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July 31, 2017

Hon. Marie-France Lalonde
Minister of Community Safety and Correctional Services
18th Floor, George Drew Building
25 Grosvenor Street
Toronto, Ontario M7A 1Y6

Dear Minister Lalonde,

Re: Legal Aid Ontario feedback on Corrections Reform Legislation

Thank you for inviting Legal Aid Ontario (LAO) to provide feedback regarding legislative reform in correctional law, both through this submission and in person at this summer's Roundtable. Each year, LAO provides legal services to thousands of low-income people who come into contact with Ontario's correctional system, including individuals in remand custody, sentenced custody, and immigration detention. In carrying out its mandate, LAO is actively engaged in the design and delivery of innovative and responsive legal services; LAO is currently planning an organization-wide Prison Law Strategy, aiming to provide the best possible service to federal and provincial inmates, and fill the most commonly recurring and important gaps in service.¹ LAO is pleased to share its experience and its views on this important issue.

Please note that what follows are the views and submissions of LAO's Policy and Strategic Research Department. Given the timeframe of this consultation, they have not been reviewed or approved by LAO's Executive Management Committee or its Board of Directors.

Note that each of the seven subjects broached by the Ministry in this consultation are important and should be considered by the Government of Ontario. However, LAO's mandate and expertise, as well as the realities of the timeframe of the consultation, preclude a detailed response on every subject area from being included herein. We would be pleased to have further and more detailed discussions on each area of requested feedback, as well as other important corrections issues not included in the request for submissions.

Section 1: Purpose and Principles

¹ Other than services pertaining to their outstanding criminal charges, which are already encompassed by LAO's criminal law services.

LAO applauds the inclusion of equivalency of services as a principle in provision of inmate services. LAO would like to see the following principles, articulated in the March 2017 Independent Review of Corrections, enshrined in legislation as guiding principles for corrections in Ontario:

- People are sent to a correctional facility as punishment, not for punishment
- Inmates retain all the rights of free persons, other than those necessarily removed by the fact of confinement
- Correctional authorities must safely and legally carry out the sentence of the court, and work to return the person to society better able to live a law-abiding life²

With respect to segregation specifically, LAO supports the Review's observation that "trying to 'fix' segregation in isolation is futile."³ The myriad problems facing inmates in Ontario are interdependent, not independent; an *ad hoc* approach focused solely on the issue of the day will do little to ameliorate these problems.

Section 5: Use of Force

The Ombudsman of Ontario has already published a great deal regarding the use of force.⁴ Generally, LAO believes use of force legislation should include:

- Clear and specific regulatory requirements on documenting use of force, including but not limited to: justification for use of force, detailed description of the use of force, list of all persons present, and any resulting injuries
- Specific protections for whistleblowers, in both the inmate and correctional officer population
- Audit and review protocols to ensure all institutions are in compliance with MCSCS's Use of Force policy
- Transparency of policies

Section 7a: Segregation

Definition of segregation

The definition of segregation needs to be both standardized and comprehensive. It must respond to the conditions, and not just the location, of confinement. Current policy regards persons as being in segregation when the institution has defined the area that they are physically confined in as a segregation area. The definition of segregation should refer instead to the restrictions that equate to segregation, most importantly the number of hours per day in which inmates are confined to their cells. It has been noted

² *Segregation in Ontario: Independent Review of Ontario Corrections*, March 2017, at p. 10.

³ *Segregation in Ontario: Independent Review of Ontario Corrections*, March 2017, at p. 13.

⁴ See, for example, *The Code: Investigation into the Ministry of Community Safety and Correctional Services' response to allegations of excessive use of force against inmates*, June 2013.

that international standards define segregation as the physical isolation of individuals to their cells for 22 to 24 hours a day. This is the definition that has also been recommended by Ontario's Ombudsman.

The definition must apply to all uses of segregation or "segregation-like" confinement. It must prohibit the creation of "ad hoc" units that go by other names, such as "behaviour management" units, but essentially keep people in conditions of segregation. The Ombudsman has also recommended consideration of the place of lockdowns in the new definition.

