

LEGAL AID ONTARIO'S
**PRISON LAW
STRATEGY**

SEPTEMBER 2019



LEGAL AID ONTARIO

AIDE JURIDIQUE ONTARIO

Table of contents

Introduction	1
Incarcerated people in Ontario - jurisdictional breakdown	4
General needs of incarcerated people	5
The role of Legal Aid Ontario	14
The legal needs of incarcerated people	15
Legal aid services for incarcerated people	30
What LAO heard: unmet legal needs and service gaps	32
What LAO heard: barriers to access to justice	37
What LAO heard: recommended approaches and best practices	39
An ounce of prevention: Why the Prison Law Strategy represents value for money for taxpayers	42
Prison Law Strategy initiatives	45
Appendix	
Appendix A: Stakeholders consulted	1
Appendix B: Images	6

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

Toll-free: 1-800-668-8258
Email: info@lao.on.ca
Website: www.legalaid.on.ca

Ce document est disponible
en français.

Legal Aid Ontario receives
financial assistance from the
Government of Ontario, the
Law Foundation of Ontario,
and the Government of
Canada.

Introduction

“No one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

- Nelson Mandela

In 2015-2016, there were 23,641 adult admissions to provincial and federal sentenced custody in Ontario, and 46,874 admissions to remand custody. Because the length of time spent in provincial custody can often be short – with over half of those admitted spending a week or less in remand custody or a month or less in sentenced custody – the average number of adult persons in correctional custody on any given day last year in Ontario, based on Statistics Canada’s annual “average daily count”, was 7,960. This number translates to an average daily incarceration rate of 72 persons per 100,000 adults in the province, a 1% overall increase over the previous year.¹

Although the overall size of the incarcerated population in Ontario is not increasing significantly, the remand population – comprised of persons awaiting a bail hearing, trial or sentencing - continues to grow, and in 2015-2016 represented 70% of Ontario’s custodial population.² These are persons who for the most part have not been found guilty of the offence or offences with which they have been charged and are legally innocent.

Although incarcerated people have the same legal needs that any Ontarian may experience, additional legal needs of incarcerated people arise from the circumstances of their incarceration, and from the application of correctional policies and processes. These have a direct impact on their daily lives, determining where and how and under what conditions they are detained. People are frequently housed in overcrowded, understaffed institutions where they may be subject to acts of violence or the threat of violence. They may be held in segregation (better known as solitary confinement), which is known to have a serious negative impact on mental health. They often have inadequate access to health care, and to appropriate programs and services.

The incarcerated population is overwhelmingly and increasingly made up of persons from already disadvantaged or marginalized backgrounds and communities. One in four people in a federal institution is age 50 or older, and the population of older and aging people in prison is growing rapidly, increasing by nearly a third over the past five years.

1 Statistics Canada, *Adult correctional statistics in Canada, 2015/2016*, online: <<http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14700-eng.htm>> [*Adult correctional statistics in Canada, 2015/2016*]; see Table 1, *Average daily counts of adults in correctional services, by jurisdiction, 2015/2016*, online: <<http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14700/tbl/tbl01-eng.htm>>.

2 Statistics Canada (Juristat), *Adult and youth correctional statistics in Canada, 2016/2017*, online: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54972-eng.htm>.

Universal truths about incarceration

- I. Incarceration is to be used as a last resort, only when all other options are exhausted
- II. People are sent to a correctional facility as punishment, not for punishment
- III. Inmates retain all the rights of free persons, other than those necessarily removed by the fact of confinement
- IV. Almost all inmates will be released and return to their communities, and
- V. Correctional authorities must safely and legally carry out the sentence of the court, and work to return the person to society better able to live a law-abiding life.

Howard Sapers: Segregation in Ontario – Independent Review of Ontario Corrections (2017), at p.10

Principles

LAO is using the following principles to inform the implementation of the Prison Law Strategy:

- Ensure the strategy and initiatives are responsive to local needs – both at the institution and community level
- Focus on building relationships at the local institutions, and early on – recognition of the importance of local service providers and local partnerships to enhance services for incarcerated people
- Prioritize the identification and support of initiatives that address prisoners' rights issues
- Prioritize increasing access to LAO for incarcerated people, and access to incarcerated people for LAO, through increased visibility, presence and awareness of services for clients, staff, the private bar, and other partners in service delivery
- Early assistance and intervention is important (i.e. reducing recidivism, supporting reintegration, preventing people from entering the correctional system in the first place)
- LAO's strategy will align with the Ontario Ministry of the Solicitor General and Ministry of the Attorney General's (MAG's) goals

LAO's prison law policies and programs should align with its concerns of access to justice and cost-effective service delivery, and have the following aims:

- to divert accused persons from needing LAO services
- to further support community resolutions for people accused and convicted of crimes
- to reduce recidivism
- to foster successful release plans that avoid further charges
- to address the issues that cause incarcerated people to need representation against their institution, and
- to link incarcerated people with existing resources outside of the institution

Prison Law Strategy Areas of Focus

The unmet needs of incarcerated people suggest a number of initiatives, which fall into three broad thematic categories:

1. Increasing internal knowledge and capacity
2. Improving and expanding legal aid services for incarcerated people
3. Partnerships, outreach and collaboration

Incarcerated people in Ontario - Jurisdictional breakdown

A discussion of corrections in Ontario is best preceded by a brief clarification of responsibilities. In Ontario, incarcerated people may be held in either federal, provincial or youth (open or closed) custody.

- **Federal Custody**

Where a person is sentenced to be jailed for two years or more, they serve this time in a prison run by the Correctional Service of Canada, a federal government body. There are seven of these in Ontario. Federal prisons fall under the jurisdiction of the federal *Corrections and Conditional Release Act (CCRA)*.

- **Provincial Custody**

Where a person is sentenced to less than two years, they serve this time in an institution run by Ontario's Ministry of the Solicitor General.³ These facilities also house people on remand (accused persons who are not serving a sentence for crimes committed, but are awaiting bail, trial, or sentencing). Remand time can depend on court availability and time spent in and awaiting trial, meaning a person's stay in a provincial institution can often be longer than two years. There are currently many more people on remand than there are people serving sentences. These provincial facilities also house adults being held for an immigration hearing or deportation. The Ministry of the Solicitor General also runs four treatment centres across Ontario, one of which is embedded in an existing institution.

- **Youth in Custody**

The provision of services to youth in conflict with the law is governed by the *Youth Criminal Justice Act (YCJA)* and the provincial *Child, Youth and Family Services Act (CYFSA)*.

The Ministry of Children and Youth Services is accountable for the provision of youth justice services, including open and secure custody/detention facilities.

³ Sapers, Howard, et al. *Segregation in Ontario: Independent Review of Ontario Corrections*. Toronto: Queen's Printer for Ontario, 2017, at 11. Online: https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/IROC%20Segregation%20Report%20ENGLISH%20FINAL_0.pdf

General needs of incarcerated people

i. Arrest and admission

The disruptive nature of a person's experience in corrections begins at the very moment of arrest. To fully appreciate this disruption, think about where you are and what you are doing right now. Then picture what would happen if you were handcuffed and taken into custody right this moment. Would your home be left unlocked and unattended, an easy target for break-ins? Would you be wearing sufficiently warm clothing for the next several days and nights, or would you be in sleepwear unsuitable for leaving home? Would you leave a pet behind with no arrangements in place for his care and feeding? A child with nobody left to pick her up from school? Would anyone know where you suddenly disappeared to? Many people who are arrested face these issues and more.⁴ Though courtroom dramas unanimously depict "one phone call" afforded to a person who is arrested, no such right exists in Canada. An accused has the right to call a lawyer, but nobody else.⁵ Calls to loved ones are entirely at the discretion of the police, and are frequently denied, leading to comparisons between arrest and state-sanctioned abduction.⁶ This disruption extends past arrest, and is particularly apparent when first being admitted to a correctional facility. New inmates are brought into the facility off of large transport vans, shackled together in small groups, and must kneel to be uncuffed. This is followed by a strip search, and finally a health assessment before people are brought to their unit.⁷ This process is especially jarring given that just hours earlier, an incarcerated person was living his or her day to day life like any other Ontarian. This situation creates confusion, disruption, and crisis. Rates of self-harm are markedly higher on remand than in sentenced custody.⁸

Though the bleak and rushed assembly line-like admission process clearly suggests an under-resourcing issue, small solutions such as allowing personal phone calls after arrest, facilitating temporary arrangements for personal matters, or even allowing an accused to access suitable clothing, are relatively inexpensive ways to ensure incarcerated people retain some of their humanity. Some initial public legal education and information to inform newly incarcerated people of their rights, and of local resources they can access, would go a long way to reducing initial feelings of disruption and crisis.

ii. Infrastructure and Physical Conditions

Most of Ontario's correctional facilities are over 40 years old (the age at which a facility is

4 Pelvin, Holly. *Doing uncertain time: Understanding the experiences of punishment in pre-trial custody*. (Doctoral dissertation). Toronto: Centre for Criminology and Sociological Studies, University of Toronto, 2017, at 80.

5 *Ibid*

6 *Ibid.* at 83.

7 *Ibid.* at 164.

8 *Ibid.* at 140.

considered due for replacement).⁹ Some were built in the 1800s.¹⁰ Though prison design has undergone a significant philosophical shift since the Victorian era,¹¹ some people are still housed in facilities with Dickensian layouts. These facilities are aging, in many cases quite poorly (see figure 1, a cell at Springhill Institution¹²). Incarcerated people frequently face squalid, unhygienic living conditions.¹³ In addition, increasing rates of incarceration in Ontario in the past three decades means that institutions are now pushing the limits of their population capacity.¹⁴ Facilities new and old often operate at full capacity or over capacity. This means people must triple bunk in a small cell made for two, or a second person must sleep on the floor of a single cell, next to the toilet.^{15,16} At one facility, people were made to sleep on mattresses in shower stalls.¹⁷ Overcrowding also leads to increased conflict.¹⁸ People lucky enough to get a bed sleep on a metal slab with a thin foam pad on top.¹⁹ Cells are closed not through open-air bars as dramatized in countless prison movies, but with a steel door with only a small window and food slot.²⁰

Newer jails are little better than old. In the 1990s, the province designed and constructed three “superjails,” referred to as such because of their large size and capacity.²¹ These superjails were designed with the overarching goal of simply housing people (or more cynically, “warehousing” them)²², assigning little or no importance to programs, activities, access to fresh air and daylight, or proximity to an incarcerated person’s community and support network. Though in more recent years, the importance of programming and community supports for a person’s wellbeing and reintegration and for reducing recidivism has once again been acknowledged, the physical layout of superjails makes visits, programs, and direct supervision (a supervision model in which correctional officers supervise inmates in person on the unit, vs. “closed” supervision through cameras with minimal direct interpersonal interaction) logistically prohibitive.²³

iii. Physical safety

Though correctional officers are permitted to use physical force against incarcerated people in certain circumstances (to control a “rebellious or disturbed” inmate, to protect oneself

9 *Supra* note 3, at 5 and 12.

10 *Ibid.*

11 *Ibid.* at 93.

12 Zinger, Ivan, et al. *Missed Opportunities: The Experience of Young Adults Incarcerated in Federal Penitentiaries*. Ottawa: Her Majesty the Queen in Right of Canada, 2017, at 22.

13 *Supra* note 3, at 93

14 *Ibid.* at 12.

15 *Ibid.*

16 *Supra* note 4 at 172.

17 *Supra* note 3 at 54.

18 *Ibid.* at 12.

19 *Supra* note 4 at 172.

20 *Ibid.*

21 *Ibid.* at 171 and 209.

22 *Ibid.* at 209.

23 *Ibid.* at 23, 29, 171 and 209.

or a colleague, or to “maintain order within the institution”)²⁴ the force employed must be reasonable and not excessive.²⁵ Correctional officers must report instances in which they have used physical force against an inmate.²⁶

The Ombudsman of Ontario has documented numerous cases in which excessive physical force was used against incarcerated people, and where assault of incarcerated people has been legitimized, minimized, or covered up. Though the behavior discovered by the Ombudsman is inexcusable, to portray all correctional officers as villains is reductive. A number of systemic and resourcing factors influence the day-to-day lives of guards, who in turn shape the day-to-day lives of incarcerated people. From 2009 to 2012, Ontario imposed a hiring freeze across all correctional institutions. This freeze resulted in severe understaffing, and meant that existing correctional officers were expected to pick up the slack.²⁷ The freeze was followed by the rapid hiring and training of hundreds of officers to fill the staffing gaps.²⁸ This is especially problematic in a sector that calls for extensive employee understanding of sensitivity in interacting with vulnerable people.²⁹

iv. Segregation or solitary confinement

Segregation is the most complete deprivation of liberty that is legally permissible in Canada.³⁰ In segregation, a person is housed alone in a six foot by nine foot room without windows for 22 to 24 hours a day. The room contains no books, television, or other means of entertainment or distraction, and the inmate has little or no contact with other people while in the room.³¹ This confinement has been described as “soul-crushing, cruel and counter-productive.”³² It can lead to the onset of mental illness, and can even bring about physical symptoms.³³ Independent Advisor on Corrections Reform Howard Sapers has noted that segregation is “characterized by social isolation, reduced environmental stimulation, and loss of control over almost all aspects of daily life”, each of these factors being potentially distressing on its own.³⁴ Under the Mandela Rules, the United Nations has stated that segregation should be used only in the most exceptional of cases, and as a last resort.³⁵ This is not the case in Ontario. People can be placed in segregation for a

24 *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.2, s 7.

25 *Ibid.*

26 Marin, Andre, et al. *The Code: Investigation into the Ministry of Community Safety and Correctional Services’ response to allegations of excessive use of force against inmates*. Toronto: Ombudsman of Ontario, 2013, at 15.

27 *Supra* note 3, at 90.

28 *Ibid.* at 91

29 *Ibid.* at 92

30 *Supra* note 3, at 3.

31 *Supra* note 3, at 9 and 44.

32 Editorial, “Ban long-term solitary confinement: Ontario Ombudsman Paul Dubé is right to call for a ban on the long-term solitary confinement of prison inmates.” *Toronto Star*. May 12, 2016. Online: <https://www.thestar.com/opinion/editorials/2016/05/12/ban-long-term-solitary-confinement-editorial.html>.

