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# **Increasing Efficiency and Fairness in Applications for Court-Ordered Counsel: An Evaluation of Ontario's Rowbotham Application Pilot Project**

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## **Abstract**

Under s. 10(b) of the *Canadian Charter of Rights and Freedoms*, individuals facing criminal charges in Canada have a constitutionally protected right to retain counsel. Two systems of state-funded counsel—provincial legal aid programs and Rowbotham orders—exist to ensure that an accused's inability to retain private counsel does not jeopardize their right to a fair trial guaranteed by ss. 7 and 11(d) of the *Charter*. Rowbotham orders were created to act as a safety net for Canadians denied legal aid. Unfortunately, anecdotal evidence suggests that the Rowbotham application process produces waste and delay. In 2015, the Ontario Ministry of the Attorney General launched the Rowbotham Application Pilot Project to expedite Rowbotham applications. To date, no research has examined how much waste and delay Rowbotham applications are creating, and how effective the Pilot Project has been at expediting Rowbotham applications. In this article, I use access to information requests to the Ministry of the Attorney General and Legal Aid Ontario, one-on-one interviews with criminal defence lawyers in Ottawa and Toronto, and a limited survey of judges of the Ontario Superior Court of Justice to explore the efficacy of the Pilot Project and to make recommendations for its improvement. I argue that by wasting less defence counsel and judicial resources, the Pilot Project makes the

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Rowbotham application process more efficient and fair. I offer recommendations for ensuring that Rowbotham applications do not unduly delay justice, and explore avenues for future research.

**Keywords:** legal representation; Rowbotham applications; waste and delay

## **Introduction**

Effective access to legal justice requires access to lawyers. Many low-income Canadians are experiencing an access to justice crisis. They make too little to hire private counsel, and too much to qualify for legal aid. Rowbotham orders were created to act as a safety net for Canadians denied legal aid. Unfortunately, anecdotal evidence suggests that the Rowbotham application process produces waste and delay. To deal with this problem, the Ontario Ministry of the Attorney General launched the Rowbotham Application Pilot Project (“Pilot Project”) in 2015. To date, no research has analyzed how much waste and delay Rowbotham applications are creating, and how effective the Pilot Project has been at expediting Rowbotham applications. To fill this void, I submitted access to information requests to the Ministry of the Attorney General and Legal Aid Ontario, conducted one-on-one interviews with criminal defence lawyers in Ottawa and Toronto, and administered a limited survey of judges of Ontario Superior Court of Justice. In this article, I draw concrete conclusions regarding the efficacy of the Pilot Project, and make recommendations for its improvement. In the first section, I describe the purposes of the research and define my research questions. In the second section, I introduce the two mechanisms through which state-funded counsel is provided in Canada: legal aid programs and Rowbotham orders. I explain the history and purpose of Rowbotham applications and describe how they are filed in court. I also describe the Pilot Project and how it differs from regular Rowbotham applications. In the third section, I describe my research methods and data analysis procedures. In the fourth section, I discuss major findings from my access to information requests and

qualitative interviews and survey. In the fifth section, I make recommendations for improving the Pilot Project and Rowbotham applications more broadly. In the final section of the article, I discuss some of the limits of my research, and explore avenues for future research.

### **Research Questions**

The purposes of this research were to gain a better understanding of the provision of court-ordered counsel in Ontario, and to evaluate the efficacy of the Pilot Project. My research was guided by the following research question: What impact, if any, has the Pilot Project had on making Rowbotham applications more efficient and fair? I was also guided by several sub-questions: (1) How common are Rowbotham applications in Ontario? (2) How much money has the provincial government spent on Rowbotham applications? (3) What are the benefits and limitations of the Rowbotham application process? (4) Has the Pilot Project reduced waste and delay in applications for court-ordered counsel? (5) How can the Pilot Project be improved?

### **State-Funded Counsel in Canada: Legal Aid Programs and Rowbotham Applications**

In Canada, state-funded counsel is provided through two mechanisms: legal aid programs and a court-order process (Bond, 2015). Each of these mechanisms are discussed in detail below.

#### *Legal Aid Programs*

Legal aid programs provide legal services to low-income individuals who do not have the financial resources to hire private counsel. Ontario's current legal aid program, Legal Aid Ontario, was created in 1998 with the purpose of "promot[ing] access to justice throughout Ontario for low-income individuals" (Legal Aid Services Act, 1998,

s. 1; see also Legal Aid Ontario, n.d.-a). To qualify for a legal aid certificate, an individual must meet the eligibility criteria set out under subsection 16(1) of the Legal Aid Services Act (Legal Aid Services Act, 1998, ss. 16(1)). Financial eligibility is assessed by looking at the family unit, the family unit's income, and the family unit's assets (Legal Aid Ontario, n.d.-b, p. 3). The financial eligibility test for legal aid certificates is based on an income test and an asset test.<sup>2</sup> Currently the gross annual income cut-off level for the certificate eligibility of a single applicant without dependents is \$14,453 and \$16,728 with a contribution agreement (Legal Aid Ontario, n.d.-c).<sup>3</sup> Legal Aid Ontario's income cut-off levels are preventing many low-income Canadians from obtaining legal representation. According to Statistics Canada, the 2016 low-income cut-off before tax (LICO-BT) for a single person without dependents living in an area with a population of 500,000 or greater was \$20,675 (Statistics Canada, n.d.-a). In 2016, approximately 327,000 people living in Toronto lived at or below that threshold (Statistics Canada, n.d.-b). This means that a significant number of Ontarians living below officially recognized low-income cut-offs are unable to qualify for legal aid because they make too much money. In fact, most legal aid applications are refused due to "financial ineligibility." Table 1 describes the total number of criminal law applications received and refused by Legal Aid Ontario between 2008 and 2017. During this period, Legal Aid Ontario received 692,454 applications for criminal law matters, 71,402 (10.31 percent) of which were refused. Table 2 describes the total number of criminal law applications refused by Legal Aid Ontario by reason for refusal between 2008 and 2017. Of the 71,402 applications refused by Legal Aid Ontario between 2008

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<sup>2</sup> The income test is based on an applicant's total gross income from all sources (Legal Aid Ontario, n.d.-b, p. 3). Applicants with income above the cut-offs do not qualify for certificate services (Legal Aid Ontario, n.d.-b, p. 3). The asset test is based on an applicant's total value of liquid assets. Legal Aid Ontario defines liquid assets as "...all assets owned by the applicant and/or the spouse or same-sex partner that can be readily converted to cash" (Legal Aid Ontario, n.d.-b, p. 4). Applicants with a total value of liquid assets that exceeds the exemption level do not qualify for certificate services (Legal Aid Ontario, n.d.-b, p. 4).

