 and Simcoe County, in years two and three, the general consensus from the CJS interviewees was that the CLO lawyers had improved in their representation of clients with special needs—particularly the mentally ill and Aboriginal accused. In year two, concern was raised by two lawyers and one judge that, on some occasions, CLO counsel settled cases that should have been brought to trial. Though this concern was reiterated by two lawyers in year three, most interviewees believed that the CLO generally made the appropriate decision to resolve its cases through plea bargaining. There was no concern expressed in year two or three by provincial Crowns about the quality of defence provided by the Simcoe County CLO. The two judges interviewed in year three expressed no concern with respect to representation provided by the CLO. Most CJS interviewees either had no comment or indicated that CLO lawyers were comparable to the private bar with respect to their effectiveness in seeking the best possible result for their clients. Two courtworkers interviewed in year three considered the Barrie CLO to be very effective in its client representation. Crowns seem generally to perceive the CLO lawyers as “about the same” as the private bar; the opinion of the private bar ranged from good to slightly below their perception of average.

In Brampton, during the second year interviews the CLO lawyers were generally perceived positively by the federal and provincial Crowns, the judiciary and the private bar interviewed. Only three respondents did not answer the question with respect to “how likely is the CLO to go to trial”. Most CJS interviewees (13) indicated that they perceived the CLO lawyers as generally taking cases to trial on a similar basis to the private bar; one senior crown, one judge, and one duty counsel felt that the CLO lawyers were generally better than the private bar in determining when it was appropriate to go to trial. In Brampton, there was concern by some CJS respondents, particularly crowns and judges, that some private criminal lawyers were pushing cases to trial when it was not appropriate to do so. No similar concern was articulated with respect to the CLO lawyers. In terms of how effective the Brampton CLO is in obtaining the best possible result, all 19 CJS respondents to this question indicated that they consider the CLO lawyers were the same or slightly better than the private bar in

obtaining the best result for their clients. The above-mentioned difficulties with the private bar were not mentioned in the year three interviews. However, those interviews generally repeated the positive comments about the CLO lawyers with respect to these issues.

In Ottawa, in the year one interviews, eleven CJS respondents indicated 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. With respect “how effective they are in obtaining the best possible result for their clients”, seven CJS respondents said they did not know how the CLO compared in terms of effectiveness; five said they were the same as the private bar; and one said the CLO was “very good”. In years two and three, although there were some dissenters, most NGO persons interviewed felt that the CLOs were the same or (moderately) more aggressive in both taking cases to trial, and seeking the best possible results for their clients. Their commitment to their clients was certainly obvious. In Year three, the judges, lawyers and Crowns perceived the CLO lawyers to provide comparable representation to the private bar. No respondent in year three felt that the Ottawa CLO representation was worse than the private bar and, on each question related to quality of services, the NGOs rated the CLO slightly better than the private bar. In year three, the NGO interviewees expressed the view the Ottawa CLO obtained as good or better results for their clients than the private bar. The Crown and all but one of the private lawyers who responded to this question, stated that the Ottawa CLO’s results were about the same as the private bar.

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

Figure 3-39 presents information on the resolution process used in cases billed by the private bar between May 1, 2004 and June 30, 2005.<sup>77</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 the private bar would be.

This data source shows little variation within sites from year one to year two for all three sites, and within all three years for Brampton and Ottawa.<sup>78</sup> On the other hand, in year three, Barrie saw a 5% decrease in the percent with a guilty plea. There was also considerable variation in types of resolution among the sites. For instance, for cases with year three as the last year of service:

- In Barrie, Guilty Pleas are much more prevalent among private bar cases (40% in Barrie versus 24% and 27% for Brampton and Ottawa);
- Barrie has the lowest rate of contested cases (9% in Barrie vs. 16% in Brampton and 13% in Ottawa).

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<sup>77</sup> For case with multiple charges, the outcome of the case will be recorded in Peoplesoft as “contested” if at least one of the charges is contested; the outcome of the case will be recorded as “withdrawn” if at least one of the charges is withdrawn and none are contested; and the outcome will be recorded as “guilty plea” if at least one of the charges has a guilty plea and none are either contested or withdrawn.

<sup>78</sup> These rates are calculated on a base that includes the “no plea” cases.

**Figure 3-39**  
**Private Bar Certificate Cases: Type of Resolution by Site**  
**by Year of Last Service**

**Legal Aid Certificates Issued and Billed by non-CLO lawyers: Plea by Area Office by Year of Last Service**

	Barrie			Brampton			Ottawa			Other		
	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07
Withdrawn (Some or all charges)	32%	32%	34%	44%	41%	43%	44%	46%	47%	39%	38%	38%
Guilty Plea	47%	47%	40%	26%	27%	23%	30%	29%	27%	38%	37%	36%
Contested	10%	10%	9%	17%	16%	16%	13%	12%	13%	12%	13%	12%
Other	11%	11%	17%	13%	15%	17%	13%	13%	13%	11%	12%	14%
Total	1600	1873	1704	2404	2125	1903	3536	3359	2790	41392	43321	38146

Certificates billed from May 1, 2004 to June 30, 2007--table produced January 7, 2008.

## **b.ii Resolution Process: CLOs**

For certificate cases, the CLO lawyers provide data to the PeopleSoft system analogous to that provided by members of the private bar. Figure 3-40 provides statistics from that data in a form identical to that just provided in Figure 3-39 for members of the private bar.<sup>79</sup>

**Figure 3-40**

**Legal Aid Certificates Issued and Billed by CLO lawyers: Plea by Area Office by Year of Last Service**

	Barrie			Brampton			Ottawa			Other		
	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07
Withdrawn (Some or all charges)	51%	53%	53%	20%	67%	21%	44%	36%	20%	60%	33%	35%
Guilty Plea	35%	28%	32%	20%		43%	22%	7%	20%	20%	39%	35%
Contested	8%	9%	9%	40%	33%	7%	11%	36%	20%	20%	11%	12%
Other	5%	9%	6%	20%		29%	22%	21%	40%		17%	18%
Total	119	148	139	5	3	14	9	14	5	5	18	17

Certificates billed from May 1, 2004 to June 30, 2007--table produced January 7, 2008.

The low numbers of certificate cases for which data was provided by CLO lawyers from Brampton and Ottawa make comparisons of CLO data and private bar data for those areas problematic. Comparisons are thus restricted to the Barrie data.

The Barrie CLO lawyers and Barrie private lawyers are equally likely to contest cases. Both do so between 8% and 10% of the time. Cases of private lawyers in Barrie are, however, more likely to be recorded as “guilty plea” (between 40% and 47% of their cases) than are their CLO lawyer counterparts (between 28% and 35% of their cases). At the same time, cases of private lawyers in Barrie are more less to be recorded as “withdrawn on some or all charges” (between 32% and 34% of cases) than are their CLO lawyer counterparts (over half their cases, between 51% and 53%).

The PeopleSoft data on certificate cases thus portray the CLO lawyers as being as willing as private bar members to contest their clients’ cases, and as obtaining results for their clients that are comparable or favourable to those of private bar cases.

Related data (in considerably more detail) are available in Figure 3-41 and Figure 3-42 from the Legal Files Data base—separately for certificate and non-certificate cases. However, it should be noted at the outset that the outcome shown for each case in these tables produced using Legal Files data is

<sup>79</sup> The cases shown under “Other” in Figure 3-40 are cases CLO lawyers have undertaken outside there base Area.

based on the *most serious* outcome in the case (i.e. using the order of the rows in Figure 3-41). Thus, if a case had five charges and four of them were withdrawn and one was completed with a guilty plea, the outcome of the case would be defined as “guilty plea”. This compares to the Peoplesoft system which would define the outcome of the case as “withdrawn” (see earlier footnote).

Figure 3-41 is based on Legal Files data for all closed cases. Figure 3-42 is based Legal Files data on all closed cases, except those cases in which the file was closed and the type of outcome was not specified (a small percent of cases) or the file was resolved outside the CLO (for instance, because the accused disappeared or changed lawyers, or was referred to another lawyer by the CLO).

It should be highlighted that certain of the following percentages are based on relatively low numbers of cases—in particular the 31 certificate cases in Brampton and the 21 in Ottawa in year one. An additional small number of cases receiving either a guilty plea or a not guilty plea could alter the percentages significantly. A fuller analysis would also ideally consider any differences in the types of cases compared. Such analysis would, however, only become statistically feasible with a larger number of cases (and more detailed data on each of the cases). Nonetheless, the evaluation will continue to monitor the situation.

First consider the information in Figure 3-41 on the proportions of closed cases that were resolved outside the CLO. These include clients that were referred out (i.e. to duty counsel or the private bar), clients that changed lawyers, clients that absconded, or cases that ceased to qualify for legal aid.

In year 2, Barrie had considerably fewer of these cases than the other two CLOs. In year two and year three, only 8% and 11% of the Barrie non-certificate cases fell into this category, compared to 23% and 22% for Brampton and 19% and 26% for Ottawa. For certificate cases, a similar but more pronounced pattern is seen. In year three, only 9% of the Barrie non-certificate cases fell into this category, compared to 26% for Brampton and 15% for Ottawa.

Again, the statistics for Ottawa and Brampton must be interpreted keeping in mind the small numbers of certificate cases.

(Further analysis of “resolved outside the CLO” cases has been presented earlier in section 3.5.4.)

**Figure 3-41**  
**All Closed Cases**

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

SiteIDN		No Certificate			Certificate			All Closed
		Year Closed			Year Closed			
		Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	
Barrie	"Unknown_null"	9%			2%	2%	2%	2%
	"Not completed by CLO, client abscond, changed solic"	18%	8%	11%	10%	9%	9%	10%
	"Withdrawn"	27%	36%	33%	5%	5%	4%	9%
	"Acquitted_dismissed"		5%	2%	2%	1%	2%	2%
	"Absolute discharge"						0%	0%
	"Stayed"		13%	13%	3%	3%	7%	5%
	"Verdict of unfitness"					1%	1%	0%
	"Plead guilty"		13%	35%	1%	17%	68%	30%
	"Reduced"		3%	4%	2%	1%	5%	3%
	"Convicted, finding of guilty, conditional sentence"	45%	23%	2%	75%	61%	1%	39%
	# of Cases	11	39	46	166	189	205	656
Brampton	"Unknown_null"	1%	2%	4%	10%	4%		3%
	"Not completed by CLO, client abscond, changed solic"	7%	11%	8%	10%	19%	23%	10%
	"Ceased to qualify, ref to DC, resolved on own"	11%	12%	14%	10%	10%	3%	12%
	"Withdrawn"	39%	30%	17%	30%	17%	16%	24%
	"Withdrawn, plus conditions"	2%	10%	18%		8%	16%	12%
	"Acquitted_dismissed"	9%	4%	4%		2%	6%	5%
	"Absolute discharge"	1%	1%	0%				1%
	"Conditional discharge"	6%	1%					1%
	"Stayed"	5%	5%	6%	20%	2%	6%	6%
	"Plead guilty to lesser offence"		1%	3%			3%	2%
	"Plead guilty"	14%	18%	21%	10%	35%	19%	20%
	"Reduced"		0%	0%				0%
	"Convicted, finding of guilty, conditional sentence"	5%	4%	5%	10%	2%	6%	4%
	# of Cases	85	275	307	10	48	31	756
Ottawa	"Unknown_null"	1%	4%	13%	5%	4%	28%	9%
	"Not completed by CLO, client abscond, changed solic"	28%	19%	26%	14%	24%	15%	23%
	"Withdrawn"	38%	39%	20%	19%	22%	10%	26%
	"Withdrawn, plus conditions"	1%	1%	5%	5%			3%
	"Acquitted_dismissed"	4%	3%	6%		7%	8%	5%
	"Stayed"	4%	4%	0%	5%	4%	5%	2%
	"Plead guilty"	10%	22%	28%	43%	33%	25%	25%
	"Convicted, finding of guilty, conditional sentence"	12%	9%	2%	10%	4%	10%	6%
	# of Cases	68	139	270	21	45	40	583

Closed Client Files Opened and closed by June 30, 2007. Table produced October 10, 2007.

\* includes: absconded, client changed lawyers, referred by CLO to duty counsel or another lawyer

\*\* includes: withdrawn, dismissed, acquitted, conditional discharge, discharge, stayed, unfit

Given the special nature of these “resolved outside” cases, an analysis of the other types of outcomes should perhaps best be done after excluding these cases. Figure 3-42 thus does this—and also excludes data for closed cases for which the outcome was not specified.<sup>80</sup>

For their **non-certificate cases**, in year one and year two, for both Brampton and Ottawa Figure 3-42 shows similar – and high – rates of cases being either withdrawn or stayed by the Crown (55% and 58% for the Brampton CLO and 61% and 52% for Ottawa). The rates of withdrawal or stayed were lower in Barrie during the first year (33%) but at comparable levels to the other CLOs in year two (59%). While Barrie and Brampton stayed at those levels in year 3, the rate fell to 35% in Ottawa. Nonetheless, even the rates in year three add support to the argument that legal assistance is required by non-certificate cases, since 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. The drop in the rate for Ottawa in year three, if continued might however be a cause for concern.

As also shown in Figure 3-42, both Brampton and Ottawa cases entered guilty pleas in similar percents of non-contested non-certificate cases and the rates in each CLO grew steadily over the three years (from 17% to 25% to 30% in Brampton, and from 14% to 26% to 38% in Ottawa). In Barrie, in year two the rate (14%) was at the year one levels for the other two CLOs, but the in year three the rate had grown considerably (to 41%) to a level higher than the other CLOs. (However, this increase in Barrie may be simply due to a change in the way the Barrie CLO coded guilty pleas and other types of convictions in year three. The sum of guilty pleas and other convictions is probably accurate. However, the allocation of the cases among guilty pleas and the various other conviction categories is probably not accurate.)

The year two report noted that these “relatively low rates of guilty plea (in the first two years) again reinforce the potential value of representation in non-certificate cases, and confirm the fact that the CLOs are not becoming—as some predicted – “plea factories”.” However, the increase in the rate of pleading guilty in year three—especially in Brampton—makes the argument less strong, and is a development that if continued would represent a concern.

The data provided the evaluators on **certificate cases** show more pronounced differences (than for non-certificate cases) among the CLOs. However, the nature of that data placed severe restrictions on any analysis. First, there is the restriction resulting from the relatively small numbers of certificate cases handled by Brampton and Ottawa. Second, the data provided for the Barrie CLO in year three is also suspect due to the change by the Barrie CLO to an incorrect way of recording data on pleas and outcomes.

The discussion will therefore focus on the results for cases closed in year two and three in Brampton and Ottawa and in year two in Barrie.

Both Brampton and Ottawa had a significantly higher combined withdrawn and stayed rate (36% and 53% for Brampton in year two and three, 35% and 18% for Ottawa) for certificate cases than did Barrie (8% in year two).

At the same time, the Brampton and Ottawa CLOs had very similar (and decreasing) rates of pleading guilty (45% to 30% for Brampton, and 44% to 29% in Ottawa). The results were quite different for Barrie where only 19% of the certificate cases were plead guilty in year two. (However, the increase in year three is likely due to the aforementioned incorrect way of recording data on guilty pleas and other convictions in year 3.)

<sup>80</sup> As shown in Figure 3-41 the group of “unspecified” outcomes makes up a small proportion of the cases.

**Figure 3-42\***  
**Closed Cases Excluding “Closed Outside CLO” and Unspecified Outcomes**

**3-44 Most Serious Outcome of Closed Cases by Certificate or Not by Year Closed (by Site)**

SiteidN		No Certificate			Certificate			All Closed
		Year Closed			Year Closed			
		Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	
Barrie	Other	11%			3%	3%	3%	3%
	Other Withdrawn	33%	39%	37%	5%	5%	4%	10%
	Dismissed or Acquitted		6%	2%	2%	1%	2%	2%
	Discharge						1%	0%
	Stayed		14%	15%	3%	3%	7%	6%
	Verdict of Unfitness					1%	1%	1%
	Reduced or reduced_conviction on lesser charge		3%	2%	2%	1%	2%	2%
	Plead Guilty		14%	41%	1%	19%	79%	34%
	1 or more Convictions (+ other only)				1%	1%		0%
	1 or more convic (+ at least 1 non conviction**)	33%	8%	2%	52%	47%	1%	28%
	Convicted only	22%	17%		31%	18%	1%	15%
# of Cases		9	36	41	149	174	187	596
Brampton	Other	3%	4%	5%	13%	16%		5%
	Other Withdrawn	46%	38%	21%	38%	21%	22%	30%
	Withdrawn on completion of diversion or other terms	3%	13%	23%		11%	22%	16%
	Dismissed or Acquitted	11%	6%	5%		3%	9%	6%
	Conditional Discharge	7%	2%					2%
	Discharge	1%	1%	0%				1%
	Stayed	6%	7%	7%	25%	3%	9%	7%
	Reduced or reduced_conviction on lesser charge		0%	2%				1%
	Plead Guilty	17%	25%	30%	13%	45%	30%	27%
	1 or more Convictions (+ other only)			0%				0%
	1 or more convic (+ at least 1 non conviction**)	4%	1%	0%		3%	4%	2%
	Convicted only	1%	3%	5%	13%		4%	4%
	# of Cases		71	216	242	8	38	23
Ottawa	Other	2%	8%	17%	6%	6%	32%	13%
	Other Withdrawn	53%	47%	27%	22%	29%	12%	34%
	Withdrawn on completion of diversion or other terms	2%	1%	7%	6%			4%
	Dismissed or Acquitted	6%	3%	8%		9%	9%	6%
	Stayed	6%	4%	1%	6%	6%	6%	3%
	Plead Guilty	14%	26%	38%	50%	44%	29%	33%
	1 or more convic (+ at least 1 non conviction**)	2%	2%	1%				1%
	Convicted only	14%	9%	2%	11%	6%	12%	6%
	# of Cases		49	115	199	18	34	34

Closed Client Files Opened and closed by June 30, 2007. Table produced Sept 15, 2007.

Excluding cases with outcome not specified and cases absconded, changed lawyers, referred to duty counsel or another lawyer

\* N.B. Year 3 Barrie data re proportion resulting in guilty pleas is inaccurate due to inaccurate coding of data.

Further, in year two the Barrie CLO was considerably more likely to take these certificate cases to trial than were the other two CLOs. In that year, the combination of *Dismissed*, *Discharged or Acquitted*, *Reduced and Conviction* outcomes was 68% for Barrie, compared to 6% for Brampton and 15% for



Ottawa.<sup>81</sup> (As noted earlier, Barrie has a more difficult caseload generally than does either of the other two CLOs.)

Finally, there are also considerable differences from CLO to CLO in the proportions of certificate cases that resulted in a conviction in year two and three—either because of a guilty plea or a guilty verdict. Those percentages were 91% and 84% in the Barrie CLO, compared to 57% and 54% in Brampton, and 50% and 59% in Ottawa. These differences certainly merit further investigation.

The main recommendation following from this analysis of Legal Files data is that the Barrie CLO change its method of recording guilty pleas and other types of convictions back to a manner consistent with that of previous years and that of the other two CLOs.

Unfortunately, given the differences in the manner in which case outcomes are defined in the Peoplesoft data and in the Legal Files data, comparisons between private bar cases (only available from Peoplesoft) and CLO Legal Files data would not be valid.

### **b.iii Sentences of CLO Cases**

(In interpreting the dispositions and sentences received by closed cases in the following tables, the reader is reminded that the statistics are based on data from only those cases in which a conviction was recorded.)

Figure 3-43 utilizes data from Legal Files to describe the types of dispositions and sentences received by all closed cases that resulted in convictions. 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 received a prison sentence except in year three, and only one or two cases in Brampton or Ottawa did so. Instead, in all three sites, non-certificate cases were most likely to receive sentences such as suspended sentences, probation, and fines.

On the other hand—keeping in mind the relatively low numbers of certificate cases in Brampton and Ottawa—there were differences among the sites regarding the likelihood of receiving prison sentences for convicted *certificate* cases—with the likelihood ranging from 74%, 61% and 81% in year one, two and three and 49% in Barrie, to lower in both Brampton (50%, 28% and 33%), and in Ottawa (0%, 53% and 21%).

<sup>81</sup> As part of the review process for this report, the writers were, however, alerted to the possibility that this result might be misleading in that many of the cases coded as withdrawals may in fact have been withdrawn “at the courtroom door” and thus at the point at which a trial would otherwise have commenced.

Figure 3-43

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

SiteidN		Not Certificate			Certificate		
		Year Closed			Year Closed		
		Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Barrie	"No logical grouping"					.7%	
	"Absolute, conditional discharge"		13.3%	5.3%	2.3%		.7%
	"Peace bond"				.8%		
	"Conditional discharge plus probation or other condition"		6.7%	31.6%	.8%	1.3%	1.3%
	"Suspended sentence"	20.0%			7.0%		.7%
	"Suspended sentence, probation, conditions"		20.0%	5.3%	8.5%	13.3%	3.9%
	"Conditional sentence"				3.9%	8.0%	4.6%
	"Probation"	40.0%	13.3%	10.5%	8.5%	9.3%	3.9%
	"Fine"	20.0%	26.7%	31.6%	3.1%	4.0%	3.3%
	"Fine and probation"	20.0%	20.0%		.8%	2.0%	.7%
	"T serve, PT cust, TD + a day, TS + proba"			10.5%	10.1%	5.3%	52.0%
	"Intermittent sentence"				7.0%		2.6%
	"Prison 2 years less a day"			5.3%	15.5%	22.7%	10.5%
	"Prison plus fine"				.8%	.7%	
	"Prison plus probation"				30.2%	32.7%	15.8%
	"Pen sentence"				.8%		
	Cases	5	15	19	129	150	152
Brampton	"Not specified, null, blanks"	6.3%	12.9%		50.0%		
	"Withdrawn"		3.2%	1.1%			
	"Absolute, conditional discharge"	37.5%	14.5%	30.0%		11.1%	11.1%
	"Conditional discharge plus probation or other condition"		21.0%	17.8%		11.1%	22.2%
	"Suspended sentence"	6.3%	1.6%				
	"Suspended sentence, probation, conditions"	12.5%	12.9%	14.4%			
	"Conditional sentence"		4.8%	1.1%		5.6%	
	"Probation"	6.3%	1.6%	10.0%		33.3%	
	"Fine"	6.3%	3.2%	14.4%			11.1%
	"Fine and probation"	12.5%	1.6%				
	Fine and Driving Prohibition	12.5%	21.0%	5.6%		11.1%	22.2%
	"T serve, PT cust, TD + a day, TS + proba"		1.6%	1.1%		16.7%	33.3%
	"Prison 2 years less a day"			1.1%		11.1%	
	"Prison plus probation"			3.3%	50.0%		
	Cases	16	62	90	2	18	9
Ottawa	"Not specified, null, blanks"	13.3%		6.3%			7.1%
	"Withdrawn"			2.5%			
	"Absolute, conditional discharge"	26.7%	16.7%	25.0%		11.8%	7.1%
	"Peace bond"			5.0%			
	"Conditional discharge plus probation or other condition"	13.3%	33.3%	18.8%	27.3%	5.9%	14.3%
	"Suspended sentence"	6.7%	4.8%	7.5%	18.2%	5.9%	
	"Suspended sentence, probation, conditions"	13.3%	9.5%	12.5%	9.1%	17.6%	21.4%
	"Conditional sentence"			1.3%	9.1%	5.9%	
	"Probation"		2.4%	2.5%	9.1%		
	"Fine"	13.3%	26.2%	12.5%	18.2%		21.4%
	"Fine and probation"	6.7%	4.8%	3.8%	9.1%		7.1%
	"T serve, PT cust, TD + a day, TS + proba"		2.4%	2.5%		5.9%	
	"Prison 2 years less a day"					17.6%	7.1%
	"Prison plus probation"	6.7%				23.5%	7.1%
	"Pen sentence"					5.9%	7.1%
	Cases	15	42	80	11	17	14

Closed Client Files opened and closed by June 30, 2007--Convictions only. Table produced December 31, 2007.

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. However, it is important to ascertain that appropriate factors underlie these differences from site to site.

#### 3.6.6 **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 designed by LAO (with some comments from the evaluators) to their clients when the case is closed and the statement of “billings” is copied to the client. Completed questionnaires are to be forwarded by the clients directly to the evaluators.

As of October, 2007, 46 such completed surveys had been received, all from Ottawa. Those results are presented in detail in Appendix B.

Although the design of the survey makes it impossible to tell, most of these Ottawa surveys were likely to apply to cases closed during the third year. Whether responses received are representative (e.g. in terms of type of case or case outcome) of all cases closed in Ottawa is unknown. However, it is also clear that the surveys are not representative of all cases closed in Ottawa with respect to services provided. For instance, at least 70 percent of the 46 responses said “the CLO assisted in making a plan which would help the client get a lighter sentence”, and “spoke up for in court about the sentence the client should get”.

It would therefore be invalid to extrapolate from these results to all cases handled by the Ottawa CLO—and certainly not to cases handled by the other CLOs.

Nonetheless, it is noted that all of the results are uniformly positive on all questions.<sup>82</sup>

There is certainly a role for client satisfaction surveys. However, major changes are needed to the client satisfaction survey and especially the survey distribution and collection process if they are to produce statistically valid and reliable results on matters of interest to the CLOs and LAO management.

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<sup>82</sup> For instance, close to 80% were “satisfied” or “very satisfied” with “the service received from the CLO” and “the amount of time it took to get service from the CLO”.

### 3.6.7 *Continuing Professional Development*

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

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

Because of the reaction of the bar to the creation of the CLOs by Legal Aid Ontario, CLO lawyers were initially barred from being full members of the local criminal lawyers' association. This has meant that they were not welcome to participate in certain local continuing education programs which have a professional development component. Fortunately, the positions of the local bars—at least regarding excluding CLO members from educational events sponsored by the local criminal bar—has changed. The Ottawa CLO lawyers have been accommodated in recent professional development sessions organized by the local criminal bar, as have members of the Brampton CLO.

However, there have been concerns that the budget of the CLOs does not allow for adequate professional development. On the other hand, during the past two years, several CLO lawyers were able to attend the annual National Criminal Law Program in Fredericton, New Brunswick in the second year<sup>83</sup>. However, concerns were expressed in year three interviews as to the difficulties of obtaining funding to take advantage of professional development opportunities that were considered important by CLO staff.

### 3.6.8 *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”.

As noted earlier, in Barrie, in year one, there were some differences in opinion with respect to how well-prepared the CLO lawyers were for their cases. In the second and third years, there was a general opinion amongst those interviewed, that the CLO lawyers were generally well prepared for their cases and had done their legal and factual research. Crowns interviewed indicated that they perceived the CLO lawyers as “generally well-prepared – about the same as private lawyers. Private lawyers interviewed were evenly divided in their opinion about how well the CLO lawyers argued and prepared their cases but all agreed with the Crowns and judges that the CLO lawyers were aggressively seeking the best possible results for their clients in comparable fashion to the local criminal bar. There was particular commendation from the local bench that the CLO was developing expertise in representation of Indigenous person and the mentally ill. The Barrie CLO lawyers stated

<sup>83</sup> For many staff this one seminar plus a number of inexpensive short local programs constituted nearly all of their professional development for the year

that they attempted to spend more time on difficult files because many of the CLO's clients had special needs and often time-consuming social and legal problems. The community legal worker indicated that obtaining medical reports and other information for both bail and sentencing often caused delays. In year three, two senior judges and a courtworker for the Indigenous community indicated that they considered the CLO lawyers and support staff to be more effective in obtaining the best possible result for their clients.

In Brampton, during the interviews in year two and three, we were able to obtain a good number of CJS respondents to each question. The year three interviews generally paralleled those of year two.<sup>84</sup> In year three, the CLO were seen by a strong majority of interviewees to be at least as good as the private bar with respect to:

- “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”;
- “how skillfully they deal with diversion personnel”;
- whether they had good and appropriate relationships with the judges, the crowns, diversion personnel and court officials.

In Ottawa in the year two and three interviews, most CJS representatives (judges, crowns, and private bar members) indicated that the CLO lawyers were at least as well prepared for court appearances as were private bar members. They were also comparable or better in aggressively seeing the best possible result for their clients. Most interviewees in year three, indicated that they considered the CLO lawyers were very effective in obtaining the best possible results for their client. Finally, most of the CJS persons interviewed felt that the CLO lawyers were equally capable as the private bar in dealing with Crowns, judges, diversion personnel and other court personnel.<sup>85</sup>

In year two, a number of members of the judiciary and the crowns interviewed encouraged the CLO lawyers to present more focused and strategic arguments in furthering their client's case. No such concerns were mentioned in year three. This likely reflects the presence of two more senior lawyers on the Ottawa CLO staff.

As noted above, a sizeable proportion—but not all—of those interviewed had the perception that not having the strictures of having to make a profit (or stick to the tariff guidelines regarding billable hours) did allow the CLO lawyers to potentially spend more time preparing and arguing a case than available on a legal aid certificate .

Other measures of “quality of service” are presented throughout this report. However, the next section presents the results of the special “Peer Review” study undertaken during the last year.

<sup>84</sup> However, in year two negative comments--about both the private bar and the CLO—were heard more frequently. However, even in year two such comments were heard in a small minority of interviews.

<sup>85</sup> In Ottawa, in year one, 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 lawyers 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: Of the 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.

### 3.6.9 *Peer Review*

#### *a Introduction*

As part of the ongoing evaluation of Legal Aid Ontario's Criminal Law Offices, it was decided that "peer review" should form a part of that process. Peer Review is a model of quality assurance that selects and trains specialist legal service providers how to review and evaluate the work of lawyers working in the same specialty area by reviewing and assessing the documentation of a number of specific service delivery issues in a reasonable number of case files.

The idea of peer review, involving independent and experienced lawyers evaluating the work of other lawyers, did not originate in Canada. Rather, over the last fifteen years peer review has become an important element of publicly funded legal services throughout England, Wales and Scotland and is now well established by their legal aid solicitors. As in the United Kingdom, it was decided that Criminal Peer Review in Ontario would not include observation of lawyers at the various stages of the criminal justice process. Rather, it would be based exclusively on the contents of lawyers' files, without reference to data from Legal Aid Ontario's electronic case-file management system (which includes biographical information concerning each client, time docketing, etc.). File management is generally accepted as a central part of good lawyering, and may have important ramifications for the results in a case and for the client. While this process does not evaluate actual performance, it offers a tool to determine whether appropriate standards of practice have been followed in the cases reviewed. Peer review of files is a valuable measurement tool since the documentation of a file is perhaps the best indicator available to demonstrate the lawyer's work in representing a client, and doing so in a cost-effective manner.

In order to provide a means to evaluate the quality of services being offered in the Criminal Law Offices, and given the experience in the United Kingdom and Scotland, it seemed sensible to make peer review a component of the larger evaluation process for the Criminal Law Offices in Ontario. Peer review provides a valuable addition to the tools that can be used to objectively measure the quality of legal services delivered by the Criminal Law Offices.

#### *b Methodology*

Professor James Stribopoulos of Osgoode Hall Law School was recruited to design and oversee the peer review process. Although primarily a criminal law academic, Professor Stribopoulos also has considerable experience as a criminal trial and appellate lawyer. In helping to make Peer Review a part of the evaluation process for the Criminal Law Offices, Professor Stribopoulos worked closely with Professor Frederick Zemans, one of the principal investigators in the overall evaluation process.

Drawing on the English experience, Professors Zemans and Stribopoulos developed a Peer Review Form. The form (plus guidelines for its use) is attached as Appendix A to this Final Report. The form identifies the variety of criteria to be used in assessing a lawyer's performance in individual cases. The review is based, as it is in England, on an examination of closed client files. The areas considered include:

- The File
- Communication
- Information and Fact Gathering
- Advice and Assistance

- The Work / Outcome
- Efficiency
- General

The Peer Review Form sets out a number of discrete criteria within each of these larger areas of inquiry. Most aspects of a lawyer's performance are to be rated on a 5 point scale, for example with "1" indicating "not performed / or performed very poorly", "3" indicating "competent" in the sense of meeting "the standard of a reasonably competent criminal lawyer" and "5" indicating "well above the standard of a reasonably competent criminal lawyer".

In order to both structure and confine the discretion of individual peer reviewers, and in an effort to ensure consistency in the application of the evaluation criteria among files and among lawyers, detailed Peer Review Guidelines were developed to explain each potential score along the 5 point scale with respect to each and every one of the evaluation criteria. The Peer Review Guidelines are attached as Appendix B(again, check ) to this Report.

The Peer Review Form and Peer Review Guidelines were developed and refined through extensive consultation with Legal Aid Ontario, the Directors and lawyers at each of the Criminal Law Offices and senior members of the criminal bar. Initial drafts of the Peer Review Form and Peer Review Guidelines were made available to a number of organizations representing the criminal bar and feedback was actively solicited before these evaluation tools were finalized.

In addition, in July of 2006 a full day training session was held for all of the lawyers at the three Criminal Law Offices. At this session the lawyers were introduced to the Peer Review Form and Peer Review Guidelines. The Peer Review process was explained to the lawyers. The need for sound file management practices, including the importance of fully documenting the files at all stages in the litigation was impressed upon the lawyers in attendance. Beyond making plain that such practices were essential for a Peer Review process that would be based on a review of closed files, the professional obligation placed on all lawyers to maintain a proper file was also strongly emphasized.

Initially the goal was to review both the work of the lawyers within the Criminal Law Offices and that of criminal lawyers from the private bar, whose practices were made up predominately of Legal Aid certificate work and who were at experience levels comparable to the lawyers staffing the Criminal Law Offices. This group would therefore serve as a comparison and control group. Despite a concerted effort to recruit members of the criminal bar, including running two full-page advertisements in the Ontario Reports and in the Lawyers' Weekly, it ultimately proved impossible to assemble a group of experienced criminal lawyers who would serve as an appropriate comparison group to the CLO lawyers. As a result, it was decided that the peer review process would be directed exclusively at the eight lawyers employed by the Criminal Law Offices. The absence of the comparison with the private criminal lawyers working on certificates, as part of the Criminal Peer Review process, made the overall peer review somewhat less valuable than had been anticipated. However, the peer reviewers are all highly experienced criminal lawyers, familiar with the standards of criminal practice in Ontario and of the normative expectation of file documentation, and the peer review process has proven to be a valuable tool to assess the CLO lawyers. It has also provided a platform for continuing education and training for staff lawyers.

