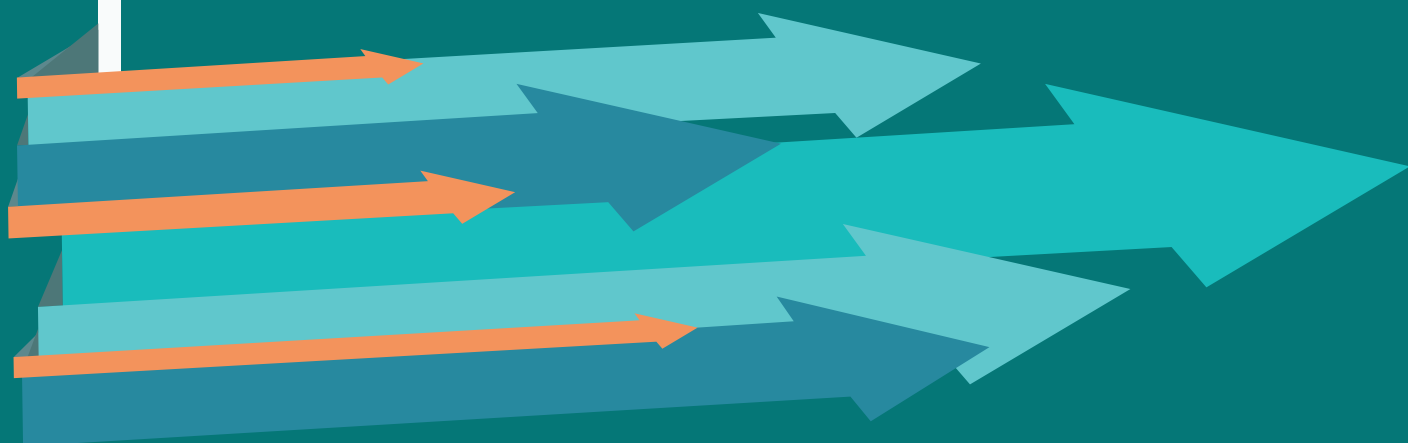


LEGAL AID ONTARIO RACIALIZED COMMUNITIES STRATEGY

MARCH - 2020



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RACIALIZED COMMUNITIES STRATEGY

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TABLE OF CONTENTS

Executive summary	1
Introduction	3
A. Reduce barriers to access	7
B. Ensure quality legal services	21
C. Engage in systemic change	31
Appendix 1	A-1
Appendix 2	A-2
Appendix 3	A-4
Appendix 4	A-6
Appendix 5	A-7
Appendix 6	A-8
Appendix 7	A-10
Appendix 8	A-12
Appendix 9	A-13
Appendix 10	A-14
Appendix 11	A-15
Appendix 12	A-30
Appendix 13	A-35

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EXECUTIVE SUMMARY

Legal Aid Ontario's Racialized¹ Communities Action Plan ("Action Plan") is a 10-year plan that commits LAO to 17 specific objectives to be achieved by 2030.

To ensure that racialized clients do not face barriers to accessing LAO's services, LAO will work to ensure that:

1. A Racial Equity Impact Assessments (REIA) tool is developed and incorporated into all of LAO's decision-making and planning processes;
2. Racialized applicants and clients across all service areas are represented in numbers that are at least equal to their representation among low-income Ontarians;
3. Unacknowledgement rates for child protection certificates are examined, and where possible, reduced;
4. Informational materials about LAO and LAO's services, including information about how clients can identify their language needs and access interpretation services, are translated into a number of languages and made available to all applicants and clients;
5. All LAO service providers (e.g. the Client and Lawyer Support Centre, court-based lawyers, clinics, panel lawyers) have access to and make appropriate use of interpretation services; and
6. Clients can easily determine whether LAO service providers are able to deliver legal services in different languages (e.g., panel lists, the "Find a Lawyer" tool).

To ensure that racialized clients receive high quality legal services, LAO will adopt and work toward the following objectives:

7. The percentage of racialized people working at all levels of LAO and across all LAO service channels is at least equal to the representation of racialized people among low-income Ontarians;
8. The funding provided to clinics and other service providers is reflective of and responsive to the representation and needs of various racialized communities among low-income Ontarians;
9. Informational materials -- explaining what clients can expect from LAO lawyers, how they can file a complaint, and when and how to change lawyers -- are translated and made available to all applicants and clients;
10. Clients regularly provide positive feedback with respect to such things as: knowledge of available services, the quality of services, ability to find a lawyer, and availability of

¹ The term "racialized" refers to people who identify as Black/African, East Asian and Southeast Asian, Hispanic/Latin American, Middle Eastern and Arab, Roma, South Asian, and bi- or multiracial.

and access to services in different languages.

11. All job interviews, performance reviews, and empanelment forms contain questions aimed at hiring/retaining people with a demonstrated understanding of and commitment to racial justice; and
12. All staff and panel lawyers regularly complete training on racial justice.

To combat systemic racism in the justice system, LAO will work to ensure that:

13. Positive outcomes (e.g., withdrawals, acquittals) are measured and incentivized (e.g., increased compensation, public recognition), and negative outcomes are disincentivized (e.g., service providers are required to provide explanation for outcome, unable to accept new certificates for remainder of calendar year, and/or placed into panel management process);
14. Legal service providers have access to resources and regularly complete training about how to challenge individual and systemic racism in the justice system;
15. Legal service providers in all areas of law and across all service channels regularly make race-based arguments (e.g., identify racial profiling and make Charter based arguments in criminal matters);
16. Specific funding is available to support community development initiatives that address issues that disproportionately impact racialized communities; and
17. There are no disparities between the legal outcomes of racialized and white LAO clients.

The Action Plan also proposes a number of initiatives that LAO may implement in order to achieve the objectives outlined above.

The Racialized Communities Strategy explains why and how LAO selected these objectives.

INTRODUCTION

In December 2016, LAO's Board of Directors committed to developing a Racialized Communities Strategy. The commitment to developing a Strategy was made for a number of reasons, including:

- **The racialization of poverty:** According to the 2016 Census, while 29% of Ontario's population is racialized, racialized people account for 42% of Ontario's low-income population.² This is due, in part, to discrimination in the labour force leading to lower employment rates, higher unemployment rates, more insecure/precarious employment, and lower wages and earnings.³ 1 out of every 20 low-income people in Toronto (5%) do not speak English or French.⁴
- **Higher rates of involvement with and apprehension by child protection services:** Poverty, race, and mental health issues are significant factors in determining whether children are taken from their families and placed into care. Children whose families run out of money for housing or utilities and children with a parent with an addiction or mental health issue are twice as likely to be placed in foster or group homes.⁵ Despite similar rates of neglect and physical, sexual and emotional abuse as white children, Black children are 40% more likely to be investigated, 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 investigations. Only Indigenous children show greater disparities.⁶
- **Anti-Black racism in the criminal justice system:** Members of Ontario's Black communities are racially profiled by police; i.e., they are singled out for greater

2 Statistics Canada, Visible Minority (15), Individual Low-income Status (6), Low-income Indicators (4), Generation Status (4), Age (6) and Sex (3) for the Population in Private Households of Canada, Provinces and Territories, Census Metropolitan Areas and Census Agglomerations, Catalogue no. 98-400-X2016211 (Ottawa: Statistics Canada, 2016) <<https://www150.statcan.gc.ca/n1/en/catalogue/98-400-X2016211>>.

3 Grace Edward Galabuzi, Amy Casipullai & Avvy Go, "The Persistence of Racial Inequality in Canada" The Toronto Star (20 March 2012), online: <https://www.thestar.com/opinion/editorialopinion/2012/03/20/the_persistence_of_racial_inequality_in_canada.html>.

4 *Supra* note 2.

5 Sandro Contenta and Jim Rankin, "Report shines light on poverty's role on kids in CAS system" The Toronto Star (15 August 2016), online: <<https://www.thestar.com/news/insight/2016/08/15/report-shines-light-on-povertys-role-on-kids-in-cas-system.html>>.

6 Ontario Association of Children's Aid Societies, "One Vision, One Voice: Changing the Ontario Child Welfare System to Better Serve African-Canadians, Practice Framework Part 1: Research Report", (Sep 2016) at 22, online: <http://www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-1-digital_english.pdf>.

scrutiny, surveilled, and questioned because of their race.⁷ As a result of higher levels of scrutiny, members of Black communities are more likely to be charged and arrested, usually for low level offences.⁸ They are also more likely to be taken to a police station for processing and to be held overnight.⁹ Once arrested, Black people are more likely to be denied bail. If they are released on bail, they receive significantly more release conditions and are thus subject to greater surveillance by the court (i.e. curfews, mandatory supervision requirements).¹⁰

- **Overrepresentation and differential treatment in the prison population:** Over the last 15 years, the number of racialized people incarcerated in federal institutions increased by almost 75%, while the population of white inmates decreased by 3%.¹¹ This may be due to an 80% increase in the Black prison population. Black people make up 3% of Canada's population but account for 9% of the federal prison population. The majority of these Black inmates (60%) are incarcerated in Ontario.¹² While in prison, Black people are more likely to be incarcerated in maximum security facilities and placed in segregation. They are also 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) as opposed to conduct for which a

7 Scot Wortley and Julian Tanner, "Data, denials, and confusion: The racial profiling debate in Toronto" (2003) 45(3) *Canadian J. Criminology and Crim. Just.* 367. Akwasi Owusu-Bempah "The usual suspects: police stop and search practices in Canada" (2011) 21(4) *Policing and Society* 395. Scot Wortley and Julian Tanner "Inflammatory rhetoric? Baseless accusations? A response to Gabor's critique of racial profiling research in Canada" (2005) 47(3) *Canadian J. Criminology and Crim. Just.* 581. Jim Rankin, Sandro Contenta, and Andrew Bailey "Toronto marijuana arrests reveal 'startling' racial divide" *The Toronto Star* (6 July 2017), online: <<https://www.thestar.com/news/insight/2017/07/06/toronto-marijuana-arrests-revealstartling-racial-divide.html>>.

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

9 "Race, Crime and Justice in Canada", *The John Howard Society of Canada*, (19 October 2017), online: <<http://johnhoward.ca/blog/race-crime-justice-canada/>>. Jim Rankin et al., "Singled out: An investigation into race and crime" *The Toronto Star* (19 October 2002) A1. Jim Rankin et al., "Police target black drivers" *The Toronto Star* (20 October 2002) A1.

10 Gail Kellough and Scot Wortley, "Remand for Bail: Bail decisions and plea bargaining as commensurate decisions" (2002) 42(1) *Brit J Crim* 186, as explained in Akawsi Owusu-Bempa & 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: Oxford University Press, 2013) at 292. Anna Mehler Paperny "Exclusive: New data shows race disparities in Canada's bail system" Reuters (19 October 2017), online: <<https://ca.reuters.com/article/domesticNews/idCAKBN1CO2RD-OCADN>>.

11 Office of the Correctional Investigator, *The Changing Face of Canada's Prisons: Corrections; Investigator Reports on Ethno-Cultural Diversity in Corrections*, (Ottawa: Office of the Correctional Investigator, 2013) online: <<http://www.oci-bec.gc.ca/cnt/comm/press/press20131126-eng.aspx>>.

12 Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2011-2012*, (Ottawa: Office of the Correctional Investigator, 2012) online: <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20112012-eng.aspx>>.

correctional officer must show factual proof (e.g., possession of contraband).¹³

In early 2016, LAO policy counsel conducted a review of the numerous studies and reports that have documented the experiences of racialized people in the justice system. LAO staff also met with approximately 60 individuals and organizations to learn more about the legal issues faced by racialized communities. This led to the development of the [Consultation Paper: Development of a Racialized Communities Strategy](#) (“Consultation Paper”).¹⁴

Next, LAO engaged in an in-depth consultation process. Between October and December 2017, LAO hosted two consultations with LAO staff and 11 consultations with members of the public. The public consultations were held in cities across the province (**Appendix 1**).

LAO also invited over 500 community-based organizations across the province – including community health centers, faith-based groups, professional associations, settlement agencies, shelters, and LAO-funded legal clinics – to host their own consultations. To promote engagement, LAO developed a promotional flyer in English and French and translated it into 12 languages: Arabic, Simplified and Traditional Chinese, Farsi, Hindi, Korean, Punjabi, Somali, Spanish, Tagalog, Tamil and Urdu (**Appendix 2**).

From January to April 2018, 30 community-based organizations hosted RCS consultations (**Appendix 3**). More than 60 organizations that collectively serve tens of thousands of low-income and racialized Ontarians each year were represented. Over 400 people, including clients, lawyers, LAO staff, outreach workers, settlement workers, and students, participated. The majority of participants identified as racialized. Many also worked in organizations that mainly serve racialized people.

In addition to in-person consultations, LAO encouraged individuals and organizations to make written submissions. LAO received written submissions from nine organizations (**Appendix 4**).

In June 2018, LAO policy counsel presented a report of the key recurrent and critical issues raised during the RCS consultations to LAO’s management and Board of Directors. A [summary of the consultation process](#) was posted to LAO’s website and circulated to stakeholders in October 2018.

In November 2018, LAO policy counsel shared a draft of the Strategy with LAO’s Racialized Communities Advisory Committee (**Appendix 5**), a working group composed of members

¹³ Office of the Correctional Investigator, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*, (Ottawa: Office of the Correctional Investigator, 2014) online: <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx>>.

¹⁴ Kimberly Roach, *Development of a Racialized Communities Strategy* (Toronto: Legal Aid Ontario, 2017), online: <<https://www.legalaid.on.ca/wp-content/uploads/Development-of-a-racialized-communities-strategy-2017-EN.pdf>>.

of various Advisory Committees (**Appendix 6**), and a staff working group (**Appendix 7**). The feedback provided by the members of these groups is reflected in this final report.

LAO's Racialized Communities Strategy aims to address the issues raised in the academic literature and during the consultation process. These include barriers to accessing LAO's services, concerns regarding the quality of legal services provided to racialized people, and the need for concerted efforts to address individual and systemic racism in the justice system. The report frames each of these issues as broad goals. These goals are addressed in the following sections:

- a) Reduce Barriers to Access
- b) Ensure Quality Legal Services
- c) Engage in Systemic Change

Each section follows a similar format. The sections begin by outlining LAO's current policies and practices, providing any relevant information (e.g. data) that LAO has available, and summarizing the issues and concerns identified during the consultations and literature review. Next, the sections set out the specific objectives that LAO will adopt in order to address these concerns and achieve these goals. The sections also outline a number of short, medium, and long-term initiatives that LAO will consider implementing in order to achieve these goals by 2030. These objectives and initiatives are captured in the LAO Racialized Communities Action Plan.

A. REDUCE BARRIERS TO ACCESS

Ensure that LAO's policies and practices are not creating barriers to access

A number of participants in the RCS consultations informed LAO that policies and practices adopted to suit the majority of LAO's clients may have an unfair impact on members of racialized communities.

As an example, some lawyer participants advised that a client who requires interpretation services will likely need almost twice as much time to meet and communicate with their lawyer. This reality is not reflected in the way that LAO funds certificates or allocates compensation funding to clinics with large newcomer populations and may thus reduce client access to legal aid services. Similar concerns were raised in the Mental Health Strategy and the Domestic Violence Strategy with respect to the amount of resources required to adequately serve clients who have mental health issues and have experienced domestic violence.

In another example, participants noted that migrant workers, including live-in caregivers, may have their rent deducted directly from their income and are often the sole providers for their families in their countries of origin. These participants were concerned that LAO's financial eligibility criteria (e.g. how LAO defines a "boarder" and "dependant") do not take into account these unique family, employment, and housing circumstances.

Other participants stated that LAO's failure to take into consideration differences in the cost of living across the province may disproportionately impact racialized communities. According to the 2016 census, most of Ontario's racialized communities live in Census Metropolitan Areas. Census Metropolitan Areas are large urban areas with an urban core population of at least 100,000.

To ensure that LAO's policies and practices do not inadvertently create barriers to access for racialized clients, LAO will work to ensure that:

1. Racial equity impact assessments are incorporated into all of LAO's decision-making and planning processes.

Race Forward is an organization that works to build awareness, solutions, and leadership for racial justice by generating transformative ideas, information, and experiences. According to Race Forward:

A Racial Equity Impact Assessment (REIA) is a systematic examination of how different racial and ethnic groups will likely be affected by a proposed action or decision. REIAs are used to minimize unanticipated adverse consequences in a variety of contexts, including the analysis of proposed policies, institutional practices, programs, plans and budgetary decisions. The REIA can be a vital tool for preventing institutional racism and for identifying new options to remedy long-standing inequities.¹⁵

Through the development and application of REIAs, LAO will consistently:

- identify the racialized communities that may be affected or concerned
- ensure that members of racialized communities are informed, meaningfully involved, and authentically represented in the decision-making process
- use quantitative and qualitative evidence to identify and document current racial inequities
- ensure that all projects/proposals address the factors that may be producing and perpetuating racial inequities
- ensure that all projects/proposals include as their stated purpose the reduction of racial disparities and discrimination
- consider how any adverse impacts or unintended consequences that may result from a project/proposal will be prevented or minimized
- consider how positive impacts and equitable outcomes will be maximized
- ensure that all projects/proposals include ongoing data collection, public reporting, stakeholder participation, and public accountability
- identify how success indicators and progress benchmarks will be evaluated and documented

REIAs have been used in a number of jurisdictions. For example, since 2002, all public authorities in the United Kingdom have been required to develop and publish race equity plans. In Seattle, Washington, City Departments are using a set of racial equity analysis questions to develop policies and budgets. Similarly, in 2017, the provincial government in Ontario introduced legislation that calls for, *inter alia*, the establishment of an anti-racism impact assessment framework to assess potential racial equity impacts and outcomes of policies and programs.¹⁶

To achieve this objective, LAO will consider implementing the following initiatives:

- Developing a Racial Equity Impact Assessment (REIA) tool.

¹⁵ Terry Keleher, *Racial Equity Impact Assessment* (Race Forward, 2009) online: <https://www.raceforward.org/sites/default/files/RacialJusticeImpactAssessment_v5.pdf>.