<sup>3</sup> A contribution agreement means that an applicant is required to pay back some or all their legal fees. For example, a single applicant without dependents is required to pay \$50 each month towards their legal fees (Legal Aid Ontario, n.d.-c).

and 2017, 34,334 (48 percent) were refused due to financial ineligibility, representing the most common reason for refusal. While the percentage of applications refused due to financial ineligibility has decreased significantly since 2008, financial ineligibility is still the most common reason for refusal.<sup>4</sup> The number of applications refused for financial ineligibility may not illustrate the full extent of unmet demand among low-income Ontarians because “legal aid plans often pre-screen individuals who may have come to apply but are clearly outside of the eligibility guidelines, and other individuals do not approach legal aid because they know they are outside of the financial eligibility guidelines” (Department of Justice Canada, 2012, p. 36).

Applicants who do not qualify for certificate services may still be eligible for duty counsel and summary legal advice services (Legal Aid Ontario, n.d.-c). To qualify for these services, a single applicant without dependents must make less than \$22,720 (Legal Aid Ontario, n.d.-c). This is positive insofar as accused persons who would otherwise self-represent are at least receiving some professional legal assistance. However, one should not only look at whether an accused is represented, but also at the quality of that representation. In their study on the effects of unrepresentation in Canadian provincial criminal courts, Hann et al. (2002) argue that duty counsel services are, like most legal aid services, stretched (p. 18–19). For example, duty counsel are very busy and rarely have time to interview the accused before court (Hann et al., 2002, p. 19). In addition, cases are often delayed because duty counsel do not have time to meet with their clients to discuss their case (Hann et al., 2002, p. 19). Lastly, Hann et al. (2002) note that “the limited experience of some duty counsel puts them at a distinct disadvantage when put up against more experienced Crowns” (p. 19). The number of staff duty counsel has risen dramatically. Between 1990–2000 and 2006–2007, the number of staff duty counsel at Legal Aid Ontario increased from 36

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<sup>4</sup> The data displayed in Tables 1 and 2 were obtained from an access to information request submitted to Legal Aid Ontario.

to 136 (Trebilcock, 2008, p. 32). Despite staffing increases, the conditions that Hann et al. (2002) describe in their study are likely still valid today. Moreover, even if duty counsel services have been improved in the years since their study, Ontarians who make slightly more than \$22,720, yet still live in poverty, do not qualify for these services.

Legal Aid Ontario's strict financial eligibility requirements prevent many low-income individuals from meaningfully resolving legal problems that will significantly impact their lives. In his 2008 report on Ontario's legal aid system, Trebilcock (2008) notes that Ontario's financial eligibility requirements do not reflect the financial realities of vulnerable populations (p. iii). This is particularly troubling given Legal Aid Ontario's commitment to "promot[ing] access to justice throughout Ontario for low-income individuals..." (Legal Aid Services Act, 1998, s. 1). Accused persons who are refused legal aid have one last option: they can obtain state-funded counsel through the Rowbotham court-order process.

### *Rowbotham Applications*

A Rowbotham application is an application for a stay of proceedings made by an accused during a criminal proceeding on the basis that they cannot afford a lawyer and a lawyer is essential to a fair trial. Rowbotham applications arise when an accused has exhausted their entitlement to legal aid. In *R v. Rowbotham* (1988) ("*Rowbotham*"), the Ontario Court of Appeal set out the legal test for when the government is under an obligation to fund legal counsel for an unrepresented accused. In that case, the court held that in the very rare circumstance where an accused is refused legal aid and representation is essential to trial fairness, the judge may, upon being satisfied that the accused lacks the financial means to retain counsel, stay the proceedings under s. 24(1) of the *Charter* until the government funds counsel. *Rowbotham* created a three-part test for when an unrepresented accused has a right to court-ordered counsel. The accused holds the burden of proof and must demonstrate on a



balance of probabilities that: (1) he or she has been refused legal aid and exhausted all available appeals; (2) he or she is indigent and has no means to pay for counsel; and (3) the charges they face are so serious and the proceedings so complex that they cannot receive a fair trial without the assistance of counsel (*R v. Rowbotham*, 1988, para 167). The Ontario Court of Appeal's decision in *Rowbotham* is only binding on Ontario courts. However, as Bond (2015) notes, "the finding in *Rowbotham* has since been cited with approval in every jurisdiction in Canada and Rowbotham applications occur routinely across the country" (p. 19).

Rowbotham applications can be quite laborious to prepare, particularly for inexperienced defence lawyers. The specific rules and procedures for filing a Rowbotham application vary by jurisdiction. Based on my research, no detailed guideline for filing Rowbotham applications in Ontario is currently available to the public. The guideline discussed below, which comes from information created by the Legal Services Society of British Columbia, Legal Aid Alberta, and the Courts of Nova Scotia, is consistent with my understanding of how Rowbotham applications are filed in Ontario. The accused (referred to as the "Applicant" in the application) must file a Notice of Application and Constitutional Issue (referred to as simply the Notice of Application in some jurisdictions), an Affidavit, and supporting documentation (Legal Services Society of British Columbia, 2018). The Notice of Application and Constitutional Issue outlines the grounds for the application, the constitutional issues to be raised, the constitutional principles to be argued, relevant statutory provisions, rules, and other forms of evidence upon which the Applicant relies, and the relief sought.<sup>5</sup> In the Affidavit, the Applicant

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<sup>5</sup> See, for example: Criminal Proceedings Rules for the Superior Court of Justice (Ontario), 2012, Rule 27.03, Notice of Application and Constitutional Issue (Form 5). Retrieved from <http://ontariocourtforms.on.ca/static/media/uploads/courtforms/scjcpr/form05/csr-5-27-03-e.pdf>; Nova Scotia Provincial Court Rules, 2013, Rule 2.1A, Notice of Application for *Rowbotham* Counsel (Form 1A). Retrieved from [http://www.courts.ns.ca/Provincial\\_Court/NSPC\\_I\\_rules\\_and\\_forms/NSPC\\_Form-1A\\_Application\\_Rowbotham\\_Counsel\\_AMD\\_15-07.pdf](http://www.courts.ns.ca/Provincial_Court/NSPC_I_rules_and_forms/NSPC_Form-1A_Application_Rowbotham_Counsel_AMD_15-07.pdf); Legal Aid Alberta, 2014, Notice of



provides information that supports their Rowbotham application. They provide information about their case, including the charges they face; they explain that they have exhausted their entitlement to legal aid; they provide information about their personal history, such as their place of birth, place of residence, language ability, highest level of education, employment status and employment history, monthly income and expenses, and assets and liabilities; and they provide a breakdown of the estimated cost of defence (Legal Aid Alberta, 2014, p. 8–18).<sup>6</sup> The Applicant will also provide the court with documentation that supports their application. To prove that they have exhausted their entitlement to legal aid, the Applicant can attach letters of refusal from their legal aid program (Legal Aid Alberta, 2014; Legal Services Society of British Columbia, 2018, p. 6). They might also be required to attach their entire legal aid file. To prove that they are indigent, the Applicant can provide documents like their employment history, proof of employment, income tax returns, personal financial statements, paystubs, social assistance payment receipts, bills, and other relevant documents (Legal Aid Alberta, 2014, p. 3; Legal Services Society of British Columbia, 2018, p. 6–7). To prove that the charges they face are serious, the Applicant can provide documents like the information sheet, Crown disclosure, and the accused’s criminal record (Legal Aid Alberta, 2014, p. 3). The Applicant can also provide the court with the Crown’s sentencing position and information that demonstrates the consequences of conviction, such as loss of employment and travel restrictions (Legal

