

Legal Aid Ontario

Consultation Paper: Development of a Domestic Violence Strategy

DRAFT: FOR DISCUSSION PURPOSES ONLY



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Title: Consultation paper: Development of a Domestic Violence Strategy
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Date: July 2015

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1. Introduction

Legal Aid Ontario (LAO) is mandated by the *Legal Aid Services Act*¹ (LASA) to promote access to justice for low-income Ontarians and facilitate flexibility and innovation in the delivery of legal aid services. LAO does this by providing high quality legal aid services in a cost-effective and efficient manner, while recognizing the private bar as the foundation in the areas of family and criminal law. Since LAO was established in 1998 under LASA², LAO, the private bar, community legal clinics and others have provided legal aid services to millions of low-income Ontarians.

Despite the efforts of the provincial government, the Law Society, the judiciary, the private bar, LAO, community clinics, law schools, and other access to justice stakeholders over the years, there is a consensus that low-income Ontarians continue to have unmet legal needs and that the justice system is able to do a better job to respond to those needs. Fortunately, in recent years, there have been unprecedented investments and commitments by the provincial government to address access to justice.

In 2015, LAO committed to developing a Domestic Violence Strategy (“the Strategy”) that is multi-year, multi-faceted, and province-wide. The goal of the Strategy is to expand on and improve current legal aid services for clients who have experienced or are experiencing domestic violence. The Strategy will also include the creation of new services, programs and resources made available specifically for this vulnerable client group.

From a broad perspective, LAO will develop a client-centric strategy with:

1. A corporate-wide scope, with policies and protocols used consistently across the organization;
2. Clearly defined strategic goals, with planned long-term objectives and outcomes; and
3. Specific action plan initiatives for each year of the Strategy.

¹ *Legal Aid Services Act*, SO 1998, c 26 s 1.

² Legal Aid Ontario, “Overview of Access to Information Requests”, online: <<http://www.legalaid.on.ca/en/publications/inforequests.asp>>.

The purpose of this consultation paper is to provide its readers with greater clarity about LAO's preliminary objectives and plans for developing a Domestic Violence Strategy. The consultation paper is also designed to encourage clients, lawyers, agencies, legal organizations, governments and any other individual or organization that is concerned about the provision of legal services to individuals experiencing domestic violence, to participate in the development of this strategy.

LAO is of the view that providing clients who have experienced or are experiencing domestic violence with effective, timely and specialized services is integral to LAO's mandate. This is true whether a client is facing a legal issue related to family, criminal, refugee and immigration, human rights or poverty law,³ or is experiencing any of these legal issues simultaneously.

³ Poverty law may include, but is not limited to, legal services relating to matters such as housing, income security and workers' rights.

2. Process and Outline of this Paper

This consultation paper has been written as a culmination of several months of preliminary meetings and engagement sessions with a wide array of stakeholders, including partners in the Violence Against Women (VAW) community (both advocacy organizations and service providers), lawyers, other community service providers, legal clinics, peer networks, professional associations, government agencies, and LAO staff.

Through these meetings and engagement sessions, as well as through LAO's own research and experience, LAO has identified a number of common issues believed to be important in addressing the development of a Domestic Violence Strategy. While the issues identified should not be considered definitive statements of LAO policy or long-term plans, these issues can help set the landscape for future conversations about the development of the Strategy.

This consultation paper takes a step towards what will be a continuing effort to directly involve stakeholders and "social communities" in shaping the future delivery of LAO's services and programs for clients who have experienced or are experiencing domestic violence. The paper is set out for public comment and LAO welcomes input and feedback from the members of the VAW community, the provincial government, the judiciary, clinics, the access to justice community, survivors of domestic violence, academics and other interested social and community providers.

This paper includes the following sections:

- Why LAO is developing a Domestic Violence Strategy
- An outline of client needs analysis based on LAO's early research, preliminary meetings and engagement sessions with stakeholders
- A background and profile of LAO services, and how they impact domestic violence clients
- LAO's first thoughts based on the above analysis and recommendations
- Key questions to help guide submissions
- Next steps

LAO anticipates that the consultation process will take place between August 2015 and November 2015. LAO will adopt several approaches to ensure broad and thorough consultation, including:

- **Written submissions.** LAO will distribute this paper widely and invites individuals and organizations to provide written submissions. Online written submissions can be completed through the dedicated LAO Domestic Violence Strategy website available at:
<http://www.legalaid.on.ca/en/publications/domestic-violence-strategy.asp>
- **In-person group engagement sessions.** LAO invites recommendations highlighting specific priority issues, around which in-person focus groups could be convened. Open discussions will take place in select cities across Ontario with interested individuals and organizations, and particularly with survivors of domestic violence.
- **One-on-one consultation sessions with targeted organizations.**

Both in-person and one-on-one sessions will be held in French, as needed.

- **Any other requested approaches as suggested by interested parties.**

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

Michelle Squires, Policy Counsel, Domestic Violence Strategy
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3. A Domestic Violence Strategy for LAO

3.1 Why a Strategy?

LAO, as the provincial legal aid agency, has a primary responsibility to promote access to justice for low-income Ontarians, including those who have experienced or are experiencing domestic violence.⁴ As an access to justice provider, LAO recognizes the barriers and hardships experienced by domestic violence survivors, and improving services and expanding access to justice for domestic violence survivors is a high priority of LAO. LAO's commitment began in 2002/2003 when LAO formally prioritized "Improving Services for Victims of Domestic Violence" as one of eight key areas of focus in its Business Plan. One of the key initiatives of that commitment was LAO's Domestic Violence Protocols, a directive providing all frontline and intake staff with guidelines and the necessary tools to appropriately screen LAO applicants who may be experiencing domestic violence. In addition, an organizational training initiative for client-facing LAO staff and for private bar lawyers accepting LAO certificates was implemented. At present, this priority is further reflected in LAO's intention to develop a domestic violence strategy.

How does LAO define Domestic Violence?

Domestic violence is a serious social problem that includes any use of physical or sexual force (actual or threatened) as well as any abuse of a non-physical nature that occurs within a familial context, including within extended family. This can include emotional and psychological abuse, physical abuse, sexual abuse, financial abuse and stalking, among other things.

It includes intimate-partner violence, child abuse, elder abuse, and abuse in a caregiving relationship.

The continuing severity and prevalence of domestic violence in Canada cautions the need for LAO to develop a new domestic violence strategy that addresses the legal needs of individuals who have experienced or are experiencing domestic violence.

⁴ While LAO's definition of domestic violence is broad, this paper concentrates primarily on intimate partner violence. Many legal services currently provided by LAO available to clients who have experienced or are experiencing domestic violence are more relevant to those experiencing intimate partner abuse, but this does not preclude potential expansion of services to more fully address other forms of familial abuse.

There are different terms that may be used to describe an individual who has experienced or is experiencing domestic violence, including 'victim' and 'survivor'. There is varying use of the terms, and this paper makes reference to both terms to be consistent when referring to other research, or in a legal context. Generally, the paper attempts to use the term 'survivor' as opposed to 'victim'.

Across Canada, the prevalence of domestic violence is alarming and continues to be a cause of concern. In 2013, Statistics Canada identified that 26% of violent crime victims were victimized by a family member.⁵ Nearly half of these incidents were perpetrated by an intimate partner (a current or former common-law partner or spouse)⁶ and over two-thirds of victims of family violence were women.⁷

Statistics Canada also identified more than 90,300 victims of police-reported violence by an intimate partner in 2013.⁸ While the rates of police-reported intimate partner violence are alarming, it must be recognized that the actual prevalence of intimate partner violence cannot be captured by police data alone, due to underreporting by victims. According to the 2009 General Social Survey (GSS) on Victimization⁹, only 30% of spousal violence incidents involving female victims and 13% involving male victims were reported to police.¹⁰ This finding would project the number of total incidents of intimate partner abuse to be closer to 350,000 annually.

Domestic violence must be understood as a gendered crime in which women are most often the victims of abuse and men are most often the perpetrators.¹¹ According to police-reported intimate partner victimization data across Canada, women account for nearly 80% of all intimate partner victim matters reported to police,¹² and the overall rate of intimate partner violence against women is almost four times higher than the rate for men.¹³ Through a gender-based analysis, this paper attempts to identify the needs of, and the intersecting legal issues experienced by, domestic violence survivors. Both the Canadian Government and the United Nations have acknowledged the necessity of using of a gender-based analysis to build appropriate

⁵ Statistics Canada, "Family Violence in Canada: A statistical profile, 2013", *Juristat* (Ottawa: StatCan, 15 January 2015) at 6, online: <<http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14114-eng.pdf>>. ["Family Violence"]. The analysis of family violence in the present study is based on definitions that correspond to those found in the *Criminal Code*. For example, assault, criminal harassment, sexual offences or homicide.

⁶ *Ibid* at 8.

⁷ *Ibid* at 9.

⁸ *Ibid* at 4.

⁹ The General Social Survey (GSS) on Victimization is a national survey of self-reported victimization and is collected in all provinces and territories. The main objective of the GSS on Victimization is to better understand how Canadians perceive crime and the justice system and their experiences of victimization. In the provinces, all respondents are contacted and interviewed by telephone; in the territories, interviews are conducted by telephone or face-to-face.

¹⁰ Tina Hotton Mahony, "Women and the Criminal Justice System", *Women in Canada: A Gender-based Statistical Report*, (Ottawa: StatCan, April 2011) at 13, online: <<http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11416-eng.pdf>>.

¹¹ For the purpose of this paper, we use terms such as 'man' or 'men' and 'woman' or 'women' to refer to an individual's self-identification of their gender.

¹² "Family Violence", *supra* note 5 at 23.

¹³ Statistics Canada, "Violence against women, 2011", *The Daily*, (Ottawa: StatCan, 25 February 2013) at 1, online: <<http://www.statcan.gc.ca/daily-quotidien/130225/dq130225a-eng.pdf>>.

programs, and particularly when building programs or policies for violence-related issues.¹⁴ LAO recognizes that program building and delivery must consider the specific needs and experiences of certain populations of women with additional vulnerabilities due to systemic barriers and widespread prejudice and discrimination, including but not limited to Trans¹⁵, racialized and migrant women.

Do only women experience domestic violence?

No. Men may also be victimized by women partners, and both men and women may be victimized by their partner in a same-sex relationship.

While the overwhelming majority of domestic violence is perpetrated by men against women, LAO provides services to both women and men who experience domestic violence. Approximately 90% of LAO clients who identify as experiencing domestic violence are women.

