



Consultation Paper

# Development of a Racialized Communities Strategy

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**Legal Aid Ontario**

40 Dundas Street West, Suite 200  
Toronto, Ontario, Canada M5G 2H1

Toll free: 1-800-668-8258

Email: [info@lao.on.ca](mailto:info@lao.on.ca)

Website: [www.legalaid.on.ca](http://www.legalaid.on.ca)

Legal Aid Ontario receives financial assistance from the Government of Ontario.

# 1. Introduction

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## 1.1 The Racialized Communities Justice Strategy

The term “racialized” is used in this paper to refer to a wide variety of people or communities of different racial and ethnic backgrounds who were historically referred to as “visible minorities”.<sup>1</sup> Racialization is a complex interweaving of social, cultural and legal processes through which particular groups – primarily those who are non-Caucasian/non-white – are defined and disadvantaged. Each group has its own experience of racialization, and the strategy’s development recognizes that “racialized communities” are not monolithic.

The experience of racialized communities in the Canadian justice system is one that is marked by overrepresentation and unequal treatment. This fact has been highlighted by several studies and reports, recently and going back decades. These studies – combined with the fact that racialized communities are overrepresented among the poor – mean that a disproportionate number of people who require legal aid services are likely racialized.

In particular, members of the Black community are overrepresented among the poor and those drawn into the justice system. They are similarly overrepresented among those who are incarcerated in provincial and federal institutions and in the child-welfare system. There is also evidence that children from other racialized communities are also overrepresented in the child welfare system.

Understanding these realities, and how Legal Aid Ontario (LAO) can contribute to preventing them, is a core component of LAO’s mandate. This is why the Board of LAO mandated the creation of a Racialized Communities Strategy (“RCS” or “the Strategy”) in 2016.

The Strategy will be a multi-year, multi-faceted, and province-wide plan to achieve measurable improvements in the effectiveness of LAO’s services for racialized communities. The goal of the Strategy is to develop improvements to current services and explore options for service expansion in response to barriers faced by racialized communities in accessing both LAO’s services and justice itself.

The strategy has four stages:

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1-Although First Nation, Métis and Inuit have been subjected to the process of racialization they are outside of the Racialized Communities Strategy because as Indigenous peoples in Canada they have different political and historical realities than members of racialized communities. Additionally, Legal Aid Ontario (LAO) has an established Aboriginal Justice Strategy

Stages	Timeline
<b>Early Engagement:</b> preliminary meetings with justice, social service partners, legal clinics, professional associations, government and community agencies that serve racialized communities	Completed February 2017
<b>Release a Consultation Paper</b>	July 2017
<b>Community Consultations</b> with an emphasis on directly engaging community members and clients	September – December 2017
<b>Announce the Strategy:</b> identify in a comprehensive Strategy Paper short, medium and long-term changes and improvements to legal aid services	TBD
<b>Sustained focus on the needs of racialized communities including initiatives to address those needs</b>	Ongoing

## 1.2 Early Engagement & Independent Research

This consultation paper is the culmination of several months of preliminary meetings and engagement sessions with a wide array of stakeholders, including ethno-specific and French speaking community agencies that are engaged in advocacy and providing services to racialized communities. LAO met with approximately 60 individuals and agencies. For a full list, please see [Appendix A](#). Although the discussions were open-ended, LAO generally posed a number of questions, including:

- What is or is not working well in terms of LAO's rules and processes?
- Are there any types of legal issues that impact your community(ies) for which there are no legal aid services currently available?
- Are there ways in which legal aid services are provided that limit their effectiveness to your community(ies)?
- Are there other agencies and people that we should speak with, and do you have recommendations as to how to effectively engage with these stakeholders?

Throughout the early engagement stage, LAO heard many times that the issues facing racialized communities have been the subject of study and consultation for many years. As such, LAO also conducted extensive independent research of its own.

This paper sets out some key themes for further and broader consultation, based on LAO's early consultations and research. These themes are not intended to limit LAO's broader consultation, but rather, to reflect what many told LAO: "We know what the problems are". By setting out key themes in this paper LAO hopes to make space for a focus during our broader consultation on what actions LAO can take to address these problems more

effectively.

# WHY WE NEED A RACIALIZED COMMUNITIES STRATEGY

## WHAT DO WE MEAN BY “RACIALIZED COMMUNITIES”?

Racialized communities refer to all people who do not consider themselves to be white. (First Nation, Métis and Inuit people are not considered racialized. To learn more about LAO's Aboriginal Justice Strategy, please visit [legalaid.on.ca/AJS](http://legalaid.on.ca/AJS).)

We used to say “visible minorities” to refer to people who were non-white or non-European in ancestry, but increasingly, there are many places where people of colour make up the majority of the population.



Over the past 20 years, there has been an **OVERREPRESENTATION OF RACIALIZED COMMUNITIES IN THE JUSTICE SYSTEM**

## A SNAPSHOT OF LEGAL AND SOCIAL NEEDS



Increased  
**POVERTY**  
RATES



Overrepresentation  
in **JAILS AND**  
**PRISONS**



Increased rates of  
**HOMELESSNESS**



Disproportionate  
rate of  
**OVER-POLICING**



**LACK OF ACCESS** to education, fair  
work, healthcare or police protection  
for people without status



Discrimination in  
**SCHOOL**  
**DISCIPLINE**



Barriers to employment and  
overrepresentation in **LOW-PAYING,**  
**UNSTABLE JOBS**

People of colour make up almost 26% of Ontario's population. Ontario is the province of choice with 3.6 million immigrants — just over half of all newcomers to Canada call it home.

**BY 2017, MORE THAN  
HALF OF TORONTO'S  
POPULATION WILL BE  
PEOPLE OF COLOUR**

Sources: Data on file with LAO



**NEARLY ONE IN  
FIVE** immigrants  
experiences a state of  
chronic low income...



...**MORE THAN  
TWICE** the rate for  
Canadian-born  
individuals



19% of Ontario families  
from racialized  
communities live in  
poverty compared to 6%  
from non-racialized  
communities

# OVERREPRESENTATION OF RACIALIZED COMMUNITIES IN THE JUSTICE SYSTEM

## THE RACIALIZATION OF POVERTY



**A THIRD OF CHILDREN** from racialized communities live in poverty

77.5¢

Workers from racialized communities in Ontario are paid 77.5¢ for every dollar earned by persons from non-racialized communities



19% of Ontario families from racialized communities live in poverty compared to 6% from non-racialized communities

## HIGHER JAIL ADMISSIONS



People from racialized communities are overrepresented in Ontario's **youth and adult** jails

## RACIAL PROFILING

Racial profiling is any action undertaken for reasons of safety, security or public protection that relies on **stereotypes about race, colour, ethnicity, religion, or place of origin** rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment.

**4X more black canadian boys** (aged 12 to 17) in the young male jail population than what they would represent in the general young male population

For example:



A landlord asks a student to move out because she believes that the tenant will expose her to SARS



A bar refuses to serve certain patrons because of an assumption they will get drunk and rowdy



A private security guard follows a shopper because she believes the shopper is more likely to steal from the store



An employer wants a stricter security clearance for an employee after a terrorist attack

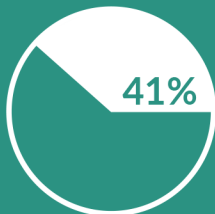


A police officer assumes someone is more likely to have committed a crime

## CHILDREN IN STATE CARE



Higher proportion of **children in state care**



**41% of youth in care** of the Children's Aid Society of Toronto are Black...



...even though only **8.2%** of the city's under-18 population is Black



## 2. What is Legal Aid Ontario?

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LAO's mandate is to promote access to justice for low-income Ontarians by providing high quality legal services to low-income Ontarians and to advise government on all aspects of legal aid services. LAO's mandate specifically requires it to identify and assess the diverse legal needs of low-income individuals and disadvantaged communities in Ontario.

### 2.1 LAO-funded Community Legal Clinics

LAO funds 76 community and specialty legal clinics throughout the province. Each clinic provides information, legal advice and representation, but their services and the areas of law for which they provide service vary. Some of the services they provide include:

- Help with tenant/landlord housing issues
- Help with civil tribunals, proceedings and appeals
- Help with government assistance issues (such as issues with Ontario Works or the Ontario Disability Support Program).

Among these 76 clinics, LAO funds 2 francophone clinics, and 17 specialty clinics. The specialty clinics focus on providing services in specific areas of law or to specific communities that have been historically disadvantaged. They include Aboriginal Legal Services, the African Canadian Legal Clinic, the Centre for Spanish Speaking Peoples, the Chinese and Southeast Asian Community Legal Clinic, and the South Asian Legal Clinic of Ontario. These clinics provide services that are culturally and linguistically accessible to the communities they serve.