¹⁶ *Anti-Racism Act*, 2017, S.O. 2017, c. 15, s. 13(1).

- Training all staff on how to conduct REIAs.
- Pilot the use of REIAs in specific departments; i.e., Communications, Policy and Strategic Research, Human Resources, Workforce Planning, and Lawyer Services and Payments.
- Require all reports to LAO's Senior Leadership and Board of Directors and all annual reports to reflect the use of REIAs.

Engage in proactive and collaborative communication

LAO primarily communicates information about its services through LAO's website. The website provides plain language information in English and French on how to access LAO's services as well as legal and financial eligibility requirements. Between September 1, 2018 and August 31, 2019, the website was accessed by approximately 574,972 users. Redesign of the website was completed in November 2019.

In April 2017, LAO translated the most frequently downloaded brochures and fact sheets into: Arabic, Chinese, Dari, Farsi, Hungarian, Russian, Somali, Spanish, Tamil, and Turkish. These materials are available on LAO's [website](#).

LAO staff also conduct public legal information sessions. These are typically scheduled at the request of community members or community-based organizations. In some cases, staff conduct public legal information sessions outside of work hours on a volunteer basis. While individual LAO offices likely maintain some record, there does not appear to be a centralized reporting system of when or where sessions are conducted, how many people are in attendance, or what materials and resources are provided. The practice of delivering public information sessions also does not appear to be consistent across the province.

In addition to maintaining websites that communicate the legal services provided, LAO-funded legal clinics engage in community development and public legal education. Clinics provide annual reports on the number and types of public legal education initiatives in which they have engaged. According to the Client Information Management System (CIMS) -- the system that clinics use to track and produce reports for performance measures -- between October 1, 2018 and September 30, 2019, LAO-funded clinics delivered 1,530 public legal education sessions.

Despite these efforts, most consultation participants did not have a clear understanding of LAO's various services and the differences between them. For example, while participants were largely familiar with some aspects of LAO's certificate program, many indicated that it lacked transparency and predictability. Many also did not understand the difference in services provided through LAO's certificate program and legal clinics, or between different

legal clinics. As an example, a number of participants from legal clinics reported that clients often attend their offices to apply for certificates.

Many participants from community organizations were not aware that they could request information sessions. Participants from community legal clinics, community-based organizations, and LAO staff reported spending a lot of time, sometimes over several appointments or days, helping clients navigate LAO's services and processes. Similar concerns have been raised by LAO's Aboriginal Justice Strategy, Mental Health Strategy, Domestic Violence Strategy, and Prison Law Strategy.

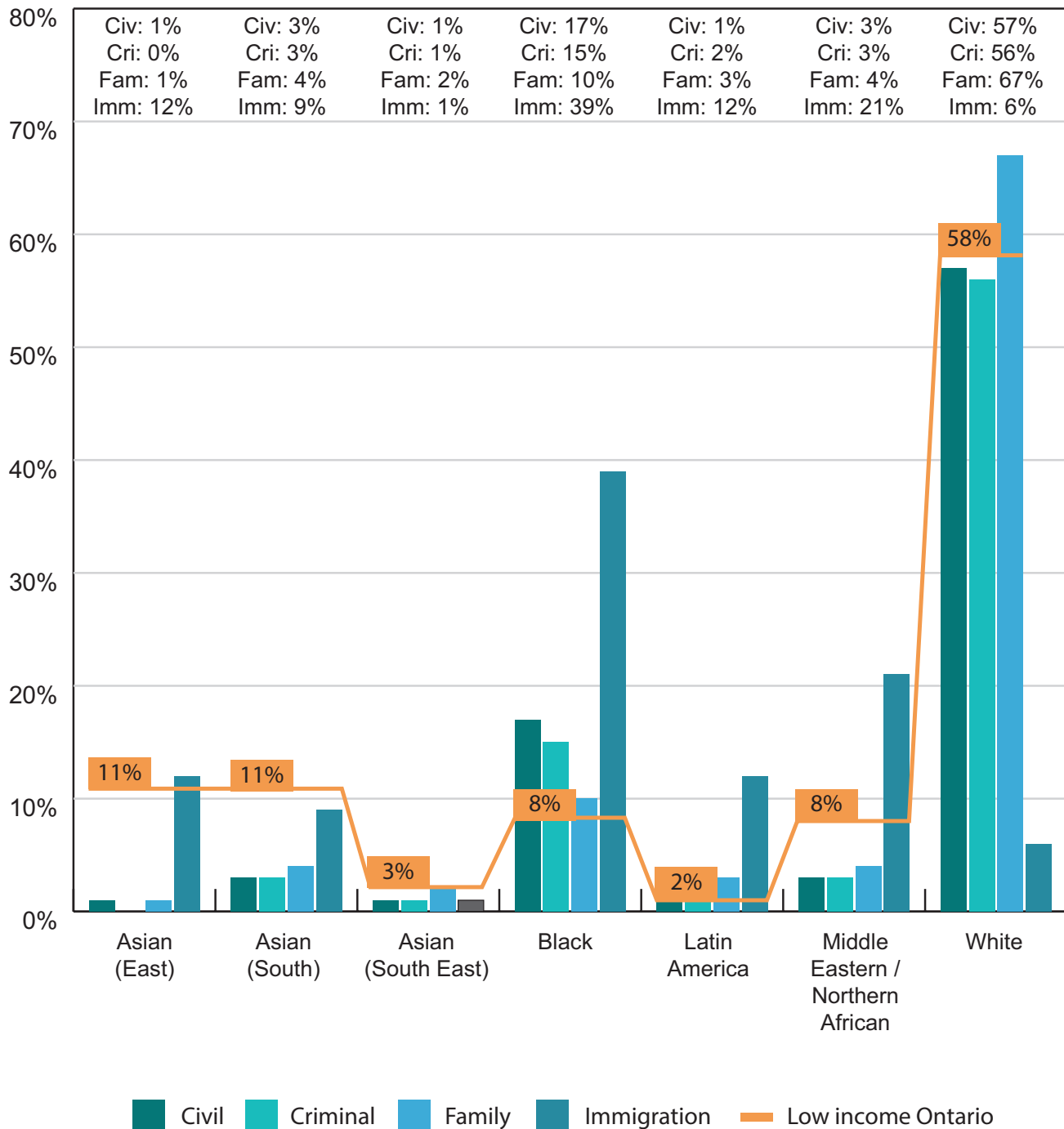
This lack of knowledge can mean that clients who are legally and financially eligible for LAO's services (particularly people who are new to Canada) have to rely on family, friends, and community to find money to pay for legal fees. According to the consultation participants, sometimes, after they have paid, they are asked by legal service providers to pay even more money. If they cannot pay, the legal service provider intimidates them or leaves them in a vulnerable legal position.

This lack of knowledge can also mean that already vulnerable clients have to contact multiple LAO-funded service providers before they receive the correct or appropriate service. As an example, the Client and Lawyer Service Centre (CLSC) estimates that of the approximately 1,250 calls that the CLSC receives per day, over 35% are referred to external service providers.

In April 2018, LAO began collecting race-based data from applicants to LAO's certificate program. Between September 2018 and September 2019, 132,763 people applied for LAO certificates. Of these, 12,582 (9.4%) were not asked to self-identify their racial identity.¹⁷

¹⁷ LAO staff may not ask an applicant about their Indigenous or racial identity where the applicant appears in court by video, the applicant is unable to answer (e.g. mental health crisis), the interviewer has not been trained on how to properly ask clients about their Indigenous or racial identity, or no intake interview is conducted.

LAO Certificate Applications (Sept. 2018 - Sept. 2019) Not including Indigenous clients



The race-based data collected by LAO demonstrates that, relative to their representation among low-income Ontarians, most racialized communities (i.e. East Asian, South Asian, South East Asian, Middle Eastern) are underrepresented among LAO certificate applicants.

LAO communicates information in a way that, for the most part, requires clients to first find out about the existence of LAO and LAO's website in order to then access information about LAO. LAO's communication strategy must be responsive to our clients' lived experiences, including that our clients may never before have engaged with the Canadian justice system, speak neither English nor French, have low literacy rates, are differently abled (e.g. blind, deaf), are incarcerated, and/or do not have regular access to the internet. LAO clients are often marginalized in a number of intersecting ways.

In LAO's 2019-2024 Strategic Plan, LAO committed to implementing a customized client-centered approach for marginalized communities and vulnerable client groups. Through the Racialized Communities Strategy, LAO will work to ensure that:

2. Racialized applicants and clients across all service areas are represented in numbers that are at least equal to their representation among low-income Ontarians.

To achieve this objective, LAO will consider implementing the following initiatives:

- Provide service providers, including staff offices and legal clinics, with the resources and supports to hold regular in-person informational sessions, seminars and workshops with community-based organizations that serve racialized communities.
- Track community engagements to ensure that LAO service providers are engaging community-organizations that serve racialized communities in numbers that are at least equal to the representation of racialized low-income people in the community.
- Develop informational materials in different languages and different mediums (e.g., video).

Make it easier to find a lawyer

When clients receive a certificate, they can use LAO's online "Find a Lawyer" tool which allows clients to search for panel lawyers by area of law, location, and language. LAO staff may also provide clients with a panel list; i.e., a physical list of all the lawyers on a panel. This panel list typically includes the name, phone number and address of the lawyer. Generally, lawyers must accept or work on three or more certificates per year to be included on the panel lists that are given to clients.

A number of consultation participants highlighted the difficulties that clients who obtain an LAO certificate face in finding and retaining a lawyer who will accept the certificate. This was a particular concern outside of the Greater Toronto Area and with respect to

child protection matters. As an example, a lawyer participant in London estimated that, while there are approximately 80 lawyers in the city who practice family law, less than half accept certificates, and only 5 take on child protection matters. Another participant from a community-based organization in Windsor, reported that she had to call 182 lawyers in the city to find one that would represent her client in a child protection matter.

Similar concerns were raised in the Domestic Violence Strategy, where it was reported that “Often a client must make numerous calls before finding a lawyer who is available to represent them, leading to a client settling for the first lawyer they reach who is able to take them on as a client.”¹⁸

According to an analysis of LAO certificates in 2018/19, an average of 8% of LAO certificates that are issued are not acknowledged. The “unacknowledgement rate” ranges from 1% to 25% depending on area of law. The lowest unacknowledgement rate (2%) is in the area of criminal law and the highest rate (28%) is in the area of family law (**Appendix 8**).

Of note, the unacknowledgement rate for Family – *Child, Youth and Family Services Act* (“CYFSA”) matters was 15%. These certificates are issued to parents who have been contacted by or whose child or children have been taken into the care of a children’s aid society. While the unacknowledgement rate with respect to other areas of law may be the result of clients using duty counsel services, deciding not to proceed, or resolving their legal matter without a lawyer, this seems like an unlikely and unwanted outcome for child protection matters. The unacknowledgement rate of CYFSA certificates thus corroborates the concerns raised during the consultation process that CYFSA lawyers are difficult to find.

As of October 2019, there were:

- 395 lawyers on LAO’s Immigration and Refugee Panel;¹⁹
- 2,424 lawyers on LAO’s Family Law Panel; and
- 2,893 lawyers on LAO’s Criminal Law Panel.²⁰

These numbers suggest that lawyers are widely available. However, between 2014 and 2017, 1,350 panel lawyers (over 30% of panel lawyers) accepted 10 or fewer certificates. 50% of the certificates issued by LAO were acknowledged by 10% of panel lawyers (448).

18 Michelle Squires, *Legal Aid Ontario’s Domestic Violence Strategy*, (Toronto: Legal Aid Ontario, 2017), online: <<https://www.legalaid.on.ca/documents/legal-aid-ontarios-domestic-violence-strategy/>>.

19 LAO’s Refugee Law Office has 14 staff lawyers that provide legal services to refugee claimants primarily in Toronto, Hamilton, and Ottawa. Staff services provide an alternative to the private bar service offered to legally aided refugee claimants.

20 These figures reflect only those lawyers who accepted and/or billed on a certificate between 2015 and 2018.

This suggests that the pool of lawyers who are accepting certificates may actually be significantly smaller than the panel lists suggest.

According to data provided by the Law Society of Ontario, 48,654 lawyer licensees submitted a Lawyer Annual Report in 2017. Of those lawyer licensees:

- 4,239 devoted at least 25% of their time to criminal or quasi-criminal law;
- 3,942 devoted at least 25% of their time to family/matrimonial law; and
- 910 devoted at least 25% of their time to immigration law.

This data suggests that approximately 64% of all criminal lawyers, 62% of all family lawyers, and 37% of all immigration lawyers in Ontario accept LAO certificates.

There are a number of possible explanations for these differences. First, due to the vulnerability of LAO clients and LAO's responsibility to ensure high quality services, lawyers who represent legal aid clients must meet certain standards (i.e., minimum experience and professional development requirements) and apply to become part of a panel for the type(s) of law they practice. Lawyers may only accept LAO certificates and represent LAO clients after they have been admitted to a panel. A lawyer's application may be refused. A lawyer may also be removed from a panel.

Second, with respect to immigration law, LAO's certificate program does not cover a number of areas of immigration, including obtaining permanent resident status, preparing sponsorship applications, and renewing temporary resident permits or student visas. It is possible that the lawyers who practice immigration law provide services in the areas of immigration law that are not covered by LAO's certificate program. Also, beginning in January 2015, LAO removed all lawyers from the Immigration and Refugee panel and implemented new panel standards for its Immigration and Refugee Panel. This resulted in a reduction of the panel from 680 in July 2015 to 291 in March 2016.

Third, some members of the private bar expressed that many lawyers do not accept certificates for financial reasons; i.e., LAO's rates do not accurately reflect the amount of time that is required to properly represent LAO clients. These lawyers also explained that the administrative burden of joining LAO's panels and billing for services acts as a deterrent.

LAO has undertaken a number of initiatives to encourage participation on LAO panels. As an example, in 2018, the Law Society of Ontario (LSO) released a Report of the Legal Aid Working Group. In that document, the LSO outlined its statutory duty to facilitate access to justice for the people of Ontario and its "significant and abiding interest in helping to ensure robust, transparent, and sustainable legal aid services for low-income Ontarians."²¹

²¹ Legal Aid Working Group, *Report of the Legal Aid Working Group: An Abiding Interest* (Toronto: Law Society of Ontario, 2018), online: <<https://s3.amazonaws.com/tld-documents.llnassets.com/0005000/5767/>>

In LAO's submission to the Law Society, LAO suggested that the Law Society encourage licensees to consider legal aid work.

In addition, some LAO offices regularly hold information sessions on how to join LAO panels and submit bills to LAO to encourage lawyers, particularly newer lawyers, to provide legal services to LAO clients. LAO is engaged in a review of "billing irritants" to reduce the administrative burden of providing LAO-funded services. LAO has also established a second chair program which provides hands-on training for junior lawyers and paid mentorship opportunities for senior lawyers.

LAO will continue to work to increase the number of lawyers who are available to provide high quality legal services to LAO clients. Specifically, LAO will work to ensure that:

3. Unacknowledgement rates for certificates related to child protection matters are examined, and where possible, reduced.

To achieve this objective, LAO will consider implementing the following initiatives:

- Continue to work with panel lawyers to determine how LAO can increase numbers and support retention (e.g. removal of billing irritants, increased use of conditional empanelment).
- Engage in active recruitment of racialized lawyers (e.g. Second Chair Program, formal mentorship program) and law students, particularly outside of the GTA.
- Work with the Law Society of Ontario to encourage and/or create incentives for lawyers to provide legal aid services.
- Provide more flexibility in authorizing travel costs for lawyers who practice in areas of law with small panels or high unacknowledgement rates; and
- Open a Child Protection Legal Service Centre that is specifically mandated to address the overrepresentation of racialized families in child protection matters by, among other things, providing legal representation in child protection matters, and mentoring junior lawyers and law students in child protection matters.²²

[convocation-jan-2018-legal-aid-working-group-report\(2\).pdf](#)>.

²² A similar recommendation was made in the Report of the Motherisk Commission, *Harmful Impacts: The Reliance on Hair Testing in Child Protection*, (February 2018), online: <<http://motheriskcommission.ca/wp-content/uploads/Report-of-the-Motherisk-Commission.pdf>>. The Motherisk Commission recommended that Legal Aid Ontario establish an independent specialty legal clinic focussed on child protection that could accept "hard to serve" clients, provide research and mentoring for private practitioners, engage in advocacy, and bring test case litigation to protect and enhance the rights of parents in child protection proceedings.

Increase availability of and access to information and services in multiple languages

Some LAO staff and certificate lawyers have the capacity to provide direct services in languages other than English and French. For the most part, however, LAO delivers legal services to those clients who do not speak English or French through interpreters.

LAO provides interpretation services in a number of ways. As an example, LAO has a contract with MCIS Language Solutions that permits applicants and clients who contact the Client and Lawyer Service Centre (CLSC) at LAO's toll-free phone line to receive help in over 300 languages.

In Fiscal Year (FY) 2016/17, 2017/18 and 2018/19, the CLSC spent (or will spend) approximately \$182,273, \$240,489, and \$319,266 respectively on interpretation and translation services. In 2018/19, the top 5 languages were:

1. Spanish
2. Arabic
3. Turkish
4. Farsi
5. Hungarian

When a client contacts the CLSC and identifies a language need that requires interpretation services, LAO staff call MCIS, identify the language into which they require interpretation, wait for an interpreter to join the call, and then proceed with the intake process. Once the client call is answered, the process of connecting the client and the LAO employee to an interpreter typically takes approximately two minutes. A similar process is followed by LAO offices and LAO-funded legal clinics.

While interpretation is available, the pre-recorded voice prompts at the CLSC are recorded only in English and French. In order for clients to speak to an LAO staff person and identify their language need, clients must first navigate through the pre-recorded voice prompts. A number of participants from community-based organizations reported that when clients who do not speak English or French call the CLSC, they are unable to understand the initial pre-recorded voice prompts in order to identify their language need.

