



LEGAL AID ONTARIO  
AIDE JURIDIQUE ONTARIO



# The Mental Health Strategy for Legal Aid Ontario

# Foreword

## *A Mental Health Strategy for Legal Aid*

The steady march of rights has marked the relationship between the justice system and persons with mental health and addictions over the last 25 years.

In 1991, the Supreme Court of Canada directed Parliament to establish a formal system of care and oversight for criminally accused with mental illnesses.

In 1996, Ontario introduced comprehensive health care consent and substitute decision making legislation.

In 1998, the first Mental Health Court in Ontario created alternatives to criminalization and incarceration, a practice now common in courts across the province.

And in just the last year, Ontario introduced legislation to specifically afford greater rights to long-term patients in the civil mental health system, and to protect people from discrimination and stigmatization that can come from non-criminal police contact.

Attitudes today are marked by the general recognition that equitable access to justice is good health policy, good social policy, and fundamental to full and equal citizenship.

The development and launch of this Mental Health Strategy in 2016 marks Legal Aid Ontario's long-term commitment to continuing the effort to prioritize, expand, and sustain mental health rights and advocacy within Ontario's legal system.

Legal Aid Ontario developed this Mental Health Strategy to strengthen the capacity of lawyers, front-line workers, and management, to better advocate for clients with mental illnesses. It is a multi-faceted, multi-year strategy that will improve access, increase capacity, and build on LAO's current client services.

This document provides a blueprint for this commitment. It outlines the concrete steps needed to both foster and protect rights, expand access to advocacy, and sustain change within LAO and across the broader legal landscape.

**John McCamus**, Chairman of the Board, Legal Aid Ontario

**David Field**, President & CEO, Legal Aid Ontario

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# A mental health strategy for greater rights, better access and sustainable change

The Mental Health Strategy (the "Strategy") marks the beginning of Legal Aid Ontario's ("LAO") long-term commitment to prioritizing, expanding and sustaining **mental health rights and advocacy** within Ontario's legal system.

This document provides a blueprint by outlining the concrete steps needed to both foster and **protect rights, expand access to advocacy, and sustain change** within LAO and across the broader legal landscape.

Two years of province-wide consultation and engagement shaped an approach that is driven by the needs of LAO clients, their legal advocates, and the support providers who assist both.

LAO's Board of Directors set the Strategy's parameters, requiring it to:

- review all of LAO's mandate and services through a mental health and addictions lens
- identify and recognize the legal needs of clients as the impetus for change
- enable LAO and legal clinics to provide services in a more efficient, effective and holistic manner
- set a five-year vision with specific initiatives for each year

The need for this Strategy is evident: mental health and addiction needs permeate the justice system, corrections, and the population eligible for legal aid services. LAO estimates that 1 in 3 clients experience mental health or addiction issues. People with mental health issues are disproportionately criminalized, incarcerated, impoverished, and under-housed — all of which are advocacy issues falling well within the legal aid mandate.

In fact, LAO has a **statutory mandate** to provide legal aid services “in the area of mental health law.” This means more than just specialized proceedings, like diversion courts or mental health tribunals. LAO's Mental Health Strategy will connect these dedicated services to the bigger picture of mental health rights advocacy.

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Section 13(1) of the *Legal Aid Services Act, 1998 (LASA)* requires that “the Corporation shall provide legal aid services in the areas of criminal law, family law, clinic law and **mental health law.**”

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## What is “mental health”?

“Mental health” is a heterogeneous term. It may include addiction, a severe and persistent mental illness, cognitive impairment, developmental delay, dual- and concurrent-diagnoses, dementia, trauma, acquired brain injuries and fetal alcohol spectrum disorder. This Strategy uses the terms “mental health” and “mental illnesses” in this broad and inclusive sense, while mindful that choices are personal and accommodation is individual. In this regard, this Strategy is concerned with **mental health rights** and the competency to provide expert advocacy for — and with — all Strategy clients.

Everyday across Ontario, someone with a mental health issue finds themselves in need of one or more of LAO's legal services and in one or more of LAO's mandated areas — from housing and income rights, criminal law, and refugee/immigration law to family law and prison law. Given this need, skilled mental health rights advocacy that empowers clients must be an easily accessible core competency throughout the entire legal aid system.

Greater rights and greater access to the justice that protects those rights, further represents an important link between mental health rights advocacy and clients who may be marginalized by the **social determinants of health**: issues including housing, income and livelihood, health services, working conditions, and education.

Advocacy assists with these social determinants of health. Advocacy helps clients achieve a stable income; helps clients find and stay in housing; promotes respect for rights and choices in health care; improves employment opportunities and working conditions; and confronts discrimination related to race, gender, sexuality, ethnic origin, and disability.

In this light, “access to justice” and LAO's “mental health law” mandate are themselves significant determinants of health, stability, and safety, both for individual clients and in the community writ large: equitable access to justice is good health policy, good social policy, and fundamental to full and equal citizenship.

Importantly, this Strategy also acknowledges that the terms “mental health” or “mental disability” are only a shorthand for a wide array of abilities and needs.

“Mental health” is more than a medical condition or disorder: it includes a sense of well-being, empowerment, and an understanding that disabilities are not pathologies.

Considering this broad and inclusive definition, LAO and its service providers must have the skills, knowledge and flexibility to understand and individually accommodate each client.

Responding to these needs includes recognizing and anticipating changing demands for mental health advocacy. Just the last several years have witnessed:

- **Increased diversity in mental health related law:** rapidly evolving legislation and case law has re-shaped treatment incapacity and end-of-life planning; expanded mental health privacy rights in policing and background checks; prompted the corrections system to assess mental health needs at admission and to reduce incidents of seclusion; mandated greater rights and care planning for longer-term civil in-patients; introduced mental health provisions in longterm care and retirement homes; and revised the mental disorder provisions of the *Criminal Code of Canada*
- **Increased demand for both community-embedded and outreach legal services:** the expanded use of community health centres, social hubs, criminal diversion, community crisis planning and “situation tables”, and a 612% increase in community treatment orders between 2003-2010<sup>1</sup> indicate how legal aid advocacy services need to align to with this new landscape of mental health and social support services
- **Increased demand for mental health advocacy expertise:** hearings before the civil and forensic mental health tribunals have respectively increased by 32% and 41% between 2005-2013, combining for over 5,000 hearings yearly<sup>2</sup>

These developments underscore the need for a Mental Health Strategy that fosters and protects rights, expands access to advocacy and enables sustainable change.

Therefore, the Strategy includes even more commitments from LAO:

- LAO is dedicated to a long-term Mental Health Strategy that will feature continual work with clients, advocates and stakeholders to improve initiatives and programs
- LAO is committed to independent, client-instructed, rights-based legal advocacy and acknowledges the vital role it plays in preserving client choice, improving client outcomes and protecting and promoting client autonomy and dignity
- LAO recognizes that “mental disability” and “mental health” are heterogeneous terms reflecting a diversity of needs, addictions and capacity issues. LAO and legal advocates have the primary professional obligation to respect, represent and accommodate clients as individuals
- The Strategy applies to all legal aid service providers such as the private bar, clinics, staff, duty counsel, and administrators

- The Strategy will apply across the legal aid mandate — in refugee/immigration, family, criminal, clinic, and specialized mental health law
- The Strategy will see significant investments go toward expanding mental health rights advocacy services, with an emphasis on continual improvement through needs assessments and innovative service planning. These investments have been developed in concert with LAO’s recently expanded financial and legal eligibility requirements

The Strategy's goals will be achieved through service and program commitments made according to three organizing principles:

**Rights.** LAO will expand mental health rights advocacy by increasing both financial and legal eligibility. Clients rely on legal aid to activate and protect rights, and to ensure fairness in accessing the services that help provide for the most fundamental human needs: shelter, independence, and freedom. Furthermore, LAO is committed to working with clients, advocates and stakeholders to identify and prioritize unmet needs while introducing new advocacy services tailored to youth, seniors and First Nations, Métis and Inuit clients. In addition, LAO will expand legal services in relation to criminal, family, civil and refugee needs, and is intent on promoting mental health rights through systemic initiatives.

**Access to Justice.** LAO will continue to promote access to justice by introducing easier ways for clients to retain counsel. New retainers will give counsel a choice of different practice models and “alternate fee arrangements” to help prioritize face-to-face communication with clients, foster stable solicitor-client relationships, and facilitate more flexible, informal and preventative advocacy. Legal aid “touchpoints” will be installed within the pre-existing health, social and legal infrastructure routinely utilized by our clients. These community and outreach-based pilot projects will enable barrier-free access to services while fostering greater inter-professional cooperation among the people who provide those services.

**Sustainable Change.** Mental health rights advocacy must become a core competency of every legal aid lawyer, administrator and front-line provider. LAO can only promote a rights-based approach to mental health and addictions by creating and sustaining a province-wide training program; instituting updated quality service and performance standards; modernizing policies; expanding partnerships; and ensuring that programs and services accommodate clients by design rather than exception.