Recruitment of senior members of the criminal bar to serve as the Peer Reviewers took place during the winter of 2006/2007. Recruitment strategies included two full-page advertisements in the Ontario Reports and one in the Ontario Lawyers' Weekly, as well as targeted solicitations of individuals who were specifically recommended by the Area Directors in the three jurisdictions where the Criminal

Law Offices are located. In addition, a number of senior members of the criminal bar were contacted and encouraged to apply.

A number of applications were ultimately received from individuals who wished to serve as Peer Reviewers. From this pool of applicants a short list was created and each candidate on that list was interviewed. Ultimately, three Peer Reviewers were selected. All three are experienced and respected members of the criminal bar. The most junior has been practicing criminal law for ten years, while the most senior has over twenty-five years of experience. Each of the Peer Reviewers had some familiarity with the jurisdiction in which the lawyers they would be evaluating were practicing.

The three Peer Reviewers received training to provide them understanding and familiarity with the Peer Review Form and Guidelines. This training included conducting practice peer reviews on actual closed files. The goal of this training was to ensure that each reviewer had a clear sense of the Peer Review evaluation criteria and to ensure consistency in how the evaluation tools would be applied.

A list of files closed by each lawyer within the Criminal Law Offices since August of 2006 (which post-dates the CLO lawyers' training session) was supplied by Legal Aid Ontario to Professor Stribopoulos. For each of lawyers at the Criminal Law Offices, Professor Stribopoulos randomly selected twenty closed files to be assessed by the Peer Reviewers. The Peer Reviewers were instructed to attend at the Criminal Law Offices with these lists and to request the specified files. The Criminal Law Offices were not provided with any advanced warning as to which of the files the Peer Reviewers would scrutinize. The Peer Reviewers were instructed to work through the files on their lists until they had completed a review of 15 files for each of the lawyers. The Peer Reviewers were instructed to disregard any file that was not the subject of any "meaningful work by the lawyer". In other words, files that were opened but quickly closed, for example, because it was determined that the client was not eligible for assistance from the Criminal Law Office or where the client ultimately decided not to be represented by the lawyer, were not to be considered. Ultimately, with at least some of the lawyers, the initial batch of twenty closed files proved insufficient. As a result, Professor Stribopoulos forwarded updated lists in which five additional randomly selected files were added to the list of files for peer review to be scrutinized for each lawyer.

Beyond evaluating fifteen closed files for each of the lawyers at the Criminal Law Offices, the Peer Reviewers were also required to meet with each lawyer at the end of the review process. The purpose of these "exit interviews" was for the Peer Reviewers to ask for clarification and explanations for any matters that remained unclear after their review of the lawyer's closed files.

Finally, based on their scoring of fifteen files for each lawyer, in conjunction with insights gained through the exit interview, the Peer Reviewers were required to prepare a Peer Review Report for each of the lawyers being evaluated. In this Report the Peer Reviewers were asked to summarize their findings, highlighting strengths and weaknesses observed and making suggestions for future improvement. Finally, each Peer Reviewer was asked to give the lawyer evaluated an overall score based again on a five point scale. By way of guidance, in arriving at a grade for each lawyer's overall performance, the following criteria were to be considered:

#### **5 Excellent**

The lawyer has performed well above the standard of a reasonably competent criminal lawyer. The following may evidence this:

- Client's instructions are fully and appropriately recorded.
- Communication, advice and other work are carefully tailored to each individual client's circumstances.



- Clients are advised fully and correctly.
- All relevant legal and factual issues are identified and managed appropriately.
- The lawyer demonstrates in-depth knowledge and expertise in moving the case to final resolution.
- There is excellent use of tactics and strategies, demonstrating skill and expertise, in an attempt to ensure the best outcomes for clients.
- The lawyer adds value to the file, taking a fully proactive approach and considerably improving the client's position throughout the litigation.

#### **4 Above average**

The lawyer meets the standard of a reasonably competent criminal lawyer and in certain aspects of her work routinely exceeds that standard. The following may evidence this:

- Client's instructions are appropriately recorded.
- Advice and work is tailored to individual client's circumstances.
- Clients are advised correctly and completely.
- Issues are progressed comprehensively, appropriately and efficiently.
- Tactics and strategies are employed to achieve the best outcomes for clients.
- The lawyer adds value to the file and takes a proactive approach.

#### **3 Competent**

The lawyer meets the standard expected of a reasonably competent criminal lawyer. The following may evidence this:

- Client's instructions on key issues are appropriately recorded.
- There is adequate but limited communication with the client.
- Key legal and factual issues are identified.
- Some evidence of tactics and strategy informing lawyer's approach.
- The advice and work is adequate although it may not deal with other linked issues beyond the most basic.
- Case outcomes are as should be expected.

#### **2 Needs Improvement**

The lawyer is performing below the standard that is expected of a reasonably competent criminal lawyer, and his or her performance requires some improvement. The following may evidence this:

- Information is not being recorded or reported accurately.
- There is limited communication with client and it is sometimes of poor quality.
- Important legal or factual issues occasionally go unnoticed.
- The advice and other work are inadequate.
- Some cases are not being conducted with reasonable skill, care, and diligence.
- The timeliness of the communication, the advice and other work is inadequate.
- There are occasional lapses below the required standard.

**1 Very Poor**

The lawyer is performing very poorly and is consistently falling well below the standard of the reasonably competent criminal lawyer. Significant improvement is required in order for the lawyer to meet the reasonable competence standard. The following may evidence this:

- Information is not being recorded or reported accurately.
- Communication with the client is very limited and often of poor quality.
- Important legal and factual issues regularly go unnoticed.
- There is a clear lack of preparedness at important stages of the litigation.
- Cases in general are not being conducted with reasonable skill, care, and diligence.
- The timeliness of the communication, the advice or the work is often inadequate.
- There is no meaningful service being provided, or the service leads to potential or actual prejudice to the client.
- Ethical requirements are being ignored, for example acting on a guilty plea where a client does not admit his guilt.

In order to ensure that the Peer Review criteria were applied consistently, Professor Stribopoulos conducted a separate double-blind check on the work of each Peer Reviewer. On the completion of their work each Peer Reviewer supplied Professor Stribopoulos with a list of files reviewed for each lawyer and provided Professor Zemans with their Peer Review Report for each of the lawyers being evaluated. The Peer Reviewers did not share their findings with Professor Stribopoulos. Professor Stribopoulos attended at the three Criminal Law Offices and reviewed 20% of the files that had been considered by the Peer Reviewers, scoring each file using the same Peer Review Form and Peer Review Guidelines.

On the completion of his review, Professor Stribopoulos communicated his general findings to Professor Zemans, regarding his assessment of each lawyers in the Criminal Law Offices. In every case Professor Stribopoulos' assessments corresponded with those of the Peer Reviewers. In other words, the findings that are set out below are the conclusions not only of each Peer Reviewer but also of Professor Stribopoulos whose reviews proceeded separately from that of the individual Peer Reviewers

*c Summary of Findings*

The average score of the eight lawyers who were evaluated by the Peer Reviewers was 3.5 indicating that the lawyers working at the Criminal Law Offices were found to be providing legal services that exceeded the standard that one would expect of reasonably competent criminal lawyers.

Two of the lawyers evaluated were found to be providing competent to above average legal representation to their clients (essentially, 3.75 on the 5 point scale outlined above).

Four of the lawyers evaluated were found to be providing legal services slightly better than one would expect from a reasonably competent criminal lawyer (3.25 to 3.50 on the 5 point scale).

One of the lawyers evaluated was found to be performing at just below the reasonable competence level, receiving a score of 2.8 primarily because of significant failings in the lawyer's file management practices. The major concerns of the Peer Reviewer centred on the lack of "written documentation

from client[s] in files, including client's version of facts and written instructions from clients." As well, the Peer Reviewer was concerned with the lack of written memos by the lawyer and evidence of how the "the lawyer obtained the results achieved [i.e. good results but how did the lawyer get there?]."

Finally, one of the lawyers received an overall score of 2.5. This lawyer will need to make improvements to the documentation of his clients' files in order to meet the reasonable competence standard. The Peer Reviewer's major concern, in this case, focused on the "failure to obtain a written summary of the facts from the client." This made it difficult for the Peer Reviewer to determine whether or not the client had defences to the charges, including any charter issues. The Peer Reviewer noted "that on the one file that I reviewed in relation to this lawyer which involved a contested trial, the lawyer appeared to do a good and competent job with a good result. In the files that I reviewed involving mental health issues, the lawyer did a good and competent job with good results."

#### *d Strengths of the Files Reviewed*

A consistent observation, made by the Peer Reviewers regarding virtually all of the lawyers evaluated, was the quality of the *results* obtained by the lawyers for their clients. The CLO lawyers got good and in some cases excellent outcomes for their clients. In a reasonable number of cases the peer reviewers noted that the "outcomes were as good as or better than expected in the circumstances". The CLO lawyers reveal a level of competence that would be expected from criminal counsel of their experience and also suggest that the lawyers are committed to obtaining a "favorable result for their clients and take all factors into consideration".

Not surprisingly, the lawyers who scored near the top overall, receiving 3.75 as their rating on the 5 point scale, were found to routinely secure "good to excellent outcomes" for their clients.

A Peer Reviewer commented, with respect to a lawyer who scored slightly above the reasonable competence standard (receiving a 3.25), that "this practitioner has many years experience" and "works hard" on behalf of clients. Another lawyer who scored similarly in the overall evaluation process was, according to the Peer Reviewer, "capable" in negotiating favourable outcomes for clients "such as peace bonds and withdrawal of the charges" and that the lawyer "demonstrated resourcefulness in taking advantage of various diversion programs."

In fact, when it came to actual results obtained, the overall scoring of each lawyer was not necessarily indicative of the outcomes that were often obtained by the lawyers. So, for example, one lawyer who was found to be practicing at slightly above the "reasonable competence" level was also found to get "good or excellent results for clients in almost all cases."

Similarly, the two lawyers who were found to be practicing below the reasonable competence standard obtained good results for their clients. For example, with respect to one of these lawyers, the Peer Reviewer concluded that in "terms of overall results for client, in most files that I reviewed the lawyer did a good and competent job, particularly in relation to files involving mental health issues." As quoted above, the second lawyer who overall received a ranking of below the reasonable competence standard was also the subject of positive comments by the Peer Reviewer with respect to a file involved a contested trial and his mental health files in which the CLO lawyer did a "good and competent job with good results."

Overall, the lawyers working at Legal Aid Ontario's Criminal Law Offices tend to obtain good outcomes for their clients. Results are significant to both clients and to the providers of legal services.

Nevertheless, good outcomes do not necessarily tell the entire story. As Professor Stribopoulos concluded, “it is not just good results that distinguish the best criminal lawyers, it is also how those results are obtained. Peer Review, as it has developed, is dependent on the understanding that good lawyering requires appropriate documentation of process and on lawyers keeping detailed files that include the client’s instructions and the strategies and analysis undertaken by the lawyer.” These may be critical with respect to future developments with respect to the case.

The files of the lawyers who received higher than average scores evidenced a clear appreciation of the relevant legal and factual issues in the litigation. These files generally included evidence that necessary legal research had been undertaken, appropriate legal motions had been filed and, where necessary, factums had been prepared. Many of the files contained clear evidence of very effective lawyering on the part of counsel employed by the Criminal Law Offices.

#### *e Weaknesses*

##### **e.i Documenting the file**

A major shortcoming was a general failure on the part of the lawyers to adequately document their files, particularly in two of the offices. This included a failure to properly document developments in the litigation, including memos to file recording important details regarding court appearances, meetings with prosecutors, discussions with potential witnesses and, most importantly, meetings and discussions with the client. File documentation was a source of considerable concern in two of the CLOs. For example, in one of these offices, copies of reporting letters to clients at the completion of the cases were not contained in the closed files reviewed. In the other office, although reporting letters were sent, they regularly failed to fully explain the outcome and its implications for the client.

Basic biographical information regarding the client, discussions with clients regarding their version of events, developments in the litigation, strength and/or weaknesses in the Crown and defence cases, the reasons behind tactical decisions, whether to plead guilty or not guilty, and the bases for a guilty plea are all essential matters that should be recorded in detail in the file. With respect to two of the Criminal Law Offices, this was almost never documented. In one of these offices there was a greater effort to record such information and evidence of this was found in some of the files reviewed. All the CLOs initially used a pre-printed form at the front of every file that provided space for the lawyer to enter important information. In many cases, important parts of this form were often left blank and in one office seldom used at all.

This is a significant problem for a number of reasons. First, a client’s case can take time to work its way through the court process. If important information is not properly recorded, it can fade from the lawyer’s memory and ultimately the benefit of that information may be lost.

Good practice dictates that early in the litigation a lawyer should take the time to carefully interview the client. Although experienced criminal lawyers may disagree on when precisely the client interview should take place, whether it should come shortly after the lawyer is retained or await receipt of the Crown’s disclosure of materials, all would agree that a detailed interview relatively early in the life of a file is an absolute must. While relevant events are still fresh in the client’s mind, it is essential that the lawyer document the client’s version of events. This early record of the client’s “story” can be critical later, for example in preparing the client to testify at trial. In one of the CLOs, evidence of this sort of detailed client interview was not found. In a second CLO, there was inconsistent evidence of detailed interviews.

Beyond the best interests of the client, it is also in the best interests of the lawyers and Legal Aid Ontario for files to be properly documented. There are two principal reasons for this. First, if a lawyer were to be unavailable to complete a client's matter a well-documented file would permit another lawyer to assume responsibility for the file with minimal disruption. Second, if a client were to subsequently make allegations of ineffective assistance of counsel either in seeking appellate relief or civil redress, a well-documented file would go a considerable distance in helping to defend against such a claim.

The failure to properly record information may result from a lack of clear expectations from Legal Aid Ontario regarding file management practices. Alternatively, it may be that the caseload of the lawyers in the Criminal Law Offices is such that they don't have adequate time to document their files and still fulfill all of their other responsibilities. One lawyer's explanation during the exit interview with a Peer Reviewer, as to why information was not properly recorded, point to both variables as potential explanations. The lawyer reported that when it is clear that a matter will not be going to trial, the lawyer tends to document less. According to this lawyer, if it happens that the lawyer is very busy but "things are going well" on a file, the lawyer will refrain from documenting conversations with the client.

#### **e.ii the timing of and preparation for guilty pleas**

In one of the CLOs the level of documentation supporting the timing of guilty pleas entered on behalf of clients appeared problematic. The Peer Reviewer noticed in the files that the lawyers did not provide adequate information relating to the CLO's efforts with respect bail, character evidence or trial issues. Based on the evidence documented in the file, it was difficult for the Peer Reviewer to determine if it was appropriate for the lawyers to have had the client plead guilty.

#### *f Variation Among Offices*

Although there was consistency in some of the strengths and weaknesses observed in each of the Criminal Law Offices, there was also some noteworthy variation among offices.

For example, one office had considerably better file documenting practices than the other two. Files in this office generally included comprehensive notes of detailed client interviews, soon after the CLO was retained. Case developments, including each communication with the client, were well documented. Shortcomings in Crown disclosure were often followed-up with a detailed letter to the Crown identifying the problem and requesting that it be corrected. In cases where it seemed warranted, written instructions were obtained from clients with respect to guilty pleas. Finally, all files were closed with a copy of the final account sent to the client, accompanied by a reporting letter that clearly explained to the client the outcome in their case and its implications.

The other two Criminal Law Offices did not match the file management practices evident in the office just described. In one of them, the information recorded in client files was, at best skeletal.

#### *g Recommendations*

Legal Aid Ontario should to takes steps to standardize file management procedures at all three Criminal Law Offices. At present, practices vary dramatically from one office to the next. It appears that the standard of practice, and particularly file management, of individual offices are determined by

the practice habits of the Director of each office. The Peer Review process has identified clear standards and expectations with respect to both file management and client services. Ideally Legal Aid Ontario will continue the development and administration of quality assurance standards.

Legal Aid Ontario should formalize guidelines and ensure that lawyers employed at the Criminal Law Offices are properly trained in appropriate file management procedures. This should include clear expectations regarding the sort of information that *must* be recorded in the file and the level of detail with which such information is recorded.

Legal Aid Ontario should establish a format for periodic review of the files in concert with the lawyers to ensure that the guidelines are being followed. As well, periodic quality assurance visits, by either independent Peer Reviewers or a senior criminal lawyer with LAO), should be regular enough that problems or concerns are noticed early and addressed before they become entrenched.

#### 3.6.10 **Quality: concluding Comments**

Quality is a multi-faceted concept. However, on nearly all dimensions considered, the CLOs provide case-specific services of a more than competent quality that is generally at least equal to that provided by a typical member of the private bar handling similar cases.

However, certain potential areas of improvement have been identified—here and in the summary in Chapter 1. Hopefully that information will help the CLOs in their efforts to continually improve the quality of their service.

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

As in the first and second year reports, the information presented in the preceding chapter on the characteristics, litigation process and results for non-certificate cases handled by the CLO raise a profound access to justice issue. First, the data collected on CLO cases clearly indicate that these cases certainly exhibit characteristics that signal the presence of legal issues and the need for the accused and the court to have legal advice available to the accused to help deal with these issues. For instance, sizeable numbers of these cases were identified as having triable legal issues.

Secondly, evidence is also presented that there is an opportunity for a well-advised accused to benefit from putting up a defence. One of the best examples is the evidence given of the opening position put forward by the Crown on these cases.

Finally, evidence is presented that having legal representation available does have an impact—as attested by the CLOs’ success (particularly in Brampton and Ottawa) in getting significant numbers of charges withdrawn or stayed and diverted.

All of this 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 deemed to be 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 currently covered by legal aid and services which are not.

### **3.8 Concluding Comments**

A summary of the major findings in this Chapter can be found in Chapter 1, section 1.7.2.

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## Chapter 4: Systemic Law Reform: Non-Casework (Outreach and Law Reform) Objectives

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### 4.1 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.

Over the three years of their operation, each CLO has developed close ties with agencies in their communities and is receiving direct requests for services. This is particularly the case in Barrie and Brampton, where the CLOs have developed close relationships with local Canadian Mental Health Association workers. In Barrie, the CLO also works closely with the Native Friendship Centre.

In addition, the CLOs are expected:

- 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.

Information related to the first group of objectives was sought from all stakeholder groups. However, most interviewees who were not directly involved in the area in question had little knowledge of the CLOs’ outreach and reform efforts. Information related to the CLOs’ efforts with respect to the last



two objectives is based primarily on interviews with LAO and CLO staff, and with LAC members (including NGOs).

Information from the interviews is discussed next in this Chapter. The Chapter then reports on the analysis of empirical information from Legal Files on the efforts spent by CLO staff on systemic/law reform and other non-case specific activities.

## 4.2 Observations from the Interviews

### 4.2.1 *Highlights*

During the first two years of interviews, we asked LAO and CLO staff seven questions regarding each of the different 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?*
- *what other strategies should be developed in the future? and*
- *is each of the goals still relevant and supportable? Should the goals be changed or reviewed?*

(The year three interviews did not repeat these specific questions, but addressed the issues in a more general fashion.)

Before discussing the responses to these specific questions, some general observations should be highlighted.

- All of these objectives were considered to be worthwhile potential activities by those interviewed (including the CLOs, private lawyers, Judges, Crowns, NGOs and private bar respondents) in each of the sites.
- Ambiguity exists with respect to certain objectives, particularly law reform and test case litigation. Issues include:
  - How broadly criminal law reform should be defined in the context of CLOs;
  - The appropriate amount of professional time to be allocated to systemic law reform issues;
  - The appropriate strategies for the initiation and implementation of a law reform agenda.
- Other respondents indicated that the CLO could more effectively make a contribution indirectly, by providing legal counsel to community groups that are involved in criminal justice law reform projects.<sup>86</sup>
- All of the CLOs initially hired community legal workers (CLWs) who knew the social service environment in their area. The CLOs made good connections with relevant social services in their region. However, all three original CLWs have left and have been replaced by CLWs who are currently expected to focus primarily on case delivery issues, with little time for law reform or community outreach.

<sup>86</sup> A small number of those interviewed questioned whether other groups might not be more qualified to handle test cases to further the administration of justice – i.e., Pro Bono Ontario.

- All the CLOs have found that during the second and third years of operation, increasing caseloads have severely restricted the availability of their professional staff from undertaking community outreach and law reform activities.
- In the final interviews, we heard requests by local NGOs for more frequent contacts and on-going collaboration with the CLOs, as well as suggestions from criminal lawyers that there is a need for greater leadership in local law reform projects. There is clearly a desire for the CLOs to develop not only a unique and distinct caseload but to respond to their clients' needs through the development of legal or procedural reform and community outreach strategies. (Among the issues discussed by respondents were the importance of greater representation and involvement in issues at the mega-jail in Penetanguishene; and addressing issues of racial profiling, persons facing deportation, and youth cases in which the parents offer no financial support.)

#### **4.2.2 *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 diversion, sentencing and disposition planning for their clients. However, as regards bail programs, the CLOs have a much more restricted role. For instance, the Brampton and Ottawa CLOs have had very little involvement in bail hearings and many interviewees noted that addressing issues related to bail was an area adequately handled by Duty Counsel. The Barrie CLO continues to be involved in bail hearings because of its significant certificate practice, which involves a large number of returning clients.

In Brampton, the CLO—as an alternative to taking on many such cases on a non-certificate basis—has developed a clinic for persons accused of impaired driving to provide summary advice to indigent accused who are unable to obtain a legal aid certificate despite being financially eligible. The CLO also provides more specific strategic advice to persons who may have a “Carter” defence to impaired driving charges. The local judiciary and Crowns expressed support for any endeavour that would assist in addressing the backlog of impaired driving cases in Peel. This project assists both unrepresented accused and the CLO (and potentially the private bar), in identifying impaired driving cases where there is a triable defence and counsel should be provided.

The Brampton CLO has also had a continuing productive and positive relationship with local mental health workers, including participation on a number of local mental health committees. The CLO has also acted jointly with mental health workers and other stakeholders to develop a formal protocol for those workers to refer cases to the CLO, although this occurred after the end of the three-year evaluation period (June 2007). Both judges and mental health workers gave very positive marks to the CLO for its work in this area.

In Barrie, the partnership with local CMHA officials has seen continuing development in collaborative approaches to handling mental health cases. The Barrie community legal workers and CMHA courtworkers have been able to become involved with clients before bail and assist in expediting medical assessments and in locating hospitalization where necessary. The Barrie CLO's community legal worker is contacted directly by CMHA case workers and, on occasion, by Supervising Duty Counsel. Both the former and current community legal workers and both staff lawyers have been involved in preparing for both bail and sentencing hearings; in assisting the accused to retain or obtain employment; and in developing appropriate proposals to put to the Crown and to the Court with respect to bail, sentencing and probation. Over the three years of the pilot project, the Barrie CLO and

CMHA initiated a number of community education programs for mental health and other social service workers in Simcoe County.

During the second and third years, both staff lawyers at the Barrie CLO have presented detailed pre-sentence submissions with respect to Aboriginal persons, pursuant to the Supreme Court of Canada decision in *R. v. Gladue*.<sup>87</sup> The CLO staff has developed a model for *Gladue* sentencing submissions with the assistance of the LAO Research Centre and has shared its submission with other member of the local criminal bar. Both judges and Crowns commended this initiative; the CLO lawyers were also commended by senior members of the Simcoe County judiciary, Crown attorneys and Native courtworkers for their growing expertise and commitment to the criminal issues confronting the Indigenous community.

In Ottawa, the CLO has delivered a training program to a variety of staff groups, including the John Howard and Elizabeth Fry Societies. Since the departure of the original CLW, the Ottawa CLO has not been as involved in educational and outreach programs, although the director has continued to be involved in and is on the boards of several local NGOs.

#### 4.2.3 *Establish Links to Improve Services to Clients with Intersecting Needs*

##### *a Links with NGOs*

The CLOs have the objectives of establishing links with local community legal clinics and NGOs 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 to improve coordination and services to clients with intersecting criminal/refugee and criminal/family law needs (not applicable in Barrie).

Each CLO established a **Local Advisory Committee (LAC)**, composed of representatives of the local criminal bar and of various local NGOs including in some instances representatives of the Canadian Mental Health Association; Native Courtworkers, Salvation Army, Elizabeth Fry and John Howard Societies. The LACs included the local LAO Area Director and, in some instances, the Director of the local LAO clinic(s) and the Senior Duty Counsel. The LACs played a significant role during the first year in considering and ultimately confirming the priorities of each CLO, and in assisting the CLOs to become known and integrate into the local social services network. As the CLOs became established the LACs played a more limited role and LAC meetings became less frequent.

In year one, all the CLOs met with NGOs and clinics in their region which serve the target groups mentioned in CLOs' objectives. **Becoming known to the workers who provide services** to the target groups was considered the best means to reach their clientele and make them aware of existing and expanded legal aid services. In addition to the contacts by the Community Legal Workers, the CLO Directors all made contact with some or all of the LAO clinics in their area to discuss their respective mandates. All CLO directors and some staff lawyers became involved in local organizations working with indigent accused, including various projects involving the mentally ill,

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<sup>87</sup> *R. v. Gladue*. [1999] 1 S.C.R. 688, where the Court interpreted s. 718 2(e)(e) of the Criminal Code, which provides that: "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders."

Aboriginal persons and young offenders. Some staff lawyers sit on the on the boards of their local LAO clinics, as well as the boards of local community groups.

Since its inception, the Ottawa CLO has continued to meet and periodically conduct workshops with various groups regarding issues related to women and prostitution. Informal efforts were initially made to establish contact with a group of Somalian Women that was formed to address challenges related to their sons. Although there has been limited contact in the intervening period, this is still an area of interest for the CLO director. The francophone staff lawyer has delivered talks to the Laissez AJFO, a francophone interest group in the area. The Director is a member of the Aboriginal Justice Centre. Although the Ottawa CLO continued to receive positive reviews from some NGOs, a number of those interviewed observed that they have had less contact with the CLO since the departure of the original CLW during year two. Another NGO interviewed mentioned that the CLO was not as visible as it perhaps could be at meetings of NGOs working in the criminal justice system. This reduction in contact has likely been caused by the staff turnover and the workload of the lawyers and CLW during the lengthy period of transition during years two and three.

During the first year, both Ottawa and Brampton CLOs' targeted education programs were 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. In Brampton, the CLO focused on agencies helping youth, immigrant communities, and the homeless, in their attempt to assess how to better serve this clientele.

The Barrie CLO's most significant outreach success has been in its developing relationship with the Canadian Mental Health Association (CMHA). A representative of CMHA has been a Local Advisory Committee member of the CLO 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 solid experience in, and understanding of, both the legal and human needs of the mentally ill. As well, the CLO's original community legal worker had worked for the Elizabeth Fry Society and also had experience working with mentally ill accused. The work of the Barrie CLO with the mentally ill has been further facilitated by the Simcoe County CMHA receiving funding from the Ministry of Health for additional courtworkers.

The CLOs have become **involved in the programs or boards** of other agencies. For instance, the Barrie CLO has participated in a number of meetings of mental health workers in various communities in Simcoe County. These meetings have been generally organized by the Canadian Mental Health Association or the Simcoe County Human Services & Justice Coordination committee. It is anticipated that further continuing education sessions will be jointly organized by the CMHA and the CLO for mental health workers and others concerned with the legal and social needs of the mentally ill and disabled.

The Barrie CLO has developed a close relationship with the Barrie Native Friendship Centre and has worked closely with the Aboriginal Criminal Court Worker who has joined the Barrie CLO's Local Advisory Committee. The CLO has also made contacts with Aboriginal communities both on Christian Island and the Rama reserve. It was noted by one judge that the CLO director has undertaken representation of accused from the two reserves in Simcoe County.

The CLO director continues as a board member of the Simcoe County Children's Aid Society; the staff lawyer remains a member of the board of Newpath Youth & Family Services and also of PARS, which offers a sentencing and counseling programmes to men dealing with domestic abuse charges. Some members of the Barrie CLO staff, as well as members of the Barrie Local Advisory Committee

and several Crowns, reiterated their belief that there is a continuing need in Simcoe County for the CLO to reach out to young offenders and also to students charged under the *Safe Schools Act*, in respect of both representation and public legal education.

The Brampton CLO lawyers have become members of the Peel Human Services and Justice Coordinating Committee, the Criminal Justice Coordinating Committee, the Peel Mental Health Court Committee, and the Peel Legal Education Committee. As well, staff lawyers sit on the boards of the Square One Youth Centre and the Dixie Bloor Neighbourhood Centre, and Mississauga Community Legal Services, and are members of the Multicultural Interagency Group, which is an umbrella organization that assists various settlement organizations working in Peel Region. Those interviewed from the local clinics appreciated having the CLO available for assistance. However, those interviewed did note the decrease in contact and outreach by the CLO, in years two and three.

Several of interviewees in Barrie and Brampton encouraged the **use of the Internet** and the development of CLO websites that could provide legal information targeted to various groups but particularly young people and to the NGOs, teachers, probation officers and police who deal with groups with special needs in each of the CLO communities. It was also suggested that the Barrie CLO should consider developing an outreach program, similar to or in collaboration with, the Simcoe, Haliburton and Kawartha Lakes Community Legal Clinic in Orillia.

All CLO sites would have significantly benefited from the ability to conduct a much more extensive outreach program in their communities and regions. The distribution of **information pamphlets** to community groups would have aided in the development of a higher profile of each CLO, in their local low income communities. Unfortunately, no CLO pamphlets are in circulation in the three CLO catchment areas. The local bar associations continue their opposition to such pamphlets, arguing that they would give an unfair advantage to the CLOs in attracting clients away from the private bar.<sup>88</sup> Some respondents urged that the CLOs should place information advertisements in the Yellow Pages and have information pamphlets on various substantive law topics available in shelters, jails, Friendship Centres and other settings where the brochures would reach potential clients. During all rounds of interviews since 2004, there has been a definite belief, amongst NGO interviewees, that the CLOs, as legal services funded by taxpayers should be “permitted” – and possibly even obliged – to advise the public of its services in whatever manner possible. Interviewees involved with youth and young offenders strongly urged the development of youth-oriented materials, perhaps in comic book format. The importance of a CLO website, or a more visible presence for the CLOs on the LAO website has also been mentioned.

#### *b Links Among Legal Aid Clinics*

In our *Year One* report, we noted that contact between legal aid clinics and the CLOs on specific cases did not seem to be taking place. In our *Year Two* report, we stated that there had been growing contact between the legal clinics in Peel County and the Brampton CLO. The director of the CLO sits on the board of the Mississauga Legal Services clinic and a good working relationship has developed between the two legal aid offices. This includes referrals and consultations on a periodic basis, with respect to clients with intersecting or multiple legal and social problems. However, similar collaboration between the CLO offices in Barrie and Ottawa and their local and student legal aid clinics is not apparent. We encourage LAO’s senior management to facilitate better collaboration between local legal aid service providers, including: staff offices, senior duty counsel, and the CLOs.

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<sup>88</sup> As an example, the Brampton CLO was given 1000 brochures (in French and English) which we handed out liberally the first year. However, the private bar was very much opposed to their disseminating the brochure too widely. They would not allow it to be placed in the Duty Counsel or Area Offices, and when the CLO ran out of English brochures, the CLO was told that LAO would not print any more.

### *c The changing Role and Availability of the Community Legal Worker*

In all three CLOs, increasing caseload demands have meant that the CLOs' staff—and in particular their community legal workers (CLWs)—have been required to focus most of their time on casework and administrative matters. Although the CLWs are continuing to perform important work in supporting the case specific activities (e.g., arranging local support services and handling general case administration, scheduling and management matters), this has meant that outreach to community-based organizations has dropped significantly, as caseloads have increased.

Although good relations have, in general, been maintained with NGOs working with persons in the criminal justice system, the number of contacts, presentations and community legal projects has declined significantly during the last two years. Community legal workers in all the CLOs expressed concern that non-casework objectives were not receiving the attention that they had in the first 18 months of the CLOs operation. The problem may be exacerbated by the expectations raised by the higher visibility of the CLOs within their communities. The reduced efforts of the CLWs and the CLOs in general towards outreach and law reform efforts has also clearly been noticed—and is viewed as unfortunate—by other stakeholders in each site. Both the increase in caseload and the employment of new CLWs in the second and third years by all three CLOs contributed to the movement away from the non-casework objectives in the second and third year.

### *d The manner in which Outreach is Carried Out*

Although they were raised by only a minority of those interviewed—and were not heard in all three sites—the following two issues are presented, since they were raised by experienced NGO personnel and the viewpoint was consistent with that of a number of other CJS stakeholder groups.

A number of respondents, particularly from the NGO community, discussed the importance of collaborative initiatives, particularly the field of law reform and proposed that the CLOs might work more closely with agencies and coalitions as legal counsel in both writing and **presenting law reform briefs**.

The second issue is that different approaches seem to be used in different CLOs with respect to the **allocation of responsibilities for systemic reform/outreach work**. In two CLOs the roles of systemic reform and outreach are considered the responsibility of all staff members. In the other, responsibilities in this area have at times, in large part, been exercised by the CLW and/or by one of the lawyers—often with little communication with other members of staff about the non-casework activities. While allocation of responsibilities in this field is the task of the CLO directors in consultation with their staff, if this is considered to be a priority for LAO, consideration should be given to making training in law reform and outreach approaches available to all CLO lawyers and community legal workers.

#### 4.2.4 *Advancing the Administration of Justice*

One of the objectives of the CLOs is “promoting and undertaking 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.”)

