

Legal Aid Ontario

Mental Health Strategy consultation paper



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1. Introduction

Legal Aid Ontario (LAO) is mandated by the *Legal Aid Services Act* (LASA) to promote access to justice for low-income Ontarians throughout Ontario. LAO does this by providing high quality legal aid services in a cost-effective and efficient manner. LAO is also statutorily mandated to encourage and facilitate flexibility and innovation in the provision of legal aid services, while recognizing the private bar as the foundation in the areas of criminal and family law. Since its creation under LASA in 1999, LAO, the private bar, community legal clinics and others have provided millions of legal aid assists to low-income Ontarians.

Despite the efforts of the provincial government, the Law Society, the judiciary, the private bar, LAO, community clinics, law schools, and others over the years, it is still widely acknowledged that low-income Ontarians have many unmet legal needs and that the justice system can do a better job meeting those needs.

Fortunately, recent years have seen an unprecedented level of interest in promoting access to justice for low-income Ontarians. This interest has been matched by significant investments and commitments by the provincial government.

LAO, as the provincial legal aid agency, has an obligation to promote access to justice for low-income Ontarians. As a result, LAO is developing a comprehensive, integrated long-term access to justice strategy intended to significantly expand access to justice for Ontario's poorest and most vulnerable communities.

This consultation paper considers how LAO can expand access to justice for legal aid clients with mental health and addiction issues. It is designed to provide greater clarity about LAO's early thinking about the objectives and plans for developing a Mental Health Strategy. It is also designed to encourage participation in the development of that Strategy by clients, lawyers, agencies, legal organizations, governments, and any other individuals or organizations who are concerned about legal services to persons with mental illness. This paper follows earlier LAO papers on clinic law services and refugee legal aid.¹ LAO anticipates releasing discussion papers on family and criminal legal aid in 2014.

¹ Available through LAO's consultations website: <http://www.legalaid.on.ca/en/policy/mentalhealth.asp>

1.1 A Mental Health Strategy for LAO

In 2012, LAO committed to developing a Mental Health Strategy (MHS or “the Strategy”) that is multi-year, multi-faceted, and province-wide. The goal of the Strategy is to expand and improve on current services while dedicating new programs and resources to clients with mental health and addictions issues.

1.2 Legal Aid Ontario’s Role in the Mental Health System

LAO plays a crucial role in empowering clients in the mental health system. Most of the cases heard before the two main mental health tribunals – the Consent and Capacity Board and Ontario Review Board – are argued by private bar lawyers working on a legal aid certificate. But mental health and addiction issues intersect with every other part of LAO’s mandate. Criminal lawyers and duty counsel represent a significant disproportion of accused who have mental illness and/or addictions. A significant portion of legal aid clinic advocacy assists clients in accessing housing and social entitlements. And every day in Ontario, lawyers assist vulnerable clients with mental illness in family law, child law, and refugee law matters.

LAO, as the provincial legal aid agency, has a mandate and responsibility to promote access to justice for low-income Ontarians with mental health legal needs. As a practical reality, however, access to justice for this clientele is not restricted to legal aid. In this field and others, the provincial government, the judiciary, the private bar, and others have significant responsibilities as well. There is also a proliferation of private or non-governmental agencies and institutions in Ontario that promote access to justice, including community clinics and many community agencies at the local and provincial level.

Within this context, LAO has an opportunity to play an important leadership role in three respects.

- First, LAO can take an objective look at its own programs and services and work towards improving access to justice within the realm of traditional legal aid services.
- Second, LAO can proactively manage and, to an extent, create new partnerships, programs and services that promote greater access to justice, and in addition to representation by legal aid-funded lawyers in courts and tribunals.
- Third, LAO can promote a rights-based approach that is accessible to, and supportive of, clients who are going through the health, legal and social support sectors. This includes a greater role for LAO in systemic and cross-sector mental health initiatives and issues.

What is recovery?

What is recovery? The “recovery model” is where client services are driven by self-determination, holistic assessment of need, access to health and social supports, and proactive identification of issues and concerns. Recovery is individually defined, and means living well whether in the presence of symptoms or not. In LAO’s formulation, the activating legal rights and providing advocacy triggers empowerment & choice, leading to recovery, stability, improved social determinants of health, and ultimately reduced legal support needs.

This consultation paper – and the development of LAO’s Mental Health Strategy – initiates LAO’s contribution to this larger project. LAO is eager to work with the provincial government, the judiciary, and any other member of the access to justice community to discuss or plan how to work together more effectively and efficiently to empower clients with mental health and addiction issues in Ontario.

1.3 Change and Modernization at LAO

Ontario’s legal aid system is facing many challenges. LAO, like all public organizations, must ensure that the public funds it receives are spent effectively and efficiently. LAO and other justice organizations must also meet the challenge of the “access to justice” crisis in Ontario. To take but one example, there is a growing gap between LAO’s financial eligibility guidelines and the poverty line in Ontario. This gap is a major unmet legal need. Legal needs research and experience also suggests that the legal aid system needs to consider new or emerging legal needs.

Through innovation and sound management, LAO believes that the legal aid system can do more to improve access to justice in Ontario and address the unmet legal needs of low-income Ontarians.

In recent years, LAO has improved access to justice through several initiatives:

- **Client Service Centre.** The Client Service Centre (CSC) is LAO’s telephone hotline that has significantly increased access to LAO client services, including summary legal advice and client applications. LAO is forecasting approximately 300,000 client calls in 2012/13.
- **LAO Courthouse Services Expansion.** LAO has improved access to legal aid services by establishing front line offices in 56 courthouses across Ontario.
- **Improved hourly rates for private lawyers.** The 2010 Memorandum of Understanding (MOU) between the provincial government, LAO and the Criminal Lawyers Association has significantly increased the hourly rate paid to private lawyers acting on legal aid certificates and as per diem duty counsel. By the end of the MOU, tariff hourly rates will have increased between 41% and 66% over pre-MOU rates.

- **Criminal Law.** In criminal law, LAO has streamlined lawyer payments through initiatives such as block fees; expanded criminal duty counsel services; introduced new panel quality standards; expanded case management of criminal cases; improved junior counsel services; and increased fees for experts.
- **Family Law.** LAO has improved services for family law clients, including expanding the range and number of access points and services; expanded access to mediation; established the Family Law Information Program (FLIP), an online family information resource available to all Ontario residents; and established several Family Law Service Centres (FLSCs). FLSCs are staff offices offering eligible clients a range of legal services and support for family matters.
- **Expanded translation and interpretation services.** LAO has introduced professional interpretation and translation services in over 200 languages for community legal clinics.
- **Aboriginal Justice Strategy.** In 2008, LAO established a dedicated strategy to improve legal aid services to Aboriginal peoples. Initiatives include Aboriginal cultural training for all LAO staff, new Aboriginal panel standards for private lawyers, and new billing authorizations to facilitate *Gladue* submissions.
- **Streamlined and improved administration.** LAO has introduced major reforms to its administration. Notable examples include introducing regionalization, simplified financial eligibility testing (SFET), the Lawyer Workforce Strategy, improved performance management, better financial tracking, and major technology improvements. SFET, for example, drastically reduces time and cost to complete legal aid applications while improving accuracy of eligibility testing at the same time. These initiatives and others have helped LAO reduce its administrative costs by more than 40% between 2009/10 and 2012/13.