Violence against women is a social problem that impacts not only individual women, but also has significant repercussions for children, families and their communities, as well as Canadian society as a whole. Children are exposed to violence in 28% of households where spousal violence is reported, substantially increasing their chance of developing social disorders, emotional disorders or delinquency issues.¹⁶

The physical, emotional, social and economic consequences of violence against women contribute to the perpetuation of women's inequality in society, and there are significant financial and economic costs associated with violence against women at both the micro level of the individual and at the macro level of society as a whole. Women survivors of domestic violence may experience individual economic consequences related to the associated costs of exiting an abusive familial relationship, including having to find a new home, living in a single-income earner household and child raising costs. In addition, victims and their families are often

¹⁴ Holly Johnson, "Measuring Violence Against Women: Statistical Trends 2006", (Ottawa: StatCan, October 2006) at 8, online: <<http://www.statcan.gc.ca/pub/85-570-x/85-570-x2006001-eng.pdf>>. [Johnson, "Measuring 2006"].

¹⁵"Trans is an umbrella term referring to people whose gender identity or gender expression is not reflected by the gender assigned to them at birth, including people with non-binary identities." This definition is taken from HIV & AIDS Legal Clinic Ontario (HALCO) and Legal Aid Ontario's (LAO), "Trans Legal Needs Assessment Project", (Toronto: June 2014) at 1, online: <http://www.halco.org/wp-content/uploads/2014/06/Trans_Legal_Needs_Assessment_Project_background2014June-Revised.pdf>.

¹⁶ Ting Zhang et al, "An Estimation of the Economic Impact of Spousal Violence in Canada, 2009" Department of Justice (2012) at 68, online: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_7/rr12_7.pdf>. [Zhang et al, "Estimation"].

faced with loss of earning and out-of pocket expenses related to their health and well-being.¹⁷ At the macro level, in its study of the economic costs of spousal violence to women, the Department of Justice found that the overall costs of spousal violence against women and men was estimated at \$7.4 billion. The cost of spousal violence against women specifically was estimated at \$4.8 billion.¹⁸ Across Canada, the estimated economic cost to the justice system was \$545.2 million.¹⁹

Despite various positive commitments from the Ontario Government in recent years to end violence against women, statistics show that the rate of violence against women, including homicide against women, has remained steady in Canada over the last decade, despite annual fluctuations.²⁰ To establish substantive change, all stakeholders in the access to justice community must commit to work collaboratively and dedicate the necessary time and resources to adequately address the needs of this vulnerable population.

3.2 LAO's Domestic Violence Strategy – Role and Opportunities

The development of LAO's Domestic Violence Strategy will be client and stakeholder focused, with particular attention paid to the specific needs of clients who have experienced or are experiencing domestic violence and on the communities which support this population, including the VAW community and the justice system. A successful strategy should enable LAO to:

- Better identify and prioritize the complex intersecting legal needs of clients who have experienced or are experiencing domestic violence and ensure that they can access a range of services, both legal and social;
- Expand access to legal services, and allow LAO, the private bar, clinics and others in the broader legal aid system to provide services to these clients in a more efficient, effective and comprehensive manner;

¹⁷ Tanis Day, Katherine McKenna & Audrey Bowlus, "The Economic Costs of Violence Against Women: An Evaluation of the Literature Expert brief compiled in Preparation for the Secretary-General's in-depth study on all forms of violence against women", (2005) United Nations at 8, online: <http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/rr12_7/rr12_7.pdf>.

¹⁸ Zhang et al, "Estimation", *supra* note 16, in Statistics Canada, "Measuring violence against women: Statistical trends" by Marie Sinha, eds (Ottawa: StatCan, 25 February 2013) at 89, online: <<http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.pdf>>. [Sinha, "Measuring VAW"].

¹⁹ Sinha, "Measuring VAW", *ibid*. This includes costs associated with police, courts, prosecution, legal aid, corrections, civil protection orders, divorce and separation, and child protection systems.

²⁰ *Ibid* at 12.

- Develop policies, protocols and processes to reflect a better understanding of how domestic violence impacts a client’s experience in the legal system. This includes using a gender-based approach in developing these policies;
- Provide better supports to service providers, including community organizations, lawyers, community clinics and other agencies and;
- Create a sustainable plan to ensure LAO staff are knowledgeable and educated on domestic violence and how it impacts clients, and provide up-to-date resources to assist in their work.

A Domestic Violence Strategy will also better assist LAO to participate and engage in both provincial and national justice system reforms and in VAW community development projects. These initiatives include the Government of Ontario’s Sexual Violence Action Plan,²¹ recommendations made by the Domestic Violence Advisory Council,²² the Ontario Domestic Violence Death Review Committee,²³ and the national Action Committee on Access to Justice in Civil and Family Matters²⁴ as well as recommendations made in the Law Commission of Ontario’s *Towards a More Efficient and Responsive Family Law System: Interim Report*.²⁵

²¹ Government of Ontario, “Changing Attitudes, Changing Lives, Ontario’s Sexual Violence Action Plan”, (March 2011), online: < <http://www.women.gov.on.ca/owd/docs/svap.pdf>>.

²² In 2009, the Ontario Domestic Violence Advisory Council was created by the Minister Responsible for Women’s Issues. The Council commissioned two reports: (1) “Study on the Experiences of Abused Women in the Family Courts in Eight Regions”, Prepared by Molly Dragiewicz & Walter DeKeseredy for Luke’s Place Support and Resource Centre for Women and Children, (November 2008), online: <http://ywcaCanada.ca/data/research_docs/00000030.pdf> and (2) “Shifting Public Policy Direction: Gender-Focused versus Bi-Directional Intimate Partner Violence”, Prepared by Molly Dragiewicz & Walter DeKeseredy, (2 March 2009), online: <http://www.oaith.ca/assets/files/Publications/Shifting_Public_Policy_Direction.pdf>. Their final recommendations were released in “Transforming our Communities: Report from the Domestic Violence Advisory Council for the Minister Responsible for Women’s Issues”, (May 2009), online: <http://www.women.gov.on.ca/owd/docs/dvac_report.pdf>.

²³ The Domestic Violence Death Review Committee is a multi-disciplinary advisory committee of experts established in 2003 whose purpose is to assist the Office of the Chief Coroner with investigating and reviewing deaths that occur as a result of domestic violence. The Committee also makes recommendations to help prevent future deaths in similar circumstances.

²⁴ “Meaningful Change for Family Justice: Beyond Wise Words”, Final Report of the Family Justice Working Group of the Action Committee on Access to Justice in Civil and Family Matters, (Ottawa: April 2013), online: < <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf>>. ; “Access to Civil and Family Justice: A Roadmap to Change”, Action Committee on Access to Justice in Civil and Family Matters, (Ottawa: October 2013), online: <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf>.

²⁵ “Towards a More Efficient and Responsive Family Law System: Interim Report”, Law Commission of Ontario, (Toronto: February 2012), online: < <http://www.lco-cdo.org/family-law-reform-interim-report.pdf>>.

Other papers released by community partners have provided great insight into client needs analysis, including *Policies Matter: Addressing Violence Against Women Through Reflection, Knowledge and Action*,²⁶ *Justice Done: Crafting Opportunity from Adversity*,²⁷ *Through the Looking Glass – The Experiences of Unrepresented Abused Women in Family Court: Final Report and Recommendations*,²⁸ *Portrait of the Legal Needs of Francophone Women in Ontario*,²⁹ *It shouldn't be this hard: A gender-based analysis of family law, family court and violence against women*³⁰ and the *Aboriginal Sexual Violence Action Plan*.³¹

There are a number of opportunities to increase LAO's role in expanding access to justice for and providing services to individuals who have experienced or are experiencing domestic violence.

- First, LAO can conduct a thorough needs assessment of clients who have experienced or are experiencing domestic violence;
- Second, LAO can take an objective look at its own programs and services and identify where there are service gaps and systemic barriers, and how LAO can improve access to justice for this vulnerable client group;
- Third, LAO can proactively ensure it is working with other communities and service providers to make certain that clients who have experienced or are

²⁶ "Policies Matter: Addressing Violence Against Women Through Reflection, Knowledge and Action", Prepared by Harmy Mendoza, Woman Abuse Council of Toronto; Amanda Dale, The Barbra Schlifer Commemorative Clinic; and Michelle Coombs, Elizabeth Fry Toronto, (July 2013), online: <http://www.efrytoronto.org/userfiles/files/PoliciesMatter_Final.pdf>.

²⁷ "Justice Done: Crafting Opportunity from Adversity", Final Report, Barbra Schlifer Commemorative Clinic Forum, (Toronto: 2011), online: <http://www.oaith.ca/assets/files/Publications/Family%20Law/JusticeDone_FinalReport_ENG.pdf>.

²⁸ "Through the Looking Glass – The Experiences of Unrepresented Abused Women in Family Court: Final Report and Recommendations", Completed by Luke's Place Support and Resource Centre for Women and Children for The Denise House, Funded by Ontario Victim Services Secretariat, Ministry of the Attorney General, (March 2008), online: < <http://lukesplace.ca/pdf/Pam-Appendix-2.pdf>>.

²⁹ Lucie Brunet & Julie Lassonde, "Portrait of the Legal Needs of Francophone Women in Ontario", A study conducted for Action ontarienne contre la violence faite aux femmes on behalf of the Centre francophone de Toronto for Legal Aid Ontario, (Revised in December 2012 by the Centre francophone de Toronto), online: <<http://www.legalaid.on.ca/en/publications/downloads/Portrait%20of%20the%20Legal%20Needs%20of%20Francophone%20Women%20in%20Ontario.pdf>>.

³⁰ "It shouldn't be this hard: A gender-based analysis of family law, family court and violence against women", Prepared by Pamela Cross for Luke's Place Support and Resource Centre for Women and Children, (September 2012), online: < http://www.lukesplace.ca/pdf/It_Shouldnt_Be_This_Hard.pdf>.

³¹ "Aboriginal Sexual Violence Action Plan", Prepared by the Ontario Federation of Indian Friendship Centres (OFIFC), (2011).

experiencing domestic violence are able to access the legal services they require; and

- Fourth, LAO can promote a comprehensive approach that is accessible to, and supportive of, clients who are accessing both legal and social supports. This includes a greater role for LAO in systemic and cross-sectional legal advocacy.