33 *Supra* note 3, at 9

34 Sapers, Segregation in Ontario, at 66.

35 UN General Assembly. “United Nations standard minimum rules for the treatment of prisoners (the

number of reasons: for their protection; for the safety of another inmate or the institution; at their request; for having refused a body search; or “as a sanction for having committed serious misconduct,” also known as disciplinary segregation.³⁶ The most common reason for segregation is the person’s protection or health needs, which made up 40% of segregation placements in 2016.³⁷ Disciplinary segregation made up only 3% of segregation placements.³⁸ It has been noted that segregation has become, inappropriately, a multi-purpose default to address a variety of correctional challenges:

Many of the men and women in segregation today simply should not be there. Segregation is frequently used as the default tool to manage individuals with mental health needs, those at risk of self-harm or suicide, the disabled and elderly who need mobility assistance devices, critically ill patients requiring close medical supervision, individuals who feel unsafe when left alone in general population units and transgender inmates before in-depth placement and needs assessments can be completed. Even some low-risk individuals sentenced to intermittent custody – who are typically in jail only on the weekend – are at times placed in maximum security segregation cells.³⁹

Segregation is employed in every institution in Ontario, despite the growing body of work highlighting its disproportionate harms, and growing consensus that it is not used responsibly.⁴⁰ Facilities use segregation as a pressure valve where the facility is overcrowded or understaffed,⁴¹ and track number and duration of segregation placements with sporadic accuracy.⁴²

Within federal institutions reductions have been observed in both the number of admissions to segregation and the average length of stay in segregation, although concerns remain in a number of areas including in relation to conditions of confinement, the use of segregation-like units to manage incarcerated people who have behavioural, emotional or cognitive issues, and with respect to the fact that Indigenous people are still more likely to be placed in segregation and to stay there longer than any other group.⁴³

Mandela Rules),” A/C.3/70/L.3, 2015.

36 *Supra* note 3, at 25, 28.

37 *Ibid.* at 39 and 66.

38 *Ibid.* at 39.

39 Sapers, *Segregation in Ontario*, at 66.

40 *Ibid.* at 9

41 *Ibid.* at 5 and 66.

42 *Ibid.* at 88.

43 Office of the Correctional Investigator of Canada, *Annual Report 2016-2017*, online: <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf>, at pages 40-42.

LAO input into corrections in Ontario

LAO's Policy and Strategic Research Department was grateful to have the opportunity to attend the working groups on corrections in Ontario over the past several years. The points made by LAO have included the need for:

- Assistance upon release – LAO flagged the need for clothing, food, medication, and belongings when being released from court [in addition to release from a facility].
- Independent oversight and mandatory reporting to create accountability.
- Food – some people are given the “nutrigrain diet” wherein they receive one nutrigrain bar in the early morning prior to transport to court, and no other food all day.

For further details on LAO's input regarding corrections, see LAO's submission to the former Ministry of Community Safety and Correctional Services, which is available at: https://www.legalaid.on.ca/wp-content/uploads/2017-07-31_LAO-Feedback-on-Corrections-Reform-EN.pdf.

v. Health and health care

At both the federal and provincial levels of corrections, access to health care and health-related issues top the list of concerns. Health issues include wait times, lack of disability infrastructure, access to medical diets and appropriate pain medication, and lack of palliative care. Gaps in the provincial system include oversight and standards for provision of health care, treatment for substance use disorders (which about 80% of the population have), and prevention and treatment for blood-borne infections like Hepatitis C and HIV.

Incarcerated people are more likely than the general population to have conditions requiring medical treatment. They are from the outset a compromised population, predisposed to poor health outcomes by poverty. Mortality rates are higher in custody than out,⁴⁴ with incarcerated people twice as likely to die as the general population.⁴⁵ Communicable diseases are more prevalent among incarcerated people, with tuberculosis more than five times as common, Hepatitis C 35 times as common, and HIV 7-10 times as common as in the general population.^{46,47} Chronic diseases are also disproportionately common among

44 Kouyoumdjian, Fiona, et al., “Health Status of Prisoners in Canada,” *Canadian Family Physician*, Vol 62: March 2016, at 217.

45 Sapers, Howard. *Corrections in Ontario: Directions for Reform. 2017*: Queen's Printer for Ontario, Toronto [Directions for Reform], at 200.

46 *Supra* note 48, at 217.

47 John Howard Society of Ontario, *Fractured Care: Public Health Opportunities in Ontario's*

prisoners.⁴⁸ People who have been incarcerated have a shortened life expectancy, by over four years for men and over ten years for women.⁴⁹

Access to care and equivalency of care

Incarcerated people have inadequate access to health care, and the health care afforded to them is of a lower quality than the rest of the population.^{50,51} Jail is an unhealthy physical environment due to overcrowding, violence and the threat or fear of violence, and infrastructure problems at many institutions (e.g. mould, lack of exposure to natural light, and increased injuries as well as diseases like staph infections⁵²). In many facilities, lack of access to a proper diet causes or worsens health problems. Infirmaries are often understaffed, leading to ill or injured people being kept in segregation cells as an alternative.⁵³ Segregation is also often used for people who act out as a result of an unmet treatment need.

There are also delays in accessing medical care: it can take weeks for an ill person to be able to see a doctor, and medical visits are sometimes done entirely by video, and can result in a pro forma prescription of Tylenol or Advil for a plethora of conditions.

Generally, there is a lack of access to treatments and medications in correctional institutions that are available in the community. Denial of pain medications is particularly rampant in the provincial system, due to security concerns. For example, Tylenol is now delisted, meaning incarcerated people have to purchase it from the canteen at exorbitant prices (equivalent to one week of work). This is also the case for eyedrops. Further, there is a lack of understanding of the importance of, and entitlement to, alternative or substitution therapies, meaning incarcerated people are often denied these treatments.

There is a lack of access to prevention and harm reduction measures that are available in the community, such as supervised injection or needle exchanges, and opioid substitution therapies; methadone treatment is unavailable at many provincial institutions unless a person was already enrolled in a methadone program in the community.

Consistency is also a problem. Each institution may differ in the level of healthcare that is available. While this is often a resourcing issue, it can also be a matter of institutional culture: provision of adequate health care is considered an administrative inconvenience

Correctional Institutions. Toronto: John Howard Society of Ontario, 2016, at 8.

48 Green, Samantha, et al. "Access to primary care in adults in a provincial correctional facility in Ontario." *BMC Research Notes* 9:131, 2016, at 1. Online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4770553/>

49 *Supra* note 49, at 200.

50 *Supra* note 51, at 11.

51 *Supra* note 49, at 192.

52 *Supra* note 51, at 10.

53 *Ibid.* at 12.

at some institutions; people requesting health care are sometimes seen as lying or simply trying to get access to drugs.

Continuity of care

Entering and leaving a correctional institution is disruptive to a person's health, as continuity of care is interrupted.^{54,55} Incarcerated people are often denied their required daily medications until assessed by a facility physician, which can often take several days or weeks. This can lead to serious physical and mental health problems.⁵⁶ The division of care between the Ministry of Health (MOH) on “the outside” and Ministry of the Solicitor General on “the inside” creates scenarios where the institutional doctor may not support the recommendations of a community specialist (or vice versa upon release). Health care staff within the institutions have difficulty accessing patient records, as obtaining the patient's consent is difficult; and as arrest and admission is a profoundly disruptive process, a newly incarcerated person may not have immediate recall of salient health care details (e.g. doctor's name, names of various medications). Coming out of a correctional institution can be as disastrous for a person's health: they may not have a health card, connection to a family physician, or an ongoing health plan.

Women are disproportionately affected by the lack of access to adequate health care: they have greater need for access to health care services, while at the same time their complaints are often downplayed and not taken seriously. There are no gender-specific health care resources for women in the provincial correctional system. Similarly, older people suffer from chronic health conditions that institutions are not equipped to manage.

Mental health and addictions

Mental health and addictions issues also affect the incarcerated population at markedly higher rates than the rest of Canada. Most incarcerated people have at least one diagnosable mental health condition.⁵⁷ Suicide rates are between four and seven times higher than in the general Canadian population.⁵⁸ There is a high prevalence of substance use disorders amongst the population in provincial correctional facilities, affecting perhaps as much as 80% of incarcerated people. Incarcerated people with a mental health condition, or at risk of self-harm or suicide, are frequently mismanaged, and are more likely to end up in segregation, and to stay segregated longer.⁵⁹ Correctional institutions often rely on segregation as an alternative to adequate mental health supports.⁶⁰ Segregation, in turn, has serious harmful mental health effects on the segregated person, especially when

54 *Supra* note 52, at 4.

55 *Supra* note 51, at 13 and 15.

56 *Ibid.* at 12.

57 *Supra* note 48, at 217.

58 *Ibid.*

59 Sapers, Howard, et al. *Segregation in Ontario: Independent Review of Ontario Corrections*. Toronto: Queen's Printer for Ontario, 2017, at 3 and 65.

60 *Ibid.* at 3 and 66

they have a mental health condition.⁶¹

The tragic case of Ashley Smith illustrated how “the correctional system and federal/provincial health care can collectively fail to provide an identified mentally ill, high risk, high needs inmate with the appropriate care, treatment and support.”⁶² Even where a mental health issue is recognized and understood, an infirmary bed is often the only support available for an incarcerated person in need of mental health supports. Individuals are often transferred to a community medical facility for several weeks for mental health assessments, and then back to the institution once the assessment is complete. This is highly disruptive for continuity of care. In addition to strengthened resources and understanding of mental health needs of incarcerated people, there should also be increased outpatient and other resources to ensure continuity of treatment and care, and avoid harmful disruptions in treatment when entering and leaving custody, as well as more communication and collaboration between institutions and existing health resources in the community.

These problems exist despite the government’s responsibility spelled out in the law “to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services”⁶³ for people in correctional facilities to the same extent as anyone in the community.⁶⁴

vi. Visits and support networks

Staff can sometimes see facilitating visits (taking people from cell blocks to visiting areas and back, supervising visits, etc.) as disproportionately burdensome.⁶⁵ Studies show the contrary: visits are crucial for an incarcerated person’s well-being, rehabilitation, and successful reintegration into society.⁶⁶ Despite this, visits with family members and other loved ones are difficult to access, and rife with inadequacies. Most institutions impose a maximum visit length of 20 minutes, which is the minimum length prescribed by legislation, and a maximum of two visits per week for people on remand and one visit for sentenced people, again the minimum prescribed by law.⁶⁷ In provincial facilities, most visits are “closed,” meaning the incarcerated person and the visitor are separated by a glass panel, and unable to have any physical contact;⁶⁸ open visits are possible but rare.⁶⁹ In federal facilities, availability of open visits is dictated by a person’s security classification. Ontario’s newest facilities not only preclude physical contact, but even prevent someone from seeing

61 *Ibid* at 71.

62 “Verdict of Coroner’s Jury.” *Coroner’s Inquest Touching the Death of Ashley Smith*. December 19, 2013, at 1. Online: <http://www.csc-scc.gc.ca/publications/005007-9009-eng.shtml>

63 *Canada Health Act*, R.S.C., 1985, c. C-6, s. 3.

64 *Supra* note 51, at 5.

65 *Supra* note 49, at 46

66 *Ibid.* at 43.

67 *Ibid.* at 47

68 *Ibid.* at 46.

69 *Ibid.* at 50.

their visitor in person. All visitors stay in a large room near the facility's entrance and communicate with the prisoner via a Skype-style video call with the inmate remaining in the cell block, and accessing a similar video terminal.⁷⁰

Most facilities permit a maximum of two visitors at a time, meaning a partner visiting an incarcerated person with their shared children is only able to bring one child.⁷¹ This is difficult to coordinate, especially where the partner is traveling a long distance for the visit, as is increasingly common in this era of remote superjails. Further, many facilities only allow visits from people on “approved visitors” lists. An incarcerated person must compile a list of at most six names, provide these people's addresses and dates of birth, and have the list approved by institution staff.⁷² In some facilities, the list may only be changed once a month. This effectively means an incarcerated person can only see six people in a month, besides cellmates and staff. It can also be an immense barrier to regular visits (how likely are you to know your lawyer's birthday?) and prohibitive for drop-in visits or urgent contact with lawyers and loved ones.

vii. Post-incarceration

The harms that an incarcerated person experiences do not end upon release. Studies show time in prison worsens barriers to gainful employment, and that re-entry into society after a sentence is difficult.⁷³ Time on the inside also has harmful outcomes for the person's family.⁷⁴

Reconciliation, rehabilitation, reintegration and restoration are not nostalgic nods to the past or feel-good rhetoric. These words describe prime outcomes of a fair and functioning system of justice, of which corrections is a significant component.

Howard Sapers: *Segregation in Ontario – Independent Review of Ontario Corrections* (2017), at p.1

70 *Ibid.*

71 *Ibid.* at 47.

72 *Ibid.* at 46.

73 *Supra* note 4 at 159.

74 *Ibid.*

The role of Legal Aid Ontario

Incarcerated people are known to be vulnerable and to face unique challenges in accessing legal assistance. Their daily activities are regulated, their privacy is limited, and they may not have reliable access to legal information and resources. As a group, they are more likely than the general population to have experienced sexual or physical abuse, to have attained lower levels of education and literacy, to be experiencing mental illness or addictions, and to be in poor physical health.

LAO has a statutory mandate to promote access to justice for low-income Ontarians and to identify, assess and recognize the diverse legal needs of low-income individuals and disadvantaged communities across the province.

Prison law legal aid services are within the scope of both criminal law services set out in s. 13(1) of the *Legal Aid Services Act*, and civil law services provided for in s.13(2) of the *Legal Aid Services Act*.⁷⁵ LAO's criminal, family, and immigration and refugee law services are, of course, all available to eligible applicants who apply for these services from within the confines of the correctional system. Although prison law services make up a relatively small proportion of legal aid services overall, they are nonetheless important to LAO in meeting its mandate to promote access to justice to the most disadvantaged. As former Supreme Court of Canada Justice, the Honourable Louise Arbour, has stated:

A fair criminal process produces reliable convictions and, as a result, the management of a custodial sentence does not have to be plagued with uncertainties about the legitimacy of the enterprise. However, all authority must still come from the law. A guilty verdict followed by a custodial sentence is not a grant of authority for the State to disregard the very values that the law, particularly criminal law, seeks to uphold and to vindicate, such as honesty, respect for the physical safety of others, respect for privacy and for human dignity. The administration of criminal justice does not end with the verdict and the imposition of a sentence. Corrections officials are held to the same standards of integrity and decency as their partners in the administration of criminal law.⁷⁶

The Independent Advisor on Corrections Reform has stated that corrections “is all about human rights”⁷⁷ and that, accordingly:

...respect for individual dignity and human rights must flow through all correctional

⁷⁵ Section 13(1) of the *Legal Aid Services Act*, S.O. 1998, Chapter 26 requires LAO to provide services “in the areas of criminal law, family law, clinic law and mental health law”. Section 13(2) provides, however, that LAO may provide legal aid services “in areas of civil law not referred to in subsection (1)”.