In addition to providing some of the general services that are available at the community legal clinics, these clinics also provide services that are specific to the legal needs of the particular communities that they serve. This may include services to address discrimination in employment and immigration matters. These clinics also work to promote law reform and to address issues of institutional and systemic racism through advocacy and the pursuit of test case litigation.

### 2.2 LAO Staff and Certificate Services

LAO provides services for criminal, family, child protection, mental health and immigration and refugee law, in English and French across the province.

LAO provides the following types of services:

- Help from duty counsel lawyers (lawyers in the courthouse) who are there to explain what people need to do and help when they are in Court.

- LAO issues certificates to people who are eligible for them. These certificates are like vouchers for legal services. You can take a legal aid certificate to a lawyer who accepts legal aid certificates and use it to “pay” for that lawyer’s services for a certain number of hours. The lawyer will use that time to represent clients in court or to help them deal with other legal matters.
- Information and referrals to other service providers.

### (a) Vulnerable Client Strategies

In addition to the services outlined above, LAO has developed a vulnerable client strategy model to better respond to the unmet needs of our most vulnerable client groups, who are often overrepresented in the justice system and subjected to differential and unequal treatment. At present, LAO has three vulnerable client strategies: the Aboriginal Justice Strategy (AJS), the Mental Health Strategy (MHS), and the Domestic Violence Strategy (DVS). While these Strategies are in various stages of development, they have all sought:

- To better identify and understand the unmet legal needs of specific vulnerable and marginalized client groups
- To improve the quality of LAO services through, for example, expanded eligibility, enhanced services, and better training to address unmet legal needs
- To promote systemic improvements to the justice system to address unmet legal needs.

The insights and experiences of LAO’s vulnerable client strategies can very much inform the development of LAO’s Racialized Communities Strategy. Like members of these other vulnerable client groups, racialized persons are overrepresented and unequally treated in the justice system. In addition, each of LAO’s other vulnerable client strategies began with a commitment to consult with members of the community and to develop a strategy based on the results of that consultation.

More specifically, each of these vulnerable client strategies has implemented changes in how LAO provides services that **may be** applicable to the development of the Racialized Communities Strategy. For example, through the efforts of the Aboriginal Justice Strategy, LAO is now able to collect demographic information about clients who self-identify as First Nation, Métis and Inuit in order to refer Indigenous clients to enhanced services. As was emphasized by Justice Tulloch in his 2017 *Report of Independent Police Oversight Review*,<sup>2</sup> it is critical to obtain similar data on the racial make-up of persons engaged in the criminal justice system in order to effect positive change. LAO is interested in learning how we can best obtain that kind of information from clients who are also members of racialized communities.

In addition, all vulnerable client strategies have initiated training or cultural competency programs to assist LAO staff to better assist these specific vulnerable client groups. Through

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2-The Honourable Michael H. Tulloch, Report of the Independent Police Oversight Review, (Toronto, Queen’s Printer for Ontario, 2017)

the work of the Domestic Violence Strategy, in particular, LAO has provided in-person training to both staff and private bar lawyers on how to identify and best respond to clients who may be experiencing domestic violence. To better assist clients who are members of racialized communities, LAO is considering anti-racism training programs, and would like feedback regarding what that training might look like.

Finally, each of the vulnerable client strategies have worked with community groups and other stakeholders in advocating for justice reform on specific issues that are relevant to that vulnerable client group. LAO's Mental Health Strategy, in particular, has been active in various government proposals in seeking improvements for the treatment of people living with mental health challenges in the justice system. LAO would like to know from racialized communities whether LAO should take a similar role on issues that may impact racialized communities in the justice system.

For more details on the initiatives of each strategy please see [Appendix C](#).

## (b) RCS Activities and Initiatives

Since receiving Board approval to develop a Racialized Communities Strategy in 2016, the RCS has met with approximately 60 community groups and individuals to obtain feedback on our services and to learn about issues of relevance to the communities. In addition to informing our consultation paper, we have used this feedback to do the following:

- Inform LAO's advocacy for systemic improvements for racialized communities in the justice system.
  - LAO participated in and made submissions to the Ministry of Community Safety and Correctional Services on Carding and Street Checks, and the Strategy for a Safer Ontario (Reform of the *Police Services Act*)
- Improve access to information about LAO services through the translation of brochures into 13 languages, other than English and French.
- Improve identification of client needs by the introduction of "*Project Rosemary*", an initiative that will allow clients to self-identify their race. LAO is in the process of developing training to support this initiative.
- Support other LAO initiatives that address the needs of racialized communities. These initiatives include:
  - Issuing grants of \$100,000 each for two community organizations to provide services to Black students facing suspensions or expulsion hearings
  - Co-sponsoring with the Rights Advocacy Coalition for Equality (R.A.C.E), an educational event for lawyers on racial profiling and consideration of race in sentencing, and
  - Participating in the province's Anti-Racism Directorate's consultation.

For more details about RCS initiatives, please see [Appendix D](#).

### (c) LAO Programs and New Initiatives that Support RCS Goals

In addition to the specific programs outlined above, the RCS has worked with LAO's test case program and bail strategy to better direct those initiatives to the concerns of racialized communities.

#### (i) Test Case Program

The test case program:

- Funds certificates for representation by private bar, research and other supports for cases that raise issues of public interest, and could lead to law reform that would improve the lives of poor and disadvantaged communities in Ontario.
- Has worked with RCS to identify and support cases that are of particular importance to racialized communities.
- Recently provided support in the Knia Singh case which challenged the constitutionality of carding, and funded representation for Mr. Carby's family in the Jermaine Carby Inquest.

#### (ii) Bail Initiatives

LAO's Bail Strategy, released in December 2016, identifies problems with bail decision-making in Ontario and analyzes how these inequities impact low-income Ontarians. The paper notes that racialized and Indigenous accused are disproportionately affected by inequities in the bail process. Higher rates of poverty limit the ability to secure sureties, and unconscious bias at various stages of the justice system may work to disadvantage racialized individuals at the bail hearing, with many being denied bail or being subjected to conditions that are both numerous and onerous. Currently, LAO is implementing its Bail Strategy by, for example:

- Piloting bail "best practices" to challenge and litigate improper practices by both Crown and judicial decision-makers, including obtaining information about potential racial bias.
- Expanding and enhancing its duty counsel bail program by introducing ten new duty counsel positions in busy bail courts, and introducing new on-site duty counsel positions in seven correctional institutions in the province.



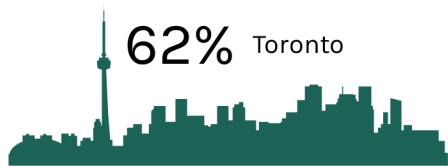
# THE TRANSLATION PROJECT

## WHAT THE NUMBERS TELL US



**1 in 5 racialized families live in poverty** in Canada, compared to 1 in 20 non-racialized families

In two of Canada's largest cities, **more than half of all persons living in poverty are from racialized groups:**



Racialized communities in Canada face **high levels of poverty:**

**9%** Poverty rate for non-racialized persons  
**22%** Poverty rate for racialized persons

**1.1 MILLION**

**racialized persons living in poverty in Canada** in 2006 - 52% lived in Ontario,

Almost three-quarters of racialized persons living in poverty in Canada have a **mother tongue other than English or French**



## WHAT WE'VE HEARD FROM VARIOUS COMMUNITIES

There needs to be **more information available** about rights and how Legal Aid Ontario can help

Information needs to be available in **languages that clients understand**

More information can **empower clients** to get the help that they need

## WHAT WE'VE STARTED TO DO

We looked at the **most requested languages** among our clients:

- Arabic
- Chinese
- Dari
- Farsi
- Hungarian
- Russian
- Somali
- Spanish
- Tamil
- Turkish

We looked at our **most frequently downloaded brochures and fact sheets** and translated them:

- Legal Aid Ontario can help
- Finding the right legal aid lawyer
- Has children's aid contacted you?
- What to do before your criminal court first appearance?
- Custody and access issues for those at risk of deportation



# THE PROBLEMS WITH THE BAIL SYSTEM



A lot of people detained in overcrowded jails are:

- poor
- experiencing addiction and mental health issues
- from racialized communities

The longer someone spends in custody waiting for a bail hearing or trial, the more likely it is they will plead guilty just to get out of jail – even if they're innocent.