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Application for Funding for Unrepresented Accused (Rowbotham Application), p. 5. Retrieved from <http://www.legalaid.ab.ca/information-resources/Documents/Court%20Ordered%20Counsel/Rowbotham%20Application%20Checklist-Notice%20of%20Application-Affidavit%20of%20Applicant.pdf>; Legal Services Society of British Columbia, 2018, p. 25–27.

<sup>6</sup> See, for example: Nova Scotia Provincial Court Rules, 2013, Rule 2.1, Affidavit for *Rowbotham* Counsel (Form 2A). Retrieved from [http://www.courts.ns.ca/provincial\\_court/NSPC\\_I\\_rules\\_and\\_forms/NSPC\\_Form-2A\\_Affidavit\\_Rowbotham\\_Counsel\\_AMD\\_15-07.pdf](http://www.courts.ns.ca/provincial_court/NSPC_I_rules_and_forms/NSPC_Form-2A_Affidavit_Rowbotham_Counsel_AMD_15-07.pdf); Legal Services Society of British Columbia, 2018, p. 23–24. Retrieved from <https://lss.bc.ca/resources/pdfs/pubs/If-You-Cant-Get-Legal-Aid-for-Your-Criminal-Trial-eng.pdf>.

Services Society of British Columbia, 2018, p. 8). Finally, to prove that they cannot self-represent because their charges are too complex, the Applicant can use documents and testimony to show that their case involves complicated legal issues, multiple witnesses, complex procedural issues, and difficult defences (Legal Services Society of British Columbia, 2018, p. 9; Legal Aid Alberta, 2014, p. 4).

After compiling this information, the Applicant attaches it to the Affidavit and the Notice of Application and Constitutional Issue. They then file their completed Rowbotham application with the court registry and, in most jurisdictions, serve it on the local Crown Attorney's Office, the Attorney General of Canada, and the Attorney General of the province (Legal Services Society of British Columbia, 2018, p. 4).<sup>7</sup> In Ontario, at the Ministry of the Attorney General, Rowbotham applications are served on Crown Law Office – Civil. The government will either consent to or oppose the application. If they consent to the application, they will pay for a legal aid lawyer for the Applicant. If they oppose the application, it needs to go to a hearing before a judge (Legal Services Society of British Columbia, 2018, p. 11). The judge will use the legal test set out in *Rowbotham* to determine whether the government must fund legal counsel. According to a 2014 Memorandum of Understanding between the Ministry of the Attorney General and Legal Aid Ontario, when Rowbotham applications are successful—either on consent or at a contested hearing—the Ministry of the Attorney General pays for the defence, and Legal Aid Ontario manages the case in accordance with their policies on billing and payment (Legal Aid Ontario, 2014, p. 40). Criminal defence lawyers are compensated in accordance with Legal Aid Ontario's standard policies and procedures, and subject to the Legal Aid Ontario tariff rates (Legal Aid Ontario, 2014, p. 40).<sup>8</sup>

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<sup>7</sup> See also Provincial Court of Nova Scotia, n.d., Practice Direction – Application for *Rowbotham* Counsel. Retrieved from: [http://www.courts.ns.ca/Provincial\\_Court/NSPC\\_I\\_rules\\_and\\_forms/NSPC\\_PD\\_Application\\_Rowbotham-Counsel\\_AMD\\_15-07.pdf](http://www.courts.ns.ca/Provincial_Court/NSPC_I_rules_and_forms/NSPC_PD_Application_Rowbotham-Counsel_AMD_15-07.pdf).

<sup>8</sup> This policy is supported by case law. In *R v. Paryniuk* (2001), Justice Campbell noted that “[in] order to maintain the consistency and integrity of the system of publicly funded legal

Criminal defence lawyers are generally only compensated for Rowbotham applications when the applications are successful.

Although there is very little public information detailing the prevalence of Rowbotham applications, anecdotal evidence suggests they are on the rise. While Rowbotham orders used to be considered exceptional, this is no longer the case, as “more and more, individuals are going to the courts to request state-funded representation because legal aid has failed to protect their rights” (Moore, 2015). Criminal practitioners in Ottawa and Toronto are reporting a tenfold increase in Rowbotham applications over the last few years, and the overwhelming majority of them are successful (Spratt, 2014; Ha-Redeye, 2016). Empirical research also supports the conclusion that Rowbotham applications are growing in number. According to Bond (2015), the annual number of reported Rowbotham applications increased from approximately 1 between 1988 and 1999 to approximately 21 between 2010 and 2014 (p. 20).

The current system for applying for court-ordered counsel is creating waste and delay (Bond, 2015; Criminal Lawyers’ Association, 2015). The Ministry of the Attorney General recognized this when it launched the Pilot Project in January 2015 for applicants appearing before the Ontario Superior Court of Justice in Toronto or Brampton. The Pilot Project was initiated by Justice McMahon of the Ontario Superior Court of Justice, and developed by the Ministry of the Attorney General and Legal Aid Ontario in consultation with the Court Services Division of the Ontario Superior Court of Justice, Crown prosecutors, and the Criminal Lawyers’ Association (Ontario Superior Court of Justice, n.d., p. 33). The Pilot Project was created to reduce waste and expedite applications (Ontario Superior Court of Justice, n.d., p. 33). According to a statement by the Criminal

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counsel, *Rowbotham* fees in this province, for policy reasons, are typically set at the ordinary legal aid rate” (para. 10). While the accused is entitled to counsel, he or she does not have a right to a rate of remuneration above the ordinary legal aid rate. As Justice Campbell commented in *R v. Abu-Taha* (2001), “[the] accused have a right to counsel but no prima facie right to a rate of remuneration above that provided by the regular legal aid plan” (para. 40).