⁷⁶ Solicitor General Canada, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston (Canada)*, (1996), the Honourable Louise Arbour, Commissioner, online: <http://www.caefs.ca/wp-content/uploads/2013/05/Arbour_Report.pdf> [Arbour Report], at page 7.

⁷⁷ Sapers, *Directions for Reform*, at page 1.

laws, policies and actions. Imprisonment of course limits liberty and places certain restrictions on freedom of association, expression and assembly, but it does not mean total deprivation or absolute forfeiture of rights. Correctional authorities must be held to account in the daily exercise of care and control of inmates to ensure that basic rights and liberties such as the right to safety and security of the person, and the right to be treated humanely and be free from torture, degrading, or inhuman punishment are preserved behind prison walls. Correctional practices, like the democracies behind them, require an ongoing commitment to both accountability and transparency.⁷⁸

78 Sapers, *Directions for Reform*, at page 17.

The legal needs of incarcerated people

Prison law

Correctional legislation and policies, and the nature and circumstances of the prison environment itself, collectively give rise to the area of law known generally as “prison law”. Prison law is sometimes thought of as a subset of criminal law, but in fact bears a closer relationship to administrative law.

Prison law may be defined, narrowly, as law dealing with the application of correctional statutes, regulations, and policies, and the management of incarcerated persons under these schemes, including in relation to:

- Eligibility for parole
- Statutory release
- Internal disciplinary processes (known as “disciplinary offences” in federal institutions and “misconducts” in provincial institutions) for those alleged to have engaged in prohibited activity or to have disobeyed orders or rules of conduct)
- Use of segregation (solitary confinement)
- Involuntary transfers between institutions
- Security classifications
- Internal complaint processes and grievances in relation to matters including living conditions and access to treatment

General legal needs

There exists a common misconception that when someone enters a correctional institution, their legal needs remain on the outside, and are replaced by a new set of prison legal needs, along the lines of those set out above, or pertaining to their unresolved criminal charges. However, a person does not check their needs at the prison door with their wallets and cell phones. Imprisonment exacerbates rather than supplants the existing legal issues of low-income people. Their pre-existing hardships continue, and are supplemented by issues specific to custody. Like any other person, an incarcerated person may experience legal needs in the areas of:

- Family law
- Child protection

- Criminal law
- Immigration law
- Mental health
- Human rights
- Wills and estates
- Civil law

As discussed throughout this paper, incarcerated populations are disproportionately made up of people from already marginalized backgrounds and disadvantaged circumstances. As such, their likelihood of having involvement in some form of conflict necessitating legal assistance (i.e. relationship breakdown, involvement with Children’s Aid Societies, landlord-tenant issues, social benefits disputes, etc.) is in fact likely higher than that of the general population of Ontario. Further, they are more likely to be impecunious and lack a readily available support network.

Vulnerable client groups

Incarcerated people with mental illnesses and addictions

Persons experiencing mental illness and addictions are disproportionately criminalized and incarcerated.

The Office of the Correctional Investigator indicates that 39% of the federally incarcerated population has been diagnosed with a mental illness, and that mental health problems are up to three times more common among people in correctional institutions than among the general population.

Incarcerated women, a growing proportion of whom are Indigenous, are even more likely than men to be facing mental health issues; it has been found that over half of all women in federal prisons have an identified mental health need.⁷⁹

Incarcerated people from racialized communities

Racialized and, in particular, Black or African-Canadian Ontarians, are severely overrepresented in the correctional system: Black Ontarians represent 4% of the provincial population, but 18% of Ontario’s incarcerated population.⁸⁰ This figure is the culmination

⁷⁹ *Annual Report of the Office of the Correctional Investigator 2015-2016*, online: <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20152016-eng.pdf>> [2015-2016 Report of the Office of the Correctional Investigator], at page 8.

⁸⁰ Akwasi Owusu-Bempah and Scot Wortley, “Race, Crime, and Criminal Justice in Canada,” *The*

of 20 years of increasing overrepresentation. Black Ontarians are more likely than other ethnicities to be stopped by police; this means that a Black person who commits a crime is more likely to be caught than a white person who commits a crime, simply because he or she is Black – in fact, 65% of Black drug dealers report being stopped by the police and arrested at least once, vs. only 35% of white drug dealers, despite empirical evidence that more North American drug dealers are white.⁸¹ More generally, increased police profiling also alienates the Black community from the institutions of mainstream society, perhaps steering some Black Ontarians into a life of illegality. Studies also show that Black Ontarians are more likely than other ethnicities to be shot or killed by police.⁸²

Black people are also less likely to be released by police at the scene of a crime than other ethnicities. Police put more effort into building a case against bail for Black accused than other accused, and Black accused are more likely to be placed in pretrial custody rather than released.⁸³ An Ontario study shows 31% of Black accused are denied bail pending trial for drug charges, vs. only 10% of white accused for similar charges.⁸⁴ A Toronto study shows Black accused are denied bail in 36% of overall cases vs. 23% of accused from other racial backgrounds. This in itself contributes to overrepresentation of Black Ontarians in remand custody, but also contributes to overrepresentation in *sentenced* custody: people who get bail are more likely to have their charges withdrawn than people who are denied bail. They are also more likely to plead guilty; in fact, the prosecution uses pretrial detention to encourage guilty pleas. Black accused are also more likely to receive a custodial sentence than white accused, especially where the charges relate to drug offences, and where the Black accused is young, male, unemployed, or has a low income.⁸⁵

When granted bail, Black accused are more likely to be given onerous bail conditions than white accused. This includes curfews, area restrictions, and mandatory supervision.⁸⁶ This means their bail is more difficult to comply with, and they are more likely to breach conditions. Coupled with increased police stops, these conditions effectively set Black accused up to fail.

When incarcerated, Black people are overrepresented among those charged with misconducts; disciplinary court outcomes can result in a more difficult prison stay (including segregation and other punitive measures), and a disciplinary record is a factor considered in a parole application – meaning Black people are less likely to be paroled, or to be placed in temporary release programs.⁸⁷

The prison system itself is more likely to meet the rehabilitation programming needs of

Oxford Handbook of Ethnicity, Crime, and Immigration. Eds. Sandra Bucerius and Michael Tonry. at p. 8.

81 *Ibid.* at page 14.

82 *Ibid.* at page 14.

83 *Ibid.* at page 15.

84 *Ibid.* at page 15.

85 *Ibid.* at 16.

86 *Ibid.* at 16.

87 *Ibid.* at 16.

white prisoners; Black prisoners' cultural and rehabilitation needs are not likely to be met:⁸⁸ culturally suitable food, programming, and even grooming products are seen as privileges for Black people, whereas resources that fit a white person's needs tend to be the default. Racism is reported as rampant in correctional institutions, with racist comments a frequent occurrence, and complaints resulting in reprisals. These factors obviously result in a more difficult time inside, demeaning a racialized person and diminishing his or her self-worth; in turn, an ineffectual correctional system is less able to create conditions for return to a law-abiding life, meaning Black releasees are at higher risk of recidivism.

The Office of the Correctional Investigator of Canada has also found that Black people are increasingly over-represented relative to their proportion within the Canadian population, are more likely to be placed in maximum security institutions despite having a lower risk to re-offend, are released later in their sentence, and are less likely to be granted temporary absences.

Many incarcerated Black people are youth or young adults. Research points to the need for early intervention to interrupt their path towards deeper involvement with the justice system before it risks becoming irreversible. Practically speaking, all incarcerated people require crisis intervention accessible at their fingertips, be it a youth worker, social worker, or other support. These supports need to be culturally specific (i.e. the factors that resonate with Somali youth, Caribbean youth, etc., need to be identified).

Stakeholders consulted by the PLS emphasize the importance of partnering with organizations who have a longstanding presence in correctional institutions and strong relationships with the Black community both inside and outside of institutions. Not only will this allow LAO to leverage existing services, but these partnerships will also support LAO's credibility as an organization that can be trusted and worked with (whereas existing discourse may create a perception of LAO as another facet of a system which systematically oppresses Black and racialized people).

Importantly, reintegration needs to be addressed. Black and racialized people are set up to fail upon release: they emerge from a correctional institution unemployable, long removed from the education system, and stigmatized by their communities. The lure of a return to criminality is strong. Legal education to inform racialized people of their rights upon release, and empower and resource racialized releasees to choose a life as law-abiding citizens are essential. Understanding about how the system works should also be fostered among communities on the outside, to raise awareness and minimize stigma of returning former prisoners. This can be done with some basic accessible legal information, printed or online.

Increased awareness and humanizing the correctional experience would go a long way to remedying the offender and ex-offender stigma that can exist in some racialized communities. Stakeholders recommended sessions where advocates, formerly

⁸⁸ *Ibid.* at 17.

incarcerated people, and people in the community are brought together to discuss these very issues as a good first step.

Ultimately, broader advocacy for correctional reform is required, grounded in a social justice and anti-oppression framework.

Finally, stakeholders emphasized the importance of including racialized communities in the discussion about correctional solutions: they have been involved in this system through their lived experience, and therefore think about this topic often. People from racialized communities have much to share regarding correctional solutions, and should be empowered to speak. The saying “nothing about us without us” is helpful here.

Indigenous people

The over-representation of Indigenous people in the justice and correctional systems has been known to be a problem for years and is only increasing with time. Between 2007 and 2016, while the overall federal prison population increased by less than 5%, the Indigenous prison population increased by 39%.⁸⁹ The Truth and Reconciliation Commission of Canada’s Calls to Action, which LAO and the province support, specifically call for a response to this over-representation.

The Office of the Correctional Investigator’s special report, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*⁹⁰, released in 2013, spoke to the “severe and chronic state of Aboriginal over-representation in federal penitentiaries”⁹¹ and underscored the fact that convicted Indigenous people spend disproportionately more of their sentence behind bars, are over-represented in maximum security institutions, and are more likely to return to prison on revocation of parole.

Within corrections, Aboriginal offenders tend to be younger; to be more likely to have served previous youth and/or adult sentences; to be incarcerated more often for a violent offence; to have higher risk ratings; to have higher need ratings; to be more inclined to have gang affiliations; and to have more health problems, including Fetal Alcohol Spectrum Disorder (FASD) and mental health issues and addiction.

While it is recognized that CSC does not have control over the number of offenders entering the federal system, it can have an impact on the number of offenders returning to a penitentiary after their release. The enhancement of Aboriginal cultural and spiritual opportunities for offenders, particularly if offered in an Aboriginal

89 *Annual Report of the Office of the Correctional Investigator 2016-2017*, online: < <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf> >, at page 47.

90 Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Oct 2012, released March 2013), online: Office of the Correctional Investigator: < <http://www.oci-bec.gc.ca/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf> > [Spirit Matters]

91 *Spirit Matters*, at page 11.

environment, is acknowledged as a positive approach to the successful reintegration of Aboriginal offenders.⁹²

The 2015 report of the Truth and Reconciliation Commission recognized that the criminal convictions of Indigenous offenders have frequently resulted from an interplay of many factors, including the intergenerational legacy of residential schools. The report called on the federal government to eliminate the overrepresentation of Indigenous people in custody over the next decade.

Indigenous people make up 13% of persons in provincial custody, although they represent only approximately 2% of Ontario's population.⁹³ The percentage is much higher in some areas of the province. Following a tour of the provincial jail in Kenora in February 2017, the Chief Commissioner of the Ontario Human Rights Commission learned that over 90% of people incarcerated at the facility identify as First Nations. For many, English is not their first language. Many come from remote communities, are now dislocated from their families, and may never have left their home community prior to their arrest. All of the people currently housed at the jail were confirmed to have "either mental health disabilities, intellectual disabilities (including and especially fetal alcohol spectrum disorder (FASD)) and/or addiction-related issues".⁹⁴

Incarcerated Women

The majority of women in federal custody are known to have experienced previous violence and abuse. Their "crimes" are for the most part acts of survival. Many are mothers, and stand to lose their children as a result of their incarceration if they have not already done so. Indigenous women are highly overrepresented in the incarcerated population. The incidence of mental illness, which is elevated across all groups of incarcerated people, is highest among incarcerated women.

Living within a system designed to contain men, women in prison are a vulnerable group within a vulnerable group. Over twenty years ago, the Honourable Louise Arbour, as Commissioner leading an inquiry into events at the now-closed Prison for Women in Kingston, wrote that, while incarcerated women offenders do have things in common with their male counterparts, "[t]heir crimes are different, their criminogenic factors are different, and their correctional needs for programs and services are different".⁹⁵ Not only do women commit fewer and less violent crimes than men and pose a lower risk of re-offending, she

92 *Ibid.* at page 13.

93 Sapers, *Directions for Reform*, at page 168.

94 Ontario Human Rights Commission, Letter to the Hon. Marie France Lalonde, Minister of Community Safety and Correctional Services, *Re: CSCS Corrections Reform - Findings from Tour of Kenora Jail, February 27, 2017*, online: <<http://www.ohrc.on.ca/en/re-cscs-corrections-reform-findings-tour-kenora-jail>>; see also CBC News Thunder Bay, "Every inmate at Kenora, Ont., jail has addictions, mental health issues: human rights commissioner" (posted February 21, 2017), online: <<http://www.cbc.ca/news/canada/thunder-bay/kenora-jail-1.3988460>>.