To underscore LAO's commitment to these principles, work has already begun on several initiatives to improve and expand mental health services, including:

- a mental health training program developed in partnership with the Mental Health Commission of Canada and the Canadian Mental Health Association, Ontario
- expanded legal aid certificate coverage for several mental health advocacy needs, as part of LAO's financial and legal eligibility increases beginning in June 2015
- expanded coverage for first-time accused so they are less likely to face serious secondary consequences of criminalization, such as loss of employment, a police record or unrealistic bail terms
- a new mental health tribunals program to expand access to appeal rights while investing in the growth and experience of the mental health bar in communities across Ontario
- the creation of a formal mentorship and second chair program to help more lawyers gain experience and expertise in mental health law
- several pilot projects that place lawyers in drop-ins, shelters, community health centres and hospitals, ensuring continual and preventative access to a variety of advocacy options, and better linkages to other legal services
- the modernization of administrative practices and policies to align with the needs of clients and their advocates
- the creation of a permanent LAO policy counsel position to promote, coordinate and harmonize these, and forthcoming initiatives across Ontario

These initial efforts create a foundation for the continual improvement and expansion of mental health rights advocacy over the coming years:

- Training programs lead to improved practices, new quality service standards and the formation of communities of practice to support and grow mental health rights expertise in cities across Ontario
- Investments in the mental health bar translate into greater capacity to expand legal services and coverage, and strengthen rural and remote capacity
- Expanded eligibility means greater legal aid coverage for marginalized clients, like the increasing number of seniors being criminally charged while in long-term care and retirement homes
- More community-embedded and outreach services will increase access to justice for First Nations, Métis and Inuit clients, victims of domestic violence, youth, the homeless, and in-patients
- Finally, the development of more flexible retainers will empower advocates to intervene earlier and on a wider array of major and minor issues, which impact the independence and stability of their clients.

# MENTAL HEALTH RIGHTS

## WHO ARE LEGAL AID CLIENTS?

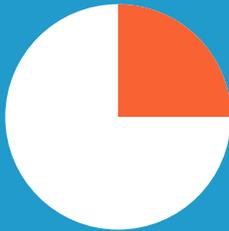
### 18-30

42% of legal aid clients are **BETWEEN THE AGES OF 18 AND 30** when most mental illnesses onset

### 2 IN 3

eligible certificate clients receive **SOCIAL ASSISTANCE OR HAVE NO INCOME**

## LAO'S ANNUAL BUDGET



Mental health clients account for **25% OF LAO'S YEARLY BUDGET**



LAO **INCREASED ELIGIBILITY** in 2014, the first increase since 1996



**400,000 MORE ONTARIANS** with low income will have access to legal aid by 2016

## HOW DO CLIENTS ACCESS LEGAL AID?

### LEGAL CLINICS



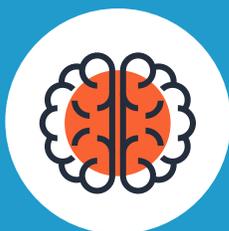
Clinics work on **250,000 CLIENT FILES** each year



**76 COMMUNITY CLINICS** and six Student Legal Aid Services Societies located throughout the province



**17 SPECIALTY CLINICS** share expertise including elder law and disability law



Clinics estimate **1 IN 2 CLIENTS** have a mental illness or addiction



Legal assistance helps **FIGHT EVICTIONS**



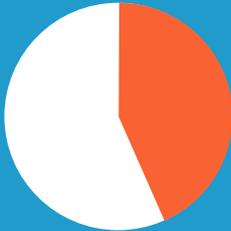
Income assistance includes **SOCIAL ENTITLEMENTS**

# ADVOCACY AT A GLANCE

## PRIVATE BAR

5,007

lawyers across Ontario accept legal aid certificates



46% of family law litigants report **STRESS-RELATED MENTAL ILLNESS**

85,000

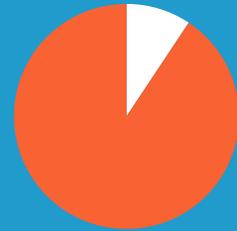
LAO certificates issued each year



**CCB AND ORB HEARINGS** are up 32% and 41% between 2005-2013

1 IN 3

certificate clients have a **MENTAL ILLNESS OR ADDICTION**



90% of refugees have a **HISTORY OF TRAUMA**

## STAFF LAWYERS

10

FAMILY LAW SERVICE CENTRES

2

FAMILY LAW OFFICES

2

CRIMINAL LAW OFFICES

1

REFUGEE LAW OFFICE

1

INTEGRATED LAW OFFICE

## CALL CENTRE

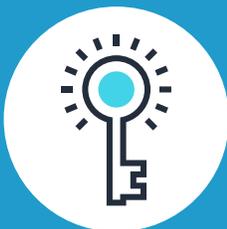
1,200

**CALLS ANSWERED DAILY**, providing summary legal advice, referrals, and issuing certificates

200

**LANGUAGES SERVED**, including TTY and 18 Aboriginal languages

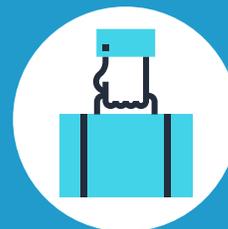
## DUTY COUNSEL



**KEY ROLE IN IDENTIFYING CLIENTS NEEDS** and triaging to appropriate services



**30 FLY-IN LOCATIONS** served in northern and remote areas



**860,000 ASSISTS** for criminal and family law matters each year



40% of criminal duty counsel assists are for **BREACHES AND FAILURES TO APPEAR**

# Provincial consultations

The Mental Health Strategy public consultations took place between December 2013 and April 2014. During that period, LAO:



**received 65 written submissions from groups, organizations & individuals**



**received 700 unique downloads of the MHS consultation paper**



**received over 3,000 unique visits to the Mental Health Strategy website** ([www.legalaid.on.ca/MHS](http://www.legalaid.on.ca/MHS))



**convened over 24 in-person consultation sessions** around Ontario, including in Thunder Bay, Kenora, Sudbury, Peterborough and Guelph



**met with over 15 organizations** including the Canadian Mental Health Association, Ontario; Ontario Federation of Indigenous Friendship Centres; Schizophrenia Society of Ontario; John Howard and Elizabeth Fry Societies; Psychiatric Patient Advocate Office; Toronto Drop-In Network; Criminal Lawyers Association; Mental Health Legal Committee; Ontario Psychologists Association; and the Provincial Human Services and Justice Coordinating Committee



*Consultation with Injured Workers Consultants (IWC) Community Legal Clinic.*

## Here's what we heard about...



### Legal aid

- LAO has a distinct institutional role to protect and promote mental health rights and advocacy in Ontario.
- Legal aid provides assistance for many social determinants of health like housing, income stability, criminality and refugee status.
- Access to justice and advocacy should itself be understood as an important social determinant of health with a significant social return on investment.
- Legal aid services should be measured in terms of volume and cost, and in terms of meaningful and lasting client outcomes.
- Legal aid covers many of the issues that matter to clients, but these services aren't holistically and seamlessly linked together, creating service gaps.

### Mental health

- “Mental health” should be inclusively defined and include addictions.
- An expanded definition of “mental health” should also expand eligibility for legal services.
- Labels should not precede people or drive assumptions about abilities, needs, or choices.
- Mental health is often part of the picture rather than the sole or determining factor. Issues like housing, income and criminal records are major determinants of health and stability.

### Community

- More mental health services are being provided in the community — and that's where advocacy should be available too.
- Familiarity breeds trust and understanding. More on-site face-to-face services in familiar places can ease communication, help clients activate their rights and advocates better do their job.
- Many organizations are eager to have on-site legal advocacy, including community health centres, cultural centres, drop-in and mental health service centres, health care facilities, and community hubs.





- Outreach and embedded counsel can intervene more preventatively before issues are litigated.
- Advocates can enhance their work through partnerships with community services like social workers, user-driven mental health services, and mental health experts.

### Legal needs

- Legal aid should be expanded to cover issues that often impact the rights of people with mental illnesses, like guardianship disputes, police records and carding, driver's license suspensions, in-patient charges, *Provincial Offences Act* and "safe streets" charges.
- Clients have multiple and intersecting legal needs. These needs should be actively identified and clients should be helped in teams or through seamlessly coordinated services.
- Advocacy services should be more preventative, flexible, and holistic, rather than reactive and transactional.
- Self-represented and unrepresented clients are a problem of legal aid coverage and also of trust, choice of counsel, access and continuity of effective services.