**Everyone is innocent until proven guilty.**

Unfortunately, in the bail system, people aren't always treated like they're innocent.

Most people in Ontario jails are **legally innocent**. They are waiting for either a bail hearing or a trial.



## REASONS FOR A FAILING BAIL SYSTEM



**Police aren't releasing accused persons after charging them.** Instead, they are holding them in custody for a bail hearing.



**Courts are overwhelmed by the number of people in custody.** Often, courts aren't able to get to all the bail hearings that are ready to proceed. This means people are staying longer than necessary in jail.



**Often, bail is only granted when excessive conditions are met.** This delays hearings unnecessarily. And, often, the conditions have nothing to do with ensuring someone's appearance in court or protecting the public.

**One of the most common required conditions is having a surety to sign bail.**

## WHAT LEGAL AID ONTARIO IS DOING

In December 2016, Legal Aid Ontario released a strategy that offers a number of ideas. At the same time, the Ministry of the Attorney General announced it would be reducing time-to-trial and improving the bail system. LAO looks forward to working with the Ministry to reform the bail system to reduce the number of people in Ontario jails awaiting trial.

Visit our website:  
[www.legalaid.on.ca/bailstrategy](http://www.legalaid.on.ca/bailstrategy)



### 3. Key Terms and Concepts: Race, Racialization, Racial Hierarchy and Proposed Scope for the Racialized Communities Strategy

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Race is a social construct. This means that “racial difference” is a human creation, not a biological fact. That being said, race matters. Although race is a constructed fiction or myth, it is also a social reality. It produces real social, economic, political, and legal effects. Race becomes “real” when individuals or groups behave and/or create systems that behave in a manner that reflects or perpetuates patterns of subordination and inequality in daily life. These behaviours are, in turn, justified and/or explained by assumed differences in physical and biological characteristics, or in theories of cultural deprivation or intellectual inferiority.

Race, like other social constructs, is unstable. As noted by the Ontario Human Rights Commission, the social definition of an oppressed “racial group” can change over time and geography:

...groups and people that have only marginal physical distinctions from western European people have been racialized in Canada. For example, emigrants from southern or eastern Europe were deemed as “races” of less worth when they first came to Canada.<sup>3</sup>

With the passage of time and their growth in numbers, Southern and Eastern Europeans are generally no longer considered to be marginalized communities in Canada.

In this paper, the term “racialized” people or communities is used. Racialization refers to the complex social, cultural and legal processes through which particular groups are both defined and disadvantaged. At present, the impact of racialization is primarily experienced by those who are non-Caucasian in race or non-white in colour; or by people who are visible minorities as defined by the *Employment Equity Act* S.C. 1995 c.44, and the Census/ National Housing Survey.

Racialized communities are not monolithic. They are composed of different races and ethnicities, all of which have varied histories and experiences in Canada. It is for this reason that this paper refers to “Racialized Communities” and that is why, in LAO’s early

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3-Ontario Human Rights Commission, “Policy and Guidelines on Racism and Racial Discrimination Part 1- Setting the context: Understanding Race, Racism and Racial Discrimination,” online: Ontario Human Rights Commission <<http://www.ohrc.on.ca/en/policy-and-guidelines-racism-and-racial-discrimination/part-1-%E2%80%93-setting-context-understanding-race-racism-and-racial-discrimination>>

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engagement, it sought out community agencies and others serving racialized communities both generally and targeted to one or more racialized communities specifically. This reality is also reflected in LAO's research which focused not only on the experiences of racialized communities generally but, where available, on specific communities.

Based on LAO's early engagement and research, LAO posits the following tentative foci for the Strategy:

- Black/African Ancestry
- Asian (East or Southeast Asian)
- Hispanic/Latin American
- Middle Eastern and Arab
- South Asian
- Roma
- Bi/Multiracial (where at least one parent is a member of a racialized community)



## 4. Key Environmental Factors

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### 4.1 Racialized People

The racialized population in Canada is growing rapidly. The growth of this population continues to outpace that of the white and Indigenous populations. According to the 2006 census, racialized persons made up approximately 13.4% of Canada's population. However, by 2011 they represented over 19% of the population.

Ontario is the most diverse province in Canada. According to the 2011 National Household Survey, 26% of Ontario's population self-identify as a member of a racialized community. According to LAO's regional breakdown of the province, approximately 49% of Ontario's racialized population resides in the Greater Toronto Area, specifically within Toronto and the Peel-York district. The North Central and Eastern regions of the province are home to 12.4% of Ontario's racialized population; the majority of which reside in the Ottawa and Durham Regions. A slightly smaller percent (11.3%) of Ontario's racialized population reside in the Southwest Region, with the majority of that population living in Hamilton-Kitchener, although the Windsor district also contains 2% of the province's racialized population.

Please see [Appendix E](#) for a map of LAO's regional structure.

### 4.2 The Racialization of Poverty

Poverty is not colour blind. According to the 2011 National Household Survey, almost 24% of Ontario racialized families lived in poverty, compared to 14% of families from white communities. The economic and social dynamics of this reality are complex and multifaceted:

- **Immigration status:** Poverty rates among immigrants have continued to rise over the last two decades, while they continue to fall among those who are born in Canada. Studies have also shown that there is a gap in earnings between first generation immigrants who are racialized and non-racialized immigrants, with racialized men earning 36% less, on average, than non-racialized men,<sup>4</sup> while racialized women as a whole earn 56.5% of what white men earn.<sup>5</sup>

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4-Sheila Block & Grace-Edward Galabuzi, "Canada's Colour Coded Labour Market: The Gap for Racialized Workers" (2011) Canadian Centre for Policy Alternatives, online: Canadian Centre for Policy Alternatives <[http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour\\_Coded\\_Labour\\_MarketFINAL.pdf](http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf)> at 4

5-Grace Edward Galabuzi, Amy Casipullai & Avvy Go, "The Persistence of Racial Inequality in Canada" The Toronto Star (20 March 2012), online: The Toronto Star <[https://www.thestar.com/opinion/editorialopinion/2012/03/20/the\\_persistence\\_of\\_racial\\_inequality\\_in\\_canada.html](https://www.thestar.com/opinion/editorialopinion/2012/03/20/the_persistence_of_racial_inequality_in_canada.html)>

- **Labour Market Discrimination:** Several studies also suggest that discrimination in the labour force, lower employment rates, higher unemployment rates, more insecure/ precarious employment, and lower wages and earnings are significant contributors to the growing number of racialized families living in poverty.<sup>6</sup> Despite having a higher participation rate than non-racialized workers, racialized workers have higher unemployment rates. The unemployment rate among racialized groups, with the exception of those who identify as Japanese or Filipino, has consistently been reported as higher than that of non-racialized Ontarians.<sup>7</sup> The disparity is most striking for those who self-identified as Middle Eastern/Arab: for these individuals, the unemployment rate was 95% higher than non-racialized Canadians. The unemployment rate for Blacks was 73% higher than non-racialized Canadians.<sup>8</sup>

Moreover, when racialized workers are able to find employment, the jobs are often precarious and/or part-time. Racialized workers are also often paid less than non-racialized workers. Those who identify as racialized earn 75.6 cents for every dollar that non-racialized workers are paid. When gender is taken into consideration, the wage gap increases dramatically. Racialized women make 6.5 cents for every dollar made by non-racialized men, while non-racialized women make 63 cents for every dollar made by a non-racialized man.<sup>9</sup>

- **Health and well-being:** Economic marginalization leads to socio-political marginalization. The World Health Organization (WHO) Commission on the Social Determinants of Health has stated:

Employment and working conditions have powerful effects on health and health equity. When these are good they can provide financial security, social status, personal development, social relations and self-esteem and protection from physical and psychological hazards –each important for health.<sup>10</sup>

- **Housing:** Racialized groups are often forced to accept housing that is unsafe, substandard and in neighborhoods that have high crime rates and a low average income. Studies also suggest that issues in the labour force may result in increased vulnerability to eviction. According to a recent review of the tenant duty counsel services completed by the Advocacy Centre for Tenants Ontario (ACTO), 44% of tenants who

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6- *Ibid.*

7-Block & Galabuzzi, *ibid.* at 7

8-*Ibid.*

9-Block and Galabuzzi, *ibid.* at 4

10-*Ibid.*

utilized those services indicated that they identify with one or more racialized groups.

ACTO's study further notes that tenants who identified as Black or Indigenous were over-represented in the survey compared to the proportion of Black and Indigenous residents in the general population of the cities in which the survey was carried out.