Similarly, while LAO's website explains that clients who call the CLSC can be helped in over 300 languages, the website is only in English and French. Clients who do not speak either of these languages are thus likely unaware that they can be helped in other languages. As noted above, LAO's website contains brochures and fact sheets in Arabic, Chinese, Dari, Farsi, Hungarian, Russian, Somali, Spanish, Tamil, and Turkish. However, some

participants commented that these resources are not prominently featured on LAO's website. Clients are thus expected to locate these resources by navigating a website that they do not understand.²³

For clients who receive certificates, LAO provides panel lawyers with disbursement funding for interpretation and translation services. According to LAO's Disbursement Handbook, translations are generally paid on a per-word basis at a rate of \$0.20 per word. LAO also authorizes up to 10 hours of actual interpreting time for the purpose of solicitor and client meetings. The first hour is compensated at the rate of \$31.40 and \$19.20 is paid for each subsequent hour. When an interpreter is not available at LAO rates, prior authorization is required. Lawyers must also seek prior authorization to exceed the 10-hour pre-authorized maximum.

A number of lawyer participants criticized LAO's funding of language translation and interpretation services, noting that it is difficult, if not impossible, to find translators and interpreters who are willing to accept LAO's rates. These lawyers also noted that providing services to a client who requires interpretation typically takes longer. This is not reflected in the way LAO funds certificates. As a result, panel lawyers may be reluctant to accept certificates from clients who require interpretation.

In preparing the Racialized Communities Strategy, LAO staff contacted three interpretation service providers, including MCIS Language Solutions, and found that two service providers charge \$55 per hour with a two-hour minimum, while one charges \$83 per hour with a three-hour minimum; i.e., between two and four times more than LAO provides.

With respect to LAO's court-based services, the manner in which LAO's duty counsel access interpretation services is not consistent. While some LAO offices have set aside a budget for interpretation services and established an MCIS account that duty counsel can access, others appear to rely on court interpreters. Court interpreters are not funded by LAO. Rather, they are provided by the Ministry of the Attorney General (MAG). They are meant to be used in court proceedings or appearances as opposed to in preparation for a court proceeding or appearance. Court interpreters may not be immediately available.

²³ Some participants from community-based organizations also raised the concern that the technologies that LAO uses are actually inaccessible to low-income clients. For example, one participant explained that while LAO used a teletypewriter (TTY) to communicate with clients who are deaf, this technology is not readily available to low-income clients; i.e., a TTY costs about \$1,500 and requires that the user have a landline. The cost of a teletypewriter can be prohibitive. Many clients who are deaf have to travel to a community-based organization to use a teletypewriter in order to contact LAO.

As of June 2019, LAO no longer uses the teletypewriter to communicate with clients who are deaf. Instead, clients can now contact LAO through the free and confidential Bell Relay Service. The Bell Relay Service supports communication by phone between hearing people and people who are deaf, deafened, hard of hearing, or those with speech disabilities. Professionally trained operators act as intermediaries to facilitate the call. Bell Relay operators are available 24 hours a day, 7 days a week. There is no charge for using the Bell Relay Service to place local calls.

People who require court interpretation are advised to ask for an interpreter with advanced notice to allow court staff time to make arrangements for the date and time required.

This lack of access can lead to injustices. As an example, one participant shared that criminally accused clients may remain in pre-trial detention for longer – despite the Crown consenting to their release – because a court interpreter is not immediately available to interpret the duty counsel’s legal advice or the Crown’s proposed bail conditions.

A number of participants highlighted that outcomes like these may be avoided if LAO actively recruits and engages legal service providers that are able to deliver direct services in different languages.²⁴

In LAO’s 2019-2024 Strategic Plan, LAO committed to implementing a customized client-centered approach for marginalized communities and vulnerable client groups and to developing more innovative ways to improve access to services. To this end, LAO will work to ensure that:

4. All applicants and clients can easily access translated informational materials about LAO and LAO’s services, including information about how clients can identify their language needs and access interpretation services.

²⁴ There is evidence that providing services in a client’s language of choice not only increases access to services but also improves justice outcomes. In Maricopa County, Arizona, for example, the Driving Under the Influence (DUI) Court created a separate Spanish-speaking court. The court achieved an 88% graduation rate, higher than the 66% rate for participants in English-speaking DUI court. Graduates of the DUI court have to complete at least 20 weeks of treatment, education, and counseling, reach 6 months of sobriety, and be attending school or employed.

Similarly, in Santa Cruz County, California, the probation department addressed difficulties communicating with Spanish-speaking families by increasing the number of Spanish-speaking staff to match the proportion of youth at the detention center. The department also created programs to meet the needs of Latin American youth and expanded bilingual staff at a local community-based organization. “[T]hese efforts helped lead to a 25% reduction in the average daily detention population, and a simultaneous 22% reduction in the Latino representation in the juvenile hall population.” For more information, see The Sentencing Project, *Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System* (Washington: The Sentencing Project, 2015) at p. 24.

5. All service channels (e.g. CLSC, court-based services, clinics, certificates/disbursements) have access to and make appropriate use of interpretation services.

6. The ability to deliver legal services in different languages is included on all panel lists, the “Find a Lawyer” tool, and as a preferred competency in all job postings for client-facing positions.

To achieve these objectives, LAO will consider implementing the following initiatives:

- Create, translate, and widely distribute or prominently display important informational materials, including how people can identify their language needs and access interpretation.
- Conduct a review of all court-based service providers to determine the level of access to and use of interpretation services. Ensure that all court-based service providers have access to funding for interpretation services (e.g. MCIS account). Promote the existence of LAO-funded interpretation services to court-based staff. Provide court-based service providers with tools and resources to help clients identify their language needs. For an example, see the resource created by the Barbra Schlifer Commemorative Clinic (**Appendix 9**).
- Generate a list of interpreters who are willing to accept LAO rates and circulate to panel lawyers. If the number of interpreters who are willing to accept LAO rates is low, issue an RFP for interpretation services to permit LAO to negotiate more competitive rate for interpretation services for all certificate clients, or adjust disbursement rates accordingly.
- Survey staff and service providers across LAO’s service channels (e.g. certificate, staff lawyers, and clinics) to determine who is able to provide services in different languages. Develop, translate, and distribute informational materials that indicate the languages in which clients can receive services at particular locations (e.g. courthouse, clinic, district office).
- Use census data and LAO usage data to determine the language needs of low-income Ontarians in various catchment areas. Ensure that these language needs are reflected in targeted recruitment of staff and service providers.
- Encourage LAO-funded legal clinics, particularly those with large racialized communities, to actively recruit staff who are able to deliver services in different languages.

- Provide certificate enhancements for clients who require interpretation services.
- Develop a policy in which LAO commits to making interpretation available across all service channels including court-based services.

B. ENSURE QUALITY LEGAL SERVICES

Increase racial diversity at all levels and in all areas of LAO

LAO has an *Employment Equity Policy* that is aimed at ensuring that there are no systemic barriers in the employment process for members of marginalized communities (**Appendix 10**).

LAO also has a *Workplace Harassment, Sexual Harassment and Discrimination Prevention Policy* that prohibits all forms of harassment and discrimination and provides a process for reporting, investigating and responding to complaints of harassment and discrimination (**Appendix 11**).

In 2013, LAO formed the Inclusion and Diversity Committee with a mandate to advance equity and diversity within LAO by building inclusion and diversity into LAO's business policies and practices and by promoting an inclusive work environment for all employees, including racialized employees.

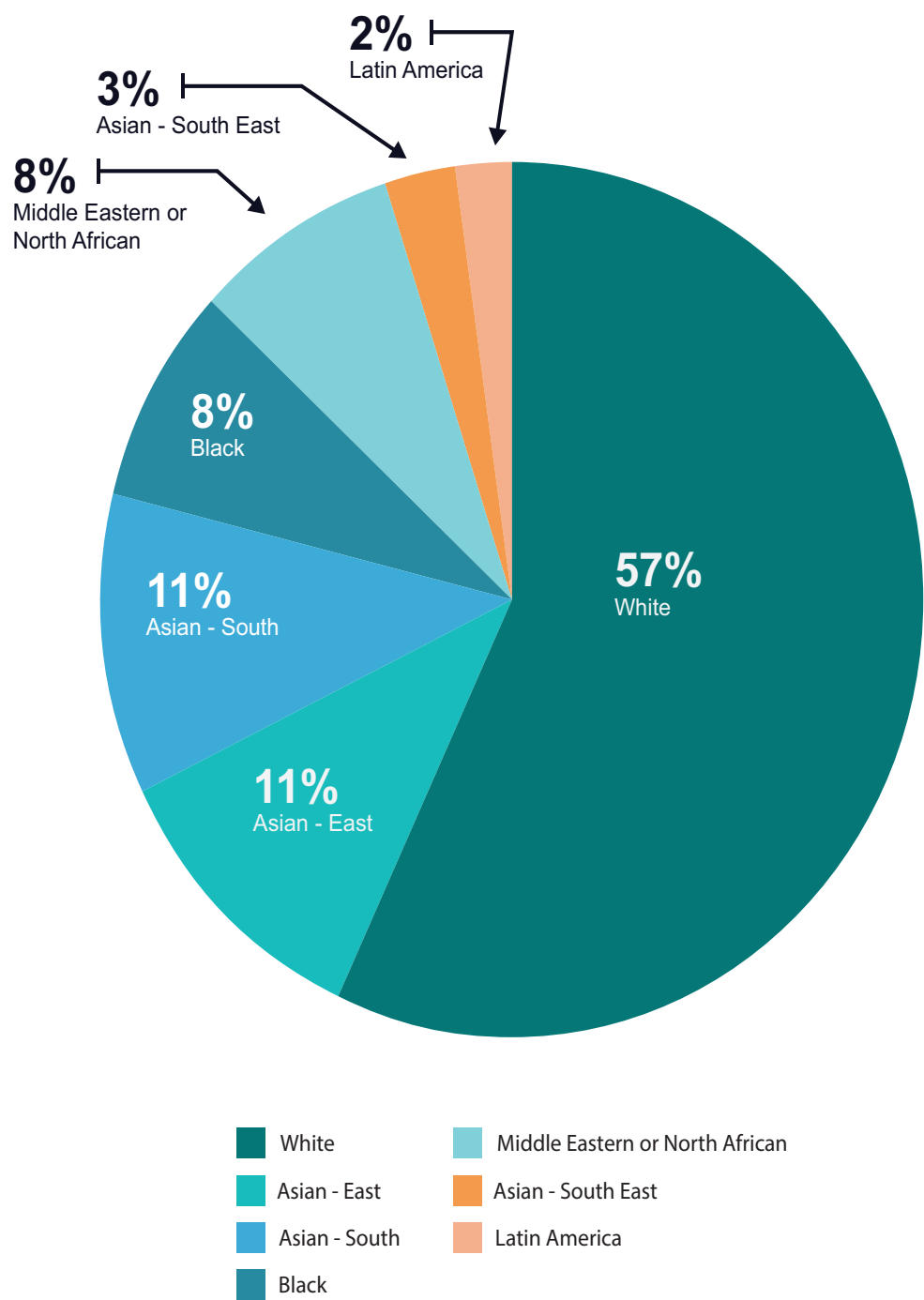
In 2017, LAO introduced an *Inclusion and Diversity Policy* that outlines LAO's commitment to having a workforce that is, among other things, "reflective and responsive to the diversity of all Ontarians" by doing such things as:

- increasing the diversity of LAO's senior management and leadership team;
- dedicating resources in the annual budget to support the Human Resources department in the recruitment of diverse applicants and the proactive identification of barriers;
- conveying to the provincial government (which appoints half of LAO's Board of Directors) that it is important for the Board to be reflective of the population of Ontario;
- ensuring representation from broad perspectives on committees and working groups;
- ensuring equal access to job opportunities through a transparent and competitive process that is void of systemic barriers; and
- ensuring skills and requirements in all job profiles reflect *bona fide* criteria for success (**Appendix 12**).

Despite these efforts, a number of consultation participants expressed that due to the lack of racial diversity and representation among the staff, leadership and the board of LAO, LAO is not able to provide culturally competent or responsive legal services to racialized communities. As an example, one participant from a community-based organization in Windsor estimated that from a list of approximately 200 panel lawyers, only 10 were

racialized. Some consultation participants also expressed concerns about the lack of representation from other groups, including racialized people who are lesbian, gay, bisexual, transgender, and/or queer or questioning (“LGBTQ”), are differently abled and those with lived experiences that are similar to those of LAO clients.

Low-Income Ontario - 2016 Census



According to the 2016 census, racialized communities represent 43% of Ontario's low-income population.

LAO does not collect race-based or other demographic data on its staff or LAO-funded service providers. As such, it is not possible to determine the extent to which LAO is representative of the communities it serves.

Lawyers and paralegals are required to submit an annual report to the Law Society of Ontario. The annual report includes questions about race and other social identity characteristics. Beginning in 2019, the Law Society of Ontario will provide legal workplaces of at least 25 licensees with data compiled from the Lawyers Annual Report and the Paralegal Annual Report.²⁵ LAO will thus be able to get a better sense of the racial diversity among its staff lawyers. LAO may also be able to work with the Law Society to obtain aggregated demographic information about panel lawyers.

While the information that will be provided by the Law Society is helpful, it will not include information about non-legal staff or representation at different levels of LAO (e.g. management, board of directors). Without this information, LAO will not be able to determine the necessity and efficacy of the measures outlined in the *Inclusion and Diversity Policy*.

Consultation participants also raised concerns about the lack of racial diversity in LAO-funded clinics and the impact of this on the ability of clinics to determine and respond to the legal needs of their respective catchment areas, and to provide culturally competent services. As an example, one participant shared an observation about a legal clinic that serves mostly racialized clients. For almost ten years, LAO hired articling students. As a part of their 10 month articles, these students completed a three-month rotation at the clinic. Due to high service demands, the clinic also engaged volunteer articling students. The articling students that were hired by LAO and paid were white, while the articling students that did identical work for no pay were racialized.

Three separate community groups requested that LAO consider funding three new and distinct specialty clinics to adequately address the legal needs of their respective communities. These three groups can be broadly described as members of the African-Francophone community, members of the Korean community, and members of the Muslim community.

LAO funds 72 legal clinics throughout the province, including 13 specialty clinics, and 5 ethno-linguistic clinics. Community legal clinics provide clinic law services to a particular geographic community, and specialty and ethno-linguistic clinics deliver clinic law services

²⁵ Challenges Faces by Racialized Licensees Working Group, *Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions* (Toronto: Law Society of Ontario, 2016), online: <<https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/w/working-together-for-change-strategies-to-address-issues-of-systemic-racism-in-the-legal-professions-final-report.pdf>>.

in a particular area of law or to a specific ethno-linguistic or racial community, usually across the province. In addition to Aboriginal Legal Services of Toronto, and Centre Francophone de Toronto, the specialty and ethno-linguistic clinics to which LAO provides funding include: Centre for Spanish-Speaking Peoples²⁶, Chinese and Southeast Asian Legal Clinic²⁷, South Asian Legal Clinic of Ontario²⁸, and Black Legal Action Centre²⁹.

Clinics are independent corporations. LAO provides clinics with funding. While clinics must comply with their funding obligations, decisions with respect to such things as recruitment, employment, and retention of staff, and election/appointment of directors are made by the management, boards, and/or memberships of these clinics. The funding agreements between LAO and all LAO-funded clinics require that clinic boards strive to reflect the diversity of their respective communities.

LAO-funded clinics do not collect race-based data on their staff. As such, like LAO, it is not possible to determine racial diversity in the clinic system with any reliability. There is, however, some data that suggests that members of racialized communities are well represented among the legal staff in the clinic system. In 2016, the Law Society of Ontario published a Statistical Snapshot of Lawyers in Ontario.³⁰ The report provides that, while only about 19% of lawyers in Ontario are racialized, approximately 25% of lawyers in the clinic system are racialized.³¹ While this information is helpful, it does not provide information about non-legal clinic staff or representation of members of racialized communities at the management and board levels. It is also not clear whether the racialized lawyers in the clinic system are concentrated in ethno-linguistic clinics or represented in community legal clinics.

Representation on clinic boards is important because clinic boards make a number of important decisions, including setting clinic priorities within their respective catchment areas, overseeing the development and implementation of human resource policies, and deciding how to allocate clinic resources. It is worth noting that at one highly attended consultation, none of the participants (the majority of whom were racialized) knew that they

26 The Centre for Spanish Speaking People Legal Clinic serves members of the Spanish-speaking community from across Ontario.

27 The Chinese and Southeast Asian Legal Clinic (CSALC) serves non-English speaking clients from the Chinese, Vietnamese, Laotian and Cambodian communities.

28 The South Asian Legal Clinic of Ontario serves low-income South Asians in the Greater Toronto area.

29 The Black Legal Action Centre serves low-income Black Ontarians.

30 Law Society of Ontario, *Fact Sheet: Statistical Snapshot of Lawyers in Ontario from the Lawyer Annual Report (LAR) 2016* (Toronto: Law Society of Ontario, 2016) online: <http://annualreport.lsuc.on.ca/2017/common/documents/Snapshot-Lawyers18_ENG-final.pdf>.

31 Out of 34,315 lawyers in Ontario who provided information about their racial identity to the Law Society, 19.3% (6,610) are racialized, 79.2% (27,192) are white, and 1.5% (513) are Indigenous. 560 lawyers work in a legal clinic. Of these lawyers, 25% (approximately 150) are racialized.

could become members of their local legal clinic or join its board.

In LAO's 2019-2024 Strategic Plan, LAO committed to delivering culturally appropriate services, implementing a comprehensive talent management strategy, and fostering an inclusive and diverse workplace that reflects the people, cultures and languages of the communities that LAO serves. In line with these strategic objectives, LAO will work to ensure that:

7. The percentage of racialized people working at all levels of LAO and across all LAO service channels is at least equal to the representation of racialized people among low-income Ontarians.

In line with feedback contained in the Auditor General's Report that LAO equitably distribute clinic funding based on the needs in each community,³² and the commitment made in LAO's Strategic Plan to support clinics to effectively meet the needs of their communities, LAO will also work to ensure that:

8. The funding provided to clinics and other service providers is reflective of and responsive to the representation and needs of various racialized communities among low-income Ontarians.