Lawyers' Association, "the impetus for the pilot was to avoid the waste of court resources that was frequently occasioned by Rowbotham hearings folding 10 minutes prior to their scheduled start time due to Crown Law Civil consenting to the application at the courtroom door" (Criminal Lawyers' Association, 2015, p. 1). The Pilot Project expanded into Ottawa, Cornwall, Barrie, and Hamilton in 2016, and into all Superior Court of Justice courts across Ontario in April 2017 (Legal Aid Ontario, n.d.-d).<sup>9</sup> To qualify for the Pilot Project, applicants must meet the following conditions:

- The client must have exhausted all of their legal aid appeals
- The client is facing serious and complex charges
- The client's immediate family is unable to fund legal services
- The client already has a lawyer
- The prosecuting Crown is seeking a term of imprisonment
- LAO has identified the client as potentially eligible for this pilot program and has advised the client's lawyer (Legal Aid Ontario, n.d.-d).<sup>10</sup>

Pilot Project applications appear to be less laborious than regular Rowbotham applications. To apply for the Pilot Project, applicants complete the simplified application form and submit it to Crown Law Office – Civil, along with their legal aid file and the legal aid release

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<sup>9</sup> The Pilot Project is currently unavailable to an accused with federal charges and matters before the Ontario Court of Justice.

<sup>10</sup> These conditions are slightly more limiting than the ones enunciated in *Rowbotham*. In *Rowbotham*, the court never said that the financial resources of applicants' family members must be considered in assessments of indigence. This requirement is consistent with the more restrictive approach to indigence taken in cases like the British Columbia Supreme Court's decision in *R v. Malik* (2003), and the Ontario Superior Court of Justice's decisions in *R v. Munroe* (2015) and *R v. Robinson* (2014), where applicants were held to a standard of financial prudence. In addition, the requirement that an applicant already have a lawyer was not specifically articulated in *Rowbotham*. This additional requirement works against low-income accused who do not have the financial resources to hire a criminal defence lawyer to prepare and possibly litigate a Rowbotham application.

authorization form (Legal Aid Ontario, n.d.-d). The Applicant is not required to submit the Notice of Application and Constitutional Issue, Affidavit, and supporting documentation needed in regular Rowbotham applications. If Crown Law Office – Civil consents to the application, the government will pay for a legal aid lawyer for the Applicant. If the government opposes the application, the Applicant needs to file a regular Rowbotham application before a judge (Criminal Lawyers’ Association, 2015, p. 1). To date, no research has analyzed how much waste and delay Rowbotham applications are creating, and how effective the Pilot Project has been at expediting Rowbotham applications. To fill this void, I submitted access to information requests to the Ministry of the Attorney General and Legal Aid Ontario, conducted one-on-one interviews with criminal defence lawyers in Ottawa and Toronto, and administered a limited survey of judges of the Ontario Superior Court of Justice. In the next section of the article, I describe my research methods and data analysis procedures.

### **Research Methods and Data Analysis Procedures**

This research project used access to information requests, qualitative interviews, and a survey questionnaire to explore the provision of court-ordered counsel in Ontario. Between May 2016 and March 2018, I submitted four access to information requests to the Ministry of the Attorney General, and one access to information request to Legal Aid Ontario. In my requests to the Ministry of the Attorney General, I asked for information like the total number of Rowbotham applications received between 2010 and 2015, and the total number of Pilot Project applications received since January 2015, broken down by decision and court location. In my single request to Legal Aid Ontario, I asked for information like the total amount of money that the Ministry of the Attorney General spent on Rowbotham applications between 2010 and 2017, broken down by year.

As previously mentioned, one of the purposes of this research project was to determine whether the Pilot Project is reducing waste and

delay in applications for court-ordered counsel. With this in mind, I used one-on-one interviews with criminal defence lawyers and a survey questionnaire with judges of the Ontario Superior Court of Justice to find out more than can be gleaned merely from analyzing reported cases, anecdotal comments, and news reports. More specifically, the interviews were used to capture participants' opinions of the strengths and weaknesses of the Rowbotham application process, the efficacy of the Pilot Project, and whether improvements can be made to the provision of court-ordered counsel.

I interviewed criminal defence lawyers because they are responsible for preparing and litigating Rowbotham applications.<sup>11</sup> Guided by my research questions, I recruited criminal defence lawyers in Ottawa and Toronto with experience preparing and litigating Rowbotham applications. Participants were recruited through email and word of mouth. I used the Defence Counsel Association of Ottawa's public membership list to email defence lawyers in Ottawa. To recruit criminal defence lawyers in Toronto, I sent an email to the Criminal Lawyers' Association explaining the purpose of the research project, and asked them for assistance in recruiting participants. After interviewing one of their members, he sent an email to all Criminal Lawyers' Association members, which helped me recruit more criminal defence lawyers working in Toronto.

In the end, I conducted 10 one-on-one semi-structured interviews with criminal defence lawyers in Ottawa and Toronto in February and March 2018. The interviews lasted between 25 and 45 minutes. I conducted face-to-face interviews with seven criminal defence lawyers in Ottawa, and telephone interviews with three criminal defence lawyers in Toronto. Before conducting the interviews, I

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<sup>11</sup> I also wanted to interview lawyers at the Ministry of the Attorney General and Legal Aid Ontario. My request to interview lawyers at the Ministry of the Attorney General was denied, and I never heard back from Legal Aid Ontario.



obtained informed consent from the research participants.<sup>12</sup> Participants engaged in guided discussions about their experiences preparing and litigating regular Rowbotham applications; their experiences preparing Pilot Project applications; their opinions of the benefits and limitations of regular Rowbotham applications and Pilot Project applications; and their recommendations for improving the provision of court-ordered counsel. With the consent of the participants, all interviews were audio recorded to capture verbatim language and voice inflections. Face-to-face interviews were recorded using my mobile phone, and telephone interviews were recorded using the mobile application Call Recorder – IntCall. Recordings were labelled with a unique identifier and stored on my password-protected mobile phone and in my email. All recordings were destroyed after transcription and data analysis. Transcripts were encrypted and stored on a password-protected computer.

