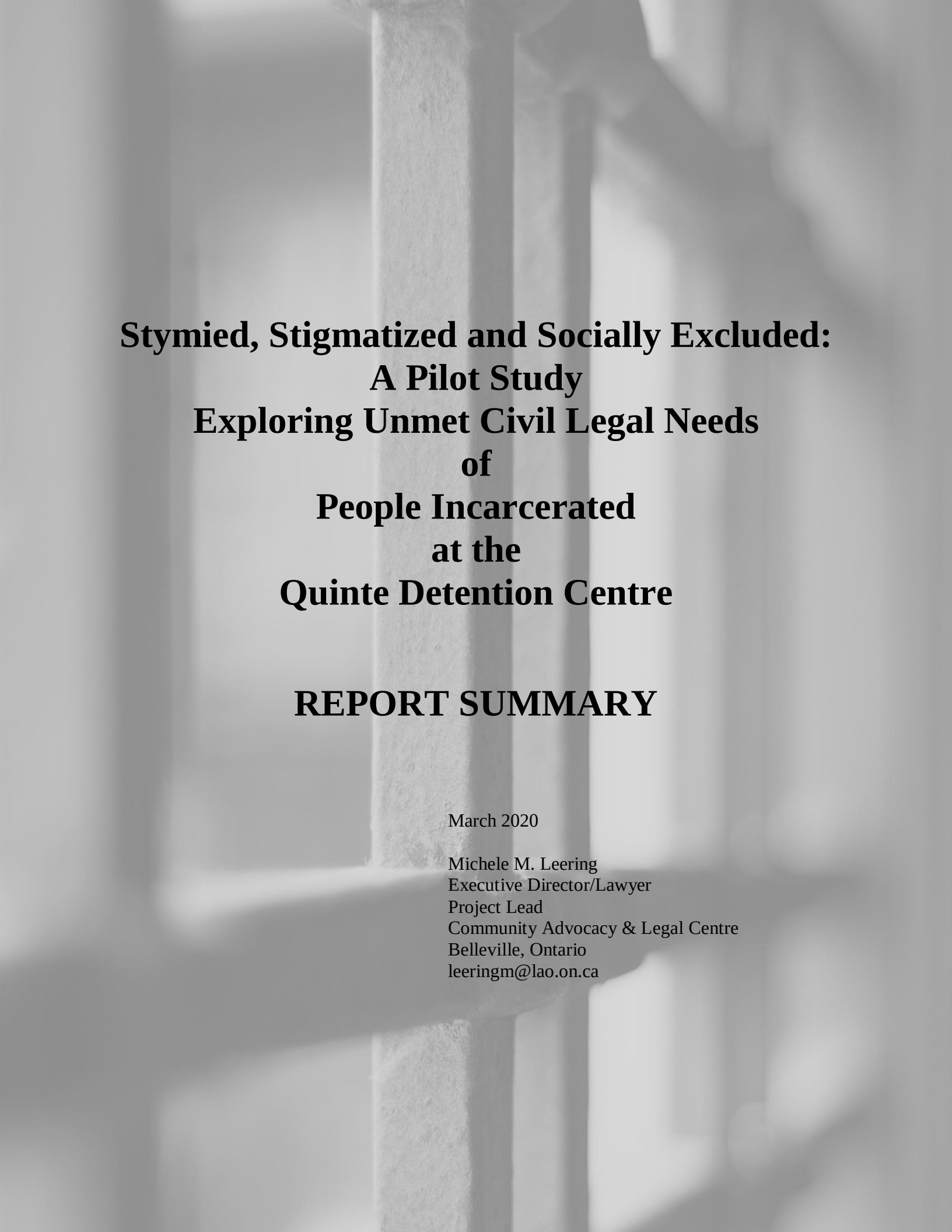

Stymied, Stigmatized and Socially Excluded: A Pilot Study Exploring Unmet Civil Legal Needs of People Incarcerated at the Quinte Detention Centre

REPORT SUMMARY

March 2020

Michele M. Leering
Executive Director/Lawyer
Project Lead
Community Advocacy & Legal Centre
Belleville, Ontario
leeringm@lao.on.ca

Acknowledgements

We wish to acknowledge the $15,000 grant provided by The Law Foundation of Ontario (LFO) towards the cost of this pilot research study. The LFO's vision is to "put people at the heart of justice." Without this seed grant, we could not have devoted the time necessary to explore this new (to us) area of unmet legal need. While financially supported by the LFO special grant, the Community Advocacy & Legal Centre (CALC) is solely responsible for all content in this report.