95 Arbour Report, at page 123.

wrote, “women offenders as a group have a unique history of physical and sexual abuse” and, in addition, “it seems that women experience incarceration differently than men. Self-abuse – slashing, is its most common form – is the most dramatic example of that difference. It is indicative of different needs and mental health issues”.⁹⁶ Compounding these difficulties, she noted, incarcerated women are more likely to have primary childcare responsibilities – often as single mothers – and, because there fewer options for the imprisonment of women, they suffer greater family dislocation than men.⁹⁷

Nearly two decades later, the Office of the Correctional Investigator confirmed that, in this regard at least, little has changed:

- More than 70% of federally sentenced women are mothers to children under the age of 18;
- More than half of these women are serving a sentence of 2-4 years and most are classified as medium security;
- 65% self-report being sexually abused and 86% physically abused;
- Compared to men, federally sentenced women are twice as likely to have a serious mental health diagnosis, twice as likely to be serving a sentence for drug-related offences, more likely to be supporting dependents on the outside, and more likely to have motivation for correctional intervention and potential for reintegration.⁹⁸

In 2015-2016, 16% of adults admitted to provincial and territorial correctional services in Canada were women and, at the federal level, women accounted for 7% of admissions to custody and 8% of admissions to sentenced custody in 2015-2016.⁹⁹ Although these percentages are not large, they have been increasing. Over the past decade, the number of women in federal penitentiaries has grown by 35% (from 502 to 680 women).¹⁰⁰

At the same time, the profile of incarcerated women has been changing. Over the past decade, the number of Indigenous women in federal prisons has increased by 57%, and Indigenous women now account for 36% of all federally sentenced women; their over-representation in prisons now exceeds that of Indigenous males. The Office of the Correctional Investigator has found that these Indigenous women are also over-represented in maximum security and segregation placements, and under-represented in minimum security. In past years there has also been an increase in the number of Black and Asian

96 Arbour Report, at page 109.

97 Arbour Report, at page 108.

98 *Annual Report of the Office of the Correctional Investigator 2014-2015*, online: <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20142015-eng.pdf>>, at page 50.

99 *Adult correctional statistics in Canada, 2015/2016*.

100 *Annual Report of the Office of the Correctional Investigator 2015-2016*, online: <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20152016-eng.pdf>> [2015-2016 Report of the Office of the Correctional Investigator], at page 62.

women in federal prisons.¹⁰¹

Incarcerated women are known to be statistically more likely than their male counterparts to have mental health issues and to self-harm behind bars. The Office of the Correctional Investigator found in 2015-2016 that self-harm, the use of administrative segregation and the use of psychotropic medications continue to be elevated in women's corrections.¹⁰²

Incarcerated transgender women potentially face greater risks in the correctional system. The issue of pre-operative transgender women being housed in men's institutions, where they may be placed at risk of sexual harassment or assault, has been raised provincially and federally. Provincial correctional policies have been revised to require people to be housed according to their self-identified gender.¹⁰³

Consultations underscored the fact that women experience incarceration differently than men. Women are the primary caregivers of children, and consequently are at greater risk than men are of losing their children to the state due to being incarcerated. As of 2018, tens of thousands of children in Canada are separated from parents who are incarcerated.¹⁰⁴ Despite this, courts seldom consider the impact of a custodial sentence or a bail denial on the child of an accused or convicted woman, and rarely weigh the gravity of the consequence to the family unit against the often minor nature of the charge against the woman.¹⁰⁵ The circumstances that bring women to prison frequently involve or grow out of an experience of violence or abuse, which means that many criminalized women are themselves victims. Trauma and mental health issues often need to be taken into account. Accordingly, many women develop trust issues which act as a further barrier to accessing justice and exercising their rights. When women are placed in segregation, it is frequently directly related to mental health issues. When a woman is also Indigenous, the risk of her being placed in maximum security and of experiencing segregation rise steeply. Women are placed according to a security classification scheme that was designed for men, and a woman's security classification affects her access to programs and services, which in turn has an impact on her re-integration.

In consultations LAO also heard that women need access to education, which plays an important role as a source of empowerment, and to advice. Too often women do not know their rights, or where to begin when they need to challenge something. The correctional experience normalizes many practices and behaviors that should be challenged. Practices such as strip-searching have an acutely disproportionate impact on women. Women need access to advice on matters as diverse as family law, their *Charter* rights, and how to deal

101 2015-2016 Report of the Office of the Correctional Investigator, at page 62.

102 2015-2016 Report of the Office of the Correctional Investigator, at page 62

103 See the 2015-2016 Report of the Office of the Correctional Investigator, at page 16, and the 2014-2015 Annual Report of the Ontario Ombudsman at page 38.

104 Sophie de Saussure, "Parents in Prison: A Public Policy Blind Spot," *Policy Options*. Institute for Research on Public Policy, May 2018. Online: <http://policyoptions.irpp.org/magazines/may-2018/parents-in-prison-a-public-policy-blind-spot/>

105 *Ibid.*

with prison law processes and issues such as disciplinary proceedings or an involuntary transfer. It was noted that the knowledge of most criminal lawyers “ends at the prison gate”, and that lawyers also need access to education on the legal rights and needs of incarcerated women.

LAO heard that increasing access to duty counsel on-site in correctional institutions would be an important way to expand access to justice for women, and that the institutional duty counsel program in provincial facilities should therefore be expanded, if possible. Advocates from the Canadian Association of Elizabeth Fry Societies have access to and regularly visit federal institutions, but not provincial jails (although regional Elizabeth Fry Society advocates are building capacity in this area).

Older incarcerated people

There is a “grey wave” in corrections: the population of older and aging people in prison has grown rapidly, increasing by nearly a third over the past five years. One in four people incarcerated in federal institutions today is age 50 or older, and this trend will increase over the next decade. Among older prisoners there is a prevalence of chronic health conditions including arthritis, diabetes, chronic pain, mobility issues, and cancer. Incarceration adds 10 years to chronological age. Incarcerated people who die of “natural causes” die prematurely (average age 60-62). Older prisoners may be subject to bullying from younger prisoners, and prison programming (e.g. job search skills) is not age-appropriate. For this group of people, there is a need for alternatives to incarceration, access to nursing care in institutions, patient advocacy, lifespan programming, and a preventive response to premature mortality.

Youth and young adults

There are significant differences, and also many similarities, between youth and adult custody.

A drop in the number of young people in sentenced closed custody (many more youth are assigned to open custody) means that, in contrast to many adult institutions, overcrowding is not a common problem in youth closed custody facilities; indeed, some facilities are reportedly half empty.

Three quarters of the youth in closed custody are in pre-trial detention, and this fact raises the same kinds of issues raised by the fact that two-thirds of adults in provincial custody are on remand. Young persons involved with the child welfare system are less likely to be released on bail, and may spend longer in detention than they would otherwise.

As is the case with adults in remand, youth in pre-trial detention have little or no access to programs. The principal form of programming available to youth is school programming,

meaning that there is little on offer for those who are not in school.

The isolated geographical location of many closed custody youth facilities means that young people are held in places that are far distant from their families and other supports. As some facilities become underpopulated, those detained there may be moved to other, even more remote, locations in order to consolidate shrinking populations. This remoteness does not assist with reintegration; indeed, LAO heard that little emphasis is placed on reintegration supports for youth. Young people who are being moved around tend to lose connections to services.

As with the adult system, over-representation of vulnerable client groups is a problem. Most young people in the system are vulnerable in at least one respect and some are multiply disadvantaged. It is common for them to come from unstable home environments, to have had involvement with the child welfare system, and to have learning disabilities or mental health issues. Young people who are LGBTQ are more likely than their straight counterparts to end up as kids living on the street, where they risk being drawn into the criminal justice system. LAO also heard that in the North, most youth in closed custody are Indigenous while in Toronto, the majority are Black.

Regarding unmet legal needs, LAO heard in consultations that, as with adults, youth lack access to basic legal advice behind bars. LAO heard that the top areas of need for legal advice are family and child welfare law. For example, a young person may wish to reside with another person such as their grandmother on release, or may desire access to siblings. Few lawyers are said to visit youth facilities, and those who do are only retained to provide assistance in relation to a youth's criminal charges. Many youth cannot even recall the name of their lawyer.

Another area of legal need identified relates to assistance with the provincial institutional complaint process, which is not formalized for youth. Complaints are made in writing, which may present a barrier for young persons in custody with lower levels of reading and writing skills.

Stakeholders consulted by LAO emphasized the importance of prevention work and of understanding the intersections that exist between the child welfare and youth criminal justice systems. Involvement in the child welfare system has been described as a “pipeline” to criminal involvement, as is involvement in truancy courts. Suspensions and expulsions under the *Education Act* often act as a gateway to the criminal justice system. Knowledge of these intersections and the ability to provide legal support would be very important to preventing young people from journeying through this pipeline, but few lawyers outside of the immediate Toronto area are trained to be competent in these intersections and legal aid does not offer certificate coverage for *Education Act* matters.

Young adults also have unique needs, and the adult system is poorly equipped to meet

those needs. The more vulnerable the young adult is, the more inappropriate the adult correctional system is for them. Young adults aged 18-21 serving time in federal custody are known to be over-represented in admissions to segregation, making up 6% of persons admitted to segregation while comprising only 2.7% of the federally incarcerated population.¹⁰⁶ Correctional programming is not tailored to meet the learning needs of young adults; 19-year olds are offered the same programs as those provided to 45-year olds.¹⁰⁷

Individuals 18-21 years of age are considered to be “emerging adults”, in terms of overall development and maturity. They have distinct needs and limited life experiences and it is only because they have reached the age of majority that they are serving a federal sentence in an **adult** institution. This timeframe is a critical period in their life as they transition to adulthood and it can be an important point in which to positively intervene to potentially stop the cycle of criminal offending and movement into and out of the criminal justice system. If the cycle can be disrupted early, these young people have an opportunity to become law-abiding citizens, thereby substantially reducing the social costs associated with offending.¹⁰⁸

The number of young adults aged 18-21 in federal custody has declined in recent years, in a manner corresponding to the decline in the police-reported crime rate for both youth and young adults, but despite the overall decrease in numbers, certain vulnerable populations remain over-represented. The Office of the Correctional Investigator reports that, in 2015-16, nearly 2 in 5 people aged 18-21 (38.4%) in federal custody across Canada were Indigenous, while 12% of the young adults in custody were Black.¹⁰⁹

In consultations LAO heard that many young adults who are between 18-21 years old and who have been in the youth system should not be moved to the adult system; there are sentence review provisions in the *Youth Criminal Justice Act* that could be employed to prevent a transfer from happening, but few lawyers are involved in doing this work.

Immigration and refugee detention

Persons with less than citizenship status are a vulnerable population. People who are “deportable” are not subject to human rights protections. Those who are permanent residents may have spent many years in Canada but stand to lose their status if sentenced to more than six months for a criminal offence. Many people complete their sentence, but are then transferred indefinitely to immigration detention. The loss of status can be avoided but requires advocacy and is not something that can be done without the assistance of a

¹⁰⁶ Office of the Correctional Investigator, *Missed Opportunities: The Experience of Young Adults Incarcerated in Federal Penitentiaries* - Final Report August 31, 2017, online: <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20170831-eng.pdf>>, [Missed Opportunities] at page 25.

¹⁰⁷ *Missed Opportunities* at page 39.

¹⁰⁸ Office of the Correctional Investigator of Canada, *Missed Opportunities: The Experience of Young Adults Incarcerated in Federal Penitentiaries* (August 2017), at page 6.

¹⁰⁹ *Missed Opportunities* at page 14.

lawyer.

Canada Border Services Agency has entered into Memoranda of Understanding with several provinces to house immigration detainees in provincial correctional institutions. The decision as to where a particular immigration detainee will be held (an immigration holding centre or a correctional institution) rests with the CBSA officer. There are no statutory criteria for the decision to place a person in a correctional institution.¹¹⁰ Nearly 80% of all detention of non-citizens in Canada occurs in Ontario, and nearly one third of all such detention occurs in a correctional institution,¹¹¹ despite the detained non-citizen not being charged with, or even accused of, a crime. Though Central East Correctional Centre has a separate unit for immigration detention, ostensibly without segregation, staffing shortages often mean correctional officers are pulled from the immigration unit, and immigration detainees are confined to their cells. Further, immigration detainees in correctional institutions must often request “protective segregation” out of fear of the general population, thus creating a situation where the most draconian conditions are dealt to a population who has done nothing wrong.

Most migrants detained in correctional institutions are there because they are deemed a flight risk. However, the determination of “flight risk” can be overly broad so as to include anyone who is afraid of returning to their country of origin (i.e. all refugee claimants). Though immigration detention must be reviewed every 30 days, this can often snowball into lengthy prison terms – in fact, the 30 day increments are detrimental in a number of ways: the decision maker may view “just another 30 days” as inconsequential while failing to appreciate the cumulative effect of denials of release; and the indeterminate nature of a prison stay adds to the vulnerability and trauma experienced by the detainee. In one case, described by the reviewing court as Kafka-esque, an immigration detainee was kept in a correctional institution for 17 months, not knowing why he was there or what he should do to get out.¹¹² The court observed that “despite the fact that counsel for the Attorney General of Canada puts forward no substantive reason for his continued detention, Mr. Scotland cannot seem to get himself out of custody. He appears enmeshed in an endless circuit of mistakes, unproven accusations, and technicalities.”¹¹³ The court noted the difficulty of obtaining release at 30 day reviews, owing to the low evidentiary threshold that must be met by CBSA: “Each decision, even if later proven to have been based on faulty information, gets relied on and replicated the next time around...The detention review process becomes a closed circle of self-referential and circuitous logic from which there is no escape.”¹¹⁴

110 Hanna Gros and Paloma van Groll, *We Have No Rights: Arbitrary imprisonment and cruel treatment of migrants with mental health issues in Canada*. Toronto: International Human Rights Program, University of Toronto Faculty of Law, 2015, at p. 77.

111 *Ibid.* at p. 79.

112 *Scotland v. Canada (Attorney General)*, 2017 ONSC 4850. Online: <https://www.canlii.org/en/on/onsc/doc/2017/2017onsc4850/2017onsc4850.html>

113 *Ibid.* at para. 3.

114 *Ibid.* at para. 73-4.