4. Client Needs Analysis

The starting point for developing a Domestic Violence Strategy is an analysis of LAO services through the lens of a client who has experienced or is experiencing domestic violence. An important benefit of this approach is that it provides insight into the perspective of clients who directly access services, i.e. survivors of domestic violence.

A client-needs-driven approach is beneficial as it transcends LAO's traditional categories of service (for example, criminal, family and clinic law) and offers fresh insight into the unique needs of domestic violence clients.

The highlights of LAO's needs analysis of clients who are survivors of domestic violence is outlined below.

4.1 Domestic Violence Clients Have Intersecting Legal Needs

LAO currently places a high priority on clients who have experienced domestic abuse in family matters, but the legal needs of these clients are not restricted to this area of law. Domestic violence must be understood in multiple legal contexts, each of which may define and understand domestic violence differently.³² Each area of law is comprised of different legal actors, and may carry different legal burdens of proof, rules of evidence, processes and procedures. It is important to identify intersecting legal needs to appropriately determine what services the client may need to access.

Intersecting legal needs of domestic violence clients are common in cases where one or both parties involved in a family law proceeding is also charged criminally with a domestic violence offence. According to a recent study in Ontario, it is estimated that in approximately 10.7% of family law cases, there was also a concurrent criminal proceeding in relation to domestic violence.³³ In such circumstances, the matters are more complex and challenging for both criminal and family law lawyers, as they must

³² Department of Justice, "Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems, Volume I", Report of the Federal-Provincial-Territorial (FPT) Ad Hoc Working Group on Family Violence, (November 2013) at 29, online: <<http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/mlfvc-elcvf/mlfvc-elcvf.pdf>>.

³³ Department of Justice, "Making the Links in Family Violence Cases: Collaboration among the Family, Child Protection and Criminal Justice Systems, Volume II", Annexes to the Report of the Federal – Provincial-Territorial (FPT) Ad Hoc Group on Family Violence, (November 2013) at 12, online: <<http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/mlfvc-elcvf/vol2/mlfvc2-elcvf2.pdf>>.

ensure that the steps they take to advance their client's interests in one set of proceedings do not undermine the rights of their client in the other forum. For example, lawyers representing a survivor of domestic violence who has been charged with a domestic violence offence must be cognizant that agreeing to a non-contact bail order, may result in the client being released from custody, but may also prejudice the client in his/her ongoing efforts in family court to have custody of his/her child(ren). Similarly, family law lawyers who are assisting the same client in a family law proceeding must be aware of the particular terms of the client's bail order before facilitating contact and interim arrangements with their client's partner and/or his/her child(ren).

It must also be acknowledged that an individual experiencing domestic violence may have intersecting legal needs, yet may not wish to pursue both legal issues. A domestic violence survivor with a family law matter may be reluctant to call the police to report the violence. They may have a general distrust in the criminal justice system to resolve familial issues and fear potential legal consequences with respect to custody, access and support. They may also fear that reporting the abuse may also lead them to being cross-charged with a domestic assault offence.

Challenges that a domestic violence client experiences in the legal system will also be heightened if there is a threat or consequence to their immigration or refugee status. Immigration and refugee law issues and processes may have a significant impact upon family law proceedings that can include concerns of change of status upon separation. Sponsorship obligations and fear of deportation may keep an individual from disclosing violence or create uncertainty about whether they can leave an abusive partner without consequence to their immigration or refugee status.

There are also many intersecting needs between child protection matters and domestic violence, and referrals made to a Children's Aid Society in Ontario are universally screened for the presence of domestic abuse.³⁴ A review of the literature indicates that adult domestic violence and child maltreatment co-occur in families, and in homes where domestic violence occurs, children are a greater risk of being maltreated.³⁵ Specifically, research suggests that in 30% to 60% of families where

³⁴ Ministry of Children and Youth Services, "Child Protection Standards in Ontario", (February 2007) at 7, online: <<http://www.children.gov.on.ca/htdocs/English/documents/topics/childrensaid/childprotectionstandards.pdf>>.

³⁵ Jeffrey L. Edelson, "Should Childhood Exposure to Adult Domestic Violence Be Defined as Child Maltreatment under the Law?", in Peter G. Jaffe, Linda L. Baker & Alison J. Cunningham, ed, *Protecting Children from Domestic Violence: Strategies for Community Intervention* (New York, NY: Guilford Press, 2004).

woman abuse or child maltreatment is identified, it is likely that both forms of abuse exist.³⁶

Domestic violence impacts an individual's primary legal need as well as their overall health and safety, creating secondary legal consequences. For example a custody and access matter may trigger legal issues related to income security, employment, housing or an individual's ability to access legal representation.

4.2 Domestic Violence Clients Require Legal Representation in the Family Justice System

Experience and statistics demonstrate that domestic violence clients need legal representation in family court. Statistics that have been made available to LAO by Ontario's Ministry of the Attorney General suggest that, in Ontario's family courts, half of all persons are not represented by a lawyer, at least at the outset of their court proceeding.³⁷

In a recent research study examining self-representation in family courts across Canada, the researchers found that in 50% to 80% of cases, either one or both parties were unrepresented.³⁸ Another study of self-represented litigants in Ontario family courts conducted by Rachel Birnbaum and Nicholas Bala found that one-third of women (whether represented or not) reported domestic violence issues.³⁹ In this study, 132 participants were surveyed on their views on the impact that the lack of representation has on both victims of domestic violence and their abusers:

³⁶ Ontario Association of Children's Aid Society, (November 2012), online: <<http://www.oacas.org/pubs/oacas/thevoice/2012/nov2012/index.html>>.

³⁷ Excel Spreadsheet, "Representation at Time of Filing-by location", provided to LAO by the Family Policy and Programs Branch, Court Services Division, Ontario Ministry of the Attorney General, on January 26, 2012, in response to request from LAO's Policy Department. On file with Policy and Strategic Research.

³⁸ Rachel Birnbaum, Nicholas Bala & Lorne Bertrand, "The Rise of Self-Representation in Canada's Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers and Litigants (2013) 91 Can Bar Rev 67.

³⁹ Rachel Birnbaum & Nicholas Bala, "Experiences of Ontario Family Litigants with Self-Representation" (Toronto: Pro Bono Students Canada, August 2011) at 17, online: <<http://www.probonostudents.ca/news-announcements/pbsc-partnering-with-leading-academics-on-innovative-family-justice-survey>>. [Birnbaum & Bala, "Experiences"].

- 34% of self-represented females agreed that self-represented litigants who are *victims* of domestic violence do not get adequate protection from the family justice system⁴⁰
- 34% of self-represented females also expressed concern about the lack of protection for victims of family violence, compared to only 20% of women with legal representation⁴¹
- 37% of self-represented males disagreed or strongly disagreed with the statement that self-represented litigants *accused* of domestic violence get fair treatment in the family courts⁴²

These statistics clearly indicate the pervasiveness of self-representation in the family court system and a need for greater protection for self-represented litigants who are survivors of family violence. Unfortunately, since the cost of retaining a lawyer is prohibitive for many women, the ability to access legal representation remains a significant barrier for women who experience violence.

In addition to the inherent difficulties of navigating the family law system without legal representation, a survivor of domestic violence may experience further challenges and barriers of self-representation due to the power imbalances between the parties. In family law matters, abusive spouses or ex-spouses may use litigation as a bullying tactic, to continue a dynamic of power and control. The family law process may operate to re-victimize an individual who has experienced abuse. Full legal representation for an individual experiencing domestic violence provides them with greater protection if the other (abusing) party exerts control, aggression and/or manipulation during negotiation procedures or in the courtroom. Where in criminal law, the *Criminal Code*⁴³ permits the court to appoint counsel for the cross-examination of victims in domestic/sexual violence cases and for victims/witnesses in particular circumstances, there is no corresponding rule in the family courts. Consequently, domestic violence victims may be cross-examined by their self-represented abuser in family court.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid* at 18.

⁴³ *Criminal Code* RSC 1985, c C-46 s 486.3.

4.3 Domestic Violence Clients Need Support in the Criminal System

Domestic violence clients need more legal support in the criminal justice system. The availability of publicly funded full legal representation for individuals experiencing domestic violence who are charged or cross-charged in a domestic assault matter is rare. This gap in service is especially of concern to women who may have been charged for the first time in a domestic violence matter and have no knowledge of how to navigate the criminal justice system. The lack of available publicly funded resources for this client group is due to several issues. First, these clients rarely pass LAO's "reasonable likelihood of incarceration" test, a legal eligibility requirement to obtain a criminal legal aid certificate. Secondly, once a domestic violence client has been criminally charged, they may no longer be able to access Victim/Witness Assistance Program (VWAP) services. Lastly, to avoid a conflict of interest, where a duty counsel lawyer has already assisted the other party, the domestic violence victim will have to be assisted by other duty counsel resources, such as *per diem* duty counsel lawyers. There are also additional concerns for some immigrant women charged with domestic assault who are trying to obtain a surety bail but whose only contact may be their abusive spouse or their spouse's family members.

Even where a criminal charge does not result in a conviction, there may be other equally serious consequences for the individual as a result of the charge itself. For example, police services collect and retain information about some of the people they come in contact with, even where no criminal conviction results. The retained information is referred to as a non-conviction record which may appear in more detailed police record checks that involve searches for "local police contact", police information checks or vulnerable persons sector checks. This may negatively impact an individual's ability to enrol in certain educational programs, attain certain professional and non-professional licences and obtain employment.

Additional consequences may arise for an individual who is convicted of a criminal charge (that does not result in jail time) in relation to other areas of law. For example, a conviction can have damaging repercussions that may affect family law and child protection matters, immigration status, access to housing, and the ability to obtain employment.

Is this strategy also for victims of sexual violence?

This strategy is being developed for individuals who have experienced or are experiencing domestic violence, which may include sexual violence. Some of the unique needs of a client who experiences either domestic or sexual violence may be similar. While the development of this strategy is not directed to victims of sexual violence, some recommendations for future protocols may also assist this vulnerable group.

4.4 Immigrants and Refugees Who Experience Domestic Violence Require Greater Legal and Social Supports

There are additional consequences for women and men who experience domestic abuse and are seeking status or residency in Canada. While these consequences may be directly related to legal issues involving their immigration or residency status, these individuals may also experience consequences to their family and/or criminal law matters.