### Lawyers

- Many legal aid lawyers are sole practitioners. Developing communities of practice would improve practice standards, better support lawyers, and help sustain and grow the bar in rural and remote communities.
- Lawyers need more time with high and complex-needs clients — different kinds of retainers that are more flexible and time intensive would help fill the need.
- Job satisfaction is an important factor in deciding to work with high and complex-needs clients.
- Effective training, tools, and communities of practice, would increase the capacity and number of lawyers working effectively with mental health clients.
- Lawyers need training in trauma-informed approaches and communication skills to better accommodate clients.



# Rights

Mental health rights advocacy recognizes that all legal aid service providers promote and protect the rights of clients with mental health disabilities.

But too often it is the “mental disorder” which becomes the sole or defining feature of the client and their legal matter.

LAO's provincial consultations have revealed how labels and stereotypes too often result in making choices for a person rather than making decisions with a person.

The consultations underscored how client-instructed advocacy is essential to the promotion and protection of autonomy, dignity and choice; how advocacy uncovers options and alternatives; how advocacy questions “best interests” and confronts discrimination and stigmatization; and how mental health rights advocacy creates the equitable and consensual conditions required for a client to comfortably say “yes” while protecting that client's right to say “no.” In addition, the consultations showed how the profession should develop an advocacy-based culture that emphasizes supportive decision making rather than substitute decision making.

The Strategy recognizes that client empowerment and accommodation is only possible where rights and options are known and can be activated, but there is currently often a gap between the two.

LAO wants to help fill that gap. This means more than increasing access to current services; it means *expanding* legal coverage to ensure advocates are empowered to respond to the everyday legal needs of their clients. Legal advocacy should be readily available whenever a vulnerable person faces a critical issue affecting their livelihood, independence or well-being. But how?

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## Are “rights” the same as “best interests”?

Legal advocates distinguish between rights and best interests. Legal advocates are bound by rules of professional conduct that require the advocate to treat all clients with equal rights and abilities; to act on an instructed basis; and to accommodate clients in giving instructions. This rights-based, choice-driven requirement distinguishes legal advocacy from professions in which the “best interests” of the person may be decided on their behalf.

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# 1.1 Expand financial and legal eligibility

**Financial eligibility.** Expanded financial eligibility means greater access to services across the legal aid mandate, including in family, criminal, refugee/immigration, mental health and clinic law. The greater the number of people retaining lawyers, the fewer the number of people having to represent themselves. It also means improved access to justice for the increasing number of vulnerable Ontarians living on the threshold of financial eligibility, such as: mental health clients in receipt of disability pensions, Canada Pension Plan entitlements or retirement savings; clients of modest means; those at risk of losing their livelihood or facing a long-term disability; and persons with disabilities who may have modest property or trust assets.

**Legal eligibility.** Many clients with mental health issues already meet the financial eligibility criteria but frequently face issues that have been considered “less serious,” rendering them ineligible for legal aid coverage. But these minor issues can accumulate, triggering an avalanche of increasingly serious problems. While these “secondary consequences” may not result in a loss of liberty, they can compound marginalization and lead to life-long legal problems. Legal advocacy can confront these risks, but only where the issues are proactively identified, and only if legal coverage is actually available.

Expanded legal and financial eligibility makes legal advocacy better able to identify these kinds of issues. LAO's provincial consultations uncovered many examples:

- a minor criminal charge not typically covered by LAO may nonetheless negatively impact an existing diversion or bail arrangement, trigger re-incarceration and loss of community supports, or impact an immigration or refugee proceeding
- a history of non-criminal police contact or the accumulation of charges under the *Provincial Offences Act*, creates a record that acts as a barrier to employment, supportive housing and treatment programs, and can limit travel, education and professional practicums

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## Criminalization by another name

LAO recently introduced the **Provincial Offences Act Program** at Old City Hall in Toronto. Clients with a mental health issue are routinely charged with minor provincial offences for “street crimes” like panhandling or trespass. These prosecutions can proceed *ex parte* — in the absence of the accused — yet can result in serious consequences including imprisonment, major fines, and breaches of existing bail or mental health diversion plans. The Program represents clients in these circumstances, comprehensively addressing any and all POA charges they may be facing. Since July 2015, the program has completed assistance to clients for 93 charges, 83% of which were withdrawn or stayed.

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- a short visit to an emergency room for crisis care, even without formal admission, can trigger a driver's license suspension lasting months or years. This can severely impact livelihood and independence, complicate access to needed services particularly in suburban and rural areas, and force individuals to disclose a mental illness to employers
- involuntary detention in a mental health facility can throw housing, community supports and guardianship matters into disarray
- a lack of government-issued identification can be a barrier to social support, opening a bank account, renting an apartment, applying for a job, or even voting in elections
- a physician's finding of incapacity to manage property can trigger a family dispute with potential litigation or raise issues with the Public Guardian and Trustee, despite the client's potential lack of access to legal advocacy regarding powers of attorney for care or property
- a workplace injury claim can be rejected in favour of Ontario Disability Support Payments
- residents in long-term care or retirement home facilities may be charged with minor offences, inviting punitive transfers to different facilities, the loss of health care or support services, or the removal of personal care guardians
- bail conditions may prohibit access to areas where food, shelter and support services are provided
- a sentence greater than 90 days can trigger the removal of supportive housing programs or income entitlements

Consequences like these have a disproportionate impact on persons living precariously on the margins. They also negatively influence the social determinants of health — issues like housing, poverty and employment, access to education, and ability to maintain a livelihood — and increase the risk of marginalization. Expanded mental health rights advocacy will better ensure comprehensive help for these kinds of matters.

**What steps has LAO taken to achieve these goals?** LAO's eligibility expansion has already begun. In June 2015, LAO began the most significant and rapid increase in eligibility for legal aid certificates in more than 25 years. This historic initiative will make almost 400,000 people — 40% more low-income Ontarians — eligible for legal aid services. LAO is able to provide this support because the provincial government increased LAO's funding by \$154 million over four years. To start this initiative, LAO expanded certificate coverage in several areas including criminal law, family law, immigration and refugee law, and mental health law.

**What does this mean for mental health rights advocacy?** LAO's expanded eligibility makes it possible for certificate lawyers to represent an increased number of mental health clients. Stakeholder consultations identified several priority areas that LAO implemented beginning in June 2015 and including the following:

- **Expanded criminal coverage for first-time accused with a mental health issue.** Legal aid certificates are now available for financially eligible first-time offenders with a mental health issue. This covers any summary, hybrid and indictable offence, including mental health diversion, irrespective of the likelihood of incarceration.
- **Expanded coverage for guardianship disputes.** Unrepresented clients are often caught in a dispute between guardians under the *Substitute Decisions Act* (SDA), and their wishes may not be heard. Legal aid certificates will ensure representation in these circumstances.
- **Expanded coverage to challenge statutory guardianship of property.** Legal aid certificates will be available to financially eligible applicants living in the community who wish to challenge the statutory guardianship for property in the Superior Court of Justice or at the Consent and Capacity Board.
- **Expanded coverage for substitute decision makers.** Substitute decision makers are an important safeguard for incapable patients facing forced medical treatment or end-of-life decisions. LAO is making certificates available in the event that a substitute decision makers' instructions are being challenged by health practitioners, ensuring that rights and due process remain readily accessible to incapable patients.

**How will this affect clients?** Trevor's story shows how things would be different. Trevor had never been in trouble with the law until he had his first and only psychotic episode and assaulted a complete stranger. Because it was a relatively minor incident and a first offence, he didn't receive much legal assistance. "I had a few seconds of duty counsel at first appearance," Trevor says, "and while I did receive a certificate it allowed very little time for the lawyer to do much of anything." Things could have been different: "Had my lawyer been able to spend more time on my file, he may have been better able to present the mental health aspect of my offence, which didn't come up until sentencing." Trevor eventually got back on his feet. Today, he is working with LAO to develop training materials that help lawyers more thoroughly identify needs, options, and anticipate the kinds of serious consequences of criminalization that marginalize vulnerable clients.

# 1.2 Enhance rights for youth, seniors, First Nations, Métis and Inuit

LAO will consult with clients, advocates and stakeholders on their priorities for expanding legal coverage to issues of importance to youth, senior, First Nations, Métis and Inuit clients. Expanded financial and legal eligibility should consider the unique needs of these clients in each practice area:

- Seniors are increasingly coming into contact with the criminal justice system. They may face financial eligibility problems related to modest pensions or resources held in trust or guardianship, or legal eligibility barriers as first-time offenders with relatively minor charges. Without legal support, seniors can face serious consequences related to long-term care, access to care, and stable living arrangements
- First Nations, Métis and Inuit clients would benefit from the expanded availability of *Gladue* sentencing principles and programs as they apply to a wider continuum of legal and justice services. For example, LAO would include coverage for criminal mental health proceedings and forensic dispositions before the Ontario Review Board
- Transition-aged youth, or youth turning 18 years old, may become ineligible for assistance from organizations like the Provincial Advocate for Children and Youth or the Office of the Children's Lawyer. Unrepresented transition-aged youth may not have their wishes heard if caught in a family law dispute, or a court proceeding involving a family member for guardianship of the person or property

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## The cultural components of “mental health”

Aboriginal approaches define “mental health” holistically, considering a multiplicity of factors that contribute to the wellbeing of the individual and community. This includes social, economic and spiritual factors, as well as intergenerational factors and family stress, trauma, and posttraumatic stress. It is important that the justice system honour these elements and recognize the need for broader and more inclusive approaches.