LAO implemented these initiatives at the same time it was tackling both a major budget shortfall (a 90% decrease in revenues from the Law Foundation of Ontario) and a lengthy withdrawal of services by the criminal bar.

In addition to its Mental Health Strategy, LAO is currently working on several new initiatives designed to improve access to justice for low-income Ontarians:

- **Financial Eligibility.** Financial eligibility is the most significant access to justice issue for low-income Ontarians. Financial eligibility for legal aid has been frozen since 1995. LAO is developing a strategy to increase financial eligibility to legal aid for the first time in almost 20 years. LAO's research shows that there were approximately one million fewer Ontarians eligible for certificate services in 2011 than in 1996.
- **Family Law.** LAO is leveraging recent provincial investments to significantly expand access to Family Law Service Centres, mediation, and other family justice services. LAO's goal is to promote consensus-based family law resolutions, address the needs of unrepresented family litigants, build "holistic" responses to family law issues, and improve services to victims of domestic violence.

- Clinic modernization. LAO is working with community clinics in Ontario to expand and improve client services by building capacity, meet contemporary needs, improve clinic management, and promote quality and efficiency.
- Criminal law. LAO expects to release a consultation paper on criminal law services that seeks advice on LAO's vision for criminal law service delivery.
- Aboriginal Justice. LAO is developing proposals to expand access to *Gladue* report writing services for Aboriginal accused and other Aboriginal services.
- Victims of Domestic Violence. LAO is reviewing its protocols to identify victims of domestic violence and will develop appropriate client-centred services.
- Technology. LAO is developing an access-promoting technology strategy that will provide more on-line client services, expand client access through web and mobile technology, improve client case management, and improve referrals.

2. Why Is LAO Developing a Mental Health Strategy?

The Mental Health Strategy is driven by the needs of LAO clients, their legal advocates, and the supporters who assist both. There is a high prevalence of mental illness and social marginalization within the population who are currently eligible for legal aid services. Persons with mental illness are disproportionately criminalized, incarcerated, impoverished, and under-housed – all of which are advocacy issues falling within the legal aid mandate. LAO believes that appropriate, timely and individually tailored mental health services can be a core competency throughout LAO's legal and service mandate. This is true whether a client is facing an issue related to criminal law, refugee law, family law, or poverty law – or all these issues at once.

The Mental Health Strategy is also an opportunity for LAO to look at the “big picture.”

LAO, like the justice system generally, has traditionally looked at the legal needs of clients with mental health issues from a perspective that does not always match a contemporary understanding of needs or appropriate services. For example, a contemporary definition of “mental health and addictions” would acknowledge that there is no single homogeneous group of clients. Rather, that the legal aid system requires the competency to accommodate and advocate for a wide array of needs including addiction, severe and persistent mental illness, cognitive impairment, developmental delay, dual- and concurrent-diagnoses, aging-related illnesses, and trauma. Similarly, a contemporary perspective on service provision suggests that LAO requires the flexibility to serve many different mental health communities, including in-patients, drop-in and community centres, emergency shelters, and supported community residents.

These observations are not meant as criticisms of the many dedicated lawyers, clinics, and programs (at both the provincial and local levels) that strive to provide services in this manner. On the contrary, the Mental Health Strategy is an acknowledgement that the legal aid system needs *more* programs, providers, and policies to meet the needs of this particularly vulnerable clientele.

Within this context, LAO's overall objective for its Mental Health Strategy is to:

- Expand access to mental health legal aid services, including financial eligibility
- Develop structures, policies, and processes to better reflect a maturing understanding of mental health clients' needs within LAO and the justice system
- Provide better and more systemic supports to the lawyers, community clinics, community agencies and other service providers who provide mental health legal aid services, and,
- Promote ongoing discussion and evaluation of mental health legal aid services by LAO, clients, the bar, community clinics and other stakeholders.

This consultation paper seeks advice from clients, the private bar, the judiciary, community clinics, the broader legal community, community agencies, and governments as to how LAO can achieve these objectives.

LAO's Mental Health Strategy also facilitates LAO's participation in justice system reforms at the provincial and federal level. These efforts include the *Open Minds, Healthy Minds: Ontario's Comprehensive Mental Health and Addictions Strategy*;² the Ontario Human Rights Commission's *Minds that Matter: Report on the Consultation on Human Rights, Mental Health and Addictions*;³ the Legislature of Ontario's Select Committee on Mental Health and Addictions *Final Report: Navigating the Journey to Wellness*;⁴ jury recommendations to the *Inquest into the Death of GA*;⁵ the Mental Health Commission of Canada's *Changing Directions, Changing Lives*:

² Ministry of Health and Long-term Care, *Open Minds, Healthy Minds: Ontario's Comprehensive Mental Health and Addictions Strategy* (Toronto: June 2011). Online: http://www.health.gov.on.ca/en/common/ministry/publications/reports/mental_health2011/mentalhealth_rep2011.pdf.

³ Ontario Human Rights Commission, *Minds that Matter: Report on the Consultation on Human Rights, Mental Health and Addictions* (Toronto: September 2012). Online: <http://www.ohrc.on.ca/en/minds-matter-report-consultation-human-rights-mental-health-and-addictions>.

⁴ Legislative Assembly of Ontario, Select Committee on Mental Health and Addictions, *Final Report Navigating the Journey to Wellness: The Comprehensive Mental Health and Addictions Action Plan for Ontarians* (2nd Session, 39th Parliament 59 Elizabeth II). Online: http://www.ontla.on.ca/committee-proceedings/committee-reports/files_pdf/Select%20Report%20ENG.pdf.

⁵ Office of the Chief Coroner of Ontario, *Jury Verdict and Recommendations to the Inquest into the Death of GA* (Toronto, July 2011).

The Mental Health Strategy for Canada;⁶ the 2011 Auditor General's report on Legal Aid Ontario;⁷ the identification of key "service gaps" by the Toronto Justice Service Collaborative;⁸ the *Report of the 5th Annual Criminal Justice Symposium*;⁹ and the *Ontario Provincial Strategy to Coordinate Human Services and Criminal Justice Systems in Ontario*.¹⁰

The Strategy also follows through on the *Report of the Legal Aid Review 2008*.¹¹ That report recommends that LAO be more strategic, innovative and experimental in its approach to service delivery. The report emphasizes LAO's need to develop more integrated and holistic institutional responses, where individuals with interrelated problems have their advocacy needs assessed proactively and comprehensively, without resorting to endless referrals.

3. The Consultation Paper: Process and Outline

This consultation paper synthesizes several months of preliminary meetings with a wide array of stakeholders. Over 80 individuals and groups have been consulted, including consumer/survivors of mental health services, academics, lawyers, mental health advocacy organizations, health care providers, community service providers, peer networks, professional associations, judges, government agencies, and LAO staff.

Through consultation, research and experience, LAO has identified a provisional set of "first principles" and key issues that LAO believes are important to developing the Mental Health Strategy. In this paper, these principles and issues are set out for public comment. In so doing, the discussion paper takes a first step in what will be an ongoing effort to directly involve constituents and stakeholders in shaping the future of LAO's services and programs. Additionally, LAO has created two standing advisory groups to provide expert input on the

⁶ Mental Health Commission of Canada, *Changing Directions, Changing Lives: The Mental Health Strategy for Canada* (Calgary, 2012). Online: <http://strategy.mentalhealthcommission.ca/pdf/strategy-images-en.pdf>.