Although there is a wide variance in the physical dimensions and design of segregation units around the province, it would be helpful to establish standards in this area, going forward.

Restrictions on segregation

In accordance with international standards and recommendations, LAO believes that segregation should be used as an option of last resort and should never be used for more than 15 consecutive days.

Segregation must be subject to clearly defined safeguards and oversight. Restrictions must be in place to prevent the practice of restarting the clock to achieve what amounts to continuous segregation of an inmate.

Viable alternatives to segregation must always be considered. Segregation cannot continue to be the "multi-purpose default to respond to diverse correctional challenges"⁵ described by Independent Advisor Howard Sapers in his report. LAO believes that putting an end to segregation as a "multi-purpose default" is particularly urgent and compelling in the case of vulnerable client populations and in the case of persons in remand custody who are presumed innocent. The report of the Independent Advisor found that, last year, "seven out of ten inmates in Ontario's segregation cells were legally innocent – on remand, waiting for their trial or a bail decision".⁶

Segregation should never be used for an inmate who has a mental illness.

An Indigenous inmate should not be placed in segregation without taking their Indigenous heritage and the availability of Indigenous spiritual or cultural programming into account.

Access to health care and daily monitoring of the health of inmates in segregation must be required and clarified. It must be made clear that a segregated inmate has to receive an examination by a health care professional prior to admission to segregation and on release, as well as daily while they are in segregation.

⁵ *Segregation in Ontario: Independent Review of Ontario Corrections*, March 2017, at p. 66.

⁶ *Segregation in Ontario: Independent Review of Ontario Corrections*, March 2017, at p. 65.

Sections 7b and c: Collecting and Sharing Information; Independent Oversight

Ministry policies are often overlapping and inconsistently followed, for example on segregation reviews.⁷ This overlap and inconsistency is exacerbated by their invisibility to the public.⁸ Policies available for public discussion and critique would foster functional policy design and consistent policy application.

Transparency is an important leg of oversight. Publicly available data on Ministry procedures, institutional compliance with procedures, as well as specific inmate human rights issues (segregation, lockdown, overcrowding, access visits, living conditions, access to fresh air and natural light, availability of health care, availability of mental health and addictions services) would go a long way towards ameliorating these issues.

There is a basic minimum of human rights that ought to be afforded to an inmate. Adequacy and transparency of information helps extraministerial organizations flag and discuss lagging areas, and keep MCSCS on track. Adequacy of information also helps LAO and other service providers design and assess their services for inmates.

There should be across-the-board gathering and good faith sharing of the data below:

Overcrowding

- Population per facility (vs. capacity of facility)
- Population per staff at each facility
- Unused wings/beds at each facility

Lockdowns

- Lockdowns per facility. Whole facility or specific wing?
 - Cause per lockdown?

Access

- Visits per facility
- Breakdown by type – family, lawyer, community support
- Visits per inmate
- Denied visit requests per facility
- Cancelled visits per facility (by institution for systemic reasons)

Segregation

- Segregations per facility

Overrepresentation

- Gender/race/age/indigenous breakdown of inmates
- Are there existing processes for identifying and assisting particularly vulnerable clients at any of these institutions? If so what do these processes look like?

⁷ *Segregation in Ontario: Independent Review of Ontario Corrections*, March 2017, at p. 82.

⁸ *Segregation in Ontario: Independent Review of Ontario Corrections*, March 2017, at p. 99.

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- Aging inmates
 - Younger inmates
 - Inmates with mental health issues
 - Racialized inmate population
 - Indigenous inmate population

Physical and Mental Health

- Inmates with Mental Health alerts/issues by facility
- Availability of Mental Health and medical services by facility (i.e. RN, MD, psychiatrist/psychologist per population and/or per facility)
- Availability of Mental Health and Addictions programming and services by facility

Rights Violations

- To what extent does each institution meet the following basic needs:
 - Medical care
 - Mental health and addiction services
 - Access to fresh air and daylight
 - Solving long waits in remand
- Are some institutions worse than others in the above areas? Where does the most need exist?