See endnote.<sup>3</sup>

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## 1.3 Recognize growing civil legal needs coverage

Developments in legislation and disability rights have significantly expanded the scope of civil legal issues for which clients are requesting assistance. LAO will consult clients, advocates and stakeholders on their priorities to expand legal coverage to issues like:

- representation in guardian disputes
- assistance in drafting powers of attorney for property and personal care
- resource development to enable advocates to raise human rights discrimination and accommodation issues before mental health tribunals
- greater assistance with issues imposed by administrative actions like driver's license suspensions, police records and carding street checks, which disproportionately impact racialized communities and persons with mental illnesses
- civil opinion certificates to provide summary and brief services in a wide range of issues

Civil legal needs also directly intersect with the social determinants of health and so have a disproportionate impact on people living marginally. Barriers to housing, employment discrimination, access to education and loss of livelihood increase the risk of further marginalization.

Legal aid clinics focus on these kinds of concerns. LAO will therefore consult with legal clinics to expand the availability of advocacy services. This may include more coverage for preventative advocacy interventions like non-eviction housing, employment accommodation and discrimination, and greater representation for administrative barriers that impact on livelihood, like police records and driver's license suspensions.

## 1.4 Promote systemic rights and advocacy

Several high-level provincial strategies actively encourage cross-sector engagement, including Ontario's 10-year Mental Health Strategy.<sup>4</sup>

Since launching its Mental Health Strategy, LAO has increased its presence in provincial mental health initiatives. LAO has become part of the Ministry of the Attorney General Roundtable on Criminal Mental Health; an *ex officio* member of the Provincial Human Services and Justice Coordinating Committee (HSJCC); and a member of the Justice, Mental Health and Addictions Expert Panel at the Centre for Addiction & Mental Health. LAO is also promoting rights-based approaches in partnership with organizations like the Canadian Mental Health Association, Ontario and the Mental Health Commission of Canada.

In addition, LAO hosts several programs and initiatives to further systemic mental health rights advocacy. This work takes many forms:

- LAO's Group Applications and Test Case Committee (GATCC) is among the leading sources of systemic and test case funding in Ontario and across Canada, regularly funding litigants and intervener public interest organizations with cases before the Ontario Court of Appeal, the Supreme Court of Canada, and Coroner's Inquests
- LAO is helping coordinate the development of new initiatives like the Mental Health Appeals Program. LAO has worked with the Ontario Court of Appeal, Superior Court of Justice, Minister of the Attorney General, and private bar representatives from the Mental Health Legal Committee and Criminal Lawyers' Association to expand access to justice and expedite appeals from the tribunals that oversee patients in the civil and forensic mental health systems
- LAO's Refugee Law Office helped law students and professors from the University of Toronto's International Human Rights Program to research and report on the treatment of immigration detainees with mental illnesses. The recently released report includes 29 recommendations directed at federal and provincial governments and institutions, and will be tabled internationally.
- LAO is participating in the Attorney General's Roundtable on Criminal Mental Health law. Several of the identified priorities align with LAO Strategy initiatives, such as expanding no charge criminal diversion options, focusing on the needs of dual- and concurrent-diagnosis accused, and ensuring continuity of service through community outreach programs.

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## Solitary confinement on the rise

The federal Office of the Correctional Investigator has identified the rising and disproportionate use of solitary confinement for federal inmates with mental illnesses. There were some 8,300 segregation admissions in 2013/14. And the last five years have seen a 61% increase in incidents of inmate self-harm.

Youth face similar challenges. The Provincial Advocate for Children and Youth recently released their report *It's a Matter of Time*. This systemic review of secure isolation found "indications that serious mental health concerns emerge or are exacerbated during the use of secure isolation" and that there is "immediate need for vigilance and further examination of the conditions of confinement, particularly when youth are held for long periods of time."

LAO will consult on options to increase representation for inmates advocating for improved conditions of confinement and access to health care.

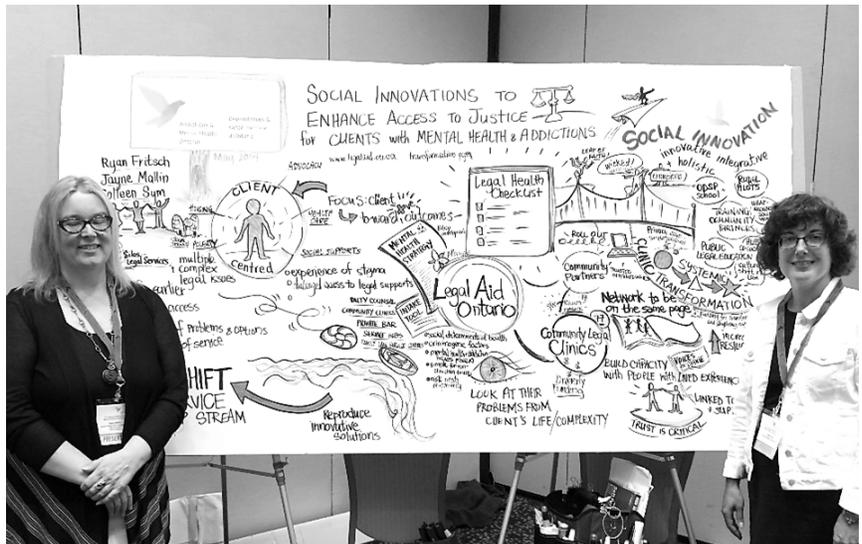
See endnote.<sup>5</sup>

**What are the systemic impacts of test cases funded by GATCC?** Funding for mental health rights advocacy is a major part of the GATCC mandate. Over the last several years, around 30% of the GATCC budget has gone to test cases and inquests related to mental health rights, with many precedent-setting results. For example, legal aid funding supported interveners in *Cuthbertson v. Rasouli* (2013 SCC 53), heard before the Supreme Court of Canada and which expanded end-of-life health care rights. GATCC funding also supported interveners in *P.S. v. Ontario* (2014 ONCA 900) which deemed prolonged involuntary psychiatric detention under Ontario's *Mental Health Act* unconstitutional. Finally, GATCC funding also assisted the CAMH Empowerment Council in the *Inquest into the Deaths of J, K and E*. The inquest jury made dozens of recommendations to improve the way police interact with people who have mental illnesses.

**Coordinating with other institutions can also improve access to justice and expedite proceedings.** LAO is helping coordinate development of a new Mental Health Appeals Program. The program began after Mental Health Strategy provincial consultations revealed a long-standing barrier to appeal rights from the two major mental health tribunals in Ontario: the Consent and Capacity Board and the Ontario Review Board. Between them, these two tribunals convene over 5,000 hearings each year but were subject to only a handful of appeals. LAO worked with the courts, tribunals, the provincial government and client advocacy groups to design an expedited appeal process with representation for all appellants. In its first year, the program has helped approximately 100 appeals go forward, and has expanded the number of lawyers specializing in mental health law in communities across the province.

**LAO has been talking about mental health rights advocacy across the province!**

From top to bottom:  
co-hosting the Prisoners' Justice Day 2014 Conference in Toronto with the Canadian Civil Liberties Association, John Howard Society and Elizabeth Fry Society; presenting at the Addictions and Mental Health Ontario Conference in 2014; and launching the Mental Health Strategy consultations in December 2013.



# Access to justice

Mental health rights advocacy can only help if it is easily accessible, accommodating and responsive to the needs and goals defined by clients. This requires an expansive and flexible approach to answering specific questions, such as:

- what are the eligibility and procedural barriers?
- how can legal aid facilitate familiarity, trust and continuity of representation with a client's counsel of choice?
- is adequate time provided to an advocate in order for them to accommodate and address complex and ongoing issues?
- are services being provided in a way that is culturally competent and trauma-informed?
- does the client receive transactional services, or services that anticipate multiple and intersecting legal needs? Can these be identified proactively rather than reactively?

Access to justice is an LAO priority and will be enhanced by the following initiatives.

## 2.1 Enable flexible representation

LAO will continue to support the needs of clients and the work of mental health rights advocates by introducing new kinds of flexible retainer and “alternate fee arrangement” options. These services are built around client choice and are designed to improve accessibility and accommodation by:

- allowing more time spent with high and complex-needs clients
- fostering longer-term relationships and greater continuity between client and counsel rather than providing for the more traditional transactional one-offs
- facilitating earlier intervention and more preventative, informal legal advocacy covering a wider array of issues faced by the client, and in concert with financial and legal eligibility expansion

This flexibility is essential to modernizing the relationship between staff lawyers, certificate lawyers and the mental health clients they serve.