## 4.3 Overrepresentation & Unequal Results in the Justice System

### (i) Child Protection

Poverty does not only impact adults; children are poor if their parents are poor. According to the 2006 census data, 43% of children living in poverty in Ontario are from racialized groups.<sup>11</sup> While there is no evidence that poverty predisposes a child to maltreatment from their parents, it does expose those families to greater scrutiny and limits their ability to challenge the child welfare system when they do come under its scrutiny.<sup>12</sup>

Despite white families having a rate of child maltreatment<sup>13</sup> that is similar to families from racialized communities, a recent study by the Ontario Association of Children's Aid Societies (OACAS) concluded that:

African Canadian children and youth are 40% more likely to be investigated compared to White children, 18% more likely to have their abuse substantiated, 8% more likely to be transferred to ongoing services, and 13% more likely to be placed in out-of-home care during the investigations. Only Indigenous children showed greater disparities than African Canadians.<sup>14</sup>

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11-Colour of Poverty Campaign, *Fact Sheet #4: Understanding the Racialization of Poverty in Ontario in Health and Wellbeing in 2007*, online: <<http://www.learningandviolence.net/lnrteach/material/PovertyFactSheets-aug07.pdf>>

12-One Vision, One Voice: Changing the Ontario Child Welfare System to Better Serve African-Canadians, Practice Framework Part 1, (Ontario Association of Children's Aid Societies, September 2016), online: OACAS <[http://www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-1\\_digital\\_english.pdf](http://www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-1_digital_english.pdf)>

13-Child maltreatment refers to all forms of "child abuse" as defined by the Ontario Association of Children's Aid Societies. It captures physical, sexual and emotional abuse and neglect.

14-*Ibid.* at 22

The number of referrals to Children's Aid Societies about African Canadian families shows an over-representation of families of African descent.

## (ii) The Criminal Justice System

Over the past two decades, a number of high profile reports and academic studies, as well as the Ontario Court of Appeal, have recognized that racialized communities are over-represented and subject to differential treatment in the justice system as a whole, and in criminal proceedings in particular.<sup>15</sup> The reports of academics, rights-based organizations, and journalists continue to shed light on and have confirmed what members of racialized communities, and the Black community in particular, have long maintained: they are unfairly and unequally treated within the justice system and are over-policed.

## (iii) Policing

The Black community has long complained about being the target of over-policing and racial profiling. Numerous studies have confirmed that the Black community has been the consistent focus of racial profiling by police services in Ontario for several decades. In recent times other racialized groups have made similar allegations of racial profiling. In the 1990s, Toronto's Asian community was the focus of the Asian Crime Unit, which was later incorporated into the Toronto Police Services Guns and Gangs Unit. After the events of September 11, Canada's South Asian and Middle Eastern communities have also brought forward complaints of racial profiling. In addition, it is a strongly held view that growing Islamophobia has resulted in an increased police focus on South Asian and Middle Eastern communities and some members of the Black community, specifically the Somali community.

Racism in policing can occur in many ways:

- **Over-scrutiny:** Several recent studies suggest that because of their physical appearance/ skin colour, not their behaviour, Black people are subject to higher scrutiny and increased surveillance by law enforcement officials in public spaces such as highways, streets, malls, borders etc.
- **Higher rates of arrest:** As a result of higher levels of scrutiny "compared to white people, minorities are more likely to be arrested, convicted and punished", which has been identified as a significant contributing factor to the overrepresentation of Black males in the criminal justice system.<sup>16</sup>
- **Detained at scene:** Despite clear legal rules authorizing the police to release individuals

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15-Case Study in Diversity in Corrections: *The Black Inmate Experience in Federal Penitentiaries*, Report of the Office of Correctional Investigator, November 2013; See also, Gail Kellough and Scot Wortley "Remand for Bail: Bail and Plea Bargaining as Commensurate Decisions" (2002), *British Journal of Criminology*, 42

16-Vic Satzewich & William Shaffir, "Racism versus Professionalism: Claims and Counter-Claims about Racial Profiling" (2009) 51 Canadian J. Criminology and Crim. Just. 119 203

at the scene of an arrest, over the past 15 years the police have been increasingly detaining people for a bail hearing rather than releasing them from the scene.<sup>17</sup>

Members of racialized communities who are already subject to over-policing and racial profiling have been disproportionately prejudiced by the growing failure of the police to exercise their authority to release from the scene.

- **Increased likelihood of being injured or killed by police:** As noted in *The Roots of Youth Violence*, and the more recent 2017 *Report of Independent Police Oversight Review*, the impact of racial bias in policing is seen not only in the actual interactions between police and members of racialized communities, but also in the consequences of those interactions:
  - Racial bias in policing stigmatizes communities and leaves them with a lack of faith in the police and the justice system.
  - For racialized communities, too often interactions with the police escalate into violent confrontations that may result in injuries or even loss of life at the hands of the police.<sup>18</sup>
  - For some communities, particularly Black and Indigenous communities, historical realities have led to distrust of the police, a distrust that sometimes extends to the oversight bodies themselves.<sup>19</sup>

#### (iv) Higher Rates of Pre-Trial Detention (Bail)

While more work needs to be done, several historical studies have noted the racial disparity in decision-making about bail in this province.

In 1995, the Report of the Commission on Systemic Racism in the Ontario Criminal Justice System came to a “conclusion that is inescapable: some Black accused who were imprisoned before trial would not have been jailed if they had been white, and some white accused who were freed before trial would have been detained had they been Black”.<sup>20</sup>

A 2002 study of bail courts in Toronto found that “race remains a significant predictor of pre-trial detention”, after controlling for relevant legal factors related to flight risk and danger to the public. The same study also found that Black accused, after controlling for similar

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17-Legal Aid Ontario, A Legal Aid Strategy for Bail, (November 2016), online: Legal Aid Ontario <<http://www.legalaid.on.ca/en/publications/paper-legal-aid-strategy-for-bail-2016-11.asp>>

18-Roy McMurtry and Dr. Alvin Curling, *The Review of the Roots of Youth Violence* (Queen’s Printer for Ontario, 2008)

19-The Honourable Michael H. Tulloch, *Report of the Independent Police Oversight Review*, (Toronto, Queen’s Printer for Ontario, 2017)

20-“Report of the Commission on Systemic Racism in the Ontario Criminal Justice System”, Commission on Systemic Racism in the Ontario Criminal Justice System, (Toronto: Queen’s Printer for Ontario), at v, online: <<https://archive.org/details/reportracismont00comm>>.

variables, tend to receive significantly more release conditions than non-Blacks.<sup>21</sup> More specifically, they were subject to greater surveillance by the court (i.e. curfews, mandatory supervision requirements).

#### (v) Rates and Conditions of Incarceration

As with other aspects of the justice system, racial disparities and overrepresentation of racialized persons is present in both provincial and federal institutions. Over the last 15 years, the population of racialized persons incarcerated in federal institutions has increased by almost 75%, while the population of white inmates decreased by 3%. A significant factor in the growth of the racialized population that is incarcerated may be linked to an 80% increase in the Black prison population. In Canada, Blacks make up 3% of the population but account for approximately 9.5% of the federal prison population.<sup>22</sup>

While incarcerated, racialized inmates are also subjected to discriminatory behaviour and prejudice. A case study of the experiences of Black inmates in federal custody<sup>23</sup> conducted by the Federal Office of the Correctional Investigator in 2012-13 found that Black inmates are over-represented in maximum security and segregation, incur a disproportionate number of institutional charges, and are more likely to be involved in incidents involving use of force. The report details various types of discriminatory behaviour and prejudicial attitudes by some Correctional Service of Canada (CSC) staff. It also notes that Black inmates are:

- **Over-represented in maximum security and segregation:** Despite being rated as a lower risk to re-offend and lower need overall, between 2009/10 and 2012/13, Black offenders were consistently more likely to be placed in maximum security.
- **More likely to be placed in involuntary segregation:** Between 2007/08 and 2011/12, Black inmates were consistently over-represented in involuntary/ disciplinary segregation placements

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21-Gail Kellough & Scot Wortley, "Remand for Bail: Bail Decisions and Plea Bargaining as Commensurate Decisions" (2002) 42 Brit J Crim, as explained in Akwasi Owusu-Bempe & Scot Wortley, "Race, Crime and Criminal Justice in Canada" in Sandra M. Bucerius & Michael H. Tonry eds *The Oxford Handbook of Ethnicity, Crime and Immigration*, (Oxford, UK: Oxford University Press, 2013) at 292.