Not surprisingly, there has been limited work in **law reform** during the first three years, given the immediate responsibilities that were necessarily priorities in the operationalization of the CLOs. Some of the CLOs’ individual cases have involved challenges which have the potential to create broader change. However, “law reform litigation” in the sense that such litigation is intended to address a systemic unfairness, speak for a class of persons, or change the law has not occurred (with the possible exception of Ottawa with its DNA litigation). However, virtually all of the work of the CLOs occurs in the Ontario Court of Justice, and therefore an appeal would only go to the Superior Court—not the venue for significant law reform. Nonetheless, the CLOs could develop a joint program with Pro Bono Ontario that would allow the CLOs, in concert with senior counsel, to move forward on various criminal justice issues arising in the three CLO communities. (Such a joint program has in fact been undertaken by the Brampton CLO in September 2007.) In any case, it is not clear whether support continues within LAO for this original “law reform” objective for the CLOs, especially since the CLOs may not be ideally situated to address the objective and also because LAO already has a program to fund worthy test case legislation.

In Ottawa during the second year, the Director of the CLO, with the support of LAO, took on the issue of “retroactive DNA”. Retroactive DNA hearings were conducted on behalf of offenders [not all were inmates] who had been convicted of murder, manslaughter and serious sexual offences prior to 2000. At the time, the legislation permitted the right of the offender to challenge the Crown’s request for a DNA sample. The Ottawa CLO Director was the designated duty counsel for these hearings.<sup>89</sup> The Kingston DNA initiative is representative of the potential types of reform efforts that might be taken on by the CLOs.

As regards **conditions in local institutions**—for both sentenced and remand prisoners— all of the CLOs had members on their Local Advisory Committees (LACs) who recommended a role for the local CLOs in advocating and perhaps litigating issues on behalf of persons in custody. During the first year, the Barrie CLO and its LAC members, with their proximity to the then privately run “Superjail” in Penetanguishene, heard a series of concerns about the treatment of prisoners at the “Superjail”. Championing of the prisoners’ cause was supported by all LAC members. With the change in management of the “Superjail”, these concerns subsided slightly. However, the need for addressing the issues in this large prison that is designed to be administered by a very small staff was raised again by a number of respondents in the third year interviews. Lawyers, Crown and judges all agree that the 1200 inmates in this prison have legal and social needs that are not being addressed by LAO or the private bar. Similar concerns with incarceration issues obtain, to a lesser extent, in both Brampton and Ottawa. To date no monitoring, representation or law reform processes have been undertaken by any of the CLOs to either reach out to inmates or to potentially challenge the conditions of confinement or treatment of inmates at local penal institutions. While the treatment of inmates as well as young offenders remains a significant unmet need, it is unlikely that a two- or even three-lawyer CLO could undertake such a project. In any case, such law reform projects would require a substantial commitment of time and sophisticated joint leadership of CLO in collaboration with community clinics and other NGOs.

<sup>89</sup> The Ottawa CLO is currently (i.e. in January, 2008) attempting to challenge the scope of how the DNA samples can be used, and whether they can be applied to re-investigate the offences for which these offenders were convicted.

During its first year, the Brampton CLO had launched or joined in three **administrative initiatives** intended to address practices or policies in the larger Brampton courthouse which have a systemic impact.

The Brampton CLO has championed the cause of getting remand prisoners in Brampton better telephone access to sureties and counsel.

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 had two components. First, the CLO's former 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. Secondly, he compared, 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 the Brampton CLO cases, additional disclosure was 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 (as reported in first year report), the CLO 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 was set up which tracks the time and the additional appearances which pass before disclosure is complete. It was intended that this practice and data would continue to be used to address the disclosure issue. However, the CLW who was instrumental in setting up the disclosure initiative left the employ of the CLO during the second year. The study was a "one-off", but the database was meant to be on-going. For a variety of reasons, the CLO stopped updating the database when the CLW left. This experience has, however, provided valuable lessons regarding the difficulties involved and the processes needed to effect lasting procedural and administrative change in a court environment.

The Director and staff lawyers of the Brampton CLO play continuing roles on various bar and bench committees and as board members of the one of the regional legal aid clinics, as well as working with other community groups, the Ontario Bar Association and the Ontario Justice Education Network.

#### **4.2.5 Assist LAO to Develop Justice System Policy and Advocacy**

In Barrie, these 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 continue to allow LAO to use them as sounding boards or a source of advice on various matters, including the design of data systems to monitor and assess their effectiveness, and with respect to other potential criminal justice system reforms. During the second and third years, there was no mention of any of the CLOs undertaking justice system policy analysis or advocacy. It should also be noted that the CLO staff were neither trained nor given the necessary supports necessary to permit them to effectively undertake "justice system policy analysis or advocacy." The work of the CLO staff and this evaluation should contribute to public policy discussions about the provision of criminal legal aid services in Ontario and elsewhere in Canada. The data collected will be



valuable to LAO in moving forward in addressing the unmet needs of disenfranchised groups who have benefited from the opening of the CLOs in all three communities.

### 4.3 Information from Legal Files

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

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

Our review of the systemic objectives discussed in this Chapter in the *Year One* report was severely restricted by limitations in the empirical information currently available from the CLO. Legal Files docketing information system— especially information describing the amount of time CLO staff spent on specific types of Outreach and Law Reform efforts.<sup>90</sup> As with certain other areas, improvements to the Legal Files configuration and data entry procedures were made during the second and third year. Although some improvements remain to be made, certain types of useful analysis can be pursued more fully in this report.

However, it is also hoped that by providing analysis of parts of the data that still exhibit problems, we will also be able to assist the CLOs in identifying areas in which improvements to the non-case-specific activity data are still needed. As will be seen, areas of needed improvement include:

- Ensuring that information is entered on a more complete set of the activities that are undertaken,
- Refining the coding system used to code the data so it can be used to produce reports of more value to managers, and
- Improving the accuracy and completeness with which data is recorded.

#### 4.3.2 *Time Spent of Different types of Non-Case Specific Activities*

Figure 4-1 describes, for the Brampton CLO, the information docketed in Legal files to capture the total number of hours spent on non-case-specific activities by each staff member of the CLO. The total number of hours docketed by each staff member is shown in the bottom row of each chart. Subtotals of the number of hours docketed to each of twelve broad categories of activities are shown in the rows above these totals<sup>91</sup>. Although the data in the first two rows, “Law Reform” and “Outreach Activities”, are the most relevant to the discussion of the current Chapter, the data in the other rows provides both a useful context, and a better understanding of the quality and completeness of the data in general.

Figure 4-2 presents the identical information, except that the hours worked are shown as a percentage of the total number of hours worked by a staff member in a typical (1820 hour) year.

<sup>90</sup> It can, however, be stated that the CLOs spend considerably less time on these non-casework objectives than they do on handling specific legal cases.

<sup>91</sup> Please note that the percentages are based on the total number of non-case-specific activities docketed. The percents **are not** based on all work done by the CLO staff (i.e., work that would include tasks related to specific cases).

Originally it was hoped that another useful context for these data on the CLOs would be provided by comparable data from the private bar. However, the co-operation from the private bar in providing such contextual data was not forthcoming.

Figures analogous to Figure 4-1 were also prepared for the other two CLOs. However, when all three Figures were examined, there were clear signs that considerably more work is needed before the data are as complete and accurate as we would hope. For instance, until the third year certain staff members recorded information on their holidays, sick time etc.—while others clearly did not. Similarly, it is simply not credible that there would be so much difference in the total number of hours docketed to these types of activities by the three directors of the CLOs (ranging in year two and three from 140 and 354 hours in Barrie to 1,352 and 1,804 —52 weeks! — for Ottawa).<sup>92</sup> In Barrie, except for the data shown for the administrative person, the low numbers of hours docketed for the other staff members in years one and two would lead one to believe that the data for those years very much under-report actual activity and should be discounted very heavily.

Given these and other problems evident in these data, it would be prudent for LAO management to undertake a careful and detailed review of the practice and policies relating to the entering of this information into Legal Files. As an interim observation, it appears that, if LAO values this type of information, better procedures and policies are needed to ensure such data are accurately, consistently and more comprehensively collected.

For our purposes, the analysis will be limited to the Brampton data, which appear to be the most accurate.<sup>93</sup> For that CLO, starting in year one and continuing into year three, all staff in Brampton docketed a significant number of hours to non-case-specific activities. If we assume that there are roughly 1820 working hours in a year, in year three the Brampton director docketed nearly two thirds (62%) of her time to non-case specific work. This is a substantial portion of her time. However, it should be noted that a significant portion of the director's time must be spent undertaking tasks not generally expected from a managing or senior lawyer in a private law firm—for instance: 6% (of her total docketed time) was devoted to Law Reform or Outreach, and another 5% was devoted to this evaluation and to other LAO activities.<sup>94</sup>

As would be expected, the other two Brampton lawyers docketed considerably less of their time to non-case specific work, but even then their percents are higher than would be expected (41% and 36%). Granted, no specific targets have been set, and different options are available for allocating such work among different CLO staff members, but it is noted that the statistics confirm that the two lawyers devoted relatively low percentages of their time to law reform or outreach—0% and 7%. The evaluators are particularly surprised, given their initial mandate, at the limited amount of their time that the two CLWs have spent on law reform and outreach (3% and 2% in the last years each worked).

The evaluators again note that these data should be treated with caution. Nonetheless, the data would seem to justify a review by LAO of both the manner in which staff time is docketed, and whether modifications would be appropriate regarding the allocation of time among case-specific and other types of activities and tasks (including Law Reform and community outreach).

<sup>92</sup> A subsequent preliminary review of the Ottawa data for the Director showed for instance that vacation time for other staff had been docketed to the director's administrative file.

<sup>93</sup> Although the data for the Brampton CLO seems considerably better than that for the other two CLOs, it too exhibits certain problems. For instance, it is unlikely that the CLW time spent in Brampton spent on law reform and outreach activities in year two and three totaled only 61 and 34 hours—and less likely that the total for CLWs in Ottawa was “0” in both years. However, we know for a fact that at least one of the CLWs in Brampton (there was some turnover in the position) have spent considerable time on Law Reform Work and that this time is simply not being reported by Legal Files. Here it should be noted that the evaluators suspect that technical or procedural problems have accounted for this problem.

<sup>94</sup> It is also clear that the Director delayed much of her year one sick/vacation time from year one into years two and three.

## 4: Systemic Law Reform

Figure 4-1

**Brampton CLO: Time Spent (hours) on Non-Case Specific Activities By Different CLO Staff Members:  
Activity Type By Year Undertaken by Site**

	Beard, Paula Ms (Director)			Daigle, Heather Ms. (Lawyer)			Smith, Alan Mr. (Lawyer)			Morton, Douglas Mr (CLW)		Chlebowski, Karina Ms. (Admin)			Scale, Matthew Mr. (CLW)		Maltese, Raimondo Mr. (Lawyer)
	2004/5	2005/6	2006/7	2004/5	2005/6	2006/7	2004/5	2005/6	2006/7	2004/5	2005/6	2004/5	2005/6	2006/7	2005/6	2006/7	2004/5
Law reform	116	89	69	.	.	5	30	16	29	12	44	.	.	.	3	15	.
Outreach activities (Other)	77	60	40	20	.	.	142	66	105	25	14	11	.	.	.	9	13
Sick/vacation	88	271	238	.	93	188	7	145	149	.	84	56	162	159	22	208	.
Quality Control	18	50	108	.	.	.	2	.	.	.	.	.	.	.	10	2	.
Education	103	49	111	15	87	104	86	129	117	4	37	.	.	.	0	44	.
Management	47	77	73	.	.	.	20	.	.	.	.	2	.	.	.	0	.
Administration	359	342	217	9	228	390	59	199	219	113	441	147	958	1,720	17	475	.
Evaluation related	33	45	79	.	.	.	3	2	10	1	2	.	1	.	.	3	.
Other LAO activities	63	7	16	.	.	0	2	.	.	.	.	.	.	.	2	.	.
Staff meeting	94	79	57	.	13	33	18	29	7	17	30	7	6	3	5	25	.
Non-Billable Client Work	4	13	38	1	2	17	.	.	4	22	28	9	.	.	2	34	.
Other Activities	.	.	.	.	.	.	25	.	.	.	.	.	.	.	.	.	.
Non billable travel	35	43	91	.	12	7	27	4	17	.	.	3	.	.	.	7	.
Total Hours	1,038	1,124	1,135	45	435	744	419	591	657	193	679	235	1,127	1,882	61	822	13

All Activity data entered in Legal Files to June 30, 2007: Figure prepared September 21, 2007

### Explanation of Above Categories

*Law reform:* time docketed for law reform projects (for example, disclosure research in Brampton)

*Outreach activities:* time docketed for community outreach (for example, meeting with NGOs, presentations, etc.)

*Sick/Vacation:*

*Quality control:* time docketed for performance reviews, reviewing client files, etc.

*Education:* time docketed for attending continuing legal education, research, etc.

*Management:* time docketed for financial management, planning, reviewing management reports, etc.

*Administration:* time docketed for general administrative duties, entering data, preparing documents, etc.

*Evaluation related:* time docketed for meetings related to the evaluation, reviewing reports and statistics, etc.

*Other LAO activities:* time docketed for meetings with senior management, involvement in LAO related projects, etc.

*Staff meeting:* time docketed for meetings, preparation time, etc.

*Non-billable client time:* time docketed for summary advice, waiting time at courts, inquiries by potential clients, etc.

*Non-billable travel:* time docketed for travel not billable under the tariff

## 4: Systemic Law Reform

Figure 4-2

**Brampton CLO: Percentage of Full Time (1820 hour) Work Year Spent on Non-Case Specific Activities By Different CLO Staff Members:  
Activity Type By Year Undertaken by Site**

	Beard, Paula Ms (Director)			Daigle, Heather Ms. (Lawyer)			Smith, Alan Mr. (Lawyer)			Morton, Douglas Mr (CLW)		Chlebowski, Karina Ms. (Admin)			Scale, Matthew Mr. (CLW)	
	2004/5	2005/6	2006/7	2004/5	2005/6	2006/7	2004/5	2005/6	2006/7	2004/5	2005/6	2004/5	2005/6	2006/7	2005/6	2006/7
	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Law reform	6	5	4	.	.	0	2	1	2	1	2	.	.	.	0	1
Outreach activities (Other)	4	3	2	1	.	.	8	4	6	1	1	1	.	.	.	1
Sick/vacation	5	15	13	.	5	10	0	8	8	.	5	3	9	9	1	11
Quality Control	1	3	6	.	.	.	0	.	.	.	.	.	.	.	1	0
Education	6	3	6	1	5	6	5	7	6	0	2	.	.	.	0	2
Management	3	4	4	.	.	.	1	.	.	.	.	0	.	.	.	0
Administration	20	19	12	0	13	21	3	11	12	6	24	8	53	95	1	26
Evaluation related	2	2	4	.	.	.	0	0	1	0	0	.	0	.	.	0
Other LAO activities	3	0	1	.	.	0	0	.	.	.	.	.	.	.	0	.
Staff meeting	5	4	3	.	1	2	1	2	0	1	2	0	0	0	0	1
Non-Billable Client Work	0	1	2	0	0	1	.	.	0	1	2	0	.	.	0	2
Other Activities	.	.	.	.	.	.	1	.	.	.	.	.	.	.	.	.
Non billable travel	2	2	5	.	1	0	1	0	1	.	.	0	.	.	.	0
Total Non_Case Specific Hours (% of Full Time)	57	62	62	2	24	41	23	32	36	11	37	13	62	103	3	45

All Activity data entered in Legal Files to June 30, 2007: Figure prepared January 3, 2008

N.B. percentages in the last row may add to over 100% if a staff person docketed more than 1820 hours in a year.

### 4.3.3 *Estimates of the Value (Opportunity Cost) of Efforts expended on Non-Case Specific Activities*

One of the important avenues of research that was indicated in the first year report was the development of a more detailed understanding of the costs incurred and the value produced for this systemic, law reform/outreach type of activity as well as the non-billable administrative work of the CLOs. It was intended that once accurate data were obtained on the time spent on certain of these activities, one would use an appropriate hourly billing rate to estimate the value, or at least the “opportunity-cost” of the effort expended. Clearly the quality of the data makes this analysis less useful than hoped. However, we present estimates in the following set of Figures in order to shed light on where problems in the data are likely to lie. While it is likely not accurate data, it does indicate whether the CLOs devote substantial amounts of time completing non-billable activities, and the potential dollar magnitude of these activities can be demonstrated.

The statistics shown in Figure 4-3 are not reliable enough to draw any conclusions about the work completed in these areas, and are only presented to give the reader a general understanding of the potential value of this work.

Figure 4-3

**CLOs: Total Value (at Billing Rate) of Non-Case Specific Activities By CLOs:  
Activity Type By Year Undertaken by Site**

	CLO Site								
	Barrie			Brampton			Ottawa		
	2004/5	2005/6	2006/7	2004/5	2005/6	2006/7	2004/5	2005/6	2006/7
Law reform	\$91	\$1,126	\$1,477	\$13,367	\$10,645	\$9,484	\$1,625	\$369	.
Outreach activities (Other)	\$4,236	\$4,640	\$8,102	\$21,442	\$11,269	\$12,328	\$2,789	\$1,005	\$3,139
Sick/vacation	\$9,216	\$7,221	\$34,728	\$8,717	\$45,966	\$57,723	\$42,747	\$26,057	\$64,127
Quality Control	.	\$332	\$1,247	\$1,669	\$4,824	\$9,998	\$1,053	\$399	\$122
Education	\$1,283	\$7,969	\$5,633	\$17,248	\$20,187	\$29,490	\$9,869	\$8,613	\$3,077
Management	\$379	\$166	\$789	\$5,904	\$6,976	\$6,785	.	\$2,105	\$443
Administration	\$352	\$126	\$14,646	\$40,435	\$87,226	\$120,670	\$82,372	\$78,522	\$74,476
Evaluation related	\$332	\$0	\$332	\$3,222	\$4,268	\$8,144	\$1,477	\$81	.
Other LAO activities	\$374	.	.	\$5,878	\$659	\$1,318	\$7,904	\$5,566	\$1,514
Staff meeting	\$175	\$911	\$2,065	\$10,554	\$11,651	\$9,265	\$16,763	\$3,599	\$6,091
Non-Billable Client Work	\$0	\$175	\$5,834	\$948	\$1,941	\$6,049	\$7,848	\$7,933	\$12,757
Other Activities	.	.	.	\$1,662	.	.	.	.	.
Non billable travel	\$249	\$392	.	\$5,188	\$4,077	\$10,491	\$3,506	\$7,748	\$894
Total	\$16,687	\$23,057	\$74,853	\$136,233	\$209,690	\$281,745	\$177,953	\$141,997	\$166,639

All Activity data entered in Legal Files to June 30, 2007: Figure prepared September 21, 2007

## 4.4 Concluding Comments

Each of the CLOs has developed its non-casework practice in relation to local demands. There been significant accomplishments. However, the response to casework demands appears to have come to dominate the CLOs’ agenda.

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

In Brampton, the sheer volume of cases, the staff turnover with respect to the CLW, and the 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. Because the increase in the Brampton caseload was much more gradual than in Barrie, the Brampton CLO has been active on these fronts and will hopefully be able to continue to provide leadership for system reform on behalf of indigent and mentally disabled clients.

The Ottawa CLO has also continued to build on the progress made in the first year in establishing good relationships with the community agencies with which it routinely interacts. However, Ottawa has suffered, as have all the CLOs, from the impact of increasing caseloads and from both lawyer and CLW staff turnover which have significantly reduced the resources devoted to non casework objectives.

At the end of the third year of operation, each of the CLOs finds itself struggling with the tension between managing a heavier load of cases and the expectation in the original CLO mandate, and now of their respective communities, that they will undertake work in the field of law reform and community education and outreach. This situation is complicated by staff turnover and, most importantly, by the lack of clarification by LAO with respect to the priority of community outreach and law reform in a staff model of delivery of criminal legal services.

In spite of all of the caveats above, the ground has been laid, through the initial community-building efforts and the engagement of a wide variety of stakeholders, to develop significant innovative law reform and community outreach projects that respond to the unmet needs particular to each community and to allow the CLOs to play an important role in developing systemic reform strategies, within the criminal justice system. For this to happen, ongoing leadership and commitment will be required from LAO working with the directors and staff of the CLOs.

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

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### 5.1 Introduction

Other parts of this report focus on the effectiveness of CLO activities in handling specific client cases, and on the efficiency of specific CLO activities. This Chapter focuses on the impact of each of the CLOs as a whole within their local communities, on the justice system generally and on the separate groups working within that system.

### 5.2 Overall Trends

In our *Nine-Month Interim*, report, we found that most private bar members were opposed to the CLOs, and most CJS officials and non-governmental organizations (NGOs) were in favour of a CLO in their area.

For the *Year One* report, we were most interested in interviewing people who had actually interacted on cases with the CLOs in the larger court environment. In the second round of interviews for that report, the criminal bar was not as prominent in our interviews, though bar members were interviewed in each community. 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 were generally in favour of the existence of the CLO in their area, more so than they were at the time the CLOs were just starting.

In both the *Second and Third Year* reports, we attempted to interview CJS respondents who had interacted with the CLOs, as well as a number of criminal lawyers in each of the three communities. We made every effort to speak to a cross-section of Crowns, private lawyers, duty counsel, judges, LAO area directors, and a representative group of NGO personnel in each community. In these interviews—although there were some exceptions (primarily within the private bar) -- we found a generally positive response to each CLO, particularly from the judges, Crowns and from NGOs working with the mentally ill, indigenous peoples and youth.<sup>95</sup> There was a sense that the CLOs were becoming visible in their community and that they were beginning to create a role for themselves both within the justice and client communities.

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<sup>95</sup> It should also be noted that despite repeated attempts, only one crown attorney in Brampton returned our requests for interviews during year three. The one who did respond had not had recent contact with the CLOs. However, in earlier years, crown attorneys who were interviewed did have a positive response to the CLO. Similarly, one Crown Attorney in both Ottawa and Barrie returned our requests in year three and both were positive about the work of their local CLO.

### 5.3 Important Context

Before discussing specific results, it is important to highlight some observations made by many of those interviewed. Specifically, one has to be realistic when one assesses the impact of the CLOs on the justice system in a particular community or county. First, the efficiency and effectiveness of any justice system is dependent on the complex interaction of a myriad of factors, many with competing cultures, resources and objectives. Second, tradition is often a highly valued principle, and few justice systems are known for their willingness to embrace rapid change. In this context, it is unreasonable to expect the relatively small group of two or three lawyers that comprise a CLO to have even a moderate, much less a significant, impact on the local administration of criminal justice in a relatively short period of time.

As well, it is not surprising within the justice community to find different perspectives and opinions among different groups of stakeholders, and among different individuals within each group. Thus, although the following discussion highlights the major positions put forth, these positions were neither unanimous, nor equally strong from one community to another.

### 5.4 Impacts on the Court Process and Workloads

The impacts of the CLOs in the court system they serve are of several types. Overwhelmingly, CJS officials whom we interviewed continued to focus primarily on the CLOs' impact on reducing the numbers of unrepresented accused (UAs) primarily in the provincial court and their work with respect to the special needs of the mentally ill, Aboriginal persons and young offenders.

Direct interactions, and especially trials, with UAs are not only exceedingly difficult – usually proceeding slowly, as well as being difficult for all concerned – they also raise fairness issues for the accused.

Crowns, judges, and many NGOs, who frequently interact with UAs, are appreciative of almost any initiative which will provide representation or assist them with UAs. Because the CLOs intervene on behalf of people who might otherwise be unrepresented, court personnel are generally favourable towards the CLOs, even where they have misgivings about the erosion of *judicare* and the certificate system. Though, in many ways, the private bar continues to see the CLO as “just another law firm,” more recent interviews indicate that the Crowns and judges, in particular, have developed a greater understanding and appreciation for the CLOs' representation of UAs and the growing emphasis of the CLOs on representing traditionally under-represented accused, such as the mentally ill, Aboriginals and young offenders.

A closely related point is that many interviewees suggested that a significant benefit provided by the CLOs is their representation of accused persons who are financially eligible for legal aid but have been denied representation because there is little or no possibility of their “loss of liberty” if convicted.<sup>96</sup>

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<sup>96</sup> Figure 3-41 and Figure 3-42, by documenting the outcomes of such cases, provide evidence of the importance of such representation.



In addition to simply focusing on the CLOs' benefit 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 that allowed under the mandate for 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 as one interviewee phrased it, “able to spend more than ten minutes” with the accused – while Duty Counsel tend to be very busy. Many CJS respondents commented on the need to reexamine the concept of the part-time duty counsel and how the full-time accessibility of the CLOs, including the community legal workers and administrative staff, gave CLO staff a presence and accessibility not available with duty counsel.
- A number of provincial and federal Crowns reacted favourably to the CLO model since it allowed for continuing and regular contact with the CLO lawyers throughout the criminal justice process, as well as their presence on administrative committees dealing with issues including disclosure, diversion and mentally ill accused.
- Cases moved more predictably and consistently, and trial scheduling problems were lessened.

Generally, the representation of accused persons who would otherwise have appeared before the court without legal representation means that the administration of justice becomes more efficient.

### 5.5 Impact on Workloads

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 NGOs – interacted with the CLO staff at all stages of the criminal justice system, including bail and bail planning (although to a lesser degree so in Brampton and Ottawa), plea negotiations and plea court, remand court, pre-trials, trials, sentence planning and sentencing:

- Most acknowledged that they noticed fewer UAs in the courthouse since the arrival of the CLO. Only the Barrie CLO is currently providing bail representation.
- Most judges and Crowns reported that their work was made “easier” by experienced lawyers being consistently present at more stages of the criminal process.
- Plea negotiations had fairer outcomes. 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 where the law and the facts are discussed and the accused's rights asserted and evaluated.

### 5.6 Impacts on the Quality of Legal Service Available Generally

Before the CLOs opened, a number of predictions of negative impacts on the quality of legal service were put forward, including: a decrease in the quality of representation, shrinkage of the legal aid roster, reduced choice of counsel for accused persons. The vast majority of those interviewed, in years two and three, in all three CLO sites felt that none of these predictions had come to pass.

A majority of interviewees felt that the quality of service offered by CLO lawyers was equal to that of small local criminal law firms, with a mix of senior and junior lawyers, though there was concern raised by several private lawyers as to whether increasingly caseloads would result in diminished ability to maintain the level of service. Many NGO interviewees suggested that the CLOs are developing new approaches to representation in the types of cases they are handling. These interviewees remarked that the CLOs are committed to representation of disenfranchised accused who have previously been unrepresented.

Virtually none of those interviewed recently, from all groups, felt there was evidence of either a shrinkage of the legal aid roster or reduced choice of counsel for accused persons.

### 5.7 Impact on the Private Bar

The interviewers asked whether respondents saw negative impacts from the CLOs. There were no specific negative impacts noted by the interviewees.

Some private lawyers also indicated that the CLOs took minor cases that otherwise would have provided an important learning experience for young lawyers in private firms. Other bar members, especially those who are on the executive of local and provincial bar associations, remain opposed on the grounds that the CLOs represent a potential erosion of judicare.

By far the majority of the CJS interviewees did not express any of these concerns. They pointed to the small size of the CLOs, the opening of new private law firms, the hiring of juniors in those firms, and the fact that the CLOs also provide opportunities and training for new lawyers.

The issue of whether the CLOs pose a threat to judicare was not raised in the interviews with non-private bar members.

### 5.8 Impact on Other Clinics

In the first two years of the evaluation, there was some concern expressed by the Ottawa criminal bar that the existence of the CLO had had a negative impact on the University of Ottawa Student Legal Aid Clinic (“SLAS”). It was argued that the Ottawa SLAS had had to reduce the number of students handling the reduced number of criminal cases since the CLO opened and that student learning opportunities were diminished. Others stated that law students could not be expected to provide the same level of representation as the more experienced CLO lawyers.

During the last eighteen months, there has been greater collaboration between the Ottawa CLO and the Ottawa SLAS, including case referrals, when the CLO was understaffed in the winter of 2007. There is an opportunity for the CLOs to strengthen community legal aid resources through continued collaboration with the student legal aid clinic and with other community based legal service providers.

### 5.9 Potential Areas of Improvement

Interviewees were asked “how the CLO could best contribute to improving the justice system in this area”. In response, most interviewees indicated they should continue in their present mandate. Others suggested that:

- the CLO should continue to 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 confine itself to non-certificate clients;
- the CLO should take more serious cases, or more cases of “hard to serve” clients;
- CLO lawyers should take more impaired driving cases as there are numerous unrepresented accused at various stages of the criminal process who are slowing up the system and not pleading appropriately. (This concern was particularly expressed in Brampton where impaired driving cases dominate the court dockets);
- the CLO should undertake more systemic reforms of the local justice system and undertake research projects on such issues as disclosure, bail reform and systemic discrimination.

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

- the CLO should get on the record sooner, to reduce early remands and improve representation at early stages in the criminal process;
- the means by which Unrepresented Accuseds (UAs) are referred to the CLO should be simplified -- some interviewees suggested that the current arrangement is too complicated for many UAs, who have a low tolerance for complexity and bureaucracy;
- the CLOs and their mandate should be better known and understood; they should be publishing brochures on the rights of the mentally ill and youth and making them available throughout their communities;
- several community clinics lawyers encouraged the CLOs to collaborate more closely with them on joint outreach and community projects to attempt to address local poverty issues that impact on the poor and disenfranchised appearing in the lower courts;
- all CLOs should, where possible, emulate the Brampton CLO and accept student interns from diverse cultural communities, who can assist in reaching out to local ethnic communities;
- in Barrie and Ottawa, a few interviewees suggested that the duty counsel function and the CLO function should be better integrated, or combined into an extended duty counsel function, similar perhaps to that in Manitoba’s legal aid system;
- a number of interviewees, including a number of private lawyers, expressed concern about the salary levels at the CLOs.

### 5.10 Concluding Comments

This Chapter explores issues related to the impact of the CLOs on the institutions, processes and workloads of the criminal justice system. The consensus is that the impact has been positive, despite the continuing feeling from some members of the private bar that their monopoly should be retained.

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## Chapter 6: VALUE FOR MONEY: PROCESS OBJECTIVES

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### 6.1 Introduction, Format and Highlights of Results

Although the CLOs in general have proven to be *effective*, evidence is presented later in this Chapter to support efforts to improve the efficiency and cost/effectiveness of their operations. To be effective and efficient overall, the CLOs will have to have effective and efficient policies and practices in each of five areas: leadership and direction; organization and responsibilities; 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.

Chapter 2 addressed a number of issues related to the first of these areas, leadership and direction. This Chapter addresses the remaining four:

- Section 6.2: Organization and Responsibilities
- Section 6.3 Effective Strategies, Tactics and Procedures
- Section 6.4: Workloads and Resources
- Section 6.5: Support Systems

The Chapter concludes by providing information on a number of indicators on how well the CLOs are doing in providing services in a cost-effective, value-for-money manner:

- Section 6.6: Costs per Case and Value for Money

### 6.2 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?*

The original job postings defined in general terms the formal job descriptions for the CLO positions, however these have not been updated or reviewed since that time. As well, the Office Procedures Manual provides general direction for the overall work and that of each position.<sup>97</sup> For the most part, all staff were generally clear about their responsibilities in the organization at the time of the interviews in all three years. There was some concern in Ottawa, in year three, with respect to the expectations of the staff in the area of community outreach.

*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.

*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?*

*Were CLO 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). As well, the CLO lawyers have at times been excluded from full—or in some cases any—membership in their local Criminal Lawyers’ Associations. Over the first two years 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 some CLO lawyers to participate in Bar and Bench Committees;
- allowing the CLOs to continue with certain innovative practices (such as allowing the Barrie CLW to interview clients in the Simcoe County jail in Barrie, prior to bail).

In the three years 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 that LAO had hoped. We note that in all sites, there may be a slowly growing acceptance by the local criminal bar of the CLOs, although some CLO lawyers indicate that they are still shunned by some members of the private bar. There is an acknowledgement by much of the local criminal bar that there are good criminal lawyers staffing the CLOs, but concern remains as to the long-term implications of the staff lawyer model, particularly its implications for younger members of the private criminal bar.

Most local bar members have not had their practices affected in any appreciable way by the introduction of the CLO. 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 lawyers exchange precedents and legal research with some members of the criminal bar.

<sup>97</sup> The draft Manual was completed by the Directors of the CLOs and introduced to the CLOs in their second year.

Nonetheless, there is still a considerable way to go to establish a positive overall relationship between the CLO and the bar in each of the three communities. There continue to be leading members of the private criminal bar who are strongly opposed to the creation and continued existence of the CLOs. For instance, LAO received responses from CDLPA and the CLA that were critical of the CLOs, the pilot project and the evaluation in the spring of 2006.

At a more specific level the Simcoe County Criminal Lawyers' Association continues to exclude the CLO staff from membership. In Barrie, there is some acceptance of the CLO's representation of mentally ill and Aboriginal accused, but continuing concern and opposition to the CLO's representation of certificate cases. The issue in Barrie is what should be the appropriate split of certificate and non-certificate cases handled by the CLO.

The Ottawa CLO lawyers until recently have faced similar exclusions from local bar association privileges and CLO lawyers in Brampton have been denied full membership in their criminal lawyers' association (although day-to-day relations with the private bar are positive). Some senior members of the local bar association in Ottawa have made it clear that they strongly oppose the CLO model as a violation of the principles of judicare in Ontario. (However there were several senior lawyers in our final interviews who were positive about the Ottawa CLO and encouraged it to expand its caseload and law reform agenda.

It is relevant that in year three, the interviews with the private bar in most instances elicited a much more subdued and moderated response to the CLO. In a number of instances, members of the private bar expressed support for the work of the CLO—especially when discussing areas not being serviced by the private bar such as cases without legal aid certificates. One gets the impression that if it were made clear that the mandate of the CLOs were restricted to areas of unmet need (although defining *unmet need* might be difficult), resistance of the leadership of the criminal bar would be reduced significantly—in all three communities. There were also instances in which private bar members suggested that the CLO should increase intake of certain types of cases that were not considered financially viable by the private bar under the current legal aid tariff (impaired driving cases being the most frequently mentioned.)

