

# ***Duty Counsel Program***

## **Q&A for Unrepresented Respondents**

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### **What is the Duty Counsel Program?**

The Duty Counsel Program (**DCP**) is designed to provide day-of legal services to unrepresented Respondents involved in an Enforcement Proceeding or an Application for Hearing and Review before the Capital Markets Tribunal (**Tribunal**). Duty Counsel have been selected and trained by The Advocates' Society through the Litigation Assistance Program (**LAP**) and their services are provided to Respondents free of charge. Volunteer lawyers (**Duty Counsel**) may be available to assist as part of the program.

### **What is the Difference Between the Litigation Assistance Program (LAP) and the Duty Counsel Program (DCP)?**

Under the Litigation Assistance Program, an unrepresented Respondent must apply in advance of an enforcement hearing to obtain assistance from volunteer counsel (**LAP Counsel**). LAP Counsel are permitted to assist Respondents at any of the following stages of an Enforcement Proceeding or an Application for Hearing and Review:

- preliminary attendance,
- confidential conference,
- confidential settlement conference and/or public settlement hearing,
- sanctions and costs hearing; and/or,
- on an exceptional basis, a motion.

Under the DCP, a Respondent is not required to apply in advance to the Duty Counsel Program. Duty Counsel also do not meet with the Respondent in advance of the hearing date. Rather, Duty Counsel will attend on the date of the Respondent's attendance at the Tribunal and will provide immediate day-of legal advice and assistance, including representation at the hearing, if requested. The scope of assistance that Duty Counsel can provide on the hearing date is more limited due to the inability of Duty Counsel to consult with the Respondent and prepare in advance. Duty Counsel are permitted to assist Respondents at only the following stages of a proceeding:

- preliminary attendance,
- confidential conference, and/or
- sanctions and costs hearing.

### **Who is Eligible?**

Duty Counsel may be available to assist unrepresented Respondents who are appearing in an Enforcement Proceeding or an Application for Hearing and Review before the Tribunal. At this time, the DCP does not provide assistance to persons facing civil proceedings or quasi-criminal proceedings commenced by the Ontario Securities Commission (**OSC**) before the Ontario Court of Justice.

### **What Can Duty Counsel Help You With?**

At this time, Duty Counsel can provide only limited assistance to you. In particular, they can only provide you with assistance in respect of one or more of the following stages of your proceeding on the date you are scheduled to appear:

- (a) a preliminary attendance;
- (b) a confidential conference; and/or
- (c) a sanctions and costs hearing.

Duty Counsel will not be able to provide you with assistance, legal advice or representation with respect to any other part of your proceeding, including the hearing on the merits. They also will be unable to provide you with assistance, legal advice or representation with respect to any other legal matter.

Duty Counsel can offer the following services:

- (a) general legal information concerning the Tribunal's *Rules of Procedure and Forms* and *Practice Guideline*;
- (b) summary legal advice; and/or
- (c) legal representation at the attendance.

However, Duty Counsel will not be able to conduct a full merits assessment of your case, conduct legal research, or read all relevant documents.

### **What Happens if No Duty Counsel is Available to Assist You?**

There is a limited number of lawyers on the Duty Counsel roster (**Duty Counsel Roster**). Neither the DCP or the Tribunal are obliged to provide you with a lawyer.

A lawyer on the Duty Counsel Roster may not be available to assist you due to scheduling reasons and/or may have a conflict of interest that prevents them from acting for you. If there is no lawyer on the Duty Counsel Roster who is able to assist you, you will be required to either retain a representative or represent yourself.

### **Who Pays for the Duty Counsel?**

Lawyers on the Duty Counsel Roster provide assistance under the DCP free of charge.

### **Are the Duty Counsel Independent of the Tribunal and the OSC, including Enforcement Staff?**

Yes.

### **Who Gives Instructions to Duty Counsel?**

If Duty Counsel is present on the date of your hearing, they will only accept instructions from you, unless you provide them with written permission to accept instructions from someone other than you.

### **Can a Duty Counsel That Assists Me Tell Anyone Else About our Discussions?**

A Duty Counsel may not tell anyone else outside of their firm, or a mentor assigned to them to help them assist you, anything that you tell them about your case unless you give them permission to do so. The lawyer's firm and / or mentor are also bound in the same way.

### **How Does an Unrepresented Respondent Apply for Assistance?**

On the day of your attendance, you will be required by Duty Counsel to complete a DCP Legal Services Retainer and agree to the Terms and Conditions it sets out. Give a copy of your signed and completed Legal Services Retainer to the Duty Counsel.

**If you have additional questions, please send an email to [LAP@osc.gov.on.ca](mailto:LAP@osc.gov.on.ca).**