Interview recordings were transcribed in a two-step process. Each interview was first transcribed verbatim. Real names were deleted and replaced with numerical identifiers. I then edited the transcript to make sure the document read coherently. This step involved eliminating repetitive words and most non-lexical conversational sounds such as “um,” “hm,” or “uh.” After completing the transcripts, I identified relevant themes based on the research and interview questions. To do this, I engaged in an iterative analysis whereby I grounded my analysis in the current literature and the interview data (Tracy, 2013, p. 184). After reading through the interview transcripts to get a sense of what was happening—what Tracy (2013, p. 188)

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<sup>12</sup> The interviews were originally conducted as part of a graduate qualitative research methods class at Carleton University. The consent form that participants initially signed indicated that the information they provided in their interview would not be used in further research, publications, or conference presentations without obtaining ethics approval and their further consent. After receiving ethics clearance from the Carleton University Research Ethics Board in June 2018, I went back to the participants and obtained their consent to use the information they provided me in their interview in future research, publications, and/or conference presentations. Eight of the ten participants signed new consent forms. Regrettably, I did not hear back from the other two participants. As a result, information from their interviews is not included in this article.



refers to as the “data immersion phase”—I organized the data by using a computer-aided process (Tracy, 2013, p. 188) whereby I colour-coded the interview transcripts to correspond with specific themes, and then copied and pasted the relevant data under thematic headings in a new word document.

I sought input from judges of the Ontario Superior Court of Justice because they adjudicate contested Rowbotham applications. In March 2018, I submitted a formal application to the Office of the Chief Justice explaining the purpose of the research project, the research process, and the time commitment. I asked for approval to conduct 30-minute telephone interviews with judges with criminal law experience. In May 2018, I was informed by counsel to the Chief Justice that I would not be given approval to conduct telephone interviews with members of the judiciary. Instead, counsel to the Chief Justice would reach out to judges and ask them to provide responses to my questions. Counsel to the Chief Justice would then roll-up the responses and provide me with an aggregate, generalized response on behalf of the Office of the Chief Justice. I received ethics clearance for this procedure from the Carleton University Research Ethics Board in June 2018.<sup>13</sup> After receiving ethics clearance, I provided counsel to the Chief Justice with a survey questionnaire that consisted of 13 questions relating to their experience adjudicating contested Rowbotham applications; their opinions of the positive and negative features of the Rowbotham application process; and their thoughts on the efficacy of the Pilot Project. In early October 2018, counsel to the Chief Justice provided me with a roll-up of the judges' observations. The observations do not represent the views of the Ontario Superior Court of Justice nor are they fully representative of the full range of locations or judges. Instead, they represent a small

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<sup>13</sup> Since judges would not be participating on an individual basis, counsel to the Chief Justice did not support them signing consent forms. I obtained their implied consent when they sent responses to my questions to counsel to the Chief Justice. I did, however, provide counsel to the Chief Justice with a document to send to the judges that explained the details of the research project, study procedures, and confidentiality.

sampling of judges (approximately 5–10) with criminal law experience from a range of geographic centres of different sizes. Most responses did not respond to all the questions, and not all responses covered all the information provided to me in the generalized response. Upon receiving the generalized response, I analyzed the data by grouping the observations into themes that corresponded with my research questions. This section of the article discussed the methods and data analysis procedures that I used for the research project. In the next section, I discuss some of my major research findings.

## **Findings**

My findings are divided into two sections. The first section discusses findings relating to regular Rowbotham applications. The second section discusses findings relating to Pilot Project applications.

### *Regular Rowbotham Applications*

Consistent with Bond's (2015) findings, my research found that Rowbotham applications are becoming more common in Ontario. Table 3 describes the number of Rowbotham applications served on the Ministry of the Attorney General between 2010 and 2015. During this period, the Ministry of the Attorney General was served with 728 applications. In 2010, the Ministry of the Attorney General was served with 64 applications. In 2011, this number increased 75 percent to 112 applications. Between 2011 and 2015, the Ministry of the Attorney General was served with an average of 133 applications each year. This is significantly more than the average number of reported cases that Bond (2015) found between 1988 and 2014. However, when compared to the total number of refused legal aid applications described in Table 1, Rowbotham applications are still quite rare. Between 2010 and 2015, Legal Aid Ontario received 393,650 applications for criminal law matters. During this same period, the Ministry of the Attorney General received 728 Rowbotham applications. Therefore, Rowbotham applications were

brought for approximately 0.19 percent of the 393,650 legal aid applications.<sup>14</sup>

Even though Rowbotham applications are still relatively rare, they are costing the government a significant amount of money. Table 4 describes the amount of money the Ministry of the Attorney General spent on Rowbotham appointments and funding agreements between 2010 and 2017. Between 2010 and 2017, the Ministry of the Attorney General spent \$25,569,172.87 on Rowbotham appointments and funding agreements.<sup>15</sup> On average, the Ministry of the Attorney General spent approximately \$3.2 million each year on Rowbotham appointments and funding agreements. During this same period, the Ministry of the Attorney General's actual budget was \$12,430,000,000 (Ontario Ministry of Finance, n.d.).<sup>16</sup> Therefore, between 2010 and 2017, the Ministry of the Attorney General spent approximately 0.20 percent of its budget on Rowbotham appointments and funding agreements.

The overwhelming majority of Rowbotham applications are resolved on consent. In my first access to information request to the Ministry of the Attorney General, I asked for the number of applications served on the Ministry of the Attorney General between January 1, 2014, and January 11, 2015, broken down by decision. According to their response, the Ministry of the Attorney General was served with 130 applications, 94 (72 percent) of which were resolved on consent.

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<sup>14</sup> This figure assumes that the Rowbotham applications were brought in the same year the applicants were denied legal aid. I chose to compare the number of Rowbotham applications to the total number of legal aid applications, rather than, for example, the total number of criminal cases in Ontario courts, because Rowbotham applications can only be brought by accused who apply for legal aid.

<sup>15</sup> In my access to information request to Legal Aid Ontario, I asked for the total cost of Rowbotham applications between 2010 and 2017. In their response, Legal Aid Ontario told me that they could only provide me with the aggregate cost of Rowbotham appointments because the cost of the applications themselves are not individually tracked.

<sup>16</sup> I calculated this figure by reviewing Ontario's annual consolidated financial statements for 2010–2011 to 2016–2017, and adding up the Ministry of the Attorney General's actual budget for each year. The consolidated financial statements can be found at <http://www.ontla.on.ca/library/repository/ser/15767/>.