22-Office of the Correctional Investigator, *The Changing Face of Canada's Prisons: Corrections; Investigator Reports on Ethno-Cultural Diversity in Corrections*, online: Office of the Correctional Investigator <<http://www.oci-bec.gc.ca/cnt/comm/press/press20131126-eng.aspx>>

23-Office of the Correctional Investigator, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*, online: Office of the Correctional Investigator <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx>>



	2007/08	2008/09	2009/10	2010/11	2011/12
Voluntary	3.7	3.5	4.0	6.3	5.4
<b>Involuntary/Disciplinary</b>	<b>8.6</b>	<b>9.3</b>	<b>10.0</b>	<b>10.8</b>	<b>11.7</b>
Black inmates as proportion of total inmate population	7.3	8.0	8.5	9.1	9.3

Source: CSC Data Warehouse, February 2013

- **Disproportionately charged with institutional charges:** Black inmates are more likely to be charged with misconduct that involves subjective judgement on the part of correctional officers (e.g. disrespect toward staff, disobeying a rule) and less likely to be charged with misconduct where a correctional officer must show factual proof, such as possession of contraband. For example:
  - In 2011/12, Black inmates made up 9.3% of the incarcerated population, yet comprised 13% of those charged for disrespect towards staff, 21% of those charged for disobeying an order, 24% of those charged for jeopardizing the safety and security of the institution or another person and 12% of those charged with committing a disturbance.

At the provincial level, while the data is not as complete, the situation is no better. In Ontario, the proportion of Black males in the youth inmate population is four times greater than the proportion of Black male youth found in the general population of the province.<sup>24</sup>

## (vi) Immigration and Refugee

Canada's immigration policy has historically been shaped by discrimination and exclusion. Race and ethnicity played an important role in determining who was allowed in and who was kept out of Canada. Sweeping changes to Canada's immigration system in the 1960s saw the country move to a points system which removed some of the barriers to entry by non-white immigrants. As a result, there was an influx of racialized immigrants primarily from the British colonies and other Commonwealth countries. The latter part of the century saw a rise in the number of immigrants from the African continent, and the global south. It is clear that over the last 50 years the face of immigration to Canada and more specifically Ontario has become increasingly racialized. As of 2006, persons from racialized groups made up 54% of all immigrants to Canada.

There is a high poverty rate for members of racialized communities who are also immigrants.

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24-Jim Rankin & Patty Winsa, "Unequal Justice Aboriginal and Black inmates disproportionately fill Ontario jails" The Toronto Star (1 March 2013), online: *The Toronto Star* <[https://www.thestar.com/news/insight/2013/03/01/unequal\\_justice\\_aboriginal\\_and\\_black\\_inmates\\_disproportionately\\_fill\\_ontario\\_jails.html](https://www.thestar.com/news/insight/2013/03/01/unequal_justice_aboriginal_and_black_inmates_disproportionately_fill_ontario_jails.html)>

The poverty rate is particularly severe for more recent immigrants.

- According to Statistics Canada, the majority of racialized people (66%) living in poverty in Canada are immigrants. Similarly, LAO's analysis of the 2011 National Housing Survey, found that the majority of racialized people (64%) living in poverty were immigrants.<sup>25</sup>
- According to the 2006 census, ninety percent of racialized persons living in poverty in Canada are first generation immigrants.<sup>26</sup>

Sadly, the poverty rates among immigrants have continued to rise over the last two decades, while they continue to fall among those who are born in Canada.

Racialized immigrants often face many of the same issues as racialized non-immigrants. These issues can, however, be further complicated by additional barriers such as immigration status, language, lack of knowledge about rights, and barriers imposed by a lack of knowledge of the Canadian justice system.

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25-According 2006 census information 66% of racialized persons living in poverty were immigrants. See Employment and social : A Snapshot of Racialize Poverty in Canada, online: Government of Canada, Employment and Social Development Canada <<https://www.canada.ca/en/employment-social-development/programs/communities/reports/poverty-profile-snapshot.html>> at 4

26- Employment and Social Development Canada: A Snapshot of Racialize Poverty in Canada, online: Government of Canada, Employment and Social Development Canada <<https://www.canada.ca/en/employment-social-development/programs/communities/reports/poverty-profile-snapshot.html>> at 6. The quote refers to persons who are 15 years and older. First generation immigrants are defined as those persons born outside Canada as well as non-permanent resident.



# RACIAL DISPARITIES

## IN ONTARIO'S CHILD PROTECTIONS SYSTEM



According to the 2013 Ontario Incidence Study of Reported Abuse and Neglect, the numbers of children likely to be investigated as possible victims of child abuse or neglect compared to white children:



INVESTIGATED

ABORIGINAL CHILDREN

130%  
more likely

BLACK CHILDREN

40%  
more likely



HAVE  
MALTREATMENT  
CONFIRMED

15%  
more likely

18%  
more likely



TAKEN FROM  
HOMES AND  
PUT INTO CARE

168%  
more likely

13%  
more likely

### THE CONNECTION TO POVERTY

Children at risk are usually from poor families, where families struggle with:



LACK OF  
FOOD



LACK OF  
CLOTHING



LACK OF  
AFFORDABLE  
HOUSING

## HOW LEGAL AID ONTARIO CAN HELP

### BEFORE COURT PAPERS

#### ARE SERVED

When children's aid starts looking into your home life, asking questions and wanting to perform a home inspection, **clients can get advice or help with:**

- customary care agreement
- special needs agreement
- participation in an Aboriginal alternative dispute resolution process

Clients can choose a legal aid lawyer, who will provide up to **10 hours of legal advice and negotiation.**

### IN FAMILY COURT

**A legal aid lawyer can represent you in court with:**

- crown wardship
- society wardship
- supervision order
- status order
- status review
- openness application
- third party application



Sources: Data on file with LAO

# RACIALIZATION OF CARDING AND STREET CHECKS

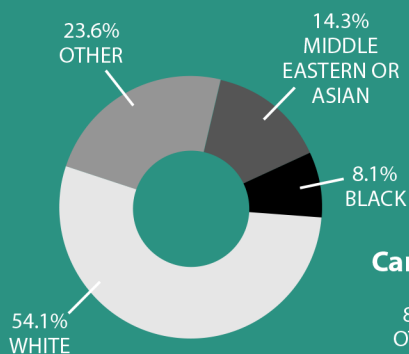


A **"STREET CHECK"** or **"CARDING"** is when police officers randomly stop and question someone and collect information about those people. The details about each person — their name, age, perceived skin colour, estimated height and weight, and often, the names of their friends — are recorded and entered into a database.

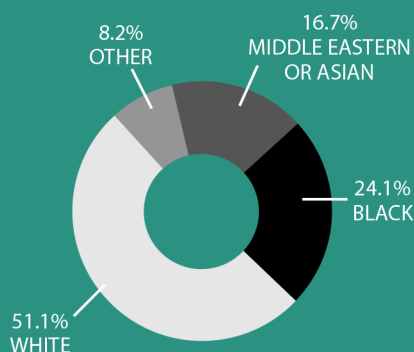
## TORONTO

Between 2008 and 2013, Toronto police filled out at least 2.1 million contact cards involving **1.2 MILLION PEOPLE**.

### Make up of population



### Carding (2008-2013)



## OTTAWA

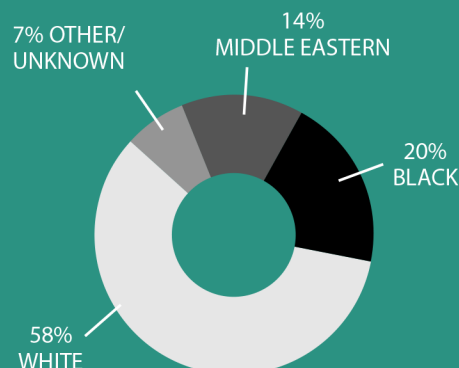
Between 2011 and 2014, the Ottawa police recorded 23,402 street checks involving **45,802 PEOPLE**.

### Make up of population

**<6%**  
BLACK

**<4%**  
MIDDLE EASTERN

### Carding (2011-2014)



## LONDON

In 2014, London police conducted about 8,400 street checks (far more than officers in other cities and at a rate triple that of Hamilton and Ottawa). That included recording data of about **14,000 PEOPLE**.

### Make up of population

**2.5%**  
BLACK

**1.9%**  
ABORIGINAL

### Carding (2014)

**7.7%**  
BLACK

**5.6%**  
ABORIGINAL

## HAMILTON

Between May 2010 and 2013, the Hamilton police conducted over **18,500 STREET CHECKS**.