Time-restricted services are often defined by the type of legal proceeding and assumptions about the work involved, rather than by the specific needs of the clients. Mental health rights advocacy often identifies a wider array of legal options (and secondary consequences) faced by the client. This advocacy needs include: the coordination of health and social services; preventative and informal support in dealing

with administrative rights and discrimination in accessing social support and non-eviction housing matters; access to specialized procedures like diversion or assessments; or the review of large medical histories.

More flexible retainers would better facilitate the choices clients have, the time in which they have to act, and whether counsel can seize an opportunity to address issues in a more comprehensive and lasting manner.

Clients also benefit from more time since it permits more follow-through and ongoing follow-up, and may require various forms of procedural and communication accommodation. These kinds of issues are not always effectively anticipated through conventional legal certificates, block fees, and *ad hoc* discretionary "top-up" policies. A better fit between client need and lawyer service improves the accessibility and efficacy of advocacy. It also means that advocates themselves experience less stress and greater job satisfaction. Ultimately, this means more advocates who are willing and able to work with high-needs, vulnerable clients.

To pursue these goals, LAO will:

- Consult on the creation of new, more flexible legal aid funding options like open-ended and client-based (rather than issue-based) retainers. These would allow advocates to work intensively with a client or a smaller pool of high needs clients, giving them time and flexibility to deal with multiple and intersecting legal issues. In turn, counsel can be more proactive about identifying rights issues and seeking early resolution prior to formal litigation, or working collaboratively with other lawyers across practice areas
- Consult on the introduction of certificates tailored to the mental health advocacy needs of the practice area. This creates retainer options that would allow for more appropriate remedies to be



## Multiple and intersecting needs

LAO has determined that there is considerable need for services tailored to a smaller group of high and complex-needs clients. Many clients who have appeared before a mental health tribunal also have criminal, family, immigration/refugee and clinic law issues. But of all these clients, a minority — just 10% — required 50% of the criminal certificates, 30% of family law certificates, 30% *CFSA* certificates, and 50% of refugee certificates. Client-based retainers could more seamlessly facilitate a team-based approach to comprehensively addressing multiple, concurrent and ongoing legal needs.

advocated for, depending on the requirements of the clients; for example bail hearings and reviews, where community and mental health services have to be arranged

- Support and encourage lawyers to be able to provide services in multiple practice areas, making continuity of counsel easier for clients, and better identifying consequences that can impact rights in family, refugee, criminal or civil mental health rights proceedings
- Consult on the best way to have clients choose the right service at the right time. LAO is committed to ensuring a client's right to choose the advocate and service that best meets their needs, whether it is a private bar lawyer, staff lawyer, or some other service model. LAO will work with stakeholders to ensure the mix of legal aid services is managed in a way that sustains all aspects of the mental health bar

### **How do flexible retainers benefit clients? How do they benefit lawyers?**

Accumulated charges, intersecting legal issues, ongoing support and communication needs – all of these take time to manage and resolve comprehensively. This is why LAO is interested in exploring the potential of a new service model for private bar lawyers: open-ended or more flexible “alternate fee arrangement” retainers.

The idea is simple: client needs rarely fit in a neat legal box. Clients increasingly rely on more informal or proactive advocacy out of court, require more time to better communicate with their lawyer, may need counsel to consult with other lawyers about family law or immigration issues, and may need a comprehensive approach to untangling years of accumulated criminal charges, or to deal with a complex family law and guardianship matter.

Open-ended or flexible retainers could make it easier for counsel to address a wider array of advocacy needs over time, and without the hassle of constant administrative requirements. It would also make it easier to stick with a client, potentially reducing the number of unrepresented clients for whom existing models don't work.

## 2.2 Expand community-based services

Providing better service to clients needing mental health rights advocacy means meeting them where they are — rather than waiting for them to find help on their own.

Active community outreach connects with the significant number of current and *potential* clients who face barriers to accessing legal aid services through traditional means. Clients and their counsel have identified many obstacles like lack of trust and unfamiliarity; unawareness of rights and how to activate them; uncertainty about expectations and outcomes, and the perceived risk in speaking up and asserting rights; practical difficulties like travel, system navigation, paperwork and appointments; and cultural barriers.

Programs that bring legal services to where clients live, find community in and generally frequent, will be key to addressing these barriers. Places like drop-in and community centres, psychiatric facilities, crisis diversion centres and shelters, supportive housing providers, remand and correctional centres, community health centres, long-term care and out-patient services. One or more of these may together form a "client pathway" through the health care and social support systems — a pathway which should include legal aid access.



**This graphic records a consultation with nearly a dozen mental health agencies in Hamilton, where ideas and feedback were gathered, which have helped establish an active community outreach program. Legal counsel from Hamilton Community Legal Clinic now provides on-site and on-call advocacy and legal education in downtown drop-in and community centres.**

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## Health and justice sector partnerships improve outcomes and enhance rights

The ARCH Disability law Clinic and St. Michael's Hospital recently launched a legal services partnership to provide access to justice for patients in downtown Toronto. Other clinics are providing services in multi-service hubs. The Rexdale Community Legal Clinic and Davenport-Perth Legal Assistance Office are located in community health centres, creating a one-stop shop for outpatient, social support, and legal aid services.

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***The graphic on the opposite page records a presentation by LAO and the Halton Community Legal Clinic to the Addictions and Mental Health Ontario Conference in 2014.***

*Key principles of improved mental health rights advocacy, like earlier and on-site access, drive innovation throughout the system.*

Several pilot projects are already demonstrating the benefits of active legal aid outreach along these client service pathways. Access to justice is seamless and meaningful where legal services are offered on-site within community settings and face-to-face by familiar advocates. Communication and trust barriers are overcome; legal rights are proactively and preventatively uncovered in the everyday; and more flexible and informal advocacy enables immediate responses and the continuity necessary to manage dynamic and evolving legal complexities.

People don't live in boxes that fit neatly into corresponding legal categories; people experience problems in the everyday, and should have access to everyday legal services too.

While the provision of on-site services benefit the client, legal advocates are similarly advantaged: proximity equals partnerships.

Partnerships also help advocates be more effective by assisting with related matters. For example, social workers and participants in user-defined and user-operated services, which can include peer support, often help clients make court appearances, manage paperwork, ensure the client stays connected to their advocate, provide transportation to appointments, and identify better services and support options.

Site-based health services can also make it possible for an advocate to use local assessment procedures while maintaining control of disclosure. They can more proactively and preventatively respond to first-episode charges. Site-based services make ongoing follow-up easier; make responding immediate; make system navigation and case coordination a core feature; and enable proactive and informal advocacy in order to resolve matters before they end-up in courts and tribunals. In short, community-based services strive to give every client access to a "full-service law firm."



**How do community-based legal services change things for clients and their advocates?** The Halton Community Legal Clinic is working with partners to extend community access. The development of an innovative "legal health check-up" puts legal information in the hands of trusted intermediaries at local community centres. These workers use the check-up with their community members to identify legal issues and options. This makes for a quick referral to and a rapid follow-up at the legal clinic. It also improves awareness of rights and legal services. The check-up helps shift services upstream, lets clients seek help in the community where they're comfortable, and shows the power of partnerships.

**What kinds of partnerships are showing results?** A mix of LAO service providers, for example some legal clinics and some staff lawyers, have formed referral partnerships with local police forces and housing providers, to line-up no-charge diversion services as soon as clients with mental illnesses faces potential charges. Other clinics provide things like interdisciplinary professional services in tandem with staff social workers; extended satellite services to better reach rural and remote clients; and partnerships with local law schools and employing articling students to learn the mental health rights advocacy skills required of new practitioners.

**Community-embedded services help provide the "one stop legal shop."** Effective legal advocacy relies on subject matter expertise. But clients frequently experience a highly siloed legal system: criminal issues are dealt with at courthouses; family law services are provided by staff offices and private bar counsel; and housing and income security services are provided by legal clinics. Active outreach can provide a *single point of contact* that helps make these services seamless.

**The “mobile law firm” making rights advocacy available in the community.**

The Hamilton Outreach Project launched in early 2015 to make barrier free access to justice readily available in downtown Hamilton communities. As a result, there is no waitlist for services and even no additional bus rides to take.

The program provides a single point of face-to-face contact and brings a wide variety of legal aid services directly to clients in the familiar setting of their community. The program utilizes two lawyers: a legal clinic lawyer with expertise in housing and income rights, and a legal aid staff lawyer with expertise in criminal law, mental health law, health care rights, and guardianship issues. Their practice is provided on a weekly or biweekly basis within several shelter, community, social service agencies and at a hospital in downtown Hamilton.