Many newcomers to Canada lack knowledge of, and experience with, Canadian law and the Canadian justice system. The challenges they experience in accessing the justice system are often compounded by language barriers, unfamiliarity with local social norms, isolation and a lack of information about or receiving inaccurate information about the Canadian justice system. A domestic violence client may be isolated by their abuser, may not have access to community supports, and may be reliant on their abuser for advice and information about legal issues. Recent changes to Canadian immigration laws have increased barriers faced by this vulnerable group.

There is also a lack of understanding of the aforementioned consequences and challenges that many domestic violence survivors experience by those assisting or supporting them in the legal system. Greater training is required for all advocates of immigrant/refugee women in the justice system, including decision-makers, on both the direct and secondary consequences domestic violence may have on a client's legal needs.

4.5 Women and Men Experience Violence Differently

Legal aid services, programs and protocols must acknowledge that violence experienced by women and men is not the same. Women are more likely than men to experience the most severe forms of self-reported victimization, such as multiple victimizations and incidents with physical injuries.⁴⁴ Female victims of self-reported spousal violence were more than twice as likely as male victims to be physically injured and reported chronic violence in their relationship almost three times more often than males.⁴⁵

The emotional impact of violence is also more pronounced for women than men. Female victims of spousal violence are identified as being seven times more likely than male spousal violence victims to fear for their life and three times as likely to be depressed or anxious.⁴⁶

A gender-based analysis is required to properly identify specific risks for men and for women who experience violence, as well as highlight the needs for targeted programs and resources.⁴⁷ Accordingly, the differences amongst the experiences of violence for men and women and the specific needs of men and women who are domestic violence survivors must be considered in the development and delivery of the Strategy.

4.6 The Greatest Risk For Abuse And Fatality Occurs At The Point Of Separation or Impending Separation

A woman is most at risk of harm, violence or death at the point of separation or impending separation from her partner. The Ontario Coroner's Domestic Violence Death Review Committee (DVDRC) found that in all cases reviewed from 2003 to 2012, 73% involved a couple where there was a history of domestic violence and 72% of the cases involved a couple with an actual or pending separation.⁴⁸

⁴⁴ Sinha, "Measuring VAW", *supra* note 18 at 8.

⁴⁵ *Ibid* at 26 – 27.

⁴⁶ *Ibid* at 9.

⁴⁷ Johnson, "Measuring 2006", *supra* note 14 at 8.

⁴⁸ "Domestic Violence Death Review Committee 2012 Annual Report". Office of the Chief Coroner for Ontario, (February 2014) at 11, online: <<http://www.mcscs.jus.gov.on.ca/stellent/groups/public/@mcscs/@www/@com/documents/webasset/c165340.pdf>>.

Violence can occur as retaliation for leaving the relationship and, whether or not reconciliation occurs, violence may be used to re-establish power and control imbalances between the partners. It is imperative that there is an abundance of legal and social supports available for victims of domestic violence to access both at the time of separation, and prior to separation occurring.

4.7 An Individuals' Experience and Identification Of Abuse is Unique

The experience of domestic violence cannot be universalized amongst victims. Each individual's experience of domestic violence is unique and highly influenced by the social variables of that person's gender, race, class, ethnicity, religion, sexual orientation, relationship status, age and other variables. Social identity will influence the impact of an individual's experience of violence and how they may respond to abuse, as well as determine the relevance of certain social and legal services.

An individual may face obstacles preventing them from disclosing their abuse. A client may be hesitant to disclose information about the abuse they are experiencing or may not recognize or understand what they are experiencing to be domestic violence. Elder survivors of domestic violence, survivors living with a physical disability or those living in a rural area may have additional needs and complexities that impact their legal issues. For example, an elderly woman or a woman with a physical disability may rely on her abuser to help her physically leave the home. A woman living in a rural area may not have transportation to access social or legal services or may have concerns that her legal issues will not be kept private within her community.

4.8 Some Communities May Be Particularly Vulnerable to Violence Which May Lead To A Greater Need For Support

4.8.1 First Nation, Métis and Inuit

First Nation, Métis and Inuit have a long and difficult history of involvement with Canadian law and legal systems as a result of the ongoing legacy of colonization and the residential schools program, coupled with both historic and current racism, and

poverty.⁴⁹ Statistics Canada identifies family violence as one of the most important issues facing First Nation, Métis and Inuit in Canada. In 2009, close to 67,000 Aboriginal women aged 15 or older living in a Canadian province reported being the victim of violence in the previous twelve (12) months and the overall rate of self-reported violent victimization among Aboriginal women was almost three times higher than the rate of violent victimization reported by non-Aboriginal women.⁵⁰ The rate of spousal homicide is eight times higher for Aboriginal women than non-Aboriginal women.⁵¹

In late 2013, the Commissioner of the Royal Canadian Mounted Police (RCMP) initiated an RCMP-led study of reported incidents of missing and murdered Aboriginal women across Canada. The study indicated that Aboriginal women are over-represented amongst Canada's murdered and missing women and there are police-recorded incidents of 164 unresolved missing Aboriginal females and 1,017 Aboriginal female homicide victims.⁵²

4.8.2 Mental Health

There is a strong correlation between domestic violence and mental health issues. Individuals who experience domestic violence suffer high rates of trauma, which may underlie or trigger mental illness.⁵³ A 2002 study of women involved with the mental health system found that 80% of participants reported being physically and sexually abused by a male partner either during their childhood and/or in their current relationships.⁵⁴

⁴⁹ In 1879, the Davin Report reported that the boarding school approach was the best answer because it "...took the Indian from the reserve and kept him in the constant circle of civilization, assured attendance, removed him from the "retarding influence of his parents...", in Robert P.C. Joseph & Cynthia F. Joseph, *Working Effectively with Aboriginal Peoples*, 3d ed (British Columbia: Library and Archives Canada Cataloguing in Publication) at 31-32. The last residential school for Aboriginal children in Canada closed in 1996. The effects however, are intergenerational.

⁵⁰ Shannon Brennan, "Violent victimization of Aboriginal women in the Canadian provinces, 2009", *Juristat*, (Ottawa: StatCan 17 May 2011) at 5, online: <<http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.pdf>>. This figure does not include Aboriginal and non-Aboriginal women living in any of the three Canadian Territories, namely, the Northwest Territories, Yukon and Nunavut.

⁵¹ Johnson, "Measuring 2006", *supra* note 14 at 67.

⁵² Royal Canadian Mounted Police, "Missing and Murdered Aboriginal Women: A National Operational Overview 2014" (Ottawa: Government of Canada 2014) at 3, online: <<http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf>>.

⁵³ Legal Aid Ontario, "Mental Health Strategy consultation paper", (November 2013) at 18, online: <<http://www.legalaid.on.ca/en/policy/downloads/Mental%20Health%20Strategy%20consultation%20paper.pdf>>.

⁵⁴ Women's Mental Health and Addictions Research Coalition (WMHAARC), "Implementing a Woman Abuse Screening Protocol: Facilitating Connections between Mental Health, Addictions and Woman Abuse", (The Ontario Trillium Foundation, 2007) at 5.

Many women are traumatized by abusive situations. This may lead to Post-Traumatic Stress disorder, anxiety, depression or an inability to focus. There is also a significant social stigma attached to people with mental health issues that leads to isolation and lack of supportive services.

4.8.3 Individuals with Physical Disabilities

Almost 14% of the Canadian population aged 15 years or older (approximately 3.8 million individuals) report having a difficulty or impairment due to a long-term condition or health problem which limits their daily activities.⁵⁵ Individuals living with physical disabilities are at a higher risk of experiencing violence than those living without a physical disability. It is estimated that 60% of women with disabilities are likely to experience some form of violence in the course of their adult lives.⁵⁶

Individuals with disabilities who have experienced abuse face additional barriers addressing the violence in their lives. These additional barriers may include: increased difficulty contacting shelters or other intervention services, a lack of access to information about available social services, difficulty accessing transportation services, a heightened fear of losing their financial security, housing or other government entitlements, or a fear of being institutionalized.⁵⁷

4.9 The Majority Of Domestic Violence Clients Require Social Support Services

Many domestic violence clients also require access to non-legal services such as shelters, rape crisis centres, community-based supports, criminal justice supports and services, counsellors and therapists, and/or culturally and linguistically appropriate services.

Shelters may provide an abused woman and her child(ren) with a safe and temporary place to live. The majority of Ontario's shelters offer women safety and protection

⁵⁵ Statistics Canada, "Canadian Survey on Disability, 2012", *The Daily*, (Ottawa: StatCan, 13 March 2015) at 1, online: <<http://www.statcan.gc.ca/daily-quotidien/150313/dq150313b-eng.pdf>>.

⁵⁶ Roeher Institute, "Harm's Way: The Many Faces of Violence and Abuse Against Persons with Disabilities", (Toronto: L'Institute Roeher Institute, 1995) in Disabled Women's Network of Canada, "Factsheet: Women with Disabilities and Violence" at 1, online: <<http://www.dawncanada.net/main/wp-content/uploads/2014/03/English-Violence-January-2014.pdf>>.[*"Disabled Women"*].

⁵⁷ International Network of Women with Disabilities (INWWD), "Document on Violence against Women with Disabilities, 2010" at 8, in *"Disabled Women"*, *ibid* at 3.

planning (95%), advocacy on behalf of women (94%), housing referrals (92%), individual short-term counselling (91%), and transportation services (89%).⁵⁸

In a twelve-month period in 2009/2010, nearly 31,000 women and children were admitted to the 171 shelters in Ontario.⁵⁹ On April 15, 2010, a “snapshot” of Canadian shelter services was taken and found that 1,870 women were residing at Ontario shelters that day. This study of abused women in Ontario shelters’ revealed important findings, including the following:

- 74% of the women were at the shelter primarily because of abuse,
- 71% of the women experiencing abuse identified a current intimate partner (spouse, common-law partner, or dating partner) as their abuser,
- 41% of the women stated that the most recent abusive situation had been brought to the attention of the police, and of these cases, 61% of women indicated that charges were laid against the abuser as a result and;
- 34% of the women indicated that the inability to find affordable housing contributed to their decision to seek shelter.⁶⁰

It is important to note that these statistics on shelter admissions are not reflective of the fact that some domestic violence survivors may not access shelter services for various reasons, including accessibility issues or being unaware that these services exist.

