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Part 1: OBJECTIVES, TYPES AND FUNCTIONS OF DUTY COUNSEL

Objectives of the Duty Counsel Program

The objective of the Duty Counsel program may be summarized as follows:

To provide consistently high-quality legal aid services province-wide in a cost-efficient manner to any Albertan by providing legal advice, court representation and other legal assistance in accordance with the policies and priorities established by Legal Aid Alberta.

Providing Consistently High-Quality Legal Aid Services

Duty Counsel tasks must be performed in a professionally acceptable manner. This means balancing the pressures created by volume and needs of clients requiring service and the limited time in which those services can be performed.

Providing services to all Albertans

Legal Aid Alberta will ensure that Duty Counsel are assigned where and when required. Each Duty Counsel is expected to contribute their professional skill and judgment to the services for which they are paid and to submit accurate and completed accounts and report statistics.

Duty Counsel are expected to supply summary legal services (adjournments, etc.), provide legal advice, court representation and legal assistance to all people having business at the court.

All services provided by Duty Counsel must fall within LAA's priorities for the types of cases and types of proceedings for which we provide legal aid services as specified in Legal Aid policy and rules.

All Duty Counsel providers must be able to recognize which services do/do not fall within Duty Counsel's mandate and to provide services in accordance with those priorities. Duty Counsel must also be aware of other types of LAA service delivery and in a general way be able to refer proper cases to the proper service delivery method (e.g. Assisting clients in applying for LAA services through Client Gateway or refer to community resources like Student Legal Services and Student Legal Assistance).

Providing Statistics and Reports on Services Rendered

Duty Counsel are accountable to LAA and must fulfil reporting requirements on the Duty Counsel activities they provide, including correct billing procedures, data or information collection, and other administrative tasks in accordance with the policies and directions of LAA. This reporting is done through the Outcome Reporting on the Lawyer Portal when billing Duty Counsel Certificates.

Duty Counsel are expected to complete the invoicing, and reporting, on their Duty Counsel certificates within a reasonable timeframe. While the certificate itself allows up to 6 months for billing, LAA strongly recommends that Duty Counsel certificates be billed, and the services reported within 7 days of completion of the shift.

The information provided through the Lawyer Portal is essential for the local and provincial management of LAA's resources. Accurate reporting also provides a measure of the needs of the communities that LAA serves and informs how Duty Counsel services should be provided across Alberta. For these reasons, LAA requires Duty Counsel to provide timely reporting on services being rendered in each court location.

Other Objectives

To meet the overall objective set out above, the Duty Counsel program has the following subsidiary objectives:

- To provide professional guidance to clients requesting assistance to move through the judicial system as quickly and effectively as possible, by:
 - reaching an appropriate resolution of as many issues as possible for each client;
 - where a final resolution is not feasible, referring the client to the most appropriate resource (mediation, obtaining a lawyer through LAA or privately) at the earliest possible intervention point; and
 - planning the client's options and next steps with the client to fully utilize available community resources.

- Contribute to the administration and functioning of the court process, by:
 - ensuring that the optimum number of Duty Counsel are scheduled each day;

- encouraging individual Duty Counsel to be organized and as efficient as possible in dealing with their daily client workload; and
- Communicating and exchanging information with court administration and the judiciary

Joining the Duty Counsel Roster

A roster lawyer may apply to LAA to have their name entered on a list of qualified Duty Counsel by submitting a request to LAA which specifies the court locations and the areas of law for which they are interested in performing Duty Counsel services. Lawyers may submit their application for different areas of the province and indicate their preferences.

In the application, the lawyer must provide information concerning his or her practice, qualifications and experience and the status of their Law Society of Alberta membership. LAA may manage Roster Duty Counsel by applying additional standards, such as experience in a particular field, e.g.: refusing to put a lawyer in a specialized Youth Court even though the lawyer is on the larger Criminal Duty Counsel list.

The “applicable standards” required of Duty Counsel are evolving, but LAA will take into consideration factors such as previous courtroom experience and training, or educational programs completed. LAA may make further enquiries as required.

Shadowing Requirements:

Once an application for Duty Counsel is accepted by LAA as eligible, LAA will require that Duty Counsel successfully shadow experienced Duty Counsel. Shadowing will usually occur over two court days.

Types of Duty Counsel

Once shadowing is concluded to LAA’s satisfaction, eligible Duty Counsel can then be scheduled for their preferred court locations. This shadowing requirement is applicable to all

areas of law as described below. There are four broad areas of law which require Duty Counsel services:

1. Family
2. Child Welfare
3. Criminal
4. Mental Health Act.
5. Institutional Hearings

Family Duty Counsel

Functions of Family Duty Counsel:

- Attend the Alberta Court of Justice Family Division and the Court of King's Bench of Alberta as scheduled.

Functions of Child Welfare Duty Counsel:

- Attend the Court of Justice for Child Welfare matters.

Functions of EPO Duty Counsel:

- Attend the Court of Justice for Emergency Protection Order applications.

In Alberta Court of Justice and the Court of King's Bench:

- Advise persons about their rights and any immediate urgent steps they may need to take at court to protect them.
- Advise persons about court procedures.
- Briefly review documents filed with the court and advise on documents the client needs to file to respond.
- Assist in obtaining adjournments and scheduling further court dates such as interim hearings, JDRs and trials (Alberta Court of Justice) or Early Intervention Case Conferences 4.10 Case Conferences, Resolution Counsel Meetings and Special Chambers (KB);
- Assist unrepresented persons at applications in Alberta Court of Justice docket, initial EPO applications, KB Family Docket or Chambers concerning, custody, access, child protection, child support, spousal/partner support and EPO KB Review Hearings; and
- Assist persons in the negotiation of settlements and consent orders;
- If required, assist with making a *Rowbotham* [*New Brunswick v. G. (I)*] application for Court Ordered Counsel in child protection proceedings.

Types of Criminal Duty Counsel

There are several different types of Criminal Duty Counsel and the functions of Criminal Duty Counsel vary slightly depending on the location. Overall, the function of Criminal Duty Counsel is to advise persons of their rights and support their navigation through the Criminal Justice System.

Alberta Court of Justice Criminal Duty Counsel:

Functions of Alberta Court of Justice Criminal Duty Counsel:

- Attend the Alberta Court of Justice Criminal Division as scheduled.
- In the Alberta Court of Justice Criminal Division, assist unrepresented persons who have been taken into custody or summoned and charged with offences, by advising them of their rights and by taking any steps that may be appropriate, including:
 - Advise them of court processes and procedures prior to appearing.
 - Assist with adjournments,
 - Reserve plea to seek counsel,
 - Conduct Judicial interim release applications,
 - Enter an election and plea,
 - Set trial dates,
 - Conduct plea negotiations on their behalf with the Crown,
 - Enter a guilty plea,
 - Speak to sentence, and admission into diversion programs.
 - Advise them on how to obtain Disclosure and an Early Case Resolution offer.
 - Assist with admission into specialized courts such as Drug Treatment, Mental Health, and Indigenous Court.
 - Complete a Client Gateway application and/or a Referral if required.
 - Provide the court with an update on an accused's application with the DC Portal
 - If required, assist the accused with making a *Rowbotham* application for Court Ordered Counsel.

Youth Court Duty Counsel

Youth can particularly benefit from the experience and knowledge of Duty Counsel and may not need to work with a lawyer other than Duty Counsel.

Functions of Youth Court Duty Counsel:

- Attend the Alberta Court of Justice of Alberta, Youth Division as scheduled.
- In the Alberta Court of Justice, Youth Division, assist young persons who have been charged with offences, by advising them of their rights and by taking any steps that may be appropriate to protect those rights, including:
 - Advise them regarding procedure prior to appearing in court.
 - Assist with adjournments, reservations of plea to seek counsel, judicial interim release applications, entering an election and plea, setting trial dates, having plea negotiations on their behalf with the Crown, entering a guilty plea, speaking to sentence, and admission into diversion and extra judicial sanction programs.
 - Advise them on how to obtain Disclosure and an Early Case Resolution offer from the Crown Prosecutor's office if they wish to proceed on their own.
 - If required, assist with making an application to LAA using Client Gateway
 - Provide an update on a youth's application using DC Portal.

JP Bail Duty Counsel:

Functions of JP Bail Duty Counsel:

- Attend JP Bail Court via CCTV
 - Provide Duty Counsel service to clients in custody.
 - Provide preliminary legal advice and information.
 - Represent clients at the Justice of the Peace hearings, including conducting contested and consent release hearings; and possible resolution and/or resolution planning;
 - Refer clients to community resources or other recommended programs.
 - Liaise with various business units within Legal Aid Alberta to assist with the client's application process.
 - Communicate with other Legal Aid Alberta staff as necessary to assist clients with their upcoming appearances in docket court; and

Brydges Duty Counsel:

Legal Aid Alberta provides *Brydges* Duty Counsel Services on behalf of the Minister of Justice and Attorney General, according to R v. *Brydges* and the Legal Aid Governance Agreement. The *Brydges* service ensures access to immediate and free summary legal advice by telephone for all persons detained by police and peace officers in Alberta, regardless of their financial status. The number for the toll free *Brydges* line is posted in police stations and detention centres across the province.

Additionally, the *Brydges* Duty Counsel Service has access to a 24-hour language translation program that assures confidentiality and provides communication in many languages.

Functions of *Brydges* Duty Counsel:

- Answer telephone calls from detained individuals across Alberta.
- Advise detained persons of their rights when dealing with the police – most importantly, the right to remain silent and not answer questions other than those for identification (name and address).
- Advise the detained persons of procedure when being charged with an offence and what may happen next (i.e. attending court).
- If required, advise how to make an application to LAA once charges are laid.

Institutional Disciplinary Hearings Duty Counsel:

Inmates can be charged with violating rules of the institution and will face internal disciplinary hearings in the institution. These hearings and the procedures are governed by the [Corrections Act](#), its regulations and the common law. If the allegation is proven at the hearing, penalties can include reprimands, fines, suspension of privileges or loss of remission good conduct time.

Due to the potential loss of liberty for the inmate, or reduced liberty, Legal Aid Alberta provides a Duty Counsel program for anyone in an institution wishing to have a lawyer present at an institutional disciplinary hearing.

Functions of Institutional Duty Counsel:

- Attend at the Institution in Alberta as scheduled;
 - Review disclosure and provide preliminary legal advice;
 - Advise the inmate of their rights and any steps needed to be taken immediately to protect those rights;
 - Represent the inmate's rights throughout the hearing;
 - Help the inmate to respond to the allegations and evidence presented at the hearing;
 - Help the inmate to understand hearing procedures, punishments and next steps;

Mental Health Review Panel Hearings Duty Counsel:

The [Mental Health Act](#), which is provincial legislation, allows authorities to hospitalize and treat people who meet the criteria under the *Act* without their consent. People detained (formal patients) can ask for a review or appeal of the decision to the Mental Health Review Panel. The Panel consists of 3 appointed individuals - a lawyer, (Chair), psychiatrist and lay-person. Panel members are independent of the hospital or facility where the patient is staying or is associated with. The Panel also adjudicates matters pertaining to Community Treatment Orders governed by the *Mental Health Act*.

Duty Counsel for MHRP hearings will in most cases be assigned a DC certificate for the day or week and might attend more than one hospital or facility. The role requires:

- Attend the MHRP hearing as scheduled;
- Review the patients file and provide preliminary legal advice prior to the hearing;
- Represent the patient's rights throughout the hearing;
- Help the patient to respond to submissions by the hospital's representative, usually the treating psychiatrist and evidence presented at the hearing
- Helping the patient to understand hearing procedures, outcomes and next steps after the hearing
- The DC may in some circumstances be asked by LAA to provide an opinion on the likelihood of success if the patient is seeking an appeal to the Court of King's bench (Separate certificate)

Most people subject to the *Mental Health Act* are not facing Criminal Charges.