### Make up of population

**15%**  
VISIBLE MINORITIES

**3%**  
BLACK

### Carding (2010-2013)

**20-25%**  
VISIBLE MINORITIES

**11-14%**  
BLACK

## 5. Key Themes from Early Engagement Sessions

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LAO's early engagement sessions with organizations that serve racialized communities have helped LAO to identify key issues and concerns. Many participants in the early engagement sessions identified the following needs:

1. Build/improve relationships with racialized communities and the organizations that serve those communities.
2. Improve communication about LAO and LAO-funded services, policies and practices.
3. Improve the capacity of LAO staff and LAO-funded service providers to serve racialized clients.
4. Provide services in a manner that addresses the intersecting needs of clients.
5. Build and promote an understanding of legal rights and the legal system within racialized communities.
6. Address barriers to accessing LAO services faced by racialized communities (i.e. language barriers, geographical, cultural barriers, lack of trust, and mental health).
7. Address the lack of racialized legal service providers and lack of diversity within the justice system.
8. Acknowledge and develop ways to address systemic racism in the justice system.
9. Provide legal services in areas that are not traditionally covered by legal aid, such as education, employment, police misconduct and human rights law.
10. Increase and expand eligibility to increase services to racialized communities.

A detailed list of the issues and concerns noted is attached as Appendix B.

During early engagement sessions many individuals and organizations emphasized that it is important to understand that needs and priorities vary within and among racialized communities.

## 6. Next Steps

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LAO anticipates that the consultation process will take place between September and December 2017. LAO will adopt several approaches to ensure broad and thorough consultation, including:

- **Written submissions.** LAO will distribute this paper widely in English and French and invites individuals and organizations to provide written submissions. Online written submissions can be sent to the Racialized Communities Strategy email address which is: [rsc@lao.on.ca](mailto:rsc@lao.on.ca)  
**RCS Website:** [legalaid.on.ca/RCS](http://legalaid.on.ca/RCS)
- **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.
- **One-on-one consultation sessions with targeted organizations in English French, and other requested languages.**
- **Other requested approaches suggested by interested parties are appreciated and will be considered.**

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

- **Kimberly Roach**, Policy Counsel, Racialized Communities Strategy  
[roachk3@lao.on.ca](mailto:roachk3@lao.on.ca)
- **Marcus Pratt**, Director, Policy and Strategic Research  
[Prattm@lao.on.ca](mailto:Prattm@lao.on.ca)

# THE CASE FOR RACE-BASED STATISTICS

## WHY COLLECT RACE-BASED STATISTICS?

### The Ontario Human Rights Commission finds data collecting can help:

- verify, monitor, measure and address gaps, trends, progress and perceptions
- proactively identify opportunities for improvement and growth
- improve the quality of decision-making, service delivery and programming

### Examples of why collecting data is a good idea:



Prevent or address systemic barriers to access and opportunity



Plan special programs



Improve equitable service delivery and programs

## WHAT THE NUMBERS ARE TELLING US

LAO currently doesn't collect data about the race of applicants or clients, but we do rely on secondary data about race. Here's how stats shed a light on our services in the various areas of law that we cover.

### About the child welfare system:



Ontario's children's aid societies have agreed to collect race data to help figure out needs of Black and Aboriginal families

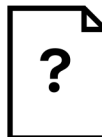
# 42%

of youth in care of the Children's Aid Society of Toronto are Black, but only 8.2% of the city's under 18 population is Black

# 23%

of children in care province-wide are Aboriginal, but only 2.5% of Ontario's under 18 population is Aboriginal

### About school disciplinary hearings:



Not all Ontario school boards collect data on race and suspension rates



Toronto District School Board data revealed that Black students are suspended disproportionately compared to white students



LAO will provide funding to two organizations to help Black students who are suspended and facing expulsion hearings

### About the bail system:



Racialized and Aboriginal people face more over-policing practices and racial profiling



Racialized and Aboriginal people are more likely to find themselves in pre-trial detention

# 13%

of the remand detention population is Aboriginal but only 2% of Ontario's population is Aboriginal

## HOW COLLECTING RACE-BASED DATA COULD HELP LAO

### LAO currently doesn't collect statistics on applicants' or clients' race.

Understanding data, however, could help us understand how we can help improve the outcomes of racialized communities when they come into contact with the justice system.

Additionally, we can:

- document and study systemic discrimination in the justice system
- remove barriers people face when accessing our services
- tailor programs to address client needs

### Next steps:

In early engagement sessions, LAO has repeatedly heard about the need to collect data about clients' race.

LAO has begun the process of figuring out how to gather and analyze this data. Updates will be provided as more information becomes available.

## 7. Key Consultation Themes and Questions Proposed

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The following are key themes and questions about which LAO will seek input during the full consultation phase of the development of the Strategy. That being said, as with the early engagement phase, LAO welcomes feedback in all areas that community representatives and members feel are important.

### 7.1 Knowledge and Accessibility of Legal Aid Services

1. Are you a member of a racialized community? If yes, please specify which community(ies) with which you self-identify.
2. If you are not a member of a racialized community, please indicate if and how this consultation impacts your work, interest in social justice, your family etc.
3. Are you aware of the legal services provided by Legal Aid Ontario in your community?
4. If yes, how would you rate your awareness of the following kinds of services, in English and French:
  - a) Private lawyers for criminal or family or refugee or mental health matters
  - b) Staff services in criminal or family or refugee or mental health matters
  - c) Clinic law services in poverty law (e.g. social assistance, and landlord-tenant disputes)
  - d) In-court duty counsel services in criminal or family matters
  - e) Telephone information and summary legal advice
  - f) Public legal education material
  - g) Other (e.g. Test Case funding)
5. How can LAO build awareness of our services among racialized communities?
6. How would you rate the accessibility of LAO services for each type of legal service outlined above?
7. How can our services be made more accessible for racialized communities?
8. Are there particular barriers, such as language or culture that are faced by racialized communities in accessing legal aid services?

9. For each type of legal service, are there particular barriers at play that may prevent legal services from being easily accessed (e.g. for persons who have been arrested and detained, or for families in difficulty with child welfare authorities)?

## 7.2 Quality of Legal Services for Racialized Communities

1. Based on your or your community's experience, how would you characterize the quality of the following kinds of legal aid services?
  - a) Private lawyers in criminal or family or refugee or mental health matters
  - b) Staff services for representation in criminal or family or refugee or mental health matters
  - c) Clinic law services in areas of poverty law
  - d) In-court duty counsel services in criminal or family matters
  - e) Telephone information summary legal advice
  - f) Public legal education material
  - g) Other (e.g. Test Case funding)
2. In each of these service areas, do you feel that you or your community received the same quality of service as white clients? If not, please give examples.
3. Based on your or your community's experience, how should LAO improve the legal services it funds or provides in the above areas?
4. Are there particular areas of law in which LAO provides funding or assistance, in which racialized communities are being underserved and their legal needs are not being met?
5. What suggestions do you have for how LAO might improve its provision of legal services in these underserved areas of law?
6. Are there specific factors that impact LAO's ability to serve racialized communities?
7. If yes, what can LAO do to ensure that these factors do not impact services to racialized communities?

## 7.3 Training and Cultural Competency<sup>27</sup>

1. What training, if any, is needed improve legal services for racialized clients?
2. What education and/or training would improve the provision of legal aid services (by lawyers and non-lawyers) to racialized communities?
  - a) Diversity training
  - b) Anti-racism training
  - c) Unconscious bias training
  - d) Cultural Competency and Cross-cultural communication training
  - e) *Human Rights Code* training
  - f) Race and the social determinants of health
  - g) Other, please specify
3. How frequently should training occur?
4. LAO currently requires that lawyers serving certain client groups have specific legal knowledge relating to the particular vulnerabilities of those communities. Should this requirement be extended to those serving racialized communities?
  1. If yes, what should that legal knowledge relate to?
    - a) Racial profiling and policing
    - b) Race and sentencing
    - c) Racial bias in child protection
    - d) *Human Rights Code* and
    - e) Other, please specify

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27-“LAO views “cultural competence” as a set of attitudes, behaviours and skills that would enable individuals to work successfully in a cross-cultural setting. It implies valuing and adapting to diversity: being aware of your own identity and cultural biases and being able to manage the dynamics of working with people who are different



## 7.4 LAO's Collection of Race-Based Data

LAO is committing to collecting race-based data from clients to better plan our services and inform the Ontario government of issues impacting on racial communities.