4.10 Domestic Violence Clients Need Lawyers Who Are Educated About Abuse and Violence Against Women

Individuals who have experienced or are experiencing domestic violence need high quality and effective legal representation. To appropriately address the needs identified above, these clients require advocacy from lawyers who are educated about domestic violence, its legal and social impacts, and the role it plays in a person’s primary and intersecting legal needs. Developing a strong and trusting relationship

⁵⁸ Adam Cotter & Marta Burczycka, “Transition Homes in Canada: National, Provincial and Territorial Fact Sheets, 2009/2010”, (Ottawa: StatCan October 2011) at 17, online: <<http://www.statcan.gc.ca/pub/85-404-x/85-404-x2011000-eng.pdf>>. [Cotter & Burczycka, “Transition Homes”].

⁵⁹ *Ibid.* Shelters were asked to provide 12 months of data corresponding to a standard fiscal year (April 1, 2009 to March 31, 2010), a calendar year, or a 12 month period of their own choosing. Most shelters responding to the survey reported their annual information based on a standard fiscal year.

⁶⁰ *Ibid* at 18.

with their lawyer is of the utmost importance to a domestic violence survivor and addressing the specific concerns and sensitivities of a domestic violence client may require additional time and resources.

5. Profile and Discussion of Current Legal Aid Services

In 2008, with funding provided by the Ontario Women's Directorate and in co-operation with the Barbra Schlifer Commemorative Clinic, Domestic Violence Protocols (the protocols) were developed for LAO's front line family law service providers to improve working more effectively with clients who have experienced or are experiencing domestic violence.

Since the introduction of the protocols, LAO has significantly changed its service delivery model. The intake process and procedure, the types of services available, and the methods for accessing legal aid services have changed substantially. Prior to the implementation of the protocols, clients presented at one of fifty-one (51) local area offices to apply for legal aid services in person. This means that survivors of domestic violence were assured privacy when speaking with application officers and may have been safe during the time they were at the office.

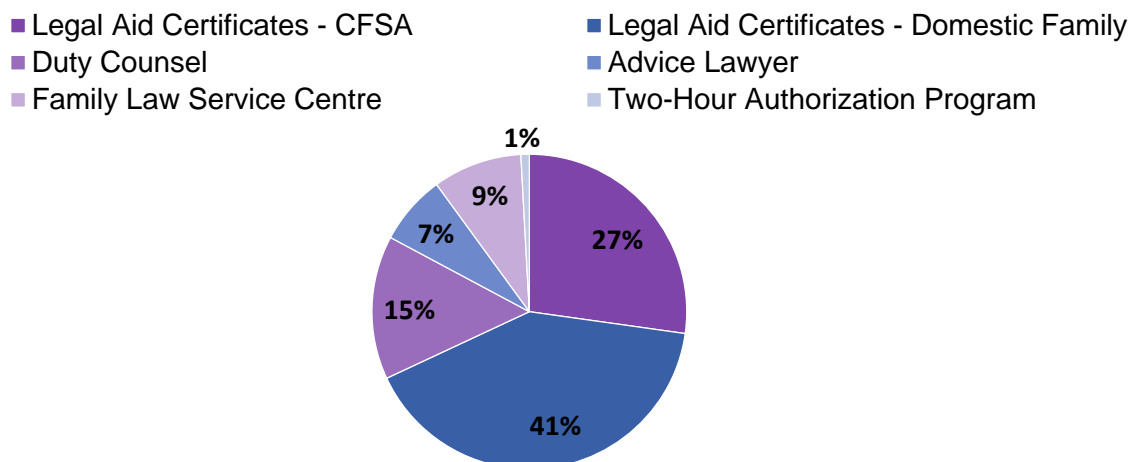
LAO's Area Office structure changed in 2010. LAO's client intake now occurs through two primary channels: 1) over the telephone at the Client and Lawyer Support Centre (CLSC) and 2) at "natural" intake sites, such as courthouses. The CLSC assists approximately 1,300 clients per day, which has significantly increased access to LAO client services, including summary legal advice and client applications. Approximately 80% of legal aid certificates issued to clients who have experienced or are experiencing domestic violence are provided through the CLSC. LAO is working to identify and address any barriers to service of this client population to ensure that LAO maintains its commitment to prioritizing the needs of survivors of domestic violence.

The following summarizes current legal aid services and discusses relevant issues for clients who have experienced or are experiencing domestic violence.

5.1 Family Law Services

In 2013-2014, LAO invested approximately \$70 million in family law services with the majority of services provided through legal aid certificates.

LAO's Investment in Family Law Services 2013/2014



There are a range of family law services available depending on the need of the client, including the following:

5.1.1 Legal Aid Certificates

Eligible, low-income Ontarians can apply to LAO for a legal aid certificate to receive full representation by a private bar lawyer (or a lawyer at a Family Law Office or Family Law Service Centre) who accepts legal aid clients, to assist with domestic family law matters such as child custody and access, child support and child protection issues and restraining orders. When an individual has disclosed abuse or has been identified as experiencing domestic violence, LAO prioritizes the client and applies an expanded and more flexible financial eligibility test. Regardless of their immigration status in Canada – if a client qualifies both financially and legally for assistance, he/she is eligible for a legal aid certificate for their family law matter. In the 2013/2014 fiscal year, LAO issued 12,826 domestic family legal aid certificates of which 8,370 (approximately 65%) were issued to clients experiencing domestic violence. This represents an investment of \$17.3 million for certificates for domestic violence clients.

Legal aid certificates are also available for clients seeking assistance with *Child and Family Services Act*⁶¹ (CFSA) matters, and 6,187 certificates were provided for related matters in 2013/2014. While LAO does not currently track domestic violence occurrences in CFSA matters, there is an opportunity for LAO to gain insight into the importance of this legal intersection in the future by ensuring that this information is gathered at intake.

5.1.2 Duty Counsel

Duty counsel services are available to financially eligible clients at family law courthouses across the province, and in the 2013/2014 fiscal year a total of 189,403 duty counsel assists were provided. The general functions of duty counsel include assisting unrepresented persons at court by negotiating interim or final settlements with the other party, attending in court with them to speak to adjournments, obtain consent orders and argue simple motions, and to assist in summary and uncontested hearings regarding custody, access and support where the issues are not complex.

i) Expanded Duty Counsel Pilot

In 1999, an Expanded Duty Counsel Pilot was introduced providing family law services in three locations, Hamilton, London and Oshawa. The Expanded Duty Counsel model emphasizes advancing cases toward resolution or assisting in major elements of the client's matter and has three important features that distinguish this model from the traditional model which includes:

- The capacity of duty counsel to create and carry client files;
- The ability of duty counsel to provide continuous representation; and
- The capacity of duty counsel to draft court documents.

ii) Enhanced Duty Counsel Initiative

The Enhanced Duty Counsel initiative was commenced as a Province-wide organizational strategy in 2010 and was built on the principles explored in the Expanded Duty Counsel Pilot projects. The Enhanced Duty Counsel

⁶¹ *Child and Family Services Act*, RSO 1990, c C-11.

initiative was established to expand, enhance and integrate LAO's duty counsel program in criminal and family law to:

- Provide a broader range of services through inter-professional teams including paralegals and articling students;
- Increase continuity of service to clients, reduce duplication and minimize court appearances;
- Facilitate earlier resolution of legal issues; and
- Support Justice on Target and Ministry of the Attorney General (MAG) Family Law Initiatives.

5.1.3 Advice Lawyer

The advice lawyer provides independent legal advice to individuals with family law matters who are not scheduled for court on the same day of their attendance. The advice lawyer has an interview room in courts that have a Family Law Information Centre (FLIC) office, run by MAG. Elsewhere, advice lawyers are available during fixed hours within a courthouse, community centre, or district area office. In general the advice lawyer may provide an individual with up to 20 minutes of information on court processes and related general advice on family law matters. This may include advice about the role of counsel and how to choose a lawyer and referring and advising clients about other sources of assistance. Financial eligibility testing may be conducted where the advice lawyer wishes to refer the client to other legal aid services, and case specific advice may be provided to clients who are financially-eligible. In 2013/2014, across the province, more than 87,000 people were provided with summary legal advice at family court.

5.1.4 Family Law Service Centres (FLSC) and Family Law Offices

Across the province, there are seven (7) Family Law Service Centres and two (2) Family Law Offices (Ottawa and Thunder Bay), which offer legal assistance to financially eligible clients with family law matters including, but not restricted to, areas of custody, access, support, child protection and restraining orders. Some centres also provide full scope representation for clients who are eligible for certificates. During the 2013/2014 fiscal year, approximately 35,111 clients received help at these centres.

5.1.5 Advice Lawyer – Family Violence Two Hour Authorization Program

A LAO program available specifically for clients who have experienced or are experiencing domestic abuse is the Advice Lawyer - Family Violence Two Hour Authorization program. Financially eligible domestic violence survivors can meet with a lawyer of their choice (from a list of available lawyers on LAO's domestic violence panel) and receive up to two hours of free legal advice related to family law or refugee and/or immigration law matters. A more expanded and relaxed financial eligibility test is applied to issue these authorizations than the financial eligibility test that is used when a domestic violence survivor applies for a legal aid certificate (which is currently the duty counsel rate). These authorizations are used by survivors of domestic violence to consult with a lawyer about their available legal options as they consider their next steps in addressing partner abuse. LAO provides these authorizations through shelters, legal clinics and other community organizations to women or men leaving violent relationships. In 2013/2014, 2,465 clients were provided with assistance through these two-hour consultations.

5.1.6 Community Partnerships

LAO also has partnerships with a number of community hubs, which offer collaborative assistance for survivors of domestic violence to access free social and legal family services. For example, in November 2011, LAO partnered with the Safe Centre of Peel (located in Brampton) that provides seniors, other adults and children who have survived domestic violence and trauma with one-stop access to the many services they require. This hub enables clients to address their intersecting needs in a holistic way and at one location. In addition, since spring 2011, LAO has been participating in the Family Violence Project of Waterloo Region. This is Canada's first one-stop centre for victims of domestic violence. In the Durham-Frontenac District, LAO has partnerships with two community hubs, Durham Region's Intimate-relationship Violence Empowerment (DRIVEN) in Oshawa and Support Team for Abuse Today (START) in Peterborough. To assist domestic violence clients, the Steering Committee of START negotiated a protocol with the CLSC to have a priority queue for those clients. A local lawyer volunteered to attend on site when available and if they consult with a client, may bill the two-hour family violence authorization. The same protocol has been extended to DRIVEN. These are just a few examples of partnerships LAO has with community organizations to provide services to clients who have experienced or are experiencing domestic violence.