Hearings before the MHRP are not as adversarial as court and less formal.

Please note-it is important to understand the difference between the MHRP (Mental Health Review Panel) and the CCRB (Criminal Code Review Board)

Part 2: ACTING AS ALBERTA COURT OF JUSTICE CRIMINAL - ADULT DUTY COUNSEL

The provision of Duty Counsel services in Court of Justice locations across Alberta is a cornerstone of the essential services that LAA provides. Our Duty Counsel provide invaluable assistance not only to unrepresented accused but also to the Court. The “feet on the ground” perspective Duty Counsel can provide and report back to LAA about court proceedings and client needs is integral to ensuring that adequate resources can be scheduled throughout the province.

The following sections provide guidance for Duty Counsel acting in court rooms:

1. Availability of Duty Counsel.
2. Interviewing the Accused;
3. Providing Advice;
4. Agency Requests;
5. Adjournments;
6. Judicial Interim Release (Bail) Hearings;
7. Role in Diversion Programs;
8. Guilty Pleas;
9. Speaking to Sentence;
10. Referring a Client for LAA Coverage via Client Gateway;
11. *Rowbotham* Applications;

Availability of Duty Counsel

Reasonable efforts should be made by the court to inform all those appearing without representation of the availability, role, and function of Duty Counsel. Duty Counsel should announce their presence prior to the commencement of court, both in the corridor and in the body of the court itself. The announcement should make it clear that Duty Counsel are:

- Lawyers;
- Available for advice and assistance in court;
- Free of charge; and
- Located in or around the courtroom.

Court starting times are set out in the Alberta Court Calendar and Indigenous Court Worker and Resolution Services Programs booklet available at <https://albertacourts.ca/pc/court->

Duty Counsel should arrive an hour before court so they can interview people as they arrive at court. CCTV interviews should also commence at least one-half hour before court, depending upon inmate availability time.

Unfortunately, many accused attend just before or after court commences. Unless the court automatically adjourns in recognition of the problem, Duty Counsel should request that a client's matter be stood down to give Duty Counsel an opportunity to meet with the client. Once court commences, the judge should either make a general announcement as to the availability of Duty Counsel or enquire whether each unrepresented individual would like to consult with Duty Counsel.

Duty Counsel should never force their services on an accused, as every person has the right to act for themselves. In advising an unrepresented accused, Duty Counsel should review all the options including the possible benefits associated with an early resolution.

Interviewing the Accused

Duty Counsel must be prepared to provide effective legal advice. Preparation, including interviewing the accused, must be efficient, precise, and accurate.

During the interview, Duty Counsel should:

- first introduce themselves and explain their role and that what is said will be confidential.
- Review Information about the charges.
- Whether the accused has private counsel
 - If the accused indicates their lawyer is coming to assist them, then Duty Counsel may not be necessary, and you can end the interview.
 - If the accused indicates that they would prefer to use Duty Counsel, Duty Counsel can then assist and continue the interview.
- It is important to review DC Portal where you can:
 - Review client's application status.

- Submit a Client Gateway application.

Essential things to determine include, but are not limited to:

- If the accused wishes to speak to release:
 - Those dealing with the three grounds under s. 515 of the *Criminal Code* surety contact information, criminal records (including convictions for “failing to appear” or “failing to comply” (FTA & FTC), evidence of stability in the community, personal circumstances including education, employment, addiction issues, Indigeneity, and the existence of mental or physical health issues.
- If the accused has expressed an interest in resolving their matters.
 - s 606(1.1) of the *Code* must be canvassed and antecedent information about the accused collected to assist in negotiation with the Crown, entering the guilty plea(s), or sentencing. In some courthouses the Crown may provide Duty Counsel access to the Crown brief or parts of their brief that usually contain a wealth of background information, the record of the accused and prior release history, as well as a copy of the synopsis of the offence charged.
- If an interpreter is needed
 - This should be clearly noted, and the court informed. Finally, the accused must be informed of the general processes for what will be happening, so they are prepared, and unexpected outbursts are minimized.
 - Be mindful that interpreters may be needed in other courtrooms.

Duty Counsel must obtain all relevant information in a short amount of time, in a clear detailed and legible fashion. This information may be recorded on the standard Duty Counsel worksheet. An example of a worksheet is included in the Appendices and Forms section of this manual. Sometimes accused persons cannot or will not tell Duty Counsel the truth. Relevant personal observations of the accused should be recorded on the interview sheet as well.

Providing Advice

Duty Counsel should be prepared to answer questions about courtroom procedures, legal aid, bail, offences, possible penalties and defenses. Advice can be provided at any stage of the proceedings.

Duty Counsel should assist an accused in applying for Legal Aid and, if necessary, refer them to the website for information regarding the Legal Aid Appeal process or make a *Rowbotham* application. (See below and Appendix for application materials)

LAA only issues a certificate to a financially eligible accused if:

- There is a reasonable likelihood of imprisonment.
 - Indictable charges are automatically issued a certificate (if they qualify financially)
 - An accused facing a charge that does not involve a probability of incarceration upon conviction should be advised that they are unlikely to succeed in obtaining a legal aid certificate unless there are extenuating circumstances.
 - When providing an opinion on the likelihood of incarceration, Duty Counsel should note aggravating circumstances such as theft from an employer which increase the probability of incarceration.

Duty Counsel can assist accused persons with their application by completing a [Client Gateway form](#).

Duty Counsel should possess a working knowledge of the *Criminal Code* and related statutes such as the *Youth Criminal Justice Act* and the *Controlled Drugs and Substances Act*. Duty Counsel should also be able to answer questions involving related *Provincial Offences Procedure Act* proceedings such as prosecutions under the *Traffic Safety Act* and other *provincial statutes*.

Duty Counsel must alert the accused as to the effect a *Criminal Code* conviction has on other statutes. For instance, being charged for impaired operation of a conveyance or operating a conveyance while prohibited will trigger an automatic suspension under the *Traffic Safety Act*

Also, a conviction may result in incarceration under another statute such as the *Corrections and Protection Act*.

Duty Counsel should advise clients that a “discharge” still creates a criminal record. A conditional or absolute discharge may still result in a prohibition of entry into the United States.

Advice given by Duty Counsel should clearly be resolution oriented and include a clear explanation of the role of Duty Counsel in arranging diversions and entering guilty pleas.

Agency Requests for Lawyers on a LAA Certificate

The primary function of Duty Counsel is to assist unrepresented accused who have been taken into custody or summoned and charged with offences, by advising them of their rights and assisting them regarding procedure, adjournments, reservations of plea, judicial interim release applications, entering an election and plea, setting trial dates, plea negotiations with the Crown, entering a guilty plea, speaking to sentence and admission into diversion programs. Duty Counsel, time and circumstances permitting, will make every effort to assist counsel acting on a LAA certificate in obtaining **a docket court adjournment or standing a matter down** until counsel can attend.

Often counsel for an accused request Duty Counsel to act as agent to request adjournments or set trial dates. LAA encourages this procedure when the accused is a Legal Aid client. It is acceptable for Duty Counsel to appear as agent for counsel and provide a reasonable list of suggested trial dates. Duty Counsel are not entitled to any additional compensation from LAA or from private counsel for acting as an agent while appearing as Duty Counsel.

Duty Counsel should not appear as agent with respect to a motion to change a trial date if the motion is contested, nor should Duty Counsel act as agent for counsel to conduct a trial or speak to sentence.

If you are requesting Duty Counsel assistance for these purposes, counsel must send a detailed agency request to LAA via dutycounsel@legalaid.ab.ca.

Duty Counsel should not perform agencies in the following circumstances:

- Where inadequate information has been provided to complete the requested task.
- When asked to speak to Bail or Sentencing for counsel.
- When asked to set trial dates or summary disposition dates for counsel.
- When asked to complete forms, get paperwork signed or file documents for counsel.
- When asked to collect or forward disclosure to counsel.
- When asked to make written disclosure applications on behalf of counsel.
- When asked to provide legal advice to a client where counsel has been retained.
- When asked to speak to contested forfeiture at the request of counsel.

Duty Counsel is not responsible for reporting back to retained counsel as to the outcome of an agency, however DC should be making notes in DC Portal.

It is up to individual Duty Counsel whether they wish to appear as an agent for privately retained lawyers, but the conditions above are still applicable.

As a rule, roster Duty Counsel should not act in their own cases or matters to the detriment of their duties as Duty Counsel, nor should any Duty Counsel attempt to act beyond the limits of one's own professional judgment.

Adjournments in Court

Most courts allow an adjournment following first appearance for a client to obtain a lawyer either privately or through Legal Aid. If the accused does not have a lawyer on the return date, the judge may enquire as to the reason.

Duty Counsel should be able to inform the court as to the reason for the delay and may require an update on the client's application status with LAA which may require further investigation on behalf of Duty Counsel. As Duty Counsel you have access to the client's application status through DC Portal.

After determining the next steps needed, the Court may grant a further adjournment to finish arrangement of Counsel, to set a date for trial or preliminary hearing or may order that a date be set immediately. If an Accused does not have counsel on a trial date, it is very difficult to obtain an adjournment, as witnesses are inconvenienced and trial time wasted and the

Accused should be advised that they must make every effort to arrange Counsel for their scheduled date, which may include further application to LAA.

Reasons for adjournment:

The following is a list of common acceptable reasons for Duty Counsel to request that a matter be adjourned on behalf of a client:

- To retain counsel privately (ascertain time needed to complete retainer)
- To complete Legal Aid application
- To obtain a trial date
- For possible resolution
- Obtaining relevant documentation/reports
- Disclosure not available (ask when it will be ready)
- To have Crown determine if complainant would accept a peace bond or if restitution has been made
- For an accused who is ill, in custody elsewhere or otherwise cannot attend court.

An adjournment request can be made on behalf of an accused's counsel or an accused who has contacted the Duty Counsel office with information that is reliable or verifiable (see above section regarding Agency Requests). It is important that the accused understands that Duty Counsel is relaying a request and not appearing as agent without the client. The accused must also understand that they (or their lawyer) **is** responsible for finding out the result, including the return date. The justice may deny the adjournment request and issue a warrant for an accused who is not in attendance.

Reasons for "standing matters down":

The following is a list of acceptable reasons for Duty Counsel to request that a matter be stood down on behalf of a client:

- For counsel to attend
- To attend Case Management Office to obtain a trial date.
- To have a resolution discussion with the Crown
- For arrival for interpreter
- To have the accused meet with diversion worker

- To have the client complete paperwork for a diversion program or for extra-judicial sanctions.

Avoiding needless adjournments:

Duty Counsel should always ask the question “how can I make the Accused’s next appearance more productive?” or “how can I reduce the number of court appearances needed by the Accused?”

If the matter is adjourned to obtain Legal Aid, Duty Counsel can assist the Accused in completing their assessment by filling out a Client Gateway form

If the charges are not indictable, likelihood of incarceration may need to be confirmed and can be done through Client Gateway, located in [DC Portal](#).

Duty Counsel should canvass whether the matter can be resolved at that appearance.

Judicial Interim Release (Bail) Hearings:

Conducting bail hearings and arranging the early release of accused persons is one of the most important functions of Duty Counsel as it is often a significant consideration in subsequent decisions made by the accused about how to proceed with their charges. If an accused is detained they could spend several months in custody while awaiting a bail review or a trial.

Duty Counsel must be aware that a denial of bail or a surety release that cannot be met might result in a period of incarceration longer than the actual sentence. Such “dead time” is not always fully considered at the sentencing stage. Further, remanded inmates are allowed fewer privileges than inmates serving a sentence.