1. What steps can LAO take to ensure that communities are comfortable being asked questions about race?
2. Client data is protected under the *Freedom of Information and Protection of Privacy Act* (R.S.O. 1990, c. F.31) so that personal information about client identity cannot be released. What other protections should be provided around the release of this information?
3. Are there appropriate persons and institutions with whom we could share our race data?
  - a) No sharing of data
  - b) Share with academics to support research on racialized communities
  - c) Share with lawyers to support submissions/expert testimony about the impact of systemic racism in the justice system
  - d) Share with rights-based organizations, such as the Ontario Human Rights Commission, to inform their advocacy
  - e) Other, please specify
4. LAO's initiative to collect race-based data, is limited to race. Should LAO collect any other demographic information? If, yes what other demographic information should LAO collect and why?

## 7.5 Legal Aid Ontario as an Advocate in the Justice System

1. What role, if any, should LAO play in advocating for changes to the justice system to address the overrepresentation and unequal treatment of racialized communities in the justice system?
2. What role, if any, should LAO have in promoting awareness about legal rights among racialized communities?
3. In the past, LAO has developed partnerships with community organizations to improve legal services for vulnerable client groups. Who are possible partners from racialized communities for such an arrangement, and what would such partnerships look like?

4. What can LAO do to support and or work with legal clinics that are connected to racialized communities and is advocating for their rights?

# Appendix

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## Appendix A: List of Organizations Consulted

- |   |  |
|---|--|
| 1. Association of Black Law Enforcers                 | 21. Federation of Asian Canadian Lawyers         |
| 2. Advocacy Centre for Tenants Ontario                | 22. Hamilton Community Legal Clinic              |
| 3. African Canadian Legal Clinic                      | 23. Hamilton/Kitchener District Office           |
| 4. Afrikan Canadian Prisoner Advocacy Coalition       | 24. HIV & AIDS Legal Clinic Ontario              |
| 5. Alexandria Park Community Centre                   | 25. Human Rights Legal Support Centre            |
| 6. Anti-Racism Directorate                            | 26. Industrial Accident Victims Group of Ontario |
| 7. Arab Canadian Lawyers Association                  | 27. India Rainbow Community Services of Peel     |
| 8. Black Canadian Action Network                      | 28. Income Security Advocacy Centre              |
| 9. Black Action Defence Committee                     | 29. Jamaican Canadian Association                |
| 10. Canadian Association of Black Lawyers             | 30. Jane Finch Community Legal Services          |
| 11. Canadian Training Institute                       | 31. John Howard Society of Ottawa                |
| 12. Catholic Centre for Immigrants                    | 32. Justice For Children and Youth               |
| 13. Central District Staff                            | 33. KCWA Family and Social Services              |
| 14. Centre for Spanish Speaking Peoples               | 34. Korean Canadian Lawyers Association          |
| 15. Centre francophone de Toronto*                    | 35. Chinese and Southeast Asian Legal Clinic     |
| 16. Centre de santé communautaire Hamilton            | 36. Midaynta Community Services                  |
| 17. Le Centre de services communautaires Vanier       | 37. Mississauga Community Legal Services         |
| 18. Chinese Canadian National Council of Toronto      | 38. Mount Sinai                                  |
| 19. Community Leadership Network for Families Project | 39. North Peel Dufferin Community Legal Services |
| 20. D!ONNE Renée                                      | 40. Ontario Human Rights Commission              |

41. Ottawa Community Legal Clinics
42. Rexdale Community Legal Clinic
43. South Asian Legal Clinic of Ontario
44. Somali Centre for Family Services
45. South Asian Women's Centre
46. Tropicana Community Services
47. University of Toronto, Centre for Criminology and Sociolegal Studies
48. University of Ottawa Legal Services
49. Urban Alliance on Race Relations
50. World Sikh Organization

## Appendix B: Concerns/Issues Raised by Organizations Consulted

1. Build/improve relationships with racialized communities and the organizations that serve those communities.
  - Increase outreach to racialized communities.
  - Develop relationships with community organizations that serve racialized communities.
  - Work with community organizations to develop a plan to communicate with communities.
  - Build a presence in communities that are highly racialized.
  - Use social media and local (community-specific) media.
2. Improve communication about LAO and LAO-funded services, policies and practices.
  - Communicate regularly with communities, community organizations, and social services about services, policies and practices.
  - Produce materials that educate the community and service providers about accessing LAO services and policies (i.e., complaints, certificate appeals, and change of solicitor).
  - Provide additional and instructional information when a certificate is issued, such as:
    - what is covered by the certificate is issued;
    - how to find a certificate lawyer or a list;
    - are there services that counsel is allowed to seek additional payment outside of the certificate; and
    - Consider sending alerts to panel lawyers when changes are made to services and eligibility.
3. Improve the capacity of LAO staff and LAO-funded service providers to serve racialized clients
  - Service providers should be trained on:
    - Basic customer service;
    - Unconscious bias;
    - Cultural awareness and cross-cultural communication; and
    - Anti-racism

- Materials and resources about the impact of systemic racism and community-specific information about some highly racialized, low-income neighbourhoods.
4. Provide services in a manner that addresses the intersecting needs of clients.
    - Establish a system through which all of a client's legal needs are determined and triaged in a manner that each legal service provider is aware of all possible intersections (i.e. criminal lawyer is aware of client's immigration status and is in communication with immigration lawyer).
  5. Build and promote an understanding of legal rights and the legal system within racialized communities.
    - Increase community outreach and Public Legal Education and Information.
    - Use YouTube and social media.
    - Provide education/posters about criminal processes and the consequences of a criminal record.
    - Provide information about family law services and Child Protection matters.
    - Provide education about the importance of applying for citizenship.
  6. Address barriers to accessing LAO services faced by racialized communities (i.e. language barriers, geographical barriers, cultural barriers, lack of trust, and mental health).
    - Provide documents in languages other than English and French.
    - Develop partnerships with organizations that have the trust of the communities.
  7. Address the lack of racialized legal service providers and lack of diversity within the justice system.
    - Service providers (lawyers and non-lawyers) should be reflective of the communities served.
    - Outreach to racialized law student associations to attract diverse lawyers.
    - Look at ways to attract, retain and promote racialized staff.

8. Acknowledge and develop ways to address systemic racism in the justice system
  - Support legal challenges to racial profiling, and legislation that adversely and disproportionately impacts racialized communities.
9. Provide legal services in areas that are not traditionally covered by legal aid, such as education, employment, police misconduct and human rights law.
  - Provide assistance and services for education law and police misconduct matters.
  - More employment law services needed.
10. Increase and expand eligibility to increase services to racialized communities.
  - Advocate for and support the use of cultural assessments in Ontario criminal proceedings.
  - Expand legal eligibility to include coverage (through certificate or staff lawyers) for less serious matters for young Black men who do not have a criminal record.
  - Increase financial eligibility, because the threshold is too low.

## Appendix C: Other Vulnerable Client Strategy Highlights

Aboriginal Justice (AJS) - Started in 2008

### 1. Identification of Clients

- Improved LAO capacity for clients to self-identify as Métis, Inuit or First Nation.
- Working with Client Services Centre to better identify vulnerable clients at intake stage to triage clients to best service option.

### 2. Understanding Legal Needs

- Ongoing review and implementation of new panel standards for lawyers wishing to represent Aboriginal clients (“*Gladue* Panel Standards”).
- Aboriginal cultural competency training for staff: online and in-person curriculum.

### 3. Implementing Service Initiatives

- New (2016) family certificate coverage for non-litigation services for parents involved with child protection agencies; for third party caregivers in child protection proceedings.
- Criminal coverage for aboriginal accused fleeing domestic violence regardless of likelihood of jail.
- LAO funds *Gladue* report writers across province for serious sentencing cases involving Aboriginal accused.
- Provides additional hours of coverage (“*Gladue* enhancements”) for lawyers representing Aboriginal clients.
- LAO increased the number of dedicated legal advice service locations around the province.

### 4. Systemic Improvements to the Justice System

- Participation on the Attorney General’s Aboriginal Justice Advisory Group and support for implementation of several recommendations in the Iacobucci Jury Report.
- Engagement strategy with all LAO staff to increase localized knowledge and capacity for providing legal services to First Nation, Métis and Inuit.
- Working closely with First Nation communities and other Aboriginal service providers such as Aboriginal court workers to ensure enhanced co-ordination and supports.



## Mental Health Strategy (MHS) – Started in 2013

### **1. Identification of Clients**

- Development of a training program and interview tools to help lawyers, support workers and the LAO Client and Lawyer Service Centre better identify the legal and service options of clients with mental health and addiction needs, and to better identify secondary consequences and inter-related legal matters.

