

Duty Counsel Program

Q&A for Self-represented Parties

What is the Duty Counsel Program?

The Duty Counsel Program (**DCP**) provides day-of legal services to self-represented parties involved in certain proceedings before the Capital Markets Tribunal (**Tribunal**). Volunteer lawyers have been selected and trained by The Advocates' Society through the Litigation Assistance Program (**LAP**) and their services are provided to a party free of charge. Volunteer lawyers (**Duty Counsel**) may be available to assist as part of the program in: (i) an enforcement proceeding, or (ii) an application for review of a decision of a self-regulatory organization or of a Director of the Ontario Securities Commission (**OSC**).

What is the difference between the Litigation Assistance Program (LAP) and the DCP?

Under LAP, a self-represented party must apply in advance to obtain assistance from a volunteer lawyer (**LAP Counsel**). LAP Counsel are permitted to assist a party at any of the following stages of an enforcement proceeding or an or an application for review of a decision of a self-regulatory organization or of a Director of the OSC:

- 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 party is not required to apply in advance. Duty Counsel also do not meet with the party in advance of the hearing date. Rather, Duty Counsel will attend on the date of the party'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 limited due to the inability of Duty Counsel to consult with the party and prepare in advance. Duty Counsel are permitted to assist a party 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 self-represented parties who are appearing before the Tribunal in an enforcement proceeding or an application for review of a decision of a self-regulatory organization or of a Director of the OSC. The DCP does not provide assistance to persons in civil proceedings or quasi-criminal proceedings (charges) commenced by the OSC before the Ontario Court of Justice or appeals before the Divisional Court.

What can duty counsel help you with?

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*;
- (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 volunteer lawyers on the Duty Counsel Roster. Neither the DCP nor the Tribunal is 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 available and able to assist you, you will have to either retain a representative on your own or represent yourself.

Who pays for the Duty Counsel?

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

Are Duty Counsel independent of the Tribunal and the OSC, including the OSC's Enforcement Branch?

Yes. Volunteer lawyers are selected and trained by The Advocates' Society, a national

association of litigation lawyers. The Governance & Tribunal Secretariat of the OSC, which administers the Tribunal, notifies Duty Counsel in advance of any hearings in which a party is self-represented. The Governance & Tribunal Secretariat informs the next volunteer lawyer on the Duty Counsel Roster that there is a hearing with a self-represented party and does not apply any discretion in this regard.

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 give them written permission to accept instructions from someone else.

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 Duty Counsel's firm and mentor are also bound in the same way.

How does a self-represented Party 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 more questions, please send an email to LAP@capitalmarketstribunal.ca.