⁷ Office of the Auditor General of Ontario, *2011 Annual Report* at Chapter 3.09, "Legal Aid Ontario". Online: http://www.auditor.on.ca/en/reports_en/en11/309en11.pdf.

⁸ See the Toronto Service Justice Collaborative online: <http://servicecollaboratives.ca/servicecollaborative/toronto-justice/>

⁹ Report of the 5th Annual Criminal Justice Symposium (Montreal: January 18-19, 2013).

¹⁰ Ministries of the Attorney General, Community and Social Services, Health and Long-Term Care, Solicitor General and Correctional Services, "Provincial Strategy to Coordinate Human Services and Criminal Justice Systems in Ontario" (1997).

¹¹ Michael Trebilcock, *Report of the Legal Aid Review 2008, Submitted to the Minister of the Attorney General of Ontario* (Toronto: March 2008). Online: <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/trebilcock>

Strategy: the long-standing Mental Health Advisory Committee to the Board of Directors, and the newly established Community Advisory Committee. The input and comments of the later will be made available to the public through LAO's mental health strategy website at <http://www.legalaid.on.ca/en/policy/mentalhealth.asp>.

This document is designed to set the stage for a conversation about LAO's Mental Health Strategy. It includes the following major sections:

- An outline of client needs, based on LAO's research and preliminary consultations
- A profile of LAO's current services
- LAO's provisional priorities and assumptions for its Mental Health Strategy
- Key questions
- Next steps

LAO expects that the consultation process will take place between December 2013 and February 2014. LAO will adopt several approaches to ensure broad and thorough consultation, including:

- Written submissions. LAO will distribute this paper widely and invites organizations and individuals to provide written submissions.
- In-person group consultation sessions. LAO invites recommendations highlighting specific priority issues, and around which focus groups could be convened. Open consultations will also take place in select cities across Ontario with interested organizations and individuals, and particularly with in-patient consumer/survivors.
- One-on-one consultation sessions with targeted organizations.
- Online written submissions through the dedicated LAO Mental Health Strategy website at <http://www.legalaid.on.ca/en/policy/mentalhealth.asp> or through a public Twitter Q&A dialog at @LAO_RFritsch
- Live webcast consultation sessions with stakeholders across the province.

Questions and suggestions can be also addressed directly to the following:

Ryan Fritsch, *Policy Counsel*, Mental Health Strategy
fritschr@lao.on.ca

Nye Thomas, *Director General*, Policy and Strategic Research
thomasa@lao.on.ca

4. Client needs from a mental health perspective

The starting point for LAO's Mental Health Strategy is an analysis of client needs. This approach is essential if LAO is to fulfil its access to justice mandate. More specifically, the key starting point for LAO's needs assessment has been to look at the broad range of LAO services through a mental health lens. The benefit of this perspective is that it transcends LAO's traditional priorities and categories (criminal law, family law, clinic law, etc.) and provides fresh insight into client needs. From this perspective, it is clear that the breadth and depth of mental health legal needs spreads across the entire legal aid system.¹²

LAO's preliminary research and stakeholder consultations have demonstrated a strong correlation between mental illness and the demand for LAO services. LAO has learned that mental health needs are a significant part of every legal service within the LAO mandate: criminal law, clinic and poverty law (including housing rights and social entitlements); specialty clinics (including disability, race, Aboriginal, youth and elder law); family law; prison law; and refugee law.

Highlights of LAO's client needs analysis include the following.

- **There is a significant incidence of mental illness in the population who are eligible for legal aid services**

LAO has found that 73% of legal aid certificate clients receive income support through Ontario's two main income and employment support programs – the Ontario Disability Support Program (ODSP) and Ontario Works (OW) – or report no income whatsoever. Mental illness is the primary or secondary diagnosis of 60% of adult ODSP recipients and 75% of youth recipients,¹³ while some 25% of OW recipients are estimated to have mental illness.¹⁴

Extrapolating from these statistics, LAO can assume that a very high percentage of LAO certificate clients have some form of mental illness.

- **Persons with mental illness are disproportionately represented in criminal law**

The Office of the Correctional Investigator for Canada reports that 39% of the federal offender population is diagnosed with some kind of mental illness, and that mental health

¹² It is important to note at the outset that there is some difficulty in tracking the prevalence of mental health clients across the legal aid system. LAO does not have a tool for identifying mental illness, and/or differentiating clients with a formal diagnosis from persons with more moderate or intermittent mental illness. As a result, some of the data and analysis presented below is based on inferences and deductions, or research from other parts of the broader justice system.

¹³ Commission for the Review of Social Assistance in Ontario, *Brighter Prospects: Transforming Social Assistance in Ontario* (October 24, 2012) [Lankin Report], online: <http://socialassistancereview.ca/home>.

¹⁴ *Ibid.* at 43.

problems are up to three times more common among inmates in correctional institutions than among the general Canadian population.¹⁵

Persons with mental illness are three times more likely to face serious legal issues including criminalization and over-policing.¹⁶

Ontario's Ministry of Community Safety and Correctional Services (MCSCS) indicates that 15% of inmates required a clinical intervention for mental illness, and that there is a significantly higher prevalence of mental illness in the remand population where the number of mental health alerts has increased by 44.1% in the last decade.¹⁷

In interviews with LAO staff, criminal duty counsel have estimated that some 30-40% of the criminally accused persons accessing their services have mental illness.

Extrapolating to the broader criminal legal aid system, mental health may be a factor in up to 26,000 criminal certificates per year and in up to 400,000 duty counsel assists.¹⁸

- **Persons with mental illness are disproportionately represented in clinic law**

Clinic law caseloads are heavily weighted to ODSP and OW representation. As noted above, mental illness is the primary or secondary diagnosis of 60% of adult ODSP recipients and 75% of youth recipients,¹⁹ while some 25% of OW recipients are estimated to have mental illness.²⁰ As a result, LAO can assume that a very high proportion of clinic law clients have some form of mental illness.

In interviews with LAO staff, clinic lawyers have estimated that 50%+ of clients assisted with a housing matter have some kind of mental illness.

¹⁵ See "Speaking Notes for Mr. Howard Sapers, Correctional Investigator of Canada" before the Parliament of Canada, Standing Committee on Public Safety and National Security (June 2, 2009).

¹⁶ Jeffrey S. Hoch, Kathleen Hartford, et. al., "Mental Illness and Police Interactions in a Mid-Sized Canadian city: What the Data Do and Do Not Say" (2009) 28 Canadian Journal Community Mental Health at 50.

¹⁷ Centre for Addiction and Mental Health, "Mental Health and Criminal justice Policy Framework" (October 2013) at 8, online: http://www.camh.ca/en/hospital/about_camh/influencing_public_policy/Documents/MH_Criminal_Justice_Policy_Framework.pdf

¹⁸ LAO issues approximately 65,000 criminal certificates each year, and 110,000 certificates in total. Criminal duty counsel provide a total of approximately 800,000 assists each year. See Legal Aid Ontario 2010/2011 Annual Report, online: <http://www.legalaid.on.ca/en/publications/reports.asp>

¹⁹ Lankin Report at 43.