### **2. Understanding Legal Needs**

- Conducted province-wide consultations with clients and service providers.
- Develop mental health and addiction training with both online and in-person curriculum.
- Develop in-patient needs assessment and quality service surveys.

### **3. Implementing Service Initiatives**

- Expanded civil law certificate eligibility services for disputes between guardians where the incapable person is unrepresented; challenging a statutory guardianship for property; and end-of life consent challenges.
- Expanded certificates and other forms of support for appeals from the Consent and Capacity Board and Ontario Review Board.
- Introduction of second chair/mentorship programs to grow mental health expertise around the province.
- Pilot programs introducing counsel and legal supports in psychiatric facilities and local drop-in centres community and healthcare settings

### **4. Systemic Improvements to the Justice System**

- Active partnerships with lawyers groups, Mental Health Commission of Canada, Enabling Change, Canadian Mental Health Association (CMHA)-Ontario, Centre for Addiction and Mental Health (CAMH), ConnexOntario, Ontario Psychologists Association, and provincial-level initiatives including the Provincial Human Services and Justice Coordinating Committee; Ministry of the Attorney General Criminal Mental Health Roundtable; CAMH Provincial Justice System Service Collaborative

## Domestic Violence Strategy (DVS) – Started in 2015

### **1. Identification of Clients**

- Working with Client and Lawyer Service Centre to better identify vulnerable clients at intake stage to triage clients to best service option.

### **2. Understanding Legal Needs**

- Delivering in-person training on identifying and responding to domestic violence to over 900 LAO staff, 28 clinics and over 350 private bar lawyers. The training is available online to ensure the sustainability of the content and continued access to training for LAO staff and service providers.

### **3. Implementing Service Initiatives**

- Financial eligibility for domestic violence family law clients was increased to match financial eligibility for duty counsel services in November 2014.
- Criminal certificate coverage for persons fleeing domestic violence who are also Aboriginal persons, or refugee claimants or have a legally aided ongoing family law dispute regardless of likelihood of jail.
- From 2014-2017, LAO partnered with Luke's Place to provide Domestic Violence clients with Family Law Service Centres services and other related services in Durham.

### **4. Systemic Improvements to the Justice System**

- Ongoing regular meetings with representatives of domestic violence community to assess gaps in both Legal Aid services and justice system generally.
- Support for Premier's Sexual Violence Strategy.
- Ongoing presentations to Violence Against Women community groups on LAO services for clients experiencing violence.

## Appendix D: List of Racialized Communities Strategy Activities and Initiatives to date

### 1. Identification of Clients

- *Project Rosemary* (Ongoing)
  - Development of a race-based data collection initiative to collect and analyze information about the race of applicants and clients of LAO to support evidence-based planning of LAO's services.
  - Develop training and supports necessary to empower staff to ask applicants and clients to self-identify their race.

### 2. Understanding Legal Needs

- Met with over 60 community agencies, right-based organizations and individuals.
- Development of an information session for community agencies about legal aid services. LAO staff held a pilot session in Ottawa.

### 3. Implementing Service and Access Initiatives

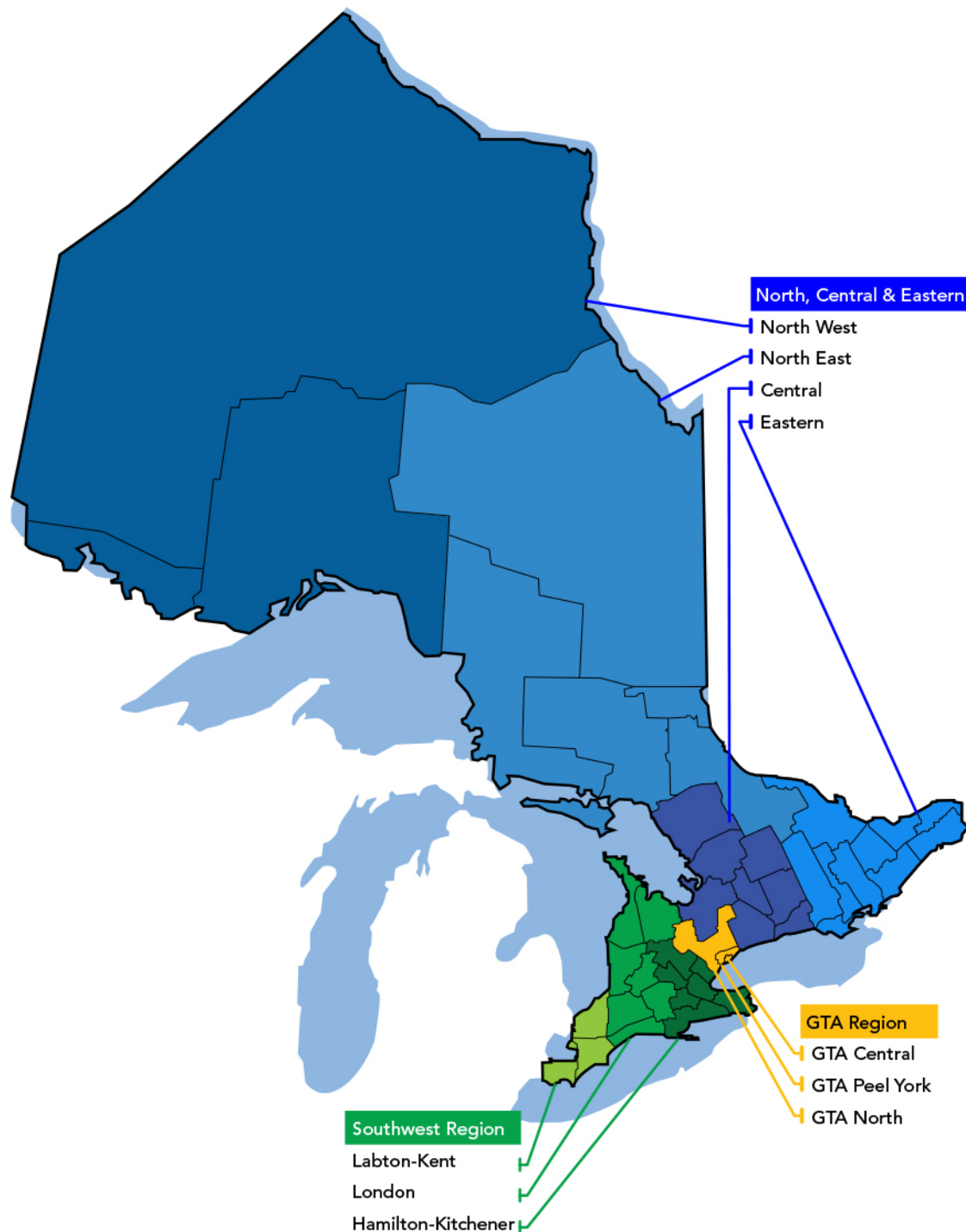
- Translation Initiative
  - Translation of 5 LAO Brochures into 13 languages other than English and French.
- Education Law Grant
  - Informed the development of a one-time grant of \$200,000 for two community organizations to provide services to Black student facing suspensions or expulsions hearings.
- Sponsored Continuing Professional Development for criminal lawyers in partnership with Rights Advocacy Coalition for Equality (R.A.C.E.) dealing racial profiling and the consideration in race in sentencing.
- Test case funding supporting racialized people.
  - Inquest into the police shooting of Jermaine Carby.
  - Challenging the constitutionality of street checks and carding.

### 4. Systemic Improvements to the Justice System

- Ministry of Community Safety and Correctional Services consultation on the regulation of street checks/carding - 2015.

- LAO made submissions to the Ministry of Community Safety and Correctional Services on carding and street checks to support the elimination of the practice of arbitrary and often discriminatory street checks.
- Ministry of Community Safety and Correctional Services Consultation on the Development of a Safer Ontario - April 2016.
  - LAO made 27 recommendations for the development of the Strategy for a Safer Ontario.
- Participation in the Anti-Racism Directorates Consultation.

## Appendix E: Map of Legal Aid Ontario Regional Organization





LEGAL AID ONTARIO  
AIDE JURIDIQUE ONTARIO

## **Legal Aid Ontario**

40 Dundas Street West,  
Suite 200

Toronto, Ontario, Canada  
M5G 2H1

Toll free: 1-800-668-8258

Email: [info@lao.on.ca](mailto:info@lao.on.ca)

Website: [www.legalaid.on.ca](http://www.legalaid.on.ca)

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financial assistance from  
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