

# Duty Counsel Protocol

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## "A" Court

1. The Supervisory Duty Counsel (or designate) will be responsible for assigning counsel to courts and other duties/responsibilities.
2. The goal is to address all out-of custody duty counsel matters together in "A" Court at 11.30 AM, or earlier upon the request of the Justice/clerk, subject to the readiness of the assigned Duty Counsel.
3. For out-of custody matters, assigned Duty Counsel should be available for summary advice from 8.30 AM onwards.
4. Upon completion of matters in "A" Court, Duty Counsel should generally be available to support same day guilty pleas in court at 2.30pm.
  - a. Depending on the capacity, the Supervisory Duty Counsel may assign *in-custody* guilty pleas in addition to out of custody guilty pleas to the duty counsel in the guilty plea court.
5. Duty Counsel are expected to file their accounts online no later than 2 months after services rendered.
6. Should the Duty Counsel in "A" Court finish matters early (i.e. prior to 3 PM), they are asked to seek instruction from the Supervisory Duty Counsel with respect to duties for the remainder of the workday.

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## WASH Court

1. The Supervisory Duty Counsel (or designate) will be responsible for assigning per diem duty counsel to weekend courts and other duties/responsibilities.
  - a. Duty Counsel selected for WASH Court will be required, if possible, to be available to serve as Duty Counsel on the first following non-weekend or non-holiday of operations (i.e. Saturday/Sunday Duty Counsel also works the following Monday, or Tuesday if Monday is a holiday) to ensure continuity of bail matters.
2. Duty Counsel are expected to review Crown positions and bail briefs, starting at 9.30 AM.
3. For each matter *returnable to London* where Duty Counsel is requested by the accused, the WASH Duty Counsel will be asked to commence the BAIL WORKSHEET based on the information available from the disclosed bail brief.
  - a. All BAIL WORKSHEETS must be returned to the Duty Counsel office and must include **the return date** of the matter, as well as instructions around outstanding items required to secure the release of the accused, specifically:
    - i. Plan
    - ii. Surety name and contact
    - iii. Deposits requested
    - iv. Crown conditions requested
    - v. Other release conditions
  - b. All Duty Counsel efforts are subject to a maximum billable effort of 5 hours.

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4. For each matter *returnable to London* where private counsel is requested by the accused, the WASH Duty Counsel will be asked to leave a message at the answering service for the private counsel mentioned in court. The details of the message should include:
  - a. Your name
  - b. Name of the Accused
  - c. Date of appearance
  - d. Decision (i.e. adjournment for hearing)
  - e. Next Appearance
  - f. Any instructions from the accused and recommendations from the Crown or Judiciary
  
5. It is expected that one scheduled bail hearings is to be conducted during WASH Court hours, based on the accused instructions. Should the accused want to initiate a contested bail hearing and the Judiciary is agreeable, the Duty Counsel (if adequately prepared) is expected to:
  - a. Request a short recess to prepare for the matter
  - b. Informally work on a potential release/pleas position with the Crown
  - c. Proceed with the case upon resumption of the court should consent release plan not be successful
  - d. Follow the Duty Counsel procedure for **Bail Court**
  
6. Duty Counsel are expected to file their accounts online no later than 2 months after services rendered.

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### **Bail Court (Weekday)**

1. The Supervisory Duty Counsel (or designate) will be responsible for assigning counsel to courts and other duties/responsibilities.
  - a. All matters assigned to Duty Counsel will be scheduled to appear in the Primary Bail Court (Court #8).
    - i. No more than 10 matters per day can be scheduled to return to the Primary Bail Court with the understanding that duty counsel can reasonably only perform, at most, 4 (four) contested bail hearings per day.
    - ii. Where there is sufficient high demand for Duty Counsel services on bail hearings, these matters will be place at the end of the queue in the Secondary Bail (Court #6).
2. At 8.30 AM Duty Counsel and/or Duty Counsel Support are expected to contact/remind identified sureties on behalf of accused in custody who are scheduled to have a bail hearing.
3. Duty Counsel are expected to start at 8.30 AM and to review Crown positions and bail briefs, starting at 9.30 AM.
4. Starting at 10 AM Primary Bail Court Duty Counsel will proceed with the first two or three hearings of the day, if adequately prepared, as arranged the day beforehand.
5. If Defence Counsel request throughout the day that Duty Counsel attend to their bail matters, the Defence Counsel *must* provide a completed BAIL WORKSHEET to duty counsel 30 minutes or longer prior to the anticipated start time of the hearing.