Of the remaining 36 applications, the court granted 9 and dismissed 11, and 16 were abandoned.<sup>17</sup> When one considers the amount of work that goes into a Rowbotham application, it is clear that the application process is creating waste. According to the participants' own estimations, the average amount of time spent preparing a regular Rowbotham application is between 5 and 30 hours. On average, participants spend 15 hours to prepare a Rowbotham application. This number often does not include time spent in court litigating contested applications. If it takes a criminal defence lawyer approximately 15 hours to prepare a single Rowbotham application, this means that approximately 1,410 hours were spent preparing the 94 applications that the Ministry of the Attorney General resolved on consent between January 1, 2014, and January 11, 2015. As previously mentioned, criminal defence lawyers are normally compensated at the legal aid rate for their work on Rowbotham applications (Legal Aid Ontario, 2014, p. 40). Let us assume, for this article, that the hourly rate for most Rowbotham applications is Legal Aid Ontario's Tier 2 rate of \$122.78 (Legal Aid Ontario, n.d.-e). Based on this hourly rate and the estimated 15 hours it takes criminal defence lawyers to prepare a Rowbotham application, the 94 applications that the Ministry of the Attorney General resolved on consent would have cost the Ministry of the Attorney General \$173,120.<sup>18</sup> This suggests that the Rowbotham application process is producing unnecessary government spending and wasted defence counsel resources. This point was reiterated by several criminal defence lawyers:

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<sup>17</sup> In my third access to information request, the Ministry of the Attorney General denied my request to have the applications in other years broken down by decision. I suspect that this information would show that most of the applications served on the Ministry of the Attorney General between 2010 and 2015 were resolved on consent.

<sup>18</sup> This figure assumes that criminal defence lawyers are paid for applications resolved on consent, and that they are paid for the full 15 hours that they spend on preparing the application. This figure also assumes that each of the 94 Rowbotham applications required 15 hours of preparation. It is entirely possible that many of the applications required less preparation. Future research should test the accuracy of this number by using a larger sample size.

Well, for the one I was just telling you about, with an affidavit from the client, another affidavit, putting together a factum, I mean, I'm sure we put 30 hours in preparation quite easily, and then you got to set aside a day in court even if the case ends up falling through at the courtroom door like it usually does. (Participant #1)

[They were consented to] the day of the hearing or shortly before the hearing. If they were consented to before the day of the hearing, it wasn't in sufficient time to not have counsel from Toronto cancel the plane ticket or inform the court so that court time could be used otherwise. So, like within a day or two the week of the hearing...I had one case last year where we brought the Rowbotham application and in the middle of the hearing Crown Law Civil spoke to Legal Aid, the hearing was adjourned, and a certificate was issued. (Participant #5)

This is a ten-tab application book that took eight hours to essentially put together, only to have someone consent to it the day before. I mean this was a no-brainer. My client's cut-off was \$500—she made \$500 more than the cut-off. She had the most heart-wrenching personal circumstances. I don't know if it's because no one looked at this until the day before or what it was... (Participant #6)

Judges of the Ontario Superior Court of Justice and Criminal defence lawyers also mentioned the delay caused by the requirement that applicants exhaust the legal aid appeal process before applying for a Rowbotham order. There was a general sense among the judges who completed my survey that Legal Aid Ontario's two-tiered appeal process takes too long and contributes to delay. Moreover, the value of this process does not appear to outweigh the delay. Consequently, courts would like to see a more expedited or streamlined appeal process. Similarly, criminal defence lawyers noted that this

requirement can cause one to six months of delay. As a result, many of them recommended that applicants should be able to file a Rowbotham application without needing to exhaust this appeal process:

If somebody's refused on financial grounds, the intake worker will know right away. If it's somebody working at Walmart making \$18,000 or \$19,000 a year or making \$25,000 but supporting three kids, we know on an appeal that he's still going to be refused so there's really no point of appealing. So, to make somebody have to go through the motions which adds another month on seems kind of pointless. You know, if somebody's facing serious charges and they're looking at a trial that could go on for days or weeks, and this person will obviously never be able to afford a lawyer even though they're above the legal aid cut-off, then why not just send them straight to the Pilot Project instead of making them go through the appeal motions. (Participant #1)

I would think given the court's current concern, especially with regards to delay, that there would be a move on the part of the Ministry of the Attorney General to avoid delays as much as possible. I don't again believe many of the appeals of Legal Aid refusal are all that successful. I don't have the statistics. I don't know, I'm just going by my own personal experience. So, as you say, it's sort of fruitless to have to go ahead and appeal something when you know it's not going to go anywhere. (Participant #3)

I think that hearings should be able to proceed without the need of exhausting every single appeal process. I think so just given how unsuccessful the legal aid appeal process is, [and] how lengthy that process can be in terms of submitting the information and going through the appeals, especially given that I think there's a time limit that you're allowed for the appeal. I think it's like 90 days or something like that to



appeal. I mean you could just wait to day 91 and then your appeals are exhausted. I think it's sort of artificial to make people jump through those hoops, especially when there's no question that the financial remuneration is the same. Legal Aid administers the Rowbothams, [and] you have the same amount of hours and funding for the Rowbotham applications as you would for a certificate. So, there's no financial interest in a lawyer preferring to do Rowbothams as opposed to legal aid. I mean I could see if it was more lucrative to have a Rowbotham order, you might not want to not incentivize people to go down that route, but actually quite the opposite is true. I mean it takes more time to do these Rowbothams; you have to book the day in court, [and] it's a lot more work that you don't get paid for. So, I actually think there's a disincentive to bring a Rowbotham if you can get legal aid otherwise. And insisting on all these strict procedural requirements and getting all this information actually just serves to delay things and increase the overall cost of the system. (Participant #5)

The frustrating part about having to apply and get refused and then do the appeal, which we end up helping the client fill out [and] which takes another half hour to an hour [to do]...[is] just how much time it takes...With a legal aid refusal to start the Rowbotham, you're set back four to six weeks. (Participant #6)

I have pretty much never seen one of those appeals been successful. If you're denied legal aid, you're denied all the way through. But it's just a waiting game until you get your final denial. Nothing's going to change. Yeah it would be helpful if you could apply after your first denial, but that would require the case law to change. (Participant #7)



Again, it's just extra steps. Legal Aid's policies are very clear on when they grant and deny applications. So, except for certain more complex cases, generally what happens is a client might have income that's just above the threshold and they're going to say no and there's no other ground for which they can grant an application. The appeal is completely frivolous. (Participant #8)

However, not all criminal defence lawyers believed that applicants should be able to file a Rowbotham application without exhausting the legal aid appeal process. One of them expressed the view that the appeal process plays an important role and should continue to be a requirement for filing a Rowbotham application:

I stand by my comments earlier about how it didn't strike me that many of my clients have ever gotten anywhere far on the legal aid appeal process. But...if you grant Legal Aid that it is a meaningful appeal process, you know, I don't see why people shouldn't have to go through it. Because really a lot of the time the appeals or whatever are like you said no and I still need a lawyer. People aren't always really trying to robustly appeal. But let's say there is something where like, you know, there were financial considerations and the person does make the appeal and they managed to put together a few more financial documents or a bit more information, and it satisfies Legal Aid and they're like okay we're going to grant you the certificate because we understand now that you really can't afford counsel, you do meet the criteria. I think on that end I don't see that it's horribly onerous for someone to go through... (Participant # 9)