²⁰ *Ibid.*

- **The distress caused by frequent justice issues exacerbates moderate and severe mental illness**

Empirical legal needs research suggests that 38% of people with legal problems believed that their legal problems had caused adverse effects in other areas of their lives, including mental health (36.6%) and alcohol or drug use (6.4%).²¹

- **Clients who experience legal issues have a high risk of experiencing stress-related mental illness, loss of income and/or housing**

The 2009 Ontario Civil Legal Needs Project survey found that 71% of respondents who had experienced "legal issues" had also experienced one of a series of related consequences, including stress-related or mental illness (46%), loss of employment or income (31%), a permanent disability (14%) or a move to a shelter (3%).²²

- **A minority of clients with mental illness require intensive and intersecting legal support services**

Since 2006, LAO has found that just 10% of all clients who have had at least one certificate issued for a hearing before either of the two main mental health tribunals – the Consent and Capacity Board and/or Ontario Review Board – account for 37% of all certificates issued to that client group. These higher-needs clients receive 50% of the criminal certificates, 30% of the family law certificates, 30% of the certificates for matters under the *Child and Family Services Act*, and 50% of the refugee certificates issued to that client group.

- **There is a high incidence of mental health and addictions needs in youth courts**

While the rate of mental illness amongst youth in general is estimated to be between 15-25%,²³ the rate of mental illness amongst justice involved youth is between 50-100%.²⁴

²¹ Department of Justice, "The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians" (Ottawa, 2006).

²² Ontario Civil Legal Needs Project, "Listening to Ontarians: Report of the Ontario Civil Legal Needs Project" (Toronto, May 2010).

²³ Costello, E., Angold, A., et. al., "The Great Smoky Mountain Study of Youth: Goals, design, methods, and the prevalence of DSM-III-R disorders. 53 Archives of General Psychiatry 1129 (1996); Gisso, T. "Adolescent offenders with mental disorders" 18 The Future of Children 143 (2008); Wasserman G., et. al., "Psychiatric disorder, comorbidity, and suicidal behavior in juvenile justice youth" 37 Criminal Justice and Behavior 1361 (2010).

²⁴ Wasserman, *ibid.*; Vermeiren, R., "Psychopathology and delinquency in adolescents: a descriptive and developmental perspective" 23 Clinical Psychology Review 277 (2003).

Toronto's first mental health youth criminal court diverts justice involved youth with mental health needs out of the criminal justice system and into community treatment programs. A preliminary study of this court has found 79% of youth appearing at the court had clinically indicated experiences of trauma in their life, while 31% reported alcohol or drug use. 71% of participants in the youth mental health court had a history of a previous mental health diagnosis.²⁵

The breadth of these needs underscore how mental illness must be a lens through which LAO critically views all of its services and mandate. Current services to clients with mental illness show considerable promise. However, clients still face barriers to accessing services, and fall through the significant gaps which remain. LAO must be strategic in developing its current mental health mandate while prioritizing the most immediate needs and opportunities.

5. Profile and discussion of current legal aid services

"Mental health law" is one of four mandatory legal aid service areas. The *Legal Aid Services Act, 1998* (LASA), provides that "the Corporation shall provide legal aid services in the areas of criminal law, family law, clinic law and mental health law."²⁶ This section summarizes the current legal aid services in this area and discusses relevant issues.

5.1 CCB and ORB Services

LAO – as opposed to community clinics – has traditionally delivered its dedicated mental health services through two programs:

- To clients in the civil mental health system, exercising rights under Ontario's *Mental Health Act* and *Health Care Consent Act* for a review before the Consent and Capacity Board (CCB), and
- To clients in the criminal (forensic) mental health system, including "mentally disordered accused" under the jurisdiction of the Criminal Code of Canada and in reviews before the Ontario Review Board (ORB).

In addition to these services, LAO also has other services related to mental health, including:

- Relaxed qualification for certificates provided to clients having a CCB or ORB hearing.

²⁵ Krista Davis, "A Process Evaluation of Toronto's First Mental Health Court for Youth: Proposal & Preliminary Findings" Presentation to the Provincial Human Services and Justice Coordinating Committee (Toronto: May 13, 2013).

²⁶ *Legal Aid Services Act, 1998* at s. 13(1).

- Specialized Duty Counsel - LAO trains duty counsel who specialize in mental health cases, attending criminal courts around the Greater Toronto Area (GTA).
- Enhanced tariff payments for vulnerable clients- criminal certificates may qualify for an enhanced block fee tariff when the client has a history of mental illness.
- Appointment of counsel - LAO arranges for the appointment of counsel pursuant to orders made under LASA s. 85(2); *Health Care Consent Act* s. 81 (for unrepresented clients appearing before the CCB);and *Criminal Code* s. 672.24 (for unrepresented clients found unfit to stand trial).
- Mental Health Advisory Committee to the Board of Directors – Meets twice yearly to gain feedback from external stakeholders
- Group Applications and Test Case Committee – provides funding to important test cases. Over the last two years approximately 20% of GATCC cases were related to mental health issues.
- Panel Standards – LAO maintains a Panel Standard governing lawyers who represent clients before the Consent and Capacity Board.

The following tables summarize the demand and cost of some of these services:

<u>Civil mental health legal aid services</u>	
Service	Demand/Cost
CCB Applications Filed, all sources (2010-11)	5,216
LAO CCB Certificates Issued (2012-13)	3,423
CCB Hearings Conducted (2010-11)	2,566
Average Completed Cost of LAO Certificate (2012-13)	\$1,168
LAO Total Expenditure on CCB Issues (2012-13)	\$3.69M

<u>Criminal mental health legal aid services</u>	
Service	Demand/Cost
Accused under ORB Jurisdiction (verdict of NCR or Unfit) ²⁷ (2010-11)	1,622
New Accused under ORB Jurisdiction each year (2010-11)	248
Yearly ORB Disposition Reviews (2010-11)	1,972
LAO Certificates Issued for ORB hearings (2012-13)	1,381

²⁷ Under the *Criminal Code* Part XX.1, a verdict of “not criminally responsible” or “unfit to stand trial” are two outcomes under the “mental disorder” provisions which may lead to hospitalization.

Average Completed Cost of LAO Certificate for ORB (2012-13)	\$1,356
LAO Total Expenditure on ORB Certificates (2012-13)	\$1.76M

Other mental health legal aid services – 2010-2011	
Service	Demand/Cost
Number of s. 85 Appointments	≈ 250
Number of Mental Health Block Fees	873 (2012-13)

In addition to CCB and ORB services, many services to persons with mental illnesses are provided under LAO's "regular" certificate and duty counsel programs and through community clinics.

Private bar lawyers are responsible for the delivery of almost all CCB and ORB services across Ontario. Appeals from the ORB to the Ontario Court of Appeal are supported through a panel of senior lawyers acting as *amicus curiae*. Appeals from the CCB to the Superior Court are generally unfunded by LAO. LAO is responsible for arranging legal counsel when so ordered by the courts, generally for unrepresented or self-represented clients, many of whom have mental illness. Other litigation, including test cases and coroner's inquests, are occasionally funded through LAO's test case fund which generally covers partial costs. Approximately 350 lawyers are qualified to accept LAO mental health certificates across Ontario. Only about 100 lawyers are actively practicing, conducting at least five CCB or ORB hearings in a year.

Many lawyers in the mental health bar take considerable pride in the time and support they dedicate to clients, recognizing this as an important form of accommodation. Lawyers frequently cite the need to take calls at all hours of the night, travel great distances to meet with in-patient clients, help clients to make meetings and court appearances, and coordinate services with social workers and medical professionals on behalf of their client. Such dedication nurtures a trusting relationship with clients, often a pre-condition to improved communication and uncovering other rights and legal issues the client may be facing. It is a specialized form of practice that distinguishes the mental health bar from other practice areas.