5.2 Immigration and Refugee Law Services

In 2013/14, LAO invested \$18.2 million for immigration and refugee legal services and issued approximately 5,300 certificates. LAO's Refugee Law Office (RLO) in Toronto provides legal assistance, representation and summary legal advice to refugee claimants and immigrants who are eligible for legal aid. The Integrated Legal Services Office in Ottawa also offers refugee services, and a fulltime refugee lawyer supports refugee claimants in southwestern Ontario out of the Hamilton District Office.

Depending on the legal matter, the client's country of origin, and their financial situation, LAO may assist with hearings before the Immigration and Refugee Board, family sponsorship, deportation appeals and detention reviews. As mentioned earlier in this consultation paper, survivors of domestic violence with refugee and/or immigration law matters who qualify financially can receive up to two hours of legal advice from a lawyer about their legal matter through LAO's Advice Lawyer - Family Violence Two Hour Authorization program.

5.3 Criminal Law Services

Similar to family law, LAO offers a range of criminal law services, although the majority of cases are handled through the certificate program or by duty counsel. In 2013/14, LAO issued almost 55,000 legal aid certificates for criminal law services (a \$108 million investment), and provided approximately 650,000 duty counsel assists. Overall, LAO invested \$132 million in criminal law services.

While no legal services are dedicated specifically to domestic violence clients in criminal matters, LAO does have certain legal supports available for sexual violence complainants. LAO issues certificates, known as O'Connor/Mills, to financially eligible complainants in sexual assault cases whose confidential/third party records are being sought by the accused. LAO also provides certificates to domestic violence clients if they meet LAO's standard criminal "loss of liberty" test.

There is great need and potential for LAO to build on the services available to clients who have experienced domestic violence in the area of criminal law. Although the family and criminal justice systems are separate and distinct, in recent years there has been greater attention paid to the intersections between these two areas of law.

To address the co-ordination of issues and the sharing of information where there are concurrent criminal and family proceedings, an Integrated Domestic Violence Court (IDVC) pilot project was introduced in June 2011 in Toronto, the first and only integrated court in Canada.⁶² The IDVC enables families with summary conviction criminal proceedings (at the Ontario Court of Justice) and certain family law issues to have both matters adjudicated before one dedicated judge. The information sharing between the criminal and family courts appears to be positive but there is a need for ongoing evaluation.⁶³ Since its inception in June 2011 to September 2014, there has been only 41 cases brought before the IDVC, as initially all parties had to consent before the family and criminal case would be transferred to the IDVC. However a new practice direction of the Chief Justice and Regional Senior Justice, Toronto of the Ontario Court of Justice, dated April 26, 2013, makes participation in the IDVC mandatory in certain circumstances.⁶⁴ Although not correlated to the low number of cases brought to the IDVC, stakeholders have identified as a major challenge for IDVC cases is the ability to obtain a legal aid certificate that is sufficient to cover the necessary time for court preparation, documentation and court attendance that results from hearing both matters sequentially.⁶⁵

5.4 Clinic Law Services

LAO funds a network of 76 legal clinics across the province, and in 2013/2014 LAO invested \$75.5 million in clinic law services. Each clinic establishes its own mandate within the provisions of LASA, and provides services in a number of areas, including landlord and tenant issues, disability and income security programs, workers' rights, immigration, criminal injuries compensation and human rights issues. In 2013/14, the community clinic program supported more than 178,000 active files and specialized clinics supported a further 30,000 files. LAO is working with legal clinics in Ontario to expand and improve client services by building capacity and meeting modern needs.

Specialized clinics focus on test cases, law reform and public legal education – all of which have the ability to address the systemic needs of clients who have experienced domestic violence. Specialized clinics are dedicated to fields such as disability, HIV/AIDS and elder law, while others provide culturally competent legal services

⁶² Rachel Birnbaum, Nicholas Bala & Peter Jaffe, "Establishing Canada's First Integrated Domestic Violence Court: Exploring Process, Outcome, and Lessons Learned" (Unpublished) at 8. [Birnbaum, Bala & Jaffe, "IDVC"].

⁶³ *Ibid* at 53.

⁶⁴ "Practice Direction regarding the Integrated Domestic Violence Court at 311 Jarvis Street, Toronto", online: < <http://www.ontariocourts.ca/ocj/files/idvc/2012-idvc-practice-direction-EN.pdf>>.

⁶⁵ Birnbaum, Bala & Jaffe, "IDVC", *supra* note 62 at 44.

dedicated to Southeast Asian, African Canadian and Aboriginal clients, among others.⁶⁶

LAO also offers family law services such as legal advice and legal information through some community legal clinics who have partnered with LAO. The clinic is staffed with an LAO lawyer on a part-time basis to provide domestic violence clients with family law services. These services may include summary legal advice, document preparation and limited day-of-court representation. Certain locations may also offer other LAO services.

Clinics may individually or collectively offer services tailored to the needs of domestic violence clients. However, as each clinic operates independently, there is a wide variety of approaches taken by clinics.

Clinics have told LAO that clinics could use assistance to better support domestic violence clients, and have requested that they receive Domestic Violence Awareness Training. Clinics 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 services between courthouses, clinics, community centres, and those provided by the private bar and LAO staff lawyers.

5.5 First Nation, Métis and Inuit Services

First Nation, Métis and Inuit have a long and difficult history with Canadian law and legal systems, most notably in the areas of child protection, criminal law, and youth justice. In domestic family law, 9% of certificates issued in 2014 were provided to First Nation, Métis or Inuit clients. While First Nation, Métis and Inuit children account for only 2.8% of Ontario's child population, 13% of certificates for child protection matters in 2014 were issued to First Nation, Métis or Inuit clients.⁶⁷ In LAO's Northeast district the rate was much higher, with 20% of certificates for child protection matters issued to First Nation, Métis or Inuit clients. There are now three times more Aboriginal

⁶⁶ For a list of all legal clinics funded by LAO and the services provided see a list of community legal clinics, online: <<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>>.

A list of speciality clinics is available online:
<<http://www.legalaid.on.ca/en/contact/contact.asp?type=scl>>.

⁶⁷ Legal Aid Ontario, "2015/16-2016/17 Business Plan", Prepared for the Ministry of the Attorney General (Unpublished) at 72.

children in the care of child welfare agencies than were in residential school programs at their peak in the mid-20th century.⁶⁸

In 2008, LAO began developing an Aboriginal Justice Strategy (AJS) to improve legal aid services to all First Nation, Métis and Inuit in Ontario, regardless of whether they live on or off-reserve, are status or non-status, or live in a rural or urban environment. In 2013, LAO announced its renewal of the strategy for an additional five years, with significant financial investments. The goal of the renewed AJS is to expand important client services and increase LAO's ability to respond to local needs.

5.6 Mental Health Services

It is estimated that one-third of LAO certificates are issued to clients with mental health or addiction issues. After two years of province-wide consultation and engagement sessions, LAO has developed a Mental Health Strategy (MHS) to strengthen the capacity of LAO staff, private bar lawyers, front-line workers and management to better serve clients with mental health needs. The strategy takes a rights-based approach⁶⁹ and proposes to reduce barriers and promote access to justice for clients with mental health issues by expanding financial and legal eligibility. Further, community and outreach-based pilot projects will embed coordinated legal access points along the health, social support and legal pathways that clients may encounter.

LAO delivers mental health services to clients in the civil mental health system, including exercising rights under Ontario's *Mental Health Act*⁷⁰ and the *Health Care Consent Act*⁷¹ for a review before the Consent and Capacity Board (CCB) or the Ontario Review Board (ORB). LAO will consult with its stakeholders in the mental health realm and provide recommendations as to how LAO may be able to provide services to clients in the civil mental health system who have experienced domestic violence, with issues related to distress in property/estate disputes, where there is contested power of attorney for personal care and/or applications for court-appointed guardians of property. In addition, further consultation is also needed on providing

⁶⁸ 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>.

⁶⁹ A rights-based approach seeks to promote the empowerment of people to understand and claim their rights, while increasing the accountability of individuals and institutions that are responsible for respecting and protecting the rights of individuals.

⁷⁰ *Mental Health Act*, RSO 1990, c M.7.

⁷¹ *Health Care Consent Act*, 1996, SO 1996, c 2, Schedule A.

services to clients in the civil mental health system who are survivors of domestic violence with making claims to and representation at the Criminal Injuries Compensation Board.

5.7 French Language Services

LAO is subject to the *French Language Services Act*,⁷² and is committed to meeting its obligations to ensure all LAO French services are readily available, evident, and accessible.

LAO's French Language Services (FLS) participates in ongoing consultations with justice sector partners and FLS stakeholders throughout the province, including stakeholders from the VAW community. Many challenges faced by Francophone legal aid clients reflect similar issues faced by all clients, although there are needs particular to Francophone communities including:

- Ensuring Francophones are aware of their right to, and the availability of, services in French; and
- Ensuring service models respond to the needs of Francophones, and are not simply a translation of English services.

LAO funded a 2012 report of the legal needs of Francophone women in Ontario,⁷³ and has been working to integrate key recommendations into planning and services where appropriate. LAO's recent family law and domestic violence service enhancements reflect several recommendations found in the report.

⁷² *French Language Services Act*, RSO 1990, c F.32.

⁷³ "Sexual Assault and Domestic Violence: French Language Services and Priority Issues Ten Years after Forum 2004". Summary of the Report on the Forum, Prepared by Maïra Martin, Action Ontarienne contre la violence faite aux femmes, (May 2015).

6. LAO's Commitment to Access to Justice

Ontario's legal aid system faces many challenges. Like all public organizations, LAO must ensure that the public funds it receives are spent effectively and efficiently and, like other justice organizations, must also meet the challenge of the "access to justice" crisis in Ontario. Legal needs research and experience suggest that the legal aid system must consider new or emerging legal needs and find creative approaches to delivering services to clients.⁷⁴

The provincial government has recently committed to increasing financial eligibility at LAO and has invested heavily in LAO's family law services. These changes have placed LAO in a much better position to improve access to justice for low-income Ontarians and enhance services for vulnerable individuals such as those who have experienced or are experiencing domestic violence.

6.1 Financial Eligibility Expansion

On June 8, 2015, LAO announced a multi-year plan to expand its certificate services in criminal law, family law, refugee/immigration law and for mental health legal proceedings. This plan is the most significant and rapid increase in eligibility for legal aid certificates in more than 25 years. This historic initiative will make almost 400,000 or 40% *more* low-income Ontarians financially eligible for legal aid services. As announced in the provincial government's last two budgets, the government has increased LAO's funding by \$154 million over four years.