This approach is like a “mobile law firm” of services available to clients. It removes obstacles to access and offers legal advocacy and rights education available to the client in the health, justice and social service systems. The team offers a coordinated and holistic approach that means assisting with a variety of intersecting rights and legal needs. Ongoing, in-person contact ensures that counsel stays connected to the client and connected to other legal aid services.

The Hamilton Outreach project is looking to make private bar expertise in criminal and family law available through this model, as well as expanding access to a family health team. They are working to maintain better contact with criminally accused clients through a dedicated criminal paralegal at the John Sopinka Courthouse.

## 2.3 Build legal capacity through partnerships

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### What is “peer support”?

Peer support is a blanket term that recognizes the need for, and benefit of, persons with psychiatric disabilities providing services to other consumer/survivors. These are user-defined and user-operated services which recognize that “there should be nothing about us without us,” and that improvements to the justice, social support and mental health systems should be driven by mental health service users themselves.

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The delivery of effective client and patient services increasingly involves cross-sector partnerships. And while lawyers are not social workers, they also don’t work in isolation. Effective mental health rights advocacy is not produced in a vacuum — it often involves some combination of health, social support and housing providers.

Support services can also enhance and intensify the advocacy or legal service provided. Advocates can call upon these services to assist either themselves or their clients, either within the privileged relationship or more broadly.

Typical examples of advocacy “support services” include access to expert assessments and second opinions; inclusion of staff social workers to help liaise with housing and social support providers; or working with participants in user-defined and user-operated services, including peer support workers, to provide assistance in client meetings and hearings, to make appointments, or to help manage paperwork.

LAO can do more to improve upon, and better accommodate, the provision of ancillary support services that enhance the work of legal advocates and the experience of clients.

LAO will:

- develop inter-professional partnerships with social workers and services run by mental health service users at more points in the legal aid system
- cultivate the greater use of inter-professional student and practicum placements
- support community service providers as "trusted intermediaries" to expedite access to legal aid by taking applications and helping clients identify rights issues
- consult on the development of a model province-wide partnership guidelines that will foster more cross-sector and inter-professional services. This would protect client rights and decision-making powers while creating a common framework for issues like privacy, professional responsibility and privilege, and the independence of legal advice
- establish preference for partner service providers who serve all LAO clients, regardless of their criminal record, probation or parole status

**Users supporting users.** For Toronto's Injured Workers' Consultants ("IWC") Community Legal Clinic, user support begins on day one. IWC utilizes a unique group intake process that helps injured and unemployed clinic clients to instantly connect with a supportive community. Finding such community is empowering and helps clients give voice to their story and find strength to pursue a litigation process that can take months or years. Most importantly, it helps clients avoid feeling alone and isolated.

**The power of peer support.** Every month, peer support workers at the Parkdale Activity Recreation-Centre ("PARC") assist over a dozen members with their legal proceedings. The PARC peer support program helps people make appointments, attend court dates, organize paperwork, and liaise with lawyers and community supports. This occurs across a variety of conventional practice areas, including criminal, refugee, family and clinic law. Peer supporters provide an essential form of accommodation that makes it possible for program users to successfully navigate the justice system, while enabling advocates to focus on advocacy.

**Always the right(s) call.** It should always be the right call to reach out for help. But even short delays can make communication frustrating. That's why LAO is creating a dedicated, direct-access phone line for advocates and trusted intermediaries working with vulnerable clients, like victims of domestic violence, those with mental health issues, and First Nations, Métis and Inuit.

For callers who need further assistance, LAO has formed a partnership with ConnexOntario, a 24/7 help line for those providers of mental health and addictions services. Connex maintains a comprehensive database of all mental health and addictions services in Ontario, and is able to pinpoint culturally and linguistically appropriate services. Any clients needing more help will be given a live transfer to Connex without delay.

LAO and Connex are also partnering to put the right information in the hands of mental health rights advocates. The partnership with Connex will make their database of services available to legal advocates at any time. This will provide an instant and comprehensive picture of locally available services, and can even provide up-to-the-minute information on bed availability for specific services. These are powerful tools that meaningfully enhance the advocacy and services available to clients.

## 2.4 Address barriers in different practice areas

Access to effective mental health rights advocacy can be improved through both general and specific service initiatives. Each practice area faces distinct barriers and needs. By no means an exhaustive list, the following suggestions have priority given the commonality of the needs they serve and the potential impact on clients.

**Criminal law.** Many clients with mental health issues are incarcerated at the remand stage of their proceeding, typically because they lack the external supports to secure bail or plead guilty. If not, they are often stuck with onerous or counter-productive bail terms that make adherence a challenge and breaches likely. More legal aid resources at this stage can better prepare defence counsel, allowing them the time necessary to arrange proper community supports, to discuss options with the client, and to liaise with the Crown and other parties in order to create more appropriate terms for judicial interim release, ones that don't set the client up for failure.

LAO will:

- seek to expand legal aid coverage for mental health bail hearings and reviews, diversion, and other mental health proceedings
- seek to expand legal aid coverage to represent more mental health clients on first offence and less serious criminal charges resulting in secondary consequences, including *Provincial Offences Act* charges, to help break cycles of criminalization and marginalization
- investigate the impact of better training, better intake tools, and stronger referral pathways to proactively and preventatively assist criminally accused clients in identifying areas in their lives particularly vulnerable to criminal justice involvement, such as ongoing family and child welfare difficulties. Multiple and intersecting legal issues should be identified at the first point of contact within the LAO system, no matter where that contact occurs
- work systemically to promote and establish a consistent set of “baseline” policies and services at every criminal court house across the province

**Refugee and immigration law.** Recent legislative changes have dramatically reduced the time in which to prepare a claim. Asylum claims are now made, prepared, and determined in two-to-three months, compared to two years available under the previous legislation. Shorter preparation time disproportionately affects clients with mental health issues. Criminalized permanent residents have seen their ability to appeal deportation orders impacted, limiting their ability to raise humanitarian and compassionate grounds, which is the obvious possibility when considering the plight of clients with mental health issues. Such litigants may not have any opportunity to explain the circumstances of their offences or even to have the mitigating factors assessed.

- LAO will investigate the impact of better of training, better intake tools, and stronger referral pathways, to improve the identification of client needs and link refugee and immigration clients to criminal, family and child welfare law resources
- LAO will ensure refugee and immigration clients are eligible for more flexible legal aid coverage when facing relatively minor criminal or mental health proceedings

**Family law and child welfare.** Recent reports and projects highlight the myriad unmet needs and challenges in the family law and child welfare systems, including the considerable number of self- and un-represented litigants;<sup>6</sup> the stress and anxiety that litigants face to the point of triggering mental health issues;<sup>7</sup> the need to increase legal aid funding in this area;<sup>8</sup> and how family law and child welfare disputes so often intersect with other legal needs related to housing, income and employment, access to social services, domestic violence, and mental health and addiction.<sup>9</sup> To better meet these client needs, LAO will explore options to:

- expand legal aid eligibility and coverage for victims of domestic violence
- explore the introduction of more flexible retainers to work more intensively with high- and complex-needs clients, facilitate early intervention to promote resolution, and to account for the informal or brief advocacy services for related issues
- enhance certificate coverage to ensure access that is based on the complexity of the client's mental health needs, the potential impact on their legal issue, and the need for post-resolution support with other intersecting legal issues
- increase the availability of independent health, social, and accommodation assessments to ensure that litigants, and not courts or other parties, control information

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## Minor cases, major consequences

Minor criminal or civil mental health proceedings may appear insignificant but can have irreparable consequences on immigration and refugee status. These considerations intersect with the need for cultural and religious competence, better understanding of communication barriers, and an awareness of the self-stigma or the shame that exists in discussing or disclosing mental health issues. Cases can also cause refugee applicants to remain in limbo, for example being stuck in detention that can exacerbate underlying post-traumatic stress disorders and underlying trauma. Studies show high levels of psychiatric symptoms among detained refugee claimants, even after short periods, with rates of depression three times higher than non-detained refugees. Refugee claimants with mental health issues are routinely held in correctional facilities alongside the general criminal population rather than immigration holding centres.

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- expand coverage for both parties in a family law matter
- assist more people and more families with disabilities to advocate for support and accommodation needs, including assistance with emergency child apprehension appeals

**Clinic law.** LAO recently established dedicated clinic funding to develop innovative programming around community outreach and mental health initiatives, including \$3.3M for projects in 2016/17. Clinics also received 30% of financial and legal eligibility expansion funds. Together, these set the stage for enhanced clinic services, potentially including:

- expanded civil legal coverage for issues like non-eviction housing, employment accommodation and discrimination issues
- wider representation for client involvement with administrative barriers that impact a client's livelihood, like police records and driver's license suspensions
- more clinic involvement in community embedded and outreach advocacy
- greater support for clinics who wish to neighbour with health and social support services, such as community health centres and social service hubs
- stronger support for clinics who wish to make use of in-house social workers who magnify the advocacy work of counsel by assisting with community programming, client support, and the need to liaise with external service providers



***Treating family law problems with social innovation.*** LAO is partnering with the Ontario Psychological Association in a social innovation project hosted by the Winkler Institute at Osgoode Hall Law School. Lawyers, clients, doctors and various institutions, are working together to design a project that will provide lawyers with greater access to expert coaching and consulting in mental health issues. This will educate counsel, helping them to become more aware of mental health services and options for their clients and the kinds of advocacy issues counsel can pursue.