*What support did the CLOs receive from LAO?*

The CLOs in all three sites continue to receive helpful support from a variety of groups within LAO, including administrative support from the Area Directors and the provincial office. Particular mention was made of the very good and helpful legal research provided by the LAO LAW (a group within LAO that provides support to all lawyers representing legally aided clients). The Barrie CLO 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 *facta* that have been utilized on major cases, as well as assistance with respect to sentencing of Aboriginal accused. The use of up-to-date research was commended by several Simcoe County judges. Such research will be even more important if and when the CLOs take on more complex legal issues in areas of specialization.

One area in which better co-operation and even alternative allocations of responsibilities would likely yield benefits is the CLO's relationship with local duty counsel. In none of the CLO sites was there an especially close working arrangement with the local duty counsel's office. Since both CLO staff and senior duty counsel are LAO employees, this was surprising. Some of the reasons for this lack of close operational co-operation have to do with workplace issues such as management styles and differences in relative resourcing by LAO. However to fully understand the tensions, one has to look at the situation in terms of the historical development of the CLOs, and in particular the strong

concern voiced by the private bar that close cooperation between the CLOs and local duty counsel would give the CLOs an unfair advantage over the private bar (e.g. in case referrals). To prevent any allegations of favoritism, LAO may set up or tolerated a situation that does not take advantage of the opportunities for providing certain CLO and duty counsel services in a manner that would not only better benefit their clients and the courts, but would also be more cost-effective for taxpayers.

A rethinking of the relationship of the CLOs and duty counsel offices—from both a legal services and cost-effectiveness perspective—is thus indicated. There would seem to be a number of opportunities for improving the effectiveness and cost effectiveness of service to litigants and the courts through a sharing and possible reallocation of responsibilities between the two groups. Although likely resistance to change from the private bar would have to be dealt with, opportunities for greater efficiencies and economies of scale certainly exist for sharing duty counsel and CLO administrative support personnel, systems and facilities. For instance, the contact that the duty counsel gain from the accused persons very early in the litigation process would be expected to have value if available to the “CLO case” later. There would also seem ample opportunities for “duty counsel lawyers”, since they are constantly at the court, to handle much more efficiently certain types of appearances in a “CLO case” as and when they are called to court, rather than the CLO lawyer or CLW having to make a special trip to court for that or a small number of cases (e.g. appearances earlier in the court litigation process or guilty pleas). Conversely, “CLO lawyers” might be available to handle “duty counsel” cases that require special expertise, or progress beyond a guilty plea. The previous success of earlier efforts to adopt alternative models of duty counsel services points to the feasibility and possibility of success for such re-engineering efforts.

### 6.3 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?*

*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 had to address 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 a support worker. These are to some extent predictable and normal growing pains of any law office which have been handled in many cases quite well.

The most innovative change in service delivery methods in the CLOs is the direct delivery of legal aid services through LAO staff. The CLO model uses a mix of the traditional practice of criminal law and innovations made possible through community legal workers (CLWs) and community partnerships, as well as addressing the broader challenges of its clientele and the administration of justice.

The set of responsibilities assumed by the community legal workers and the changing nature of their priorities are areas of concern. Whether or not the changing nature of the priorities for CLWs—namely a move from outreach/systemic reform work to administrative and case support/case management work—were consistent with overall priorities and cost-effective is an area that was often stressed in the interviews with staff. There is no question that the CLWs’ work in offering

administrative and non-legal technical support to the lawyers—from taking basic information from clients at initial interviews, to appearing for the client in assignment court—is considered to be of value and many staff emphasized the importance of this role. In fact, the most significant way that the CLOs now offer services in a non-traditional manner is through the use of the CLWs in this case management support role to the lawyers. CLWs or paralegals are generally not available in smaller private criminal law firms.<sup>98</sup>

In their first year, the CLOs developed a model of criminal lawyering that was significantly different because of the use of CLWs to facilitate greater use of a broad range of other resources within the community—both to assist cases on an individual basis (e.g. to obtain assistance from mental health workers) and to assist in developing systemic improvements to the justice system for all cases (e.g. to improve general protocols). Although, case specific contacts continue (*albeit* sometimes to a reduced extent), the CLWs have not been available to undertake significant outreach activities. Rather the CLOs and specifically the CLWs have been assisting in providing criminal defence services to clients in a similar manner to private criminal lawyers.

Finally, the CLWs have also been required to provide administrative support role within the CLOs and it is unlikely that many of those administrative activities are a cost-effective use of their time—or an effective use of their experience and skills. Much of this latter role—especially tasks related to the entering of time dockets and other information into the CLOs’ automated and manual information systems—could be performed by lower paid clerical staff.

Thus, the CLWs during the second and third year had limited time available for outreach and law reform tasks and in some instances were discouraged from undertaking non-casework activities. If these latter tasks are to be valued by LAO, the task mix of the CLWs (and perhaps the administrative staff and staff lawyers) should be clarified, or additional CLWs or administrative staff should be hired to assist with both casework and outreach.

## 6.4 Workloads and Resources

### 6.4.1 *Workloads*

Concerns have also recently been raised as to whether or not the CLOs are, or are about to have reached their caseload capacities. (Although it was not specifically raised in the interviews, a more important question is whether the CLOs are operating at an *optimal* level—a level that in most organizations is quite different than *capacity* (especially from a cost-effectiveness perspective). For instance, if the CLOs are reaching capacity, there will be a greater need to develop more specific criteria and procedures for accepting and turning away different types of cases. As well, increases in workloads may have significant implications for the numbers of staff required, and/or the best allocation of existing staff responsibilities.

The following Figures provide quarterly trends in three different key indicators of workloads (separately for certificate and non-certificate):

- Cases Opened (a measure of workloads associated especially with activities performed at the early stages of a case, e.g., opening a file, initial interviews with the client and witnesses)

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<sup>98</sup> However the current Barrie CLW worked as a paralegal in a leading small criminal law practice prior to joining the CLO in early 2007.



- Cases Closed (a measure of workloads associated especially with activities performed later in the litigation process, e.g., negotiations with the crown, pleas, trials, and completing documentation of a case).
- Cases Current or Pending at end of quarter (a measure of the number of matters the office has “opened” and which could demand attention of staff).

Trends in cases *opened* in each of the CLOs have been discussed earlier in Section 3.4 in the context of how many and what types of cases are being accepted by the CLO. Although that discussion is relevant to a discussion of workloads, it will not be repeated here. Here the discussion will focus on trends in cases closed and pending.

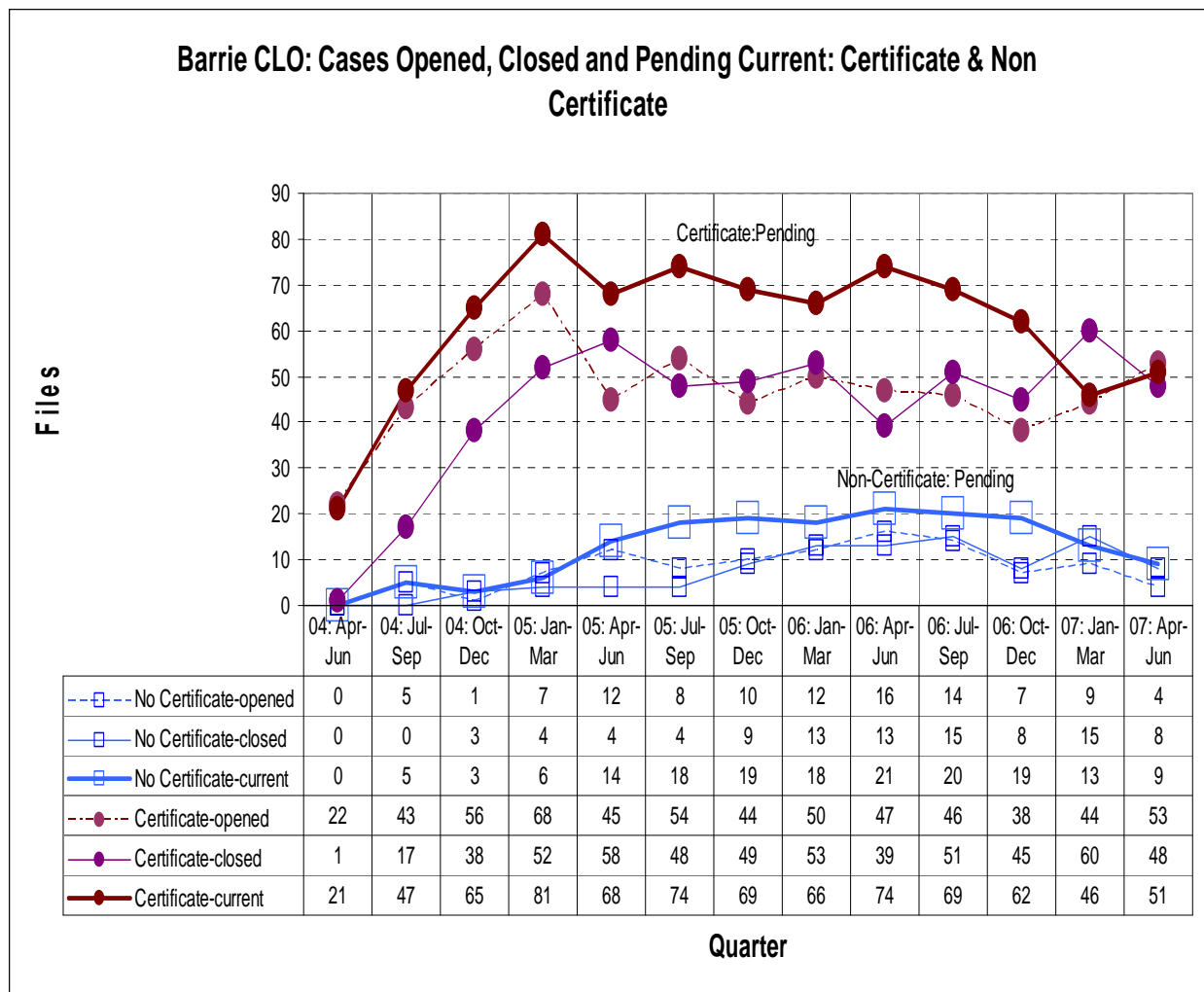
Figure 6-1 presents these data for the two-lawyer Barrie CLO, and shows that until the end of the second year trends in cases closed generally kept up with trends in case opened. The result is that—for both non-certificate and certificate cases—the inventory of cases still current (cases pending) remained fairly constant during the second year (at around 20 and 70 cases, respectively). However, in year three the Barrie CLO in most quarters managed to close more cases than it opened. For certificate cases, this was accomplished even though the number of cases opened increased moderately during the last three quarters.<sup>99</sup>

The net result is that the Barrie office managed to substantially reduce the total number of opened cases pending or active from 95 at the end of year two to 60 by the end of year three.

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<sup>99</sup> In the fall of 2006, the Barrie CLO lost its community legal worker and was required to significantly reduce its intake of cases for a number months until a new CLW was found. The new CLW had worked for many years as an administrative assistant and paralegal for two of the leading criminal lawyers in Barrie.

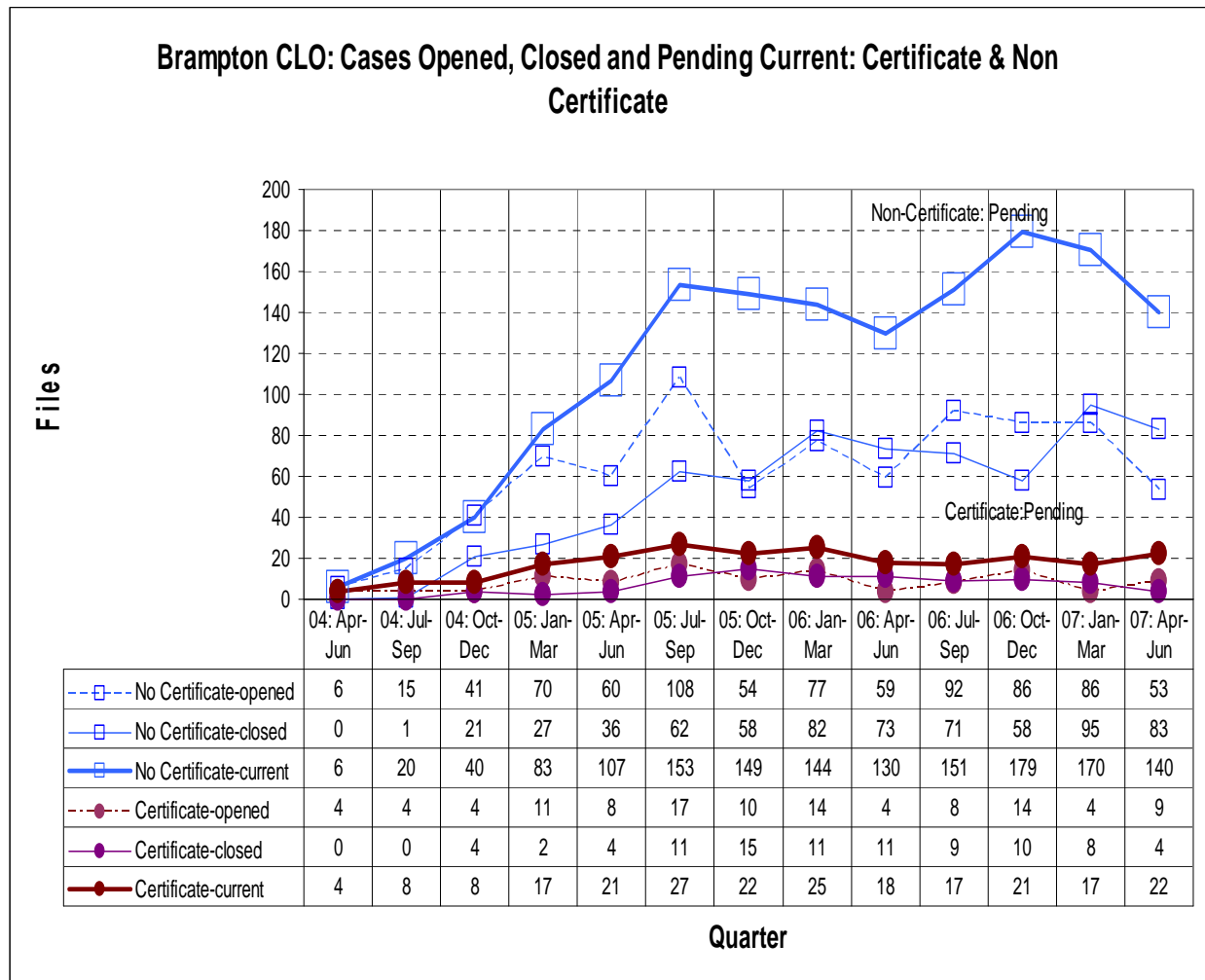
Figure 6-1



A similar picture is shown in Figure 6-2 for the first two years for the three-lawyer Brampton CLO—although the level of pending non-certificate cases did not level off until after the July to September 2006 quarter (as opposed to after the January to March 2005 quarter in Barrie). The inventory of cases still current (cases pending) remained at roughly 150 for non-certificate cases until a slight dip in the last quarter of the second year to 130, and at just over 20 for certificate cases, again with slight dip in the last quarter of the second year. In year three, although the number of non-certificate cases did increase in the first and second quarters, by the end of the year the numbers of cases pending or current—for both certificate and non-certificate cases—were close to the numbers at the end of the previous year. This result was in large part to the office restricting the numbers of non-certificate cases opened in the last quarter of the year.

The net result is that the Brampton office thus has also managed to keep their inventories of active cases under control.

Figure 6-2



A quite different picture is shown in Figure 6-3 for the three-lawyer Ottawa CLO during the first two years. During the second year, the number of closed non-certificate cases had not kept pace with the number of opened cases. The result was a considerable increase in the number of non-certificate current or pending cases—from 58 at the end of year one to 118 at the end of year two. The number of certificate cases current or pending was also fairly level (or slightly decreasing) during the second year, but at considerably lower levels (i.e., between 19 and 27).

Therefore, in the third year, inventories of pending or current cases fell for both certificate and non-certificate cases. However, for both types of cases, this result was achieved—not only by increases in the numbers of cases closed—but also by steady reductions from quarter to quarter in the numbers of cases opened.

Figure 6-3

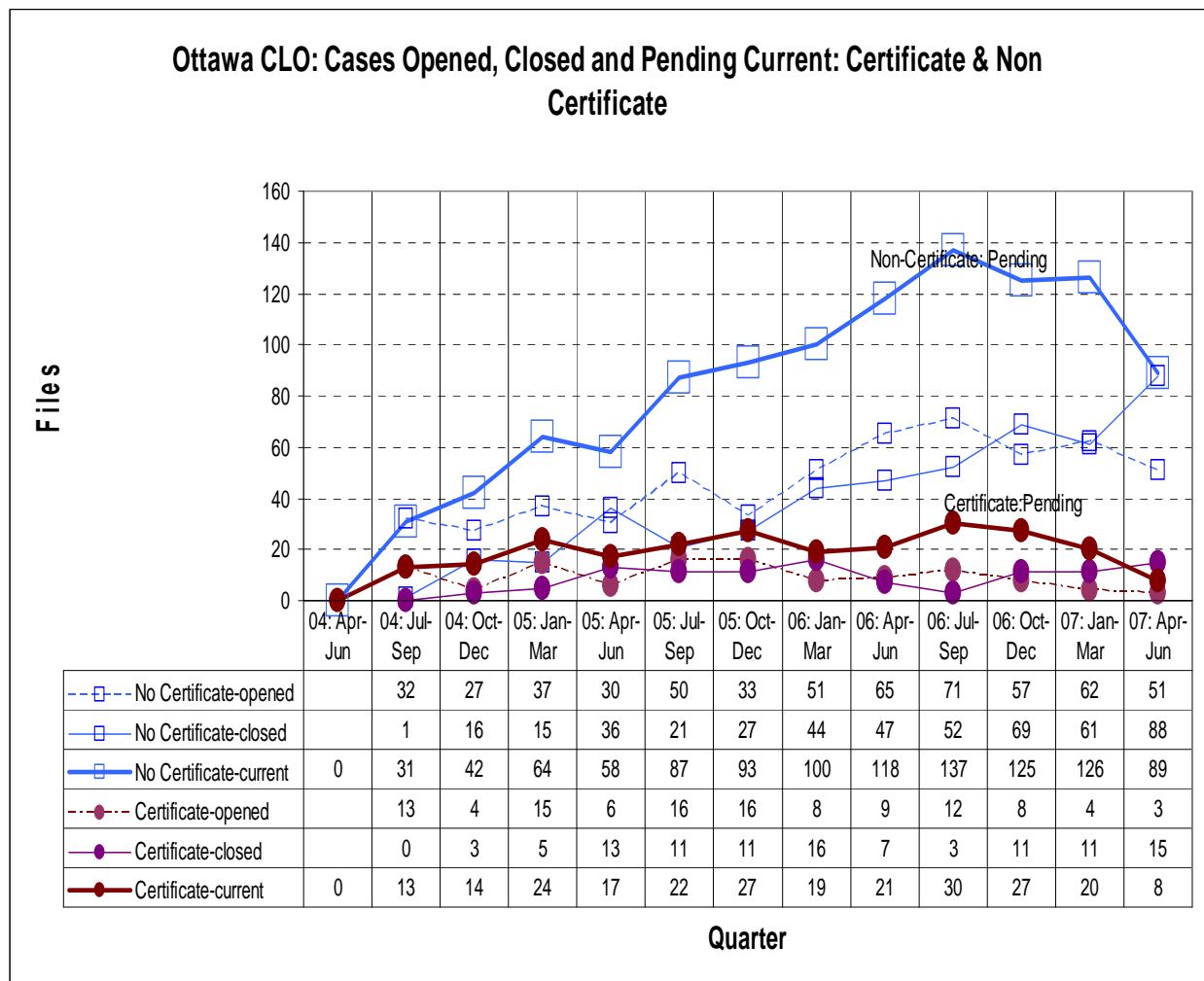


Figure 6-4 provides a summary comparison in the levels of total (i.e., non-certificate and certificate) cases pending in the three CLOs. Until the second last quarter of the first year (i.e., January to March 2005), the three CLOs had similar inventories of current or pending cases. However, during the next two quarters, Brampton experienced a sharp increase to the 188 level, where it (generally) remained for the whole of the second year. In contrast, Barrie's total numbers of pending cases stayed at the January to March 2005 levels (about 90) throughout the second year. Ottawa followed a third trend, by continually increasing throughout the second year—starting at the Barrie levels at the beginning of the year and reaching a level almost mid-way between Barrie and Brampton at the end of year two.<sup>100</sup>

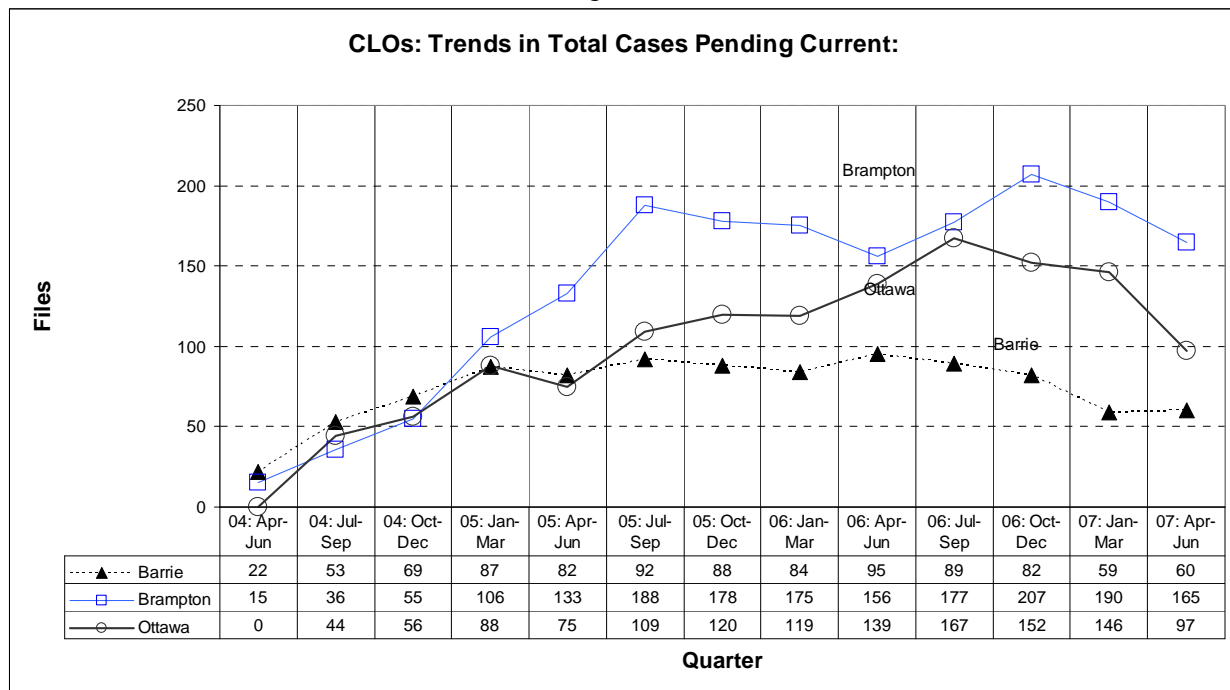
Over year three, total pending caseloads fell in both Barrie and Ottawa. Total pending caseloads fell in all four quarters during the year in Barrie, but only in the last three in Ottawa and the last two in Brampton.

It is also relevant that the Barrie CLO has achieved these results with a more serious caseload mix—and therefore closing a typical case in Barrie represents a greater challenge in terms of issues to address. Barrie's pending caseload at the end of the third year consists of 9 non-certificate vs. 51 certificate, while Brampton's consists of 140 non-certificate vs. 22 certificate, and Ottawa's consists of 89 non-certificate vs. 8 certificate cases.

<sup>100</sup> The slight differences between the total number of pending cases and the sum of certificate and non-certificate cases are due to a small number of cases for which the CLOs did not record whether the case was a non-certificate or certificate.

Investigating why the different CLOs have been exhibiting these different patterns and what they mean for issues such as the capacity and efficiency of the three CLOs will certainly be an important task for CLO directors and LAO planners and managers.

Figure 6-4



### 6.4.2 Staffing

*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, and as of November, 2005, the Barrie CLO considered itself at or above capacity. The Brampton CLO began feeling it was reaching capacity by March 2006, and at that point began triaging cases more vigorously.<sup>101</sup>

It should however be noted that the Ottawa CLO had two of its lawyers leave the CLO – one in spring and the other in late fall 2006. The delay in replacement of the two junior lawyers by two more experienced lawyers, as well as difficulties associated with replacing the administrative assistant and CLW created significant person power issues in Ottawa during late 2006 and early 2007 that impacted caseload capacity.

In year two, the Barrie CLO requested an additional lawyer and potentially another CLW (or a combination CLW/Administrative Assistant) to better serve the demand for its services. LAO declined the request for budgetary reasons.

Similarly, Brampton interviews repeatedly noted that having an additional CLW—or combination CLW/Administrative Assistant—would result in more valuable work being performed, and improvements to the overall efficiency of the office.

<sup>101</sup> As noted elsewhere, since operational standards for what constitutes “capacity” have not been fully clarified it was not possible for the evaluators to assess whether capacity had in fact been reached for any of the CLOs.

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

As noted in the *First Year* report, the three CLOs were each in a different situation with respect to the experience of their lawyers (all the community legal workers were at that time highly experienced). This translates into different requirements for training, supervision, mentoring and review.

In Barrie, the two original lawyers and the community legal worker were all experienced in criminal representation. The Director and the CLW were well known and generally respected within Simcoe County; the second staff lawyer is an experienced criminal lawyer who has considerable experience in working with mentally ill accused in Toronto. The CLO staff discuss complex cases and difficult clients whenever possible or when a major case is being prepared and argued. Over the third year, limited time has been afforded by the Director to monitoring or reviewing the cases of his colleagues because of pressures on his time and particularly his own heavy caseload and regular court appearances throughout Simcoe County. The Director attempts to be in the CLO office one day a week but often is involved in court appearances in Orillia or Midland.

In Barrie there were no serious gaps in competencies identified in the second or third year interviews. Senior Crown counsel and senior members of the Simcoe County judiciary commended the two staff lawyers for their commitment to their clients and their zealous advocacy on plea bargaining, sentencing and in the courtroom. One Duty Counsel observed that “only real area that s/he hears complaints was tardiness.” This was perceived as an aspect of trying to cover a number of cases in various courts and may be symptomatic of having only two lawyers trying to cover a number of courts throughout a large geographic area. As mentioned earlier—and this comment was heard as well with respect to other CLOs—there were several CJS interviewees who indicated that one of the staff lawyers should be more strategic and directed in his final arguments. Again, as with the other CLOs, a number of additional suggestions were made for improving CLO practices, including: having regular case conferences to determine whether cases should proceed to trial; keeping up-to-date on specific aspects of the law<sup>102</sup> and putting forward guilty pleas where a trial might be more appropriate. It was advocated by several CJS interviewees that the Barrie CLO develop a more significant profile and expertise in representing young offenders. Finally, staff members expressed concern in both year two and three that there was need for regular staff meetings and greater sharing of information and consultation on both caseload and community outreach priorities.

In Brampton, all three lawyers are experienced not just in the practice of criminal law, but in the complexities of its practice in the Brampton courthouse. Earlier reports noted that they needed little or no ongoing or formal supervision, just clarification, information, or a second opinion on an as-needed basis. However, in the year three interviews, there was some indication that more hands—on managerial attention would be a good idea. The CLO staff discuss complex cases and difficult clients when issues arise. Although regular meetings are held for that purpose, during the year three interviews staff noted that that it would be beneficial for them to more often discuss strategic and caseload issues.

In Brampton, as noted earlier, there was a general agreement in the year two and year three interviews that the CLO lawyers were experienced and knowledgeable criminal lawyers. Those who had the

<sup>102</sup> “bail law” was noted specifically, although that is not an area of much activity for the CLO.

most interactions with the Brampton CLO said that their staff helped to fill a definite gap in representation services. 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”. Another interviewee stated that “they attempt to provide justice wherever there is a possible defence.” One judge and one senior defence counsel encouraged the office to continue to expand its expertise and representation of mentally disabled accused.

In Ottawa, the inexperience of the junior lawyers during the first year made the situation initially very different. As a couple of the CJS respondents put it, they were in the same situation as any junior lawyer in private practice, learning mostly on the job. Two senior lawyers have since replaced the junior lawyers and have considerably strengthened the CLO staff. The CJS respondents we interviewed commented favourably on the hard work, passion, dedication and preparation of all the Ottawa CLO lawyers. With the two senior lawyers added to the staff, the experience issue was no longer raised by interviewees. Staff turnover has meant that the Ottawa CLO is strongly associated with the good reputation of its director. As mentioned above, there was a desire expressed by the Ottawa staff for regular staff meetings to discuss caseload, as well as community outreach and law reform matters.

*Were any improvements necessary in management competencies?*

As noted in Chapter two, there continues to be limited case reviews or other methods of routinely monitoring, assessing or ensuring quality control and adherence to LAO strategic and operational guidelines on the part of staff. There is instead a general feeling that the lawyers are professionals and that such intrusion is unnecessary. However, if LAO wishes to ensure that the offices to adhere to certain standards, then such standard quality control activities on the part of the CLO directors would seem essential.

However—as is acknowledged by at least one CLO director—it is evident that the CLO directors in all sites lack formal training in methods of ensuring quality control in this type of organization with an evolving professional staff. Clearly these are complex and sophisticated skills that a lawyer who has generally worked as a sole practitioner does not necessarily acquire on the job. Nor were the directors hired with such experience acquired from previous jobs. It is also of concern that at least one of the CLO directors has requested enhanced management training and has yet to be given such an opportunity.

As with any modern organization, all CLOs, with the help of the Provincial office, should develop a more regularized procedure for assessing the ongoing training and supervision needs of all CLO lawyers, CLWs and administrative staff.<sup>103</sup>

*Training would also be of value in other areas of managerial responsibility, in particular in various aspects of human resource management. Our confidential interviews have indicated a number of specific concerns of a human resource management nature. CLOs have experienced problems in retaining staff, and some of those staff have left with concerns about the way their situation was treated. In some cases, there have also been quite protracted delays in bringing replacements on board—and it is unclear to what extent this has been due to general LAO practices or to human*

<sup>103</sup> As described earlier in section 3.6.9 implemented a file documentation training program to support the Peer Review part of the evaluation. During July 2006, all CLO lawyers received training from Professor James Stribopoulos of Osgoode Hall Law School. This training provided for an opportunity for all eight CLO lawyers to discuss file management and the importance of documenting all aspects of a criminal file.

*resource management processes within the CLO. Our confidential interviews have also indicated a number of specific concerns of a human resource management nature.*

Clearly, the cause of some of these problems does not rest with the CLO directors. For instance, two major causes are the lack of clear definition of roles by LAO headquarters and the relatively low pay scales when compared to other lawyers. The existence of such challenges reinforces the need for enhanced skills on the part of the CLO directors to help them deal with the problems in an effective and efficient manner.

Enhanced management training for all CLOs is thus strongly recommended.

#### **6.4.3 Level of Compensation**

In interviews in all years the salary issue was raised by a number of CLO and CJS interviewees. As noted earlier, the concern is that the salary levels for the CLO positions are not high enough to recruit and/or retain sufficiently skilled and experienced lawyers and CLWs over the long term—and staff turnover has confirmed this concern in at least one of the CLOs with respect to lawyers, and in all three CLOs with respect to CLWs. Higher salaries for similar work (especially with offices like the Crown Attorneys) may cause CLO lawyers to be tempted to seek jobs elsewhere. Staff were lost in the Ottawa office, including most recently (after year three) an experienced criminal lawyer who was dedicated to the goals and clients of the CLO. During the spring of 2006, Brampton lost its well-regarded and experienced community legal worker because of salary issues. Despite attempts by the CLO Director, LAO was unable to resolve the financial concerns of the CLW. A number of CJS interviewees and his colleagues expressed regret at the loss of an experienced and innovative community legal worker.

On the issue of salary, not surprisingly a number of members of the criminal bar suggested that the best lawyers will generally be attracted to private practice because of the higher earning potential. Some criminal lawyers 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.

The recognition factor as well as collegial and collaborative environment is important internally to all the CLO employees, because the external environment is unlikely to provide it, or in some cases is openly hostile. This goes along with mentoring for junior staff, CLWs and administrative staff.

#### **6.4.4 Facilities and Equipment**

*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 is close to area courthouses, and (much to the concern 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.



## 6.5 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 made the following observations and recommendations in earlier reports:

- 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, we also stated:

- 4) There is a need for LAO senior headquarters staff and planners to better specify to the CLOs the substantive considerations regarding data collection and coding requirements that flow from overall LAO policy, planning and evaluation requirements – especially requirements related to how specifically staff time and activities should be docketed (i.e. recorded in Legal Files) 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 to LAO provincial staff the 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 –and both the CLO and headquarter levels.

- 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 – or the replacement of Legal Files if it is found to be less appropriate than competing software systems.

The CLOs and the Provincial office spent considerable time during the second year addressing these recommendations. Significant progress was made, especially in better defining codes to be used for recording data and procedures for capturing information—i.e., recommendations 4 and 5 above. However, the main results of this work were not implemented until late in the second year of operations, and therefore it was possible to analyze data based on these improvements until these year three report.

The analysis for this year three report confirms that positive steps have been made. However, substantive improvements remain to be made in all of the eight areas—especially in addressing some of the organizational issues that are important to the ongoing effectiveness and quality of the system (i.e., recommendations 6, 7 and 8 above). In particular there is still a need to establish centralized responsibility for the content and quality of the data in the system. For instance, responsibility for ensuring adequate quality of the data provided to the evaluators seemed to be left to policy personnel. This responsibility would more appropriately rest with operational personnel at both the CLO and headquarters level.