People who are held in immigration detention in provincial facilities are both vulnerable and isolated. They have no access to programs and limited access to the outside world. They may not speak English, and spend more time in segregation than sentenced people. This experience is universally traumatic, and leads to increased likelihood of a mental health issue or suicidal ideation. Research shows that people detained in regions with high correctional institution housing have worse prospects for release than those detained in regions with low imprisonment.¹¹⁵

Immigration detention in correctional centers is not only damaging to the detainee, but is costly to taxpayers. Immigration detention costs are estimated at \$259 per detainee per day.¹¹⁶ In 2013, Canadian taxpayers paid \$57,326,412 to house migrants in correctional centers.¹¹⁷

Persons in remand custody

Approximately 70% of people in provincial correctional institutions are on remand rather than in sentenced custody. Systemic risk aversion resulting in over-reliance on sureties and the imposition of onerous and frequently unreasonable bail conditions that can set a released person up to fail has contributed to bail system dysfunction and the growth of the remand population, despite a falling crime rate.¹¹⁸

As former provincial Independent Advisor on Corrections Reform Howard Sapers has pointed out, persons in remand custody are subject to the most restrictive conditions (since provincial institutions are overwhelmingly designated as “maximum security”) while at the same time their legal status is innocent.

The growth in the remand population contributes directly to overcrowded conditions in many provincial facilities. People denied release on bail may spend “months, or even years, awaiting trial in overcrowded provincial detention facilities” that were not designed for long-term detention and which do not provide access to recreation or education programs.¹¹⁹ Of particular concern is the impact of this kind of confinement on people who, for the most part, have not been convicted and are therefore legally innocent. Many find their situation so untenable that they feel pressured to forfeit their right to a trial and plead guilty simply to get out of remand custody and “have matters resolved”.¹²⁰

115 *Supra* note 114 at p. 75.

116 *Ibid.*

117 *Ibid.* at p. 76.

118 See John Howard Society of Ontario, *Reasonable Bail?* (2013), online: <<http://www.johnhoward.on.ca/wp-content/uploads/2014/07/JHSO-Reasonable-Bail-report-final.pdf>>.

119 Canadian Civil Liberties Association and Education Trust, *Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention* (2014), online:< https://ccla.org/dev/v5/_doc/CCLA_set_up_to_fail.pdf> [Set Up to Fail] at page 11.

120 *Ibid.* at p. 10.

LAO's Bail Strategy

The increase in the remand population is the result of several factors including systemic delays in holding bail hearings, overreliance on sureties as a requirement for release, and onerous and unrealistic conditions attached to release. In response to these problems, and in recognition of the importance that a bail decision can have in the eventual outcome of a criminal matter, LAO has developed and is continuing to implement its [Bail Strategy](#). The strategy highlights the impact of bail system problems on LAO's most vulnerable client groups, and outlines ways in which LAO can contribute to positive reform of the system.

Legal aid services for incarcerated people

Legal Aid Ontario has delivered Prison Law services for a number of years. These services are mainly certificate services, and though a variety of services are available, the vast majority of services delivered have revolved around Parole.¹²¹ Traditionally, LAO service delivery in the area of prison law has fallen into one of these discrete categories:

1. **Certificate services** mostly in the areas of Parole Hearings and legal opinions for parole. Certificates are also available for, residency hearings, internal transfer, post-suspension hearings, post-revocation hearings, and applications under s.696 of the *Criminal Code*. LAO issued 850 prison law certificates in fiscal year 2017-8. Additionally LAO issues certificates for judicial review of administrative decisions and habeas corpus applications.
2. **Legal Aid Workers** attend federal institutions to take certificate applications.
3. LAO funds **Queen's Prison Law Clinic (QPLC)**, an independently governed and managed student legal aid clinic based at Queen's University law school in Kingston, which assists with a wide range of prison law matters including grievances, parole hearings, and disciplinary hearings. The clinic is involved in appeal and test case work, and also provides legal information and advice to incarcerated people.
4. Through its **Test Case Program**, LAO will consider funding test case work including litigation of significant prison law issues, and representation at prison related inquests that raise important public interest issues.
5. In 2017, LAO started the **Institutional Duty Counsel (IDC) program**, whereby DC work full time at 7 provincial institutions across Ontario: Ottawa Carleton Detention Centre, Vanier (Milton), Hamilton Wentworth Detention Centre, Kenora Jail, Elgin Middlesex Detention Centre (London), Central North Correctional Centre (Penetang), and Toronto South Detention Centre.
6. LAO's **Refugee Law Offices** attend Maplehurst Correctional Complex and Vanier Institute for women to serve immigration detainees in these institutions, and serve immigration detainees at Central East Correctional Centre by video link.

The above services work well but are narrow in scope. Key programming issues include:

- People incarcerated in federal institutions have greater access to a greater range of LAO services compared to people incarcerated in provincial institutions;
- LAO services address formal prison law processes and issues rather than the incredibly diverse range of legal and other needs of incarcerated people;
- People in sentenced custody have greater access to services than those on remand

121 See Appendix B for a list of available certificates in Prison Law by District.

(70% of incarcerated people in Ontario), awaiting bail, or in immigration detention;

- Largely focused on certificate representation, when other models of service delivery may be a better fit for certain needs and situations; and
- Assistance is dependent on an application process including connecting with LAO intake staff by phone or video for a determination of legal and financial eligibility; the time this takes, especially for incarcerated people in the most vulnerable situations, which can exacerbate the problems an incarcerated person is seeking help for in the first place

This narrower focus means important service gaps are often left unfilled. Think of all the legal needs that legal aid clients come in with. These are people who have all of those, plus some additional particular needs due to being incarcerated.

LAO's Test Case Program

Test cases are an effective tool in supporting LAO's statutory mandate – to promote access to justice throughout Ontario for low-income individuals. LAO's [Test Case Program](#) provides support to cases that address serious issues fundamentally affecting 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 Committee is an expert advisory committee that makes recommendations to LAO on supporting matters through the Test Case Program, via certificates or project funding agreements. The Committee applies an eligibility test that includes consideration of a range of factors.

What we heard: unmet legal needs and service gaps

There are unmet legal needs at every level

At each site of incarceration, be it federal, provincial, youth, or immigration detention, some legal needs still exist in which a person cannot connect with a service to assist. Though the specific needs may look quite different between levels, they exist at every level.

Incarcerated people need legal assistance to protect their rights inside the correctional system

Incarcerated people experience a variety of legal needs that relate directly to their incarceration. LAO heard that some of the most important needs relate to:

- Challenging human rights violations: LAO heard that many lawyers who deal with people in custody may be insufficiently aware that if a person's complaint involves a human rights violation / discrimination on enumerated grounds, it may be brought to the human rights tribunal
- Access to medical treatment
- Informed consent to treatment
- Making a complaint about treatment within the institution or the institution's failure to comply with the law (this could include overcrowding, food quality, access to counsel and so on). While it may be possible to resolve complaints at the institutional level, incarcerated people often require assistance. If the matter cannot be resolved internally, legal assistance is needed to bring the matter to court, where remedies may include a declaration or damages. LAO heard that earlier assistance with the federal grievance process can build the record for judicial oversight, including potential test cases, if the complaint is not adequately addressed internally
- Accessing parole, including within the provincial system where many incarcerated people may not even be aware that parole exists
- Involuntary transfers, which may be increasing in number in the federal system as federal reliance on segregation is reduced
- Changes in a person's risk classification/security level: these impact incarcerated people's access to programs and can lead to an involuntary transfer

LAO also heard consistently that test cases can be an important vehicle for addressing

important systemic issues affecting incarcerated people, but that the criminal and correctional bar often lack the necessary supports, including access to civil or administrative litigation expertise, to bring test cases forward.

Much of the legal needs in a prison are not in prison law

In addition to the above, incarcerated people often require advice and representation in areas having nothing to do with their charges or sentence. Low-income and vulnerable people frequently enter correctional institutions with existing legal issues in a variety of areas, and often their legal problems may be exacerbated by incarceration:

- Custody and access
- Child welfare
- Support enforcement
- Civil (e.g. setting up a Power of Attorney, Wills, getting ID, setting up a bank account, dealing with other matters related to property: even though they may own very little in the way of money or material goods, LAO heard that these kinds of matters can weigh heavily on the minds of people who are incarcerated)
- Immigration and refugee law
- Disputes with landlord
- Concerns about losing social housing or social assistance

Many unmet legal needs are in poverty law areas

Many of the needs listed above are in the areas of poverty law, which is covered by Ontario's independently governed community legal clinics. LAO heard from staff and stakeholders that there is "overwhelming" demand for poverty law assistance, particularly around housing and income support. This suggests partnerships between LAO and legal clinics will most effectively fill these service gaps for incarcerated people.

Advice is a large gap

People in correctional institutions need general legal information and advice services on a wide range of legal issues, both pertaining to their criminal and carceral issues, and to the everyday problems that an Ontarian may face. While most people are able to visit, call, or google a lawyer, legal clinic, community resource, or informational guide, an incarcerated person's situation vastly restricts the way in which he or she can receive much-needed legal advice and information. Almost the only sure way to meet this need is to bring the

service to the person. Stakeholders have identified the need for advice in many areas including the following:

- Merit of potential appeal
- Merit of parole application
- Whether to plead into drug treatment court
- What issues to address at a bail hearing
- Why bail was denied
- Effect of charge or conviction on immigration status

Early assistance and intervention is important

A criminal record of any length, no matter how short, can be a life sentence. It can drastically impact employment prospects, and create a vicious cycle of poverty and crime.¹²² This is especially the case for Black and other racialized populations.¹²³ Aside from the creation of a criminal record, admission and stay in custody itself is disruptive to a person's development. Especially for youth and young adults, even one small conviction and sentence can be a "gateway" offence to a life of more serious or recurring criminality. The best way to reduce recidivism and support rehabilitation is to work with other justice system actors to explore charging and sentencing options that are more likely to have a truly restorative effect on a person, rather than focusing on punishment and detention. Aside from this long-term systemic objective, ensuring those already incarcerated have access to supportive services, constructive programming, and robust rehabilitation supports, will most effectively work to return the person to society better able to live a law-abiding life, which should be the mandate of correctional authorities.¹²⁴

122 John Howard Society of Ontario, *The Invisible Burden: Police Records and the Barriers to Employment in Toronto*. Toronto, John Howard Society of Ontario, February 2018. Online: <http://policerecordhub.ca/wp-content/uploads/2018/02/The-Invisible-Burden-Report-FINAL.pdf>

123 *Ibid.*

124 Sapers, Howard. *Segregation in Ontario: Independent Review of Ontario Corrections*. Toronto: Queen's Printer for Ontario, March 2017, at 10.

Red Hook Community Justice Center

In November 2017, LAO's Policy and Strategic Research Department attended the Advocates Society's "Courthouse of the Future" symposium, at which Judge Alex Calabrese, the founding and presiding judge of New York's Red Hook Community Justice Center, discussed the Center in detail. For nearly two decades, Red Hook CJC has operated as a single-judge, multijurisdictional courthouse, in which sentencing tools other than jail and fines are at the judge's disposal. This humane approach avoids placing vulnerable persons on a path towards lifelong cyclical incarceration, instead providing the tools for the person to return to a law-abiding life. By avoiding incarceration and fines, the person is not further stigmatized or criminalized. This saves the justice system countless dollars both immediately and in the future. By offering onsite supportive services such as mental health and addictions counselling, mentorship, GED or equivalency programs, among others, the root causes of a person's offence are uncovered and addressed, opening up other options besides crime. The Center also works on a number of preventive initiatives to improve public safety and trust in justice, including community building and youth leadership programs. This restorative approach is projected to be piloted at three Justice Centre sites in Ontario, in Kenora, London, and Toronto's Moss Park. LAO has heard consistently and clearly that this approach, as opposed to a punitive and costly incarceration-based justice system is sorely needed in this province, and will produce better outcomes for an accused and for society. LAO hopes to work with existing Justice Centres and support their widespread use. For more information about the great work done at the Red Hood Community Justice Center, [visit their website](#).

Service coverage is uneven and not well publicized

People in correctional institutions, and people who provide services to them, lack knowledge about LAO's services and coverage. This is in large part because coverage is uneven and highly variable between communities. For example, contacting LAO can take a variety of forms: there is a dedicated 1-800 number for people in correctional institutions, designed to circumvent the wait time so that the call length does not exceed facility phone use maximums; in some facilities, legal aid workers attend in person to meet with applicants and take applications; elsewhere, video applications are facilitated in custody. This variety of overlapping access points can create confusion for clients, and increase administrative churn. Further, there is some confusion about what LAO can do: often, incarcerated people think that LAO is only able to help with their unresolved criminal charges, and that there is no point contacting LAO for other forms of legal assistance.

Vulnerabilities

Incarcerated people are, in comparison to the general population, disproportionately likely to have mental health issues, to be Indigenous or racialized and, if female, to have been victims of violence. Many face language and literacy barriers, which also reduces the viability of self-help options.

Youth in closed custody are disproportionately Indigenous or racialized, and lack access to legal information and assistance as youth advocates are not able to provide legal advice.

The correctional environment and the existing processes and conditions within institutions give rise to significant human rights concerns, particularly in relation to increased risk of death or bodily harm from violence or overdose, the use of segregation and access to adequate medical care.

The most vulnerable and those most in need of help are also those most unlikely to be able to reach out for assistance. Onsite availability and an “eyes on the ground” approach have been emphasized as crucial to providing assistance to the most vulnerable.

In the provincial system, 70% of inmates are in remand custody: as emphasized by the Independent Advisor on Corrections Reform, their legal status is innocent.

LAO can support systemic reform efforts

As a provider of legal services, LAO can strengthen the rule of law in correctional institutions. As a provincial organization that exclusively serves the most marginalized and most impoverished in Ontario, LAO has a responsibility to bring these people’s issues to the forefront of public discourse, and ensure that correctional policies, which impact the most vulnerable and least visible of Ontarians, are just and humane.

What LAO heard: barriers to access to justice

Lockdowns occur frequently at many correctional institutions and they impede access to counsel. When lawyers travel a long distance to see a client and are unable to do so because of a lockdown, they have little incentive to try again. Lockdowns also interfere with access to telephones.