We are also grateful to CALC's main funder, Legal Aid Ontario (LAO). LAO's legislative mandate is to promote access to justice. CALC's operational funding and mandate enables staff to provide a broad range of legal services, including research and advocacy on systemic legal issues impacting on vulnerable communities, informed by a human rights perspective and a social inclusion lens.

We are grateful for the contributions of 23 formal research participants who shared their experience and insights for this study. We also deeply appreciate the knowledge and expertise brought by the 18 members of the Advisory Committee who volunteered their time and energy to help us research and understand the complex access to justice and related issues that arise for people who find themselves in conflict with the law.

We thank the nine people with lived experience of incarceration who agreed to be interviewed. Daily, they face marginalization, stigmatization, and are often stymied in their attempts to reintegrate successfully into the community. Many have experienced social exclusion as a result of their incarceration, criminalization, poverty, and their precarious and unsettled lives which may have included abuse, mental health and/or addiction issues, and other challenges.

We wish to express our admiration for the crucial and tireless work of the dedicated and under-resourced staff who work for the John Howard Society of Kingston & District (JHSK'D), John Howard Society of Belleville (JHS – B), and John Howard Society Ontario (JHSO), as well as Elizabeth Fry Kingston (EFry). The scale and complexity of the issues faced by people in conflict with the law they help are handled with compassion and equanimity, despite their overwhelming and intransigent nature. We are honoured to have worked with them on this study, and we learned from their lived experience of working with this marginalized population.

And we owe a debt of gratitude to our project partners and collaborators, JHSK'D and Community Legal Education Ontario (CLEO), without whom we would not have been able to conduct out this research study effectively.

A copy of the full 77 page report can be downloaded from http://communitylegalcentre.ca/tcodownloads/unmet-civil-legal-needs-2020.

Cover photo by Marco Chilese on Unsplash

Report Summary

This report details the findings of a pilot study undertaken by the Community Advocacy & Legal Centre (CALC) to identify the unmet *civil* legal needs of people who are or have been detained or incarcerated in the Quinte Detention Centre (QDC). We undertook this research to understand the impact of unmet legal needs and how improving a person's *legal health* might ease community re-entry after release from the QDC. What were the opportunities to identify legal issues early and intervene to prevent or ameliorate cascading legal problems? We also wanted to map the local capacity to respond to the problems. How could CALC work more effectively with other organizations in the local justice and social service sectors to help overcome the challenges created by unresolved legal problems, to ease reintegration, and to prevent future legal troubles?

Our research was focused at a local level, in the communities surrounding the QDC. We also learned about the unique needs of this population by reviewing Canadian and international studies and reports. We wanted to listen to the voices of those with lived experience – either because they had previously been incarcerated or because they are service providers working with people in conflict with the law. Twenty-three local people participated in the research through formal interviews to increase our insight into the depth and complexity of the issues and the most effective ways to help. We also convened an expert Advisory Committee to ensure we benefitted from the professional knowledge of others who work extensively with this population, and to help us collect information about approaches tried elsewhere. Over the course of more than a year, these 18 people helped design the research, articulate the diverse challenges people face, and recommend next steps.