There is also a need to address a more fundamental question. We were repeatedly struck during our interviews with CLO staff by assertions that Legal Files was not of significant use in supporting their day-to-day requirements related to specific cases. As well, the CLO Directors, Area Directors and Provincial Office senior managers consistently reported that Legal Files was not providing them with the management and planning information they needed. This is despite the considerable level of effort and irritation associated with entering data into it. In fact, a number of people at all levels pointedly said that Legal Files was only being maintained to support the evaluation. Clearly this was neither the intended sole use of Legal Files, nor a cost-effective use of the system. We would therefore recommend a review of whether Legal Files can fill the operational and planning needs of different levels of LAO staff, and if so what changes in procedures are needed to ensure that it fulfills those needs.

## 6.6 Costs per Case and Value for Money

### 6.6.1 Introduction

Delivering services in a cost-effective manner is an important objective for LAO and the individual CLOs. Of particular interest is how the costs of delivering services through the CLOs compare to the costs of delivering similar services through private lawyers under the main available alternative, the LAO certificate program.

This section of the report explores four questions directly related to this objective:

1. *What challenges have to be kept in mind when assessing the efficiency, cost per case or value for money of the CLOs compared that of the certificate program?*
2. *With respect to the individual cases handled, does the imputed value (fees) for CLO staff time devoted to handle and close individual cases (imputed CLO fees per case) exceed the fees per case that would be charged by the private bar under the certificate program)?*
3. *With respect to the overall commitment of public expenditures to fund the CLOs, does the value of services they provide cover those expenditures?*
4. *What opportunities exist to improve the efficiency or cost-effectiveness of the CLOs?*

At the outset it must be understood that each of the methods used to address these questions must overcome significant challenges. Some of the specific challenges are presented in subsections 6.6.3 and 6.6.4. However, because of their importance, some of the particularly important and more general ones are presented first in subsection 6.6.2 following.

### 6.6.2 Important Challenges in Comparing CLO and Private Bar Hours and Costs

*“What challenges have to be kept in mind when assessing the efficiency, cost per case or value for money of the CLOs compared that of the certificate program?”*

#### *a Different Organizational and Business Playing Fields*

Ideally, a comparison between the CLOs and the certificate program would involve similar activities performed in similar situations. Also, the data and information available to measure cost-effectiveness using both models would be collected using the same methods and made available to the evaluators. However, before exploring the more specific technical issues of estimating costs per case for the CLOs and the private bar, one must recognize that we will always to some extent be comparing “apples and oranges”. Although significant attempts have been made by LAO to preserve a level playing field, the reality is that there are significant differences in the “playing fields” within which the CLO and private bar currently operate, as well as the data available to measure both.

Some of these differences favour the CLOs. For instance, many of those interviewed raised the point that the CLO lawyers are hired on contract and it could be argued that they do not personally have to deal with the financial pressures that seem omnipresent for most members of the private criminal bar. Others noted that the CLOs seem to be able to afford more expensive office facilities than their private bar counterpart. As well, the CLOs are able to hire both a CLW and a support staff, an option felt to be financially impossible by many private criminal law firms.

However, the CLOs also operate under significant handicaps that are not felt by the private bar. For instance, members of the private bar do not have to have their performance subjected to an extensive and very public evaluation. (A closely related point is that members of the private bar do not have to incur the significant expense of documenting their activities in detail and attending the numerous meetings and interviews to support this evaluation.) Private bar members are also not tied to expensive LAO policies which make the CLO labour and equipment costs much higher than any small private firm would face.

Perhaps more significant from a dollars and cents perspective is that the CLOs do not have many of the business options available to the private bar to improve or protect their “bottom line”, options such as: being able to derive higher rates and fees from non-certificate clients (“cash” clients) who are relatively well-off financially, focusing on or avoiding particular types of cases because of their profitability or interest, increasing or decreasing their staff levels to meet varying demands for service or opportunities for more revenue, benefiting as much as the private bar members do for referrals from other firms, or being able to include other types of matters (e.g. real estate, wills, etc.) in their practice to fill in during—or supplement the revenues for—down periods for criminal work.

Clearly, even if the costs could be accurately estimated, a simple comparison of CLO vs. private bar costs per case out of context of their different playing fields has the strong likelihood of being misleading.

When such more detailed comparisons are presented later, they will therefore be presented with these strong caveats in mind.

A number of more technical issues also have relevance for understanding other ways in which the *playing fields* differ.

### *b Different Types of Cases*

Cost comparisons will have to factor out differences due to the different types of cases handled by the CLOs. In particular,

- The CLO data relates to both certificate and non-certificate files, while the available private bar data only included certificate files. Besides separating out the CLO data into the two types of cases, the special additional workload and scheduling challenges that have to be met by the CLOs in dealing with non-certificate cases (because of their mandate) also have to be factored into cost comparisons.
- The CLOs have to a significant extent focused on types of cases (e.g. those involving mentally ill persons) that the private bar sees as being especially challenging to handle within either the means of the accused or the legal aid tariff—especially when one takes into account the extra services and extra time that is often demanded by those cases. Some CLOs have had to refrain recently from handling certain types of time consuming (because of the complex legal issues involved) cases-- because to do so would prevent them from handling other priority types of cases. For example, Brampton has recently introduced a case triage system that means they will limit their drinking and driving cases.
- The private bar data includes cases not covered by the CLOs (large murder trials), as well as “big cases” that do not mirror CLO files. This inflates the average cost per certificate for the private bar.

### *c Different Services*

By intention and practice, the CLOs may deliver a very different mix of services from those that are delivered by standard delivery mechanisms (primarily private bar offices and duty counsel). Two obvious examples include the CLOs' provision of services for non-certificate cases and special external services (such as outreach and law reform) not provided by private bar offices.<sup>104</sup>

An important prerequisite then for answering the “value for money” for *comparable services* question would be the ability to allocate both value and costs of CLO services to the delivery of different specific types of services. In particular, in estimating costs per case, one should take out of the CLO total office budgets an amount that corresponds to the types of work the CLO does that is not done (or more accurately not done to the same extent) by comparable private bar offices.

Although the evaluation is in a better position than for the *First and Second Year* reports, it is still not at the point where the inclusion of these non-client activities can fully be incorporated, and therefore we cannot provide as complete and reliable a value-for-money analysis as we had hoped.<sup>105, 106</sup> That being said, significant steps have been taken and the calculations presented later have important implications for policy in this area.

### *d Challenges in Estimating the Costs of Private Bar Cases*

It is also important to understand that the costs billed by private bar members for certificate services significantly underestimate the costs (to LAO, and hence the public) of providing those services. In particular:

- The average cost per certificate represents the average amount billed to LAO by individual members of the private bar. This does not represent the total cost for running the certificate program by LAO for the people of Ontario. For example, LAO must pay significant amounts for Lawyer Services & Payments, Operational Support, IT costs for operating Legal Aid Online (i.e. the system through which the lawyers submit their claims and the necessary information is collected to effect payment), etc. These other costs to LAO of operating and subsidizing the certificate program are substantial and are not included in any calculations in this report.<sup>107</sup>

<sup>104</sup> It is recognized that members of the private bar also engage in law reform and outreach activities. However, these activities are not being subsidized by LAO, and it is also unlikely that they do such activities to the extent expected from the CLOs, and as one (of a number) of core mandated objectives.

<sup>105</sup> The first year of the evaluation identified at least four enhancements to the configuration and procedures of Legal Files before it could provide the information needed for the value for money part of the evaluation.

- First, the system was considered to acceptably record the total time spent on client litigation files—especially by lawyers. However, the system did 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 were required to better ensure that non-lawyer time was fully allocated to client litigation files.
- Third, significant improvements were 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 were required to ensure that staff—especially lawyers in certain CLOs—docket their administrative (including travel) time to specific administrative tasks.

During the second year work proceeded on all these fronts, and particular success was achieved in the first area. There is still some ambiguity about the second area, in that it is unclear whether CLWs should docket their time for specific non-client activities, and if so, how to ensure that they do. Considerable work has been done on defining the codes and procedures related to the third area above. However, even at the end of this third year, finding ways to ensure that these procedures do in fact capture the key activities of interest—and that the procedures are followed (the fourth area)—is still represents a challenge.

<sup>106</sup> Eventually, one would also hope that co-operation could be obtained from the private bar to obtain more detailed financial data on private bar cases—for which the PeopleSoft certificate billing data must now serve as our the best available “proxy”.

<sup>107</sup> Estimates of these costs were not available to the evaluation.

Clearly, the above caveats must be kept in mind when interpreting the results that follow.

### 6.6.3 **Comparing CLO “Imputed” and Actual Private Bar Fees for Handling Individual Specific Cases**

*With respect to the individual cases handled, do the imputed value (fees) for CLO staff time devoted to handle and close individual cases (imputed CLO fees per case) exceed the fees per case that would be charged by the private bar under the certificate program)?*

The report now turns to an examination of the data on the “imputed” fees per case for handling individual cases over the past two years—using data from Legal Files data for individual CLO cases, and from the Peoplesoft system for certificate cases billed by private lawyers through “the LAO portal”, Legal Aid Online.

*a Certificate Cases: All case types combined*

#### **a.i CLOs: Imputed Fees per individual certificate cases: 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. For certificate cases handled by private sector lawyers, the value is best approximated by the amount for which those lawyers are willing to provide the service, the amount paid by LAO.

Since CLOs do not actually bill their clients or LAO for specific cases, their fees on such cases are imputed by multiplying

- an estimate of the hourly billing rate each of them would have otherwise billed LAO for doing similar work (under the certificate program) as private lawyers by
- the number of hours actually worked on the file.

Figure 6-5 begins the analysis by presenting various statistics showing the distribution of the “imputed” total (i.e., lawyer plus community legal worker) fees for the CLOs, separately for each of a number of categories of offences.<sup>108</sup>

First, there are quite significant differences (shown the last row for each site in Figure 6-5) in the overall fees per case figures for the Brampton CLO compared to Barrie and Ottawa. (Brampton has means (and medians) in year 2 and year 3 of \$830 and \$700 (medians of \$609 and \$378)). The comparable figures for Barrie and Ottawa are much higher. [Ottawa is highest using the *mean* amount per case as the criteria (\$916 and \$1,161 vs. \$914 and \$868 for Barrie). Barrie is highest when the *median* amount per case is used as the criteria (\$738 and \$708 vs. \$630 and \$542 for Ottawa)]. With

<sup>108</sup> There are a number of measures that can be used that provide meaning when interpreting cost per case data. The “mean”, or average cost per case, for example, would be more appropriate for those concerned with total fees from CLO operations over all cases. On the other hand, the median (which is a measure of the “typical case”, where half the values are more and half are less) would be more appropriate for those interested in the fees for dealing with the typical individual case. The various percentile statistics are for those interested in the fees for dealing with cases at the lower (25th percentile) and upper (75th and 95th percentile) extremes, the latter being helpful to recognize the impact of “extreme” cases.

the small numbers of certificate cases for Brampton and Ottawa it is difficult to understand with confidence the reasons for these differences. The data presented later does not, however, provide an overwhelming case that the differences are solely due to different mixes of case types among the offices.

Second, one should also note the considerable variation from year one, to year two, to year three. In Barrie, the mean fee per case rose from \$801 in year one to \$914 in year two. It then fell back in the third year to \$868. A similar pattern was followed by the median.

Given the aforementioned small numbers of certificate cases in Brampton and Ottawa in year one, estimates of the changes from year one to year two from those sites should be used with caution. However, the numbers of cases in years 2 and 3, although not large, are of useful size. With this caveat in mind, it is worth noting that the mean fee per case in the Brampton CLO followed a different pattern, *falling* steadily from \$852 in year one to \$830 in year two. It continued to fall in the third year to \$700. A similar pattern (but more pronounced) pattern was followed by the median.

In direct contrast, the mean fee per case rose steadily in the Ottawa CLO—from \$845 in year one to \$916 in year two. It continued to increase in the third year to \$1,161. A different (up then down) pattern was followed by the median—suggesting that the increase in the third year might have been to a few relatively larger cases having a disproportionate impact on the mean.

This volatility in fees per case should be kept in mind when using figures from any one year.

Figure 6-5

6-5b. Total Imputed Fees Per Certificate Case: by CLO Site by Year Closed

	Barrie			Brampton			Ottawa		
	Year Closed			Year Closed			Year Closed		
	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Percentile 25	\$424	\$486	\$410	\$294	\$354	\$220	\$404	\$365	\$295
Median	\$634	\$738	\$708	\$660	\$609	\$378	\$567	\$630	\$542
Percentile 75	\$923	\$1,146	\$1,129	\$1,349	\$1,159	\$768	\$950	\$1,375	\$1,068
Percentile 95	\$1,879	\$1,914	\$2,154	.	\$2,346	\$4,118	\$3,176	\$3,198	\$3,695
Mean	\$801	\$914	\$868	\$852	\$830	\$700	\$845	\$916	\$1,161
# of Cases	166	189	205	10	46	30	21	44	39

Specific Closed Certificate Client Files Cases opened and closed by June 30, 2007. Table produced October 20, 2007.  
Includes cases with missing charge data

## a.ii Fees per Certificate Case for Private Bar Cases: PeopleSoft Data

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

The first observation made in the 2<sup>nd</sup> Year Evaluation Report about the analogous numbers shown in Figure 6-6 was that in each of the three CLO sites, and for the rest of Ontario, the mean fee per private bar case increased from the first to the second year of CLO operations. Although this trend continued for cases in Ottawa (with a sizeable increase from \$1,489 to \$1,792), such was not the case for Barrie

(a decrease to below year one levels), and Brampton and “Other Ontario” sites (both with very minor increases or decreases).

Similar results are obtained if the medians are examined instead of the means. At the same time, since there were smaller changes in the median cost per case, changes in the mean cost per case seems often due to increases in the costs of the larger, more expensive, cases.

Second, as shown in Figure 6-6, in each of the comparable sites, in each of the first, second and third year the total fees billed by the private bar per case were higher than the imputed CLO fees for certificate cases:

- In Barrie, in year one, two and three the mean CLO imputed fees per case were \$801, \$914 and \$868—compared to \$1,200, \$1,751 and \$1,102 for the private bar (medians in year three of \$708 for the CLO vs. \$765 for the private bar);
- In Brampton, the mean CLO imputed fees per case for the three years were \$852, \$830 and \$700—compared to \$1,511, \$1,817 and \$1,845 for the private bar (medians in year three of \$378 vs. \$933)]; and
- In Ottawa, the analogous mean CLO imputed fees per case were \$845, \$916 and \$1,161 compared to \$1,279, \$1,486 and \$1,792 for the private bar (medians in year three of \$542 vs. \$972)].

Because the mix of cases of the CLOs and the private bar are different, with the CLOs not handling the larger cases handled by the private bar, the median would likely be a more appropriate statistic for comparison here. However, whether one uses the mean or the median, the same result applies.



Figure 6-6

**Legal Aid Certificates Issued and Billed: Total Fees Paid per Certificate: by Area Office by Year of Last Service**

	Barrie			Brampton			Ottawa			Other		
	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07
Percentile 25	\$562	\$547	\$540	\$674	\$674	\$687	\$665	\$675	\$674	\$598	\$600	\$600
Median	\$808	\$791	\$765	\$923	\$970	\$946	\$933	\$960	\$972	\$831	\$831	\$831
Percentile 75	\$1,247	\$1,201	\$1,200	\$1,435	\$1,526	\$1,524	\$1,431	\$1,487	\$1,505	\$1,280	\$1,304	\$1,293
Percentile 95	\$2,585	\$2,658	\$2,482	\$3,904	\$4,804	\$4,298	\$3,032	\$3,536	\$3,324	\$2,931	\$3,065	\$3,047
Mean	\$1,200	\$1,751	\$1,102	\$1,511	\$1,817	\$1,845	\$1,279	\$1,486	\$1,792	\$1,286	\$1,372	\$1,371
Valid N	N=1719	N=2021	N=1843	N=2409	N=2128	N=1917	N=3545	N=3373	N=2795	N=41397	N=43339	N=38163

Certificates billed from May 1, 2004 to June 30, 2007 (excluding appeals and opinions)

### a.iii A note on alternative statistical measures

Before presenting the analysis in the following sections, it should be noted that the Figures presented often show, not one, but a range of statistics to describe a certain set of data. 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 Figure 6-7 (for the Barrie data for July to December, 2004) to facilitate the explanation.

Table 1

Notes on Definitions and Interpretations of Different Statistics (based on Figure 6-7) (for the Barrie data for July to December, 2004)			
Imputed Fees		Definition of the statistic	What the statistic is useful for describing
25 <sup>th</sup> percentile	\$418	<ul style="list-style-type: none"> <li>At least 25% of the 56 cases had fees of \$418 (and less than 25% had fees of \$417 or less)</li> <li>Alternatively, at least half the 1,1912 cases had at 11 weeks or more between first and last service.</li> </ul>	<ul style="list-style-type: none"> <li>describing how low the lowest quarter of the fees were</li> </ul>
Median	\$552	<ul style="list-style-type: none"> <li>At least half the 56 cases had fees of at least \$552 (and less than half had fees of \$551 or less)</li> <li>Alternatively, at least half the 56 cases had fees of \$552 or more.</li> </ul>	<ul style="list-style-type: none"> <li>Describing the “typical” fee— the fee that (roughly speaking) exceeds and is exceeded by half the fees</li> <li>This measure is not influenced by atypically small or large fees for a few cases</li> </ul>
75 <sup>th</sup> percentile	\$822	<ul style="list-style-type: none"> <li>At least 75% of the 56 cases had fees of \$822 (and less than 75% had fees of \$811)</li> <li>Alternatively, at least 25% of the 56 cases had fees of \$822 or more</li> </ul>	<ul style="list-style-type: none"> <li>Describing how large the largest quarter of fees are</li> </ul>
95 <sup>th</sup> percentile	\$1,266	<ul style="list-style-type: none"> <li><b>At least 95% of the 56 cases had fees of \$1,266 (and less than 95% had fees of \$1,265)</b></li> <li><b>Alternatively, at least 5% of the 56 cases had fees of \$1,266 or more</b></li> </ul>	<ul style="list-style-type: none"> <li>Describing how large the largest small group of fees are</li> </ul>
Mean (or average)	\$637	<ul style="list-style-type: none"> <li>If you added up all the 56 fees and then divided the total by 56, you would get the average of \$637</li> </ul>	<ul style="list-style-type: none"> <li>The average fee—with no regard to whether the average is influenced by particularly small or large fees</li> </ul>
Valid N	56	<ul style="list-style-type: none"> <li>The number of cases for which we have data on fees</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 had the following fees: 1,2,3,5,5,5,5,5,5,60. In this example, the *mean* or average fee is  $((1+2+3+5+5+5+5+5+5+60)/10 =) 9.6$ . This *mean* is obviously misleading if taken as describing the average or typical case. In fact, no case had a fee of 9.6. The problem is that the one \$60 fee 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 large is the fee for the small group (5%) of cases that have the longest fee.

#### **a.iv Fees per Certificate Case for Private Bar Cases and CLOs: Excluding Larger Cases**

The 2<sup>nd</sup> Year Evaluation report noted that one of the problems with data such as that presented in the previous section is that the CLOs do not handle “the larger” criminal cases. It is thus unfair (to the private bar) to compare the fees or costs of CLO cases to those of the private bar without making some adjustment for this difference in the nature of their caseloads. This section attempts such an adjustment by comparing similar size (in terms of fees) cases from the CLOs and the private bar. The first step is to develop an understanding of the size of the certificate cases handled by the CLO such as that shown in Figure 6-7. The next step is to extract a sample of similar size cases from the private bar certificate caseloads. This sample is then compared with the CLO caseloads.

Figure 6-7 begins with statistics that show that the CLOs typically handle relatively small cases. The median (typical) imputed fee of all Barrie certificate cases over the 3 years was \$705. The median fee of a Brampton certificate case was lower at \$525, while the median fee of an Ottawa certificate case was lower as well (at \$560). Thus, half of the CLO cases were smaller and half were larger than these amounts. What is needed for the current exercise is a fee/size of case that encompasses, not half, but most of the cases handled by the CLOs. Being the size of case that is at least as large as the case size of 95% of the cases, the 95<sup>th</sup> percentile would seem appropriate.

As shown in Figure 6-7, 95% of the certificate cases of the Barrie CLO were \$2,023 or less—i.e. roughly 45% were between \$705 and \$2,023. The 95% percentile certificate case size for the Brampton CLO was \$2,571 (the upper roughly 45% were between \$525 and \$2,571); and the upper 45% of the Ottawa CLO certificate cases covered an even larger range, from \$560 to \$3,196.

A rough average of these three 95<sup>th</sup> percentile values is \$2,500, a fee/size that would contain roughly 95% of all the cases handled by the CLO.

Figure 6-7

**Fig 6-13b2 Distribution of Imputed Fees for Certificate cases Opened and Closed by June 30, 2007: By Half Year Closed.**

SiteidN		Half Year File closed						Total
		July to Dec: 2004	Jan to June: 2005	July to Dec: 2005	Jan to June: 2006	July to Dec: 2006	Jan to June: 2007	
Barrie	Percentile 25	\$418	\$431	\$441	\$540	\$456	\$353	\$441
	Median	\$552	\$714	\$728	\$808	\$750	\$625	\$705
	Percentile 75	\$822	\$1,051	\$1,163	\$1,134	\$1,126	\$1,133	\$1,086
	Percentile 95	\$1,266	\$2,181	\$1,713	\$2,260	\$1,845	\$2,246	\$2,023
	Maximum	\$1,752	\$7,338	\$3,667	\$9,459	\$5,603	\$3,175	\$9,459
	Mean	\$637	\$884	\$827	\$1,006	\$879	\$859	\$864
	Sum	\$35,648	\$97,285	\$80,263	\$92,562	\$84,389	\$93,593	\$483,741
	Valid N	N=56	N=110	N=97	N=92	N=96	N=109	N=560
Brampton	Percentile 25	\$128	\$511	\$417	\$110	\$211	\$193	\$301
	Median	\$327	\$1,035	\$616	\$539	\$444	\$330	\$525
	Percentile 75	\$697	\$1,698	\$1,315	\$1,053	\$862	\$633	\$925
	Percentile 95	.	.	\$2,796	\$2,279	.	.	\$2,571
	Maximum	\$813	\$2,683	\$3,029	\$2,315	\$5,809	\$913	\$5,809
	Mean	\$384	\$1,163	\$940	\$688	\$886	\$421	\$787
	Sum	\$1,537	\$6,979	\$24,434	\$13,756	\$15,939	\$5,049	\$67,695
	Valid N	N=4	N=6	N=26	N=20	N=18	N=12	N=86
Ottawa	Percentile 25	\$814	\$363	\$422	\$294	\$234	\$348	\$362
	Median	\$1,977	\$485	\$654	\$539	\$508	\$564	\$560
	Percentile 75	.	\$928	\$1,150	\$1,592	\$667	\$1,592	\$1,055
	Percentile 95	.	.	\$1,789	\$3,928	.	\$3,123	\$3,196
	Maximum	\$3,309	\$1,924	\$1,796	\$4,082	\$16,194	\$3,695	\$16,194
	Mean	\$2,033	\$646	\$798	\$1,024	\$1,650	\$917	\$993
	Sum	\$6,100	\$11,635	\$16,758	\$23,541	\$21,447	\$23,832	\$103,313
	Valid N	N=3	N=18	N=21	N=23	N=13	N=26	N=104

Specific Closed Client Files: Certificate Cases opened and closed by June 30, 2007. Table produced October 10, 2007.

If we then re-calculate Figure 6-5, but base the calculations (respectively) only on private bar certificate cases and CLO cases with fees of \$2,500 or less, we will have estimates of the fees billed by the private bar and the CLOs for samples of certificate cases comparable to those handled by the CLOs. These recalculations are presented in Figure 6-8 (for private bar cases) and Figure 6-9 (for CLO cases).

Figure 6-8

**6-13e2: Legal Aid Certificates Issued and Billed: Total Fees Paid per Certificate for Total Fees up to \$2500: by Area Office by Year of Last Service**

	Barrie			Brampton			Ottawa			Other		
	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07	July 04 through June 05	July 05 through June 06	July 06 through June 07
Percentile 25	\$546	\$540	\$540	\$657	\$665	\$665	\$637	\$665	\$665	\$576	\$598	\$591
Median	\$785	\$757	\$748	\$854	\$864	\$831	\$859	\$868	\$881	\$808	\$831	\$822
Percentile 75	\$1,154	\$1,122	\$1,122	\$1,256	\$1,288	\$1,265	\$1,256	\$1,293	\$1,336	\$1,162	\$1,197	\$1,183
Percentile 95	\$1,856	\$1,786	\$1,819	\$2,009	\$2,087	\$2,064	\$1,994	\$2,043	\$2,063	\$1,911	\$1,927	\$1,903
Mean	\$895	\$869	\$857	\$988	\$1,010	\$1,000	\$995	\$1,017	\$1,029	\$908	\$925	\$913
Valid N	N=1626	N=1901	N=1753	N=2164	N=1878	N=1708	N=3245	N=3029	N=2545	N=38571	N=4018 7	N=35440

Certificates billed from May 1, 2004 to June 30, 2007 (excluding appeals and opinions)

Figure 6-9

**Fig 6-13c2b Distribution of Imputed Fees for Certificate CLO cases Opened and Closed by June 30, 2007 and with Fees of up to \$2500: By Half Year Closed.**

	Barrie			Brampton			Ottawa		
	Year Closed			Year Closed			Year Closed		
	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)	Year 1 (April 04> June 05)	Year 2 (July 05> June 06)	Year 3 (July 06> June 07)
Percentile 25	\$417	\$480	\$403	\$284	\$350	\$187	\$398	\$327	\$281
Median	\$621	\$734	\$702	\$593	\$588	\$368	\$545	\$539	\$520
Percentile 75	\$881	\$1,106	\$1,088	\$1,078	\$1,110	\$666	\$933	\$1,005	\$961
Percentile 95	\$1,720	\$1,662	\$1,861	.	\$2,214	\$989	\$1,974	\$1,789	\$1,972
Mean	\$737	\$819	\$803	\$648	\$781	\$444	\$721	\$733	\$686
# of Cases	163	185	200	9	45	28	20	41	37

Specific Closed Certificate Client Files Cases opened and closed by June 30, 2007. Table produced October 20, 2007.  
Includes cases with missing charge data

Comparing data from these two samples:

- In Barrie, in year one, two and three the mean CLO imputed fees per case (based on cases of \$2,500 or less) were \$737, \$819 and \$803—compared to \$895, \$1,869 and \$857 for the private bar (medians in year three of \$702 for the CLO vs. \$748 for the private bar);
- In Brampton, the mean CLO imputed fees per case for the three years were \$593, \$588 and \$368—compared to \$854, \$864 and \$831 for the private bar (medians in year three of \$368 vs. \$831)]; and
- In Ottawa, the analogous mean CLO imputed fees per case were \$727, \$733 and \$686 compared to \$995, \$1,017 and \$1,029 for the private bar (medians in year three of \$520 vs. \$881)].

Thus, for each of the three years, the median fee per individual certificate case under \$2,500 for the CLO is lower than that of the private bar certificate cases. A similar result is obtained using the mean fee per individual case as the comparison.

It is also worth noting that these differences are pronounced for the results for Brampton and Ottawa. On the other hand, for the last two years in Barrie, the differences for the CLO and the private bar are considerably smaller.

#### **a.v Comparisons for Specific Offence Types**

Another possible reason for differences among fees per case numbers (both among the CLOs and between the CLOs and private bar cases) might be the differences in the mix of case types handled.

Separate CLO imputed fee per case statistics for different case types are shown Figure 6-11. Given the relatively small number of certificate cases within individual offence categories handled—especially in Brampton and Ottawa—it would be inappropriate to compare these figures in detail either within or among the three sites. However, the data that are available would seem to indicate that the total imputed fee per case varied considerably from one type of offence to another. For instance, in Barrie, both the mean and the median were over \$1,300 per case for *sexual assault* cases in all three years—compared to means and medians below \$800 per case in all three years for *theft* cases, and below \$600 per case for *fail to comply* cases in all three years. Comparisons of cost per case data among different service providers therefore clearly needs to consider whether or not the two providers are providing services to the same mix of case types.

Analogous case-type-specific fee per case data for private bar certificate cases are shown in Figure 6-12. First, as with the CLO certificate cases, private bar certificate cases show considerable variation from one charge type to another with respect to fee per case—again emphasizing the importance of considering the mix of cases in any fee per case comparisons. A second observation is that for certain offence types, there are considerable variations from one area to another. These variations may indicate substantive differences in local conditions that account for the differences in fees per case, or may indicate areas or specific offence types in which one might focus targeted initiatives to reduce LAO costs for the certificate program. Alternatively, very low costs/fees per case might also indicate offence types for which the returns earned by the private bar are relatively low under the tariff and thus represent a potential target area for the CLOs.

In certain areas, relatively lower fees per certificate case may indicate an impact of the CLO's already focusing on that area. For instance, mean fees per case for sexual assault cases in Brampton (\$4,181 over all three years combined) and Ottawa (\$3,092) are considerably higher than in Barrie (\$2,106). For other offences, there are variations, but they are less pronounced (for instance, for theft cases the fees per case range from \$1,205 in Brampton and \$1,202 in Ottawa, compared to \$975 in Barrie. Fail CLO Evaluation: Second Year Report

to Comply cases are seen in high volumes in each site and also show area-to-area variations in mean fees per case (i.e., \$976 in Brampton and \$998 in Ottawa, compared to \$717 in Barrie). On the other hand, the fees per case are very similar for other types of cases such as the relatively high volume assault cases (\$1,194 in Brampton and \$1,081 in Ottawa, compared to \$958 in Barrie).

As noted earlier, especially for Brampton and Ottawa, the volume of certificate cases of specific offence types is too low to facilitate comparison of fees per case with the private bar. However, tentative observations might be possible with regard to three of the moderately high volume CLO certificate offences: theft, assault and fail to comply. As shown in Figure 6-10, in all instances in which a comparison is possible, the average CLO fee per certificate case is lower than that of the private bar for comparable offence types. This conclusion applies whether one uses the mean or median as the measure of comparison. Although the opportunities for comparison are limited, this third approach to comparison also shows the CLOs in a favourable light.