LAO has also been told that under the current ORB and CCB certificate system, lawyers may do a considerable amount of work without compensation, or be unable to assist clients with related legal issues that frequently arise. These often include issues related to privacy rights, human rights discrimination and accommodation, medical treatment rights, provincial offences, and other "secondary consequences" of legal entanglement, such as drivers license suspensions and police records.

LAO has also been told that dedication to, and expertise in, a "mental health practice" is often to the exclusion of maintaining a more diverse practice, particularly for sole practitioners who represent the majority of the bar. Practitioners outside the Greater Toronto Area face additional geographic barriers. Hearings are convened at psychiatric facilities which may be

hundreds of kilometers apart. Many suburban and rural areas in Ontario find it difficult to maintain an adequate roster of lawyers to ensure coverage and client choice.

All of these challenges are compounded by limited articling or mentoring opportunities for students and recently called lawyers, and impacted by rising disbursement costs, particularly for the production of medical records and translation services.

5.2 Community clinic services

Community clinics frequently support the legal needs of clients with mental illness, including income maintenance, landlord/tenant disputes, workplace accommodation and discrimination, and provincial offences charges. Specialized clinics focus on test cases, law reform and public legal education – all of which address the systemic needs of clients with mental illness. Specialized clinics are dedicated to fields such as disability, HIV/AIDS, and elder law, while others ensure culturally competent services dedicated to South East Asian, African Canadian, and Aboriginal clients, among others.

Last year, LAO provided funding to 60 independent community legal clinics and 17 specialized legal aid clinics. In 2011/12, the community clinic program supported over 213,000 active files and the specialized clinics a further 37,000 files.

Clinics may individually or collectively offer services tailored to the needs of clients with mental illness. However, as each clinic is independent, there is a wide variety in approaches. Some leading clinics have taken on one or several of the following initiatives:

- an array of outreach programs that co-locate legal advocates in community centres, hospitals, shelters, crisis centres, youth facilities, and in other satellite offices, often holding “office hours” on a weekly or *ad hoc* basis
- the use of inter-professional teams, typically integrating social workers who work alongside legal advocates to develop community services, provide case coordination, and engage in outreach
- co-locating the legal aid clinic with other health and social services in “interdisciplinary hubs,” creating a “one stop shop” for clients to access a wide variety of medical, social, government and legal services
- working within communities in harm-reduction programs, restorative justice programs, and proactively engaging high-risk groups through informal advocacy services and the provision of legal and rights information
- creating an important link between law schools and local communities, ensuring student assistance to low-income Ontarians is part of the law school curriculum
- developing “communities of practice” that circulate knowledge, expertise and training resources between community legal aid clinics

- working with client communities and groups to identify, develop and litigate systemic test cases.

Clinic stakeholders have told LAO that clinics could use assistance in better supporting clients with mental illnesses. LAO has also been advised that clinics could use assistance following developments in the health care and justice sector. For example, there are sometimes jurisdictional mismatches between the array of mental health services one clinic offers while another clinic is in the catchment area of a local crisis diversion centre, mental health court, or community centre. Clinic stakeholders have also told LAO that, while local initiatives exist and are important, the legal aid system as a whole could do a better job organizing and integrating community-based services, including a frictionless continuum of services at and between court houses, clinics, community centres, the private bar and LAO staff lawyers.

5.3 Criminal legal aid services

As noted above, there is a very high incidence of persons with mental illness in the criminal justice system. The majority of criminal legal aid cases are handled through two streams. In 2012/13, LAO issued approximately 60,000 criminal certificates. Duty counsel assist with more routine matters such as initial appearance, adjournments and summary advice, providing some 800,000 criminal client assists in 2012/13. LAO also funds the Brydges Hotline to provide immediate legal assistance to recently arrested clients, serving many thousands of clients each year.

LAO provides a number of specialized services that match the evolution of the criminal justice system. LAO Specialized Duty Counsel serve as experts in mental health cases, attending criminal courts around the Greater Toronto Area (GTA). Enhanced block fee tariff payments are also provided to private bar lawyers when a client has a history of mental illness. Counsel may also apply for discretionary payments to cover additional preparation time or recurring hearings. LAO also arranges for the appointment of counsel for unrepresented and self-represented clients with mental illness.

As with the bar providing ORB and CCB services, there are a great number of dedicated private lawyers providing certificate and duty counsel services to persons with mental illness. This bar – like the CCB and ORB bar – includes many lawyers whose dedication and service to this clientele is exemplary. Not surprisingly, private lawyers have raised many of the same issues regarding criminal certificate services as ORB and CCB services.

Specialized mental health services have become a common feature of the criminal justice system in the 15 years since such courts were first established in Toronto. While many criminal courts now offer some kind of dedicated “mental health courts,” there remains significant regional and local variability. These issues require greater coordination between government, the judiciary, and legal advocates.

In particular, recent reviews confirm that the lack of consistent mental health screening in courts is a barrier to accessing appropriate assistance from court support workers and referrals

to mental health services.²⁸ Similarly, dedicated programs tend to result from individual initiatives at the local level rather than having provincial consistency, including pre- and post-charge diversion with police, short-term crisis housing, or liaison relationships with local mental health service providers and community centres. This is despite positive evidence that such programs increase access to mental health services, improve health outcomes, reduce recidivism and hospitalization, reduce the likelihood of homelessness, and contribute to a more effective and efficient court process.²⁹

Legal counsel also cite how routine matters related to breaches and failures to appear occur because of a lack of supportive procedural accommodation within and outside the courthouse. For clients living precarious lives, a lack of supports make it challenging to deal with a paper-heavy legal process, attend hearing dates without the provision of transportation passes or peer accompaniment, or to juggle appointments with multiple service providers at multiple sites across a city or region.

This variability is similarly reflected in the practice of duty counsel. A recent LAO staff survey found significant differences in the use of client screening tools, advocacy for clients in pre-charge diversion planning and community treatment agreements, and issues related to fitness hearings. LAO's survey also found great interest in more training in mental health issues and in assisting clients to connect with community and health resources.

5.4 Refugee legal aid services

In 2012/13, LAO issued approximately 8,500 certificates for immigration and refugee legal services while also staffing a Refugee Law Office providing representation and summary legal advice.

Advocates suggest that there is a high prevalence of mental illness in the refugee population, particularly related to post-traumatic stress disorder and underlying trauma. This is supported by studies showing high levels of psychiatric symptoms among detained refugee claimants, even after short periods, with rates of depression three times higher than non-detained refugees.³⁰ Refugees are generally observed to have lower levels of health than economic immigrants,³¹ and experience significant declines in health status within as little as two years of arrival in Canada.

²⁸ Center for Addiction and Mental Health, "Mental Health and Criminal Justice Policy Framework" (October 2013) at 5, online: http://www.camh.ca/en/hospital/about_camh/influencing_public_policy/Documents/MH_Criminal_Justice_Policy_Framework.pdf

²⁹ *Ibid.* at 5-6.

³⁰ Janet Cleveland, "Mental health impact of detention and temporary status for refugee claimants under Bill C-31" 184 *Canadian Medical Association Journal* 15 (2012).

These concerns are exacerbated by factors such as the 5-year postponement of permanent residence, which triggers negative health consequences related to family separation and prolonged uncertainty. Age, gender, family clustering, pre-migration trauma and length of detention each independently contribute to the risk of ongoing PTSD, depression, and mental health-related disability. Longer detention is associated with more severe mental disturbance, an effect persisting for an average of three years after release.³²

Recent legislative amendments have further narrowed the scope of asylums claims related to mental illness.