Telephone access is a huge barrier. Ministry policy requires most outgoing calls from a correctional institution to be collect calls. The telephone system prevents incarcerated people from making calls to cellphones, which makes it difficult for them to reach most of the people that it is important for them to contact including their lawyers, who are only reachable by cellphone when they are in court. Calls answered by an automated attendant are dropped by the system, and calls to a landline answered by a receptionist cannot be transferred or the prison's phone will disconnect the call. The inability to call a cellphone from a correctional institution also presents a barrier to making arrangements with potential sureties, which in turn interferes with the bail process. In federal institutions, inmates are only allowed to phone people who are on their authorized call list, which is limited to 40 phone numbers. Other telephone-related barriers include a 20-minute limit on phone calls, the high cost of collect calls from correctional institutions, and the difficulty that incarcerated people have in contacting a legal clinic that lacks a 1-800 number. LAO also heard from stakeholders about broken telephones at correctional institutions, including those that are meant to link inmates to the "Access: Defence" service, and inmates who bully other inmates by blocking their access to the telephones.

Access to the legal aid application process and questions of coverage and eligibility can be a problem. Access to telephones is difficult, as noted above, and because prisoners are limited to 20 minutes on the phone it can be difficult to complete an application by telephone. Not all institutions make information on how to contact LAO readily available. The application process itself may be confusing. Many people do not know what sorts of legal matters, other than criminal law matters, are covered by legal aid or whether they would be eligible for assistance. Most clinics, other than specialty clinics with a provincial mandate, have a mandate to serve clients residing in a geographic catchment area, which means that there may be issues with assisting a client incarcerated within a clinic's catchment area whose home address and legal issue, such as a landlord-tenant matter, are in a different catchment area.

The isolation of people in segregation means that even when lawyers have access to an institution they may not be able to see the most vulnerable people. Because segregated people frequently have mental health issues or other vulnerabilities, they are not only the most invisible people but also the ones who are least likely to try to reach out for assistance.

Systemic disincentives to appearing in court deter many people from seeking bail, and may also contribute to unnecessary guilty pleas. A day in court means being awakened at five in the morning to await transportation to the courthouse, not being provided with medications, being strip-searched and then cuffed to two other people for a trip that can take anywhere from 15 minutes to two hours, existing on what has been termed the “nutrigrain diet”, which means that their lunch is a granola bar, and frequently returning to the institution too late for the evening meal, which is served at 4:30. This experience of going to court impacts their willingness to go to court unless their appearance there is going to be meaningful, and often it is not, ending instead in another adjournment.

What LAO heard: recommended approaches and best practices

- √ Be on site in facilities, as much as possible. The Institutional Duty Counsel (IDC) program is a great model that should be expanded. Not only should the program be implemented province-wide beyond the 7 sites currently served by the IDC, but the range of services that the IDC can provide should be expanded wherever possible. There is a wide range of pressing unmet needs which can be met, at least in part, through IDC assistance
- √ Warm referrals are crucial. Unless there is active follow up to connect a client with the help they need, they will fall through the cracks
- √ Be aware of, and prepared to respond to, the intersecting legal needs of incarcerated people. Lawyers who go into correctional institutions should, if possible, be polymaths, capable of providing information related to a wide variety of legal questions and needs, including needs that are not directly related to incarceration. Duty counsel need supports and resources to help them provide assistance to clients in some of these other areas and to make warm referrals, including to legal clinics which can provide assistance in a variety of areas but which incarcerated people find difficult to contact directly
- √ Because it is often difficult for lawyers to get access to correctional institutions, legal aid should partner with those who already have access, both to distribute public legal education materials and to identify clients who require legal assistance. Examples include agencies like the Elizabeth Fry Society and John Howard Society, as well as institutional intermediaries like social workers and chaplaincy services. At the same time, LAO should work with each correctional institutions to foster access and openness. This is a long-term endeavor and will require a culture shift
- √ Information sharing between LAO, clinics, the bar, the courts system, and other justice stakeholders is important. Everyone in the justice system should know what the inside of a correctional institution looks like
- √ Build relationships with local institutions; a local approach is crucial because every institution is different and has its own culture and approach
- √ Clinics can be important partners in the strategy. Clinics connect with incarcerated people's legal issues in the areas of human rights, immigration law and poverty law. Clinics do outreach, public legal education, and test case work which makes them ideal partners for helping incarcerated people. Partner with interested clinics and help them to be better equipped to provide clinic law services to incarcerated people. Many clinics would like to be more involved in this area but face access barriers because they lack the necessary institutional contacts and knowledge of the layers of bureaucracy. Catchment area issues may be addressed by networks of clinics working together to address clients' legal problems

- ✓ Education about legal rights is important. This education should be made available to correctional staff as well as to incarcerated people, to assist in changing institutional culture
- ✓ Being able to work with Corrections, and acknowledging the challenges that they face, is important to the success of the strategy. There are many good superintendents, deputy superintendents, and correctional officers. Issues can often be resolved through them. People are not motivated to work with you if all they receive is criticism
- ✓ Basic legal information is important to provide: at the level of basic legal processes and what is going to happen to them next, incarcerated people don't know as much as people think they know. For example, there is a lack of legal comprehension around bail and sureties. Many people have an intersecting immigration issue and they are flummoxed about the process and what may happen to them when they are released. There is a lack of information and understanding about provincial parole; people don't even know what it looks like or they see it as pointless
- ✓ Client triage is important because people may not even know what a lawyer can, or cannot, help them with. Prisoners' Legal Services, located in British Columbia, is a good model for triage because they use in-house legal advocates who are able to make assessments regarding who should receive assistance from counsel (for example, someone who has a strong case, or someone who is unable to read)
- ✓ Look for opportunities for collaboration, including with Ministries. Work to break down silos
- ✓ Look for outside funding opportunities to support the work of the strategy
- ✓ Focus on the most important priorities for test case work, potentially choosing one important area each year and focusing attention and resources on that area. Test cases are a powerful tool for bringing about systemic change. In some provinces, such as British Columbia, teams of lawyers including constitutional, criminal and civil litigation lawyers often come together to work on test cases, and this makes them stronger
- ✓ Work as much as possible with those who are rooted in the community and already doing advocacy work; Legal Aid does not need to lead the advocacy itself in order to play an effective role. In many places, great community supports already exist, which LAO can partner with or build on. LAO does not need to reinvent the wheel
- ✓ Think about opportunities to provide services through law students. The Queen's Prison Law Clinic is a great model that should be expanded to provide province-wide coverage and include provincial as well as federal facilities
- ✓ Consider establishing a stakeholder-led table, along the model of a Regional Advisory Committee, as Correctional Services Canada and others have done, to provide ongoing independent advice to support the work of the strategy. Empowering stakeholders and people with lived experience to run their own table independently will allow them to generate creative and candid recommendations

- ✓ Prevention, early intervention and reintegration are very important principles that should directly inform the strategy and make up part of its work. LAO can often be reactive, but helping people before they reach the end of their rope is more likely to return someone to life as a law-abiding citizen. It also saves higher costs later on. Further, someone coming out of a correctional institution needs robust community supports, otherwise they are being set up to fail
- ✓ The rule of law in correctional institutions, and access to justice for incarcerated people, are important goals; however, without working towards a justice system that is truly reintegrative, any other institutional supports will be band aid solutions
- ✓ Prioritize work that creates change in people's lives. Release planning and reintegration support can reduce the risk of housing instability and medical crises such as overdose, which are common following release. It may not seem like "legal work" at first glance, but many lawyers feel uncomfortable with leaving their clients after the sentencing hearing, and would do more for them if funded to do so. Disciplinary court work is funded by legal aid in the same manner as trial work but assistance with accessing programs, health care and proper release planning would actually make a bigger difference to the lives of most incarcerated people. Most of the people cycling in and out of provincial custody are not serious criminals, and incarceration does nothing but weaken their life prospects when it could be an opportunity to intervene productively in their lives
- ✓ When providing front line services, ensure LAO is seen to be separate from the institution, not part of it. This will foster client trust
- ✓ Increased LAO presence at institutions can increase accountability and transparency
- ✓ Legal assistance and resources can reduce an incarcerated person's feelings of helplessness, crisis, and disruption, leading to a less stressed and therefore more cooperative population
- ✓ Prison law is not criminal law. LAO should look at forming local specialty panels of prison and correctional lawyers in each community, perhaps with its own set of standards. Training will be important.

An ounce of prevention: Why the Prison Law Strategy represents value for money for taxpayers

Given the increasing human and financial costs associated with prison, investing in effective re-entry programs may well be one of the best investments we make.¹²⁵

LAO's goals for the Prison Law Strategy are focused on addressing the legal needs of those who are incarcerated, and furthering policies and practices to reduce over-reliance on incarceration. These goals support broader goals for justice and correctional system improvement, including the reduction of systemic delay in the criminal justice system.

Incarceration is expensive, without even beginning to count the loss of human potential and associated costs such as in relation to mental health, job loss and family breakdown. In total, in 2016/2017, operating expenditures for adult correctional services in Canada totaled over \$4.7 billion.¹²⁶

According to Statistics Canada, the average cost of incarcerating an individual in a provincial institution in 2016/2017 was approximately \$213 per day, or \$77,639 per year. The average cost of incarceration in a federal penitentiary is higher still: \$288 per person per day, or \$105,286 per year.¹²⁷

The cost of incarcerating women is higher than the cost of incarcerating men, and the cost of segregation is highest of all: \$1,269 or more per day, according to a March 2018 report from the Office of the Parliamentary Budget Officer of Canada. Their analysis of the variation in facility-specific expenditures across Correctional Service of Canada facilities over a five-year period, using capacity by security level and segregated populations, suggests that "inmates who are in or who cycle through segregation account for a disproportionate share of costs", anywhere from \$891 to \$1,715 per day.¹²⁸

It is tempting to look at incarceration as free – the cells already exist, so why not put a criminal in them? The above numbers remind us that incarceration is in reality an extremely inefficient way to reduce crime. Every day a person spends in custody comes at a cost to Ontario taxpayers. By contrast, supportive and reintegrative services have been proven

125 Joan Petersilia. "Parole and prisoner reentry in the United States." In Michael Tonry (ed.) *Prisons. Crime and Justice: A review of research* (26). University of Chicago Press: 1999.

126 Statistics Canada, *Adult and Youth Correctional Statistics in Canada, 2016/2017*, (June 2018), online: <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2018001/article/54972-eng.pdf?st=5kpoMRx8>>.

127 Statistics Canada (Juristat), *Adult and Youth Correctional Statistics in Canada, 2016/2017*.

128 Office of the Parliamentary Budget Officer, *Update on Costs of Incarceration* (March 2018), online: <http://publications.gc.ca/collections/collection_2018/dpb-pbo/YN5-152-2018-eng.pdf>.

to reduce recidivism,¹²⁹ as does working to get a former prisoner a job,¹³⁰ and supporting work-release programs.¹³¹ The ameliorative effect of post-release support is particularly critical: in addition to education and job training, phasing a person into independent living and building strong community connections are crucial in reducing recidivism, as is treatment in the case of people with substance abuse issues.¹³²

Many correctional institutions are overcrowded, which results in lockdowns that curtail access to services and programs, and can jeopardize the safety of incarcerated people and staff at the institutions. The major driver of overcrowding in provincial institutions is the escalating number of persons being held in remand custody. In 2012, the Drummond Report, which focused on reducing public service costs to bring down Ontario's deficit, identified the growth in remand custody as an issue that needed to be addressed:

Costs are rising for custody remand — people held in custody while awaiting trial. There are now twice as many people on remand as there are sentenced offenders.¹³³

Since the release of the Drummond Report in 2012, the percentage of people on remand has increased to well over two-thirds of the population in provincial adult facilities.

Another cost-reduction recommendation in the Drummond Report was to “expand diversion programs for low-risk, non-violent offenders with mental illness rather than send them to jail”.¹³⁴ Like the remand population, this is another group that has been increasing in size and is contributing to justice system and correctional costs, as well as to overcrowding in correctional institutions.

Incarcerating people when they could be more appropriately released on recognizance (in the case of persons in remand), offered diversion, community services or community supervision, or provided with rehabilitative and educational programs to help keep them from returning to custody following their release, places a significant economic burden on taxpayers.

129 Anthony Doob, Cheryl Marie Webster, and Rosemary Gartner, “The recidivism rate of young violent men who are released from prison can be reduced.” *Criminological Highlights* 11 (3). Toronto: University of Toronto, 2010 at 8.

130 Anthony Doob, Cheryl Marie Webster, and Rosemary Gartner, “Getting offenders jobs after they are released from prison contributes to lower recidivism.” *Criminological Highlights* 13 (3). Toronto: University of Toronto, 2013 at 8.

131 Anthony Doob, Cheryl Marie Webster, and Rosemary Gartner, “Getting offenders jobs after they are released from prison contributes to lower recidivism..” *Criminological Highlights* 17 (1). Toronto: University of Toronto, 2018 at 4.

132 Belenko, S. and Peugh, J. (1998). “Fighting crime by treating substance abuse”. *Issues in Science and Technology*, Fall, 53-60. From a report by the National Center on Addiction and Substance Abuse at Columbia University: Behind Bars: Substance Abuse and America's Prisons.

133 *Public Services for Ontarians: A Path to Sustainability and Excellence*, 2012 (Drummond Report), online: <<https://www.fin.gov.on.ca/en/reformcommission/chapters/report.pdf>>, at page 49.

134 Drummond Report, at page 50.

Not only does incarceration impose a direct financial burden on taxpayers, it also creates secondary fiscal costs. For example, first offenders given a custodial sentence are more likely to reoffend than first offenders given community service. Incarceration leads to more incarceration, all of which is paid for by the public. Further, children of even one incarcerated parent are more likely to turn to criminality themselves, both during their youth and later on in adult life, adding the cost of their arrest, trial, and incarceration to the public bill. Even the economic viability of incarcerated people's neighbourhoods is reduced as those with income are taken out of them.¹³⁵

Recidivism in particular carries a high cost, not only to public safety but also to the public purse. As stated in a 2016 Senate Committee report on criminal justice system delay:

... A repeat offender passes through the court system once again, using more valuable court time and resources and, if incarcerated, incurring the high costs of our correction system. Witnesses who spoke on these matters agreed that more needs to be done to reduce recidivism and prevent individuals from becoming repeat offenders. The result would be a *more efficient justice system, less court resources being devoted to one individual and a reduction in the demands on our justice system that prevent the courts from addressing delays*.¹³⁶

The Senate Committee concluded that:

Investing in crime prevention, rehabilitation and health treatment programs for all offenders – whether they are incarcerated or in the community – is a crucial element of the necessary reform of our justice system. Making such investments will ease the burden repeat offenders place on our court and correctional systems, free up resources better used elsewhere, and consequently allow Canadian governments to focus on reducing delay.¹³⁷

Alternatives to incarceration and supports for incarcerated people, formerly incarcerated people, and people at higher risk of incarceration, are therefore not only important to the individual, but to Ontario's justice system, which continues to struggle with cost, inefficiency, and delay.