Figure 6-10

<b>Fee per Certificate Case for Selected Offence Types: Averages and Medians for 3 years combined</b>						
	Barrie		Brampton		Ottawa	
	All Certificate	CLO only	All Certificate	CLO only	All Certificate	CLO only
Theft	\$975 (\$748)	\$809 (\$649)	\$1,205 (\$831)	\$910 (\$675)*	\$1,202 (\$910)	\$657 (\$581)
Assault	\$1,223 (\$873)	\$888 (\$792)	\$1,194 (\$831)	\$876 (\$373)*	\$1,081 (\$831)	\$1,953 (\$632)
Fail to Comply	\$717 (\$600)	\$532 (\$481)	\$976 (\$748)	**	\$998 (\$797)	**
* Less than 20 cases						
** Less than 15 cases						

6: Value For Money: Process Objectives

Figure 6-11

6-5. Mean and Median Total Imputed Fees Per CLO Certificate Case: Summary Statistics By Most Serious Charge Category by Site

SiteIDN		Year Closed									Total		
		Year 1 (April 04> June 05)			Year 2 (July 05> June 06)			Year 3 (July 06> June 07)			Mean	Median	# of Cases
		Mean	Median	# of Cases	Mean	Median	# of Cases	Mean	Median	# of Cases			
Barrie	Homicide	\$1,605	\$1,605	1	\$658	\$658	1	.	.	.	\$1,132	\$1,132	2
	Sexual assault	\$1,402	\$1,309	11	\$2,007	\$1,315	18	\$2,208	\$2,044	8	\$1,871	\$1,450	37
	Robbery	\$1,285	\$1,355	3	\$1,126	\$858	3	\$776	\$776	2	\$1,098	\$869	8
	Theft	\$831	\$602	45	\$859	\$764	45	\$728	\$592	40	\$809	\$649	130
	Impaired Driving	\$496	\$480	7	\$812	\$811	14	\$1,389	\$1,193	8	\$895	\$776	29
	Other Vehicle	\$501	\$367	4	\$957	\$676	4	\$766	\$687	4	\$741	\$505	12
	Narcotics Cocaine & Heroin	\$589	\$568	6	\$962	\$985	7	\$532	\$470	8	\$692	\$563	21
	Assault	\$806	\$709	43	\$855	\$765	40	\$967	\$850	60	\$888	\$792	143
	Fraud	\$843	\$833	6	\$1,134	\$1,074	6	\$698	\$706	5	\$903	\$796	17
	Other	\$840	\$636	9	\$717	\$573	13	\$869	\$840	17	\$812	\$680	39
	Threatening Death Bodily Harm	\$1,124	\$441	3	\$677	\$593	8	\$1,057	\$708	5	\$879	\$593	16
	B & E	\$599	\$570	4	\$624	\$722	4	\$810	\$536	7	\$704	\$602	15
	Weapons Offences	.	.	.	.	.	.	\$831	\$831	2	\$831	\$831	2
	Mischief	\$477	\$362	3	\$782	\$782	1	\$1,175	\$1,005	4	\$864	\$763	8
	Fail to Comply	\$508	\$446	17	\$552	\$519	20	\$532	\$528	31	\$532	\$481	68
	Other Drug	\$1,409	\$1,409	1	\$567	\$330	3	.	.	.	\$777	\$693	4
	Provincial and Municipal	\$370	\$293	3	\$167	\$167	2	\$276	\$230	4	\$283	\$238	9
	Total	\$801	\$634	166	\$914	\$738	189	\$868	\$708	205	\$864	\$705	560
Brampton	Sexual assault	.	.	.	\$1,978	\$1,978	1	\$913	\$913	1	\$1,446	\$1,446	2
	Robbery	.	.	.	.	.	.	\$1,374	\$1,374	2	\$1,374	\$1,374	2
	Theft	\$1,443	\$1,343	3	\$966	\$712	6	\$668	\$656	8	\$910	\$675	17
	Impaired Driving	\$1,369	\$1,369	1	\$838	\$511	9	\$476	\$376	3	\$795	\$511	13
	Other Vehicle	.	.	.	\$629	\$629	1	.	.	.	\$629	\$629	1
	Narcotics Cocaine & Heroin	\$69	\$69	1	\$1,083	\$997	4	\$322	\$237	5	\$601	\$548	10
	Assault	\$472	\$472	2	\$644	\$367	9	\$1,456	\$380	5	\$876	\$373	16
	Fraud	.	.	.	\$1,019	\$515	3	\$359	\$359	1	\$854	\$437	4
	Other	\$538	\$538	2	\$511	\$511	1	\$182	\$104	3	\$355	\$310	6
	Threatening Death Bodily Harm	.	.	.	\$566	\$481	3	.	.	0	\$566	\$481	3
	B & E	.	.	.	\$1,302	\$1,302	1	.	.	.	\$1,302	\$1,302	1
	Weapons Offences	.	.	.	\$536	\$536	1	.	.	.	\$536	\$536	1
	Mischief	.	.	.	\$952	\$952	2	.	.	.	\$952	\$952	2
	Fail to Comply	\$727	\$727	1	\$602	\$559	4	\$383	\$383	2	\$557	\$485	7
	Provincial and Municipal	.	.	.	\$700	\$700	1	.	.	.	\$700	\$700	1
	Total	\$852	\$660	10	\$830	\$609	46	\$700	\$378	30	\$787	\$525	86
Ottawa	Sexual assault	.	.	.	\$3,312	\$3,312	1	.	.	.	\$3,312	\$3,312	1
	Robbery	.	.	.	\$1,039	\$1,039	2	.	.	.	\$1,039	\$1,039	2
	Theft	\$962	\$753	4	\$742	\$634	9	\$408	\$360	8	\$657	\$581	21
	Impaired Driving	\$1,340	\$447	3	\$950	\$625	3	\$1,220	\$1,220	2	\$1,164	\$572	8
	Other Vehicle	.	.	.	\$654	\$654	1	\$553	\$553	1	\$603	\$603	2
	Assault	\$938	\$692	4	\$1,566	\$1,014	7	\$2,706	\$599	9	\$1,953	\$632	20
	Fraud	.	.	.	\$879	\$879	2	\$943	\$594	3	\$917	\$763	5
	Other	\$523	\$523	1	\$960	\$976	4	\$525	\$503	4	\$718	\$523	9
	Threatening Death Bodily Harm	\$936	\$936	1	\$394	\$468	3	\$623	\$623	2	\$561	\$583	6
	B & E	.	.	.	\$457	\$457	1	\$476	\$476	2	\$470	\$457	3
	Weapons Offences	\$1,180	\$1,180	2	\$846	\$979	3	.	.	.	\$980	\$979	5
	Mischief	\$348	\$348	2	\$303	\$303	2	\$446	\$446	2	\$365	\$369	6
	Fail to Comply	\$262	\$208	3	\$761	\$611	4	\$917	\$917	2	\$629	\$296	9
	Provincial and Municipal	\$814	\$814	1	\$171	\$171	2	\$1,204	\$1,384	4	\$853	\$814	7
	Total	\$845	\$567	21	\$916	\$630	44	\$1,161	\$542	39	\$993	\$560	104

Specific Closed Certificate Client Files Cases opened and closed by June 30, 2007. Table produced October 10, 2007.  
Includes cases with missing charge data



Figure 6-12

Mean and Median Total Imputed Fees Per Certificate Case:  
Summary Statistics By Most Serious Charge Category by Area Office by Year of Last Service

area_n		July 04 through June 05			July 05 through June 06			July 06 through June 07			Total		
		Mean	Median	# of Cases	Mean	Median	# of Cases	Mean	Median	# of Cases	Mean	Median	# of Cases
Barrie	Homicide	\$19,531	\$20,025	11	\$72,529	\$35,849	19	\$17,684	\$6,458	7	\$46,397	\$23,998	37
	Sexual assault	\$2,462	\$1,385	49	\$1,909	\$1,456	70	\$2,025	\$1,801	45	\$2,106	\$1,519	164
	Robbery	\$2,747	\$1,550	54	\$1,907	\$1,401	63	\$2,298	\$1,431	65	\$2,296	\$1,427	182
	Theft	\$958	\$755	242	\$1,004	\$748	287	\$958	\$748	243	\$975	\$748	772
	Impaired Driving	\$938	\$785	60	\$855	\$702	60	\$898	\$798	46	\$897	\$730	166
	Other Vehicle	\$1,197	\$902	31	\$919	\$806	71	\$1,016	\$746	47	\$1,007	\$794	149
	Narcotics Cocaine & Heroin	\$1,212	\$1,080	65	\$1,099	\$1,062	91	\$1,049	\$914	117	\$1,105	\$997	273
	Assault	\$898	\$781	346	\$987	\$813	423	\$982	\$757	348	\$958	\$785	1117
	Fraud	\$1,194	\$933	88	\$1,463	\$831	77	\$1,003	\$886	72	\$1,223	\$873	237
	Other	\$1,381	\$1,005	95	\$1,601	\$776	121	\$1,019	\$757	109	\$1,342	\$804	325
	Threatening Death Bodily Harm	\$982	\$831	84	\$1,051	\$768	99	\$946	\$748	92	\$995	\$776	275
	B& E	\$1,084	\$933	151	\$1,112	\$923	139	\$1,211	\$914	135	\$1,133	\$914	425
	Weapons Offences	\$1,594	\$914	31	\$1,285	\$868	59	\$1,727	\$1,033	46	\$1,505	\$914	136
	Mischief	\$849	\$727	42	\$809	\$706	45	\$751	\$665	65	\$795	\$699	152
	Fail to Comply	\$725	\$619	292	\$718	\$600	325	\$710	\$591	332	\$717	\$600	949
	Other Drug	\$1,098	\$1,000	78	\$1,038	\$900	72	\$1,111	\$1,019	74	\$1,083	\$972	224
	Total	\$1,200	\$808	1719	\$1,751	\$791	2021	\$1,102	\$765	1843	\$1,367	\$785	5583
Brampton	Homicide	\$10,363	\$8,541	12	\$18,525	\$15,499	18	\$46,000	\$33,126	11	\$23,508	\$14,215	41
	Sexual assault	\$3,728	\$2,155	68	\$3,352	\$1,708	69	\$6,279	\$2,594	42	\$4,181	\$2,078	179
	Robbery	\$2,267	\$1,468	183	\$3,258	\$1,704	131	\$1,724	\$1,446	123	\$2,411	\$1,519	437
	Theft	\$1,143	\$822	288	\$1,251	\$841	276	\$1,225	\$831	251	\$1,205	\$831	815
	Impaired Driving	\$1,099	\$831	56	\$1,059	\$998	49	\$1,812	\$732	42	\$1,289	\$831	147
	Other Vehicle	\$1,072	\$831	39	\$1,120	\$960	25	\$1,475	\$1,011	22	\$1,189	\$960	86
	Narcotics Cocaine & Heroin	\$2,045	\$1,374	132	\$2,942	\$1,505	129	\$2,203	\$1,269	112	\$2,403	\$1,431	373
	Assault	\$1,165	\$831	454	\$1,267	\$822	385	\$1,158	\$831	404	\$1,194	\$831	1243
	Fraud	\$1,212	\$861	105	\$1,856	\$997	103	\$3,166	\$1,122	103	\$2,073	\$1,002	311
	Other	\$1,762	\$993	160	\$1,756	\$1,016	127	\$1,308	\$876	112	\$1,632	\$989	399
	Threatening Death Bodily Harm	\$1,215	\$831	116	\$1,160	\$887	94	\$1,197	\$831	78	\$1,192	\$833	288
	B& E	\$1,625	\$1,191	119	\$1,362	\$1,080	117	\$1,233	\$1,080	79	\$1,429	\$1,122	315
	Weapons Offences	\$1,792	\$1,006	119	\$2,131	\$1,053	116	\$2,066	\$1,008	106	\$1,992	\$1,016	341
	Mischief	\$1,098	\$905	67	\$1,303	\$831	52	\$901	\$797	50	\$1,103	\$831	169
	Fail to Comply	\$982	\$748	370	\$888	\$748	285	\$1,069	\$808	249	\$976	\$748	904
	Other Drug	\$1,836	\$1,108	121	\$2,192	\$1,040	152	\$1,734	\$1,186	133	\$1,936	\$1,122	406
	Total	\$1,511	\$923	2409	\$1,817	\$970	2128	\$1,845	\$946	1917	\$1,711	\$944	6454
Ottawa	Homicide	\$12,114	\$4,217	20	\$26,354	\$13,740	17	\$60,384	\$8,948	23	\$34,652	\$9,328	60
	Sexual assault	\$2,976	\$2,220	44	\$3,932	\$2,272	48	\$2,188	\$1,450	39	\$3,092	\$2,044	131
	Robbery	\$2,042	\$1,570	191	\$2,546	\$1,616	173	\$2,778	\$1,621	97	\$2,386	\$1,607	461
	Theft	\$1,191	\$873	493	\$1,170	\$831	453	\$1,249	\$1,016	421	\$1,202	\$910	1367
	Impaired Driving	\$990	\$847	88	\$1,015	\$831	72	\$1,147	\$831	63	\$1,042	\$831	223
	Other Vehicle	\$1,075	\$888	60	\$1,242	\$975	64	\$1,868	\$960	47	\$1,356	\$935	171
	Narcotics Cocaine & Heroin	\$1,352	\$1,108	96	\$1,779	\$1,453	138	\$1,785	\$1,431	138	\$1,671	\$1,308	372
	Assault	\$1,050	\$831	641	\$1,106	\$854	620	\$1,089	\$831	462	\$1,081	\$831	1723
	Fraud	\$1,232	\$1,016	168	\$1,297	\$970	166	\$1,153	\$947	168	\$1,227	\$975	502
	Other	\$1,282	\$986	256	\$1,557	\$1,064	278	\$1,305	\$987	238	\$1,388	\$1,016	772
	Threatening Death Bodily Harm	\$1,360	\$1,025	188	\$1,369	\$1,050	136	\$1,301	\$1,016	103	\$1,349	\$1,029	427
	B& E	\$1,361	\$1,147	228	\$1,501	\$1,127	176	\$1,376	\$1,247	144	\$1,410	\$1,168	548
	Weapons Offences	\$1,648	\$1,385	71	\$1,463	\$1,200	96	\$1,422	\$1,016	63	\$1,509	\$1,152	230
	Mischief	\$1,048	\$831	97	\$1,619	\$822	113	\$1,240	\$831	102	\$1,317	\$831	312
	Fail to Comply	\$903	\$759	737	\$1,059	\$813	698	\$1,047	\$817	581	\$998	\$797	2016
	Other Drug	\$1,468	\$1,200	167	\$1,274	\$1,040	125	\$1,587	\$1,175	106	\$1,439	\$1,143	398
	Total	\$1,279	\$933	3545	\$1,486	\$960	3373	\$1,792	\$972	2795	\$1,498	\$958	9713
Other	Homicide	\$18,703	\$9,118	255	\$23,931	\$10,273	260	\$20,661	\$6,330	259	\$21,115	\$8,398	774
	Sexual assault	\$2,524	\$1,524	1415	\$2,856	\$1,616	1316	\$2,527	\$1,524	1201	\$2,636	\$1,560	3932
	Robbery	\$2,089	\$1,440	2210	\$2,239	\$1,436	2411	\$2,289	\$1,431	2218	\$2,207	\$1,436	6839
	Theft	\$979	\$776	5389	\$1,052	\$785	5626	\$1,028	\$803	4753	\$1,020	\$785	15768
	Impaired Driving	\$937	\$720	867	\$1,072	\$783	888	\$1,011	\$743	658	\$1,007	\$748	2413
	Other Vehicle	\$999	\$766	681	\$1,031	\$767	816	\$1,002	\$813	662	\$1,012	\$785	2159
	Narcotics Cocaine & Heroin	\$1,549	\$1,173	1761	\$1,652	\$1,154	2223	\$1,752	\$1,202	2281	\$1,660	\$1,180	6265
	Assault	\$996	\$785	8892	\$1,001	\$813	9273	\$950	\$785	8202	\$984	\$798	26367
	Fraud	\$1,227	\$895	1658	\$1,285	\$842	1636	\$1,334	\$831	1308	\$1,278	\$859	4602
	Other	\$1,336	\$831	2528	\$1,397	\$859	2642	\$1,518	\$831	2490	\$1,416	\$831	7660
	Threatening Death Bodily Harm	\$1,093	\$813	1886	\$1,135	\$831	1951	\$1,148	\$831	1674	\$1,125	\$831	5511
	B& E	\$1,110	\$965	3388	\$1,134	\$987	3299	\$1,115	\$997	2690	\$1,120	\$979	9377
	Weapons Offences	\$1,683	\$905	1180	\$1,745	\$1,016	1383	\$1,723	\$1,006	1229	\$1,719	\$975	3792
	Mischief	\$935	\$769	967	\$964	\$785	1030	\$890	\$757	879	\$932	\$776	2876
	Fail to Comply	\$825	\$691	6446	\$826	\$693	6569	\$807	\$674	5849	\$820	\$686	18864
	Other Drug	\$1,315	\$1,006	1874	\$1,411	\$1,049	2016	\$1,547	\$1,058	1810	\$1,423	\$1,033	5700
	Total	\$1,286	\$831	41397	\$1,372	\$831	43339	\$1,371	\$831	38163	\$1,343	\$831	122899

Certificates billed from May 1, 2004 to June 30, 2007 (excluding appeals and opinions)  
Table produced October 21, 2007.  
Includes cases with missing charge data

### *b Imputed Fees for Service per CLO Non-Certificate Case*

Since the private bar do not take on cases equivalent to the CLO non-certificate cases, a fee per case comparison with the private bar is not possible as it was for certificate cases. Fee per case information is however still of considerable interest on its own for those interested in the policy and operational issues related to the CLOs.

Figure 6-13 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 (differences that have been discussed earlier in this report).

The first observation (shown the last row for each site in Figure 6-13) is that the non-certificate cases handled by the CLO do not consume large amounts of their billable time on an individual case basis. The average fees per case over the three years have ranged from \$419 in year 5 in Ottawa to \$698 in the same year. In all three CLOs the fee per non-certificate case is also considerably below that for certificate cases—especially in the Ottawa CLO. Taking all cases together over the three years, in Barrie the mean fee for non-certificate cases was \$641, 74% of the \$864 for certificate cases (see Figure 6-7 earlier). In Brampton the ratio of the two mean fees per case were very similar (73%, \$564 for non-certificate vs. \$787 for certificate). In Ottawa the differences was considerably more, with non-certificate cases having a mean fee per case of \$544, only 55% that of the \$993 for certificate cases.

Second, there are differences from one site to another with respect to the imputed fees for non-certificate cases. However, the nature of these differences changes from year to year. For instance, in year 1, the mean fee per case was highest in Ottawa (\$854) and lowest in Barrie (\$538). This pattern held for the second year. However, because the mean fee increased in Barrie and decreased in Ottawa (and Brampton) from year 1 to year 3, in year 3 Ottawa had the *lowest* mean fee (\$419) and Barrie had the highest (\$698).

Third, given the relatively small number of non-certificate cases within certain individual offence categories handled—and within nearly all categories in Barrie except assault—it would be inappropriate to compare figures for those categories. However, for certain other offence categories, such comparisons are interesting, especially for Brampton and Ottawa. For instance, as with certificate cases, within the CLOs there is considerable (and different) variation for non-certificate cases in the cost per case. For instance, in Brampton in year 3 the fee per case ranged from highs of \$720 for *Weapons* offences and \$693 for *mischiefs* cases—to \$478 for *fraud* cases and \$394 for “*Other*” types of cases. However, in Ottawa the highest fees per case were \$689 for “*other*” cases and \$658 for *impaired driving* cases—and the lowest fees per case were \$265 for *mischiefs* cases and \$100 for *provincial and municipal* cases. A related observation is that the mean fee per case for assault cases in year 3 ranged from \$741 in Barrie to \$408 in Ottawa. Clearly there are differences in the fees per cases of different offence types—within sites and among sites. Whether these differences reflect differences in the more specific nature of the cases, or differences in the operating protocols for the sites, would be worthy of further investigation.

Figure 6-13

**6-8 Mean and Median Total Imputed Fees Per Non-Certificate Case: Summary Statistics By Most Serious Charge Category by Site**

SiteIDN		Year Closed								
		Year 1 (April 04> June 05)			Year 2 (July 05> June 06)			Year 3 (July 06> June 07)		
		Mean	Median	# of Cases	Mean	Median	# of Cases	Mean	Median	# of Cases
Barrie	Sexual assault	.	.		\$1,559	\$1,559	1	\$1,005	\$1,005	2
	Theft	.	.		\$524	\$253	6	\$586	\$549	6
	Impaired Driving	\$500	\$547	3	\$1,226	\$612	3	\$1,218	\$845	6
	Other Vehicle	.	.		\$210	\$210	1	.	.	
	Narcotics Cocaine & Heroin	.	.		\$65	\$65	1	.	.	
	Assault	\$478	\$486	5	\$507	\$406	15	\$741	\$595	17
	Fraud	.	.		\$561	\$561	1	\$193	\$198	3
	Other	\$754	\$754	1	\$645	\$249	5	\$550	\$455	7
	Threatening Death Bodily Harm	.	.		\$835	\$835	2	\$314	\$314	1
	B& E	.	.		\$286	\$286	1	\$503	\$503	2
	Mischief	\$656	\$656	1	\$694	\$694	2	\$465	\$465	2
	Other Drug	.	.		\$143	\$143	1	.	.	
	Provincial and Municipal	\$612	\$612	1	.	.		.	.	
	Total	\$538	\$612	11	\$603	\$406	39	\$698	\$523	46
Brampton	Sexual assault	.	.		.	.		\$768	\$768	1
	Theft	\$577	\$512	20	\$536	\$401	60	\$460	\$265	67
	Impaired Driving	\$581	\$482	6	\$1,019	\$553	40	\$530	\$317	31
	Other Vehicle	\$537	\$537	2	\$711	\$822	3	\$508	\$605	10
	Narcotics Cocaine & Heroin	\$351	\$351	1	\$475	\$383	31	\$509	\$330	30
	Assault	\$760	\$606	26	\$540	\$535	53	\$542	\$468	80
	Fraud	\$753	\$753	2	\$686	\$363	11	\$478	\$435	13
	Other	\$596	\$626	6	\$671	\$442	24	\$394	\$360	25
	Threatening Death Bodily Harm	\$802	\$480	5	\$680	\$651	7	\$609	\$464	6
	B& E	.	.		\$424	\$424	1	.	.	
	Mischief	\$392	\$392	1	\$573	\$348	10	\$693	\$304	10
	Other Drug	\$377	\$397	3	\$592	\$469	7	\$305	\$274	5
	Provincial and Municipal	.	.	0	\$78	\$78	1	\$1,192	\$1,192	2
	Robbery	.	.		.	.		\$880	\$857	3
	Weapons Offences	\$511	\$574	3	\$344	\$323	11	\$720	\$435	10
	Fail to Comply	\$455	\$455	2	.	.		.	.	
	Total	\$640	\$540	77	\$622	\$427	259	\$519	\$369	293
Ottawa	Theft	\$500	\$406	14	\$322	\$242	33	\$360	\$248	54
	Impaired Driving	\$1,917	\$1,505	9	\$1,016	\$792	22	\$658	\$352	25
	Other Vehicle	\$323	\$323	1	\$1,416	\$1,416	1	\$124	\$125	4
	Narcotics Cocaine & Heroin	\$1,425	\$1,425	1	\$288	\$288	1	\$306	\$333	3
	Assault	\$716	\$591	19	\$746	\$561	40	\$408	\$290	89
	Fraud	.	.		\$770	\$776	4	\$544	\$282	18
	Other	\$975	\$723	4	\$469	\$290	12	\$689	\$501	18
	Threatening Death Bodily Harm	\$638	\$630	8	\$880	\$519	7	\$398	\$323	12
	B& E	.	.		\$29	\$29	1	\$697	\$678	5
	Mischief	\$649	\$500	5	\$585	\$541	4	\$265	\$163	12
	Other Drug	\$1,054	\$711	3	\$467	\$473	4	\$606	\$212	3
	Provincial and Municipal	\$501	\$501	2	\$562	\$562	2	\$100	\$45	16
	Weapons Offences	\$401	\$401	1	\$238	\$226	3	\$193	\$226	4
	Fail to Comply	\$1,685	\$1,685	1	\$548	\$487	4	\$214	\$179	6
	Total	\$854	\$616	68	\$635	\$415	138	\$419	\$280	269

Specific Closed Non-Certificate Client Files Cases opened and closed by October 10, 2007. Table produced October 10, 2007.  
Includes cases with missing charge data

Figure 6-14 completes this part of the analysis with more detailed descriptions of the distribution and variation of individual fees per non-certificate case over time. Given the relatively small number of cases for Barrie when the data is presented in half yearly intervals, the discussion will focus on the statistics for Brampton and Ottawa.

One fact that becomes clear is that, although the mean fee per case for non-certificate cases may be in the \$500 to \$600 range, for a sizeable proportion this is not the case. For instance, all three sites had 95<sup>th</sup> percentile or maximum fee per case at one time over the \$3,000 level. In addition, the 75<sup>th</sup> percentile fee per case varied considerably over time for both Barrie and Ottawa. However, from January to June of 2007, 25% of the Barrie non-certificate cases were at \$1,000 or above. The same situation was present for the Ottawa CLO from January to June and from July to December 2005. (However, in Brampton the situation was more consistent over time with the 75<sup>th</sup> percentile fee per case remaining in the \$700's.)

Thus one must allow for the fact that a small but important percent of non-certificate cases require considerably more effort than the average or typical type of such cases.

The evaluation explored whether—over all three years combined—the cases with outcomes associated with trials on average had higher than average imputed fees. Although one would expect the trials to be the most expensive, this was not necessarily the case. The results showed other factors were also at work in determining fees. In Barrie, outcomes with higher than average imputed fees included: plead guilty and convicted. Ottawa and Brampton both had a number of large cases which were withdrawals and dismissals.<sup>109</sup> Since these are non-certificate cases, this points to the importance of the CLO assistance, and the likelihood that these cases would not get similar effort from the private bar, since the accuseds cannot afford to pay, and their cases are time-consuming.

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<sup>109</sup> In Brampton, outcomes with higher than average imputed fees included: other withdrawn, dismissed or acquitted, reduced, plead guilty, conviction, and discharge. For Ottawa the analogous outcomes were: other withdrawn, dismissed or acquitted, stayed, plead guilty and convicted.

Figure 6-14

**Fig 6-13b3 Distribution of Imputed Fees for Non- Certificate cases Opened and Closed by June 30, 2007: By Half Year Closed.**

SiteidN		Half Year File closed						Total
		July to Dec: 2004	Jan to June: 2005	July to Dec: 2005	Jan to June: 2006	July to Dec: 2006	Jan to June: 2007	
Barrie	Percentile 25	\$486	\$320	\$169	\$195	\$277	\$332	\$304
	Median	\$612	\$601	\$372	\$620	\$445	\$665	\$523
	Percentile 75	.	\$692	\$564	\$980	\$607	\$1,064	\$767
	Percentile 95	.	.	.	\$2,404	\$1,573	\$3,353	\$1,717
	Maximum	\$712	\$754	\$743	\$2,695	\$1,664	\$3,661	\$3,661
	Mean	\$603	\$513	\$373	\$718	\$513	\$883	\$641
	Sum	\$1,810	\$4,104	\$4,851	\$18,680	\$11,800	\$20,317	\$61,562
	Valid N	N=3	N=8	N=13	N=26	N=23	N=23	N=96
Brampton	Percentile 25	\$328	\$361	\$236	\$195	\$177	\$132	\$195
	Median	\$515	\$545	\$424	\$432	\$392	\$339	\$427
	Percentile 75	\$729	\$787	\$700	\$798	\$704	\$724	\$718
	Percentile 95	\$954	\$2,199	\$1,807	\$1,932	\$1,463	\$1,638	\$1,785
	Maximum	\$957	\$2,766	\$3,902	\$8,627	\$3,130	\$3,774	\$8,627
	Mean	\$524	\$680	\$581	\$655	\$517	\$521	\$576
	Sum	\$10,489	\$38,786	\$68,024	\$92,984	\$63,565	\$88,589	\$362,438
	Valid N	N=20	N=57	N=117	N=142	N=123	N=170	N=629
Ottawa	Percentile 25	\$234	\$323	\$241	\$168	\$121	\$105	\$150
	Median	\$568	\$685	\$455	\$364	\$252	\$288	\$335
	Percentile 75	\$892	\$1,277	\$1,248	\$756	\$588	\$556	\$714
	Percentile 95	.	\$3,231	\$2,456	\$1,672	\$1,536	\$1,108	\$1,670
	Maximum	\$2,119	\$5,294	\$3,327	\$3,292	\$3,654	\$2,156	\$5,294
	Mean	\$654	\$921	\$757	\$570	\$454	\$391	\$544
	Sum	\$11,117	\$46,977	\$36,323	\$51,333	\$54,466	\$58,222	\$258,439
	Valid N	N=17	N=51	N=48	N=90	N=120	N=149	N=475

Specific Closed Client Files: Non-Certificate Cases opened and closed by June 30, 2007. Table produced October 10, 2007.

#### 6.6.4 Does the Value of CLO Services Cover Overall Total CLO Expenditures?

*“With respect to the overall commitment of public expenditures to fund the CLOs, does the value of services they provide cover those expenditures?”*

The report now turns to the second perspective for considering cost per case. The previous sections examined the resources “billed” by the CLOs to handling specific individual cases—and for certificate cases compared those to the analogous amounts billed LAO by private lawyers under the certificate program. Essentially what was examined was the fee/cost per case/efficiency of the CLOs while they were engaged in handling individual cases. That perspective does not address whether or not other non-billable activities of the CLOs affected their broader net total cost to LAO.

That first perspective essentially compares the fees “billed” to individual cases by the CLOs with fees billed to LAO by private bar members. However, while these were the costs LAO bears for CLO activity that can be billable to an individual case, it does *not necessarily* cover the costs to LAO of other CLO activity—either work that is not related to specific cases (such as administration or outreach) or work that is done on specific cases but cannot be billed to that case. For private bar billings, any such “overhead” is assumed to be covered in the mark-up incorporated in the billable

hourly rate charged under the tariff to LAO on specific cases. No other charge is accepted from the private bar for these extra expenses.<sup>110</sup> However, for the CLOs, if the mark-up on the rates used internally to calculate imputed fees does not cover these overhead and other expenses, salaries and rent would still have to be paid and LAO would be faced with a separate extra charge.

This section thus takes a different approach and compares the total cost to LAO of the CLOs with the total amounts of imputed revenue. Essentially the section asks the question, “Does the value of billable case-specific work cover the costs of the CLOs (including work not related to specific cases)?” A total outlay is calculated and the total costs are then divided by the number of cases handled overall to get a second type of cost per case. This estimate is then compared to the average cost billed by the private bar for a certificate case.

### *a CLO Overall Expenditures*

The Yearly Expenditure information provided to the evaluation by LAO and reproduced in summary fashion in Figure 6-15, and in more detail in Figure 6-16 (for 2004/5), Figure 6-17 (for 2005/6) and Figure 6-18 (for 2006/7) is an important component in this analysis.

One should note that LAO does not keep track separately of each CLO’s expenditures on centrally provided (shared) services such as Information Technology, Finance and Human Resources. We have therefore added an 8% (of other expenses) estimate to conform to LAO rules of thumb used in other analysis. It could however be argued that at least a part of these CLO overheads should not be included in this analysis to compensate for not including in earlier estimates of private bar costs emanating from the “overhead” costs of legal aid online and other services related to the private bar certificate program.

Figure 6-15

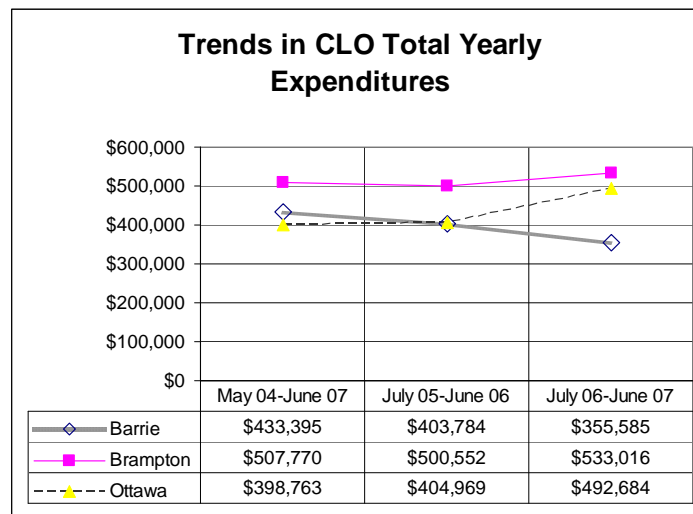


Figure 6-15 begins by showing the different levels and trends in expenditures in each of the CLOs. In large part because Barrie has only 2 lawyers compared to the 3 lawyers in Brampton and Ottawa, it has generally had a lower level of expenditure (in the order of \$100,000 or more in the last two years) than the other two sites. Barrie expenditures have also fallen over the three years.

<sup>110</sup> ....although the private bar frequently pointed out that the tariff is inadequate, and in effect private bar lawyers have to subsidize the certificate cases they accept with other income they earn from their private “cash” customers.

Brampton has until recently had the highest level of expenditure among the three sites—partly because it started up at closer to full staffing of 3 lawyers and continued at those levels. Ottawa has followed a trend of increasing expenditures, in large part because of initial delays in hiring its full complement of staff and because the initial lawyers hired were relatively junior to those hired in the other CLOs. Only in the last year has Ottawa (which is also now staffed with more senior lawyers) reached a level close to that of Brampton. Partially responsible for the increase in both Brampton and Ottawa is the fact that LAO gave wage increases to all LAO employees across the board in year 3. LAO also allowed the CLOs to hire some part-time staff to support data recording for the evaluation in year 3.

This quite considerable variation over time in expenditures on the offices has to be kept in mind in interpreting variations in cost per case data.

With respect to individual line items in the budget, the observation most relevant for the current analysis is that the budget for Brampton is above the others by some 5 to 10 percent because of higher occupancy costs. Rental and utility costs for Brampton represented a 23%, 20% and 18% addition to expenses in each of the three years. Those expenses represented only 12%, 12% and 13% additions for Barrie, and 15%, 12% and 9% for Ottawa.

The preceding information does not represent the total cost for running the certificate program by LAO for the people of Ontario. For example, LAO must pay significant amounts for Lawyer Services & Payments, Operational Support, IT costs for operating Legal Aid Online (i.e. the system through which the lawyers submit their claims and the necessary information is collected to effect payment), etc. These other costs to LAO of operating and subsidizing the certificate program are substantial and are not included in any calculations in this report.

It was originally hoped that before the end of the evaluation, we would have been able to investigate how the percentage allocations of the total budget among the detailed expense categories shown compare to those of typical private law firms of similar size in each of the CLO communities. However, that task would require the co-operation of the private bar in providing similar financial numbers for such typical private law firm. Since we were not able to obtain such cooperation, such analysis was not possible.