The initiatives – while specifically tailored to criminal law, family law, etc. – are linked and organized into the following complementary themes:

- Expanding access to justice and reducing unrepresented litigants;
- Improving access to justice for vulnerable client groups and families;
- Investing in services to address legal problems before they escalate;
- Helping low-income Ontarians avoid the life-changing consequences of a criminal record;
- Improving the administration of justice; and

⁷⁴ Legal Aid Ontario, "Clinic law service strategic direction", online: <<http://www.legalaid.on.ca/en/publications/downloads/clinicconsultation/Clinic%20Law%20Services%20Strategic%20Direction.pdf?t=1427932800024>>.

- Building the foundation for future services.

LAO's new certificate services also include initiatives specifically dedicated to improving access to justice for survivors of domestic violence.

In criminal law, for example, LAO will make certificates available to people who are charged with assault against their violent partner while attempting to defend themselves. Until now, survivors of domestic violence charged criminally have not had access to legal aid certificates, as the charges do not generally result in incarceration. However, the criminal charges can have devastating impacts on the person's family court case, especially custody and access, as well as on any child-protection proceeding. LAO also expanded criminal certificate coverage to first time offenders and for "secondary consequences," both of which are likely to assist survivors of domestic violence.

LAO's family law initiatives reiterated the high priority LAO places on certificate services for survivors of domestic violence.

LAO has also expanded certificate services for survivors of domestic violence for assistance in Humanitarian and Compassionate applications.

Finally, LAO has also committed to developing a project to expand services for survivors of domestic violence in community settings. LAO has been working with other community agencies to develop "service hubs" in which several groups join forces to offer a range of services in one location. In 2014, LAO forged a partnership with Luke's Place Support & Resource Centre for Women and Children ("Luke's Place") in Oshawa, to offer legal assistance to women experiencing domestic violence. Moving forward, LAO will partner with other community-based organizations to offer legal supports in other parts of the province.

More details on these initiatives can be found at:

http://www.legalaid.on.ca/en/news/newsarchive/1506-08_eligibilityexpansion.asp.

These initiatives follow LAO's earlier announcement – in November 2014 – that LAO would implement a higher financial eligibility test for family law clients who have experienced domestic violence. This policy – known as the DV FET – states that LAO will issue certificates to survivors of domestic violence according to LAO's duty counsel financial eligibility guidelines.

6.2 Expansion of Family Law Services

In addition to expanding financial eligibility and certificates, LAO has been expanding other family law services. In 2013, Ontario's provincial government invested \$30 million over three years in LAO to improve access to justice by strengthening LAO's family law services. The government's investment explicitly identifies victims of domestic violence as a vulnerable group most in need of responsive and prompt services.

LAO has been investing a large portion of its funding into making sustainable improvements to its family law programs and services, and focuses on matching clients with the service that most appropriately and effectively meets their needs. To accomplish this, LAO has taken steps to expand the range of services available to clients. Ultimately, LAO's objective in the delivery of family law services includes: addressing the needs of unrepresented family litigants, building "holistic" responses to family law issues, promoting consensus-based family law resolutions and offering more unbundled legal services.⁷⁵

As a result of the provincial investment, in 2014 LAO began providing certificates to clients who have expressed an interest in resolving their family law matter outside the formal court system. These "non-litigation" certificates include: 1) independent legal advice certificates, which provide up to six (6) hours of legal advice for mediated agreements and 2) separation agreement certificates, which provide up to ten (10) hours of legal services by a lawyer for the negotiation and creation of a separation agreement.

As an increasing number of new legal aid clients are being assisted with unbundled services, including legal advice and assistance with document preparation, fewer clients may be receiving certificates and working with a single lawyer throughout the duration of their case. This shift in service delivery requires further analysis of the impact on domestic violence clients. While these initiatives expand access to justice for low-income Ontarians, non-litigation service options may not be appropriate for domestic violence clients, who are currently still being referred to full certificate services.

⁷⁵ Unbundled legal services refer to the provision of legal services where a "lawyer or paralegal provides legal services for part, but not all, of a client's legal matter, by agreement with the client". See The Law Society of Upper Canada, "Unbundling" of legal services" (2014), at 1, online: <<http://www.lsuc.on.ca/unbundling/> to>.

6.3 Current Initiatives for DV Clients at LAO

6.3.1 Domestic Violence Awareness Training

Finally, LAO has two additional significant domestic violence initiatives. LAO has organized a training initiative for all LAO staff with a focus on building skills and working more effectively with domestic violence clients delivered through a lens of cultural competency. Domestic violence awareness training has been developed by Luke's Place. As of June 2015, over 900 LAO staff have been trained across the province.

This training focuses on building awareness and includes:

- Signs a person may be experiencing domestic violence
- Effective communication with clients who experience domestic violence
- Providing culturally sensitive services to domestic violence clients
- Stereotypes and misconceptions about domestic violence

LAO intends to bring this training to community legal clinics and LAO panel lawyers in the 2015/2016 fiscal year. There is also an online training component that will be made available to all LAO and clinic staff in June 2015.

6.3.2 Luke's Place and Durham FLSC Initiative

LAO is investing \$600,000 over three years in a partnership with Luke's Place. Luke's Place is a centre devoted solely to improving the safety and experiences of abused women and their children as they proceed through the family law process. Luke's Place will work with LAO's Family Law Service Centre (FLSC) in Oshawa to provide a safe and supportive site for low-income abused women.

Women who have experienced domestic violence will:

- have access to a staff lawyer who can provide legal advice and help with drafting family court documents
- be linked with a legal support worker or family court support worker based out of Luke's Place

- receive support from staff who understand domestic violence
- connect with other services offered at Luke's Place, including group support sessions, early information and safety planning sessions

7. What We've Heard So Far

To date, LAO's engagement sessions and consultations have helped identify client needs and have provided a series of preliminary suggestions and recommendations on how best to expand service delivery and increase access to justice for survivors of domestic violence. These preliminary suggestions provide critical insight for LAO to identify potential changes for service delivery in both the immediate future and long-term transformation. A single recommendation may be relevant to more than one of the needs identified above.

7.1 Recommendations to Provide Holistic Services and Address Intersecting Needs

Stakeholders have suggested that LAO:

- Provide certificates to clients experiencing domestic violence with related and concurrent family and criminal law matters for both matters
- Provide certificates to clients experiencing domestic violence with related family and immigration or refugee law matters for both matters
- Conduct early and proactive holistic assessment of client needs to help identify client issues that are often multi-layered and interdependent
- Provide guided transition between various LAO services and practice areas and increase availability of case coordination
- Ensure that both LAO staff and community clinic staff are knowledgeable about legal services in other practice areas, and how these services are provided
- Improve access points by developing consistent links between courts, community resources, legal clinics and social services
- Use 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
- Partner with initiatives and services developed and led by domestic violence survivors, peer supporters and trusted intermediaries

7.2 Recommendations to Improve and Expand Access to Services

Stakeholders have suggested that LAO:

- Provide independent legal advice to complainants in criminal domestic abuse cases
- Support community partners in the development of a program similar to the Family Court Support Worker Program for survivors of domestic violence in criminal proceedings
- Prioritize services for domestic violence advocacy in clinic transformation plans
- Consider using risk assessment tools to place domestic violence clients along a “continuum of risk” and apply a more generous financial eligibility test for clients who are at risk of harm, based on indicators of lethality
- Re-examine LAO’s legal eligibility requirement for criminal law certificate services which requires a “probability of incarceration”⁷⁶ upon conviction to account for domestic violence accused who may be charged or cross-charged
- Issue criminal law certificates to persons accused of domestic violence with identified mental health issues even if not otherwise legally eligible, because of their additional vulnerabilities
- Extend the two-hour authorization program to survivors of domestic violence to criminal law matters and to appropriate clinic legal services

7.3 Recommendations to Increase LAO’s Capacity to Address the Unique Needs of Domestic Violence Clients

Stakeholders have suggested that LAO:

- Relax time restrictions on intake and calls for CLSC staff to allow staff more time to properly identify domestic violence, and to work with the client once domestic violence is disclosed
- Improve screening practices both at the CLSC and in person to allow for accurate identification and quicker prioritization of domestic violence clients
- Put in place protocols to ensure high-risk clients receive legal assistance

⁷⁶ LAO will only issue a certificate to a financially eligible accused if there is a “probability of incarceration” upon conviction. Factors considered include: the criminal charge, the accused persons’ criminal record (if applicable) and other aggravating circumstances (such as, theft from an employer).

- Use a gender-based analysis to develop programs and policies which are directed at or engage clients who have experienced domestic violence
- Put in place consistent but flexible practices and policies for all LAO services for domestic violence clients, including appeals and cases requiring discretion or contribution agreements
- Track presence of domestic violence in all LAO service delivery and certificate applications to appropriately identify intersecting legal needs and assist with future service delivery planning
- Improve advocacy through better awareness of the client's path through the civil and criminal justice systems

7.4 Recommendations to Improve Legal Representation

Stakeholders have suggested that LAO:

- Ensure lawyers can rely on flexible discretion or enhanced fees when working with domestic violence clients in order to give appropriate time to address a broad array of legal advocacy needs
- Make domestic violence awareness, cultural competency and anti-racism core competencies of all legal aid decision-makers including lawyers and front-line staff
- Increase the availability of French resources for staff assisting domestic violence clients
- Have domestic violence specialists available at the CLSC and duty counsel offices
- Evaluate and enhance current family and domestic violence panel standards
- Ensure that all *per diem* certificate and panel lawyers and legal aid clinic staff are trained in domestic violence awareness
- Minimize the number of legal referrals for domestic violence clients when possible
- Allow greater discretion in change of solicitor applications for clients who have experienced domestic violence
- Provide services to opposing parties/alleged abusers to help ensure that both parties to these highly contested matters have representation in family matters
- Amend the Two-Hour Family Violence Authorization Program to provide an increased number of hours when needed to allow lawyers appropriate time to build trust with a domestic violence client
- Ensure lawyers understand the role of Family Court Support Workers (FCSW) and work with them to best support the needs of domestic violence clients

8. LAO's First Thoughts Moving Forward

As noted above, this consultation paper is designed to both encourage participation in the development of LAO's Domestic Violence Strategy and to provide clarity around LAO's early thinking about the Strategy. Presented here is LAO's provisional thinking about several important issues. The points raised should not be taken as definitive statements of LAO policy or long-term plans. Rather, they 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.