To achieve these objectives, LAO will consider implementing the following initiatives:

- Revise the *Employment Equity Policy* and *Inclusion and Diversity Policy* to include specific goals and timetables relating to employment equity.
- Collect race-based data and other demographic information (e.g. religion, language(s) spoken etc.) from LAO's staff, panel lawyers, board of directors, and advisory committees. Support LAO-funded clinics in collecting race-based data and other demographic information from clinic staff and boards of directors. If the data reveals that a panel, department, clinic, committee, or board is not reflective, conduct a review of employment or empanelment processes, and develop and implement a plan to increase racial diversity.
- Ask the Law Society of Ontario and Ministry of the Attorney General to appoint Board members that are reflective of Ontario's racial diversity.

³² Office of the Auditor General of Ontario, *2018 Annual Report: Legal Aid Ontario* at 285 (Toronto: Office of the Auditor General of Ontario, 2018), online: <http://www.auditor.on.ca/en/content/annualreports/arreports/en18/v1_305en18.pdf>

- Require that all recipients of LAO funding commit to equity and equality policies (e.g. foundational documents with clinics).
- Include equity and diversity initiatives in the performance objectives and measures of all LAO staff and in clinic reporting requirements.

Provide clients with information about rights and responsibilities and regularly collect client feedback

Among other things, LAO clients have the right to receive legal services in accordance with the requirements of legal professional standards; to continue to receive legal representation, even if it is discovered that their legal matter is more complex or time-consuming than expected; and to not be required to pay money for services and disbursements related to the certificate.

Where clients have a concern about the quality of service or the conduct of the lawyer, they may file a complaint in accordance with LAO's *Complaints Policy* (**Appendix 13**). Clients may also submit a Change of Solicitor (COS) request.

Over 1,000,000 low-income Ontarians access legal aid services every year, through clinics, district offices, staff offices, courthouse locations, duty counsel and certificate lawyers. During fiscal 2018/19, however, LAO received only 4,333 complaints.

While the low number of complaints may be due to high rates of client satisfaction, many consultation participants expressed a lack of understanding about the rights and responsibilities of clients. For example, participants asked questions about if and how often lawyers are expected to respond to client communications and whether a lawyer who acknowledges a certificate can also demand payment from the client. Very few participants were aware of LAO's complaints process. Those that were aware of it, indicated that due to the perceived difficulty of changing lawyers through the change of solicitor (COS) process, they would be reluctant to file a complaint with LAO for fear of further jeopardizing their case.

To ensure that clients know what to do if they are not satisfied with the quality of services they receive, LAO will work to ensure that:

9. Informational materials – explaining what clients can expect from LAO lawyers, how they can file a complaint, and when and how to change lawyers – are translated and provided to all applicants and clients when they first receive a certificate or duty counsel services.

Help clients make informed decisions when selecting a lawyer

With certain limited exceptions, the *Legal Aid Services Act* (LASA) specifically prohibits LAO staff and service-providers from suggesting or recommending a panel lawyer to a client or from attempting to dissuade a client from choosing a specific lawyer.

As noted above, clients are also often not provided with very much information about panel lawyers. When clients receive a certificate, they can use LAO's online "Find a Lawyer" tool which enables clients to search for panel lawyers by area of law, location, and language. LAO staff may also provide clients with a physical list of all the lawyers on a panel. This panel list typically includes the name, phone number and address of the lawyer.

A number of consultation participants expressed wanting to be able to select panel lawyers who can, among other things, effectively raise race-related arguments, provide services in the client's language of choice, provide trauma-informed services, and ensure a safe environment for members of the LGBTQ community.

According to a report prepared by the University of Toronto Ethnography Lab following in-depth, in-person qualitative interviews with 15 legal aid clients in Toronto, many clients are not able to make informed decisions based on the information that LAO provides to them. One interviewee explained "I just picked a random one. I was just like, ahhh [hovers his index finger over the table and drops it down in a random spot] that one."³³

In LAO's 2019-2024 Strategic Plan, LAO committed to putting clients at the centre of everything we do, and to measuring the impact on clients. In line with these strategic initiatives and in order to ensure the effectiveness of LAO's efforts to help clients make informed decisions, LAO will regularly collect client feedback and work to:

³³ University of Toronto Ethnography Lab, "Legal Aid Client Voice Interview Results: Final Report" (unpublished).

10. Increase the rates of positive client feedback with respect to such things as: knowledge of available services, the quality of services, ability to find a lawyer, and availability of and access to interpretation services.

To achieve this objective, LAO will consider implementing the following initiatives:

- Enhance the information contained in the “Find a Lawyer” tool and the panel lists to include such things as:
 - experience working with people who are marginalized on the basis of race, sexual orientation, disability, gender identity etc.; and
 - training and experience raising race-related arguments (e.g., identifying racial profiling and making Charter based arguments in criminal matters).
- Develop a way in which LAO can share client feedback (e.g. ratings) about specific service providers with prospective clients. If a service provider consistently receives negative client feedback, use this feedback as the basis for discipline, panel management and/or removal.
- Provide clients with short certificates (e.g. 30 minutes) to speak with the service provider prior to retaining him or her.

Protect racialized clients from differential or discriminatory treatment

As noted above, LAO has a *Workplace Harassment, Sexual Harassment and Discrimination Prevention Policy* that recognizes LAO’s responsibilities under the Ontario *Human Rights Code* and *Occupational Health and Safety Act* (OHSA). The policy is limited however to LAO’s responsibilities as an employer and not as a service provider. Client complaints about harassment and discrimination are instead dealt with under LAO’s *Complaints Policy*.

LAO’s Complaints Policy advises clients that they may complain about such things as service and conduct from panel lawyers, LAO staff lawyers, and LAO-funded clinics. The Policy does not specifically mention, define or provide examples of “discrimination” or “harassment.” Also, while the Policy explains that complainants will also be advised that they can contact the Law Society of Ontario, “which sets and enforces educational, ethical and professional conduct standards for lawyers and paralegals in Ontario”, it does not list or summarize these standards.

LAO regularly organizes training sessions and produces training materials. These training sessions may be accessed by duty counsel and panel lawyers through LAO's website. The website includes a number of training sessions with respect to Indigenous clients, Francophone clients, clients with disabilities, clients with mental health issues, and clients who have experienced domestic violence.

Between January and April 2018, LAO delivered in-person training on topics including privilege, unconscious bias, microaggressions, and systemic racism to over 700 staff lawyers and per diem duty counsel. LAO has developed an online version of this training which will be available to LAO staff and LAO-funded service providers in early 2020.

On April 12, 2018, LAO's Inclusion and Diversity Committee hosted LAO's first Inclusion and Diversity Symposium which explored the ways in which unconscious bias can affect the work of LAO staff. In March 2019, LAO hired a Diversity Officer who is responsible for operationalizing LAO's commitment to equity, diversity and inclusion.

Despite these initiatives, a number of consultation participants shared stories of unfair, differential or discriminatory treatment by panel lawyers, duty counsel, and clinic staff.

Some participants told stories of duty counsel and panel lawyers making jokes or disparaging comments to or about clients, with one participant commenting "They make jokes about our lives. They're playing with our lives." Another participant noted that duty counsel and panel lawyers interacted with clients in a way that seemed like they were "dealing with objects" rather than people. Another participant put it more bluntly, stating "Your lawyers are racist." One participant observed that administrative staff at one legal clinic exhibited anti-Black bias, effectively barring Black women from accessing that clinic's services. Another participant shared an account of several clients who spoke English with a non-Canadian accent being hung up on by CLSC staff. Some participants shared concerns about the experiences of trans and gender non-binary clients when trying to access legal aid services. Here, the most prevalent concerns were clients being misgendered or feeling unsafe to disclose their gender identity.

One of LAO's core values is respect; i.e., ensuring that we are culturally sensitive to our clients' needs and circumstances. To ensure that this value is upheld, LAO will work to ensure that:

11. All job interviews, performance reviews, and empanelment forms contain questions aimed at hiring/retaining people with a demonstrated understanding of and commitment to racial justice.

12. All staff and panel lawyers regularly complete training on racial justice.

To achieve this objective, LAO will consider implementing the following initiatives:

- Develop anti-racism training that addresses such things as privilege, unconscious bias, and intersectionality, and builds awareness about how legal service providers reinforce race-based discrimination. Include anti-racism training in onboarding processes for all new LAO staff and clinic staff. Update all panel standards to include the completion of anti-racism training as a requirement.³⁴
- Include anti-racism initiatives in performance objectives that must be met by all LAO staff, for example: use of REIA, completion of anti-racism training, incorporation of language needs into job postings and descriptions, implementation of initiatives related to RCS, availability of documents and pamphlets in different languages, number of engagements with community-based organizations that represent racialized clients.
- Update LAO's *Complaints Policy* and the Change of Solicitor (COS) process to explicitly include discriminatory treatment as the basis for a complaint and/or a COS request.

³⁴ Anti-racism and anti-oppression training have been found to positively impact justice outcomes. The Sentencing Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Washington: The Sentencing Project, 2016), at 13: "Evidence suggests that when professionals are faced with a need to triage cases—a regular occurrence for law enforcement and defense counsel, for instance—implicit bias likely comes into play in deciding which cases to take as a sort of mental shorthand used to draw quick conclusions about people and their criminal tendencies. To offset this, implicit bias trainings can make people aware of these temptations, and this awareness can minimize racially influenced trigger responses in the future. Additionally, instilling in practitioners a motivation to be fair and impartial can influence implicit bias, as could be accomplished through professional trainings on the topic of implicit social cognitions."

The Sentencing Project, *Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System* (Washington: The Sentencing Project, 2015) at p. 21: "In its comprehensive review of implicit racial bias research, the Kirwan Institute for the Study of Race and Ethnicity concludes that "education efforts aimed at raising awareness about implicit bias can help debias individuals. Their review describes a number of debiasing strategies shown to reduce implicit racial bias in both experimental and non-experimental settings. These include providing exposure to counter-stereotypic imagery, increasing inter-racial contact and diversity, and monitoring outcomes to increase accountability ... [J]urisdictions have mitigated the negative impact of implicit bias in later stages of the justice system by establishing objective guidelines to standardize decision making, ensuring that decision-makers have access to the most complete information possible, and providing training on racial bias."

C. ENGAGE IN SYSTEMIC CHANGE

Ensure that LAO's policies and practices are not contributing to unjust outcomes

There are two realities with which LAO must contend. The first is that, in addition to members of Indigenous communities, members of racialized communities, particularly members of Ontario's Black communities, have been and continue to be subject to unfair and unequal treatment in the justice system. The second is that racial disparities in the justice system persist despite the fact that a significant portion of the people involved in the justice system are represented by LAO-funded lawyers.

Certainly, in the area of criminal law, responsibility for the disproportionate incarceration of racialized communities does not rest solely with LAO or LAO-funded lawyers. Among others, it is shared with police forces, Crowns, and members of the bench. That said, LAO-funded lawyers represent 80% of criminal accused in bail hearings in Ontario.³⁵ In 2018, the Ontario Court of Justice dealt with approximately 500,000 adult and youth criminal charges. LAO-funded lawyers provided legal representation in about 64% of these matters. LAO and LAO-funded lawyers must therefore take some responsibility for these justice outcomes.³⁶

Like all lawyers, LAO-funded lawyers are ethically obligated to “raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law.”³⁷

The majority of lawyers who provide services to legal aid clients are zealous advocates that are engaged in ethical lawyering, often for less than they would charge paying clients.

At the same time, a number of participants in the RCS consultation process, including members of the criminal bar, identified that some lawyers may be engaged in “dump-truck lawyering.” In an article written by (then criminal defence counsel) Justice Breese Davies, she explains:

Identifying a viable defence in a criminal case takes a lot of skill and a lot of

³⁵ Marcus Pratt, *A Legal Aid Strategy for Bail*, (Toronto: Legal Aid Ontario, 2016), online: <<https://www.legalaid.on.ca/documents/a-legal-aid-strategy-for-bail/>>

³⁶ Michael Trebilcock and Albert Yoon, “Equality Before the Law? Evaluating Criminal Case Outcomes in Canada” (2016) 53(2) *Osgoode Hall Law Journal* 587 at 610.

³⁷ Law Society of Ontario, *Rules of Professional Conduct*, commentary re Rule 5.1(1), online: <<https://iso.ca/getdoc/efbc020d-2ee0-4069-b187-a495504d3365/chapter-5>>.

time. It might even require that counsel conduct their own investigation, interview witnesses, and track down exculpatory evidence. Well-heeled clients expect that their lawyers will do this work before giving them advice on whether to plead guilty or go to trial. But an overworked, underpaid legal-aid lawyer has little reason to make this kind of effort if their client is willing to plead guilty.³⁸

The number of criminal lawyers who engage in dump-truck lawyering may be small. However, because these lawyers take on a high volume of cases, they have the potential to negatively affect the lives of a large number of LAO clients. As noted above, between 2014 and 2017, 50% of all certificates issued by LAO were acknowledged by 10% of panel lawyers (448).

It should be noted that in some cases, in order to simplify the billing process, law firms submit bills under one lawyer's name even though legal services are in fact delivered by other lawyers within that law firm. However, this is not always the case. As an example, the RCS conducted a cursory search of lawyer billings and found one sole practitioner who appears to have acknowledged 1,042 criminal certificates over a three-year period, an average of 348 certificates per year. The majority of these certificates were billed through block fees rather than tariffs, meaning that this lawyer did not set matters down for trial.

Bail hearings, bail reviews and criminal trials require more time and preparation than a guilty plea. A number of lawyer, paralegal and law student participants reported, however, that LAO is seen to pay criminal panel lawyers less for these criminal law processes than for guilty pleas. As a result, LAO's certificate program is perceived as incentivizing criminal lawyers to engage in "dump-truck lawyering"; i.e., to take on a large number of clients and advise or encourage them to plead guilty. A few participants noted that this practice disproportionately affects racialized clients.

Some participants also reported a similar practice among duty counsel noting, for example, that duty counsel were often seen to advise young Black or Latin American accused to plead guilty or "go to diversion" and that these accused would then take this advice.³⁹ Many client participants, and participants from community-based organizations, expressed a strong sense of distress and hopelessness around being limited to LAO and LAO-funded options when clients need legal services.

LAO's 2019-2024 Strategic Plan commits LAO to developing metrics, and measuring and reporting outcomes, and to monitoring access to, timeliness, and quality of services. In furtherance of these strategic objectives, LAO will work to ensure that:

³⁸ Breese Davies, "Going Broke in Legal Aid: The High Cost of Cheap Justice" *The Walrus* (23 August 2016), online: <<https://thewalrus.ca/going-broke-in-legal-aid/>>.

³⁹ Before assisting an accused enter a guilty plea, all criminal duty counsel are required to complete a Plea Comprehension Inquiry to help ensure that the accused has been properly advised of their rights and understands the consequences of the plea. See <https://www.legalaid.on.ca/wp-content/uploads/plea-comprehension-inquiry-EN.pdf>.

13. Positive outcomes (e.g. withdrawals, acquittals) are measured and incentivized (e.g. increased compensation, public recognition) and negative outcomes are measured and disincentivized (e.g. service providers are required to provide explanation for outcome, unable to accept new certificates for remainder of calendar year, and/or placed into panel management process).

In 2018, the Office of the Auditor General of Ontario conducted a review of Legal Aid Ontario (the “Auditor General’s Report”). The Auditor General noted that LAO’s panel removals were “in response to complaints, rather than Legal Aid Ontario determining quality of services through a regular review of lawyers.”⁴⁰ To respond to this feedback, and to achieve objective noted above, LAO will consider implementing the following initiatives:

- Review the outcomes (e.g. withdrawal, discharge, guilty plea) of lawyers who take on a high volume of cases.
- Ask panel lawyers to report on the appropriateness or reason for certain outcomes.
- Engage lawyers who have a high volume of guilty pleas and are unable to provide an explanation for these outcomes in the panel management and/or panel removal process. Limit the number of certificates that these lawyers can accept in a year.
- Publicly recognize and celebrate lawyers with a high volume of positive client outcomes.
- Convene working groups in the areas of criminal, family, immigration, mental health, prison, and clinic law to review tariffs with the aim of ensuring that positive outcomes are incentivized (i.e., compensated accordingly) and perverse incentives are avoided.

Support challenges to individual and systemic racism in the justice system

As outlined above, members of racialized communities experience differential treatment and outcomes in the justice system. In family law, racialized and Indigenous families experience higher rates of involvement with and apprehension by child protection agencies.

⁴⁰ *Supra* note 33 at 278.

In criminal law, anti-Black racism operates at all levels of the criminal justice system from racial profiling, to the exercise of prosecutorial discretion, to the imposition of pre-trial detention, and to disparities in sentencing. Members of racialized communities are overrepresented in prison populations and experience differential treatment, including being placed in maximum security facilities despite having a lower risk to re-offend, being released later in their sentence, and not being granted temporary absences.

Where an accused is racially profiled by police, lawyers can file a *Charter* motion; i.e. a defence application alleging a breach of the provision of the *Charter*. LAO funds *Charter* motions in criminal matters at an hourly rate, with a maximum of 2 hours. During the RCS consultations, a number of lawyer participants stated that *Charter* motions require significant preparation. This is not reflected in LAO's rates and may dissuade some lawyers from raising *Charter*-based arguments. Rather, *Charter* challenges are brought mostly by lawyers whose client files qualify for LAO's Big Case Management (BCM) – a program that governs criminal cases that are expected to cost more than \$20,000 – and those who receive funding through LAO's Test Case Program.⁴¹

LAO's Test Case Program allows LAO to provide funding and research supports to cases that, among other things, advance important public interests and address a serious issue that fundamentally affects low-income Ontarians or disadvantaged communities whose perspective would be unlikely to come before the courts but for the involvement of LAO. The Test Case Program has supported a number of cases that directly impact members of racialized communities, including cases that:

- advocate for the use of cultural assessment reports in the sentencing of a racialized accused;
- highlight the disproportionate impact of police violence on racialized communities;
- challenge the disparate impact of laws (e.g. mandatory minimum sentencing) on racialized communities; and
- challenge racial profiling.