Time to prepare for a bail hearing is often very brief. As part of that preparation, Duty Counsel must interview the accused, confirm potential sureties, review the synopsis and criminal record of the accused and when necessary, contact community resources. If properly instructed, Duty Counsel can then conduct the bail hearing or attempt to negotiate a release with the Crown.

When interviewing for the purposes of a bail hearing Duty Counsel may also advise an accused on a possible guilty plea and request a position on disposition from the Crown.

Duty Counsel should be alerted to matters that are suitable for an early plea. Also, Duty Counsel should also be aware of the circumstances in which the Crown may agree to withdraw minor charges resulting from the same transaction or series of transactions.

Evidence at the bail hearing:

In Alberta, most bail hearings proceed based on allegations and verbal submissions by the Crown and Defence without the need to adhere to strict rules of evidence.

However, if evidence needs to be called at a bail hearing, it is governed by section 518 of the [Criminal Code](#).

The purpose of the bail hearing is not to determine the guilt or innocence of the accused, but rather to determine whether there is any reason the accused should not be released pending trial. It is in this context that the circumstances of the offence are relevant. Duty Counsel conducting bail hearings should exercise caution that they do not inadvertently open up the issue by inquiring of the alleged facts of the offence from an accused.

Application for release (burden of proof; reverse onus provisions):

When a person has been arrested and has not been released by either the arresting police officer or the officer in charge, s 503 of the *Criminal Code* requires that the person be taken before a justice of the peace within 24 hours of the arrest (where a justice is available), or as soon as practicable.

When the accused appears before the justice, they are entitled to apply for judicial interim release pending trial, unless the accused intends to plead guilty and may choose not to speak to judicial interim release. Following the judicial interim release hearing (also described as a show cause hearing or bail hearing), the accused is either released (with or without sureties, conditions, etc.), or else they are ordered detained in custody until the time of the trial.

Subject to specified exceptions contained in s 515(6), the onus at the bail hearing is on the Crown to show why the accused should not be released from custody pending the trial. The accused may either be released on their own recognizance without conditions (s 515(1)), or on a recognizance with conditions, sureties or cash deposits (s 515(2)).

Section 515 has been described as a “ladder” which the Crown must climb from the lowest rung (accused to be released without conditions) to the highest (accused to be detained in custody). The primary duty of the justice, if the Crown cannot show that detention is justified or that some other order under s 515 should be made, is to release the accused without conditions.

The next “rungs” on the ladder are found in s 515(2). In order, they consist of the accused being released:

- On an undertaking with such conditions as the justice directs;
- On a recognizance without sureties, in such amount and with such conditions, if any, as the justice directs, but with no cash deposit;
- On a recognizance with sureties in such amount and with such conditions, if any, as the justice directs, but with no cash deposit;
- With the prosecutor’s consent, on a recognizance without sureties and with or without conditions, with a cash deposit;
- Where the accused is not ordinarily resident in the province or does not reside within 200 kilometres of the place where he is in custody, on a recognizance with or without sureties and with or without conditions, with a cash deposit.

Finally, one comes to the highest rung on the ladder - detention. Per *Myers*, pretrial detention is to be the exception and not the rule. If the Crown meets the onus upon it to show that detention pending the trial is required, the accused is detained in custody pursuant to s 515 (10). (See below: Grounds for Detention).

Duty Counsel when speaking to bail should be familiar with the Supreme Court of Canada decisions in [R v Antic, 2017 SCC 27](#) and [R v Myers, 2019 SCC 18](#).

Again, the burden is on the prosecution to show the necessity for any of these orders. Section 515 (3) states that the justice shall not make any of the above orders unless the prosecution shows why an order under the immediately preceding paragraph should not be made.

The burden is also on the prosecution to show the necessity of conditions that are placed on an accused that is released. The Supreme Court, in [R v Zora, 2020 SCC 14](#)²⁷ para 79, further clarified the principles of bail following the landmark decisions of *Myers* and *Antic*.

Gladue Factors for Bail

The over-representation of Indigenous persons in pre-trial custody is well known and documented. As noted in *Zora*, “Indigenous people, overrepresented in the criminal justice system, are also disproportionately affected by unnecessary and unreasonable bail conditions and resulting breach charges”. It is appropriate and necessary to address *Gladue* factors during a judicial interim release hearing.

Reverse Onus Provisions

The exception to the general rule that the burden of proof is on the prosecution is found in section 515 (6). Section 515(6)(a) places an onus on the accused to show cause why, “on the balance of probabilities” detention is not justified where they have been charged with an indictable offence (other than a s 469 offence) alleged to have been committed while the accused was out on bail with respect to another indictable offence, or where the accused has been charged with a s 467.1 offence (participation in criminal organization).

Grounds for detention:

Section 515(10) provides: For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

- (a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with];
- (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody,

commit a criminal offence or interfere with the administration of justice [commonly referred to as the secondary ground]; and

- (c) on any other just cause being shown and, without limiting the generality of the foregoing, where the detention is necessary in order to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment [commonly referred to as the tertiary ground].

Primary Ground:

The first ground for detention is that detaining the accused is necessary in order to ensure their attendance in court. This includes the consideration of such factors as: residence; fixed place of abode; employment or occupation; marital or family status; previous criminal record; proximity of close friends and relatives; character witnesses; facts relating to the allegations of the offence; personal history.

The weight to be accorded to these factors varies, according to the circumstances of each case. However, one factor that often appears to be determinative in the accused's being denied bail is the fact that they are not ordinarily resident in Canada. Still, there are cases in which non-residents have been granted interim release.

Secondary Ground:

The concept of public safety is not restricted to the public's physical safety and includes the need for protection from property offences such as theft. However, neither the gravity of the offence nor the fact that violence was involved should be, by themselves, conclusive against release. Public safety often can be assured by crafting a release order that would prevent contact with any of the complainants or co-accused.

Section 515(10)(b) directs the court, in determining whether detention is required in the interest of public safety, to have regard "to all the circumstances", including any "substantial likelihood" of the accused committing criminal offences or interfering with the administration of justice while they are on bail.

Tertiary Ground:

The third justification for detention in custody is found in s 515 (10)(c) and creates a much broader basis for detention than is found in either of the preceding subsections; it refers to detention on the grounds of “any other just cause being shown”. Specifically, but “without limiting the generality” of the “any other just cause” criterion, the subsection refers to detention that is “necessary in order to maintain confidence in the administration of justice”.

Section 516 adjournments:

Section 516 of the *Criminal Code* permits a justice, before or at any time during the course of section 515 proceedings, and on an application by either the prosecutor or the accused, to adjourn the proceedings and remand the accused in custody. The section specifies, however, that no adjournment is to exceed three clear days without the consent of the accused.

Adjournments may also be required if the hearing cannot be concluded on the same day on which it commences.

NOTE: The Crown does not have an automatic right to a three-day adjournment. Valid reasons must be provided to the court. Duty Counsel should obtain and note a client’s instructions when they seek a bail hearing.

Publication Bans:

The power to delay the publication or broadcast of what goes on at a bail hearing is contained in s 517 (1) of the *Code*. The court has a discretionary power to impose a ban on its own initiative or at the request of the prosecution. However, where the application for a ban comes from the accused, the section states that imposing the ban is mandatory rather than discretionary. The ban may be imposed at any time before, or during, the course of the bail hearing. If the accused is committed to stand trial, the ban may last until the trial is over.

Role of Duty Counsel in Diversion Programs:

Both the *Criminal Code* and the *Youth Criminal Justice Act* refer to alternative measures as a method of resolving charges without resorting to judicial intervention. A wide variety of

programs exist which stress restorative justice, mediation, accountability, and increased community involvement.

Duty Counsel mainly deal with post-charge diversion programs. Often the Crown will already have decided to offer diversion and the role of Duty Counsel is to explain the process and available options to the accused, who must make the final decision.

While diversion is totally dependent on Crown discretion, Duty Counsel plays a vital, proactive role in identifying candidates. Even if the Crown initially rejects diversion, Duty Counsel may succeed in persuading the Crown to offer diversion. Diversion benefits the accused by making them take greater responsibility for their actions while avoiding a criminal record. The increased use of diversion also results in cost savings to the court system as well as LAA.

Guilty Pleas:

One of the main responsibilities of Duty Counsel is to advise and represent those who wish to enter a guilty plea. Duty Counsel may assist anyone in custody with a guilty plea without consideration of eligibility guidelines. The possibility of a plea should be canvassed with most unrepresented accused as a full representation certificate may not be needed where Duty Counsel can assist. The ability of Duty Counsel to assist in guilty pleas and sentencing reduces court delay and “dead time” for the accused.

Duty Counsel can provide additional information based on the interview with the accused to the Crown which may result in a more favorable position and negotiate on the accused’s behalf. Aspects of the negotiation could include:

- Often diversion may not be available, but a peace bond may be acceptable, so that a criminal record is still avoided.
- The Crown may accept a plea to a lesser and included offence or agree to withdraw other charges in return for a guilty plea.
- The Crown may agree not to oppose a discharge or probation or may agree to a range of sentences or a specific sentence.
- It is important to consider that the sentence currently under discussion on the day of court may not be available at a later date.

However, the accused should always be informed that the judge is not bound by a joint submission or negotiations between Duty Counsel and the Crown. The judge may impose a

different sentence but must provide Duty Counsel and Crown an opportunity to address the judge's concerns with the joint submission ([R v Anthony-Cook, 2016 SCC 43](#)).

Prior to providing assistance with a guilty plea, Duty Counsel must be satisfied of the following:

- The accused committed the act which constitutes the offence;
- The accused possessed the requisite *mens rea*;
- The Crown is in a position to prove the above (e.g.: no possible defence at trial);
- There are no defects in the information;
- There are no Charter arguments prior to trial (delay etc.);
- There are no special pleas (*autrefois acquit*, *autrefois convict*) or defence of *res judicata* or multiple convictions.

Section 606(1.1) must be canvassed and understood by the accused. It may be preferable to address the sections of 606(1.1) on the record in open Court.

The timing of the plea can be important. The accused may wish to take steps beneficial to sentencing. For instance, the accused may wish to make restitution without a court order or may wish to obtain employment, enroll in school, or register in an alcohol rehabilitation program. Duty Counsel should be aware of the sentencing patterns of each judge in the area. However, any request for an adjournment must have a reasonable basis. All pertinent information related to the accused and the negotiated resolution should be documented.

Duty Counsel should discourage an accused with counsel from pleading guilty in the absence of their counsel. Every reasonable effort must be made to contact the retained lawyer to see if they can attend later that day. If counsel cannot appear, Duty Counsel should inform the court of the situation and obtain the accused's consent on the record.

Guilty plea to a serious charge:

Occasionally, an accused insists on entering a guilty plea to an offence that will attract a lengthy penitentiary term. Duty Counsel should carefully explain the probable penalty to the accused. Where extensive preparation is required, Duty Counsel should recommend an adjournment to allow for a private lawyer to be retained.

If the accused insists on proceeding, Duty Counsel should obtain written instructions, and the court should be informed of the situation. (see below and the appendix for the Plea Comprehension Form). Duty Counsel can handwrite the Plea Comprehension Form if a blank form is not available. This written acknowledgment from the accused ought to be collected in the case of an Appeal.

Speaking to Sentence:

Duty Counsel must consider all types of sentencing options such as: discharge (absolute or conditional), fine, suspended sentence with probation, conditional sentence or incarceration. Community service orders, orders for restitution, intermittent sentences and recommendations for temporary absence should also be canvassed.