**Figure 6-16**  
**CLO Operating Expenses May 2004 through June, 2005**

	<b>Barrie/ Simcoe</b>	<b>Brampton/ Peel</b>	<b>Ottawa/ Carleton</b>	<b>Total</b>
<b>TOTAL OPERATING (incl. Shared Services)</b>	<b>\$433,395</b>	<b>\$507,770</b>	<b>\$398,763</b>	<b>\$1,339,928</b>
<b>A: Human Resource Expenditures</b>	<b>\$332,821</b>	<b>\$348,523</b>	<b>\$282,177</b>	<b>\$963,521</b>
1. Salaries: SubTotal	\$285,910	\$294,132	\$236,545	\$816,587
2. Benefits: Subtotal	\$37,535	\$37,537	\$29,409	\$104,480
3. Membership, Dues and Insurance	\$8,590	\$8,658	\$8,808	\$26,055
4. Other HR Expenditures	\$787	\$8,196	\$7,415	\$16,398
<b>B: Office Expenses</b>	<b>\$20,281</b>	<b>\$26,211</b>	<b>\$32,303</b>	<b>\$78,794</b>
1. General Expenses (travel, reference materials, etc.)	\$5,153	\$5,447	\$11,113	\$21,713
2. Legal Disbursements	\$3,055	\$2,483	\$3,098	\$8,636
3. Communications (Phone, postage, printing)	\$7,464	\$5,814	\$7,106	\$20,384
4. Office supplies, equipment and maintenance	\$4,609	\$12,467	\$10,985	\$28,061
<b>C: Occupancy: Subtotal</b>	<b>\$45,553</b>	<b>\$94,403</b>	<b>\$50,519</b>	<b>\$190,475</b>
1. Rent	20,278	55,453	50,519	\$126,250
2. Utilities, Maintenance, Taxes	25,275	38,950	0	\$64,225
<b>D. Miscellaneous</b>	<b>\$2,637</b>	<b>\$1,020</b>	<b>\$4,226</b>	<b>\$7,884</b>
1. Meetings - Misc expenses	2,535	644	2,383	\$5,562
2. Other	102	376	1,844	\$2,322
<b>D. Shared Services (est @ 8%)</b>	<b>\$32,103</b>	<b>\$37,613</b>	<b>\$29,538</b>	<b>\$99,254</b>



**Figure 6-17**  
**CLO Operating Expenses July 1, 2005 through June 30, 2006**

	<b>Barrie/ Simcoe</b>	<b>Brampton/ Peel</b>	<b>Ottawa/ Carleton</b>	<b>Total</b>
<b>TOTAL OPERATING (incl. Shared Services)</b>	<b>\$403,784</b>	<b>\$500,552</b>	<b>\$404,969</b>	<b>\$1,309,305</b>
<b>A: Human Resource Expenditures</b>	<b>\$309,696</b>	<b>\$353,755</b>	<b>\$291,198</b>	<b>\$954,649</b>
1. Salaries: SubTotal	\$245,125	\$304,313	\$245,075	\$794,513
2. Benefits: Subtotal	\$57,975	\$31,697	\$32,351	\$122,023
3. Membership, Dues and Insurance	\$6,596	\$10,388	\$9,363	\$26,347
4. Other HR Expenditures	\$0	\$7,357	\$4,215	\$11,572
<b>B: Office Expenses</b>	<b>\$20,732</b>	<b>\$25,907</b>	<b>\$39,593</b>	<b>\$86,232</b>
1. General Expenses (travel, reference materials, etc.)	\$2,343	\$14,262	\$19,633	\$36,238
2. Legal Disbursements	\$8,045	\$11,079	\$7,178	\$26,302
3. Communications (Phone, postage, printing)	\$8,034	\$6,871	\$7,880	\$22,785
4. Office supplies, equipment and maintenance				
<b>C: Occupancy: Subtotal</b>	<b>\$42,410</b>	<b>\$82,314</b>	<b>\$42,435</b>	<b>\$167,159</b>
1. Rent	20,278	44,557	42,358	\$107,193
2. Utilities, Maintenance, Taxes	22,132	37,757	77	\$59,966
<b>D. Miscellaneous</b>	<b>\$1,036</b>	<b>\$1,498</b>	<b>\$1,745</b>	<b>\$4,279</b>
1. Meetings - Misc expenses	745	893	2,494	\$4,132
2. Other	291	605	-749	\$147
<b>D. Shared Services (est @ 8%)</b>	<b>\$29,910</b>	<b>\$37,078</b>	<b>\$29,998</b>	<b>\$96,986</b>

**Figure 6-18**  
**CLO Operating Expenses May 2006 through June, 2007**

	<b>Barrie/ Simcoe</b>	<b>Brampton/ Peel</b>	<b>Ottawa/ Carleton</b>	<b>Total</b>
<b>TOTAL OPERATING (incl. Shared Services)</b>	<b>\$355,385</b>	<b>\$533,016</b>	<b>\$492,684</b>	<b>\$1,381,086</b>
<b>A: Human Resource Expenditures</b>	<b>\$262,643</b>	<b>\$376,362</b>	<b>\$368,744</b>	<b>\$1,007,749</b>
1. Salaries: SubTotal	\$224,821	\$329,889	\$318,554	\$873,264
2. Benefits: Subtotal	\$31,387	\$35,073	\$38,988	\$105,448
3. Membership, Dues and Insurance	\$6,435	\$9,502	\$9,363	\$25,300
4. Other HR Expenditures	\$0	\$1,897	\$1,839	\$3,736
<b>B: Office Expenses</b>	<b>\$24,156</b>	<b>\$33,667</b>	<b>\$42,602</b>	<b>\$100,425</b>
1. General Expenses (travel, reference materials, etc.)	\$2,801	\$9,967	\$19,300	\$32,068
2. Legal Disbursements	\$7,415	\$8,223	\$8,910	\$24,547
3. Communications (Phone, postage, printing)	\$9,683	\$9,239	\$8,764	\$27,686
4. Office supplies, equipment and maintenance	\$4,257	\$6,238	\$5,628	\$16,124
<b>C: Occupancy: Subtotal</b>	<b>\$41,997</b>	<b>\$81,676</b>	<b>\$42,242</b>	<b>\$165,916</b>
1. Rent	\$17,625	\$44,341	\$40,742	\$102,709
2. Utilities, Maintenance, Taxes	\$24,372	\$37,335	\$1,501	\$63,207
<b>D. Miscellaneous</b>	<b>\$264</b>	<b>\$1,829</b>	<b>\$2,601</b>	<b>\$4,693</b>
1. Meetings - Misc expenses	\$0	\$733	\$1,285	\$2,018
2. Other	\$264	\$1,096	\$1,316	\$2,676
<b>D. Shared Services (est @ 8%)</b>	<b>\$26,325</b>	<b>\$39,483</b>	<b>\$36,495</b>	<b>\$102,303</b>

### *b CLO Overall Expenditures per Case*

#### **b.i Using Total Expenditure Data**

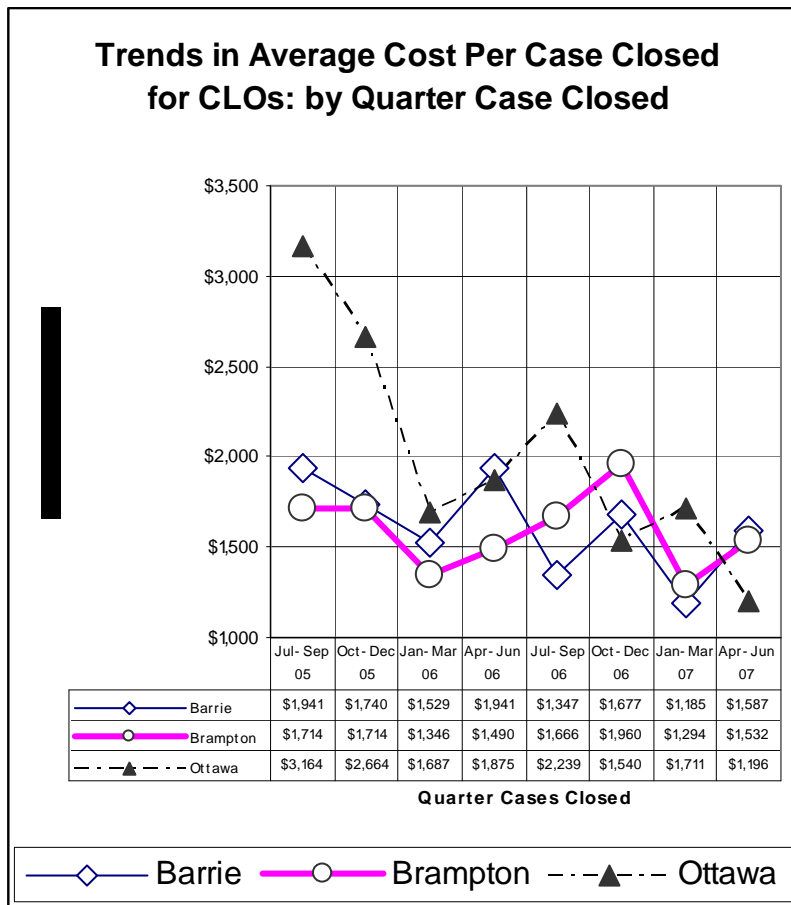
Figure 6-19 divides the total expenditure data presented earlier by estimates of the numbers of cases to arrive at an estimate of total costs or expenditures per case.<sup>111</sup> Summary data on the resulting expenditures per case are shown graphically in Figure 6-20. In both figures, data are provided only for quarters during the last two years. Given the small caseloads and normal problems associated with starting up such offices, data for the first year of CLO operation would be of minimal use for this analysis.

**Figure 6-19**  
**Average Cost per Case Closed: by CLO by Quarter Case Closed**

Barrie	Jul-Sep 05	Oct-Dec 05	Jan-Mar 06	Apr-Jun 06	Jul-Sep 06	Oct-Dec 06	Jan-Mar 07	Apr-Jun 07	Total
Certificate	48	49	53	39	51	45	60	48	393
Non-certificate	4	9	13	13	15	8	15	8	85
Total	52	58	66	52	66	53	75	56	478
Cost/Case	\$1,941	\$1,740	\$1,529	\$1,941	\$1,347	\$1,677	\$1,185	\$1,587	\$1,589
Brampton	Jul-Sep 05	Oct-Dec 05	Jan-Mar 06	Apr-Jun 06	Jul-Sep 06	Oct-Dec 06	Jan-Mar 07	Apr-Jun 07	Total
Certificate	11	15	11	11	9	10	8	4	79
Non-certificate	62	58	82	73	71	58	95	83	582
Total	73	73	93	84	80	68	103	87	661
Cost/Case	\$1,714	\$1,714	\$1,346	\$1,490	\$1,666	\$1,960	\$1,294	\$1,532	\$1,564
Ottawa	Jul-Sep 05	Oct-Dec 05	Jan-Mar 06	Apr-Jun 06	Jul-Sep 06	Oct-Dec 06	Jan-Mar 07	Apr-Jun 07	Total
Certificate	11	11	16	7	3	11	11	15	85
Non-certificate	21	27	44	47	52	69	61	88	409
Total	32	38	60	54	55	80	72	103	494
Cost/Case	\$3,164	\$2,664	\$1,687	\$1,875	\$2,239	\$1,540	\$1,711	\$1,196	\$1,817

<sup>111</sup> N.B. these cost data do not include disbursements.

Figure 6-20



The second year evaluation report noted that—except for the final quarter in year two-- in all three offices total costs per case were falling during the second year. This extended a trend that began in year one. By year three, however, in each of the sites the quarterly changes were roughly equally likely to be increases or decreases. This may reflect each of the sites reaching some sort of stability related to being closer to capacity caseloads and “normal” operations.

The second year evaluation report also noted that in year two the costs per case in Barrie and Brampton were quite similar, and in three of the quarters both Barrie and Brampton were below those for the Ottawa CLO. That said, in the last quarter, the situation changed and Barrie had the highest cost per case of all three sites. In all four quarters during year two, Brampton represented the lowest expenditure per case closed.

Comparing the full third year to the full second year, the costs per case

- in Barrie, fell by 20% (from \$1,771 to \$1,422),
- in Brampton, remained roughly unchanged (\$1,550 and \$1,577), and
- in Ottawa, fell by 28% (from \$2,201 to \$1,589).

Thus, in year three, Barrie had the lowest costs per case, roughly 10% below the (almost identical) costs per case in Brampton and Ottawa.<sup>112</sup>

<sup>112</sup> On a quarterly basis, in year three the relative positions of the three sites changed from quarter to quarter. For instance, although Ottawa represented the highest expenditure per case in the first and third quarter, Brampton had the highest expenditure per case in the second quarter and Barrie had the highest in the fourth. At the same time, the lowest expenditures per case were found in Barrie for two quarters and for Ottawa for two quarters.

### **b.ii Comparison of CLO total Overall Expenditures per case and private billings per case**

The second year evaluation report also compared the CLO expenditures per case with the private billings per case by the private bar on certificate cases. The conclusion was

*“the Barrie and Brampton average costs per case are either below or only slightly above those of the private bar (Barrie, \$1,785 vs. \$1,694; and Brampton \$1,813 vs. \$1,828). However, average mean costs for the second year of the Ottawa CLO are considerably above those for the private bar (\$2,222 vs. \$1,467).”*

This conclusion updated to use year three figures, would read:

*the Barrie average (mean) costs per case are considerably above those of the private bar (Barrie CLO, \$1,422 vs. \$1,102 for the private bar). However the average mean costs of both the Brampton and Ottawa CLOs are below those for the private bar (Brampton, \$1,577 vs. \$1,845; and Ottawa, \$1,589 vs. \$1,792).*

However, both year’s comparisons utilized estimates for the private bar based on all certificate cases. As noted earlier, to reflect the fact that the private bar handles a number of cases much larger than the CLOs, the estimates for the private bar should be based only on cases of a similar size to those handled by the CLO. Alternative estimates of private bar costs per case (for cases up to \$2,500) were thus presented in Figure 6-8.

Using those latter figures as a basis for comparison yields a quite different result than that presented in the year 2 evaluation report. More specifically:

- For Barrie, the CLO expenditures per case (Figure 6-19) for the last two years averaged \$1,589 and ranged from \$1,185 to \$1,941—compared to private bar certificate per case fees (for cases under \$2,500) of \$869 and \$857;
- For Brampton, the CLO expenditures per case (Figure 6-19) for the last two years averaged \$1,564 and ranged from \$1,294 to \$1,960—compared to private bar certificate per case fees (for cases under \$2,500) of \$1,010 and \$1,000; and
- For Ottawa, the CLO expenditures per case (Figure 6-19) for the last two years averaged \$1,817 and ranged from \$1,196 to \$3,164—compared to private bar certificate per case fees (for cases under \$2,500) of \$1,017 and \$1,029.

#### **b.ii.1 A reminder of the caveats regarding comparison of CLO and private bar costs per case**

A simple comparison of CLO and private bar total fees per case therefore shows that the CLOs have lower (imputed) fees billed for each individual case, but the overall cost of running the offices is higher on a per case basis than the fees billed by private lawyers on a comparable certificate case.

The reader is, however, reminded that the results will vary according to how one handles a number of factors. Many of these (e.g. limitations on the types of cases, organizational limitations, intentionally focusing on cases that are more work and less profitable, the fact that the private bar costs do not include the costs to LAO of running the certificate program (including Legal Aid Online) etc.) have been noted earlier in this section.<sup>113</sup>

### *c Comparison of CLO Total Fees and Total Overall Expenditures*

The last analyses related to cost per case addresses the relationship between the accrued billable time that CLO personnel spent on cases each year (i.e. if they were operating as a private law firm) and the costs of their operations. Please note these estimates do not assign any value to activities (such as systemic law reform or outreach or administrative time) many of which may be important to the operation of the CLOs but do not result in billable time on specific cases.

Earlier figures provide estimates of the expenditures on CLO operations in each year. Figure 6-22 provides calculations that yield the total value of services provided during each year.

*(Please note that the statistics in Figure 6-22 are estimated using the “accrual method of accounting” and relate to all case-specific work performed in a particular year (i.e. whether or not the case was opened or closed that year). The estimates shown are for “cases” and “fees per case” and refer to cases that were open at any time in the year. They therefore better describe the work done during the year, whether or not that work was on cases opened or closed that year.*

*These estimates cannot therefore be compared to previous figures on the full costs incurred per cases closed in particular year. The latter estimates would also include any work done on those cases in previous years—and would exclude work done during the year on cases that had been opened at any time before the end of this particular year, but not yet closed by year end.*

Figure 6-21 compares these results. Clearly there continues to be a considerable shortfall between the billings accrued and the total expenditures for the offices. Only in Barrie in the third year did the total accrued fees surpass even half of the total expenditures on the office.

<sup>113</sup> The year two evaluation report also noted issues regarding whether 8% is a valid percent to use for calculating administrative fees actually attributable to the CLOs. For instance, eliminating that 8% would result in the following changes to the expenditures per case estimates:

<b>CLOs: Average Cost Per Case by Year Cases Closed</b>				
	Including administrative Fees		Excluding Administrative Fees	
	July 05- June 06	July 06- June 07	July 05- June 06	July 06- June 07
Barrie	\$1,771	\$1,422	\$1,640	\$1,317
Brampton	\$1,550	\$1,577	\$1,435	\$1,460
Ottawa	\$2,201	\$1,589	\$2,038	\$1,472

Similar concerns were raised about how one would account for certain special duties such as the 12 special “DNA” cases handled by the Director of the Ottawa CLO are accounted for. (Eliminating those cases from the cost per case calculation in the second year report brought the Ottawa cost per case down by roughly 7%.)

Figure 6-21  
**Comparison of CLO Accrued Fees and Total Expenditures**

	May 04- June 05	July 05- June 06	July 06- June 07
<b>Barrie</b>			
Accrued Fees	\$196,286	\$192,479	\$206,538
Total Expenditures	\$433,395	\$403,784	\$355,585
Fees as % of Expenditures	45%	48%	58%
<b>Brampton</b>			
Accrued Fees	\$142,552	\$218,966	\$188,958
Total Expenditures	\$507,770	\$500,552	\$533,016
Fees as % of Expenditures	28%	44%	35%
<b>Ottawa</b>			
Accrued Fees	\$142,552	\$218,966	\$188,958
Total Expenditures	\$398,763	\$404,969	\$492,684
Fees as % of Expenditures	26%	38%	31%

Again, further analysis is required, and whether this shortfall can be covered by other benefits (i.e. other than case-specific services) will be addressed elsewhere in this report.

Since the fees per individual case seem to compare favourably to those of the private bar, attention to the caseloads and overall overhead costs of the CLOs may be indicated.

A number of factors could underlie the shortfall between value of services and expenditures on the CLOs. However, it should be pointed out that, even in the private sector, given the nature of the cases that are handled under legal aid programs, and the existing tariff for providing legal aid cases, no private firm would expect to break-even if it handled only legal aid cases. A private lawyer's income has to be supplemented by more profitable types of criminal (and possibly civil and family) cases. Adding to this the CLOs' are expected to provide other Special External Services such as community outreach and law reform, as well as focusing on the least profitable types of legal aid cases. Such a caseload and set of access to justice expectations only increase the expectation that the CLOs are not likely to break even financially.

Figure 6-22

**Accrued Value of Client-Specific Services Provided in different Years: By Site: Certificate and Non-Certificate Cases**

	Year 1			Year 2			Year 3				Total 3 Years
	July - Dec 04	Jan - June 05	1st 12 months	July - Dec 05	Jan - June 06	2nd 12 months	July - Dec 06	Jan - June 07	3rd 12 months		
<b>Barrie CLO</b>											
<i>Certificate</i>											
Fees	\$77,961	\$107,699	\$185,660	\$83,738	\$80,492	\$164,230	\$95,180	\$82,978	\$178,158		\$528,048
Cases	148	178	326	164	170	334	162	141	303		963
Fee per case	\$527	\$605	\$570	\$511	\$473	\$492	\$588	\$588	\$588		\$548
<i>Non Certificate</i>											
Fees	\$3,774	\$6,853	\$10,626	\$9,895	\$18,354	\$28,249	\$14,791	\$13,590	\$28,381		\$67,256
Cases	11	22	33	32	47	79	41	31	72		184
Fee per case	\$343	\$311	\$322	\$309	\$391	\$358	\$361	\$438	\$394		\$366
<i>Total</i>											
Fees	\$81,734	\$114,552	\$196,286	\$93,633	\$98,846	\$192,479	\$109,971	\$96,568	\$206,538		\$595,303
Cases	159	200	359	196	217	413	203	172	375		1,147
Fee per case	\$514	\$573	\$547	\$478	\$456	\$466	\$542	\$561	\$551		\$519
<b>Brampton CLO</b>											
<i>Certificate</i>											
Fees	\$17,985	\$28,373	\$46,358	\$31,233	\$20,690	\$51,923	\$18,540	\$10,382	\$28,922		\$127,204
Cases	25	45	70	54	46	100	36	35	71		241
Fee per case	\$719	\$631	\$662	\$578	\$450	\$519	\$515	\$297	\$407		\$528
<i>Non Certificate</i>											
Fees	\$25,828	\$70,366	\$96,194	\$78,402	\$88,640	\$167,042	\$76,407	\$83,628	\$160,035		\$423,272
Cases	64	162	226	254	340	594	313	318	631		1,451
Fee per case	\$404	\$434	\$426	\$309	\$261	\$281	\$244	\$263	\$254		\$292
<i>Total</i>											
Fees	\$43,813	\$98,740	\$142,552	\$109,636	\$109,330	\$218,966	\$94,947	\$94,010	\$188,958		\$550,475
Cases	89	207	296	308	386	694	349	353	702		1,692
Fee per case	\$492	\$477	\$482	\$356	\$283	\$316	\$272	\$266	\$269		\$325
<b>Ottawa CLO</b>											
<i>Certificate</i>											
Fees	\$11,691	\$12,129	\$23,820	\$37,097	\$25,669	\$62,766	\$14,045	\$13,309	\$27,354		\$113,940
Cases	18	34	52	51	49	100	50	43	93		245
Fee per case	\$649	\$357	\$458	\$727	\$524	\$628	\$281	\$310	\$294		\$465
<i>Non Certificate</i>											
Fees	\$23,890	\$56,355	\$80,245	\$44,564	\$47,524	\$92,088	\$70,062	\$53,622	\$123,684		\$296,016
Cases	63	111	174	138	193	331	243	193	436		941
Fee per case	\$379	\$508	\$461	\$323	\$246	\$278	\$288	\$278	\$284		\$315
<i>Total</i>											
Fees	\$35,581	\$68,484	\$104,065	\$81,661	\$73,192	\$154,854	\$84,107	\$66,931	\$151,038		\$409,956
Cases	81	145	226	189	242	431	293	236	529		1,186
Fee per case	\$439	\$472	\$460	\$432	\$302	\$359	\$287	\$284	\$286		\$346



### **c.i     Adjusting for the Value of Certain Non-case-specific Activities**

CLOs have in their mandate the objective of providing a number of public education, outreach and system law reform activities—and providing more of those services than normally provided by individual private bar firms. The costs of providing both case-specific and these other “non-case-specific” services are included in the CLO’s total expenditures data presented in earlier sections. Including in section 6.6.3 costs for providing both types of services in the numerator of the *cost per case* calculations but only the number of specific cases in the denominator is in essence handicapping the CLOs by insisting that the case-specific work alone cover or subsidize the other types of non-case specific activity as well.

A similarly unfair handicapping of the CLOs is present in the immediately preceding sections that ask whether total CLO expenditures are covered by imputed values of only case-specific services.

The evaluators would suggest that another, perhaps fairer, approach to the CLO cost issues is to ask: “Is the total cost of the CLOs covered by the value of case-specific services *plus* the value of other types of services provided.” The following paragraphs address this question.

Available data on the (in some instances quite substantial) amount and imputed value (at LAO billing rates) of time currently spent by CLOs on different types of non-client-specific activities are presented in Figure 6-23. Combining this information and the case-specific information together, one gets a more comprehensive estimate of the imputed value of services provided to external groups by the CLO.

Figure 6-23

**CLOs: Total Value (at Billing Rates) of Non-Case Specific Activities: Activity Type By Year Undertaken by Site\***

	Barrie			Brampton			Ottawa		
	2004/5	2005/6	2006/7	2004/5	2005/6	2006/7	2004/5	2005/6	2006/7
<b>Special External Services</b>									
Law reform	\$91	\$1,126	\$1,477	\$13,367	\$10,645	\$9,484	\$1,625	\$369	\$0
Outreach activities (Other)	4,236	4,640	8,102	21,442	11,269	12,328	2,789	1,005	3,139
Non-Billable Client Work	0	175	5,834	948	1,941	6,049	7,848	7,933	12,757
Non billable travel	249	392	0	5,188	4,077	10,491	3,506	7,748	894
Subtotal: Special External Services	\$4,576	\$6,333	\$15,413	\$40,945	\$27,932	\$38,352	\$15,768	\$17,055	\$16,790
% of total	27%	27%	21%	30%	13%	14%	9%	12%	10%
<b>Internal Overhead Activities</b>									
Sick/vacation	9,216	7,221	34,728	8,717	45,966	57,723	42,747	26,057	64,127
Quality Control	0	332	1,247	1,669	4,824	9,998	1,053	399	122
Education	1,283	7,969	5,633	17,248	20,187	29,490	9,869	8,613	3,077
Management	379	166	789	5,904	6,976	6,785	0	2,105	443
Administration	352	126	14,646	40,435	87,226	120,670	82,372	78,522	74,476
Evaluation related	332	0	332	3,223	4,268	8,144	1,477	81	0
Other LAO activities	374	.	.	5,878	659	1,318	7,904	5,566	1,514
Staff meeting	175	911	2,065	10,554	11,651	9,265	16,763	3,599	6,091
Other Activities	0	0	0	1,662	0	0	0	0	0
Subtotal: Internal Overhead	\$12,111	\$16,724	\$59,440	\$95,288	\$181,757	\$243,393	\$162,185	\$124,942	\$149,849
% of total	73%	73%	79%	70%	87%	86%	91%	88%	90%
<b>Total: Non-Case Specific Activities</b>	\$16,687	\$23,057	\$74,853	\$136,233	\$209,690	\$281,745	\$177,953	\$141,997	\$166,639

\*Please note that there may be serious discrepancies from office to office and year to year in the accuracy and completeness of this data.

The significant limitations to those data—limitations that have been reduced, but still present serious limitations to any analysis—are discussed elsewhere.<sup>114</sup> It should, however, be noted that for the Barrie and Brampton CLOs the data describes significant variations from year to year in the total amounts of time docketed by CLO staff for these non-case specific activities. Second, the data describe even more significant differences in the time recorded from one CLO to another—with Barrie recording significantly lower amounts of time for these non-case specific activities than Brampton and Ottawa. Although these differences may simply reflect less time spent by Barrie lawyers and CLWs, the wide yearly variations in the amounts recorded suggest that inconsistent and incomplete data recording may account for a large portion of the differences.<sup>115</sup> Since the source of the variation is unclear, it would seem prudent to treat the Barrie data with considerable caution.

The detailed information in this figure will also be discussed in a later section.

For our immediate purposes, the focus will be on subtotals for two categories of the types of activities shown:

- **Special External Services:** external services that are not billable to specific cases and include: law reform, outreach, non-billable client work and non-billable travel on cases; and
- **Internal Overhead Activities:** all other “overhead” activities that do not related to the direct provision of a service to an external person or group and include: internal management and planning, human resource management tasks, vacations and sick time, etc.

The subtotals for these categories are carried over to Figure 6-24. The top part of that figure repeats the imputed value for case specific services that were presented in the previous section. The next few lines repeat the subtotals for Special External Services from Figure 6-23. The most obvious observation is that the value of Special External Services provided by Brampton (\$40,945, \$27,932, and \$38,352 per year) is considerably above that provided by the Ottawa (\$15,768, \$17,055 and \$16,790)—and until the third year the value of such services provided by Ottawa was considerably above that provided by Barrie (\$4,576, \$6,333, and \$15,413). Similarly, the percent of all external services provided (case-specific and special) accounted for by Special External Services is much higher for Brampton, and much lower for Barrie.

By adding the value of Special External Services to the value of Case Specific services, one obtains a more comprehensive estimate of the value of all external services provided by the CLOs. The impact on the resulting estimate of the total value of the services provided is obviously greatest for Brampton, and smallest for Barrie.

However, the bottom line is that even after adding the value of Special External Services, the total value of services provided by the CLOs does not in any year exceed two-thirds of the expenditures on the CLOs. In the third year, the total value of services covered 62% of the expenditures in Barrie, 43% in Brampton and 42% in Ottawa. Further investigation to review this situation is indicated.

<sup>114</sup> ...in particular in section Part 2: 4.3.2.

<sup>115</sup> Of course, part of the reason would be that Barrie has only two lawyers compared to the three lawyers in the other two sites.

Figure 6-24

**CLOs: Total Value (at Billing Rates) of Case-Specific Tasks and Non-Case Specific Activities: By Year Undertaken by Site**

	Barrie			Brampton			Ottawa		
	2004/5	2005/6	2006/7	2004/5	2005/6	2006/7	2004/5	2005/6	2006/7
<b>Imputed Fees for External Services</b>									
<b>Case-Specific Tasks</b>									
Imputed Value	\$196,286	\$192,479	\$206,538	\$142,552	\$218,966	\$188,958	\$142,552	\$218,966	\$188,958
% of SubTotal: External Services	98%	97%	93%	78%	89%	83%	90%	93%	92%
<b>Special External Services (Outreach, Law Reform etc.)</b>									
Imputed Value	\$4,576	\$6,333	\$15,413	\$40,945	\$27,932	\$38,352	\$15,768	\$17,055	\$16,790
% of SubTotal: External Services	2%	3%	7%	22%	11%	17%	10%	7%	8%
<b>SubTotal: Imputed Value of External Services</b>									
Imputed Value	\$200,862	\$198,812	\$221,951	\$183,497	\$246,898	\$227,310	\$158,320	\$236,021	\$205,748
% of Total Value of All Work	92%	90%	75%	57%	54%	45%	47%	62%	55%
<b>Imputed Value of Internal Overhead Activities (at billing rates)</b>									
Imputed Value	\$16,687	\$23,057	\$74,853	\$136,233	\$209,690	\$281,745	\$177,953	\$141,997	\$166,639
% of Total Value of all work	8%	10%	25%	43%	46%	55%	53%	38%	45%
<b>Total all work: Imputed Value of External Services plus Internal Overhead</b>									
	\$217,550	\$221,869	\$296,805	\$319,731	\$456,588	\$509,056	\$336,273	\$378,018	\$372,387
<b>Total Actual Expenditures</b>									
	\$433,395	\$403,784	\$355,585	\$507,770	\$500,552	\$533,016	\$398,763	\$404,969	\$492,684
Ratio of Imputed Value of Case-Specific & Special External Services to Total Expenditures	46%	49%	62%	36%	49%	43%	40%	58%	42%

As noted earlier, there are a number of other services the CLOs offer that provide value to LAO.

These include:

- i. The CLOs have provided a environment that can be used to test out—on a limited scale—innovative approaches to the provision of defence services (for example, the use of Community Legal Workers as both community workers and for lawyer case management support, or different mixes of staff with different experiences)
- ii. Having available staff resources to pursue specific cases and/or legal/law reform issues (e.g., the DNA cases handled by the Ottawa CLO)
- iii. Being able to collect more complete data on certain types of operations to better understand costs and benefits of existing procedures (e.g., the onerous data collection borne by the offices for the evaluation to test out the time to complete certain tasks).
- iv. Providing a vehicle for testing and development of alternative monitoring, accountability and quality assurance strategies (e.g., peer review)

- v. To have available resources to test alternative partnerships and allocations of responsibility with other LAO organizations (e.g., exploring alternative relationships with duty counsel).

Depending on the value that LAO places on those services, they may cover the shortfall between case-specific generated imputed revenue and total expenditures.

However, perhaps the main conclusion of the above analysis is that the CLOs have demonstrated that it would be extremely difficult under the existing tariff for a public or private office dedicated *solely* to providing legally aided services to a comparable clientele and still being able to break even. Although the shortfall might be narrowed by reducing the quite substantial overheads borne by the CLOs or by re-engineering certain processes, it is unlikely that any such efforts would eliminate it. Given the relatively minor levels of resources devoted to outreach and law reform during recent years, reductions in those areas also cannot be seen as opportunities to eliminate the shortfall.

Further, given the earlier analysis that demonstrates that the CLOs were in large part able to handle and complete their cases within the tariff's time standards,, it is the hourly rates in the tariff, not the time expectations, that would seem to account for this situation.

#### 6.6.5 Improving Cost-Effectiveness

*“What opportunities exist to improve the efficiency or cost-effectiveness of the CLOs?”*

Figure 6-24 indicates that—at least in Brampton and Ottawa--“overhead” activities (when valued at normal billing rates) in most years accounted for over 40% of the work undertaken—and for some years in both Brampton and Ottawa accounted for over 50% of the work performed.

This issue was also explored using hours docketed to “overhead” activities for the lawyers and the CLW in Brampton for year three.<sup>116</sup> If, as before, one defines a “normal work year” of 7 hours a day, 5 days a week, 52 weeks a year (i.e. 1820 hours per year), the hours spent on “overhead” activities accounted for:

- 56% of a “normal work year” for the director,
- 41% and 29% for the two staff lawyers, and
- 44% for the CLW.

Averaged over all three lawyers and the CLW, the total number of hours docketed to “overhead” activities accounted for 42% of the total of the four normal work years.

From our (admittedly preliminary) consultations with private lawyers, such high proportions of time devoted to overhead would likely not be sustained in small law firms—and clearly handicap the CLOs’ abilities to free up time for value generating external activities. The evaluators recommend a review of ways to reduce the overhead burden on the CLOs. Evidence is presented elsewhere in this report to suggest that such a review should consider areas such as work standards (i.e. standards related to the volume of cases to be handled), management activities, allocation of work, and more efficient and effective support systems.

<sup>116</sup> Brampton year 3 data was chosen as likely to be the most complete. Whether or not Brampton is typical of the other CLOs is another area that needs further exploration.

## **6.7 Conclusions**

The main findings and conclusions of this chapter are presented in Section 1.7.5 of Chapter 1 earlier.

# **Evaluation of Criminal Law Offices Third Year Report**

## **Part 3: Appendices**

Submitted to:  
Legal Aid Ontario

Submitted by:

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Fred Zemans  
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## **Appendix A: Peer Review Guidelines & Forms**

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## A.1. Guidelines

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### Objective

The goal of the PR ["PR"] process is to obtain some measurement of the quality of criminal legal aid services that are being provided. This information will assist Legal Aid Ontario in planning for the future of the Criminal Law Offices.

### Preconditions for Effective PR

There are a few preconditions that must be satisfied before PR can be undertaken in any meaningful way. First, there must be comparable standards employed by lawyers at all the Criminal Law Offices when it comes to the documentation of case files. The only way in which a PR process that is based on the assessment of a lawyer's closed files can be effective is if the files contain a clear and detailed record of all aspects of the work performed.

It is a basic obligation of every lawyer to maintain a proper record of litigation in his or her case files. No doubt, the PR process will highlight both strengths and weaknesses in that regard amongst CLO lawyers. Some training on the management and documentation of files will be useful, to ensure that everyone understands the importance of detailing each step in the proceedings and to ensure that there is some uniformity in the process.

The second precondition is a need for uniformity in the standards being applied by the peer-reviewers. The integrity of any peer evaluation depends on there being consistency between reviewers and their reviews. The PR Form is one means to ensure the required consistency. These guidelines elucidate the meaning of the criteria set out in the form. It is essential that the Peer Reviewers selected be experienced criminal lawyers who have both the disposition and training to review the work of their peers. Lawyers must appreciate that there are a number of "correct" approaches to handling any file, rather than approaching the file subjectively – i.e. "that's not the way I would have done it" approach.

Finally, even amongst well-trained reviewers who approach their task with the required sense of professionalism and objectivity, there is bound to be some variation. To ensure consistency between reviews and reviewers, the work of the Peer Reviewers must be subject to checks. Double blind review of files and close scrutiny of significant variations will be invaluable to ensuring the integrity of the PR process.

### Purpose of these Guidelines

These guidelines identify and explain the ranking criteria that are to be used during the PR process. The goal is to provide a clear and concise statement of the factors that will be relevant to the evaluation process. These guidelines will help to ensure consistency in the standards applied between individual reviewers engaged in the PR process.

