

Amendments to Legal Aid Services Rules:

Minimum Experience Requirements Public Feedback Summary

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Introduction

Legal Aid Ontario has completed its consultation on the proposed changes to the minimum experience requirements for the Ontario Review Board roster and for youth criminal and criminal mental health matters. Upon implementation, the changes would:

- Introduce minimum experience requirements for the Ontario Review Board roster
- Remove the existing minimum experience requirements for youth criminal and criminal mental health matters.

Documents detailing the proposed changes are linked below on this page. The consultation period began July 12, 2023 and ended on August 12, 2023. Written submissions were received from five organizations and individuals.

MER for the Ontario Review Board Roster

One submission agreed with establishing minimum experience standards (MER) for representing legal aid clients at the Ontario Review Board (ORB). This submission expressed support for ensuring that competent, duly qualified expert counsel represent the most vulnerable clients before the ORB, as lawyers without adequate training can cause long-term damage to ORB clients' cases if not up to date on ORB law. Several submissions, however, opposed establishing MER for the ORB. One of these submissions did note that clients appearing before the ORB are among the most vulnerable members of society with unique needs and experiences. Concerns raised about implementing ORB MER included:

- MER do not, on their own, ensure or enhance the quality of legal services
- Generally, MER should not be implemented for specific areas of criminal law, as lawyers are ethically required to only accept files which they can competently handle
- Implementing MER for the ORB and other specialities, and requiring experienced criminal lawyers to take additional programs, will discourage them from taking legal aid cases or even taking up specialized areas of law
- The requirement to have completed at least three ORB matters within the prior three years is impractical, as many ORB clients cannot afford private counsel, and LAO has restricted mentoring and second chairs on all matters
- Implementing MER for the ORB will lead to the same difficulties as did MER for youth criminal/mental health

Suggestions to amend or improve the proposed MER included:

- Instead of MER, enhanced training can accomplish LAO's goal of providing high-quality

services to legal aid clients

- Admission to the ORB roster should be allowed based on reviewing material and promising to maintain knowledge of this area of law
- LAO should consider implementing a formal mentoring program to ensure lawyers can be provisionally admitted to the ORB roster, subject to completing three matters under a roster member's guidance. Both lawyers would be compensated
- ORB MER should mirror the MER for consent and capacity, which only requires that a lawyer "have carriage of" three matters over the previous two years, as opposed to completing three matters over the previous three. Both tribunals deal with health-related administrative tribunals and can result in significant consequences to the client
- LAO should implement policies that encourage lawyers to accept legal aid matters, such as expanding access to second chair funding to help junior counsel gain competence.

Removing MER for Youth Criminal and Criminal Mental Health Matters

All submissions that provided feedback on this issue, supported the removal.

Conclusion

Legal Aid Ontario is grateful for all the feedback received on its proposed changes to certain minimum experience requirements. MER are essential to maintaining the quality of legal aid services, while allowing lawyers new to the profession or exploring new practice areas to accept legal aid work. The feedback received during this consultation will be retained for future discussion and consideration.

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