Since *Rowbotham*, courts across the country have consistently held that applicants must exhaust the legal aid appeal process before applying for a Rowbotham order (see, for example: *Bonomo c. Québec [Attorney General]*, 2014, para. 8; *R v. Black Pine Enterprises Ltd.*, 2001, para. 5; *R v. Canning*, 2010, para. 2; *R v.*

*Isherwood*, 2017, para. 18; *R v. Legal*, 2009, para. 20; *R v. Levy*, 2016, para. 13; *R v. Smart*, 2014, para. 19; *R v. Theodore Tsetta*, 2016, para. 27). For instance, in *United States of America v. Akrami* (2001), Justice Romilly stated that “the applicant must also show that he has made every attempt to apply for legal aid and, if initially denied, has exhausted all appeals available to him” (para. 32). The case law would therefore need to change in order for applicants to be able to apply for a Rowbotham order after the first refusal. For this to happen, it would need to be shown that Legal Aid Ontario’s appeal process is consistently causing a significant period of delay that cannot be reduced. Future research should seek to obtain the average period of time it takes an applicant to receive an appeal decision from Legal Aid Ontario, broken down by level of appeal (area committee and provincial office).

### *Pilot Project Applications*

The Ministry of the Attorney General acknowledged the waste and delay created by regular Rowbotham applications when it created the Pilot Project to expedite applications. Tables 5, 6, and 7 describe the number of Pilot Project applications received by the Ministry of the Attorney General between 2015 and 2017. In its first year, the Ministry of the Attorney General received 14 Pilot Project applications. In 2016, this number increased to 30 applications. Last year, the Ministry of the Attorney General received 76 applications. The increase in the number of applications is likely the result of the Pilot Project being expanded to jurisdictions outside of Toronto and Brampton, as well as greater awareness of its existence. At the time of the interviews, four criminal defence lawyers had prepared Pilot Project applications. Three of them mentioned that the Pilot Project applications took significantly less time to prepare than regular Rowbotham applications. For one of them, the Pilot Project application took one hour to complete. For the other two, they took between four and five hours to complete. Two criminal defence

lawyers stated that they found the Pilot Project application process easier and more straightforward:

And that [the Pilot Project application] ended up going pretty well. I mean I like that procedure because I didn't have to do the whole affidavit application rigmarole. That was more straightforward. (Participant #1)

...I went through it [the Pilot Project application], I did the whole thing, which was a lot easier... (Participant #6)

Similarly, several criminal defence lawyers said that the Pilot Project has achieved its stated goal of reducing waste and expediting applications:

...[W]ell in my limited experience, it [the Pilot Project application] met that goal and from what I've heard from other lawyers, it's been pretty effective. (Participant #1)

I think it's [the Pilot Project application] been pretty successful in diverting mostly the completely no-brainer Rowbothams...So, yeah in that sense I think it's been helpful... (Participant #8)

Given its success, many criminal defence lawyers said they believe it should be expanded to the Ontario Court of Justice:

Hopefully they'll expand it to provincial court cases, which is where most cases are. (Participant #1)

Yes. I think it should definitely be expanded to include OCJ matters. I think it can be...and again having never done the Pilot Project, from what I hear it's a much more streamlined process, so if we could have a similarly streamlined process for Ontario Court of Justice, that would be helpful. (Participant #3)

Absolutely. I know that they're just trying to keep it to serious offences with significant jail time but those occur in the OCJ regularly as well. And the irritating part about doing a Rowbotham application in the Ontario Court of Justice is that only the trial judge has the ability to grant *Charter* relief...So, scheduling a Rowbotham in the Ontario Court of Justice is a nightmare because whatever judge hears your Rowbotham has to be your trial judge. And that can be very difficult to schedule. So, it would be handy if the Pilot Project also related to the Ontario Court of Justice. (Participant #8)

Absolutely...because the fact that defence counsel spends hours preparing an application to be heard before the court where the Crown can consent anyway. So, why not? If they have the ability to consent, why not have a streamlined process for them to consent? (Participant #9)

In my fourth access to information request to the Ministry of the Attorney General, I asked for the number of Rowbotham applications filed in the Ontario Court of Justice between January 1, 2008, and December 31, 2017. Unfortunately, the Ministry of the Attorney General informed me that they do not track this information. Between July 2017 and June 2018, the Ontario Court of Justice received 229,192 criminal cases, 8,505 of which were disposed of following trial (Ontario Court of Justice, n.d., p. 1). Given the large caseload, the Ontario Court of Justice could certainly benefit from a more streamlined Rowbotham application process.

There was also approval of the Pilot Project among the judges of the Ontario Superior Court of Justice. For them, the Pilot Project saves court time by conducting financial need assessments through an out-of-court process. There is support among members of the judiciary that the Pilot Project would be even more effective if it was expanded to include federal charges. Some of the judges observed that the

exclusion of federal charges can contribute to delays in court. Although data on the number of cases received with federal charges was not available from the Ontario Superior Court of Justice's website, it is safe to assume that the Pilot Project would benefit from this expansion.

### **Recommendations**

Unless Legal Aid Ontario relaxes its eligibility criteria, Rowbotham applications will likely continue to increase. It is therefore important to have an application process that is efficient and fair. Several improvements can be made to the Rowbotham application process. First, Legal Aid Ontario should examine how much delay their multi-step appeal process is creating. If it is found that the multi-step appeal process is causing unnecessary delay, Legal Aid Ontario should institute a single-step appeal process. Should this strategy prove unsuccessful, applicants should be allowed to file a Rowbotham application after their first refusal if they were refused on financial grounds and it is highly unlikely that their circumstances will change. Second, future research should investigate how common Rowbotham applications are in the Ontario Court of Justice, and how much waste and delay they are creating. If they are creating waste and delay, the Pilot Project should be expanded to cover applicants with matters proceeding before this court. Third, the Pilot Project should be expanded to include federal charges. Lastly, given the lack of information available to the public, Legal Aid Ontario and the Ministry of the Attorney General should put together information guides for self-represented accused that explain how to file a regular Rowbotham application in Ontario. They can consult documents prepared by the Legal Services Society of British Columbia, Legal Aid Alberta, and the Courts of Nova Scotia, and create a document that describes the application process and provides sample Notices of Application and Constitutional Issue and Affidavits.