Beyond guiding the Peer Reviewers, the guidelines will also provide those being assessed with insight into the evaluation process. The benefits will be considerable. First, the guidelines will assist the lawyers involved to become more self-reflective about how they practice; this cannot help but have a salutary effect on professional performance. Second, the guidelines will assist the lawyers to understand the reasons behind their evaluation results, while also mapping out the path for further improvement.

### Category Ratings

Each category on the PR Form includes specific questions designed to address discrete aspects of the file being reviewed and the work performed. The Peer Reviewer is required to rate performance based on a 5-point scale. The rating key is as follows:

Rating	Concise definition
5 = Excellent	Well above standard of a reasonably competent criminal lawyer
4 = Above average	Above standard of a reasonably competent criminal lawyer
3 = Competent	Meets standard of a reasonably competent criminal lawyer
2 = Needs improvement	Below standard of a reasonably competent criminal lawyer, requires some improvement
1 = Not performed / very poor	Not performed or performed very poorly, in need of significant improvement
X = insufficient Information	Not enough information in file to assess
NA = Not Applicable	Not applicable due to circumstances of case

### Case complexity

This is usually a function of the file and the difficulty of the legal and factual issues involved. On occasion, the circumstances of the client may serve to make the case more complicated than it would be otherwise, for example in the case of a mentally ill accused person. Circle the category that best reflects the overall complexity of the file.

### Case seriousness

This refers to the seriousness of the charge(s) and the circumstances of the accused. For example, an offence that might not lead to a custodial sentence for a first offender could potentially result in a dangerous offender designation for an accused who has a long

criminal record for violence. Circle the category that best reflects the overall seriousness of the case, given the charge(s) and the client.

### **Evaluating Performance - Categories and Criteria**

As the PR Form makes clear, the evaluation of the lawyer's performance on each file is based on the consideration of a number of variables that are strong indicators with respect to the overall quality of the service that has been provided to the client. These include:

- A. The File
- B. Communication
- C. Information and Fact Gathering
- D. Advice and Assistance
- E. Work / Outcome
- F. Efficiency
- G. General

The PR Form identifies general criteria to be used in evaluating a lawyer's performance in each of these categories. In an effort to provide even greater guidance to the Peer Reviewers and the lawyers who are being evaluated, what follows is a detailed explanation of each category, followed by a specific (although far from comprehensive) description of the criteria for the five numeric ratings within each of these categories.

## **A. The File:**

### *Generally*

- Good advocacy begins with preparation. Arguably, there is no better indicator of how well prepared a lawyer is than the state of his or her file.
- A disorganized file can be counterproductive. Important documents can go missing. Valuable time may be wasted trying to locate materials that should be at the lawyer's fingertips.
- In addition, a disorganized file may (although not always) evidence a lack of preparedness and a less than thoughtful approach to the case more generally.

### *Excellent*

- To earn this rating the file should reflect good structure in the organization of its contents. For example, all correspondence and memos to file should be located in the file and organized in some logical manner (i.e. chronologically). Similarly, disclosure material (especially where voluminous) should be organized in such a manner that they can be accessed usefully and efficiently as the case progresses to its conclusion.
- Beyond organizational structure, the contents of the documents contained in the file should contain timely, detailed, specific and comprehensive information regarding each and every development in the proceedings.
- The file will evidence attention to the same level of organization and detail from beginning to end. Timely preparation by the lawyer will be apparent throughout.

### *Above Average*

- This file is well organized. All correspondence is in the file and easily accessed. The disclosure materials have been assembled in a manner that makes the lawyer's task of finding relevant materials considerably easier.
- Developments in the case are well documented, although the detail recorded varies appropriately with the significance of the matter dealt with.
- Attention to organizing and documenting the file is apparent. Important developments are documented in a timely manner.

### *Competent*

- The file reflects some degree of organization. Important correspondence and memos to file are present and easily accessed. The disclosure materials are in the file and are in an orderly state.
- Important developments in the case are documented within a reasonable period after they occur.

### *Needs Improvement*

- The file is disorganized in places, for example correspondence is not in any particular order or disclosure materials are not maintained together or with any apparent effort to organize them in a useful manner.
- Some key developments in the proceedings appear not to have been documented or were documented long after they occurred, with the risk that important details may be have been forgotten and gone unrecorded.

### *Not Performed / Very Poor*

- The file is a mess, with no apparent effort to organize correspondence or the disclosure materials.
- Correspondence and/or disclosure materials appear to be missing
- There is no apparent effort to document important developments in the proceedings.

## **B. Communication**

### *Generally*

- Much of what lawyers do is about communicating, with clients, witnesses, court administrators, opposing counsel, judges and jurors.
- The lawyer who communicates effectively is more likely to smoothly navigate the client's case through the system. Such a lawyer is able to avoid getting bogged down in petty interpersonal disputes with other justice system actors, to obtain supplementary disclosure on consent, to negotiate better outcomes for clients, to gain concessions from opponents, and to streamline the litigation in a manner that works to the advantage of his or her clients.
- Good communication skills and the resulting ability to achieve consensus should not be taken as requiring conciliation at all costs. To the contrary, the lawyer must be capable of recognizing when consensus is not possible or, alternatively, simply not in the client's best interests, and be prepared to press the client's case firmly but fairly.
- The lawyer who communicates effectively is capable of tailoring the message to the audience. For example, the lawyer should explain legal concepts to clients in plain and ordinary terms, so that even the most unsophisticated client will be able to understand. At the same time, the lawyer must be careful not to simplify concepts to the point that their significance is lost on the client.
- Beyond protecting the lawyer from the client, written instructions will often go some distance toward clarifying any ambiguity in communications between lawyer and client, and making apparent a client's lack of understanding – affording the lawyer an opportunity to ensure the client appreciates the full implications of a particular course

of action. As a result, whenever feasible, the lawyer should strive to obtain written instructions from the client on all significant matters relating to the litigation.

- Effective communication skills will be apparent in everything the lawyer does on behalf of a client, from the initial client interview, to preparing witnesses to testify, and the oral or written submissions that are made on behalf of the client.
- Finally, the timing of communications is often just as important as their substance. Ideally, the lawyer will inform the client of significant developments as they occur or shortly thereafter, so that the client has an adequate opportunity to absorb information and be able to make more informed decisions in response. Similarly, communications with other actors within the system are more likely to receive a positive response if they are timely. The feeling of impending crisis that comes from eleventh hour communications is unlikely to yield a good outcome.

### *Excellent*

- The lawyer communicates in a clear, concise, and, persuasive manner with all participants in the justice system. This will be reflected by the lawyer's oral and written submissions, correspondence, etc.
- The lawyer provides clear but comprehensive information to the client about all developments in the proceedings (before, during, and after trial) in a manner that is appropriate to the client's level of understanding.
- All significant decisions (i.e. to accept or reject a plea offer, how to plead, to have a jury or judge alone trial, to testify or not) relating to the proceedings are made the subject of clear and comprehensive written instructions (i.e. outlining all potential pros and cons) that are appropriate to the client's level of understanding and are carefully reviewed with the client.
- All communications are timely. For example, the client's instructions are sought, whenever possible, well before important events take place, reducing the risk of rash decisions. Similarly, the client is informed of important developments as soon as possible. Finally, communications with others in the system are timely; correspondence is answered as soon as it is received etc.

### *Above Average*

- The lawyer's written and oral communications are clear and concise.
- The lawyer keeps the client abreast of important developments in the case and does so in a manner that takes into account the client's level of sophistication and understanding.
- The lawyer ensures that significant decisions in the litigation are clearly explained to the client and well-documented through the use of memos or notes to file. With respect to guilty pleas, the lawyer always obtains written instructions that make clear in plain language what the client is pleading to, the factual and legal admissions that

the plea entails, and all of the potential short-term and long-term repercussions of the plea.

- Communications are timely. The client is always consulted on important matters in advance of decisions having to be made. Phone messages are promptly dealt with, and all correspondence is answered shortly after it is received.

#### *Competent*

- The lawyer communicates clearly both orally and in writing.
- The lawyer consults with the client periodically to ensure that the client is kept abreast of developments in the case.
- The lawyer obtains written instructions (or an adequate substitute) about important developments in the litigation. In the context of guilty pleas the lawyer should obtain written instructions whenever the circumstances of the case and/or the client reasonably warrant it. For example, it would fall below the standard of reasonable competence not to get written instructions on a guilty plea when one is dealing with a very serious matter, or a difficult client, or a client who has given inconsistent information about his or her factual guilt / innocence etc.
- What will constitute an adequate substitute will vary with the circumstances. For example, it may be that the lawyer acting on a guilty plea knows that the presiding judge will conduct a s. 606 plea inquiry and therefore, although written instructions are preferable, they are not essential.
- Important developments in the case are documented.
- The lawyer answers queries from the client and responds to correspondence within a reasonable period.

#### *Needs Improvement*

- The lawyer can sometimes be unclear when explaining concepts or ideas to the client. Written communications, factums, correspondence etc. could stand to be improved in structure, grammar and/or spelling.
- The lawyer sometimes fails to keep the client abreast of important developments in the proceedings and/or at times could do a better job of explaining developments.
- The lawyer fails to obtain written instructions (or an adequate substitute) from a client on a guilty plea even though the circumstances of the case or the client would seem to require otherwise (i.e. serious charges, difficult client, client who has provided conflicting accounts re guilt / innocence).
- Phone calls are sometimes not returned, or correspondence is occasionally not answered, in a timely manner.

*Not Performed / Very Poor*

- The lawyer's verbal and written communications are of extremely poor quality, lacking in structure, clarity and/or containing many grammatical and spelling errors.
- The client is rarely if ever consulted, and when consultation does occur it is inadequate because it is too rushed or concepts and developments are not explained, excessive legalese is used etc.
- The lawyer fails to obtain written instructions (or an adequate substitute) from a client on a guilty plea even though the circumstances of the case or the client would seem to require otherwise (i.e. serious charges, difficult client, client who has provided conflicting accounts re guilt / innocence).
- Phone calls and correspondence routinely go unanswered.

**C. Information and Fact-Gathering:**

*Generally*

- Invariably, the best source of information available to a criminal lawyer is his or her client. It is essential that the lawyer spend the time that is necessary to obtain as much information as possible from the client. Hurried conversations in the halls of the courthouse before and after court appearances are no substitute for a proper interview or, in some cases, interviews.
- The lawyer must document the client's story early on, while the events are fresh in the client's mind. Failing that, important information that is essential to the defence may be permanently lost. This is not a matter of consensus, however. Many experienced criminal lawyers are of the view that for tactical reasons it is wise to defer the client interview until after disclosure is obtained or, in some cases, until after the preliminary inquiry.
- Information received from the client must be properly documented. A failure to record client interviews will result in the loss of valuable information, as details will unavoidably slip from the lawyer's memory with the passage of time.
- The lawyer must be diligent in obtaining disclosure from the Crown. Disclosure materials must be carefully reviewed in a timely manner and any significant deficiency must be made the subject of a supplementary disclosure request as soon as possible. This avoids late discoveries of missing disclosure that necessitate adjournments and work to the client's detriment. Defence counsel must be proactive in seeking relevant disclosure from the Crown. In addition, where it becomes necessary, defence counsel should not hesitate to seek the intervention of the court where the Crown fails to respond to supplementary disclosure requests or unjustifiably refuses to disclose material.



- Finally, the lawyer must be diligent in pursuing relevant information and materials from third parties. Potential witnesses should be tracked down and interviewed (preferably by an investigator) well in advance of trial. Subpoenas should be obtained and served long before the scheduled commencement of trial, so that any difficulties in securing essential evidence will be apparent early on and necessary steps can be taken to minimize any potential prejudice to the client.

*Excellent*

- When appropriate, the lawyer meets promptly with the client and obtains a detailed account of the client's version while events are still fresh.
- The lawyer takes all necessary steps to obtain disclosure from the Crown.
- Disclosure materials are reviewed promptly and any deficiencies are immediately made the subject of a supplementary disclosure request.
- Crown non-disclosure is dealt with quickly and appropriately, i.e. further demands and, when necessary, by seeking judicial intervention.
- The lawyer meets with the client after disclosure is obtained to seek clarification from the client on any apparent conflicts or inconsistencies, further fleshing out the client's account.
- All potential witnesses are tracked down and interviewed early on, so that their evidence is properly preserved.
- Witnesses are subpoenaed well in advance of the preliminary inquiry or trial.
- Relevant records that can be obtained through the client's consent are secured and reviewed in a timely manner.

*Above average*

- When appropriate, the lawyer meets with the client in a timely manner and obtains a full account of the client's version of events.
- The lawyer obtains and reviews Crown disclosure early on, and takes timely and appropriate steps in response to any apparent non-disclosure.
- The lawyer tracks down and interviews potential witnesses well in advance of the preliminary inquiry or trial, and subpoenas are obtained to ensure the attendance of witnesses in court.

*Competent*

- Before the client is called on to make any significant decisions (i.e. whether to accept a plea offer, whether to have a preliminary inquiry or proceed straight to trial etc.) the lawyer meets with the client and obtains a detailed account of his or her story.

- The lawyer reviews Crown disclosure materials in a timely manner. Potentially significant deficiencies in disclosure are recognized and dealt with so as to avoid prejudice to the client's position.
- Potential witnesses are identified and interviewed in advance of the preliminary inquiry or trial. Subpoenas are obtained to secure the attendance of witnesses who pose a risk of otherwise not attending.

#### *Needs Improvement*

- Either because of shortcomings in the lawyer's interview skills and/or insufficient time spent with the client, the information obtained from the client is deficient, i.e. too skeletal, unexplained gaps in narrative, etc.
- Although disclosure is obtained, it is not reviewed in a timely manner and deficiencies are not recognized and/or not remedied without prejudice to the client, i.e. trial has to be adjourned, etc.
- Witnesses who pose a real risk of not attending are sometimes not subpoenaed.
- Witnesses who are called are not properly interviewed before testifying.

#### *Not Performed / Very Poor*

- The client is never properly interviewed.
- Obvious and important deficiencies in Crown disclosure go unnoticed and unremedied.
- Important witnesses are not tracked down or, if identified, are not subpoenaed.

### **D. Advice and Assistance**

#### *Generally*

- The lawyer must spend time immersed in the file. It is only with real familiarity that the lawyer will be able to identify all of the potential legal and factual issues in the case.
- The lawyer must also have the knowledge and judgment to realistically assess the merits of the salient issues. The lawyer must be capable of distinguishing those issues that are worth pursuing, from those that will consume time and energy with little chance of success.
- The lawyer must guard against optimism bias, which involves an exaggerated sense of the likelihood of success. The converse, pessimism bias, must also be avoided. It involves a distorted sense about the prospects for failure. Each is capable of compromising the integrity of the advice counsel provides to the client.

- The goal is for counsel to objectively evaluate the strengths and weaknesses of both the Crown and Defence cases, so that s/he can give the client the best possible advice under the circumstances. So, for example, assuming the client admits guilt, the lawyer must provide an even handed review as to the benefits and drawbacks of going to trial or accepting a plea offer.
- A lawyer who suffers from optimism bias runs the risk of making unrealistic assurances to the client about the prospects for success, which can cause a client to forego accepting a plea offer. The negative consequences for the client can be profound, leading to a substantially longer period of imprisonment as compared to the sentence that would have been obtained if an early plea offer had been accepted.
- The lawyer who takes an overly pessimistic view of the client's prospects for success may counsel a guilty plea where one is not warranted. Alternatively, such a lawyer can instill so much fear in the client that he or she falsely admits guilt in the hope of securing a reduced sentence.
- The lawyer must provide the client with the best information available so that the client is well positioned to choose the appropriate course of action. This does not mean that counsel should abdicate his or her role to the client. In the end, the lawyer is paid to advise the client. That advice must be sound.
- The timing of counsel's advice is important. A lawyer who first takes a good hard look at the client's case on the eve of trial and only then advises the client to accept a plea offer will often do a disservice to the client. At the same time, the lawyer must be careful not to counsel the client to plead guilty before investigating the matter thoroughly. This means first securing all the relevant disclosure materials, conducting all necessary factual inquiries, and any necessary legal research. It is only after counsel has formed a well-founded view that it is in the client's best interests to negotiate a resolution and plead guilty that this course of action should be undertaken.

### *Excellent*

- The lawyer identifies all relevant legal and factual issues and exhibits exceptional insight in his or her treatment of each.
- The lawyer has considered the factual and legal issues and has developed a sophisticated strategic plan for the case that has been discussed and approved by the client.
- The lawyer provides the client with sound, balanced, and realistic advice about all of the risks and benefits of each potential course of action.
- The lawyer's advice to the client on the best course of action reveals excellent judgment.
- The lawyer's advice is well timed, resulting in significant benefits for the client.

*Above average*

- The lawyer identifies all relevant legal and factual issues.
- The lawyer provides the client with sound and balanced advice on each of his or her options.
- The lawyer exercises very good judgment in the advice given to the client.
- The lawyer's advice is well timed, leading to tangible benefits for the client.

*Competent*

- The lawyer identifies all major legal and factual issues, but also identifies some issues as important when they are not.
- The lawyer's advice to the client is relatively even-handed.
- The lawyer exercises reasonably competent judgment in the advice given to the client, although in some respects the advice is either too optimistic / pessimistic.
- The timing of the advice does not result in any prejudice to the client's position.

*Needs Improvement*

- Although the lawyer identifies most of the major legal and factual issues, some are also missed, while others are pursued that are not important.
- The lawyer's explanation of the potential risks or benefits is inaccurate or far too optimistic / pessimistic.
- The timing of advice unduly risks prejudicing the client.

*Not performed / very poor*

- The lawyer sometimes misses the real legal and factual issues and instead pursues irrelevant matters to the detriment of the client.
- Advice given to the client is not balanced, i.e. inappropriate promises or guarantees are made.
- The timing of advice results in real prejudice for the client.

## **E. The Work / Outcome**

### *Generally*

- It is not enough that counsel identifies the relevant factual and legal issues and properly advises the client in that regard, the lawyer must also have the ability to transform that knowledge into action and results.
- The lawyer must be capable of identifying what needs to be done to advance the interests of the client, the wherewithal to take all those steps necessary for the client's defence, and the skills needed to achieve real results for the client. The lawyer will draw on his/her arsenal of forensic skills to advance the client's case toward the best possible outcome.
- Careful planning by the lawyer is essential. Through this the lawyer will develop a well-conceived strategy for the case that can then be implemented at every phase of the litigation, from plea negotiations to the approach taken at trial, if a trial proves necessary.
- Although process is important, for most clients results matter just as much. Though clients will often have unrealistic expectations of what the lawyer should be able to achieve, the lawyer should only be expected to achieve the client's realistic objectives.
- The impact of the effective lawyer will be felt at every stage of the process. The lawyer will achieve optimum results for the client at the bail hearing, in plea negotiations, at the preliminary inquiry, on pre-trial motions, at the trial, and on sentencing. In short, the exceptional lawyer makes a difference from the beginning to the very end of the litigation.

### *Excellent*

- The lawyer does everything that needs to be done on the file, exhibiting depth of knowledge, real creativity, exceptional judgment, all of which is reflected in the planning and resulting strategy toward the file.
- The lawyer takes a well-planned approach, developing an effective strategy early on that is successfully implemented at each stage of the process. This may be reflected in the negotiations leading to a plea arrangement or, alternatively, at trial.
- At every phase in the litigation the lawyer achieves excellent results.

### *Above Average*

- The lawyer does everything that needs to be done on the file and demonstrates sound judgment throughout.
- The lawyer engages in necessary planning and develops a sound strategy for the case that is effectively executed during the litigation.

- At points during the process the results achieved for the client are better than would be expected.

#### *Competent*

- The lawyer does everything that would reasonably be expected in defending the case.
- The lawyer takes a planned approach and there is a strategy developed for handling the file.
- The results achieved are as would be expected in the circumstances or, if not, this is not because of anything that counsel did or failed to do.

#### *Needs Improvement*

- The lawyer sometimes fails to take steps that one would reasonably expect in the circumstances. For example, embarking on a guilty plea, or reelecting, before an unknown judge without canvassing other lawyers with respect to his or her reputation etc.
- Planning and strategic thinking could be better conceived or more effectively implemented.
- The results achieved, at times, fall below what one would reasonably expect in the circumstances, for reasons that relate to the lawyer's performance.

#### *Very Poor / Not Performed*

- The lawyer consistently fails to take steps that one would reasonably expect in the circumstances.
- There is no apparent plan or strategy toward the file.
- The results achieved are consistently worse than one would normally expect in the circumstances and are not explained by some other variable beyond the lawyer's performance.

### **F. Efficiency**

#### *Generally*

- The lawyer has many clients and must balance the demands of all their cases. In order to do so, the lawyer must have good time management skills. The time dedicated to a file must yield real benefits.
- Effective time management requires the ability to delegate tasks where this is appropriate.

- The lawyer must complete work in a timely manner to ensure that the interests of the client are protected.
- Finally, the lawyer must ensure that disbursements on the file are appropriate.

*Excellent*

- Work of good quality is completed in an appropriate period of time.
- All tasks that can appropriately be delegated are.

*Above Average*

- Work of good quality is generally completed in a timely manner.
- Tasks that can appropriately be delegated usually are.

*Competent*

- Reasonably competent work is completed within a reasonable period.
- Tasks are sometimes delegated, and tasks that should never be delegated are not.

*Needs Improvement*

- Occasionally, reasonably competent work seems to take an unusually long time to complete.
- Some of the work that is completed in a timely manner is of poor quality.

*Very Poor / Not Performed*

- Work is incomplete or takes an unreasonably long period to be completed.
- Tasks that should *not* be delegated are, which creates further inefficiencies because the work will often need to be redone.

## **G. General & Overall Ranking of Lawyers**

The final category on the PR Form is marked “General”. Deciding on this number is not simply a function of averaging the numbers in the individual sub-categories. Some of these questions are not marked on a numeric scale, but involve an evaluative assessment. For example, reviewers are asked to assess whether a particular outcome was “better than expected”, “as expected”, or “worse than expected”. As a result, the reviewer will make a global assessment of the overall quality and value added by the lawyer to the file.

Finally, all the reviews for an individual lawyer will need to be collectively assessed in order to give the lawyer an overall rating. Again, the average rating for all the individual cases

reviewed is not determinative. Rather, a global assessment of the lawyer's overall performance is to be made. Lawyers observations during the consultation period should be factored into the rating process.

With respect to the final rating of the lawyer's performance on each file and the overall final assessment for the lawyer on all of his files, reviewers should be guided by the following criteria:

#### *Excellent*

The lawyer has performed well above the standard of a reasonably competent criminal lawyer. The following may evidence this:

- Clients' instructions are fully and appropriately recorded.
- Communication, advice and other work are carefully tailored to each individual client's circumstances.
- Clients are advised fully and correctly.
- All relevant legal and factual issues are identified and managed appropriately.
- The lawyer demonstrates in-depth knowledge and expertise in moving the case to final resolution.
- There is excellent use of tactics and strategies, demonstrating skill and expertise, in an attempt to ensure the best outcomes for clients.
- The lawyer adds value to the file, taking a fully proactive approach and considerably improving the client's position throughout the litigation.

#### *Above average*

The lawyer meets the standard of a reasonably competent criminal lawyer and in certain aspects of her work routinely exceeds that standard. The following may evidence this:

- Client's instructions are appropriately recorded.
- Advice and work is tailored to individual client's circumstances.
- Clients are advised correctly and completely.
- Issues are progressed comprehensively, appropriately and efficiently.
- Tactics and strategies are employed to achieve the best outcomes for clients.
- The lawyer adds value to the file and takes a proactive approach.

#### *Competent*

The lawyer meets the standard expected of a reasonably competent criminal lawyer. The following may evidence this:

- Client's instructions on key issues are appropriately recorded.
- There is adequate but limited communication with the client.
- Key legal and factual issues are identified.
- Some evidence of tactics and strategy informing lawyer's approach.
- The advice and work is adequate although it may not deal with other linked issues beyond the most basic.
- Case outcomes are as should be expected.

#### *Needs Improvement*



The lawyer is performing below the standard that is expected of a reasonably competent criminal lawyer, and his or her performance requires some improvement. The following may evidence this:

- Information is not being recorded or reported accurately.
- There is limited communication with client and it is sometimes of poor quality.
- Important legal or factual issues occasionally go unnoticed.
- The advice and other work is inadequate.
- Some cases are not being conducted with reasonable skill, care, and diligence.
- The timeliness of the communication, the advice and other work is inadequate.
- There are occasional lapses below the required standard.

#### *Very Poor*

The lawyer is performing very poorly and is consistently falling well below the standard of the reasonably competent criminal lawyer. Significant improvement is required in order for the lawyer to meet the reasonable competence standard. The following may evidence this:

- Information is not being recorded or reported accurately.
- Communication with the client is very limited and often of poor quality.
- Important legal and factual issues regularly go unnoticed.
- There is a clear lack of preparedness at important stages of the litigation.
- Cases in general are not being conducted with reasonable skill, care, and diligence.
- The timeliness of the communication, the advice or the work is often inadequate.
- There is no meaningful service being provided, or the service leads to potential or actual prejudice to the client.
- Ethical requirements are being ignored, for example acting on a guilty plea where a client does not admit his guilt.

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## A.2. Criminal Peer Review Form

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### Review Particulars:

Reviewer's Name: \_\_\_\_\_

Office Location: \_\_\_\_\_

Lawyer's Name: \_\_\_\_\_

Client's Initials: \_\_\_\_\_

File No. / Cert. No. \_\_\_\_\_

### Rating Key:

5 = Excellent	Well above standard of a reasonably competent criminal lawyer
4 = Above average	Above standard of reasonably competent criminal lawyer
3 = Competent	Meets standard of a reasonably competent criminal lawyer
2 = Needs improvement	Below standard of a reasonably competent criminal lawyer, requires some improvement
1 = Not performed / very poor	Not performed or performed very poorly, in need of significant improvement
X = insufficient Information	Not enough information in file to assess
NA = Not Applicable	Not applicable due to circumstances of case

### Charge(s):

Case Complexity/Difficulty (circle one): Exceptional / Demanding / Routine / Minor

Case Seriousness (circle one): Most Serious / Moderately Serious / Least Serious

Most serious charge: \_\_\_\_\_

Other charge(s): \_\_\_\_\_

**A. The File:**

- |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|
| 1. How effective is the composition of the file (structure / organization)? | 1 | 2 | 3 | 4 | 5 | X |
| 2. How appropriate is the level of information recorded (detail)?           | 1 | 2 | 3 | 4 | 5 | X |
| 2. How appropriate was the management of the case throughout?               | 1 | 2 | 3 | 4 | 5 | X |

**B. Communication:**

- |   |   |   |   |   |   |      |
|---|---|---|---|---|---|------|
| 1. How effectively did the lawyer communicate with the client / explain issues / address the client's concerns?           | 1 | 2 | 3 | 4 | 5 | X    |
| 2. How well informed was the client about the following:  |   |   |   |   |   |      |
| (a) Strengths and Weaknesses of case?   | 1 | 2 | 3 | 4 | 5 | X    |
| (b) Developments in case, including outcome?  | 1 | 2 | 3 | 4 | 5 | X    |
| 3. How well did the lawyer communicate with others, support staff, other lawyers in office, court administrators, Crowns? | 1 | 2 | 3 | 4 | 5 | X NA |
| 4. How timely were all communications?  | 1 | 2 | 3 | 4 | 5 | X    |

**C. Information and Fact-Gathering:**

- |  |   |   |   |   |   |      |
|--|---|---|---|---|---|------|
| 1. How effective was the lawyer at seeking relevant information from the client?   | 1 | 2 | 3 | 4 | 5 | X    |
| 2. How effective was the lawyer at seeking disclosure from the Crown (were supplementary disclosure requests necessary / disclosure Applications required etc.)? | 1 | 2 | 3 | 4 | 5 | X NA |
| 3. How effective was the lawyer in seeking relevant information from others?   | 1 | 2 | 3 | 4 | 5 | X NA |

**Comments:**

**D. Advice and Assistance:**

- |   |                |
|---|----------------|
| 1. How good was the advice given to the client (i.e. identify all relevant legal & factual issues, give sound advice re same)?  | 1 2 3 4 5 X    |
| 2. (a) How appropriate was the advice on plea?  | 1 2 3 4 5 X    |
| (b) If client advised to plead guilty, was timing of advice appropriate (i.e. too early / appropriate / too late)?              | 1 2 3 4 5 X NA |
| 3. If appeal was warranted, how appropriate was advice given (i.e. availability & how to preserve appeal rights explained etc)? | 1 2 3 4 5 X NA |

**E. The Work / Outcome:**

- |   |             |
|---|-------------|
| 1. Was all work done that should reasonably have been done?<br>If no, specify:  | Y N X       |
| 2. How effective was the work done in achieving the client's (reasonable) objectives?   | 1 2 3 4 5 X |
| 3. What was the impact of the lawyer on:  |             |
| (a) Bail: better than expected / as expected / worse than expected / X / NA   |             |
| (b) Plea negotiations: better than expected / as expected / worse than expected / X / NA                                      |             |
| (c) Preliminary Inquiry: better than expected / as expected / worse than expected / X / NA                                    |             |
| (d) Pre-trial motions: better than expected / as expected / worse than expected / X / NA                                      |             |
| (e) Trial: better than expected / as expected / worse than expected / X / NA  |             |
| (f) Acquitted of any counts (elaborate below if necessary): better than expected / as expected / worse than expected / X / NA |             |
| (f) Sentence: better than expected / as expected / worse than expected / X / NA   |             |
| 4. Was the client prejudiced in any way by the work done or not done?<br>If yes, specify:                                     | Y N         |

**Comments:**

**F. Efficiency**

- |  |   |   |   |    |   |      |
|--|---|---|---|----|---|------|
| 1. How efficiently was the work carried out (i.e. time vs. benefit, turnaround time etc.)? | 1 | 2 | 3 | 4  | 5 | X    |
| 3. Were support staff utilized appropriately (i.e. appropriate delegation of tasks)?       | 1 | 2 | 3 | 4  | 5 | X NA |
| 3. Were disbursements incurred appropriate?  | Y | N | X | NA |   |      |

**Comments:****G. General**

- |  |   |   |   |    |   |   |    |
|--|---|---|---|----|---|---|----|
| 1. Where ethical issues arose, were they dealt with appropriately?<br>(If yes, please elaborate below) | Y | N | X | NA |   |   |    |
| 2. Overall quality and value added by lawyer?  | 1 | 2 | 3 | 4  | 5 | X | NA |

**Please write any further comments below or attach additional sheets:**

## Appendix B: Client Satisfaction Survey Results

### Notes to results

- Customer Survey Questionnaire and procedures designed by LAO.
- Results tabulated by evaluators, Dec 17, 2007.
- Total Responses = 43
- All responses were from Ottawa Cases
- No responses received for Brampton or Barrie Cases
- Total Cases Closed to June 30, 2007 in Ottawa = 583
- Whether responses received are representative (e.g., in terms of type of case or case outcome or date opened or closed) of all cases closed in Ottawa is unknown.
- Cases are not representative in terms of services offered.

### Questions 1 through 8

	Neither Agree nor Disagree	Agree	Strongly Agree	Not Applic- able	Total
	%	%	%	%	Count
The CLO responded to my concerns.	<u>2%</u>	<u>21%</u>	<u>77%</u>	—	43
The CLO treated me with respect.	<u>2%</u>	<u>9%</u>	<u>88%</u>	—	43
The CLO gave me all the information I wanted about my case.	<u>7%</u>	<u>12%</u>	<u>81%</u>	—	43
The CLO are knowledgeable and competent.	<u>5%</u>	<u>19%</u>	<u>77%</u>	—	43
The CLO took enough time to listen to me and understand my case.	<u>2%</u>	<u>12%</u>	<u>86%</u>	—	43
The CLO explained things clearly so I could understand them.	<u>2%</u>	<u>16%</u>	<u>81%</u>	—	43
The CLO returned all my phone calls within a day or two.	<u>7%</u>	<u>14%</u>	<u>77%</u>	<u>2%</u>	43
The CLO lawyer gave me a reasonable idea how my case would turn out.	<u>2%</u>	<u>14%</u>	<u>84%</u>	—	43

Service	Was the Service provided to you by CLO?			
	#	Yes	No	no answer
Trying to get you freed from jail before trial (bail)	43	28%	54%	19%
Giving you advice on pleading guilty or not guilty	43	86%	12%	2%
Standing up for you in court	43	88%	9%	2%
Making a plan for you (job, treatment, etc.) which would help you get a lighter sentence	43	70%	26%	5%
Speaking in court about the sentence you should get	43	79%	19%	2%

How Satisfied were you with the Service Provided?				
#	Neither Satisfied Nor Dissatisfied	Satisfied	Very Satisfied	No answer
12	8%	8%	83%	
37	3%	22%	73%	3%
43	3%	13%	84%	
30	7%	17%	73%	3%
34	3%	12%	85%	

Overall, how satisfied were you with..				
	Neither Satisfied Nor Dissatisfied	Satisfied	Very Satisfied	No answer
The service you received from the CLO	2%	12%	84%	2%
The amount of time it took to get service from the CLO	7%	12%	79%	2%

**In the end, did you get what you needed?**

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	42	97.7	100.0	100.0
Missing System	1	2.3		
Total	43	100.0		

**Have you ever used a lawyer for help with criminal charges against you before?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	17	39.5	40.5	40.5
	No	25	58.1	59.5	100.0
	Total	42	97.7	100.0	
Missing	System	1	2.3		
Total		43	100.0		

**If yes, how would you compare the help?**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	The CLO was much better	10	58.8	58.8	58.8
	The CLO was better	4	23.5	23.5	82.4
	The services were the same	1	5.9	5.9	88.2
	The services from the previous lawyer were better	1	5.9	5.9	94.1
	The services from the previous lawyer were much better"	1	5.9	5.9	100.0
	Total	17	100.0	100.0	