Figure 1: Underlying purpose and intention for undertaking the research study

The report describes our research methodology and details the findings from our interviews and conversations as well as what we learned from reviewing seminal studies and reports. Taken as a whole, the insights and information shared by local research participants about unmet legal needs and the impact of those needs is consistent with research reports from the federal Department of Justice, the John Howard Society of Ontario (JHSO) and others, as well as international studies. The significant challenges we faced in conducting the research are also described. Although we heard about problems being experienced due to a lack of adequate legal help for *criminal* and *prison* law problems, including challenges with getting bail, plea bargaining, and the conditions of incarceration at the QDC, these issues were beyond the scope of our study.

The research revealed:

- **a large proportion of people admitted to the QDC are on *remand* and have not been convicted or sentenced.** Approximately two-thirds of the people are awaiting a bail hearing or trial and are only at the QDC for a short period. They have not been found guilty of an offence and they are not serving a sentence for a crime. The disruption caused by unexpected incarceration exacerbates any pre-existing problems they may have had with maintaining housing, employment, income security, relationships and/or physical, mental and emotional health. Their short period of incarceration and the lack of available programming and support adds additional impediments to their ability to cope with and recover from the disruption. Timely interventions to provide both legal and non-legal help in dealing with the collateral consequences arising when detained are critical but not generally available.

- **unmet *civil* legal needs impact on the *legal health* of people** who are or have been incarcerated, regardless of the reason for incarceration (remand or sentence) and included problems with:

  - ensuring stable and adequate housing
  - retaining or finding employment
  - maintaining entitlement to income security programs including disability benefits
  - dealing with consumer contracts & debt issues
  - family and relationship issues

  > WHEN I WAS RELEASED IT WAS BASICALLY JUST THE CLOTHES ON MY BACK, NO SHOELACES, NO BELT, NO WALLET. BASICALLY THEY SHIP YOU BACK TO XX WITH JUST THE CLOTHES YOU WERE ORIGINALLY WEARING AND WITHOUT ANYTHING YOU CAN STRANGLE YOURSELF WITH AND WITHOUT ANY CASH OR ANYTHING.
  >
  > FIP Participant

  Research participants who were service providers (SP) identified more intersecting legal issues than those formerly incarcerated (FIP), because SP had more extensive experience dealing with more people with more diverse challenges. Furthermore, vulnerable people experience a known disadvantage in being able to identify their own civil legal issues, especially *poverty law* problems. These problems might be mitigated by, or resolved by, greater awareness of their legal rights and obligations, or legal solutions.

- **significant obstacles to successful community reintegration result from not dealing pro-actively with legal problems**. Unmet civil legal needs often predate the time of arrest but also can arise through or be exacerbated by incarceration. Upon release, whether on bail, when a person is found not guilty, or after serving a sentence, unresolved legal problems can be problematic and hamper efforts to start anew. Furthermore, the collateral consequences of being remanded (because bail is not always granted), or of having a criminal record, are often severe. These collateral consequences, outlined in this report can cause new legal problems.

- **the multitude of challenges faced by people in custody and/or being released**. These include the shock of sudden incarceration following arrest or when remanded to await a bail hearing or trial, leading to an inability to deal with their affairs (including care of their

children, and paying their bills). These challenges are exacerbated by problems communicating effectively due to the QDC's antiquated telephone system and lack of access to the internet or other forms of electronic communication. These are further complicated by difficult prison visiting conditions, and mental health, disability or addiction issues exacerbated by detention and/or prior life trauma. This is further intensified by trouble reaching or retaining lawyers and/or legal aid services, the distrust of lawyers reported by some, not knowing where to turn for reliable help, and a lack of access to service providers who can help them with release planning or upon release, especially after being remanded.

The challenging conditions of incarceration (including significant overcrowding, limited programming and lockdowns) as well as disorientation, disruption, mental and physical health needs, disabilities, anxiety and fear, cognitive impairments, and addictions make it very difficult for people to take action to solve their own problems. A lack of *legal literacy* and *legal capability* are also serious impediments to people solving problems on their own, without significant support and legal advice. Furthermore, non-legal issues complicate successful reintegration including finding housing, replacing lost personal identification documents, and lack of access to personal belongings or transportation after release from court or the QDC.