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- a. Should the BAIL WORKSHEET be incomplete OR the bail hearing overly complex, the bail court Duty Counsel may be unable to perform that bail hearing that day.
  - b. Should Duty Counsel be able to conduct a bail hearing for defence counsel it will be placed at the end of the queue of other Duty Counsel hearings, with the goal that the matter be heard the same day.
6. At the end of the day, Primary Bail Court Duty Counsel is expected to nominate *two or three matters* that are sufficiently prepared to go forward on the next day. These matters will be returned to the Primary Bail Court and if still sufficiently prepared, will be heard immediately at 10 AM.
- a. The Primary Bail Court Duty Counsel is expected to make every effort to ensure that the BAIL WORKSHEET is complete and that sureties have been contacted to appear, if required.
  - b. Prior to leaving the Bail Court, the Courtroom Clerk is expected to communicate to the Cell Sergeant which three matters will be called to return to the Primary Bail Court to be heard immediately at 10 AM.
    - i. The accused are expected to be available in the London Court House cells by 8.30 AM *the next day*. It is the responsibility of the Cell Sergeant to ensure that the accused are transported in a timely matter.
  - c. Duty Counsel and/or Duty Counsel Support are expected to initially contact identified sureties on behalf of accused in custody who are scheduled to have their matters addressed at 10 AM.
7. Should the Duty Counsel in either Bail Court finish matters early (i.e. prior to 3 PM), they are asked to seek direction from the Supervisory Duty Counsel with respect to duties for the remainder of the workday.

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### Video Court ("12" Court)

1. The Supervisory Duty Counsel (or designate) will be responsible for assigning counsel to courts and other duties/responsibilities.
2. Should Video Court Duty Counsel be present when an accused requests to speak to private counsel *who is not present*, the Video Court Duty Counsel should leave a message at the answering service/office for the private counsel nominated in court. The details of the message should include:
  - a. Your name
  - b. Name of the Accused
  - c. Date of appearance
  - d. Decision (i.e. adjournment for hearing)
  - e. Next Appearance
  - f. Any instructions from the accused and recommendations from the Crown or Judiciary
3. For matters in Video Court that have not yet had a bail hearing, the Video Court Duty Counsel is asked to commence/continue the BAIL WORKSHEET based on the information available from the disclosed bail brief.
4. Should the Duty Counsel in either Bail Court finish matters early (i.e. prior to 3 PM), they are asked to seek direction from the Supervisory Duty Counsel with respect to duties for *the remainder of the workday*.

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5. Duty Counsel are expected to file their accounts online no later than 2 months after services rendered.

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### Overnights

1. The Supervisory Duty Counsel (or designate) will be responsible for assigning counsel to courts and other duties/responsibilities.
2. Crown position on overnight matters (excluding Domestic Violence matters) needs to be submitted to the Duty Counsel as soon as possible after the review by the Crowns.
3. By 9.15 AM, Duty Counsel Support is expected to commence interviewing all overnights in the cell area.
4. By 10.30 AM Duty Counsel Support is expected to begin initially contacting sureties on behalf of accused in custody.
5. Overnight matters will not be called until 11 AM at the earliest.
6. The Overnight Duty Counsel is expected to seek the release of accused in custody overnight, subject to the conditions of the Crown.
  - a. Where the Crown will not consent to the release, the Overnight Duty Counsel is expected to ask for an adjournment to:
    - i. If possible, prepare for a bail hearing using the BAIL WORKSHEET.
    - ii. Seek to secure:
      - A Plan
      - Surety name and contact
      - Deposits requested
      - Crown conditions requested
      - Other release conditions
  - b. Based on bail readiness, the Overnight Duty Counsel may be able to identify selected matters which, pending some missing information, could be ready to go to hearing by 10 AM the *next day*. Is expected that the Overnight Duty Counsel advise the Supervisory Duty Counsel of these matters by 3.30pm.
7. Duty Counsel are expected to file their accounts online no later than 2 months after services rendered.
8. Should the Duty Counsel in Overnight Court finish matters early (i.e. prior to 3 PM), they are asked to seek direction from the Supervisory Duty Counsel with respect to duties for the remainder of the workday.

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## General

1. For duty counsel work on weekdays, the total maximum hours billed per day should not exceed 6.0 hours. Time in excess of 6.0 hours per day requires the prior approval of the Supervisory Duty Counsel.
2. A duty counsel assignment for a particular day is personal to the Duty Counsel. If Duty Counsel is unable to work a particular day, the Supervisory Duty Counsel should be informed as soon as possible and the Supervisory Duty Counsel will arrange for another per diem Duty Counsel.
3. If per diem Duty Counsel are "off-the-floor" for longer than 15 minutes or doing other certificate or private client work, the Supervisory Duty Counsel should be informed. Legal Aid Ontario should not be billed for this time. Duty Counsel should be back from lunch no later than 2:30 p.m.
4. If the prisoners are not at the courthouse by 8:30 AM and the Crown are not available by 9:30 AM in regard to bail matters *on a consistent basis*, the suggested start time for Duty Counsel of 8.30 AM may change. The Supervisory Duty Counsel will notify Duty Counsel if there is a change.
5. Subject to the exceptions contained in the LASA regulations, neither a duty counsel nor any of his or her associates in the practice of law shall knowingly act for an accused in the same manner.

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## Important Contact Information

Contact	Email	Phone Number
London Duty Counsel Office		
Supervisory Duty Counsel		
Legal Aid Area Office		
Legal Aid Area Office Director		
London Crown's Office		
London Police Service – Main Headquarters		
OPP – SW Ontario Headquarters		
Strathroy/Caradoc Police Service – Main Headquarters		
Elgin-Middlesex Detention Centre		
Defence Counsel Lounge		
Middlesex Law Association Library		
London Courthouse Cell Sergeant		