Duty Counsel should inform the court of any difficulties that might flow from the imposition of a particular sentence. For example, a loss of license may result in a loss of employment. A conviction may have immigration consequences. A sentence may affect the total time to be served by an accused on parole or subject to mandatory supervision or may result in the deportation of a permanent resident. Similarly, a probation order with a curfew could affect a youth's employability. Duty Counsel must bring this information to the attention of the accused and the court.

In speaking to minimum sentences, Duty Counsel must know the notice requirements, when a conviction is properly treated as a second or subsequent offence, and how prior convictions may be proved.

Often a Pre-Sentence Report or a Gladue Report will be requested or already been prepared with respect to the accused. The accused must read the report prior to sentencing. If the accused disputes the report, Duty Counsel can insist upon the attendance of the author who prepared the report.

Duty Counsel is expected to know and apply the basic principles of sentencing as legislated in sections 718 and 718.2.

Referring a Client for Legal Aid Coverage (Likelihood of Imprisonment):

Duty Counsel lawyers are in the best position to assess a potential client's likelihood of incarceration based on experience, education, discussion with the Crown as required, and knowledge of the court system. This assessment of likelihood of incarceration by Duty Counsel is necessary for the decision to provide coverage to clients charged with summary offences per LAA Rules.

This assessment of likelihood of incarceration is also vital to ensuring adherence to our governance agreement and responsibility to public funders. LAA is an independent organization— this is one of our values – and having Duty Counsel provide these assessments is integral to LAA operations. The process for providing referrals remains the same, all referrals for Likelihood of Imprisonment should be sent through a Client Gateway form within the DC Portal.

Duty Counsel are expected to consider all factors that could establish a probable risk of incarceration and not rely solely on a Crown position on ECR. The Criteria for Likelihood of Incarceration include:

- The Charge is Hybrid and Crown has proceeded by Indictment
- Crown has indicated intention to seek custodial sentence, verbally or through resolution offer/discussion and Duty Counsel believes the court will agree with the Crown
- Client has been denied bail and is being held in custody
- Client did not speak to bail and is being held in custody
- Client is facing a mandatory minimum sentence of imprisonment, a starting point sentence or a sentencing range which begins at imprisonment
- Client has already received custodial sentence for same or similar offence
- Client receiving another non-custodial sentence for similar offence is unlikely
- Based on known facts, violent/sexual offence involving bodily harm or weapon
- Based on known facts, violent/sexual offence involving domestic partner, child or another vulnerable complainant
- Other

The client also may be going through the Duty Counsel Triage. Triage files can be seen in the DC Portal, including which lawyer has been assigned.

If the client is currently being handled by Triage, deference should be given to that process as it needs to be completed. In other words, Duty Counsel should not be sending emails or referrals to try and circumvent the Triage process unless there has been a change in circumstances for the client (i.e. now in custody). If there has been a material change of

circumstances, Duty Counsel should advise the Duty Counsel Triage Lawyer of any change in circumstances.

An assessment on likelihood of jail can be made with or without a resolution offer, but the decision making should be made by lawyers performing the important role of Duty Counsel.

LAA Financial Eligibility Guidelines:

	2024					
Family Size	1	2	3	4	5	6+
Monthly Income	2,112	2,615	3,721	4,023	4,325	4,627
Annual Income	25,346	31,381	44,656	48,276	51,898	55,518

Rowbotham Applications:

If a client has been denied LAA coverage and gone through all internal appeals within LAA, they may need to pursue a *Rowbotham* application.

A *Rowbotham* application is an application for a stay of proceedings, conditional upon the appointment of state-funded counsel. (A court can't *directly* order the government to pay for an accused's lawyer in most cases, so the Court tells the Crown that it needs to provide a lawyer or there will be a stay of proceedings.) In essence, to succeed on a *Rowbotham* application, the unrepresented accused must show that:

- They are indigent
 - unable to afford to hire counsel privately;
- They have been denied Legal Aid coverage;
- The matter is sufficiently serious to justify the appointment of counsel
 - which almost always turns on (a) the prospect of incarceration, (b) immigration consequences, or (c) child custody consequences; and
- The matter is sufficiently complex that there is a real risk they would not receive a fair trial if they were unrepresented
 - *i.e. could this person competently run the trial themselves, with the judge's assistance*

We have a helpful information package on our [website](#) for unrepresented accused considering a *Rowbotham* application.

What can (or should) duty counsel do to help unrepresented individuals who want to make a *Rowbotham* application?

This is going to be driven by your time and caseload. Obviously, in a busy courtroom, Duty Counsel might be limited in what assistance you can provide. But even when Duty Counsel does not have time to provide “substantive” representation for the application itself, it is very helpful if Duty Counsel can:

- Tell the accused about the possibility of a *Rowbotham* application;
- Direct them to the resources on our website;
- Provide summary advice about whether they have any prospect of success on a *Rowbotham* application (i.e. do they obviously make too much money? or is the charge clearly too minor because there is no risk of jail, immigration consequences, etc.?);
- Quickly review the accused’s draft *Rowbotham* affidavit and supporting documents for obvious deficiencies;
- Confirm the client’s identity and commission the *Rowbotham* affidavit for the accused, and
- Review the materials with the accused.

So, when the conditions precedent exist what do you do?

You must always remember that in these situations you are acting as Duty Counsel, never, under any circumstances go on the record when assisting someone with respect to *Rowbotham*. The procedure to follow is:

1. Advise,
2. Provide,
3. Assist,
4. Advocate, but only under certain circumstances.

Advise:

If the conditions for a *Rowbotham* application are present, your first step is to advise the client that there is an application that can be made before the court for an order of court appointed counsel. The client may or may not wish to bring this application. Always remember, even if the client lacks the competency to run their own defence, you are not their guardian, and if they don't wish to bring the application then you must abide by those instructions.

Provide:

If the client is capable of completing the necessary Notice and Affidavit on their own, then you provide them with the documents and instruct them how to do so, and what to do with the documents once they are complete.

Assist:

If the client is incapable of completing the paperwork on their own, or they wish your assistance, then you can assist them with completing the paperwork and providing notice to the court and to the crown, and with filing their affidavit, and with setting a date for the application.

Advocate:

You will only advocate for the clients under certain conditions. First, if the hearing for the application is being held in a docket courtroom where Duty Counsel is present and the applicant asks for your assistance. Remember, you never go on the record. Secondly, if the hearing for the application is being held in a non-docket courtroom, but the judge requests the assistance of Duty Counsel from another courtroom. If the matter is being held in a non-docket courtroom, and the judge does not ask for the assistance of Duty Counsel, you cannot take it upon yourself to assist the applicant.

Conflicts

Most importantly, if you are in a position of advocating for the client, and the Crown calls a witness from Legal Aid Alberta, you must immediately advise the court that you are now in a conflict of interest, and you cannot cross examine the Legal Aid witness.

Part 3: ACTING AS ALBERTA COURT OF JUSTICE CRIMINAL – YOUTH DUTY COUNSEL

Acting as Duty Counsel for Youth involves many of the same basic activities that are completed in adult Court of Justice. Youth Duty Counsel is in attendance to ensure that all youth charged in Alberta have the benefit of preliminary legal advice and support through the court process.

Youth Duty Counsel can assist with adjournments, diversion referrals, setting trial dates or guilty pleas and sentencing.

Youth charges are governed by the *Youth Criminal Justice Act* which codifies the unique procedural and substantive principles that apply to Youth charged with a criminal offence. The overriding principle of the *Youth Criminal Justice Act* is that youth are given the presumption of reduced moral culpability due to their youth and therefore rehabilitation is a primary sentencing principle when dealing with young persons. For that same reason, there are arguably more diversion options available to young persons and youth charges are particularly amendable to reasonable resolution, negotiated by Duty Counsel, in the docket stage compared to the adult system.

As there are unique principles at play when dealing with youth, this section will outline the specific principles that need to be considered by Duty Counsel when performing various functions:

1. Declaration of Principles from the *Youth Criminal Justice Act*;
2. Interviewing the Young Person;
3. Traffic Tickets;
4. Judicial Interim Release (Bail) Hearing;
5. Adjournments;
6. Agency Requests;
7. Extra Judicial Sanctions;
8. Guilty Pleas;
9. Speaking to Sentence;

Like adult court, Youth Duty Counsel are expected to be available prior to the court commencement time and to explain their presence and purpose to the Young Person. Youth Duty Counsel should be prepared to answer questions about courtroom procedure, legal aid, bail, offences, possible penalties and defences. Advice can be provided at any stage of the proceedings.

Please note that all young persons will be represented by a lawyer either through Duty Counsel or a full representation certificate. Young Persons are automatically service eligible for LAA coverage regardless of financial status or their parents' income. There is no need for a Duty Counsel Referral or assessment of likelihood of incarceration like in adult court. Duty Counsel can assist the client in completing an application by filling out a Client Gateway form. There should never be a time that a youth is refused Legal Aid coverage. Of course, the young person can also retain counsel privately.

This “automatic eligibility” for LAA is supported by Section 25 of the *Youth Criminal Justice Act* which makes clear that all youth should be represented by Counsel.

Interviewing the Young Person

At the interview, Duty Counsel should first inform the young person who they are, what they are there to do for the accused, and that what is said will be confidential. Information about the charges, and whether the young person has private counsel, should then be gathered. If the young person indicates that their lawyer is coming to assist them then the assistance of Duty Counsel may not be necessary, and you can end the interview. If the accused indicates that they would prefer to use Duty Counsel, Duty Counsel can then assist and continue the interview.

Dealing with Parent/Child Conflict:

It may become obvious that the interests of the young person and their parents differ substantially. For example, they may indicate that, although their child did not commit the specific offence alleged or a *Charter* defence exists, they feel their child should enter a guilty plea for “getting into trouble” or “associating with the wrong crowd”.

If in doubt, refer to s 25(8) of the *YCJA*.

A significant portion of the interview should be conducted in the parents' absence to discuss the offence and ascertain the instructions of the young person. Duty counsel acts for the young person only and will only share information with the parents, or other guardians, with the express consent of the young person.

Traffic Tickets

If a young person wishes to plead guilty on a traffic ticket, we can give advice as Duty Counsel, but young persons must represent themselves in ticket court. Remember that the fines can be substituted for community service hours and the fine amount can often be negotiated down following discussion with the Crown. If the young person wishes to dispute the ticket or the Crown is not willing to resolve, it is often best to set the matter for trial if the young person can make that next date.

Adjournments

A matter can be adjourned so that Duty Counsel can continue to assist the young person in resolving their matters.

Duty Counsel should be able to inform the court as to the reason for the delay and may require an update on the client's application status with LAA which may require further investigation on behalf of Duty Counsel. Duty Counsel can find this status by using the [DC Portal](#).

Reasons for adjournment:

The following is a list of acceptable reasons for Duty Counsel to request that a matter be adjourned on behalf of a young person:

- To complete legal aid application (fill out a Client Gateway Form with the client.);
- To confirm appointment of Counsel (application done but offer hasn't been sent);
- For the Crown to consider if the young person is eligible for diversion;
- For ECR consideration by the Crown;
- Disclosure not available (ask when it will be ready) or Crown file not in court (*Jordan* clock running);
- For a young person who is ill, in custody elsewhere or otherwise cannot attend court.

Reasons for “standing matters down”:

The following is a list of reasons for Duty Counsel to request that a matter be stood down on behalf of a young person:

- For counsel to attend;

- To attend at Case Management Office to obtain a trial date;
- To have a resolution discussion with the Crown;
- To have the accused meet with diversion worker;
- To have the client complete paperwork for a diversion program or for extra-judicial sanctions.