135 Anthony N. Doob, Cheryl Marie Webster, and Rosemary Gartner, "The Effects of Imprisonment: Specific Deterrence and Collateral Effects," *Criminological Highlights*, Toronto, University of Toronto, 2014.

136 *Delaying Justice is Denying Justice*, Report of the Standing Senate Committee on Legal and Constitutional Affairs, chaired by the Honourable Bob Runciman (August 2016), online: <https://sencanada.ca/content/sen/committee/421/LCJC/reports/Court_Delays_Final_Report_e.pdf>, at page 171.

137 *Delaying Justice is Denying Justice*, at page 173.

Prison Law Strategy initiatives

The below initiatives, goals, and best practices were recommended and developed through extensive stakeholder consultations. While many of these practices do not carry a fiscal or organizational cost, some do require funding; at publication time, all funding for this fiscal year is allocated elsewhere. LAO encourages other organizations who serve this client base to consider these best practices, goals, and initiatives, and undertakes to resume this work when possible funding is restored. These best practices and initiatives will be considered continually as we review our service delivery.

Partnerships to identify legal need

LAO is on the advisory committee for several new initiatives led by community legal clinics, John Howard Societies, and other groups, including a pilot to assess the civil (i.e. non-criminal) legal needs of incarcerated people, the need for public legal education services, and the extent to which these needs can be met through services delivered in cooperation between multiple agencies.

Onsite legal aid services at Elizabeth Fry Society Toronto office

Elizabeth Fry Toronto provides a number of supports for incarcerated and recently released women in and around the Toronto area, including referrals, reintegration, staff court support at College Park, an embedded psychiatrist once weekly, and counsellors and life skills programs on site in institutions. A welcome and much needed resource is onsite counsel who could attend once every week to provide legal advice and information to the women who drop in in the areas of family law, child protection, some civil (POAs), poverty law (record suspensions, social assistance, landlord and tenant, social housing) and general mental health law and reintegration services.

Incarcerated client needs data collection by Institutional Duty Counsel

Institutional Duty Counsel have begun tracking needs other than bail. Where a person requests a specific form of legal or other assistance, this is tracked and recorded in the 7 institutions served by IDC, so that legal and other needs can be better understood and services can be tailored to meet need.

Active referrals

A typical referral is insufficient to meet the needs of someone who is incarcerated, as they are less able to make a connection given simply a business card and their own time and initiative. This is because of the various access barriers faced by incarcerated people every day: they cannot access services in person, have very limited access to phones, and often do not have the means to keep a phone number or other contact information (often writing information on their arms to ensure they keep it with them). By contrast, an active or “warm” referral provides the incarcerated person with the name of the person or resource who can help them with an issue (i.e. Refugee Law Office, legal clinic, reintegration service) and then contacts the service provider and gives them the name and information of the client, and follows up in 24-48 hours to ensure a connection has been made. This “two pronged” approach greatly improves the chances that a person will be connected with the service they need.

Connecting with the Solicitor General’s Office to foster LAO involvement in correctional policy discussions

Agencies serving incarcerated populations have a role to play in policy development. The more agencies and organizations are involved centrally and locally, the greater the accountability and transparency in correctional services and policies will be. LAO is mandated to exclusively serve low-income people throughout the province. As such, LAO has unique access to the issues and needs of vulnerable people in correctional institutions, and an opportunity to bring these issues to the attention of those at the centre designing correctional policy.

LAO has already had several successes in connecting with the former Office of the Minister of Community Safety and Correctional Services. LAO was able to participate in the stakeholder roundtable discussions preceding the enactment of the *Correctional Services and Reintegration Act*. LAO, together with JHSO, has highlighted the extreme difficulty faced by incarcerated people in making phone calls, caused by the current cost and logistics of the collect calls regime. LAO has participated in consultations on the transformation of correctional health care. LAO has flagged the issue of inmate transportation to court, specifically attire and restraints for people deemed at risk of suicide or self-harm.

Urgent certificate issuance criteria

In certain circumstances, the standard application and issuance process is too lengthy to provide incarcerated people with the assistance they need in a timely manner. In response to this, it is recommended that LAO develop criteria for the urgent issuance of a certificate. This is contemplated to include situations of impending involuntary transfer or pressing

human rights violation. The goal of urgent issuance is that incarcerated people can receive the service they need when they need it, and the lawyer providing the services can worry about the administrivia of certificate acknowledgement later on, thus being able to provide the service without concerns about not getting paid.

Certificate applications through trusted intermediaries

As discussed above, access to legal aid assistance is limited within a correctional institution. Where a facility does not have access to legal aid workers, trusted intermediaries with direct access to incarcerated applicants should be allowed to fill out and submit a legal aid application. There are very few organizations with regular access to incarcerated people; among them are John Howard Society, Elizabeth Fry Society, Native Inmate Liaison Officers, social workers, CMHA, and reintegration services. LAO should pilot a process to allow these trusted intermediaries to facilitate applications.

Roving advice and information services

Some of the most pressing needs are in legal advice and information: “what happens next? Should I plead into drug treatment court? Am I subject to a mandatory minimum? Do I have a shot at an appeal? What will happen to my kids now?” and perhaps most importantly, “when do I get out of here?” are all pressing and currently unanswered questions that demand some form of legal consultation, information, and advice. The Prison Law Strategy proposes to meet some of these needs through the onsite delivery of services within institutions themselves. Lawyers and/or legal aid workers could attend institutions on a rotating schedule, and clients could sign up or drop in for hourly slots to discuss their legal needs and receive much needed information and advice.

Discussions with law schools and/or SLASS clinics to provide Prison Law services

Queen’s Prison Law Clinic is a one of a kind in Ontario program that has been providing high quality services to incarcerated people for decades. They do so by engaging the student body under the supervision of 3 review counsel. Students provide representation to incarcerated people on parole matters, grievances, disciplinary hearings, and a variety of other institutional matters. This model enables QPLC to serve all five federal penitentiaries in the Kingston area year-round. The Prison Law Strategy recommends partnering with the remaining six Ontario law schools to engage their students in providing services of a similar nature. The right to counsel in segregation reviews and disciplinary hearings is one new area in which the Queen’s model could be replicated. Other areas include truancy proceedings, which can often be the first stop on the “school to prison pipeline” meaning that earlier intervention is key. More generally, students could triage legal and non-legal needs, direct clients to needed resources, and provide basic legal advice and

representation under the supervision of counsel.

Stakeholder “Regional Advisory Committee” model table

A table governed and composed entirely of stakeholders and people with lived experience mandated to generate programming ideas based on the Prison Law Strategy’s goals.

Increased awareness and uptake of prison law test cases

Test cases can greatly assist an individual. As importantly, they can provide a mechanism for public attention and systemic reform. The Prison Law Strategy recommends partnering with LAO’s Test Case Committee to identify areas of concern within prison justice, and bolster prison law test cases where needed.

Public Legal Education at admission and discharge

As discussed above, the initial stages of incarceration are incredibly disruptive and traumatic. An effective way to reduce this disruption and trauma is to provide newly admitted persons with some basic general legal education and information at the outset of the process. Public legal education and information delivered in small group sessions, or even through a video or written materials, could: inform new prisoners of their rights; highlight local resources and services available to incarcerated people such as John Howard or Elizabeth Fry Societies, legal clinics, addictions and treatment centres; inform incarcerated people about the justice system and process, with a focus on initial stages and equipping them with knowledge of what happens next.

Diversions and community justice

As discussed throughout this paper, no remedies will fully improve the lives of incarcerated people without a move to a justice and correctional system that is truly reintegrative, restorative, and based in community justice principles. The justice system should explore the various reasons why a person committed a crime (which more often than not deal with cycles of poverty and punishment), and direct him or her to the required resources to return to a law-abiding life. This, rather than punishment, should be the objective of justice and corrections. The Prison Law Strategy and LAO should work with governmental and nongovernmental stakeholders to expand the use of bail, probation, and sentencing mechanisms that do not result in jail time or a criminal record.

Similarly, an important function of corrections should be to equip incarcerated people with the tools to function in society rather than reoffend. The justice system today is too focused on “rounders”: persistent low-level offenders who are charged and incarcerated for minor crimes or breaches of bail or probation conditions. These people do not need

more jail time. Instead, the time they spend on the inside should rebuild and rehabilitate them, and perhaps most importantly, connect them with the resources they will need on the outside as the end of their incarceration nears. These resources could include: housing; setting up a health card, bank account, or social insurance number; employment and skills training; addictions treatment and counseling; transfer to community medical and mental health resources; a bed at a halfway house; legal advice and information; and many other supports. Partnerships with the Ministry, correctional institutions, NGOs, and other supportive stakeholders to expand these programs, and strengthen the connections between an incarcerated person on the inside, and these services on the outside. These crucial connections should not remain another crack that society's most marginalized fall through.

Cross-provincial federal funding proposal

LAO is working with a number of national prison law services providers to set out the case for much-needed additional federal funding for prison justice.

Expansion of Institutional Duty Counsel program

The relatively new Institutional Duty Counsel (IDC) program has been met with success, and high demand and receptivity for more services. The Superintendent of Ottawa Carleton Detention Centre has recently expressed enthusiasm for working with LAO to expand the role of and services offered by the IDC placed at that facility. The IDC at Toronto South Detention Centre have been met with high client demand for summary legal advice services in addition to the important work they do in facilitating bail. The IDC program has provided LAO with unprecedented direct access to our most vulnerable and least visible clients. Ontario correctional institutions are the site of some of the most urgent low-income and marginalized client needs in the province, but can be notoriously difficult to gain entry to in order to meet these clients' needs. It is important that LAO take advantage of this unprecedented client service opportunity: nine IDCs are already onsite in 8 provincial prisons; expansion of the role of IDCs beyond bail facilitation would help many low-income people with no cost to LAO. Expanding the IDC into other institutions, for example CECC and Maplehurst, would foster access to justice in these institutions.

Onsite clinic services in correctional institutions

An opportunity exists for LAO to partner with community legal clinics (as the Hamilton Outreach Project has already done) to provide incarcerated people with access to information and assistance in areas such as housing, preparation of wills and powers of attorney, social assistance, and employment law, among others. LAO has heard repeatedly that these are areas of significant unmet legal need within correctional institutions. The goal of the PLS is to partner with multiple legal clinics to bring poverty law services into

correctional institutions, where they are sorely needed.

Correctional officer outreach and training

The correctional institution environment can be improved through providing legal education and training to correctional institution staff, such that these personnel are aware of the legal rights of incarcerated people, and the positive and negative obligations these rights place on Correctional Officers (i.e. ensuring prompt medical care, identifying mental health needs, facilitating access to telephones, support networks, or counsel). These sessions can be delivered in partnership with local clinics, CLEO, and John Howard and Elizabeth Fry Societies, and can be designed and implemented using existing resources.

Outreach and relationship building with police

Stakeholders have told LAO that police are often the bottleneck of the correctional system: a lack of pre-charge diversion, and overcharging, especially for minor offences and breaches, not only contributes to a growing incarcerated population and courthouse backlog, but exacerbates the poverty-corrections cycle. It is recommended that LAO engage with police forces, both provincially and locally, to flag the consequences of overcharging and attempt to steer the focus away from “administration of justice” charges.

Legal assistance in immigration detention

As discussed, immigration detention units in provincial jails are frequently a black hole, both in terms of oversight, rule of law, and conditions of confinement. LAO’s understanding is that most immigration detention in Ontario currently takes place in Lindsay’s Central East Correctional Centre. This location is geographically remote from detainee’s social, familial and legal supports. An opportunity exists for LAO to use local lawyers to provide legal assistance to these detainees. Such a program has shown recent success in the GTA, where immigration detainees were housed in correctional institutions until recently. As this initiative uses existing staff, there would be no additional cost to LAO.

Pro Bono Students Canada: Prison Law Project

PBSC has expressed enthusiasm for partnering with LAO to explore the range of assistance that law students can provide to clients before, during, and after incarceration. Services could include public legal education and information, triage and referrals, assistance with onsite poverty law services, and assistance with offsite pilots e.g. at Elizabeth Fry Toronto. It is recommended that LAO partner with PBSC to develop and pilot such an initiative.

Community of Practice/Prison Law Centre

A recurring point from stakeholders is that those who provide supportive services and/or advocacy for incarcerated people, formerly incarcerated people, and people at higher risk of incarceration, are spread too thin across the province, so that little coordination of advocacy or sharing of knowledge is done. In early 2018, LAO gathered internal and external stakeholders to discuss the needs of incarcerated people, and the group highly recommended continued coordination in the form of a community of practice. This could initially be a small endeavour, for example a mailing list or recurring meetings, and could eventually grow to an annual conference, or permanent hub for knowledge management, training, advocacy, and service delivery.

Goals

The Prison Law Strategy aims to achieve the following key improvements in its three priority areas. For a detailed breakdown, see Appendix A.

1. Increasing internal knowledge and capacity

- Incarcerated people aware of and able to access LAO and other services;
- Better understanding of incarcerated people’s legal needs and coverage gaps;
- Services are streamlined where possible, local practice is preserved and respected with broader organizational, local & stakeholder awareness of services (LAO & other);
- Strong and skilled LAO & clinic staff and panel who provide Prison Law Services; and
- Stronger support and resources for local Prison Law bar.

2. Improving and expanding legal aid services for incarcerated people:

- LAO, clinic or SLASS services are “embedded” or accessible in the institution with advice services for incarcerated people, on their issues readily available;
- Improved warm referrals – all LAO and non LAO service providers are connected and easily able to refer incarcerated people and recently discharged people to the required services (i.e. IDC can identify a housing law need and refer the person to a specific person at the local clinic);
- Streamlined certificate application process with urgent/emergency short term certificates available (i.e. person at risk of imminent harm, right breached severely);
- Early assistance: Stronger supports for people at risk of starting on the school to

prison pipeline i.e. at truancy court, through diversions, and at Justice Centres;

- Meaningful test cases that can set a precedent and effect systemic change;
- Increased availability of rehabilitative and reintegrative services (i.e. strengthen discharge planning, increased availability of programming such as equivalency/GED, life skills training, career coaching), and strong linkages to these services so people behind bars don't fall through the cracks. Long term goal is to rebuild the person's capacity to function in society and reduce recidivism.