> IT WOULD HAVE BEEN HELPFUL TO SIT DOWN WITH A COUNSELOR THAT TRIES TO HELP YOU FACE THE REALITY OF WHAT'S GOING TO HAPPEN WHEN YOU ARE RELEASED.
> FIP Participant

- **a need for *holistic, client-centred* legal services with a focus on problem solving**. Legal Aid Ontario (LAO) funds and provides services differently depending on whether they are *criminal*, *family*, or *poverty* law problems. This approach presents a challenge – how to make access to legal expertise more seamless? Provincial, regional and local LAO staff, local criminal defense lawyers, and community legal clinics like CALC need to come together to devise better ways to provide more holistic legal care for populations who have complex and intersecting legal needs.

- **a need to engage QDC staff and build good working relationships**. It was not possible to engage QDC staff in the study for reasons described in the report. This seriously constrained our efforts to understand how better to assist people with their legal problems while they are incarcerated, and to build needed working relationships with these staff.

- **a need to work closely with trusted intermediaries, across the justice and social service sectors**. The complex and intersecting nature of legal and non-legal issues makes developing sustainable strategies particularly challenging for any one organization to orchestrate. Working collaboratively across disciplines and different service sectors is essential to ensuring that unmet civil legal needs are identified early and ameliorated to the extent that it is possible to do so.

- **a need to involve other stakeholders in problem-solving**. It was initially difficult to engage many service providers, or friends and relatives of incarcerated persons, partly due to a seeming lack of interest in the issues we were studying, and limited research resources.

  We believe that consulting a broader cross-section of the community using this report's findings as a discussion tool will lead to other ideas for sustainable and strategic approaches to help this marginalized population. Coming together with other stakeholders to envision a *justice ecosystem* response could reduce the sense of being stymied in efforts to help people who have been justice-involved, reducing stigmatization and social exclusion, and increasing the chances of constructively supporting successful reintegration.

- **a need for a responsive and coordinated community and justice sector response**. The complex and intersecting legal issues and multiple possible intervention points we identified suggest that a coordinated and informed response by both community and justice sector services is essential. It appears that no local protocols exist to address the host of unmet and intersecting legal needs and related problems. Involving a broader array of justice system stakeholders in problem solving could be a beneficial, efficient, and more effective approach.

> "ONE OF THE MOST CHALLENGING ASPECTS OF PROVIDING INFORMATION TO PEOPLE ON REMAND OR SERVING SENTENCES IS THAT ACCESS TO INFORMATION OR OTHER SERVICES IS HIGHLY REGULATED AND RESTRICTED." (CLEO, 2018)

The report also explores examples of how other communities and countries have dealt with some of the challenges identified. And it outlines how CALC responded to concerns about not knowing where to turn for help: we created a web-based portal to legal and other information for people who have been incarcerated, as well as printable materials, which include Resource Lists and Guides with information about local services that can help.

Recommendations

The report makes 10 recommendations for future action by CALC and other organizations:

1. **Share the report and to discuss possible future action** with a variety of key stakeholders including the QDC, the Ministry of the Solicitor General (MSG), two local Human Service & Justice Coordinating Committees (HSJCC), local Law Associations, and LAO. Our intention is to encourage dialogue, problem-solving, and devising solutions to the identified local challenges and unmet civil legal needs. We believe that by cultivating a *justice ecosystem* approach, we can move forward constructively with other community and justice sector partners, including criminal defense lawyers, to better help people in conflict with the law.

2. **Develop a good working relationship with QDC staff** to support early intervention on poverty law issues that may be complicating release, including by providing *secondary consultations* (providing legal information to staff to help people), making warm referrals available, as well as *legal literacy* workshops for interested staff, volunteers, and people who are incarcerated. We also recommend investigating whether a *justice and health partnership* might be viable with the health care providers within QDC.

3. **Develop a pilot project to provide legal help to people who are incarcerated**, if and when funding is available, with the additional caveat that constructive working relationships with QDC staff and formal partnerships with *trusted intermediaries* like John Howard Society of Kingston & District, and JHS of Belleville, Elizabeth Fry Kingston, and Addictions and Adult Mental Health Services would be critical to its success.