Agency Requests for Lawyers on a LAA Certificate:

The primary function of Duty Counsel is to assist unrepresented accused who have been taken into custody or summoned and charged with offences, by advising them of their rights and assisting them regarding procedure, adjournments, reservations of plea, judicial interim release applications, entering an election and plea, setting trial dates, plea negotiations with the Crown, entering a guilty plea, speaking to sentence and admission into diversion programs. Duty Counsel, time and circumstances permitting, will make every effort to assist counsel acting on a LAA certificate in obtaining a **docket court adjournment or standing a matter down** until counsel can attend.

Often counsel for an accused request Duty Counsel to act as agent to request adjournments or set trial dates. LAA encourages this procedure when the accused is a Legal Aid client. It is acceptable for Duty Counsel to appear as agent for counsel and provide a reasonable list of suggested trial dates. Duty Counsel are not entitled to any additional compensation from LAA or from private counsel for acting as an agent while appearing as Duty Counsel.

Duty Counsel should not appear as agent with respect to a motion to change a trial date if the motion is contested, nor should Duty Counsel act as agent for counsel to conduct a trial or speak to sentence.

If you are requesting Duty Counsel assistance for these purposes, counsel must send a detailed agency request to LAA via dutycounsel@legalaid.ab.ca.

Duty Counsel should not perform agencies in the following circumstances:

- Where inadequate information has been provided to complete the requested task.
- When asked to speak to Bail or Sentencing for counsel.
- When asked to set trial dates or summary disposition dates for counsel.
- When asked to complete forms, get paperwork signed or file documents for counsel.

- When asked to collect or forward disclosure to counsel.
- When asked to make written disclosure applications on behalf of counsel.
- When asked to provide legal advice to a client where counsel has been retained.
- When asked to speak to contested forfeiture at the request of counsel.
- Duty Counsel is not responsible for reporting back to retained counsel as to the outcome of an agency, however DC should be making notes in [DC Portal](#).

It is up to individual Duty Counsel whether they wish to appear as an agent for privately retained lawyers, but the conditions above are still applicable.

As a rule, roster Duty Counsel should not act in their own cases or matters to the detriment of their duties as Duty Counsel, nor should any Duty Counsel attempt to act beyond the limits of one's own professional judgment.

Judicial Interim Release

Duty counsel should be aware of the unique bail and sentencing provisions that apply to young people. The sections governing bail are found in ss 28-31 of The [Youth Criminal Justice Act](#).

Section 28 indicates that the *Criminal Code* bail provisions apply to such extent that they are not inconsistent with the YCJA. However, unlike adult bail there is no reverse onus at any time including bail revocation s 29(3).

A youth may have a bail hearing before a JP, but if denied, that youth is entitled to a second attempt de novo before a PCJ at the next court date (unlike adults which will need to appeal to the Court of King's Bench). In serious cases like murder, bail may only be attempted in court as a Justice of the Peace does not have jurisdiction to release on s. 469 charges.

Nonetheless, the overarching principle for judicial interim release found in s 29(1) of the *Act* states that a youth cannot be detained in custody as a substitute for appropriate child protection, mental health or other social measures.

29(3) Onus

The onus of satisfying the youth justice court judge or the justice as to the matters referred to in subsection (2) is on the Attorney General.

There is also an additional “rung” on the ladder for youth that is not available for adult accused. This is section 31 of the *Act* which allows release of the young person to a responsible person in the particular situation where the Crown has otherwise met their burden of establishing that detention of the young person is necessary on the primary, secondary or tertiary grounds (or combination).

Guilty Pleas:

Even though all young persons are entitled to representation by Counsel (a full representation certificate), there may be situations where Youth Duty Counsel can assist in disposing of a matter while it's in the docket court stages by negotiating a reasonable outcome for the young person based on an early guilty plea. Remember that there are many more sentencing options, including diversion, for young persons compared to adults.

However, the accused should always be informed that the judge is not bound by a joint submission or negotiations between Duty Counsel and the Crown. The judge may impose a different sentence but must provide Duty Counsel and Crown an opportunity to address the judge's concerns with the joint submission (*R v Anthony-Cook*, 2016 SCC 43).

Prior to providing assistance with a guilty plea, Duty Counsel must be satisfied of the following:

- The young person committed the act which constitutes the offence;
- The young person possessed the requisite *mens rea*;
- The Crown is in a position to prove the above (e.g.: no possible defence at trial);
- There are no defects in the information;
- There are no *Charter* arguments prior to trial (delay etc.);
- There are no special pleas (*autrefois acquit*, *autrefois convict*) or defence of *res judicata* or multiple convictions.
- Section 606(1.1) must be canvassed and understood by the young person. It may be preferable to address the provisions of 606(1.1) on the record in open Court if the young person has insisted in proceeding contrary to Duty Counsel's advice.

Duty Counsel should discourage a young person with counsel from pleading guilty in the absence of their counsel. Every reasonable effort must be made to contact the retained lawyer to see if they can attend later that day. If counsel cannot appear, Duty Counsel should inform the court of the situation and obtain the accused's consent on the record.

In many cases, the Pre-Sentence Report can be particularly helpful, and it can be commonplace for the sentencing to be adjourned to allow preparation of reports and collection of relevant sentencing documents by Youth Duty Counsel.

Sentencing:

Sentencing for young persons is often considered to be “a slap on the wrist” or “not as important” since the accused is a young person and incarceration is to be used as an absolute last resort per the principles in the *Youth Criminal Justice Act*. A simple sentence such as a fine or probation, which may be considered an easy sentence for an adult, may present unique challenges for a young person and has the potential to be disproportionately punitive depending on the young persons’ circumstances.

There is also a myth that exists where it’s thought that since the criminal record is “sealed” at the age of 18, that convictions acquired before that age do not have real consequences for the young person as an adult. That is not the case and youth convictions need to be treated as seriously as sentencing for adult matters.

Young persons must be aware of the access period under s. 119. For example, a 16-year-old may get 1 year probation on a robbery but the access period is 5 years from the completion of that order. If the young person, then gets convicted as an adult during that access period, his youth record is converted into an adult record.

While it is true that custody and incarceration is a last resort for young persons, the gateway to custody can quickly open and result in a high needs vulnerable youth spending the vast majority of their formative years in custody. Youth sentencing principles can be briefly summarized as follows:

- youth justice system must reduce its overreliance on incarceration for non-violent YPs (Preamble);
- youth justice system must reserve its most serious interventions (i.e. incarceration) for the most serious crimes (Preamble);
- youth justice system is intended to prevent crime by addressing circumstances underlying offending behaviour (s 3(1)(a)(i));
- youth justice system is intended to rehabilitate and reintegrate YPs who commit offences (s 3(1)(a)(ii));
- youth justice system must emphasize fair and proportionate accountability by taking into account the greater dependency of YPs and their reduced level of maturity (s 3(1)(b)(2));

In addition to the principles found in s 3 of the *Youth Criminal Justice Act*, the court must consider principles and factors found in s 38 of the *Act*.

Part 4: FAMILY DUTY COUNSEL

Family Duty Counsel as a category represents a significant portion of LAA's Duty Counsel services. Family Duty Counsel have historically been provided by staff lawyers in the cities of Edmonton and Calgary and by roster lawyers in some select jurisdictions.

Family Duty Counsel must have a thorough knowledge of the *Divorce Act*, the *Family Law Act*, the *Child, Youth and Family Enhancements Act*, the *Family Property Act*, the *Protection Against Family Violence Act*, the *Maintenance Enforcement Act*, *Adult Interdependent Relationships Act*, *Alberta Evidence Act*, *Vital Statistics Act* and the *Federal and Alberta Child Support Guidelines*, and all other related legislation and regulations.

In addition, Duty Counsel should be familiar with the *Alberta Rules of Court* (the Family Law Rules), the *Court of King's Bench Practice Notes* and the *Court of Justice Practice Directives* for the particular region.

Providing brief legal advice is a key function of all Duty Counsel, and Family Duty Counsel must be able to provide accurate "process-related" advice on topics such as court procedure and the law.

Family Duty Counsel should assist in obtaining an early resolution when the parties are close to settlement so that appointment of a lawyer on a LAA certificate may not be required.

Family Duty Counsel does more than request adjournments and set dates. The summary advice they provide and their assistance in the resolution of relatively simple matters are essential to ensure that limited LAA resources can be concentrated on more complex matters.

The precise duties of court Family Duty Counsel may vary somewhat according to local court practices and depending on which level of Court, namely the Court of King's Bench or the Alberta

Court of Justice, Family and Youth Division. The type of court may affect the role of the Family Duty Counsel in each jurisdiction.

The following sections are intended as a guideline for Family Duty Counsel in performing their duties in family court. Family Duty Counsel should not feel compelled to act if they do not feel competent due to time pressure or inexperience.

Role of Family Duty Counsel in Family Court:

- Family Duty Counsel is encouraged to be proactive in assisting clients to reach a resolution in appropriate cases and encourage them to seek out non-court based dispute resolution options. If a legal aid certificate is an appropriate option, based on the type of matter in dispute, the Family Duty Counsel should advise the client about Legal Aid's financial eligibility criteria and the application process, and how to apply for Legal Aid.
- Family Duty Counsel should explain to clients that legal aid does not always provide a full representation lawyer, explain appropriate hour certificates and that legal aid is not free.
- Family Duty Counsel **cannot** recommend a particular lawyer.
- Private roster lawyers who have acted for a client in a Family Duty Counsel capacity should refrain from later representing persons they have assisted as Family Duty Counsel because of the perceived impropriety of using the high visibility of the position of Family Duty Counsel to obtain clients. It should only occur in unusual circumstances and prior approval must be obtained from LAA, regardless of whether the retainer is private or by way of a legal aid certificate.
- The limited role of Family Duty Counsel should be stressed when Duty Counsel first meets with a client and should be revisited at key points in the interview.
- It should be clear to the client that the limited services available through Family Duty Counsel will not replace retaining their own counsel.

General Functions of Family Court Duty Counsel:

Family Court Duty Counsel deal with persons who are on the docket (Alberta Court of Justice) or Family Docket or Chambers list (KB) or persons who are applying for Emergency Protection Orders (EPO) in the Court of Justice and present in court on that specific day. Family Court Duty Counsel appear in the Court of King's Bench and the Alberta Court of Justice Family Division.

Family Court Duty Counsel may be full-time employees of LAA who are present at court each day or LAA per diem roster Duty Counsel - lawyers in private practice that are paid an hourly rate to take a Family Duty Counsel shift. LAA will use staff Family Duty Counsel first when available.

The functions of Family Duty Counsel include:

- Advise unrepresented parties about their legal rights and obligations as they relate to that court appearance or a future related court appearance that is close in time;
- Assist unrepresented parties in negotiating and settling issues as they relate to that court appearance or a future related court appearance that is close in time, likely on an interim basis, and helping clients negotiate the terms of consent orders;
- Review court documents and advising clients on their need to prepare court documents as they relate to that court appearance or a future related court appearance such as applications, affidavits and other court based forms in limited circumstances;
- Provide the Court with neutral, non-positional information about the status of the legal matter(s) before the Court and advise the Court of the client's position and how to move the matter forward.
- Refer unrepresented parties to other sources of assistance, such as Court and Justice Services, dispute resolution services, Early Intervention case conferences, Legal Aid Alberta or a privately retained counsel;
- Appear for unrepresented parties to request adjournments, obtain consent orders, argue straight forward/non-complex matters, attend child protection docket;
- Advising EPO claimants with respect to the EPO application, preparation of the EPO application documents and appearing in Court to conduct the initial EPO application when available.
- Speak to non viva voce applications to vary child support or access for financially eligible clients in non-complex cases as well as spousal/partner support.

Limits on Functions Performed by Family Duty Counsel:

Because of the summary nature of Family Duty Counsel assistance, Family Duty Counsel should refrain from providing services beyond the limits suggested by LAA.