3. Addressing needs through advocacy, partnerships, outreach and collaboration:

- LAO perceived as legitimate Prison Law stakeholder & centre of resources/expertise;
- Development of community and restorative justice models that are truly rehabilitative, to reduce reliance on custodial sentencing, in collaboration with Ministry of the Solicitor General, MAG and other stakeholders;
- Better coordination at local and provincial levels i.e. with DGs through District Advisory Committees and between LAO, MAG, and Ministry of the Solicitor General;
- Improved relationship between LAO, Clinic, private bar, institution wardens, HSJCCs, Ministry of the Solicitor General, and chaplaincy and other inside legal/rehabilitative service providers;
- Better collaboration between prison staff and management and LAO staff;
- More, better and transparent Prison Law data to inform service improvements.

APPENDIX

Appendix A: Stakeholders consulted

The Prison Law Strategy wishes to acknowledge the time and efforts of the following individuals and groups, who shared their experiences with us, partnered with us on various initiatives, or otherwise volunteered to consult with us in determining the legal and other needs of incarcerated people across Ontario:

- Lenny Abramowicz, Frank Stark, Ivana Petricone, Trudy McCormick, John McKinnon: Association of Community Legal Clinics of Ontario
- Tom Balka: O'Brien Balka Elrich Khehra LLP
- Mary Birdsell, Samira Ahmed: Justice for Children and Youth
- Regina Blosky, Ottawa Carleton Detention Centre
- Nikki Browne: Nikki Knows/Project LUCID
- The Honourable Justice David Cole
- Lois Cromarty: Northumberland Community Legal Centre
- Sophie de Saussure, Pierre Elliott Trudeau Foundation Scholar
- Abby Dushman, Office of the Minister of Community Safety and Correctional Services
- Professor Anthony Doob, Centre for Criminology and Sociolegal Studies, University of Toronto
- Jim Doxtdator: Peace Builder Mediation (Indigenous Dispute Resolution)
- Sean Ellacott, Barrister and Solicitor
- Kathy Ferreira, Paul Quick, Nancy Brar: Queen's Prison Law Clinic
- Mark Gowing, Brandon Mead, Michelle Murray, Ian Dick: St. Leonard's Community Services, London
- Hanna Gros, Subodh Bharati LLP
- Professor Kelly Hannah-Moffat, Centre for Criminology and Sociolegal Studies, University of Toronto
- Kenn Hale: Advocacy Centre for Tenants Ontario
- Haliburton Kawartha Lakes Pine Ridge Regional Human Services and Justice Coordinating Committee
- Elizabeth Hughes, Patient Advocate, Psychiatric Patient Advocate Office
- Adeline Iftene: Schulich School of Law, Dalhousie University
- Shari Janes-Olmstead: Toronto Employment & Social Services
- Dave Jarvis: Haliburton Highlands Mental Health Services
- Katherine Kavassalis: Office of the Children's Lawyer
- Lisa Kerr: Queen's University Faculty of Law
- Shalini Konanur, Sukhpreet Sangha, South Asian Legal Clinic
- Nene Kwasi Kefele, Tabono Institute

- Catherine Latimer: John Howard Society of Canada
- Amy Lavoie: Windsor-Essex Bilingual Legal Clinic
- Jason LeBlanc: Tungasuvvingat Inuit
- Michele Leering and Melissa Macrae: Community Advocacy & Legal Centre
- Lisa Loader: Community Legal Clinic Simcoe, Haliburton, Kawartha Lakes
- Staci Love-Jolicoeur, Educator/Support Worker
- Diana Majury, Savannah Gentile: Canadian Association of Elizabeth Fry Societies
- Julie Mathews, Diana Vazquez, Kristina Brousalis: Community Legal Education Ontario
- Ann McRae: Rexdale Community Legal Clinic
- Les Morley, Michael Mandelcorn, Adam Bonney, Sid Freeman: Canadian Prison Law Association/Criminal Lawyers' Association
- Renu Mandhane, Insiya Essajee: Ontario Human Rights Commission
- Jennifer Metcalfe: Prisoners' Legal Services, British Columbia
- Kathy Neill, Megan Carrick, Dana Hetheron, Caley McKnight: John Howard Society of Peterborough
- Paula Osmok, Sunny Dhillon, Graham Brown, Reza Ahmadi, Michelle Keast, Safiyah Husein, Jonathan Robart: John Howard Society of Ontario
- Akwasi Owusu-Bempah: University of Toronto, Department of Sociology
- Holly Pelvin: University of Alberta Department of Sociology
- Senator Kim Pate
- Ryan Peck, Khalid Janmohamed: HIV & AIDS Legal Clinic Ontario
- Provincial Human Services and Justice Coordinating Committee
- Howard Sapers, Independent Advisor on Corrections Reform, Ontario
- Saeed Selvam: Laidlaw Foundation
- South East Regional Human Services and Justice Coordinating Committee
- Colleen Sym, Giulia Reinhardt: Halton Community Legal Services
- Tess Sheldon: ARCH Disability Law Centre
- Daniel Sheppard: Goldblatt Partners LLP
- Mohammed (Elder) Shaikh, Benedicto San Juan, Elena Gordon: For Youth Initiative
- Elizabeth Thomas, Barrister and Solicitor
- Yudit Timbo, Elizabeth Fry Society of Toronto
- Lee Tustin, Colleen Gray: Office of the Provincial Advocate for Children and Youth
- Simon Wallace, Clifford McCarten: McCarten Wallace LLP
- Graham Webb, Clara McGregor, Christine Morano: Advocacy Centre for the Elderly
- Ivan Zinger, David Hooey: Office of the Correctional Investigator of Canada

In addition, LAO's nine advisory committees to the Board, including the Prison Law Advisory Committee, have been informed of the ongoing development of the strategy and invited to provide input. LAO wishes to thank the members of the [Prison Law Advisory Committee](#), past and present, for their time, support, and expertise:

- Melissa Atkinson, Aboriginal Legal Services
- Bryonie Baxter, Elizabeth Fry Society of Ottawa
- Nikki Browne, Project LUCID
- Brian Callendar, Barrister and Solicitor
- Philip Casey, Barrister and Solicitor
- Seth Clark, PASAN
- Sean Ellacott, Barrister and Solicitor
- Kathy Ferreira, Queen's Prison Law Clinic
- Professor Rosemary Gartner, Centre for Criminology and Sociolegal Studies, University of Toronto
- Emily Hill, Aboriginal Legal Services of Toronto.
- Elizabeth Hughes, Psychiatric Patient Advocate Office
- Professor Adelina Iftene, Schulich School of Law, Dalhousie University
- Dave Jarvis, Haliburton Highlands Mental Health Services
- Professor Lisa Kerr, Faculty of Law, Queen's University
- Amy Lavoie, Windsor-Essex Bilingual Legal Clinic
- Lisa Loader, Community Legal Clinic - Simcoe, Haliburton, Kawartha Lakes
- Professor Diana Majury, Canadian Association of Elizabeth Fry Societies
- Michael Mandelcorn, Barrister and Solicitor
- Ann McRae, Rexdale Community Legal Clinic
- Professor Allan Manson, Faculty of Law, Queen's University
- Ryan Mason, Ministry of Community Safety and Correctional Services
- Clara McGregor, Advocacy Centre for the Elderly
- Leslie Morley, Barrister and Solicitor
- Paula Osmok, John Howard Society of Ontario
- Senator Kim Pate
- Professor Holly Pelvin, Department of Sociology, University of Alberta
- Howard Sapers, Independent Advisor on Corrections Reform, Ontario
- Saeed Selvam, Laidlaw Foundation
- Elizabeth Thomas, Barrister and Solicitor
- Simon Wallace, McCarten Wallace LLP

Thanks are also due to LAO Policy Counsel who provided guidance on critical intersections between the Prison Law Strategy and LAO's Bail, Aboriginal Justice, Mental Health, Domestic Violence, and Racialized Communities Strategies, to Lance Pawluk, Shalini Kanendran, Sophie Lafleur, Joseph Taylor and Jayne Mallin for their invaluable support

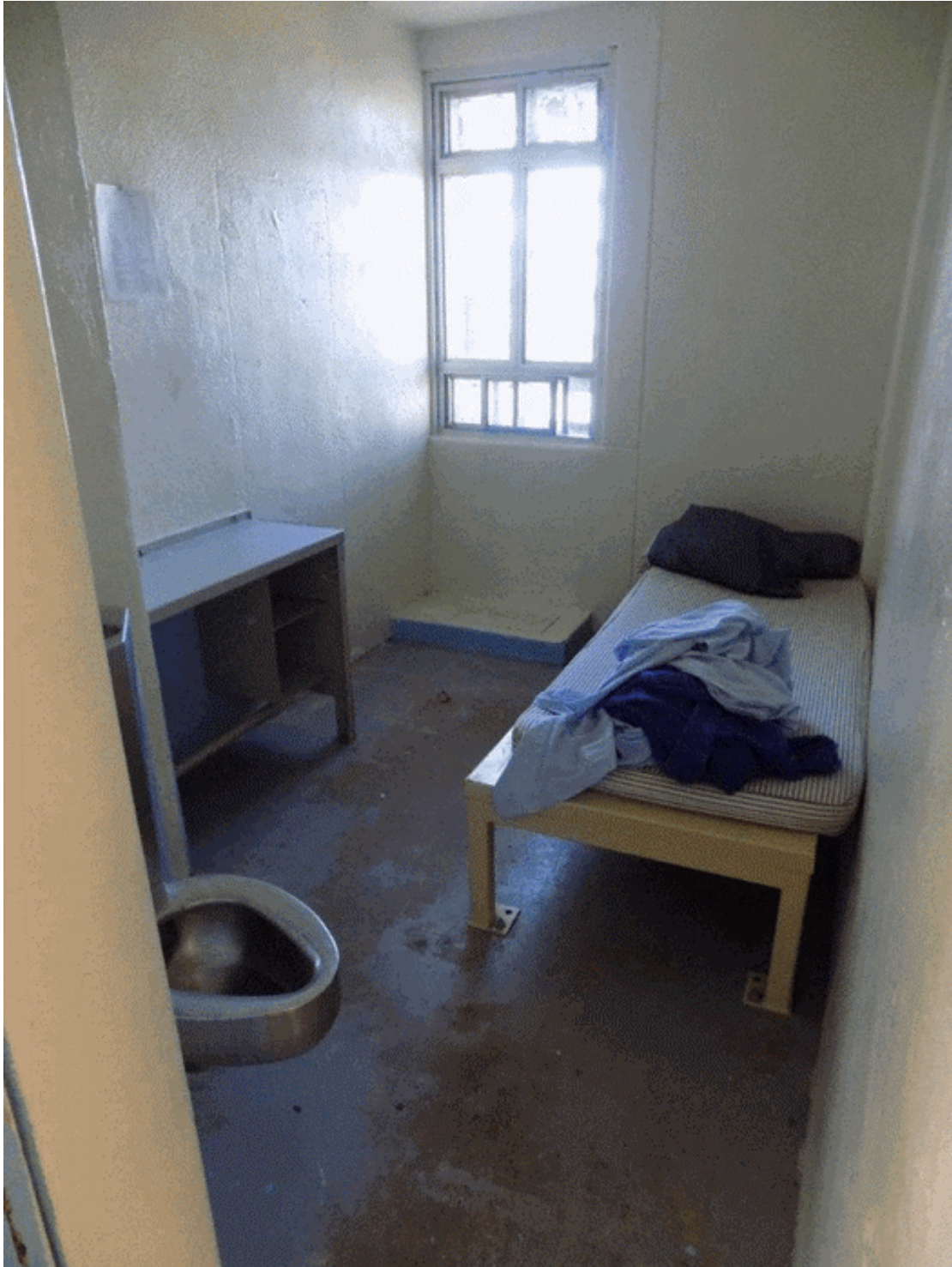
and assistance, and to the many LAO staff who directly assist legal aid clients and who provided valuable input to strategy development, and to the progress of individual initiatives, including (please note that this is not an exhaustive list):

- Liz Boucha, Andreeanne Dube: Kenora
- Cindy Bruinsma, Julie Botting, Autumn Gardner, Tara George, Sarah Stevens, Jillian Stoness, Kellen Wiltshire: Napanee/Belleville
- Bill Chowen, London
- Diane Grenier: Welland/Niagara
- Tracy Litt: Kitchener
- Mary McCormick: Owen Sound
- David Kiesman: Milton
- Kyle Noonan: Hamilton
- Danardo Jones, Sophie Lafleur, Pavan Passi, Greg Zambrzycki, Susanne Hunter, Renza Cecchetto, Paul Macleod: Toronto
- Amy Slotek, Justice in Time
- Wayne Van Der Meide, Ottawa

The Prison Law Strategy also wishes to thank the attendees of LAO's 2018 internal and external working groups on prison law: Sarah Pellegrini, Heather Vandenberg, John Haddad, Michael Currie, Gladis Alonzo, Lance Pawluk, Arwen Higgins, Tricia Banfield, Diane Morrison, David Kiesman, Karima Karmali, Susanne Hunter, Cindy Bruinsma, Liz Boucha, Tracy Litt, Lesley Weglarz, Robin Galbraith-Roy, Claudia Serraino, Kathryn Marcella, Chantal Gagnon, Ernest Boggs, Greg Zambrzycki, Holly Pelvin, Sophie Lafleur, Michele Leering, Graham Brown, Joseph Taylor, Diana Vasquez, Kristina Brousalis, Lisa Loader, and Julie Mathews.

Appendix B: Images

Figure 1: a cell at Springhill Institution



Legal Aid Ontario

40 Dundas St. West, Suite 200

Toronto, ON M5G 2H1

1-800-668-8258

media@lao.on.ca

www.legalaid.on.ca



LEGAL AID ONTARIO

AIDE JURIDIQUE ONTARIO