Funding provided through the Test Case Program is used to permit lawyers to prepare submissions. It is also used to fund the preparation of expert reports and social science evidence. Some lawyer participants recommended publicizing the test cases to which LAO has provided funding, and making available the research and materials that have been prepared through LAO funding. This could both build the capacity of lawyers who wish to raise similar arguments and save time and money by avoiding a duplication of efforts.

While both of these programs – Big Case Management and the Test Case Program – are important, their impact may be limited in scope. For example, in 2018/19, Big Case Management funded 440 cases and the Test Case Program funded 40 cases. This

⁴¹ LAO also has a Family Case Management program for CYFSA extended society care matters that are likely to cost more than \$8,000.

represents a small fraction of LAO's criminal files.

Through LAO Law, LAO provides research support to lawyers representing legally aided clients. Among other things, LAO Law's website contains general memoranda that provide a topic overview in all areas; specific issue memoranda that address discrete legal issues; and criminal, family, and immigration and refugee law factums and precedents. In certain circumstances, the staff at LAO Law are also available to provide case-specific research for certificate cases. LAO Law provides information on the following areas of law: Aboriginal legal issues, correctional law, criminal law, family law, immigration and refugee law and mental health law. There does not appear to be a separate section for issues affecting racialized communities.

As noted in the Legal Aid Strategy for Bail, criminal duty counsel represent approximately 80% of criminal accused in bail hearings in Ontario. In addition, prior to April 2019, through the certificate system, LAO-funded private lawyers regularly conduct bail hearings, bring bail reviews and represent clients who have been charged with failing to comply with the terms of their bail. LAO's bail strategy includes:

- Targeting particular jurisdictions for enhanced support to introduce "best practices" to challenge and litigate improper practices by both Crown and judicial decision-makers.
- Providing coordinated training to both duty counsel and the private bar on representation of persons from racialized communities.
- Expanding the use of *Gladue* submissions at the bail stage to provide better information on the background, personal history, circumstances and available Aboriginal resources or services upon release.⁴²

Lawyers have begun to advocate for the use of cultural assessment reports – which are *Gladue*-type submissions – in the sentencing of non-Indigenous racialized accused.⁴³ A number of duty counsel participants expressed the desire to prepare and make race-based submissions at the bail stage but indicated that they do not have the requisite training, resources or management support. One duty counsel participant expressed a desire to aggressively and systematically challenge discriminatory bail conditions but suggested that this would require explicit support from LAO's management as well as the provision of additional staff, training, and resources.

LAO has developed a Duty Counsel Manual that outlines policies and procedures for duty counsel services, billing and reporting. The Manual contains sections with information about service provision to clients who are Francophone, Indigenous, differently abled, and who have experienced domestic violence. It does not provide information about special considerations that should be taken into account when providing legal services to racialized

⁴² *Supra* note 36

⁴³ See, for example, *R. v. Jackson*, 2018 ONSC 2527.

clients.

LAO regularly organizes training sessions and produces training materials with respect to Indigenous clients, Francophone clients, clients with disabilities, clients with mental health issues, and clients who have experienced domestic violence. On March 27, 2017, LAO, together with Rights Advocacy Coalition for Equality (R.A.C.E.), organized “Confronting Race and Racism in the Criminal Justice System” an educational event in which legal practitioners provided practical tips on creating a record to reveal racial profiling. This appears to be the only training session focussed specifically on the provision of legal services to racialized clients that has occurred in the past three years.

In LAO’s 2019-2024 Strategic Plan, LAO committed to being sensitive to the specific needs of client communities and to provide staff with the supports they need to provide high quality legal services to clients. In line with these strategic objectives and initiatives, LAO will work to ensure that:

14. All legal service providers have access to resources and regularly complete training about how to challenge individual and systemic racism in the justice system.

15. All legal service providers regularly make race-based arguments.

To achieve these objectives, LAO will consider implementing the following initiatives:

1. Provide enhanced coverage and support for *Charter* motions in criminal law and CYFSA matters for racialized clients. Provide financial support for lawyers to make Charter arguments in prison law proceedings.
2. Develop tools, training sessions and resources (e.g. Bail Book, DC Manual) to help staff and panel lawyers identify and make submissions with respect to racial bias and racial disparities in the justice system. Compile resources and materials that are relevant to racialized communities into one area on LAO Law website.
3. Publicize the cases to which LAO’s Test Case Program provides funding and make available the facts and expert reports that are funded through the Program.
4. Amend the “Tariff and Billing Handbook” to explicitly recognize that race can add to complexity of CYFSA matters; i.e., include race and race-related arguments as a basis for which LAO may provide discretionary increases in CYFSA cases.

Amplify the voices of racialized communities

LAO has long recognized that providing legal representation in individual cases is only one of a number of ways of ensuring access to justice for low-income Ontarians. This recognition is most clearly evidenced by LAO's funding of 72 legal clinics, including 13 specialty clinics. In fact, the development of community legal clinics was based, in part, on a recognition that:

The "one-shot" case-by-case approach was wholly inadequate to respond to the legal problems that attended poverty because these problems were mostly of a systemic nature ... Thus it was necessary both to engage in aggressive outreach and educational activities to encourage potential clients to attempt to assert their claims and, as well, to develop organizations that could serve as a voice for the articulation of the interests of poor people with a view to changing the policies, structures and laws which operated against those interests.⁴⁴

The website of the Ontario Project for Inter-clinic Community Organizing (OPICCO) – an organization of staff from legal clinics across the province that provides training and support for community organizing and law reform initiatives within the clinic system – notes that the first staff that were hired to work in community legal clinics were more likely to be community organizers than lawyers.

Community development remains an important tool for clinics to use in building the capacity of low income people to be involved in the legal and political processes that affect them ... When used together with public legal education, casework and law reform strategies, clinics have been able to produce systemic change that individual casework could not.⁴⁵

In addition to providing legal representation and advice with respect to individual cases, clinics are mandated to engage in community development and organizing, law reform, and public legal education.

Several consultation participants felt strongly that LAO should use its position of power and credibility within the justice system to advocate for systemic change. As one participant explained, "When the people who have the privilege and power ask the people who are being oppressed to provide the solutions, they are being very disingenuous. They have the privilege and power. They should use their privilege and power to stem whatever is causing the issue of oppression." Even those who supported LAO taking on an advocacy role, however, did not suggest that LAO should undertake the accompanying role of community

⁴⁴ Michael Blazer, "The Community Legal Clinic Movement in Ontario: Practice and Theory, Means and Ends" (1991) 7 *Journal of Law and Social Policy* 49 at 55.

⁴⁵ Ontario Project for Inter-clinic Community Organizing (OPICCO), "Legal Clinics: History and Role of Community Development".

organizing. Rather, these participants encouraged LAO to challenge discriminatory laws and government practices through strategic litigation and policy submissions to relevant institutional actors.

A number of consultation participants also expressed that LAO should refrain from engaging in community advocacy. Firstly, LAO is not a community-based organization and is, therefore, not directly accountable to racialized communities. Secondly, engaging in this type of advocacy could disempower racialized communities and be tantamount to co-opting the work of community-based organizations, particularly legal clinics, who have long been engaged in this work. Thirdly, rather than speak for racialized communities, these participants felt that LAO should provide funding to empower racialized communities to speak and fight for themselves. Where requested, LAO could actively support the work of community-based organizations in a way that amplifies the messages of racialized communities.

A number of LAO-funded clinics are engaged in important community development and law reform initiatives that directly or indirectly impact racialized communities. However, a number of consultation participants, including staff from the clinic system, raised concerns that community development and law reform work is not prioritized. Specifically, many legal clinics direct significant amounts of time, energy and resources to individual cases rather than law reform and community development. Community legal workers are overwhelmed with case work and are not provided with the required resources to effectively engage in community development.

As noted above, clinics are independent corporations. While clinics must comply with their funding obligations, decisions with respect to priorities, types of services delivered, and resource allocation are made by the management and boards of LAO-funded clinics. As such, increasing or decreasing clinic funding may not lead to increased or decreased engagement in community development and law reform initiatives.

LAO's 2019-2024 Strategic Plan commits LAO to collaborating with other organizations to achieve common goals and to address systemic barriers to access to justice for vulnerable communities. In furtherance of these strategic objectives, LAO will work to ensure that:

16. Specific funding is available to support community development initiatives that address issues that disproportionately impact racialized communities.

In order to achieve this objective, it is recommended that LAO consider implementing one or more of the following initiatives:

- Allocate funding to hire staff to develop training and support for community

organizing and law reform initiatives focussed on racialized communities.

- Establish a Community Development and Law Reform Program, similar to LAO's Test Case Program, with an expert advisory committee similar to the Test Case Committee, to which community-based organizations, including LAO-funded clinics, can apply for funding.
- Providing ethno-linguistic clinics or community legal clinics with large racialized populations with additional funding for community legal workers.
- Create a funding stream similar to the disbursements fund received by clinics that is specific to the costs associated with community organizing (e.g. banners, posters, flyers, meeting space, outreach videos, leadership training, and tokens).

Change how LAO measures success

Success in legal proceedings is typically tied to outcomes. In the immigration and refugee law context, for example, a client will be successful if s/he makes a successful refugee claim at the Immigration and Refugee Board (IRB).

Similarly, in criminal law, success generally means that all of the charges against the client are withdrawn or discharged. If the client is held in pre-trial detention, they receive bail as quickly as possible and are released with as few conditions as possible. If the matter goes to trial, the client receives an acquittal. If the client is found guilty, the sentence is non-custodial and/or significantly reduced. And, the client does not engage with the criminal justice system again.

In child protection matters, success generally means that the child is not found to be in need of protection and no protection order or temporary care and custody order is made. Where the child is found to be in need of protection, a lesser protection order is made. And, if a motion for summary judgment on a protection application is made, it is successfully defended and costs are awarded.

LAO does not consistently collect, analyze, or publish information on the outcomes achieved by LAO-funded lawyers. Rather, LAO generally engages in volume-based performance measures. For example, the number of certificates that it issues, the number of clients that LAO duty counsel assist, and the number of files that LAO-funded clinics open.

In 2015, the Brennan Centre for Justice published “Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice.” In an explanation of how volume-based performance measures can create perverse incentives that lead to increases in prison populations, the report noted:

An important question in this conversation is: What are the metrics of success

in our justice system? If we fund agencies based on the number of cases they prosecute, the number of people they arrest or the number of clients they defend — and then punish them when those numbers go down by taking away resources — we perpetuate our problems. Then the system grows without a purpose.⁴⁶

One assumption that underlies LAO's volume-based performance measures is that access to a lawyer is the same thing as access to justice. The issues raised during the RCS consultation process suggest however that this may not be true for racialized clients.

The Auditor General's Report raised similar concerns with respect to LAO's tracking of clinic performance outcomes, noting:

Legal community clinics measure and report on outputs, such as number of cases, number of public education sessions held, and number of referrals. However, Legal Aid Ontario does not have aggregated data on whether these outputs are achieving the desired program outcomes for clinic law matters, such as each clinics' success rates of appeals of disability income cases (our data on Ontario Disability Support Program appeals came from the Social Benefits Tribunal) and landlord tenant disputes.⁴⁷

In LAO's 2019-2024 Strategic Plan, LAO committed to developing metrics, and measuring and reporting outcomes. LAO also committed to measuring the impact of services on clients and to being sensitive to the specific needs of client communities. In furtherance of these strategic objectives, LAO will work to ensure that:

17. There are no disparities between the legal outcomes of racialized and white LAO clients.

To achieve this objective, it is recommended that LAO consider implementing one or more of the following initiatives:

- If available (e.g. block fees), analyze information on legal outcomes, disaggregated on the basis of race. If not available, collect information and regularly report on the legal outcomes achieved by LAO-funded service providers, including LAO staff, panel lawyers, and LAO-funded clinics.
- Where there are disparities in the legal outcomes between racialized and white clients, provide additional supports to racialized clients (e.g. certificate enhancements, dedicated legal aid workers)

⁴⁶ Jessica Eaglin and Danyelle Solomon, *Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice*, (New York: New York School of Law, 2015) at 23.

⁴⁷ *Supra* note 33 at 286-287

APPENDIX 1

RCS consultations hosted by Legal Aid Ontario

Location	Date	Attendees
Windsor	Oct. 16, 2017	11
London	Oct. 17, 2017	8
Sudbury	Nov. 09, 2017	≥ 16
Scarborough	Nov. 14, 2017	11
Hamilton	Nov. 15, 2017	≥ 27
Brampton	Nov. 16, 2017	6
Rexdale	Nov. 21, 2017	13
Toronto	Nov. 23, 2017	8
Toronto	Nov. 27, 2017	4
Vanier/Ottawa (French)	Nov. 30, 2017	5
Richmond Hill	Dec. 05, 2017	3
LAO Provincial Office (PO)	Dec. 12, 2017	≥ 15
LAO Provincial Office (PO)	Dec. 14, 2017	≥ 10
Total		≥ 137

APPENDIX 2

RCS consultation promotional flyer

English

Are you Black/Asian/Latin American/Middle Eastern?

Do you know where to go for legal help if you are:

- ☐ Charged with a crime?
- ☐ Getting separated or divorced from your husband/wife?
- ☐ Contacted by Children's Aid Services?
- ☐ Facing deportation?
- ☐ About to get evicted from your home?
- ☐ Stopped, questioned, or mistreated by the police?
- ☐ Treated unfairly or taken advantage of by your boss?

Legal Aid Ontario provides free legal services to low-income Ontarians. We want to hear about your legal needs and how we can serve you better.

Please join us

DATE:

TIME:

LOCATION:



क्या आप भारत, पकिस्तान या अन्य दक्षिण एशियाई देशों से हैं?

क्या आप जानते हैं कि आप कानूनी मदद के लिए कहां जा सकते हैं यदि:

- आप पर अपराध का आरोप लगा है?
- आप अपने पति / पत्नी से अलग हो रहे हैं या तलाक हो रहा है?
- आप से बच्चों की सहायता सेवा (चिल्ड्रेन्स ऐड सर्विसिज़) ने संपर्क किया है?
- आपको निर्वासन (देश से निकाले जाने) का सामना करना पड़ रहा है?
- आप अपने घर से बेदखल होने वाले हैं?
- आपको पुलिस द्वारा रोका गया है, पूछताछ की जा रही है या आपके साथ गलत व्यवहार किया गया है?
- आपके साथ अपने मालिक द्वारा अनुचित व्यवहार किया गया है या आपका अनुचित लाभ उठाया गया है?

ऑटारियो में कम आय वालों के लिए लीगल एड ऑटारियो निःशुल्क कानूनी सेवाएं प्रदान करता है। हम आपकी कानूनी ज़रूरतों के बारे में और आपको बेहतर सेवा प्रदान करने के बारे में जानना चाहते हैं। कृपया हम से सम्पर्क करें:

तारीख: _____
समय: _____
स्थान: _____



APPENDIX 3

RCS consultations hosted by community-based organizations

Organization	Location	Date	Attendees
Tamil Seniors	Scarborough	Nov. 20, 2017	≈ 50
Ontario Bar Association	Toronto	Jan. 29, 2018	5
Waterloo Region Community Legal Services	Kitchener	Feb. 15, 2018	5
Windsor Women Working With Immigrant Women	Windsor	Feb. 22, 2018	> 10
Legal Assistance of Windsor	Windsor	Feb. 22, 2018	≥ 12
North Hamilton Community Health Centre	Hamilton	Feb. 28, 2018	23
Ligue des Africains du Canada (French)	Ottawa	Mar. 12, 2018	10
Refugee 613/Connecting Ottawa (CO)	Ottawa	Mar. 13, 2018	6
Refugee Lawyers' Association	Ottawa	Mar. 13, 2018	≈ 5
Immigrant Women Services/CO	Ottawa	Mar. 14, 2018	7
Conseil Économique et Social d'Ottawa-Carlton (French)	Ottawa	Mar. 15, 2018	9
Peel Multicultural Council	Mississauga	Mar. 19, 2018	12
ResQ Youth, United Achievers Community Services & Free for All Foundation	Brampton	Mar. 19, 2018	26
Brampton Multicultural Centre & Muslim Community Services	Brampton	Mar. 21, 2018	> 8
Canadian Association of Muslim Women in Law	Toronto	Mar. 21, 2018	7

Organization	Location	Date	Attendees
Migrant Workers Alliance for Change	Toronto	Mar. 22, 2018	5
Industrial Accident Victims Group of Ontario	Toronto	Mar. 23, 2018	12
For Youth Initiative	Toronto	Mar. 26, 2018	20
METRAC	Toronto	Mar. 27, 2018	≥ 20
North Peel and Dufferin Community Legal Services	Brampton	Mar. 28, 2018	11
UNISON	Toronto	Mar. 28, 2018	11
Black Muslim Initiative	Toronto	Mar. 28, 2018	11
Mississauga Community Legal Services	Mississauga	Mar. 29, 2018	11
Specialty Clinics	Toronto	Mar. 29, 2018	> 12
Hamilton	Hamilton	Mar. 29, 2018	17
Committee for Accessible AIDS Treatment	Toronto	Apr. 3, 2018	> 16
West Scarborough Community Legal Services	Scarborough	Apr. 4, 2018	≈ 35
LIFE SPIN	London	Apr. 5, 2018	10
HIV & AIDS Legal Clinic Ontario	Toronto	Apr. 10, 2018	≥ 17
Downsview Community Legal Services	Toronto	Apr. 10, 2018	14
Criminal Lawyers' Association	Toronto	Apr. 18, 2018	2
TOTAL			≈ 422

APPENDIX 4

Written submissions from community-based organizations

1. Association of Community Legal Clinics of Ontario
2. Chinese and Southeast Asian Legal Clinic
3. Halton Newcomer Strategy Steering Committee, Employment & Social Services, Halton Region
4. Injured Workers' Consultants Community Legal Clinic
5. Ligue des Africains du Canada (French)
6. Ontario Project for Inter-clinic Community Organizing
7. Society of United Professionals - Racialized Communities Strategy Working Group
8. Voices of Scarborough
9. Ontario Coalition of Service Providers for Refugee Claimants