In addition to examining how the Rowbotham application process can be improved, future research should also examine whether it

would be more cost effective and fair to have a single mechanism for providing state-funded counsel that takes into account the Rowbotham factors. Having a single process, administered by Legal Aid Ontario, might reduce waste by eliminating the use of expensive defence counsel and judicial resources. Accused will no longer need to hire defence counsel to prepare a Rowbotham application, and judges will no longer need to adjudicate contested Rowbotham applications. Having a single process might also increase fairness by reducing the amount of time accused are without legal representation. As previously mentioned, criminal defence lawyers in this study said that their clients are sometimes without counsel for months before a Rowbotham order is granted. Having a single process might reduce this period because applicants will no longer need to exhaust an appeal process. On the other hand, having a single, more holistic mechanism will cost money. Legal Aid Ontario might resist change because under the current system they do not pay for funding under a Rowbotham order. Legal Aid Ontario will likely require more funding to handle the increase in successful applications that is likely to occur under a single mechanism.

### **Limitations and Future Research**

This research project sought input from criminal defence lawyers working in Ottawa and Toronto and judges of the Ontario Superior Court of Justice. Future research should use a larger sample size and seek input from criminal defence lawyers in rural areas. While most Rowbotham applications are brought in Canada's largest metropolitan areas, such as Toronto and Ottawa, lawyers working in smaller communities might encounter unique challenges in the application process that provide valuable insights into the provision of court-ordered counsel. Future research should include participation from other important legal professionals, including lawyers at Legal Aid Ontario and the Ministry of the Attorney General, provincial and federal Crown attorneys, and judges of the Ontario Court of Justice.

These individuals will have important things to say about how the provision of court-ordered counsel can be improved.

### **Conclusion**

In Canadian criminal law, trial fairness requires that the accused be able to make full answer and defence. In most circumstances, this requires that the accused have access to legal counsel. Many low-income Canadians do not have the financial resources to hire private counsel. In these situations, accused can apply for state-funded counsel through provincial legal aid programs. Unfortunately, Legal Aid Ontario's financial eligibility criteria prevent individuals living below officially recognized low-income measures from retaining legal counsel. Individuals denied legal aid can obtain legal counsel through the Rowbotham court-order process. This article has shown that Rowbotham applications produce excessive government spending, wasted court and defence counsel resources, and unnecessary delay. It has also shown that the Pilot Project has the potential to make the court-order process more efficient and fair. Early evidence suggests that Pilot Project applications take less time to complete and do not waste expensive defence counsel and court resources. The recommendations offered in this article work to improve the court-order process. Given the important rights at stake, researchers must continue the conversation by consulting with government lawyers and policy makers and members of the judiciary to determine how to make Rowbotham applications more efficient and fair.



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Appendices

**Table 1: Number of Legal Aid Ontario Criminal Law Applications Received and Refused, 2008–2017**

Year	Applications Received	Applications Refused	Percentage of Applications Refused
2008	82,817	14,639	17.68%
2009	79,759	14,266	17.89%
2010	66,211	7,496	11.32%
2011	72,023	5,464	7.59%
2012	68,124	5,601	8.22%
2013	62,103	5,077	8.17%
2014	59,048	4,928	8.34%
2015	66,141	4,483	6.78%
2016	71,785	4,848	6.75%
2017	64,443	4,600	7.14%
<b>Total</b>	<b>692,454</b>	<b>71,402</b>	<b>10.31%</b>

**Table 2: Number of Legal Aid Ontario Criminal Law Applications Refused by Refusal Reason, 2008–2017**

Year	Financial	Legal	Abandoned	Change of Solicitor	Duty Counsel Refusal	Refer to Agency	Reason not Recorded
2008	5,997	5,631	2,538	308	—	115	50
2009	6,128	5,747	1,820	370	—	141	60
2010	3,825	2,479	629	455	—	56	52
2011	2,915	1,887	93	525	—	16	28
2012	2,765	2,136	84	544	—	26	46
2013	2,595	1,639	53	638	97	19	36
2014	2,279	1,902	14	522	146	12	53
2015	2,504	1,303	12	468	88	28	80
2016	3,007	1,017	15	648	48	9	104
2017	2,319	1,448	14	619	116	10	74
<b>Total</b>	<b>34,334</b>	<b>25,189</b>	<b>5,272</b>	<b>5,097</b>	<b>495</b>	<b>432</b>	<b>583</b>

*An Evaluation of Ontario's Rowbotham Application Pilot Project*

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**Table 3: Number of Rowbotham Applications Served on the Ministry of the Attorney General, 2010–2015**

<b>Year</b>	<b>Number of Rowbotham Applications</b>
2010	64
2011	112
2012	169
2013	145
2014	126
2015	112
<b>Total</b>	<b>728</b>

**Table 4: Amount of Money the Ministry of the Attorney General Spent on Rowbotham Appointments and Funding Agreements, 2010–2017**

<b>Year</b>	<b>Amount</b>
2010	\$2,280,539.18
2011	\$2,980,683.31
2012	\$3,848,936.02
2013	\$4,762,908.90
2014	\$3,625,222.09
2015	\$3,398,398.23
2016	\$3,112,922.38
2017	\$1,529,562.76
<b>Total</b>	<b>\$25,569,172.87</b>

**Table 5: Number of Pilot Project Applications Received by the Ministry of the Attorney General in 2015**

<b>Location</b>	<b>Number of Pilot Project Applications</b>	<b>Decision</b>
Toronto	14	11 granted/3 rejected (1 abandoned by applicant)



**Table 6: Number of Pilot Project Applications Received by the Ministry of the Attorney General in 2016**

<b>Location</b>	<b>Number of Pilot Project Applications</b>	<b>Decision</b>
Toronto	23	13 granted/10 rejected
Brampton	4	3 granted/1 rejected
Ottawa	1	1 granted
Hamilton	1	1 granted
Barrie	1	1 granted
<b>Total</b>	<b>30</b>	<b>19 granted/11 rejected</b>

**Table 7: Number of Pilot Project Applications Received by the Ministry of the Attorney General in 2017**

<b>Location</b>	<b>Number of Pilot Project Application</b>	<b>Decision</b>
Toronto	28	20 granted/5 rejected/3 under review
Ottawa	11	6 granted/3 rejected/2 under review
Hamilton	8	5 granted/1 rejected/2 abandoned by applicant
Brampton	5	4 granted/1 rejected
Newmarket	4	1 granted/3 rejected
Sudbury	3	1 granted/2 rejected
Barrie	2	1 granted/1 rejected
Haileybury	2	2 granted
Kitchener	2	0 granted/2 rejected
Windsor	2	2 granted/0 rejected
Belleville	1	1 granted
Bradford	1	1 granted
Goderich	1	1 granted
Kingston	1	1 granted
L'Orignal	1	1 rejected
London	1	1 granted
Lindsay	1	1 granted
Stratford	1	1 granted
Woodstock	1	1 rejected
<b>Total</b>	<b>76</b>	<b>49 granted/20 rejected/2 abandoned/5 under review</b>