5.5 Family and CFSA legal aid services

LAO delivers family law services in a variety of different ways across the province. In 2012/13, LAO issued approximately 19,000 certificates in family law. Duty counsel services are also available across the province, providing some 190,000 assists each year. Expanded Duty Counsel offices operate in Hamilton, London and Oshawa. Duty counsel generally assist unrepresented persons at court by negotiating interim or final settlements with the other party, attend at court with clients to speak to adjournments, obtain consent orders, argue simple motions, and assist in summary and uncontested hearings regarding custody, access and support where the issues are not complex.

LAO provides shelters, legal clinics and other community organizations with certificates to give to women leaving violent relationships. These certificates provide two hours of legal advice from a lawyer on the family law panel or a lawyer who has attended a training session offered through LAO's domestic violence program. Victims of domestic violence suffer high rates of trauma, which may underlie or trigger mental illness. A 2002 study of women involved with the mental health system found that 80% of participants spoke of either childhood abuse and/or violence in their current relationships.³³

Family law reform initiatives have been proposed which could impact clients with mental illness. Recent cases emphasize the potential for discrimination against persons with disabilities in family law and child protection proceedings. Procedural rights are also an area requiring attention given the number of self-represented and unrepresented litigants with disabilities, and the fact that stressful litigation can itself trigger illness and disability.

³¹ K.B. Newbold, "The short-term health of Canada's new immigrant arrivals: evidence from LSIC" 14 *Ethnicity and Health* 1 (2009).

³² Zachary Steel, Derrick Silove, et. al., "Impact of immigration detention and temporary protection on the mental health of refugees" 188 *British Journal of Psychiatry* 58 (2006).

³³ The Women's Mental Health and Addictions Action Research Coalition, "Implementing a Woman Abuse Screening Protocol: Facilitating Connections between Mental Health, Addictions and Woman Abuse" (2007) at 5.

Advocates also cite a great disparity in the availability of medical assessments when mental capacity is questioned during family and child protection proceedings. And counsel cite a desire for greater training on identifying, accommodating and advocating for clients with mental illness, as well as guidance around supportive (rather than substitutive) decision making and the ethical implications of working with professionals like social workers and doctors.

Some of these issues are discussed in LAO's forthcoming Family Law Discussion Paper. For example, recent proposals focus on developing multi-functional and multidisciplinary service models, and identify the potential for collaboration among a variety of service providers to deliver integrated and cost-effective services.

5.6 Aboriginal justice services

Aboriginal people have a long and difficult history of involvement with Canadian law and legal systems, most notably in the areas of child protection, criminal law, and youth justice. In 2012/13, LAO issued a total of 12,071 certificates to people who identified as Aboriginal.³⁴ This represents 12% of all certificates issued in this time period. Across Canada, Aboriginal offenders represent 17% of the total federal offender population while Aboriginal adults represent 4% of the Canadian adult population.³⁵ Of LAO's criminal certificates issued to youth, 11% are Aboriginal clients. And while Aboriginal children account for only 2.8% of Ontario's child population, 9% of any certificates issued in relation to a matter under the *Child and Family Services Act* are to Aboriginal clients. There are now three times more Aboriginal children in child welfare care than were in residential schools programs at their peak in the mid-20th century.³⁶

LAO provides funding for Nishnawbe-Aski Legal Services Corporation (NALSC) to provide its certificate and duty counsel services to NAN clients in northern Ontario. Funding is also provided to Aboriginal Legal Services of Toronto, a specialty clinic providing a wide range of services including a court worker program, *Gladue* court caseworkers, test case and inquest litigation, and healing circles. LAO also provides funding to:

- The Ontario Federation of Indian Friendship Centres' Community Justice Program. The community justice program administers culturally based pre- and post-charge diversion programs for Aboriginal youth, adults, and families who are in conflict with the law
- The Sarnia and Hamilton Community Legal Clinic's for an Aboriginal outreach worker to provide enhanced services to the Aboriginal community

³⁴ Self identification likely results in under-reporting of Aboriginal status.

³⁵ Mental Health Commission of Canada, "The Facts About Mental Illness" (n.d.), online: <http://strategy.mentalhealthcommission.ca/the-facts/>.

³⁶ National Collaborating Centre for Aboriginal Health, "Aboriginal and Non-Aboriginal Children in Child Protection Services" (2010) at 2, online: http://www.nccah-ccnsa.ca/docs/fact%20sheets/child%20and%20youth/NCCAH_fs_childhealth_EN.pdf

LAO significantly enhanced its competence to serve Aboriginal clients through the development of a 5-year Aboriginal Justice Strategy. The AJS is currently being revitalized and renewed for an additional 5 years, with significant new investments to follow.

6. What LAO has heard so far

LAO's consultations to date have identified a series of "first principles" on how best to facilitate access to justice for persons with mental illness. These principles create a critical lens for looking at all LAO services and mandate, identifying both immediate improvements and longer-term transformation.

- **Stakeholders Recommend Improving Access for Clients with Mental Illness**

Some of the ideas recommended to LAO include:

- Providing legal services at earlier points along the client's service pathway, such as at psychiatric facilities, crisis centres and drop-in centres, and detention facilities
- Ensuring continuity of legal counsel across multiple or successive legal issues, establishing a single contact point for all services, full representation, and helping to develop and maintain a relationship of trust
- Face-to-face communication between clients and legal advocates
- Partnership in initiatives and services developed and controlled by consumer/survivors, peer supporters, and trusted intermediaries
- Relaxing or removing financial eligibility criteria for clients with mental illness to ensure a responsive process
- Ensuring that legal advocates can rely on flexible discretion or enhanced fees to give clients appropriate time and to address a broad array of legal advocacy needs, such as informal, social or administrative advocacy
- Improving all access points by developing consistent links between court, community, legal clinic, and health services to ensure cohesive and intersecting needs are met
- Culturally competent and inclusive services

- **Stakeholders Recommend Developing Holistic Services**

Some of the ideas recommended to LAO include:

- Up-front assessment of holistic clients needs to help identify client issues that are often several and interdependent, and connected to **social and health care services**
- Provision of legal advocacy through a recovery model
- Early and proactive assistance to holistically identify legal issues, and the availability of flexible and full representation to address such issues
- Legal assistance with issues related to "loss of livelihood" and "secondary consequences" which result from legal entanglements, like police criminal records and provincial offences

- Inter-professional and inter-disciplinary team models with, e.g., paralegals and social workers, who support the legal advocate and help connect clients to community, social and health resources
- Guided transition between various LAO services and practice areas (esp. consistency in policies, practices) and the availability of case coordination
- Involvement of peer supporters

Is access to justice a social determinant of health?

The “social determinants of health” refer to living conditions that impact long-term health and wellness outcomes. Factors include addiction, age, gender, sexual identity, disability, income, race, Aboriginal status, nutrition, education, environment and access to health services. By providing legal advocacy for issues such as housing and discrimination, access to legal services is an important social determinant of health.