APPENDIX 5

LAO racialized communities advisory committee

Name	Organization
Alexandra Djagba Oli	Hamilton Community Legal Clinic
Amy Casipullai	Ontario Coalition of Agencies Serving Immigrants
Andrea Davis	York University
Avvy Go	Chinese Southeast Asian Legal Clinic
Joanne St. Lewis	University of Ottawa, Faculty of Law
Karin Baqi	Income Security Advocacy Centre
Khalid Janmohamed	HIV Aids Legal Clinic of Ontario
Melayna Williams	Rights Advocacy Coalition for Equality
Melissa Loizou	Hamilton Community Legal Clinic
Michael Harris	Ontario Human Rights Commission
Nene Kwasi Kafele	Health Equity Council
Regini David	West Scarborough Community Legal Clinic
Remy Boulbol	Legal Aid Ontario, Board of Directors
Rinaldo Walcott	University of Toronto, Ontario Institute for Studies in Education
Sharmaine Hall	Human Rights Legal Support Centre
Shawn Richard	Canadian Association of Black Lawyers

APPENDIX 6

LAO advisory committee working group

Name	Advisory Committee
Akwasi Owusu-Bempah	Criminal Law Advisory Committee
Alexandra Djagba Oli (HCLC)	Racialized Communities Advisory Committee
Amy Casipullai	Racialized Communities Advisory Committee
Andrea Davis	Racialized Communities Advisory Committee
Arthur Huminuk	Aboriginal Justice Advisory Committee
Avvy Go (MCSA)	Racialized Communities Advisory Committee
Barb General	Aboriginal Justice Advisory Committee
Deepa Mattoo	Refugee Law Advisory Committee
Hanna Gros	Refugee Law Advisory Committee
Jean Nicolas Yacoub (CFT)	Family Law Advisory Committee
Joanne St. Lewis	Racialized Communities Advisory Committee
Julia Vera	Family Law Advisory Committee
Karin Baqi	Racialized Communities Advisory Committee
Khalid Janmohamed (HALC)	Racialized Communities Advisory Committee
Lisa Loader (SIMCO)	Prison Law Advisory Committee
Lucy Costa	Mental Health Law Advisory Committee

Name	Advisory Committee
Melayna Williams	Racialized Communities Advisory Committee
Michael Harris	Racialized Communities Advisory Committee
Nana Yanful	Criminal Law Advisory Committee
Nene Kwasi Kafele	Racialized Communities Advisory Committee
Paulette Senior	Family Law Advisory Committee
Regini David (WSCAR)	Racialized Communities Advisory Committee
Remy Boulbol	Racialized Communities Advisory Committee
Rinaldo Walcott	Racialized Communities Advisory Committee
Russell Browne	Mental Health Law Advisory Committee
Saeed Selvam	Prison Law Advisory Committee
Sandi Bell	Clinic Law Advisory Committee
Shalini Konanur (SALCO)	Clinic Law Advisory Committee
Shaneeza Nazseer	Criminal Law Advisory Committee
Sharmaine Hall	Racialized Communities Advisory Committee
Shaunna Kelly	Criminal Law Advisory Committee
Shawn Richard	Racialized Communities Advisory Committee
Sunny Dhillon	Criminal Law Advisory Committee
Swathi Sekhar	Refugee Law Advisory Committee

APPENDIX 7

LAO staff working group

Name	Organization
Alma Stenhouse	Toronto North District Office
Amanda Bitton	Refugee Law Office
Amanda Mihoub-Wright	Criminal Duty Counsel - College Park
Ayesha Thorne	Client Service Centre
Beidan Hassan	Criminal Duty Counsel - College Park
Chad Skinner	Criminal Duty Counsel - North York
Claudia Serraino	GTA Region Administration
Cordelle Ellison	Criminal Duty Counsel - Old City Hall
Edith Cameron	Family Duty Counsel - 311 Jarvis
Elizabeth Wilkes	GTA Centralized Services Office
Elsa Arismendi	Summary Legal Advice Refugee & Immigration
Erika Bennett	Human Resources
Jodie Dicks	Client Service Centre
Joseph Taylor	Central Operations
Jude Anoma	Client Service Centre
Justin Charles	Clinic Resource Office

Name	Organization
Kerrian Walker	Client Service Centre
Lorna Anderson	Client Service Centre
Lydie Kiama Matu	Client Service Centre
Lyncie Antonio	Finance
Marie Natalie Hanna	Family Duty Counsel - Ottawa
Michael Muir	Human Resources
Naomi Thornton	Human Resources
Natalie Nolan	Criminal Duty Counsel - Thunder Bay
Samantha Maharaj	Family Law Service Centre - Toronto North
Samantha Spence	Communications
Shivani Sharda	Family Law Service Centre - Peel
Stephen Bloom	London District Office
Tarah Morgan-Paul	Client Service Centre
Theodore Mercado	Criminal Duty Counsel - Old City Hall

APPENDIX 8

Unacknowledgement rate of LAO certificates (2013/14 to 2016/17)

Area of Law	# of Certificates issued	% of Certificates unacknowledged
Criminal Adult - Serious	56,658	2%
Criminal Adult - Very Serious	15,236	2%
Criminal Adult - Minor	126,022	2%
Criminal Youth	19,561	3%
Refugee - RPD	24,139	2%
Refugee - JR	2,658	3%
Civil	19,729	4%
Refugee - RAD	2,044	4%
Criminal Adult - Other	18,832	4%
Family - CYFSA	24,328	10%
Family - Domestic No DV	25,054	13%
Immigration - Other	4,831	12%
Family - Domestic DV	43,694	17%
Family - ILA/SEP	8,519	28%

Barbra Schlifer Commemorative Clinic - Language needs resource

Languages Spoken In		Languages Spoken In		Languages Spoken In		Languages Spoken In	
Africa		Europe		Europe		The Middle East	
Afrikaans	Ek praat Afrikaans	Albanian	Une flet Shqip	Moldovan	Eu vorbesc limba moldovenească	Arabic	أنا أتحدث العربية
Akan	Me ka Akan	Armenian	ts baqshqil ts [tsensud]	Norwegian	Jeg snakker norsk	Armenian	ts baqshqil ts [tsensud]
Ashanti	ᲞᲚᲗᲠᲚᲗ	Belarusian	Я кажу беларуск	Polish	Mówię po polsku	Dari	من نزلی کابل من زلم
Amharic	أنا أتحدث العربية	Belgianian	Aa roepom thuringspout	Portuguese	Falo português	Farsi	من فارسی صحبت می کنم
Dinka	Dinka thong Maanyang Angies	Rossian	Govorim bolsansk	Portuguese (Azores)	Falo português dos Açores	French	Je parle français
Edo	Iwe Edo	Croatian	Ja govorim hrvatski	Romanian	Eu vorbesc limba română	Hebrew	אני מדבר עברית
French	Je parle français	Czech	Mluvím česky	Russian	Я говорю по-русски	Kurdish (Bakli)	ئێـم کوردی بەکری بێـهه
Gujarati	જુ ગુજરાતી	Danish	Jeg taler dansk	Serbian	Govorim srpski	Kurdish (Burmali)	Êz bi Kurdiya Barmali
Hausa	Na'gɓi Hausa	Dutch	Ik spreek Nederlands	Slovak	Hovorim po slovensky	Kurdish (Sorani)	من به کوردی سورانی نازیم
Kisayawanda	Turavaga mu rurimi na'kinyawanda	Estonian	Ma kõnlen eesti keelt	Slovenian	Govorim slovenski	Pashtu	زه په پښتو خبرې کوم
Korndi	Turavaga ikurndi	Finnish	Minä puhun suomea	Spanish	Yo hablo español	Punjabi (Shanwadi)	میں پنجابی شانوادی بولن
Lingala	Na lobaka Lingala	French	Ik spreek Frans	Swedish	Jag pratar svenska	Rakshi	Türkçe konuşuyorum
Oromo	Afaan Oromo nan dubbadha	German	Ich spreche Deutsch	Turkish	Tanışık konuşuyorum	Urdu	میں اردو بول رہا ہوں۔
Pidgin English	I dey tek Pidgin	Greek	Μιλάω Ελληνικά	Ukrainian	Я розмовляю українською		
Ramoran/Nigerian		Hungarian	Beszélek magyarul	Yiddish	יידיש איז מיין שפראך		
Somali	Waxaan ku hadlaa Af Soomaali	Icelandic	Ég tala íslensku				
Swahili	Mimi ninasonga KiSwahili	Italian	Parlo italiano				
Tigrinya	ትግርኛ ትግርይኛ	Latvian	Es runāju latviski				
Twi	Me ka Twi	Lithuanian	Aš kalbu lietuviškai				
Yoruba	Má nso Yoruba	Low German	Ich ried Platt Deutsch				
Zulu	Ngikhuluma isiZulu	Macedonian	Ja govoram Makedonski				
		Maltese	Jien i-kallim bil-Malti				

APPENDIX 10

LAO employment equity policy

Introduction

It is LAO's policy to ensure that there are no systemic barriers to our employment practices which may negatively affect any employee or group of employees. LAO makes all human resource decisions including decisions on hiring, compensation, and access job training on the basis of qualifications, ability and performance. This ensures equitable treatment for all employees and job applicants.

Accommodation for employees with disabilities

In accordance with the *Human Rights Code*, LAO will make every reasonable effort to accommodate employees with disabilities, as long as such accommodation does not result in undue hardship for the organization. Work place accommodations include, but are not limited to, alternative work schedules, installation of special equipment and some modifications in duties which will enable the employee to continue working.

Workplace accommodations will be jointly developed and implemented by Human Resources, the manager/supervisor and the employee with the disability.

APPENDIX 11

LAO workplace harassment, sexual harassment and discrimination prevention policy

Legal Aid Ontario (LAO) recognizes that as an employer it has the responsibility under the Ontario *Human Rights Code* and *Occupational Health and Safety Act* (OHSA) to take every precaution reasonable to protect its employees. Employees who exercise their rights under this policy will be protected from retaliation or reprisals.

The purpose of this policy is to foster a respectful workplace where all persons are treated with respect and dignity by maintaining a professional work environment that:

- Is free from all forms of harassment and discrimination including sexual harassment
- Is aligned with the organization's core beliefs and with the value of diversity
- Provides a process for reporting, investigating and responding to complaints of harassment and discrimination in an effective, impartial and timely manner
- Educates staff about their roles and responsibilities in reporting and addressing incidents of harassment and discrimination

Policy

LAO is committed to providing, maintaining and promoting a work environment in which all individuals, including employees and other persons in the workplace are free from workplace harassment, sexual harassment and discrimination.

The word "harassment" in this policy includes all forms of harassment as defined in the applicable legislation including bullying.

All LAO employees are required to conduct themselves in a manner that promotes a productive work environment and exhibits respect for all individuals, including co-workers, clients, lawyers, vendors or the public.

Every manager, employee, student, board member, volunteer, contractor or consultant working at LAO has the responsibility to refrain from any form of harassment and discrimination within the workplace.

This policy includes procedures to allow employees to report incidents of harassment, sexual harassment and discrimination. No adverse action will be taken against an employee who, in good faith, makes a complaint and co-operates in an investigation.

LAO considers all forms of harassment and discrimination to be serious offences that will not be tolerated or condoned. LAO will investigate all complaints that constitute a violation of this policy as part of its commitment to maintaining a safe workplace.

Any acts of bullying, harassment, sexual harassment or discrimination on the part of an employee or manager may result in corrective or disciplinary measures up to and including termination of employment. Corrective or disciplinary action may also be taken against any manager who is aware of harassment or discrimination and fails to take corrective action; anyone who interferes with the resolution of a complaint by threats, intimidation or retaliation; or anyone who files a complaint that is frivolous or in bad faith.

All employees of LAO are expected to have read, and understood this policy, and to adhere to it.

This is a companion policy to the Workplace Violence and Domestic Violence Policy which specifically addresses incidents of violence and domestic violence in the workplace.

Scope

This policy applies to all employees and contractors of LAO. This policy applies not only during working hours, but during any activities on or off premises which could reasonably be associated with the workplace (e.g. social events).

LAO also applies the Ontario Human Rights Code and the Occupational Health & Safety Act provisions to others affiliated with the organization including, students, contractors, consultants, board members, per-diems, and volunteers.

The complaint resolution process as defined in this policy is applicable to LAO employees and contractors. Other persons who interact with LAO may report any incident(s) of harassment or discrimination to LAO's Complaint Department, Human Resources or Management to determine the appropriate action to be taken.

The policy does not apply to complaints from the public (includes clients and justice systems partners such as Crown office staff). The responsibility for follow-up on such complaints lies with Departments/Offices pursuant to LAO Complaints Policy.

Definitions

- **WORKPLACE HARASSMENT**

For the purposes of this policy, workplace harassment is defined consistent with the OHSA and the Code as engaging in a course of vexatious comment or conduct against an employee or other worker in the workplace that is known or ought reasonably to be known to be unwelcome or, workplace sexual harassment (defined

below) (OHSA, s.1(1)).

A reasonable action taken by an employer or supervisor relating to the management and direction of work or the workplace is not workplace harassment (OHSA, s.1 (4)).

- **WORKPLACE SEXUAL HARASSMENT**

For the purposes of this policy, workplace sexual harassment is defined, consistent with the OHSA, as:

- Engaging in a course of vexatious comment or conduct against an employee or other worker in the workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the employee or other worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome (OHSA, s.1(1)).

- **DISCRIMINATION**

For the purposes of this policy, discrimination is defined as any practice or behaviour, whether intentional or not, which has a negative impact on an individual or group based on one or more of the prohibited grounds of discrimination in employment under the Code, except where the conduct is permitted under the Code. Discrimination may arise due to treatment which though applied equally has an unequal effect on an individual or group protected from discrimination under the Code.

The prohibited grounds of discrimination include age, ancestry, citizenship, colour, creed, disability, ethnic origin, family status, gender expression, gender identity, marital status, place of origin, race, record of offences, sex (including pregnancy and breastfeeding), and sexual orientation.

Bullying is repeated, persistent, continuous behavior as opposed to a single negative act and is generally associated with a power imbalance (whether real or perceived) between the victim and perpetrator, where the victim feels inferior.

Examples of “bullying” in the workplace include but are not limited to:

- Rumors or gossip that belittle, demean, humiliate or embarrass
- Verbal aggression, abuse or threats including offensive or intimidating phone calls, emails and other forms of electronic material such as social media postings
- Deliberately damaging personal property
- Over-monitoring work performance including undermining or deliberately impeding a person’s work and withholding information

- Persistent excessive or unjustified criticism
- Social exclusion or isolation (e.g. silent treatment)

- **ASSAULT**

Assault is defined as the use of force, or the threatened use of force, in circumstances where the victim reasonably believes the individual could carry out the threats.

Workplace

Workplace is defined as all offices, courthouses, and buildings or other physical facilities in which LAO conducts business. It also includes organization-related activities performed at any other site away from the physical workplace.

- **COMPLAINT**

An allegation of harassment, bullying, sexual harassment or discrimination brought to the attention of Management, Human Resources or the Union (if applicable) alleging a violation and misconduct under this policy. Union members may file a complaint under this policy to address the allegations or a grievance, but not both.

- **COMPLAINANT(S)**

A person or persons making a verbal or written complaint of harassment, sexual harassment or discrimination. The Complainant need not be the target of the alleged behaviour.

- **RESPONDENT(S)**

A person or persons alleged by a Complainant to have committed an act violating this policy.

- **DELEGATED MANAGER**

A neutral party, employed in a management capacity (Director-level or above), at LAO appointed to objectively handle and oversee the investigation of a complaint of harassment, sexual harassment or discrimination. The Delegated Manager is assigned by the Human Resources Department and works closely with the Human Resources Department during the complaint process. Delegated Managers are impartial and appointed based on availability and demonstrated expertise in handling harassment, discrimination and violence cases.

- **INVESTIGATORS**

Investigators are third-party individuals who are skilled in investigative techniques and who are retained by LAO on a case by case basis as required.

Roles and expectations

- **MANAGERS**

1. Lead by example and act respectfully in dealings with employees and other persons working for LAO including students, per diems, contractors, and volunteers.
2. Inform all employees and contractors of this policy. Offer education and training to remind them of its contents as deemed necessary.
3. Access training and be knowledgeable on the prevention and resolution of harassment, sexual harassment, discrimination and conflict resolution strategies.
4. Where appropriate, engage employees to participate in the Informal Complaint Resolution Procedure prior to filing a formal complaint.
5. Address any alleged harassment, sexual harassment or discrimination allegations of which they are aware, whether or not a complaint has been made. This direction applies to situations that involve employees as well as other persons working for LAO.
6. Keep a detailed record of any incidents related to a complaint.
7. Handle all harassment, sexual harassment and discrimination situations confidentially and ensure that others are aware of this requirement.
8. Notify Human Resources immediately of any allegations of harassment, sexual harassment or discrimination.
9. Direct employee(s) affected by any form of harassment or discrimination toward medical attention as required and access to the confidential Employee Assistance Program and other available resources as required. This direction applies to all employees affected either directly or indirectly by the incident.
10. Take all reasonable precautions to protect employees from any form of assault or physical injury resulting from the allegations. This includes but is not limited to notifying police, your Director and/or Vice President, and Human Resources.
11. Advise employee (s) of the complaint process in this policy and how it will be applied. Where appropriate, offer union representation and support from Human Resources.
12. Be vigilant to prevent retaliation against complainants.
13. Cooperate and provide assistance as required in the investigation and post investigation, including implementing any recommendations concerning the affected parties, or to establish or re-establish harmonious working relationships.

- **EMPLOYEES**

1. Be professional at all times and treat all persons with respect and dignity.
2. Promote and contribute to respectful workplace.
3. Comply with this policy at all times to protect themselves and others in the workplace from harassment (including bullying), sexual harassment and discrimination.
4. Report immediately, all complaints or incidents of workplace harassment (including bullying), sexual harassment and discrimination experienced or witnessed to Management, the Union, or Human Resources.
5. Employees are encouraged to participate in the Informal Complaint Procedure to resolve the problem before proceeding to a formal complaint. If they feel safe and comfortable doing so, employees who observe or believe they are subject to harassment can approach the person they see responsible for the behaviour and ask him/her to stop the unwelcomed behaviour/conduct.
6. Know that LAO will make reasonable effort to prevent embarrassment, reprisals and all forms of retaliation.
7. Cooperate fully in the investigation of complaints or incidents covered by this policy.
8. Participate in education and training covering the topics discussed in this policy.