Family Court Duty Counsel should not:

- Deal with significant property disputes/equalization of net family properties and provide advice on Minutes of Settlement;
- Attend at a trial, or any viva voce hearing where the issues are lengthy and/or complex, including EPO oral hearings, or, Initial Custody hearing in Child Welfare Matter other than to advise of a party's consent on the record;
- Attend Case Management conferences or give specific advice regarding witnesses or evidence to be called at trial;
- Assist self-represented persons who are not on the current day's court list unless they are speaking to an emergency application;
- Assist persons who have privately-retained (non-legal aid) counsel of record.

Agency Requests for Lawyers on a LAA Certificate:

Family Duty Counsel may act at the request of retained lawyers (either private or on a LAA certificate) to appear as agent for the purpose of obtaining an adjournment, setting a matter to the end of the list or setting a hearing date, subject to the following conditions:

- For privately retained or staff counsel, the adjournment or setting of a date must be on consent of all parties. If the adjournment or setting of a date is contested but the client has a LAA certificate, Family Duty Counsel has the discretion to refuse to appear as agent if it appears the argument may be complex or lengthy.
- Family Duty Counsel will not appear as agent if the client is not in attendance, unless retained counsel confirms it is impossible for the client to attend court (e.g.: due to illness) and that the client is aware and has consented to use of Family Duty Counsel by their lawyer as an agent.
- Family Duty Counsel is not responsible for reporting back to retained counsel as to the outcome of an adjournment or setting of a date unless it is impossible for the client to attend. In most cases, the client must be advised to notify their lawyer.

- As a general rule, roster Family Duty Counsel should not act in their own cases or matters to the detriment of their duties as Family Duty Counsel on any scheduled date. Family Duty Counsel should not attempt to act beyond the limits of one's own professional expertise and judgment.
- There is 1 Family Duty Counsel per court in Alberta Court of Justice and King's Bench in select jurisdictions.

Family Duty Counsel duties include:

- Help anyone on court list (no FEG)
- Basic legal advice and procedural information (no property)
- Basic negotiation for consent
- Appear in court – adjournments/basic arguments
- Brief review of client's documentation

Part 5: MENTAL HEALTH REVIEW PANEL ([Mental Health Act](#))

A person becomes a formal patient (involuntary patient) when they are admitted and detained in hospital and two doctors issue admission (Form 1) or renewal (Form 2) certificates. To detain a person as a formal patient, the person must:

- (a) be suffering from a mental disorder,
- (b) have the potential to benefit from treatment for the mental disorder,
- (c) be, within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder, and
- (d) be unsuitable for admission to a facility other than as a formal patient,

Community Treatment Orders (CTOs) (Form 19) are for people with diagnosed mental disorders who require treatment or care but are living in the community, not in a mental health facility. A CTO is defined by the Canadian Mental Health Association as “a doctor’s order to follow a supervised mental health treatment and care plan for a certain period of time while staying in the community rather than being admitted to a hospital or other facility.” Criteria and conditions to issue a CTO are based on a person’s medical and hospitalization history. All the following conditions must be met:

- the person must be suffering from a mental disorder
- the person is, within a reasonable time, likely to cause harm to others or to suffer negative effects, including substantial mental or physical deterioration or serious physical impairment, as a result of or related to the mental disorder, if the person does not receive continuing treatment or care while living in the community,
- the treatment or care the person requires exists in the community, is available to the person, and will be provided to the person
- the person must be able to comply with the treatment or care requirements in the CTO
- the person must be willing to consent to the CTO or their consent is not needed in a specific case

Refer to sec 9.01(1) of the Mental Health Act for further information regarding CTO’s

Procedural Fairness:

The right to review a decision is part of procedural fairness. Review panels review decisions to hospitalize and treat a person with mental illness. Review panels consider the application for review and the reasons a person was detained or treated. They also confirm all deadlines have been met.

Failure to manage review requests violates procedural fairness and a person's Charter right to liberty.

Under section 43(1), a patient may appeal a review panel decision to the Court of King's Bench within 30 days of receiving an order or written decision. An appeal is a rehearing on the merits of the patient's case.

There are three review panels in Alberta:

- Calgary and South Mental Health Review Panel
- Central Alberta Mental Health Review Panel
- Edmonton and North Mental Health Review Panel

Review panels are established under section 34 of the Act. Alberta Health describes the review panel role as:

"... an adjudicative body that hears and makes decisions on applications pertaining to: patients detained in designated facilities under admission and renewal certificates; return of a patient to a correctional facility after treatment, individuals who are subject to community treatment orders; a patient's competence to make treatment decisions; and the administration of treatment to patients who object to it under the Mental Health Act."

Each review panel has 3 members: a chair or vice-chair, a psychiatrist, and a member of the general public. Whoever chairs a hearing must be a lawyer. There is a province-wide roster of members appointed by the Minister. They are psychiatrists, and public members who are interested in being on a panel.

Three types of applications for review are related to admission and detention:

- to cancel admission certificates or renewal certificates—Form 12 (section 38)
- to be transferred back to a correctional centre—Form 12 (section 33)
- to review a formal patient's admission or renewal certificates—an automatic review occurs at or after six months if no review has been held earlier (section 39)

Other applications that patients, individuals under a CTO or their representatives can make by completing a Form 12 are:

- to review a doctor's opinion that a formal patient is not mentally competent to make treatment decisions (section 27)
- to cancel a CTO (section 38)
- to cancel a CTO—this is a deemed (automatic) application on the first renewal of a CTO and every second renewal after it unless an application to cancel it has been made in the month before the renewal (section 39)
- for a treatment order—doctors can apply for a treatment order by completing Form 12 if a mentally competent formal patient refuses to consent to treatment, or if a person authorized to make treatment decisions for an incompetent formal patient refuses to consent to treatment (section 29)

Section 40 of the Act requires the chair of the review panel to give all parties 7 days' notice (Form 13) of the hearing date, time, place, and purpose when they receive a review application. For applications under sections 27 and 29, they must give "reasonable notice". A hearing must be held within 21 days of receiving the application form.

The chair can grant one 21-day adjournment and consider requests from a patient or their representative for more adjournments. On sections 27 and 29 applications, the hearing must be held within 7 days after receiving the application form.

After a hearing, a review panel must issue its decision within 24 hours (section 41(2)(a)).

The leading case in Alberta in relation to the Act is [*JH v Alberta Health Services, 2019 ABQB 540*](#) which found that the Act was overbroad, arbitrary, and grossly disproportionate. The Court declared that the detention provisions ss 2, 4(1), 4(2), 7(1), 8(1) and 8(3) of the Act are of no force or effect as they infringe ss 7, 9 and 10(a) and 10(b) of the *Charter of Rights and Freedoms*.

The Alberta Court of Appeal in *JH v Alberta (Minister of Justice and Solicitor General), 2020 ABCA 317* upheld the lower court's decision and dismissed an appeal by the Minister of Justice and Solicitor General of Alberta and Alberta Health Services.

Part 6: LIMITATIONS AND STANDARDS

Solicitor-Client Privilege:

The customary solicitor– client relationship applies to Duty Counsel and LAA clients.

Duty Counsel are often faced with a request from a judge as to the status of a LAA application. Duty Counsel should always get a client’s consent before sharing any information regarding an application with the court.

Referrals to Other Lawyers:

Duty Counsel cannot suggest or recommend another lawyer to a client, nor should Duty Counsel attempt to dissuade a client from choosing a specific lawyer. If the client does not have the name of a particular lawyer, Duty Counsel may suggest the [LAA Roster Directory](#).

DC should advise LAA if the client is having difficulty contacting LAA or if the client speaks a different language than English.

Acting in the Same Matter:

As a general rule, any lawyer who advises or represents a person as Duty Counsel shall not represent that person “in the same matter”. Duty Counsel can represent the individual in subsequent matters provided there was no “touting” while acting as Duty Counsel.

Duty Counsel should not hand out their business cards to clients.

LAA may make exceptions for rural locations where the number of roster lawyers available to serve a client is limited or where the Duty Counsel has acted for the client on a certificate in the past.

Exceptions may also be considered where LAA is satisfied that there is a benefit to the client from a continuation of service by Duty Counsel. Factors that will be taken into account include:

- The disability of the client. For example, if a client has been able to communicate their circumstances to Duty Counsel once and to do so again would be onerous or risk missing significant elements;

- The Duty Counsel has performed substantial services for the client, and it would be counterproductive to repeat the established groundwork;
- The inability of the person to access counsel other than Duty Counsel, by reasons of mobility limitations and geographical distance;
- The skills of Duty Counsel to deal with special needs demonstrated by the client;
- The language of the applicant is difficult to match and Duty Counsel speaks that language.

The services provided by Duty Counsel should represent a complete a range of services that Duty Counsel could have discharged in the circumstances. A summary adjournment is not the type of service that would warrant an exemption on the basis of continuity.

An exemption should not create public suspicions of touting or the use of Duty Counsel assignments to solicit clients. Previous requests by the lawyer seeking the exemption will also be taken into consideration. Finally, the application for exemption must be made in a timely manner.

Acting for a Private Client While Retained as Duty Counsel:

As a general rule Duty Counsel should not act in their own cases while serving as Duty Counsel.

In larger metropolitan areas where there are frequent criminal and family court sittings, lawyers should schedule their own private files to avoid court appearances when they are scheduled to be Duty Counsel. Where criminal or family court only sits one or two days a week or month or the roster is small, enforcement of this policy may be relaxed in appropriate circumstances.

Exceptions will be made if you have been retained to act as Duty Counsel on short notice or for Duty Counsel in rural areas.

Each Duty Counsel is required to be available for the hours scheduled as Duty Counsel. Attempting to deal with one's own files while acting as Duty Counsel results in diminished accessibility, efficiency and effectiveness as Duty Counsel.

LAA has the authority to remove a lawyer from the Duty Counsel roster for consistently scheduling their own files on days when scheduled as Duty Counsel and the lawyer's ability to carry out their Duty Counsel function is adversely affected as a result.

Duty Counsel may not include any time spent with private clients, including clients on legal aid certificates, in accounts submitted for Duty Counsel services. The time spent on one's own matters is not to be recorded in any way on the Duty Counsel invoice.

Interactions with Clients:

Duty Counsel shall not:

- Solicit clients while acting as Duty Counsel;
- Solicit funds from a client while acting as Duty Counsel;
- Hold monies or chattels in trust (e.g.: bail), or
- Accept a payment or gratuity from a client they assisted while acting as Duty Counsel.

Instructions by Telephone:

Duty Counsel may use their own discretion about taking telephone instructions from individuals identifying themselves as an accused (please keep in mind the Law Society guidelines on determining identification). Telephone calls are generally discouraged and should only be taken if time permits.

Obligations when Submitting an Invoice to LAA / Submitting an Invoice:

When submitting your invoice for Duty Counsel through the Lawyer Portal you must ensure that the Outcomes section for that certificate is has been completed. This is one of the ways LAA can determine how busy a court location or a particular courtroom is, so that it can be adequately staffed. In order to complete the Outcome portion of your invoice you must click on "Add an Outcome" and then enter the appropriate data in the necessary fields.

Once you have entered this data, click the 'Add' button to save the information with your invoice.

Please see the Duty Counsel Statistics guide in the Appendices.

Appendices:

1. *Rowbotham* Materials
2. *Gladue* Considerations
3. Plea Comprehension Form
4. Written Guilty Plea Acknowledgement
5. Duty Counsel Interview Form

6. Duty Counsel Statistics Guide

Instructions for Duty Counsel Regarding *Rowbotham* Applications

Rowbotham in General:

As discussed in A.I. Nathanson's paper, *Rowbotham* Applications: Leveling the Playing Field, there are basically two types of *Rowbotham* applications. These could be called a Type 1 *Rowbotham* and Type 2 *Rowbotham* applications.