- **Stakeholders Recommend More and Better Training for Service Providers**

Some of the ideas recommended to LAO include:

- Establishing mental health awareness as a core competency of all legal advocates and support services engaged in legal aid, as well as LAO management and front-line staff
- Ensuring that legal advocates are not clinical diagnosticians, but are given tools to have a “working knowledge” of mental illness, such as identifying and accommodating clients with mental illness
- Enhancing awareness of functional impairments that may impact a case or drive advocacy needs
- Developing a **trauma-informed** and recovery-focused advocacy culture that emphasizes supportive rather than substitute decision making
- Developing anti-stigma self-assessment tools for service providers, and making this a part of performance planning and service standards
- Awareness of the halo of rights that frequently arise for clients with mental illness, such as health care consent law, privacy law, and human rights accommodation and discrimination
- Providing guidance on challenging professional ethical issues relating to assessing competency, working with other service providers, and family members
- Improving advocacy through awareness of the client’s path through the civil and criminal mental health system, and the kinds of community, health and social programs available
- Engaging law students in the practice and knowledge of mental health law, and better use of law students as a legal resource

What is trauma-informed practice?

Trauma-informed practice raises awareness of the connection between a history of trauma, mental health, and substance use. Trauma may include abuse or neglect, witnessing violence, suffering accidents, or experiencing natural disaster or war. A trauma-informed approach to legal practice can help advocates to identify trauma symptoms or adaptations in clients, build

trust with clients, increase sensitivity and awareness in hearing and re-telling the client's story, and identify underlying needs which may impact the legal issues the client is facing.

- **Stakeholders Recommend Increasing LAO's Capacity to Serve Clients with Mental Illness**

Some of the ideas recommended to LAO include:

- Developing holistic needs assessment tools to identify high-needs clients, standardize definitions and eligibility criteria based on need, and to track clients across services
- Gather more and better data to improve analysis and planning
- Focusing more resources at the outset rather than as a last resort
- Ensuring the strength and sustainability of the private bar outside major urban centres
- Developing mental health specialists in each legal practice area with the mandate and flexibility to serve clients comprehensively
- Using inter-professional and inter-disciplinary team models, such as paralegals and social workers, to allow the legal advocate to focus on the legal issues while also supporting the client in a wide array of related issues
- Updating billing, tariffs, discretion, and disbursements for private bar lawyers to better match the service needs of clients with mental illness
- Create a framework in which clinics and consumer/survivor groups can propose and implement locally integrated mental health services, using a "design lab" approach and with resources going to the best ideas and programs. These could act as pilot projects or models for the best practices to be standardized and implemented across the province
- Developing better employee mental health supports and programs, and creating opportunities for peer support among lawyers and legal support staff

- **Stakeholders Believe Self-Advocacy Is An Important Part Of Mental Health Empowerment And Recovery**

Some of the principles that should inform client services include that:

- Clients like to tell their story in their own words
- Clients benefit from early intervention and information
- Clients benefit from less formal legal advocacy arrangements
- Clients who wish to self-represent should have access to supportive models like *amicus curiae*, paralegals or peers

7. Provisional Priorities and Assumptions

As noted above, this consultation paper is designed to both provide greater clarity about LAO's early thinking about its Mental Health Strategy and to encourage participation in the development of the strategy. As a result, the paper presents LAO's provisional assumptions or thinking about several important issues. These assumptions should not be taken as definitive statements of LAO policy or long-term plans. Rather, these assumptions reflect LAO's current thinking about an issue based on our experience, stakeholder comments, and external research. Commentators are free to agree or disagree with any of these assumptions as they see fit.

- **LAO Supports a Rights-based Approach to Mental Health Advocacy**

Rights-based advocacy is vital to “levelling the playing field” and empowering clients with mental illness. Legal advocates have a key role in ensuring client instructions are paramount, and in facilitating a model of decision making that is supportive rather than substitutive (or in the “best interests” of the client). Advocacy may also enhance a mental health recovery model in which services are driven by client self-determination, holistic assessment of needs, access to health and social supports, and active client involvement in their legal matters.

- **The Most Important Service is a Really Good Lawyer**

Clients, clinics, and counsel alike consistently remark that the most important legal aid service is access to a good lawyer. “Lawyering” includes a wide range of activities, including traditional court and tribunal work, summary and self-advocacy advice, and proactive advocacy to identify legal needs and intervene early and decisively. Lawyers also play an important oversight role, ensuring a wide array of client rights are respected in the provision of (and access to) housing and community-based health and social supports. Client choice is enhanced where legal services are offered alongside those of social workers and other supporters.

- **More advocacy options can reduce the need for complex litigation**

Just as operating rooms are the most expensive way to provide health care, litigation is the most expensive way to address legal needs. It is also often reactive rather than proactive. At the same time, clients often have difficulty identifying legal and rights issues in their lives and accessing assistance. This is particularly true for areas outside of traditional legal aid certificate or duty counsel coverage (like provincial offence charges, human rights, privacy and health care law) and for “secondary consequences” of legal entanglements (like police records, driver's license suspensions, and access to services). LAO believes that demand for the “operating room” can be reduced through more flexible legal advocacy options that can holistically assess the legal needs of clients. Such services could be delivered on-site in hospitals, jails and drop-in centres, as well as community centres and shelter.

- **LAO Support to Private Bar, Clinics, Duty Counsel, Staff Lawyers and Community Partners Can Be Improved**

LAO's service providers – including duty counsel, private bar lawyers, legal aid clinics, staff lawyers, and legal support workers – are already doing good work serving clients with mental illness. There must be a continuing and primary role for the private bar and clinics in the provision of services to mental health clients. Indeed, LAO believes these efforts can be significantly enhanced through consistent policies and resourcing that encourage best practices to flourish throughout the province, and in concert with partners in the justice, health and social support systems. This is particularly true in rural and remote areas of the province which require services that are tailored and coordinated to meet local needs more effectively.

- **LAO Should Play a Greater Systemic Role**

Promoting client rights and a rights-based approach are important contributions to addressing systemic disadvantage. It is also important in light of increasing efforts to connect services across the silos of health, social, and legal services. LAO should, among other efforts, actively participate in provincial and local justice reform initiatives and increase opportunities for, and enhance coordination of, test cases.

- **Access and Financial eligibility needs to be expanded**

Clients with a proceeding before the CCB or ORB are generally pre-approved for LAO certificate services. However, access to other LAO services is not guaranteed. This creates a barrier to providing holistic services by the private bar. It also makes it much harder to achieve frictionless case coordination across multiple issues. Many clients will be turned away by procedures and policies that haven't been examined through a mental health and addictions lens. And such inflexibility inhibits innovation elsewhere, like providing site-based and mobile services. Expanded access and financial eligibility protocols can address these current service limitations, while also looking for ways to automatically qualify clients with less severe mental illness but who are at risk due to social determinants of health or addictions.

- **Mental Health Should be Inclusively Defined**

There is no homogeneous group of clients with "mental illness." The term "mental health" refers to a wide variety of mental illnesses, addictions, intellectual disabilities, trauma, concurrent and dual- diagnoses and disorders, and aging-related illnesses. LAO must have the flexibility and competency to appropriately support all clients with the right service at the right time. Simultaneously, various groups recommended that legal advocates not take on the role of medical diagnostician. This points to the need for a service assessment screening tool that would look at the broader needs of the client, such as the social determinants of health, in addition to the existence of mental health needs.

- **Legal Needs Should be Understood Holistically**

Clients with mental illness frequently have several concurrent and intersecting legal needs. While LAO's broad mandate supports many of these issues, services are often spread across multiple legal advocates and sites with little coordination. Opportunities must be developed to assess the full-range of client needs, and to work with clients to ensure smooth transitions between various legal services.