- **COMPLAINANTS, RESPONDENTS AND WITNESSES**

1. Cooperate fully in the investigation, including being available when called upon and providing the necessary information to Management, Human Resources and the Investigator.
2. Maintain confidentiality at all times. Disclosure will be limited to those who need to know as part of the investigation or as required by law.
3. Have access to the Employee Assistance Program and other resources offered by LAO or other agencies to help cope with the circumstances.
4. Receive information related to the complaint in writing, including allegations, as noted in the Formal Complaint Procedure, and in accordance with the principles of procedural fairness.
5. May request the attendance of a person of their choice (e.g. a peer or union representative) that is not a part of the investigation to sit in on the interviews/ meetings.
6. Review their statement without undue delay as recorded by the investigator, to confirm its accuracy, prior to the final report being submitted.

7. The Complainant and Respondent receive in writing the outcome of the investigation, which will specify whether corrective or disciplinary measures will be taken as a result of the complaint against either party.
8. The Complainant can exercise his/her rights outside of the policy which may include, but are not limited to: filing a grievance, filing a complaint with an external agency (e.g. police, the Human Rights Tribunal of Ontario, the Workplace Safety and Insurance Board, the Ministry of Labour) or the professional governing body (e.g. the Law Society of Upper Canada), where the situation warrants.
9. Respondents will receive legal assistance if a complaint, filed in accordance with this policy is determined to be unfounded, and is pursued in the courts or at a tribunal.

- **DELEGATED MANAGERS**

1. Access training and be knowledgeable of roles and responsibilities as Delegated Manager.
2. Apply the established steps in the complaint procedure outlined in this policy.
3. Inform the Complainant(s), Respondent(s) and witness(es) of their rights and responsibilities.
4. Take the necessary action to ensure confidentiality is maintained by all affected parties.
5. Remain alert to any reprisal and retaliation. Notify Human Resources if either occur.
6. Work with Managers of the affected areas to ensure Complainant(s), Respondent(s) and witness(es) have access to the Employee Assistance Program and other resources as necessary.
7. Allow all affected parties the right to representation to support and advise them during the complaint process.
8. Work with Human Resources and Management to separate the Complainant and Respondent, hierarchically, physically, or both, for the duration of the complaint process, if deemed necessary.
9. Consult with an external advisor (if required) and Human Resources to make a determination from the preliminary interviews and document review, if there are sufficient grounds to warrant a formal investigation. Communicate decision in writing to all parties.
10. Seek advice and guidance from Human Resources as required, in the preparation of the written report on the investigation findings to the CEO/President of LAO, including recommendations and any corrective/disciplinary action against the

parties.

11. Ensure that Complainant(s) and Respondent(s) are provided with the information to which they are entitled during the complaint proceedings, including findings and any corrective/disciplinary action.

- **HUMAN RESOURCES**

1. Post this policy for all employees and inform them of their options and rights.
2. Provide relevant training for Management, Employees, and Delegated Managers to ensure they understand their roles and responsibilities in this policy.
3. Review harassment and discrimination incidents to identify trends, and take appropriate prevention measures to protect staff, with assistance from the Joint Health & Safety Committee, Union and Management. This also includes annual review of the policy to maintain legislative compliance with applicable legislation.
4. Work with Managers of the affected areas to ensure Complainant(s), Respondent(s) and witness(es) have access to the Employee Assistance Program, medical care, and other applicable resources as required.
5. Inform the Complainant(s), Respondent(s) and witness(es) of their rights and responsibilities.
6. To the best of their ability, take preventive measures and guard all affected parties from reprisal and retaliation.
7. Ensure all affected parties understand their right to representation of their choice (union and non union) to support and advise them during the complaint process.
8. Oversee the complaint procedures including the formal investigation process.
9. Provide guidance and support to the Delegated Manager.
10. To the best of their ability, ensure the established steps in the complaint procedure in the policy are followed by all parties.
11. Take the necessary action to ensure confidentiality is maintained by all affected parties including Human Resources.
12. Acknowledge and conduct an initial review and assessment of the Harassment/ Violence Complaint Form received through the Formal Complaint Procedure to determine reasonable grounds to investigate or possible policy breach.
13. Provide support to Management in identifying problem resolution strategies to resolve complaints including but not limited to mediation, remedial training, counselling, and coaching.
14. Appoint and provide support to Delegated Managers to aid in the determination,

from the preliminary interviews and document review, if there are sufficient grounds to warrant a formal investigation. An External Advisor may be consulted in the initial screening and assessment step to review the evidence with the Delegated Manager and Human Resources. Communicate the decision to all parties in writing, as required.

15. Assign a mandate to the Delegated Manager or investigator(s) and ensure to the best of their ability that persons conducting investigations are impartial, that they have no supervisory relationship with the parties, that they are not in a position of conflict of interest, and that they are competent.
16. Review the complaint procedure steps with the Complainant(s) and Respondent(s) and work with the Delegated Manager to ensure they receive investigation updates as required.
17. Work with Management to separate the Complainant and Respondent, hierarchically, physically, or both, for the duration of the complaint process, if deemed necessary.
18. Ensure that Complainant(s) and Respondent(s) are provided with the information to which they are entitled during the complaint proceedings, including findings and any corrective/disciplinary action.
19. Work with the Vice President/designate of the affected area to implement corrective and/or disciplinary measures where warranted.
20. Ensure that no documents relating to the complaint are placed in the employee file of either party, other than a disciplinary letter, in the file of the employee who is subject to a disciplinary measure.

- **UNION**

1. Promote a positive and respectful work environment for all persons.
2. Educate bargaining unit members of this policy and their rights and options.
3. Represent union members in the complaint proceedings.
4. Report any allegations of harassment, bullying, sexual harassment or discrimination in a timely and confidential manner.
5. Address any allegations of harassment, bullying, sexual harassment or discrimination with impartiality and without a conflict of interest.
6. Help Management and Human Resources as required in the complaint and investigation of allegations.
7. Work with Management, Human Resources, and the Joint Health and Safety Committee on the prevention of all forms of harassment and discrimination in the

workplace.

- **INVESTIGATORS**

1. Meet the expectations and mandate set by the Human Resources Department.
2. Apply the principles of procedural fairness and impartiality.
3. Maintain confidentiality, except where disclosure is necessary to conduct an effective investigation into the complaint.
4. Conduct the investigation thoroughly and expeditiously within three (3) months of the formal complaint. Where this is not feasible, due to extenuating circumstances (e.g. illness, complex investigation) seek an extension in writing from the Human Resources Director/designate.
5. Provide regular updates to the Delegated Manager and Human Resources Department on the progress of the investigation.
6. Provide a written detailed report outlining the methodology used to investigate, findings, conclusions with supporting evidence to the Human Resources Director/designate. This also includes a determination as to whether there has been a violation of this policy.

Confidentiality

All complaints received pursuant to this policy shall be considered strictly confidential. The identities of the Complainant and the alleged harasser will be held in confidence except where disclosure is necessary to aid in an investigation, or to take disciplinary action, or except as required by workplace legislation such as the Ontario *Human Rights Code* and/or *Occupational Health and Safety Act*. It is acknowledged that the person against whom a complaint has been made has the right to know the circumstances that form the basis of the complaint, including the name(s) of the person complaining. The parties to the complaint are expected to maintain confidentiality. Any violations of confidentiality may be subject to disciplinary action.

Procedure

LAO has two complaint procedures to resolve complaints of harassment (including bullying and sexual harassment) and discrimination in the workplace: the Informal Resolution Procedure and the Formal Complaint Procedure. The typical process will see complaints addressed first through the Informal Resolution Procedure before moving to the Formal Complaint Procedure for those cases that remain unresolved.

Employees can report incidents or complaints of harassment and/or discrimination verbally

or in writing. When submitting a written complaint, employees should use the workplace harassment complaint form (see attached). When reporting verbally, the reporting contact, along with the worker complaining of harassment, will fill out the complaint form.

LAO will investigate and deal with concerns, complaints or incidents of harassment and discrimination in a fair and timely manner, respecting the rights of all parties and maintaining confidentiality.

All employees are encouraged to report any concerns and complaints of incidents of harassment and discrimination using the complaint procedures outlined in this policy. Unionized employees may elect to use the complaint process in this policy or file a grievance in accordance with the applicable bargaining agreement.

Both complaint procedures, including the investigation if necessary, should be completed without undue delay in three months or less. When this is not possible, the Human Resources Director will review any extenuating circumstances and determine the appropriate timeframe to complete the investigation.

While employees are encouraged to use the complaint procedures outlined in this policy, they may elect to have the matter dealt with through another governing body such as the Ontario Human Rights Tribunal, or Ministry of Labour. The Police or legal counsel may also be involved should the harassment lead to acts or behaviours that constitute criminal conduct (e.g. assault, sexual assault, threats, and behaviours such as stalking) under the *Criminal Code*.

Where there is a regulatory body conducting the investigation, LAO will aid in the investigation, as required by law or regulation, and may elect to continue its own review and assessment of the complaint.

The sharing of information with the affected parties related to the violence complaint must comply with the principles of privacy and the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990.

Informal resolution procedure

When is this used?

The objective of an informal resolution procedure is to resolve any situation or conflict as soon as possible, in a fair and respectful manner without employing the formal complaint process. Every reasonable effort should be made to resolve the problem early with open communication and in a co-operative manner.

However, in certain circumstances, depending on the severity of the allegations (e.g. sexual assault), it may be appropriate to bypass the Informal Resolution Procedure and proceed directly to the formal complaint process. The Human Resources Department in consultation with the Vice President of the affected area will make this determination.

STEP 1: REPORTING

- The employee who feels offended by the actions of another person working for LAO, is encouraged to tell the offender that their behaviour is offensive and to ask them to stop as soon as possible in an attempt to resolve the problem.
- If the conduct persists, or if the offended employee does not want to speak directly with the offender, the Complainant should notify his/her manager, or the next person in the hierarchy, if their manager is the subject of the complaint. The employee should keep a written record of the incident(s), including witnesses, if any.

STEP 2: ASSESSMENT AND RESOLUTION

- Once a complaint has been received, managers are expected to immediately report any complaints of harassment, sexual harassment and discrimination to the Human Resources Department.
- Management must make all reasonable effort to resolve the issue between the parties, as quickly as possible with support and assistance from the Human Resources Department as needed. Examples of resolution can include but are not limited to offering an apology, undertaking any of remedial training/education, coaching, counseling, and mediation. Records of any informal complaint resolution will be held in confidence by the Manager or Human Resources and separate from the employee's file.
- If early resolution is not achieved or not deemed appropriate, an employee may file a formal complaint with the Human Resources Department.

STEP 3: IF INFORMAL PROCESS DOES NOT WORK

- Employees are encouraged to pursue the Informal Resolution Procedure before a formal complaint can be launched pursuant to the Formal Complaint Procedure. However, in certain circumstances, depending on the severity of the allegations (e.g. sexual assault), it may be appropriate to bypass the Informal Resolution Procedure and proceed directly to the formal complaint process. The Human Resources Department in consultation with the Vice President of the affected area will make this determination.

Formal complaint procedure

When is it used?

The Formal Complaint Procedure will be carried out in accordance with the steps outlined in this section.

An employee may engage in the Formal Complaint Procedure if the informal resolution procedure does not lead to resolution. The Human Resources Department may also choose to advance the complaint to this stage depending on the nature of the allegations.

STEP 1: FILING A COMPLAINT

An employee who feels that they have been harassed, sexually harassed or discriminated against must complete and submit the Harassment/Violence Complaint Form to the Human Resources Department. The form should be received as soon as possible to maintain the integrity of the complaint and investigation process.

Employees should make detailed notes about: the nature of the allegation(s); the name of the Respondent(s), the date and description of the incident(s); and the names of witnesses (if any). This information will be needed to complete the Harassment/Violence Complaint Form. Any reasons resulting in the delay of reporting the allegations should be noted on the form.

STEP 2: INITIAL SCREENING AND ACKNOWLEDGEMENT OF COMPLAINT

Upon receipt of the complaint, the Human Resources Department will conduct an initial screening of the complaint. The complaint will be screened for timeliness, whether the complaint appears to be made in good faith, severity of the allegations, and outcomes from the informal resolution approach (if applicable).

If these criteria are met, the Human Resources Department will advise the Complainant about the process, provide the contact information for the Employee Assistance Program, and appoint an impartial Delegated Manager, to oversee and manage the complaint with support from Human Resources. Where appropriate, union representation should be offered and made available.

From the onset, depending on the severity and nature of the allegations, Human Resources and the Vice President of the affected area will determine if it is necessary to separate the affected parties through a non-disciplinary paid leave, reassignment, or change in the reporting structure, until the complaint is fully resolved. Criteria such as the safety and well-being of the Complainant, Respondent, witnesses and impact on operations and co-workers will be factored into the decision making.

The sharing of information related to the harassment/discrimination complaint with the parties must comply with the principles of privacy set out in the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990.

An external advisor may be consulted in the initial screening and assessment step.

The Delegated Manager will review the complaint with the Complainant to clarify any questions and information needed to determine if there is a breach of the policy and evidence of harassment and/or discrimination.

The Delegated Manager will also meet with the Respondent and provide him/her with a hard copy of the complaint including the Harassment/Violence Complaint Form.

STEP 3: FORMAL INVESTIGATION

The Delegated Manager will continue to manage the investigation process including notifying the parties that a formal investigation has started and the steps involved with support from the Human Resources Department. The Investigator will be assigned a mandate from the Human Resources Department and provided with the relevant documents and contact information of the affected parties.

Time is of the essence; the investigator will interview the Complainant(s), Respondent(s), and any witnesses within ten (10) business days of receiving the contract, where possible. In situations where there are numerous witnesses, it may take up to 30 days for such interviews to be scheduled. During the proceedings the Complainant, Respondent or witnesses may request the attendance of a person of their choice (such as a peer, co-worker or union representative) that is not a part of the investigation to sit in on the interviews/meetings. These individuals are required to abide by the expectations set out in this policy covering Union and Non-Union Support Representatives.

RIGHT TO REPRESENTATION

Complainants, respondents and witnesses have the right to be accompanied by a support person and/or bargaining agent representative where applicable, during complaint resolution processes related to this policy. Employees must actively participate in the process; the support person or bargaining agent representative does not advocate on the employee's behalf.

STEP 4: REPORT AND RECOMMENDATIONS

Once the investigation has concluded, the investigator will provide Human Resources with a report detailing the findings including any policy violations, and render a decision about the allegations made by the Complainant.

Based on the investigation findings, the Delegated Manager with support from Human Resources, will provide a written recommendation to the CEO/President of LAO the outcome of the investigation, and any preventive, corrective and/or disciplinary measures to be taken specific to the investigation findings. Such measures may include but are not limited to discipline, remedial training, mediation, or reassignment of staff.

Once the report has been submitted to the CEO/President, he/she will make a determination on the recommendations in consultation with Human Resources and the affected Vice President(s), taking into consideration the subject employee's/respondent's work history and previous discipline on record and other mitigating circumstances.

The approved recommendations will be implemented by Human Resources and the Vice President/designate of the affected department(s).

The Delegated Manager/Human Resources will inform the Complainant and Respondent in writing of the outcome of the investigation, and whether corrective or disciplinary measures will be taken as a result of their complaint. This may include notifying the professional's regulatory body of any discipline. This decision will be made by Human Resources in consultation with Management and the CEO/President (who may consult with General Counsel's Office as required)

If the complaint is frivolous or in bad faith, the Respondent will be informed in writing whether corrective or disciplinary measures will be taken against the Complainant. Any discipline arising from the investigation will be noted in the subject employee's file and kept for a maximum of seven (7) years, or as determined otherwise by the Human Resources Department or the employee's collective agreement.

Policy review

The Human Resources Department in consultation with the Executive Management Committee will review and update this policy annually.

Contact for questions

Please contact the Human Resources Department for any questions regarding this policy.

APPENDIX 12

LAO incusion and diversity policy

Legal Aid Ontario (LAO) is committed to having a workforce and a work environment that are reflective of and responsive to the diversity of all Ontarians, where differences are respected and valued, with the goal of every employee, contractor, volunteer, and Board member having the ability to realize their potential through valued contributions.

LAO strives to be an inclusive organization which is able to attract, retain and accommodate a range of diverse people who will feel valued and confident within the organizational environment.

Introduction and scope

LAO holds social justice, human rights, collaboration, learning and inclusion as core values. LAO recognizes that as an organization we will better reach our goals if we are successful in systematically identifying and removing barriers to full participation in all aspects of our work through leadership principles, operational procedures, and human resources practices and programs that support the attainment of diversity and inclusion. In doing so, we must align and embody these core values in all our activities and operations.

Inclusion and Diversity Committee

In 2013, LAO formed the Inclusion and Diversity Committee with a mandate to advance equity and diversity within LAO. The work of the Committee is to build inclusion and diversity into our business policies and practices and to promote an inclusive work environment, which includes concern for:

- Employees with disabilities
- Employees who identify as LGBTQ2S
- Employees of all different religions/non-religious, spiritual beliefs, and philosophies
- Francophone employees
- Gender equality
- Indigenous employees
- Racialized employees
- Gender Identity
- Gender Expression

The Committee is comprised of employees who volunteer their time, under the leadership

of LAO Executive Co-Sponsors. The Committee makes recommendations to the LAO leadership team based on strategic planning objectives.

Responsibility, authority, transparency and accountability

It is the responsibility of all LAO employees, volunteers, contractors, service-providers, and board members to uphold the key principles of equity, diversity and inclusiveness in all practices.

On an annual basis, LAO reports to the Board of Directors and our employees on the progress of initiatives that advance inclusiveness, and demonstrate the organization's commitment to equity and diversity. The report includes a scorecard to measure our progress against the stated goals/initiatives for the year.