# Sustainable change

LAO's Mental Health Strategy will review all services and the legal practice mandate through the lens of mental health and addictions in order to accomplish the following: identify and recognize the legal needs of clients as the impetus for change; enable LAO and legal aid clinics to provide services in a more efficient, effective and holistic manner; and set a five-year vision with specific initiatives for each year.

Over the Strategy's two-year development, an incredible array of innovative projects have emerged across all legal aid services and practices areas. The cumulative intent of these directives is to promote and sustain change rather than engage in quick fixes. Consultations emphasized how legal aid must be continually accommodating as both a system and a process. Every point of contact with a client should be valued as an engagement opportunity and a chance to remain connected, rather than simply a transaction. Corporate culture should reflect these principles, while also ensuring care and attention is given to supporting the mental wellness of legal aid service providers.

Embedding these values in the corporation and across LAO's legal and service mandate is the objective of the following commitments.

## 3.1 Grow and strengthen mental health rights advocacy expertise

The mental health bar includes a tremendous diversity of dedicated advocates working across the Legal Aid mandate and throughout LAO's services. It also includes specialists who have committed exceptional careers to promoting, protecting and expanding patient rights. This expertise needs to grow in order to sustain itself in meeting the needs of the significant proportion of legal aid clients with mental health issues. Particular attention must also be given to expanding the bar in less populated regions and providing culturally competent services to specific communities.

LAO will work to grow and strengthen mental health expertise across each practice area. LAO will:

- update retainer and service options consistent with the Mental Health Strategy in order to encourage and empower more lawyers to make mental health rights advocacy part of their practice
- increase legal services consistent with LAO's financial and legal eligibility expansion to cover more of the proceedings of greatest concern to mental health clients and advocates, and as a result, encouraging more lawyers to take up a mental health practice

- ensure second chair and mentorship funding to mental health rights advocates to help less experienced lawyers get excited about being on the front-lines of mental health advocacy
- develop and sustain a mental health training program to give practitioners confidence. The training will invite experienced mental health advocates to lead local and regional training initiatives, engage in peer mentoring, and build communities of practice. This could interface with law schools and student legal aid services to make mental health law a more readily accessible career choice
- consult on the introduction of enhanced panel standards to include core mental health service competencies for all practitioners, including the development of mental health specialist designations designed to take on the most complex cases through more flexible retainers and services

## 3.2 Introduce a mental health training program

Mental health rights advocacy relies on a strong professional culture of independent, client-instructed, rights-based legal advice that is buttressed by legal clinics, staff lawyers and the private bar. These practices need to be nurtured, grown and sustained to specifically reflect the ethical issues and substantive knowledge required to be an effective mental health advocate. Effectively serving clients with mental health issues must be a core competency of every legal aid lawyer, administrator and front-line provider.

LAO will therefore develop and deliver a mental health training program that will:

- create a province-wide mental health training program, mandatory for all LAO employees but equally available to the private bar and legal clinics
- provide training on understanding and identifying mental health rights and options; promote best practices for professional ethical issues; foster legal services that are trauma-informed<sup>10</sup> and culturally competent; and build knowledge about community and health support services
- incorporate leading mental health workplace and wellness standards in conjunction with those

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### Understanding "trauma informed practice"

Trauma-informed legal advocacy recognizes the impact current or prior exposure to violence and trauma has on the physical, emotional and psychological well-being of clients. Most recently, the American Bar Association adopted resolutions promoting the use of trauma-informed practices. This also goes for professional wellness: "secondary trauma" refers to the cumulative physical, emotional, and psychological effects of continual exposure to traumatic stories or events.

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developed by other institutions, including the Ontario Bar Association, Law Society of Upper Canada Task Force on Mental Health in the Profession, the Mental Health Commission of Canada, the Canadian Standards Association National Standard of Canada for Psychological Health and Safety in the Workplace, and CMHA Ontario's Mental Health Works

- foster the establishment of “communities of practice” in regions across the province to help grow and sustain the bar while increasing client choice. Use "train the trainer" sessions to create the opportunity for local and regional mental health bars to support one another, establish peer mentoring, and tailor materials to local needs and services
- create client legal needs-assessment tools specific to each practice area. These will help advocates and administrative staff identify the full range of legal rights and options available to clients with mental health issues
- establish the training as the foundation for more robust panel standards and for the enforcement of higher quality service
- share the training program with other legal aid plans, law schools and other institutions

**How are needs assessed?** Lawyers and their clients face a complex interaction of legal, medical, and social support considerations. It is hard to know what programs and options exist and how those relate to legal procedures. Most importantly, it is hard to know where to begin with a client, how to respond to cues and issues they raise, the wishes they express, and to understand what the implications or consequences may be. Not just in legal terms, but also in the everyday life of the client.

Beginning in 2014, LAO partnered with the Canadian Mental Health Association, Ontario and an external advisory committee of lawyers, academics and persons with lived experience to create better ways of assessing need and options. These new tools guide a legal advocate in these issues by adopting a rights-based approach. A rights-based approach accommodates a wide array of medical and social support options while protecting the fundamental freedoms and rights of clients to choose the option best suited to them. Good legal advice and proper client instructions are possible only where the advocate connects with the client to obtain relevant information; understands where the client is coming from and what their own measures of success are; and anticipates the short- and long-term consequences for the client, both legally and holistically in other areas of the client's life. These tools will help guide advocate in doing that by looking beyond the diagnosis or label.

### 3.3 Define baseline services & best practices

The rapid expansion of problem-solving courts across Ontario has led to a patchwork of programs, eligibility requirements and approaches to issues concerning mental health, including addictions, dual and concurrent diagnoses, youth and seniors. It is important to tailor services to meet local "environmental" conditions — things like local populations and existing infrastructure. But a common framework can help ensure the availability of core or baseline services at every site.

LAO will:

- seek to work with the Minister of the Attorney General Criminal Roundtable on Mental Health, the judiciary and other stakeholders to create a provincial “baseline” and best practices model for problem-solving courts
- develop options to link accused to advocates at the earliest possible opportunity, preferably before a first appearance in court. This may allow bail and diversion to be arranged in advance, and may reverse the declining trend to release accused on a promise to appear or summons
- expand the focus of mental health services beyond accused who are seriously and persistently ill or who have a formal diagnosis. This recognizes that accused with less apparent mental health needs and addictions may deserve legal services yet remain unrepresented in regular court proceedings because both their legal issues are less serious and their mental health issues less obvious



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#### Client satisfaction survey

LAO is developing an iPad-based survey to better identify and track the needs of in-patient clients. The survey will help to: set baseline quality service standards for lawyers; highlight intersecting and unmet legal needs; identify service pathways where more legal services could be made available; and create performance indicators linked to satisfying self-identified clients' needs and outcomes.

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## 3.4 Accommodate by design

LAO will embed a culture of accommodation through various corporate initiatives. These include efforts to:

- streamline administrative billing policies and practices to accommodate clients and counsel. This may include reviewing disbursements related to things like producing medical records and travelling to mental health facilities. Expand access to expert assessments and reports and update auditing practices to account for time required to work with health and social service providers
- maintain the permanently established policy counsel position responsible for mental health at LAO. This position improves accountability and innovation and promotes an understanding of mental health issues across LAO's corporate and administrative practices.
- develop corporate-wide mental health service performance indicators. These objectives must match a contemporary understanding of what comprises effective service in the realm of mental health. Previous performance indicators focused on transactions and per-incident costs may undervalue efforts that truly change lives. LAO will therefore explore the development and adoption of quality service standards and auditing criteria focused more on barometers like providing lasting client outcomes; satisfying both client and counsel alike; creating and maintaining a positive attachment between client and legal aid service; establishing readily accessible and accommodating services; involving clients and allies in service delivery and planning; generating consideration of the panoply of issues a client faces including criminal and housing status; and adhering to rights-based best practices
- involve clients, their communities, allies and mental health rights advocates in service delivery and planning. No stakeholder has more expertise in client needs and experiences than the clients themselves. LAO will continually consult clients in designing the services and policies that affect them
- LAO will also consider developing a recruitment policy and fostering training partnerships to employ more people with lived experience



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### **Clearer billing processes, faster payments, more support**

Beginning in late 2013, LAO worked with several private bar organizations to identify and streamline billing and administrative issues. This had several positive effects on mental health practice. Of the 16 items identified by representatives of the mental health bar, 10 have been resolved to date, and most other issues are being addressed under LAO's Mental Health Appeals Program.