- **Access to Justice Is a Social Determinant of Health**

The social determinants of health refer to living conditions that impact long-term health outcomes. Factors include addiction, age, gender, sexual identity, disability, income, race, Aboriginal status, nutrition, education, environment and access to health services. By providing legal advocacy for issues such as housing and access to social entitlements, access to legal services is itself an important social determinant of health.

- **Quality Assurance, Accountability, Measurement and Reporting Must be Improved**

LAO has a variety of quality assurance mechanisms governing legal aid clinics, private bar lawyers, duty counsel, and other service providers. Most of these do not include a core competency standard for serving clients with mental illness. Nor is there currently a consistent definition of "mental health and addictions" across LAO services, policies, and standards. Such standards should be developed, trained, implemented and monitored. These standards would set baseline expectations related to a wide variety of accommodation, anti-discrimination, and professionalism issues. The standards would also facilitate the collection of meaningful data on the legal needs of clients with mental illness, creating a positive feedback loop for continual service and program improvement.

- **Better Data and Research Are Needed**

LAO currently has no standard definitions related to "mental health" or "mental illness." There is thus no way to follow the client path across multiple legal services and issues, track outcomes, or develop performance indicators. A better understanding of client need would ensure mental health is a priority issue in all future planning. It would also help show how access to justice and advocacy services improve client outcomes, not just in terms of their legal issue, but with respect to health and social outcomes.

8. Discussion Questions

1. Where are mental health legal aid services most effectively delivered?

LAO is taking the view that earlier intervention and access to services along the client pathway facilitates advocacy while avoiding the expensive "operating room" of litigation. Is this assumption correct? Where should such advocacy services be provided? What advocacy services do clients need that they aren't currently getting? How can links be established between siloed services, such as the court house, legal aid clinic, and community centre?

2. How should LAO define "mental health"?

Feedback indicates that LAO must take a broad and inclusive definition of mental health and mental illness in order to accommodate the most vulnerable clients. Further recommendations suggest relaxing or removing eligibility criteria for clients with mental illness. What is essential for LAO to focus on to ensure accessibility while using limited resources responsibly?

3. How should LAO promote accessibility?

Stakeholders identified numerous options for promoting accessibility. Recommendations include removing or relaxing financial eligibility, developing intake or screening tools, prioritizing face-to-face services, and providing more community-based services. What is most important for improving access? Is it more important to enhance existing services or expand the number and kind of access points?

4. What should LAO do to promote holistic services?

There are many options for better coordinating legal, community, social and health care services. How can LAO support interdisciplinary teams? Is there a role for case coordination across multiple LAO service streams? What kinds of systems would help support clients across multiple criminal and civil legal needs over the course of a year or longer? If LAO were to develop an "innovation framework" or "design lab" in which clinics and consumer/survivor service providers could propose new initiatives, what kinds of criteria should be applied or services prioritized? Given that LAO is a legal rather than social service provider, what kinds of community, health and social support partnerships would help supplement legal services? Should LAO consider developing a "case management" system that would help track clients across multiple services?

5. How should training and quality assurance be implemented?

Recommendations have suggested that mental health should be a core competency across LAO's service and practice mandate. Is it important that training be available to (or mandatory for?) all LAO service providers, both internal staff and external providers? What

kinds of topics are most important for training to cover? How important is ongoing and “refresh” training? Should LAO incorporate mental health service standards to cover internal staff and external service providers?

6. Should all high-needs mental health clients be streamed to “assured” providers?

A series of proposals and principles address the fact that clients with mental illness require specialized services and training to properly and competently support. Other proposals indicate that improving access means making every access point the right access point. Is it important that all legal service providers have training in mental health? Should more emphasis be placed on developing mental health specialists within respective service streams, such as the call centre, duty counsel services, and the private bar?

7. What are the mental health needs in civil law, such as family law and housing?

Research indicates that the very act of becoming involved in the justice system can exacerbate or trigger mental health needs. This may be particularly in stressful situations like family break-ups, or eviction from housing. What kinds of services can LAO offer to assist clients? Is it important that ancillary services like social workers be available to supplement legal assistance with accessing community supports and services? Should legal advocates be encouraged to provide more proactive and meditative services, such as consensual dispute resolution, in serving vulnerable clients such as victims of domestic violence, the mentally ill or Aboriginal people? If so, should LAO provide these services?

8. How can LAO’s support for external service providers better serve the needs of clients with mental illness?

Many of the “first principles” touch on the need to update and align systemic policies and incentives to practical need. In particular, recommendations suggested better supporting legal clinic efforts to build linkages between services, and to develop self-supporting communities of practice dedicated to mental health issues. Updating private bar billing, tariffs, discretion, and disbursement arrangements was also recommended to better match the service needs of clients with mental illness. These needs include continuity of counsel over many and successive legal issues, and the ability to provide advocacy in less formal and proactive ways. What are the most immediate and important improvements that should be made? Is there any benefit to establishing per-client, long-term retainers so a legal advocate could holistically assist with a wide array of issues over time? Should lawyers be given the opportunity to work more creatively, such as providing a continuous link between court house and community centre?

9. How should LAO ensure that mental health competency is sustained indefinitely?

There is clearly a need for developing mental health competency through LAO’s services and mandate, and then permanently sustaining this as part of LAO’s corporate culture. How important it is that training be provided to all staff yearly? Should such training be

part of individual performance planning? Should LAO provide dedicated resources to sustaining and coordinating the mental health strategy and mental health services, such as a permanent leadership position or centre of excellence? Should LAO focus efforts on working with law schools to develop mental health related curriculum and mentorship positions with LAO, the private bar, and clinics?

10. What are the best ways to facilitate linkages between criminal and civil legal needs?

LAO provides a number of services within criminal courts and for civil legal matters, but relatively few programs that ensure clients are smoothly transitioned between these services. At the same time, recent justice reform initiatives like the Toronto Justice Collaborative³⁷ have indicated the need to focus both on entry points into the criminal justice system, and better planning for clients exiting the system. Would case coordinators help high-needs clients make this transition? Is there a role for private bar, staff or clinic lawyers, paralegals, or trusted intermediaries and peer supporters to link community and court services? Should LAO look at expanding existing services like the Brydges Hotline by seamlessly connecting them to community and legal resources?

11. What role should LAO take in systemic law reform initiatives?

Stakeholders suggest that more active engagement in systemic initiatives is an important contributor to the promotion of client rights, rights-based approaches in health and social services, as a part of cross-sector service provision. What opportunities exist for LAO to become more involved? What should the scope of LAO's intervention be?

12. Where to start? What legal services and practice areas should the Mental Health Strategy prioritize?

LAO's Mental Health Strategy will develop over several years. Given the considerable breadth and depth of the need and opportunities for change, what are the most essential points that LAO should prioritize? What practice areas should be the priority for immediate improvement and enhancement? What initiatives would help LAO develop a sound foundation on which to continually improve and enhance service for clients with mental illness into the future? What would your ideal list of 10 "quick wins" look like?

³⁷ See footnote 8.

9. Next Steps

LAO strongly encourages organizational stakeholders and individuals to consider the issues and options outlined in this paper and to make recommendations about how best to continue developing the Mental Health Strategy.

The feedback collected during the consultation process will directly contribute to the development of a five-year plan for LAO's Mental Health Strategy. After the close of the formal public consultation session in February 2014, LAO's Mental Health Strategy will be formally released for additional comment in 2014. Pilot projects are also under active development.