Leadership principles

LAO Executives and the Senior Leadership Team are guided by the principle that equity means more than treating people in the same way, and that it requires the identification and removal of barriers, proactive and intentional measures, the accommodation of differences, and measurement of outcomes. As such, some of the responsibilities of the senior leadership team as they relate to the diversity of our workforce include (but are not limited to):

- Senior Leadership Team has the group education and training needed to demonstrate “top down” support and to model and mentor expected behaviours.
- Increasing the diversity of LAO's senior management and leadership teams, and measuring our progress in doing so.
- Dedicating resources in the annual budget cycle to the Human Resources (“HR”) department to support the recruitment of diverse applicants, and to proactively identifying and removing barriers for applicants.
- Conducting diversity surveys which can measure and track progress of all equity initiatives.
- Conveying to the government that it is important for the LAO Board of Directors to be reflective of the population of Ontario and the clients and communities we serve.
- Ensuring LAO's policies and practices promote human rights and the duty to accommodate while respecting the dignity and privacy of employees.

Operational principles

At LAO, “how” we do what we do is as important as “what” we do. Our commitment to equity extends beyond having a diverse workforce, to include recognizing that decisions about the way we do our work should be examined through and informed by a diversity

lens. Some of the operational principles as they relate to inclusion include (but are not limited to):

- Representation from broad perspectives on committees and working groups (i.e. Northern Ontario and urban centres; union and non-union staff; management and employees).
- Consulting with and conducting focus groups from a broad cross-section of employees (i.e. lawyers, non-union employees, employees represented by a union, management etc.).
- Ensuring that there are opportunities for all staff to participate and provide input, and that barriers to participation are identified and removed.
- Ensuring that LAO has policies that support accommodation and accessibility.

Human resources practices and programs

There are a number of HR policies and practices that support fair treatment for employees (and prospective employees) with respect to recruitment, retention, advancement, and training and development. In line with LAO's core values, this section of the Inclusion and Diversity Policy outlines some commitments that LAO makes with respect to inclusion in HR practices and programs.

Recruitment, retention and advancement

Activities include, but are not limited to:

- Ensuring all job postings contain information to inform current employees and prospective candidates who require accommodations that accommodations can be made and informing candidates of the manner in which to request those accommodations.
- Ensuring equal access to job opportunities through a transparent and competitive process that is void of systemic barriers.
- Ensuring skills and requirements in all job profiles reflect bona fide criteria for success.
- Reviewing interview questions and scoring criteria to remove any biases.
- Ensuring all candidates are asked the same questions and are evaluated objectively based on criteria informed by equity principles.
- Offering feedback and coaching to unsuccessful internal applicants.
- Conducting exit interviews to uncover the factors that influenced an employee's decision to leave.

Training and organizational development

Activities include, but are not limited to:

- Advertising all learning opportunities to all employees through multiple channels.
- Conducting performance reviews on an annual basis, using a standardized form and rating criteria for all employees.
- Requiring all employees to complete a development plan to document skill development and future aspirations through the Performance Excellence Program (PEP) – LAO's annual performance review program.
- Encouraging, supporting, and funding opportunities for CPD.
- Establishing a formal mentoring program for employees who wish to seek guidance from more experienced employees and senior leaders.

Effective:	Interim Policy Approved by David Field, President and CEO, Dec. 20, 2017
Reviewed by:	Rosanne De Lio, Director Human Resources Janet Budgell, VP and General Counsel David McKillop, VP, Co-Chair, Inclusion and Diversity Committee Vicki Moretti, VP, Co-Chair Inclusion and Diversity Committee
Note:	This policy provides a framework that compliments others policies that in part address issues related to Inclusion and Diversity such as the Harassment, Sexual Harassment and Discrimination Prevention Policy, Accessibility Services for People with Disabilities Policy, Employment Equity Policy and the Learning & Development Policy.

ANNEX 1: DEFINITIONS

- **Barriers**

Attitudes, behaviours, procedures or physical impediments that undermine equity and diversity, inhibit inclusion and can prevent people from maximizing their contribution to an organization.

- **Discrimination**

Any act, behaviours or practice which may be intentional or unintentional, which

negatively affects or could negatively affect the environment of a person or group.

- **Diversity**

The visible and invisible differences that exist among people, including but not limited to, gender identity, race, ethnic origin, physical and mental ability, sexual orientation or identity, age, economic class, language, religion, nationality, education, and family/ marital status. These visible and non-visible differences among people can also lead to differences in experiences, values, attitudes and ways of thinking, behaving, communicating and working.

- **Equity**

Fairness of treatment for individuals or groups according to their respective needs, which may include equal treatment or treatment that is different but is considered equivalent in terms of rights, benefits, obligations and opportunities.

- **Inclusiveness**

The ability of an organization to attract, retain and accommodate a range of diverse people who will feel valued and confident within the organization.

APPENDIX 13

LAO complaints policy (January 2020)

1. Purpose

Legal Aid Ontario (LAO) created its complaints policy to:

- Make sure individuals know their right to make a complaint, and the procedures involved
- Make sure that complaints are dealt with fairly and quickly. It does not matter how the complaint is made (verbally or written), or who makes it (the legal aid applicant or another person).

2. What is a complaint?

A complaint is an expression of dissatisfaction with a service provided by LAO or with the policies of LAO. The Complaints Department accepts complaints by telephone, by fax, by email, by mail and also through the Ethics Hotline. Complaints will also be accepted in person if an appointment is made in advance. LAO accepts anonymous complaints as well.

The Importance of Complaints to LAO

LAO is responsible for ensuring that a professional and conscientious approach is taken to managing client files; that good quality legal services are provided; that all matters are managed on a timely basis and in accordance with the established policies and procedures. LAO considers complaints to be opportunities to evaluate how we are doing. They allow us to identify weak points in our policies and procedures so that they can be corrected. Complaints allow staff at LAO to see our organization through the eyes of the people who use or are affected by our services.

Who can file or make a complaint?

Any person can make a complaint, including current and former clients, lawyers, someone who has been refused a service or any other person who may be affected by the services LAO provides, including services from a community legal clinic, a Student Legal Aid Services Society or an Aboriginal Legal Services Corporation.

LAO will consider all complaints. However, there are some complaints that LAO Complaints Department does not have the authority to handle alone. Although there is no complete list, examples include Human Rights issues and some employment concerns, which are

handled by Human Resources (HR). Complainants (individuals who make a complaint to LAO) will be advised if their concerns do not fall under LAO's Complaints Department jurisdiction.

Inquiries from the Provincial Ombudsman should be directed to the Complaints Department.

LAO will not accept complaints about the refusal of LAO applications due to either financial or legal ineligibility when the option of a review or an appeal is available to the applicant

The LAO complaints process is not an avenue for disputing the outcome of a formal appeal, review or reconsideration. In these cases, the complainant will be advised that no action will be taken beyond what was decided in the appeal, review or reconsideration.

Responsibilities of the Complaint Resolving Party and the Complaints Department

- Handle each complaint professionally, efficiently and fairly
- Keep the complainant informed of our progress
- Give the complainant reasons for all decisions
- Treat the complainant with respect

Responsibilities of the Complainant

- Provide the Complaints Department with a clear idea of the problem in writing and the solution expected
- Disclose at the beginning all the relevant information
- Promptly provide new facts in writing including informing of a decision to cancel the complaint
- Cooperate with the Complaints department
- Treat LAO staff with respect

3. Types of complaints

- **Lawyer Billing Complaint**

These complaints can originate from either the lawyer's client, a contributor on behalf of the client, a subsequent lawyer acting on behalf of the client or a judgment debtor. In most cases, the client in question is subject to a contribution agreement (or lien) with LAO.

Resolution Process:

The Complaints Department's role in these matters is that of a facilitator for the Lawyer Services and Payments (LSP) Department. The Complaints Department will ensure that the client is in receipt of the lawyer's detailed accounts for the certificate(s) in dispute. The client is then instructed to review the accounts and provide their objections in writing, as well as their signed waiver and consent to release to the Complaints Department the objection letter to the lawyer in question.

The Complaints Department will then provide a copy of the client's complaint to the lawyer for his response. Once the lawyer's reply is received, the documents are referred to the LSP Department. A staff lawyer in the LSP Department will conduct the review of the account(s) and provide the client with the outcome in writing. In some instances, where serious billing irregularities is identified, LSP may refer the matter to the Investigations Department.

- **Lawyer Service Complaints**

These complaints can come from the client, the opposing party, a third party or member of the public or another lawyer. If the client wishes to change lawyers, such a request can be made to the Client and Lawyer Services department.

Resolution Process:

The Complaints Department directs complaint information to the District Office as a Stage I complaint for resolution.

- **Lawyer Conduct Complaints**

These complaints can originate from the client, the opposing party, a third party or member of the public or another lawyer.

Resolution Process:

Allegations of breaches of Legal Aid Ontario legislation, regulations and policies will be provided to the Investigations department for assessment. The complainant will be advised at the conclusion of the investigations department's review.

Complainants for these matters are also advised that they can contact the Law Society of Ontario ("LSO"), which sets and enforces educational, ethical and professional conduct standards for lawyers and paralegals in Ontario.

- **LAO Policy Complaints**

Any individual could have concerns regarding the policies of LAO. Such complaints have come from clients, lawyers, members of the public, and community groups for example.

These complaints include coverage policies implemented by LAO, the Tariff and Billing Handbook maintained by the Lawyer Services and Payments Department, the service regulations for Duty Counsel (DC), or LAO office hours, for example.

Resolution Process:

The Complaints Department does not have the authority to amend the policies of LAO. The Complaints Department will review the complainant's concerns and report them to the Management of LAO for their consideration. The Stage II resolution option is not available for policy complaints.

- **Complaints about LAO staff**

Any individual could have concerns regarding LAO staff. Such complaints have come from clients, lawyers, members of the public, community groups, etc.

Resolution Process:

The Complaints Department directs complaint information to the local District Office or Provincial Office Manager as a Stage I complaint for resolution.

- **Complaints about Duty Counsel (either staff or per diem)**

Any individual could have concerns regarding the services provided by Duty Counsel. Such complaints have come from clients, lawyers, members of the public, community groups for example.

Resolution Process:

The Complaints Department directs complaint information to the local District Office as a Stage I complaint for resolution.

- **Clinic/SLASS/ALSC Complaints**

LAO has authority to review and resolve some complaints regarding clinics, Student Legal Aid Societies (SLASS) or Aboriginal Legal Services Corporations (ALSC), once the clinic internal complaint process has been exhausted. LAO does not accept complaints related to matters internal to clinic/SLASS/ALSC operations such as human resources issues, staff performance or the administration of internal clinic processes.

These complaints are usually initiated by clients, their agents or members of the public. A Clinic/SLASS/ALSC complaint can be reviewed by the VP – Clinic Law Services once the complainant has exhausted the appeal process of the Clinic/SLASS/ALSC.

Resolution Process:

Once the complaint has been reviewed by the Clinic or ALSC's Board of Directors or

the SLASS Dean, and the complainant has received the Board's or Dean's written decision regarding their complaint, the complainant may request a review by the VP - Clinic Law Services if they are not satisfied with the outcome by the Board of Directors or Dean. The complainant will be provided with a written decision at the conclusion of the VP Clinic Law's review. The VP's decision is final and no Stage II resolution option is available for this type of complaints.

- **French Language Service Complaints**

These issues originate from clients, agents, lawyers or other members of the public who are concerned with the French language services provided by the various offices of LAO.

Resolution Process:

These complaints are referred to the Coordinator, French Language Services as a Stage I complaint for resolution.

- **Money Paid in Addition to LAO certificate**

This is a matter where the client or contributor on behalf of the client pays monies to the lawyer in addition to the acknowledged legal aid certificate after the effective date of the Certificate. The complainant is usually the client or third party on behalf of the client.

As this constitutes a breach of Section 95 of the *Legal Aid Services Act, (LASA)* 1998, these complaints must be referred to the Investigations Department with an advisement to the District Office

Allegations of money in addition to certificate services will be referred to the Investigations department for assessment. The complainant will be advised in writing of the general determination of the investigations department's review.

- **Breach of privacy or confidentiality**

LAO is covered by the Freedom of Information and Protection of Privacy Act (FIPPA) and, accordingly, subject to external scrutiny by the Information and Privacy Commissioner (IPC).

Resolution Process:

The Complaints department will forward complaints pertaining to breach of privacy or confidentiality to the District Office of Provincial Office Manager for Stage I resolution. The FIPPA Coordinator will be copied and will provide assistance as required.

3.1 Concerns/Inquiries

- **Third Party Eligibility Concerns**

These concerns are most frequently initiated by either the opposing party in ongoing civil litigation or Family Law matters, various members of the public, or lawyers (whether retained by the client in question or the opposing party). Concerns are also received with respect to Criminal and Refugee Law matters.

Concerns of this nature are taken seriously. As a government-funded organization, Legal Aid Ontario strives to ensure that its services are not misused. However, confidentiality provisions in both the Legal Aid Services Act and the Freedom of Information and Protection of Privacy Act prohibit us from disclosing or discussing the relationship of any individual to Legal Aid Ontario. As such, the complainant will receive an acknowledgement upon receipt of the complaint but no further status or resolution information will be provided due to client confidentiality restrictions. No further appeal is available for this type of inquiry.

Resolution Process:

If the Complaints Department receives the information pertaining to an individual's eligibility for legal aid, the information is sent to the local District Office. This may occur even if the individual complained about is not in receipt of legal aid assistance, for the purposes of any future application by this person.

If the person in question is in receipt of legal aid, the District Office will review the complaint information and may conduct a reassessment of the client. The District Office will review the client file and may request the assistance of the Investigations Department in the event that any additional information regarding the client's financial situation is required (e.g., corporate searches, credit checks, etc.). For confidentiality reasons, LAO cannot report the results of the investigation to the person making the complaint.

- **Eligibility for legal aid assistance or application status**

These are not considered to be complaints.

Inquiries such as these should be directed to the Client and Lawyer Service Centre or to the District Office.

- **Inquiries by lawyers regarding the status or payment of accounts**

These are not considered to be complaints.

Inquiries such as these should be directed to the Client and Lawyer Service Centre.

4. Disclosure of Wrongdoing (DoW)

The *Public Service of Ontario Act* (PSOA) contains disclosure of wrongdoing provisions that support the government's commitment to transparency and accountability. In accordance with the PSOA, members of LAO staff who are aware of wrongdoing by an LAO employee, can reveal it with protection against reprisal. The PSOA defines "wrongdoing" by a public servant, minister or parliamentary assistant as:

- contravening an act or regulation
- creating a grave danger to life, health, safety or the environment by an action or failure to act that is unreasonable in the circumstances
- gross mismanagement
- directing or counseling someone to commit one of the above

To support the disclosure of wrongdoing framework, organizations in the public service have an Ethics Executive. The President is designated as LAO's Ethics Executive.

An LAO employee who wishes to disclose wrongdoing has two options:

1. Report the information directly to the Integrity Commissioner if he or she feels that internal disclosure would not be appropriate.
<http://www.oico.on.ca/home/disclosure-of-wrongdoing>; or
2. Report the information internally to the LAO Ethics Executive either through the Complaints Department or directly to the President's Office

4.1 Complaints received by the Complaints Department

If a complaint is received and is determined to be a DoW complaint under the PSOA, the Complaints Department will:

1. Log the complaint as a DoW complaint
2. Refer the complaint to the President's Office
3. Note the complaint as "Closed/Referred to the President's Office"

The President's Office is responsible for the resolution of the DoW and for recording the outcome.

4.2 Complaints received by the President's Office

Where it is determined that there is a DoW complaint, the President's Office will:

1. Advise the Complaints Department of the DoW complaint
2. Ask the Complaints Department to log the complaint
3. Ask the Complaints Department to record the complaint as "Closed/Referred by the President's Office"

The President's Office is responsible for the resolution of the DoW and for recording the outcome.

4.3 Release of information

LAO does not provide information about legal aid applicants or their applications if a complaint is made. There is also information that LAO cannot provide because of the *Freedom of Information and Protection of Privacy Act* (FIPPA). In all other cases, the following information will be disclosed to a complainant upon request:

- Written communications about the complaint between the Complaints Department and the complainant
- Written communications about the complaint between the Complaints Department and the subject of the complaint
- Written responses to the complaint provided to the Complaints Department from the subject of the complaint
- Written responses to the complaint provided to the Complaints Department from the supervisor or manager of the subject of the complaint

5 The complaints process

In most cases there are two stages to the complaint process at LAO.

5.1 Stage I

LAO will first try to resolve the complaint at the local level. This means that District Offices and Provincial Departments are responsible for trying to resolve the complaint, and for keeping records of all complaints and their outcomes. At this stage, complainants who contact the Complaints Department will be referred back to the District Office or Provincial Department for resolution.

The complainant will be sent an acknowledgement letter no more than five days after

LAO receives the complaint. If the matter has not been resolved within thirty days, the complainant will receive a letter with an update. A status update letter is sent every thirty days until the matter is resolved.

5.2 Stage II

A complainant has the right to contact the Complaints Department in LAO's Provincial Office for a review of the resolution when the complainant is unhappy with the resolution the District Office or Provincial Department has provided.

The Complaints Department will send the complainant a letter no more than five days after LAO receives the complaint. If the matter has not been resolved within thirty days, the complainant will receive a letter with an update.

The Complaints Manager reviews how the Director General or Provincial Office manager, handled the complaint, and collects additional information from the complainant and the local office, if necessary.

Exceptions to the above are as follows:

- Complaints about Vice Presidents and other employees reporting directly to the President are referred directly to President as Stage II complaints.
- Complaints about the staff of the General Counsel's Office are determined to be automatic Stage II complaints to General Counsel or his/her designate.
- The Complaints Department will refer a matter directly to the responsible Vice President or designate as a Stage II complaint when the complaint concerns a staff member who reports directly to a Vice President.
- As the Complaints department is included in the Audit and Compliance Services Branch (ACSB), complaints about ACSB Managers are determined to be automatic Stage II complaints to the Director, ACSB.

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