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## **MENTAL HEALTH APPEALS PROGRAM**

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# **Mental Health & Addictions Strategy**

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# MH appeals – introduction

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- LAO is introducing a program that significantly expands the availability of certificates and hours for appeals from the Consent and Capacity and Ontario Review Boards (“MH Appeals”)
- This responds to recent developments including *Ontario v. Criminal Lawyers Association of Ontario* (2013 SCC 43) and anticipated impacts of Bill C-14
- LAO’s recent Mental Health Strategy consultations also indicated broad support to expand mental health appeals, strengthen the bar & improve access to justice

# MH appeals – consultations

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- This initiative is introduced following consultations with representatives of the Mental Health Legal Committee, Criminal Lawyers Association and Psychiatric Patient Advocate Office through May-Sept 2014
- MAG, the OCA and LAO worked together to design a coordinated approach to perfecting appeals and to anticipate issues (conversion of inmate to solicitor appeals, clients' wish to address the court, etc.)
- Similar process consultations are underway with the CCB and SCJ

# MH appeals – implementation

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- Implementation of the initiative is anticipated to begin in early 2015
- Most of the key features of the program, outlined below, will be implemented in January
- An interim process has been supporting appeals filed between April – December 2014

# MH appeals – key features

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- 1) Expanded hours on all existing CCB/ORB certificates to:
  - ▣ discuss hearing outcome, advise client of appeal rights & options
  - ▣ file notice of appeal if directed
  - ▣ Complete “post-hearing report”
- 2) Counsel submits a standard 2-page “post-hearing report” after each tribunal hearing to:
  - ▣ inform LAO of client wishes & indicate preferred counsel (if known)
  - ▣ serve as the appeal certificate application
  - ▣ recommend an appeal funding level
- 3) Opinion certificates and opinion letters will no longer be required
  - ▣ Greatly expedites approval and certainty
  - ▣ Area Committee review will follow after the appeal application

# MH appeals – key features (cont.)

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- 4) In post-hearing report, counsel to recommend one of three appeal funding levels depending on case complexity, client goals, seriousness of issues raised, chance of success, public interest quality, etc.
- 5) All MH appeal applications will be centralized at LAO through a single point of contact in the Provincial Cases Management Office (PCMO)
- 6) PCMO has worked with MAG, OCA to develop a coordinated appeal perfection process; similar process under development with CCB and SCJ (Toronto)

# LAO MH appeals – key features

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- 7) Appeal certificates are eligible for second chair and mentorship funding
- 8) In the future, MH Appeals to be linked to enhanced Panel and Quality Service Standards

# CCB appeals – old & new

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	Current	New
CCB Hearing Certificates	<p>10 Hours +                      2 Hours each subsequent day +                      Attendance +                      3 hours if multiple issues                      + 1 Hour (optional) to discuss outcome with client</p>	<p>10 Hours +                      2 Hours each subsequent day +                      Attendance +                      3 hours if multiple issues</p> <p>NEW: + 1 Hour (mandatory) to discuss outcome and file post-hearing form                      NEW: + 3 Hours to file appeal (new)</p>
CCB Appeal Certificates	<p>16 Hours +                      Attendance +                      Discretion</p>	<p>NEW: Three levels of certificate based on counsel's recommendation:</p> <p>Level 1: 25 hours for appeals with little chance of success, straightforward issues, etc. + hearing time</p> <p>Level 2: 35 hours for "standard" appeals with chance of success, important issues, etc. + hearing time</p> <p>Level 3: 50 hours for appeals raising complex / public interest arguments, etc. + hearing time</p>

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# ORB appeals – old & new

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	Current	New
ORB Hearing Certificates	10 Hours + 8 Hours if second day + Attendance	10 Hours + 8 Hours if second day + Attendance  NEW: + 1 Hour to discuss outcome and file post-hearing form NEW: + 1 Hour to file notice of appeal
ORB Appeal Certificates	16 Hours + Attendance + Discretion	NEW: Three levels of certificate based on counsel's recommendation:  Level 1: 25 hours for appeals with little chance of success, straightforward issues, etc. + hearing time  Level 2: 35 hours for appeals with chance of success, important issues, etc. + hearing time  Level 3: 50 hours for appeals raising complex / public interest arguments + hearing time

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# Post-hearing report form

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- **No Appeal Likely:** file the post hearing report form within 10 days of decision
- **Appeal Possible:** file post hearing report form within 10 days of receiving reasons

# Questions – process issues

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- Area Committee approval will be based on the post-hearing form and recommendation from counsel – client will no longer need to make a separate application for an opinion certificate
- The post-hearing report recommendation on funding level, case complexity, etc. can be amended by appeal counsel in consultation with the PCMO
- PCMO will assist in arranging appeal counsel where client decides against continuing with hearing counsel and doesn't otherwise indicate a preference

# Questions – process issues (cont.)

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- In the exceptional circumstance that the client wishes to remain self-represented, amicus appointments will be available based on qualification and availability of counsel
- As this is a new initiative, necessary adjustments will be made based on ongoing feedback from clients, counsel, and the respective institutions

# Questions – procedural issues

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- Interim Motions: supplemental blocks of 10 hours will be made available if motions exceed tier threshold
- Inmate/Solicitor appeals: In light of the expanded coverage, where ever possible appeals to the OCA should be filed in the first instance as Solicitor Appeals
- Clients who wish to address the court: The OCA and MAG indicate tentative support to facilitate such wishes
- Timelines: The OCA and MAG indicate tentative support for a standard extension of time (to 45 days) for appeal counsel to file a factum following perfection of the appeal book

# Questions – checks and balances

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- Counsel given additional post-hearing hours, and with those hours, expected to meet with client to discuss:
  - ▣ Merit of the Appeal
  - ▣ Appeal rights
  - ▣ Alternatives to appeal
  - ▣ Likelihood of Success
  - ▣ Expected outcomes
  
- Future: enhanced panel standards and training requirements to qualify senior and experienced counsel (to be developed)

# Implementation & what's next

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- Early 2014
  - Additional hours added to all CCB/ORB certificates
  - Post-hearing report form required for all CCB/ORB hearings
  - All MH Appeals determined based on new process and criteria
  - Coordination of appeal applications through LAO's PCMO
  
- Future 2015
  - Roll-out of LAO's mental health training program
  - Identification of local leaders for mental health training
  - Enhanced panel standards and training program for MH tribunal cases and appeals

# Contacts

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## Feedback

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