

Chapter 3

Selection of Counsel and Solicitors for Legal Aid Assignments

Legal aid work is not distributed to counsel or solicitors on the Legal Aid Panel equally regardless of merits, the legally aided persons' interests being the paramount consideration. The Legal Aid Department's primary duty is therefore towards the aided persons by facilitating the access and attainment of justice through competent legal representation. Counsel or solicitors are selected by Legal Aid Counsel having regard to the level of experience and expertise of the practitioners concerned and the type and complexity of the particular case. In general, counsel or solicitors are selected in accordance with the following criteria:

General

2. Counsel or solicitors should -
 - (a) be on the Legal Aid Panel;
 - (b) be in active practice;
 - (c) have a satisfactory past performance record*;
 - (d) satisfy the minimum experience requirement specified for the relevant area of work;
 - (e) not exceed the limit on assignments of legal aid work and/or, where appropriate, costs and fees paid or payable for such work in the past 12 months;
 - (f) (in the case of solicitors) have the necessary support and facilities afforded by their firms to handle legal aid work.

Minimum Experience Requirements

Civil Case

3. Counsel or solicitors should -
 - (a) have at least 3 years of post-call / post-admission experience; and
 - (b) have handled a minimum number of civil cases in the relevant area of work within a specified period -
 - (i) for medical negligence, professional negligence, administrative / constitutional law (including Bill of Rights) cases, have handled at least 5 such cases* in the past 3 years; and

- (ii) for other cases, have handled at least 16 cases* in the relevant area of work in the past 3 years.

Criminal Cases

- 4. Counsel or solicitors should -
 - (a) have at least 3 years of post-call / post-admission experience;
 - (b) have handled at least 5 cases* in the past 3 years in the relevant area of work; and
 - (c) meet the minimum experience requirements specified below-
 - (i) *Cases in the District Court*
 - at least 3 years relevant criminal litigation experience;
 - (ii) *Cases in the Court of First Instance and appeals from the Magistrates' Court*
 - at least 5 years relevant criminal litigation experience;
 - (iii) *Appeals to Court of Appeal and Court of Final Appeal*[#]
 - Court of Appeal:
 - Counsel – at least 7 years relevant criminal litigation experience
 - Solicitors – at least 5 years relevant criminal litigation experience
 - Court of Final Appeal:
 - Counsel – at least 10 years relevant criminal litigation experience
 - Solicitors – at least 7 years relevant criminal litigation experience

* including both legally aided and non-legally aided cases

[#] the number of cases handled in the Court of Appeal and in the Court of Final Appeal are considered jointly for the purpose of counting past experience in paragraph (c)(iii) above.

- 5. For Senior Counsel, they are exempted from the minimum experience requirements for assignment of legal aid work.

Limits on Legal Aid Assignments

- 6. Assignments should not generally exceed the limits set out below -
 - Civil Cases:*
 - (a) for solicitors -- 30 cases within the past 12 months; and
 - (b) for counsel -- 15 cases within the past 12 months.

Judicial Review-related Cases:

- (a) for solicitors -- 5 cases within the past 12 months; and
- (b) for counsel -- 3 cases within the past 12 months.

Criminal Cases:

- (a) for solicitors -- 25 cases or \$750,000 legal aid costs within the past 12 months (whichever occurs first); and
- (b) for counsel -- 25 cases or \$1.5 million legal aid fees within the past 12 months (whichever occurs first).

7. Assignment to counsel and solicitors who do not meet the above selection criteria may be allowed with the approval of a directorate officer.

* In the assignment of legal aid cases, the Department will take into account such matters as the Record of Unsatisfactory Performance/Conduct and the record of disciplinary decisions of the Bar Association and the Law Society for which the Department maintains a separate list.