Section 7d: Health Care

It is important to note the current deficiencies in inmate health care that motivate the discussion about a transfer of jurisdiction to the Ministry of Health (MOH). Inmates have inadequate access to health care, and the health care afforded to them is of lower quality. As discussed in a number of research projects,⁹ inmates fare poorer than the rest of Canadians on a number of health care indicia, including mortality, communicable diseases, and sexual and reproductive health. Inmates are denied their required daily medications until assessed by a facility physician, which can often take several days. This can lead to serious physical and mental health problems for inmates.

Specific to inmates with mental health issues, LAO wishes to highlight the current insufficient access to diagnosis and treatment resources, and to mental health and addictions programs for inmates. Standard correctional processes can have a disproportionately harmful effect on those facing mental health issues, for instance, chronic self-harming inmates; in many instances, these people are continually mismanaged and their problems are greatly exacerbated in custody. There should also be increased outpatient and other resources to ensure continuity of treatment and care, and avoid harmful disruptions in treatment when entering and leaving custody.

The overarching goal should be the provision of readily available, high-quality health care, and ameliorating health problems specific to inmates, whichever Ministry governs.

⁹ See for example Fiona Kouyoumdjian et. al., "Health Status of Prisoners in Canada," *Canadian Family Physician*, Vol 62: March 2016, at 215.

That said, LAO is supportive of a transfer of oversight of institutional health care from MCSCS to MOH. As discussed by the John Howard Society of Ontario,¹⁰ MOH governance would open up a previously unavailable human resource pool of medical professionals, a coordinated electronic health records system, and allow for a coordinated approach to an individual's health, regardless of whether he or she is in or out of custody, leading to better health outcomes for inmates and for the Ontario public.

Section 7e: Infrastructure

As discussed and photographed in detail in the Independent Review, many institutions are aging poorly, meaning many inmates live in squalor. Some facilities even have mold; though one would expect this to be most present in the older facilities, LAO has heard reports of mold even at the relatively new Central East Correctional Centre.

The design logistics of facilities, old and new, are often problematic. For example, at some new superjails, much inmate housing is underground, meaning inmates get no exposure to natural light. Various inmate pods are difficult to access (i.e. quite far from areas where inmates meet visitors). This distance, coupled with understaffing and frequent lockdowns, mean contacts with visitors can be few and far between. Not only does this exacerbate the social isolation of inmates, it can become a denial of the right to counsel, as inmates are unable to meet their lawyers.

The locations of the superjails themselves worsen inmate conditions. By moving to a model of fewer jails housing more inmates (rather than several smaller and more geographically diffuse facilities) the province has housed inmates farther from courts, and likely farther from their families and lawyers. This makes accessing counsel costlier, and family visits and in-person hearings more burdensome.

LAO would also like to raise the issue of overcrowding in institutions. While some facilities are likely overcrowded, the population numbers at individual institutions are near impossible to find. This information should be publicly available. Other institutions may not be overcrowded relative to the institution's total capacity, but are understaffed, meaning inmates are crowded into units that can be staffed, leaving other units underused. It is not unheard of for administrative lockdowns to be used when there are not enough staff to supervise the population. This practice needs to be abolished; lockdowns should be a last resort and used only when absolutely necessary.

Visits themselves are also difficult. In many facilities, inmates are only permitted a small list of 3 or 4 visitors, and can only alter this list every several days. This can delay or prevent visits. Further, inmates must provide the names and dates of birth of anyone they wish to include on their list – one wonders how likely an inmate is to know offhand the birthday of his or her lawyer, or even of most of his or her relatives.

¹⁰ John Howard Society of Ontario, *Fractured Care*.

Thank you for your consideration of the concerns raised in this letter. Should you have any questions please do not hesitate to contact us.

Sincerely,

Marcus Pratt
Director, Policy and Strategic Research
Legal Aid Ontario