**Accommodating by design: supporting clients in telling their story.** Historically, criminal prosecutions involving victims with a mental health issue have had a low success rate, despite the fact that persons with a mental health issue are much more likely to be victims of violence than the general population.

To better assist these vulnerable witnesses, Ontario's Mackenzie Health Centre for Behavioural Health Sciences recently imported an innovative program from the United Kingdom. The Liverpool Witness Support and Preparation Model was developed to prepare vulnerable witnesses for their appearance in court trials. The model isn't about what a witness will say, but about how they will say it. The service works with vulnerable witnesses, including those with intellectual disabilities, FASD, acquired brain injury and autism to identify any difficulties they may face in telling their story, and how the court can accommodate those barriers. The process also provides each vulnerable witness with an understanding of what will happen to them when they become part of a trial, as well as to provide skill building to help the witness give evidence in court.

To date, the program has worked with 70 witnesses through 50 trials in the UK, most alleging serious sexual assaults. 38 out of 45 prosecutions were subsequently successful. In addition, of 6 defendants supported, 3 were acquitted, 2 offered a plea and 1 part partially acquitted. The program has also had a successful prosecution in a Canadian trial.

LAO has been working with Mackenzie Health to make this program and training more widely available across Ontario.

# The blueprint for change

## Year 1 – Research & consultation phase (complete)

Innovation	Builds
<p>Develop and Release Mental Health Strategy Consultation Paper</p> <p>Consult by meeting people in cities around the province, online, and through teleconferences</p> <p>Establish a permanent policy position for leading the mental health strategy</p>	<ul style="list-style-type: none"> <li>• Builds knowledge, awareness and understanding of client needs</li> <li>• Identifies opportunities, trends, and potential partners</li> <li>• Identifies service gaps and community priorities</li> <li>• Establishes lines of communication between stakeholders, lawyers, clients, and institutions</li> </ul>

## Year 2 – Building foundations (in progress or complete)

Innovation	Builds
<p>Create a Mental Health Strategy</p>	<ul style="list-style-type: none"> <li>• Establishes province-wide framework to support and coordinate the development of mental health initiatives across the LAO mandate and services</li> </ul>
<p>Develop training resources, guided interview tools</p>	<ul style="list-style-type: none"> <li>• Establishes mental health as a mandatory core competency for all legal aid service providers</li> <li>• Fosters development of compliance-based baseline practice and service standards</li> <li>• Facilitates consistent application and awareness of expanded eligibility criteria</li> <li>• Fosters development of “communities of practice” around the province to support the bar</li> </ul>

Innovation	Builds
Implement mentorship and second chair programs	<ul style="list-style-type: none"> <li>• Encourages more lawyers to gain experience and expertise in mental health law</li> </ul>
Implement community embedded and outreach advocacy pilot programs	<ul style="list-style-type: none"> <li>• Ensures continual access to seamless array of advocacy options while linking legal, health and social support institutions</li> </ul>
Develop a mental health appeals program	<ul style="list-style-type: none"> <li>• Assists otherwise unrepresented appellants and invests in the growth and expertise of the mental health bar</li> </ul>
Implement the financial and legal eligibility expansion	<ul style="list-style-type: none"> <li>• Expands coverage for several new mental health law services; covers more clients at the margins</li> </ul>
Expand criminal certificate eligibility and increase services	<ul style="list-style-type: none"> <li>• Expands eligibility for first-time accused and those facing secondary consequences</li> </ul>
Streamline administrative practices and policies	<ul style="list-style-type: none"> <li>• Aligns needs of clients with those of their advocates</li> <li>• Update policies like s. 85 appointments, change of solicitor policies, eligibility and discretion, etc.</li> </ul>
Develop alternate fee arrangements and more flexible retainers	<ul style="list-style-type: none"> <li>• Facilitates longer-term and more satisfying relationships between counsel and client</li> <li>• Allows more proactive and flexible advocacy</li> <li>• Facilitates alignment with new community embedded and outreach programs</li> </ul>

Innovation	Builds
Create and conduct an in-patient needs and satisfaction assessment survey	<ul style="list-style-type: none"><li>• Gives marginalized clients a voice in defining needs and services</li><li>• Creates performance indicators linking mental health rights advocacy to health and social equity outcomes</li></ul>

## Year 3 – Expansion and enhancements (upcoming)

Innovation	Builds
Continue with financial and legal eligibility expansion	<ul style="list-style-type: none"> <li>• Continue consultations</li> </ul>
Expand partnerships	<ul style="list-style-type: none"> <li>• Continue to explore cross-sector institutional partnerships to increase access to social and health services and build capacity in the justice sector</li> </ul>
Enhance workplace mental wellness standards	<ul style="list-style-type: none"> <li>• Adopt the CSA / MHCC National Standard of Canada for Psychological Health and Safety in the Workplace</li> </ul>
Scale-up community embedded and outreach programs	<ul style="list-style-type: none"> <li>• Increase access for Aboriginal, First Nations, and Métis, victims of domestic violence, in-patients, youth and the elderly</li> <li>• Develop and roll-out more tools for trusted intermediaries</li> </ul>
Continue to streamline administrative practices and policies	<ul style="list-style-type: none"> <li>• Develop and introduce enhanced qualification, performance and practice standards for advocates</li> <li>• Update LAO's Billing &amp; Tariff Handbook to align with contemporary needs of clients and advocates</li> </ul>
Accommodate by design	<ul style="list-style-type: none"> <li>• Introduce performance metrics to measure the impact of the Mental Health Strategy</li> <li>• Enhance LAO's Client and Lawyer Service Centre call centre with dedicated lines for mental health advocates and better needs-assessment tools</li> </ul>

# Endnotes

<sup>1</sup> Ministry of Health and Long-Term Care, *The Legislated Review of Community Treatment Orders* (May 2012), available online: [http://www.health.gov.on.ca/en/public/programs/hepatitis/docs/cto\\_review\\_report.pdf](http://www.health.gov.on.ca/en/public/programs/hepatitis/docs/cto_review_report.pdf)

<sup>2</sup> Consent and Capacity Board, *Annual Reports 2005-06 and 2012-13*, available online: <http://www.ccboard.on.ca>; Ontario Review Board, *Annual Report 2012-13*, available online: <http://www.orb.on.ca>

<sup>3</sup> More information about Aboriginal approaches to mental health is available from the Ontario Federation of Indian Friendship Centres, *Aboriginal Mental Health Strategy* (2006), online: <http://ofifc.org/publication/good-mind-ofifc-mental-health-strategy>

<sup>4</sup> Ontario Ministry of Health and Long-term Care, *Open Minds, Healthy Minds: Ontario's Comprehensive Mental Health and Addictions Strategy* (June 2011), online: [http://www.health.gov.on.ca/en/common/ministry/publications/reports/mental\\_health2011/mental\\_health.aspx](http://www.health.gov.on.ca/en/common/ministry/publications/reports/mental_health2011/mental_health.aspx)

<sup>5</sup> See the Office of the Correctional Investigator, online: <http://www.oci-bec.gc.ca/>. Provincial Advocate for Children and Youth, *It's a Matter of Time: Systemic Review of Secure Isolation in Ontario Youth Justice Facilities* (Toronto: 2015), online: [http://provincialadvocate.on.ca/documents/en/SIU\\_Report\\_2015\\_En.pdf](http://provincialadvocate.on.ca/documents/en/SIU_Report_2015_En.pdf)

<sup>6</sup> See for example the National Self-Represented Litigants Project, online: <http://representingyourselfcanada.com>

<sup>7</sup> Ontario Civil Legal Needs Project, *Listening to Ontarians* (Toronto: May 2010), online: [http://www.lsuc.on.ca/media/may3110\\_oclnreport\\_final.pdf](http://www.lsuc.on.ca/media/may3110_oclnreport_final.pdf)

<sup>8</sup> Action Committee on Access to Justice in Civil and Family Matters, *Meaningful Change for Family Justice: Beyond Wise Words* (April 2013), online: <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/Report%20of%20the%20Family%20Law%20WG%20Meaningful%20Change%20April%202013.pdf>

<sup>9</sup> See endnote 8.

<sup>10</sup> More information about the American Bar Association's trauma-informed initiatives is available online: [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.authcheckdam.pdf). In June 2015, the Law Society of Upper Canada announced an initiative to look at wellness in the profession: [https://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/News/News\\_Archive/2015/treasurer-acclamation-EN.pdf](https://www.lsuc.on.ca/uploadedFiles/For_the_Public/News/News_Archive/2015/treasurer-acclamation-EN.pdf)