4. **Improve CALC's capacity to serve people while they are incarcerated.** This includes: raising awareness of CALC's services inside the QDC; streamlining how referrals are received; ensuring that people who are incarcerated can be connected immediately to a legal worker; overcoming problems with QDC's antiquated phone system; and providing all staff with training in trauma-informed approaches and working with high needs populations.

5. **CALC should work more proactively with LAO to provide holistic, responsive legal aid services focused on early intervention** by encouraging all LAO-funded services to screen for *poverty law* issues; offering *secondary consultations;* and accepting *warm referrals*. Four possible intervention points are recommended: when a person first contacts LAO's Client Service Centre, when a legal aid application is taken, when meeting with Duty Counsel, and while incarcerated if an Institutional Duty Counsel is appointed. Encouraging private lawyers funded by LAO to work with CALC is also critical. CALC welcomes the opportunity to work more closely with LAO and lawyers to reduce the collateral consequences of incarceration. To support this we also recommend working with LAO to form a Prisoners' Working Group, and a regional Legal Assistance Forum to support a justice ecosystem approach.

6. **Improve legal rights awareness, legal literacy, and the capacity to act.** This includes recommending that: CALC work with Community Legal Education Ontario (CLEO) to develop new legal information resources and training materials for people who are incarcerated as well as *trusted intermediaries*; and that CALC promote our new website portal to legal information (and our printable lists and guides) for people in conflict with the law, developed in the course of this project. CALC also encourages early legal advice with respect to employment, income security, and housing law problems.

7. **Streamline entitlement to income security programs and undertake systemic advocacy and law reform.** The report explores the issues that are created by how the *Ontario Works Act* and the *Ontario Disability Support Plan Act* are interpreted to unnecessarily penalize people who have been incarcerated by reducing their benefits or cutting them off. We also recommend streamlining benefit reinstatement upon release as well as reestablishing the Community Start-up and Maintenance Benefit (cancelled in 2013) to

remove barriers to successful transition and integration to community life and encourage social inclusion. Systemic advocacy and law reform are recommended.

8. **Respond to non-legal needs raised.** The report recommends that ameliorative approaches be devised to prevent loss of personal identification documents and personal belongings, to replace lost documents, to raise awareness about free help available for criminal record pardons, and to make transportation assistance or subsidies available on release from court or the QDC. Participants also recommended more discharge planning, mentoring, better access to addictions programming within QDC and immediately upon release, more housing supports, and better interagency communications.

9. **Collaborate more effectively with local *trusted intermediaries*.** CALC would like to better support the organizations – *trusted intermediaries* – who work with people in conflict with the law. We suggest approaches to working with organizations like the John Howard Society and EFry, Kingston Literacy & Skills, and Addiction and Mental Health Services and others that include *secondary consultations*, *warm referrals*, and *legal literacy* workshops.

Possible Intervention Point	Location	Who could intervene?
Arrested and in custody	Police Station	Private bar lawyer
Bail court	Courthouse	LAO Duty Counsel Private bar lawyer
Remanded to QDC	QDC	LAO IDC LAO Client Service Centre's Inmate Line LAO Administrative Staff Private bar lawyer Trusted intermediary (offering health/other services)
Sentenced to QDC	QDC	LAO IDC LAO's Client Service Centre's Inmate Line Trusted intermediary (offering programming or health or other services)
Pre-Release	QDC	QDC staff QDC health care team Trusted intermediary
Post-Release	Court/QDC	QDC staff Probation officer Trusted intermediary
Post-Release in community	Community	Trusted intermediary

10. **Encourage further research to be undertaken.** Two issues that could not be explored adequately in this study are how Indigenous peoples could be differently impacted by remand or incarceration and how they might be better served, and how to help people who are detained on immigration matters.

More details on these recommendations can be found starting at page 53 of the full report.