A Type 1 application involves a request for court appointed counsel where the client has been denied legal aid coverage and the application is for an order seeking a Stay of Proceedings until such time as counsel is appointed under the existing tariffs. The other party in these applications is Alberta Justice, not Legal Aid Alberta.

A Type 2 application involves a request for court appointed counsel where the client has been granted legal aid but counsel feels the case cannot be properly conducted at the existing tariff rate, and is seeking a Stay of Proceedings until such time as Alberta Justice pays something in excess of the tariff to existing counsel.

As Duty Counsel, you can only assist a client with a Type 1 application.

The following *Rowbotham* documentation can be found at Legal Aid Alberta's website:

- Application information,
- Application checklist,
- Notice of Application,
- Affidavit of the Applicant,
- Application and Affidavit for Child, Youth and Family Enhancement Act,
- Order for Adjournment Child, Youth and Family Enhancement Act
- Approved Application example, and
- Request to receive assistance in completing the application:
 - Amicus Curiae Order for Child, Youth, & Family Enhancement Act Matters

In Criminal matters the Notice can be served on the Prosecutor in the docket court where you are assisting the client. You must provide 2 clear days' notice.

It is strongly suggested that before bringing a *Rowbotham* application you read the *Rowbotham* case itself. It is located at [41 CCC \(3d\) 1 \(ONCA\)](#).

When making a *Rowbotham* application you must keep in mind the following:

1. The order sought is for a Stay of the Proceedings until such time as Alberta Justice (not Legal Aid Alberta) appoints counsel for the accused.
2. Never request that a specific counsel be appointed, as that decision will be made by Legal Aid Alberta (LAA) once Alberta Justice orders LAA to appoint counsel.
3. Duty Counsel must never go on the record for the accused that is being assisted.

Conditions precedent for a *Rowbotham* application:

- Legal Aid coverage been denied,
- The accused lacks the means to employ counsel,
- It is an exceptional or complex case,
- The accused lacks the competence or capacity to represent themselves, and
- Defense counsel is essential to a fair trial

The Alberta Court of Appeal, in the matter of *R v Rain*, (1994), 157 AR 385, provided a list of factors which should be considered in a *Rowbotham* application:

What evidence might be useful and available? For example, it is entirely possible that the accused could in a few minutes lead evidence of:

- financial background,
- educational background,
- what they know of the charge,
- what particulars have they been able to obtain from the Crown,
- what efforts have been made to get Legal Aid, with what result,
- the reasons given by the Legal Aid authorities,
- whether they have any other access to a lawyer or agent capable of giving effective defence to this charge, and
- anything else which would help make the argument that they cannot fairly meet the charge without counsel.

Duty Counsel, when conditions precedent are present, must always remember that in these situations to never, under any circumstances, go on the record when assisting someone with respect to *Rowbotham*. The procedure to follow is:

Advise:

If the conditions for a *Rowbotham* application are present, your first step is to advise the client that there is an application that can be made before the court for an order of court appointed counsel. The client may or may not wish to bring this application. Always remember, even if the client lacks the competency to run their own defence, you are not their guardian, and if they don't wish to bring the application then you must abide by those instructions.

Provide:

If the client is capable of completing the necessary Notice and Affidavit on their own, then you provide them with the documents and instruct them how to do so, and what to do with the documents once they are complete.

Assist:

If the client is incapable of completing the paperwork on their own, or they wish your assistance, then you can assist them with completing the paperwork and providing notice to the court and to the crown, and with filing their affidavit, and with setting a date for the application.

Advocate:

You will only advocate for the clients under certain conditions. First, if the hearing for the application is being held in a docket courtroom where Duty Counsel is present and the applicant asks for your assistance. Remember, you never go on the record. Secondly, if the hearing for the application is being held in a non-docket courtroom, but the judge requests the assistance of Duty Counsel from another courtroom. If the matter is being held in a non-docket courtroom, and the judge does not ask for the assistance of Duty Counsel, you cannot take it upon yourself to assist the applicant.

Most importantly, if you are in a position of advocating for the client, and the Crown calls a witness from Legal Aid Alberta, you must immediately advise the court that you are now in a conflict of interest, and you cannot cross examine the Legal Aid witness. If the court wishes to ask the witness questions that is within the courts discretion. After the Legal Aid witness has testified you are free to continue advocating for the applicant. It is important that you understand the nature of the potential conflict if you were to cross-examine a Legal Aid Alberta employee. In addition to your duty to the profession, and your duty to the client, you also have a duty to Legal Aid Alberta as they are paying for your services and to be on Legal Aid's

payroll while cross-examining another employee would be no different than trying to remain counsel of record after you have been made a witness.

If you do any of the above; that is if you provide advice, provide documents, assist with documents or advocate on behalf of an accused in our capacity as Duty Counsel, you must provide Legal Aid Alberta with the following information:

1. Name of the client you assisted,
2. The nature of the assistance,
3. If you helped file documents or provide service, then the date, courthouse and time of assistance.
4. If you advocated for the client, then the date, time, courthouse, Judge and result of the

Gladue Considerations and Checklist

1. Do you self-identify as Indigenous? Indigenous can be status or non-status Indian, First Nations, Métis, or Inuit.
2. Where are you from? What community or band are you from? Do you live in the city or in a rural area (the country)?
3. What kind of living arrangements do you have right now? For example, how many people live in your house? Are these people your brothers and sisters or other relatives?
4. What is your home community like? Are there any issues with substandard (second rate) housing, lack of clean water, chronic unemployment, or seasonal employment? Is your community “dry”? Are there any issues with substance abuse?
5. What kind of living arrangements did you have when you were growing up?
6. Have you ever been in foster care? Have other members of your family been in foster care (your parents, brothers and sisters, or your children)?
7. Do you feel dislocated from your community? (Have you been taken away from your community in some way?) Has your community been fragmented (broken apart)? Do you feel isolated or lonely because of this?
8. Did you or a family member go to an Indian residential school?
9. Have you made an application to the Indian Residential School Settlement? If so, has this process been painful for you or caused other problems? If you received a settlement payment, has this caused problems for you or your family?
10. Have you spoken with an Indian residential school counsellor or therapist?
11. Have you ever struggled with substance abuse (drug or alcohol abuse)? Have you ever struggled with addictions to drugs or alcohol?
12. Did you grow up in a home where there were issues with substance abuse or addictions?
13. Did you grow up in a home where there was abuse?
14. Do you have any mental health issues?
15. What level of education do you have? For example, did you finish high school? If not, what’s the last grade you finished?
16. Did you or a family member have any issues that may have affected your opportunities to learn? For example, do you have any issues with trauma, Fetal Alcohol Spectrum Disorder (FASD), or learning disabilities?
17. Have you taken part in community traditions, celebrations, or family gatherings as a child or as an adult? For example, have you participated in fishing, berry picking, longhouse or sweat lodge ceremonies, Hobiye, sundances or winter dances, Métis dancing, potlatches, shame feasts, friendship centre events, or volunteering for elders or other community members?

18. Have you ever been affected by racism? Please describe what happened and how this affected you.
19. Have you ever been affected by poverty? For example, did you or your family struggle to pay bills or rent, buy food, or pay for healthcare?
20. What are your interests and goals? For example, is there any education or training you'd like to complete? Is there a job or volunteer opportunity that you're interested in? Do you have goals for your family or community?
21. Have you ever been involved with any Indigenous restorative justice programs, or with community elders or teachings? If so, give examples.
22. Is there someone in your community whom you or your lawyer, Native courtworker, or other advocate can contact if you need help? For example, is there a family member, elder, social worker, chief, or band councillor who can help you?

Supplemental Questions to Consider:

1. Client's Circumstances:

- What kind of relationship does your client have with their family? Consider describing your client's family relationships in a separate paragraph (or more) for each significant family member.
- Is there a history of child protection issues in your client's family? For example, has your client ever been in foster care? Have members of their family been in foster care (his or her siblings or children)?
- Was your client raised by a single parent? Are they a single parent?
- What is your client's marital status? What was/is the length of your client's marriage or relationship?
- Does your client have any children? How old are they? Do the children live with your client? Have the children ever lived with your client? If not, why not?
- Who are your client's associates (friends)?
- What are your client's past and present living arrangements? For example, how many siblings and relatives lived in the same house while they were growing up? How many siblings and relatives do they share a home with now?
- What is your client's education? What is your client's reading ability? Does your client face any challenges that would prevent them from learning, such as trauma, learning disabilities, or Fetal Alcohol Spectrum Disorder (FASD)?
- What is your client's past and present employment record?
- Does your client have any special training, skills, or talent?
- Is your client a member of any clubs — social, professional, or religious?

- What are your client's interests, goals, and aspirations — educational, professional, or otherwise?
- What is your client's financial situation? Has your client been impacted by poverty? Do they have a history with social assistance, employment insurance, food banks, or shelters?
- Does your client have any mental health issues? What is their mental, emotional, and behavioural status?
- Is your client in good health? Do they have any health or physical problems?
- Has your client ever struggled with addictions or substance abuse (now or in the past)? Did your client grow up in a home where there was a history of addictions or substance abuse?
- Did your client grow up in a home where there was domestic violence or abuse?
- What is the Court History Assessment for your client? (The Court History Assessment is a listing of your client's past criminal record, which is included in the disclosure package from the Crown counsel.) You should review all of the offences listed with your client. Take note of any patterns. For example, you may notice that every December your client is in trouble. This could reflect a trauma, such as the death of a parent. It's also good to note any long periods of time during which your client wasn't charged with any offences. Discuss with your client the positive things that were happening in their life at that time.
- What is your client's attitude with regard to the offence?
- If you're preparing a *Gladue* report for a sentencing hearing, is your client receptive to any proposed conditions, such as a curfew or working with an elder?

Gladue Considerations for Bail

In most situations, *Gladue factors* do not have to be as detailed or contain as much personal information for bail hearing as for the sentencing hearing. The judge or justice of the peace will need to know that the person is Indigenous and the details that would be relevant to bail

— employment, education, availability of a surety.

- What are your current living circumstances?
- What are your current family connections like? Do you have any family/community support?
- Are you employed? What level of education do you have?
- Do you struggle with any addictions?
- Did you attend residential school/day school? Were you displaced by the 60's scoop/millennial scoop?

- Is there someone who can act as a surety for you? (Remember that your Indigenous community can act as a surety.)
- Are there resources (community, culture, beliefs, customs, traditions, laws) you can utilize to help support a successful bail release plan?

Community-Based Justice Programs – Alberta

The Duty Counsel Lawyer must be familiar with the Indigenous and Restorative Justice Courts, their programs, contacts and referral process associated with the courtroom DC is appearing in. DC should be prepared to answer questions and assist an accused in applying to the specialty court.

The following is a list of agencies that participate in restorative justice initiatives across the province. This list is not exhaustive and always changing, so be sure to connect with other stakeholders in your court to obtain the most up to date information.