8.1 Legal Eligibility Needs Expanding

LAO has taken important first steps in expanding financial and legal eligibility for survivors of domestic violence. For example, LAO's DV FET, described earlier, expands financial access to family law legal aid services for survivors of domestic violence. LAO believes, however, that more can be done to improve an individual's access to important legal aid services. Resources permitting, LAO could, for example, expand the DV FET to services other than family law. Survivors of domestic violence (and other legal aid clients) often have multiple and concurrent legal needs. Clients in these circumstances would benefit from more coordinated and integrated services across the legal aid system.

8.2 Greater Discretion Is Required For High-Risk Clients

Currently LAO staff applies an expanded financial eligibility assessment for domestic violence clients who have a family law matter, which attempts to take into consideration the financial expenses related to emergency needs and/or any other special circumstances of the client. Where a survivor of domestic violence does not qualify for legal aid, the applicant is not immediately declined but is referred to the District Office for consideration. District Offices should exercise discretion and flexibility when applying a financial eligibility test including offering contribution agreements to high-risk clients.

8.3 Enhanced Screening Is Required For Domestic Violence

Domestic violence clients seek LAO assistance from different access points and at different stages of their experience of having a legal issue. More specifically, some clients are referred to LAO after having accessed services from a community partner, whereas for many clients, contacting LAO is the first time that they have sought external assistance for support and legal services. Screening clients is essential, as this vulnerable population often have intersecting legal matters, making their legal needs more complex and, often, more contested. A more effective screening process is needed to identify domestic violence clients, especially at the CLSC where applications are being assessed. The circumstances of domestic violence applicants for LAO services can make it more difficult to determine if and for which services they are eligible. For example, a domestic violence applicant may not appear to be financially eligible on the face of it, but their abuser may control their financial assets, preventing the client access to them.

8.4 The Most Important Service is a Really Good Lawyer

Clients, clinics and counsel alike consistently comment 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. LAO can assure high-quality lawyers by the identification of core competencies, improving panel management and ensuring that sustainable training is available.

8.5 LAO Supports a Gender-Based Approach to Assisting Domestic Violence Clients

Social program and policy developers have identified that there are instances where programs require taking gender into consideration. Statistics Canada has acknowledged that generic policies and programs for addressing the risk of violence fail to appropriately address a woman’s experience of violence.⁷⁷ Determining the

⁷⁷ Johnson “Measuring 2006”, *supra* note 14 at 8.

needs of a client based on gender can demonstrate specific risks for men and women, and highlight needs for targeted programs.⁷⁸

8.6 Any Entry Point For A Domestic Violence Client Is The Right One

A “no wrong door” approach is required for individuals who have experienced or are experiencing domestic violence. Legal services should be provided at earlier entry points along the client’s service pathway, whether at a court, a clinic, a shelter or another community service. A client should have access to or be directed to LAO’s services regardless of their entry point into the legal system.

8.7 LAO Can Improve Support to Private Bar, Clinics, Staff and Community Partners

LAO’s service providers are already engaged in providing positive work efforts in support of domestic violence survivors. However, the efforts of service providers can be significantly enhanced through the delivery of consistent policies and resourcing that encourages best practices throughout the province. Of particular relevance, services provided in rural and remote areas must be specifically tailored to meet local needs more effectively.

8.8 LAO Should Play a Greater Systemic Role

Promoting a client-centered approach is important to address systemic disadvantages experienced by domestic violence survivors and to increase efforts to connect these clients to available 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.

⁷⁸ *Ibid.*

8.9 Greater Research is Required on Alternative Dispute Resolution Processes and Domestic Violence Clients

The traditional view of the VAW community was that parties in a family law proceeding with a history of domestic violence are not suitable candidates for mediation. Advocates and experts have asserted where domestic violence exists, the power imbalance between the two parties is too great to reach a fair, consensual and equitable agreement. However, in the last decade, there has been a shift in the relationship between mediation and domestic violence, and it is more widely accepted that mediation may be appropriate in some cases where domestic violence has occurred between the parties in dispute. More research is required with respect to the use of alternative dispute resolution processes where domestic violence exists to understand if these processes can be safe, fair and effective for clients experiencing abuse.

9. Discussion Questions

1. What Are The Most Serious Unmet Legal Needs For Clients Who Have Experienced Or Are Experiencing Domestic Violence?

As noted above, LAO currently offers a range of legal services for clients who have experienced or are experiencing domestic violence. LAO is also expanding a number of these services pursuant to its financial eligibility expansion service strategy. Given this context, what are the most important unmet legal needs of survivors of domestic violence? What range or spectrum of legal needs or services should LAO be striving to achieve? Assuming LAO can expand services for survivors of domestic violence, in what areas should services expand?

2. Where to Start? What Legal Services and Practice Areas Should The Domestic Violence Strategy Prioritize?

LAO's Domestic Violence Strategy will develop over several years. Given the considerable breadth and depth of the need and opportunities for change, what are the most essential issues 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 who have experienced domestic violence? Are there initiatives or best practices that already exist which can help achieve some of these goals? What would your ideal list of 3-4 "quick wins" look like?

3. What Can LAO Do To Improve Access To Services For Domestic Violence Clients? How Are Legal Aid Services Delivered Most Effectively?

In addition to identifying an ideal range of legal needs, LAO is seeking advice on service delivery issues. LAO's DV financial eligibility test establishes as a general principle that a client is eligible for full legal representation services if the client identifies as experiencing domestic violence and is financially eligible. LAO also offers duty counsel, summary advice and other services. Community clinics offer services to victims of domestic violence. How, in your view, could the range of legal aid services work together more effectively? Are there gaps in the range of services LAO provides? Are the appropriate services available and provided to Francophone clients experiencing domestic violence?

How can LAO use technology as a mechanism to provide outreach to clients and vulnerable populations? How can technology be used by LAO to improve access to services for particular communities, and what services could be made accessible through technological means? Are there specific technological innovations that may assist domestic violence survivors in accessing supports and services?

4. How Can LAO Promote Holistic Services?

There are many options for better coordinating legal, community and social services. As LAO is a legal rather than a social service provider, what kinds of community and social support partnerships would help supplement legal services? How should referrals be made? How can LAO assist to enhance coordination of services between courthouses, community legal clinic, and community centres?

Is there a role for private bar, staff or clinic lawyers, paralegals, or trusted intermediaries and peer supporters to link community and court services? Is the traditional role of the lawyer adequate to serve clients experiencing domestic violence? Are there alternative ways lawyers can provide services? How can LAO support interdisciplinary teams? Is there a role for case coordination across multiple LAO service streams? Should LAO consider developing a “case management” system that would help track clients across multiple services?

5. Should All Domestic Violence Clients Be Streamed To “Assured” Providers?

Improving access means making every access point the right access point. Is it important that all legal service providers have training in working with clients who have experienced domestic violence? Should more emphasis be placed on developing domestic violence specialists within respective service streams, such as the call centre, duty counsel services and the private bar?

6. Should LAO Assess Clients For Risk?

Currently, LAO does not conduct an official risk assessment to determine if a client is high risk or in immediate need of protection. Should a risk assessment be done for clients who are not financially eligible or unqualified for certificate services? How would LAO develop a reasonably consistent test or standard by which to assess risk? What is the best way to efficiently and effectively assess risk for clients? If a client is determined to be high risk, what is LAO's role?

7. How Can The Two-Hour Family Violence Authorization Program Be Improved?

Currently this program is only available for family and immigration/refugee law matters. Should this be extended to criminal matters as well? How do we ensure community partners are reporting back to LAO? Is two hours an appropriate amount of time for these authorizations?

8. How Should LAO Ensure That Domestic Violence Training and Awareness Is Sustained?

While training for domestic violence awareness and competency has been developed and implemented to improve the delivery of LAO's services; permanently sustaining this as part of LAO's corporate culture is important. How often should all staff be trained, and how important is "refresher" training? Is it important that training be available to (or mandatory for?) all LAO service providers, both internal staff and external providers? Should LAO provide dedicated resources to sustaining and coordinating the domestic violence strategy and related services, such as a permanent leadership position or a centre of excellence?

9. What Are the Best Ways To Facilitate Linkages Between Criminal And Civil Legal Needs?

LAO provides a number of services within family courts and for criminal legal matters, but relatively few programs that ensure clients are smoothly transitioned between these services. The needs analysis in this paper identified a number of areas where domestic violence clients could be improved – are these accurate? Are there other areas not mentioned?

10. What Role Should LAO Take In Systemic Law Reform Initiatives?

Stakeholders suggest that more active engagement in systemic law reform initiatives is an important contributor to the promotion of client-needs based approaches in the delivery of social and legal services. What areas of systemic law reform are needed with respect to family, criminal and immigration law? What opportunities exist for LAO to become more involved? What should the scope of LAO's intervention be?

11. What, If Any, Should LAO's Scope Be In Assisting The Other Party/Alleged Abuser?

Should LAO issue certificates to opposing parties in domestic violence cases if they are currently self-represented? If so, when? Should doing so be limited to financially eligible clients? What are the risks and limitations?

In criminal cases, mental health concerns must be taken into consideration, especially in cases of elder abuse. What are the impacts and proper responses if an abuser's actions are a result of a mental health issue such as dementia?

12. Are Alternative Dispute Resolution And Mediation Appropriate For Client's Experiencing Domestic Violence?

LAO offers family law mediation services to help people who have a dispute reach a settlement that fits their family's needs, while minimizing conflict and delay. How can alternative dispute resolution processes be used to assist domestic violence clients with family law matters? In what circumstances could mediation be appropriate where domestic violence has or does exist? When mediation is appropriate, what should LAO's role be in directing domestic violence clients to alternative dispute resolution services?

What research is still needed on alternative dispute resolution processes, including mediation, collaborative law, arbitration and parenting coordination for clients who have experienced domestic violence?

10. 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 develop a Domestic Violence Strategy.

The feedback collected during the consultation process will directly contribute to the development of a Domestic Violence Strategy for LAO. After the close of the formal public consultation sessions in the fall of 2015, a paper recommending LAO's future Domestic Violence Strategy will be formally released for additional comment in the spring of 2016. Pilot projects are also under active development.

LAO would like to extend a big thank you to all who read this paper for your time, contributions and participation in assisting in the development of a domestic violence strategy for LAO. While this initiative will not be short, it will be great.