Bigstone Restorative Justice

Calgary John Howard Society

Edmonton Native Counselling Services

Elizabeth Metis Settlement Restorative Justice Program

Ermineskin Cree Nation

Fort Saskatchewan Restorative Justice and Youth Justice Committee

Kainai Peacemaking Program

Peace River Region Restorative Justice Association

Rural Red Deer Restorative Justice Program

Saddle Lake Restorative Justice Program

Samson Cree Nation Restorative Justice

Soksipaitapiisin Indigenous Restorative Justice and Case Management Table

Siksika Nation Aiskapimohkiiks

Tsuut'ina Peacemaking Program

Urban Indigenous Peacemaker Circle (Native Counselling of Southern Alberta)

Wood Buffalo Restorative Justice Program

Yellowhead Tribal Community Corrections Society

Plea Comprehension Inquiry

I _____
(Name)

Date of Birth: _____

State that I have instructed counsel that I wish to plead guilty to the following charge(s):

I have instructed Duty Counsel to represent me for this guilty plea. I am aware of the Crown's position on sentence as follows:

I am aware that Counsel, on my behalf, will recommend to the judge that the appropriate sentence is:

I understand that:

- The judge will not accept my guilty plea if I tell the judge that I did not commit the crime(s) I am charged with committing.
- Counsel does not recommend that I plead guilty if I am pleading guilty just to get it over with for example, pleading guilty to avoid missing school or work).
- I cannot withdraw my plea because I do not like the sentence the judge imposes.
- Counsel has advised me that I should not plead guilty at this time and I am choosing to do so against this advice.
- I have a right to plead not guilty and to have a trial where the Crown must prove that I am guilty of the charge(s) beyond a reasonable doubt. If, after the trial, the judge finds that the charge(s) was not proven beyond a reasonable doubt, the judge will find me not guilty. I am giving up this right.
- I am pleading guilty voluntarily, of my own free will, and no one has pressured me to do so or promised me anything in return for pleading guilty.

- By pleading guilty I admit that I committed the essential elements – or the required parts – of the above criminal offence(s) as explained by counsel.
- At this time, I have only been able to consult with a lawyer based on a summary of the Crown’s evidence against me.
- I have a right to know in advance of the trial what evidence the Crown has against me and to wait for complete disclosure (the full file of all the evidence against me) to speak with a lawyer about the complete case. This could allow me to learn whether there are any weaknesses (i.e. legal or factual) in the Crown’s case against me or whether there are any defence(s) to this charge. I am giving up this right.
- The Judge will listen to what the lawyers say about what sentence I should receive and anything I wish to say, BUT it is the Judge’s decision to sentence me as s/he sees fit which could include jail, or a longer period of jail than what is being proposed. The Judge is not required to follow any agreement made between my Counsel and the Crown Attorney, even if my Counsel and the Crown Attorney agree to suggest to the Judge a particular sentence.
- I require the assistance of an interpreter in: _____
- That assistance has been provided to me for the purposes of translating and completing this form.

Furthermore, Counsel has explained the consequences of pleading guilty to me. I understand that:

- An Absolute Discharge or Conditional Discharge is a “finding of guilt” that will result in a temporary criminal record and a permanent police and computer record of the discharge.
- Any finding of guilt, including an Absolute or Conditional Discharge may affect my current or future employment including losing my current job or stop me getting another or different job.
- A finding of guilt may affect travel to other countries, including the United States, in particular. It is completely up to the other country to admit me or not.
- If I am not a Canadian citizen a finding of guilt can affect my immigration status (possibly leading to my deportation from Canada). I have been advised to seek advice from an immigration lawyer before pleading guilty.
- There may be other consequences of pleading guilty that could last for years or even the rest of my life, including a DNA order, weapons prohibition, Victim Fine Surcharge, possible inclusion on a Sex Offender Registry or restrictions on my mobility and consequences under the *Traffic Safety Act*.

I understand that the information on this form is to clarify the consequences of a guilty plea. My signature is not a commitment to enter a guilty plea, and I can change my mind about my plea at any time until my plea is actually entered before the court.

Signature of Accused

Date

Duty Counsel

Written Guilty Plea Acknowledgement

I _____, charged with the offence of _____, acknowledge that I have been advised by Duty Counsel of my right to request an adjournment which would enable me to apply for legal aid to retain a lawyer of my choice.

I further acknowledge that Duty Counsel has informed me that the offence is a serious one and that entering a guilty plea will likely result in a lengthy period of incarceration.

I hereby acknowledge that Duty Counsel has advised me not to enter a plea of guilty at this time, but notwithstanding said advice, I have decided to enter a guilty plea.

I further direct Duty Counsel to make representations as to sentence although a lawyer of my choice would have more time for research and preparation.

I hereby acknowledge that I have read this direction and fully understand same.

Date

Signature of Accused

Criminal Duty Counsel Interview Form

COURTROOM: _____ DOCKET PAGE NUMBER: _____

CLIENT NAME: _____ DOB: _____ AGE: _____

ADDRESS: _____ HOW LONG: _____

BAIL STATUS: _____ GROUNDS: Primary (Ensure attendance in Court)
 Secondary (Necessary to Protect Public)
 Tertiary (Maintain Confidence in System)

TIME IN CUSTODY: _____

CASH AVAILABLE: _____ SURETY: _____

CHARGES:

INSTRUCTIONS: _____

IF GP, s 606 (1.1): Voluntarily; Right to Trial; Admitting Facts; Consequences; Penalty up to Judge.

1. ROOTS IN THE COMMUNITY: _____ 1(a). INDIGENOUS: _____

2. EDUCATION: _____ 3. MARITAL STATUS: _____

4. EMPLOYMENT: a) Present _____

b) Previous _____

5. DETAILS OF OFFENCE (include mitigating): _____

6. PREVIOUS RECORD: _____

ADVICE

POG

GP LESSER

RESERVE

SET DATE

BAIL

W/D

Duty Counsel Statistics Guide

Duty counsel statistics are captured on each certificate for each day of duty counsel.

While submitting an invoice, an outcome will be required. Outcome requirements will differ depending on the duty counsel type. To add an outcome click “Add an Outcome”.

Is this a final invoice on the certificate? Yes No

Outcomes		
Outcome	Docket(s)	Legal Issue(s)
No outcomes found		

Add an Outcome

Criminal Statistics

A criminal duty counsel certificate has statistics for both youth and adult court. If your day only include either youth or adult, the other fields must have zero entered in them.

The fields for adults include:

- Number of Reserved Pleas
- Number of Reserved Pleas plus Speaking to Release
- Number of Not Guilty Pleas/Trial Dates Set
- Number of Guilty Pleas
- Number of AMP/MHD Withdrawals
- Number of Peach Bond Withdrawals
- Number of all Other Withdrawals/Stays of all Charges
- Number of Waived to Other Jurisdiction
- Number of Legal Advice only/No Appearance Made

Add New Outcome

Adult

Number of Reserved Pleas - Adult ?	Number of Reserved Pleas Plus Speaking to Release - Adult
<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>
Number of Not Guilty Pleas/Trial Dates Set	Number of Guilty Pleas - Adult
<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>
Number of AMP/MHD Withdrawals	Number of Peach Bond Withdrawals - Adult
<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>
Number of All Other Withdrawals/Stays of All Charges - Adult	Number of Waived to Other Jurisdiction - Adult
<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>
Number of Legal Advice Only/No Appearance Made - Adult	Total Number of Adults Assisted ?
<input style="width: 90%;" type="text"/>	<input style="width: 90%; text-align: center; background-color: #eee;" type="text" value="0"/>

Total number of Adults Assisted will populate base on the numbers entered in the above fields. Of the total number of adults the two fields below should be answered:

- Number of Clients in Custody
- Number of Agency Adjournments

Number of Clients in Custody - Adult ?

Number of Agency Adjournments - Adult ?

The fields for youth include:

- Number of Reserved Pleas
- Number of Reserved Pleas plus Speaking to Release
- Number of Post Sentence Reviews
- Number of Guilty Pleas
- Number of EJS/MHD/Caution Letters Confirmed Referrals
- Number of Peace Bond Withdrawals
- Number of all other Withdrawals/Stays of all Charges
- Number of Waived to Other Jurisdictions
- Number of Legal Advice Only/No Appearance Made

Youth	
Number of Reserved Pleas - Youth ?	Number of Reserved Pleas Plus Speaking to Release - Youth
<input type="text" value="0"/>	<input type="text" value="0"/>
Number of Post Sentence Reviews ?	Number of Guilty Pleas - Youth
<input type="text" value="0"/>	<input type="text" value="0"/>
Number of EJS/MHD/Caution Letters Confirmed Referrals - Youth	Number of Peace Bond Withdrawals - Youth
<input type="text" value="0"/>	<input type="text" value="0"/>
Number of All Other Withdrawals/Stays of All Charges - Youth	Number of Waived to Other Jurisdiction - Youth
<input type="text" value="0"/>	<input type="text" value="0"/>
Number of Legal Advice Only/No Appearance Made - Youth	Total Number of Youths Assisted ?
<input type="text" value="0"/>	<input type="text" value="0"/>

Total number of Youths assisted will populate base on the numbers entered in the above fields. Of the total number of youths the two fields below should be answered:

- Number of Clients in Custody
- Number of Agency Adjournments

Number of Clients in Custody - Youth ?	Number of Agency Adjournments - Youth ?
<input type="text"/>	<input type="text"/>
<input type="button" value="Add"/> <input type="button" value="Cancel"/>	

Family Statistics

The fields for family duty counsel certificates include:

- Number of Applicants Seen
- Number of Respondents Seen

Total Number of People seen will populate based on the numbers entered in the above fields. Of the total number of people seen the fields below should be answered:

- Number of Adjournments
- Number of Consents
- Number of Referral to LAA
- Number of Matters Spoken to Before the Court

Add New Outcome	
Number of Applicants Seen	Number of Respondents Seen
<input type="text"/>	<input type="text"/>
Total Number of People Assisted	Number of Adjournments
<input type="text"/>	<input type="text"/>
Number of Consents	Number of Referral to LAA
<input type="text"/>	<input type="text"/>
Number of Matters Spoken To Before The Court	
<input type="text"/>	

Emergency Protection Order Statistics

The fields for Emergency Protection Order counsel certificates include:

- Number of EPO Claimants Seen
- Number of EPO Respondents Seen

Total Number of People Seen will populate based on the numbers entered in the above fields.

Of the total people seen the fields below should be answered:

- Number of EPO Applications of Affidavits Prepared
- Number of EPO Orders Drafted
- Number of Adjournments
- Number of EPO's Confirmed or Granted
- Number of EPO's Revoked or Vacated or Not Granted
- Number of Matters Set for an Oral Hearing
- Number of Referrals to Other Services

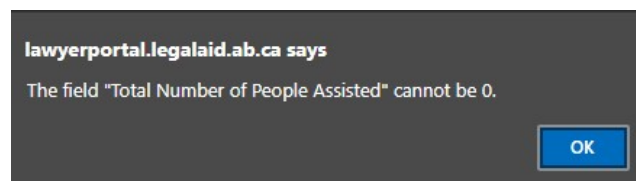
Add New Outcome

Please fill in required fields highlighted.

Number of EPO Claimants Seen <input style="border: 1px solid red;" type="text" value="0"/>	Number of EPO Respondents Seen <input style="border: 1px solid red;" type="text" value="0"/>
Total Number of People Assisted <input style="background-color: #ccc;" type="text" value="0"/>	Number of EPO Applications or Affidavits Prepared <input style="border: 1px solid red;" type="text" value="0"/>
Number of EPO Orders Drafted <input style="border: 1px solid red;" type="text" value="0"/>	Number of Adjournments <input style="border: 1px solid red;" type="text" value="0"/>
Number of EPO's Confirmed or Granted <input style="border: 1px solid red;" type="text" value="0"/>	Number of EPO's Revoked or Vacated or Not Granted <input style="border: 1px solid red;" type="text" value="0"/>
Number of matters set for an Oral Hearing <input style="border: 1px solid red;" type="text" value="0"/>	Number of Referrals to Other Services <input style="border: 1px solid red;" type="text" value="0"/>

Notes:

When adding an outcome on any duty counsel type the total number of people seen cannot be zero or the below error message will appear.



- On the rare occasion you do not see any clients during a shift, enter 1 in one of the fields and add a note to the invoice comment section to clarify that no clients were seen.

Comments *(All comments will be reviewed by LAA Staff)* remaining characters (5000)