

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

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List of Abbreviations

AMHS	Kingston’s Adult Mental Health Services
CAB	Community Advisory Board
CALC	Community Advocacy & Legal Centre
CLEO	Community Legal Education Ontario
EFry	Elizabeth Fry Kingston
FIP	People who were interviewed who were formerly incarcerated
HSJCC	Human Services & Justice Coordinating Committee
IDC	Institutional Duty Counsel (LAO-funded service)
JHS – B	John Howard Society of Belleville
JHSK’D	John Howard Society – Kingston & District
JHSO	John Howard Society Ontario
LAO	Legal Aid Ontario
LFO	Law Foundation of Ontario
MCSCS	Ministry of Community Safety and Correctional Services
MCCSS	Ministry of Children, Community and Social Services
MSG	Ministry of the Solicitor General
OCDC	Ottawa Correctional and Detention Centre
ODSP	Ontario Disability Support Program (provincial disability income support)
OHRC	Ontario Human Rights Commission
OW	Ontario Works (municipal social assistance benefits)
QDC	Quinte Detention Centre (or “The QDC”)
SP	Service providers who work for justice sector or community organizations

Executive 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.

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

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.

- **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.

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.

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.
- 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.

Chapter One - Introduction

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

Howard Sapers, Independent Correctional Investigator, 2017

Even the briefest stay in custody ... can result in a range of collateral consequences including loss of employment, loss of housing, missed medication and medical follow up, and the need for emergency care of dependents. all ... should be offered support to mitigate these impacts during custody and upon their release.”

Independent Review of Ontario Corrections Team, 2017

The Issue

Prior to commencing this research study, we knew very little about the legal needs of people incarcerated at the Quinte Detention Centre (QDC), a provincial institution in Napanee, Ontario. In the course of investigating *rural justice* issues in 2017, CALC staff realized that the *civil* legal needs of people living behind prison walls at the QDC were invisible to us, even though they might have legal problems arising from their poverty and other disadvantages that we could help resolve. CALC is a non-profit community-based legal clinic, funded mainly by Legal Aid Ontario (LAO) that helps people with their *poverty law* problems. Many people who are remanded to, sentenced to, and released from QDC also reside in the geographic communities CALC serves. Neither CALC nor its sister clinic, the Kingston Community Legal Clinic, receive many requests for legal help from people incarcerated at the QDC. We wanted to find out more about the problems they were experiencing that we could help with.

According to Statistics Canada, in Ontario 69% of people admitted to provincial custody are being held on remand.¹ This means that they have been arrested, held in police custody, and (following a first court appearance) have been transferred to a provincial institution where they await another bail hearing or a trial. They have not yet been found guilty of the crime for which they have been charged. In her doctoral study about people being held on remand in Ontario, Holly Pelvin found:

The sudden nature of most arrests means that people are unprepared for the abrupt and sometimes violent transformation from life in the community to life in custody. This has a host of consequences for a range of immediate concerns – such as housing, property, jobs, and dependents – and needs – such as legal advice, basic health and welfare – that people typically confront while in police lock ups (2017, p. 218).

¹“Adult and youth correctional statistics in Canada 2017/2018” Jamil Malakieh - Juristat (May 9, 2019) Retrieved 22 February 2020 from <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010-eng.htm>

People in custody experience a host of civil legal needs, including those that result from being remanded, or that arise when serving a sentence, or on release from prison. “Taking Justice into Custody”, a comprehensive Australian research study by the Law and Justice Foundation of New South Wales, found:

Prisoners commonly face a range of other civil and family law issues... Some arise from their chaotic lives and financial disadvantages prior to custody, including outstanding debt, unpaid fines, unresolved family law issues.... Imprisonment itself also may lead to further legal issues as the person is suddenly excised from their everyday life. Prisoners’ housing, child custody arrangements, the retention of their personal effects, employment, the operation of any business and/or social security payments are all affected by their sudden separation from the community through incarceration. Legal issues particular to being a prisoner may also arise, such as bail, prison disciplinary action, classification and segregation issues, victims’ compensation restitution and the threat of deportation. When they leave prison, ex-prisoners may experience legal issues relating to their parole and discrimination when seeking housing and employment. Our research also demonstrated that, upon release, prisoners may feel the impact of unresolved legal problems dating from a time prior to custody or during their imprisonment. (Grunseit, Forell & McCarron, 2008, p. xvi-xvii).

Leaving these issues unresolved can create significant obstacles to community reintegration upon release, even after short periods of remand.

At the time we began our inquiry, we also became aware of simultaneous research by LAO and Community Legal Education Ontario (CLEO) that was very relevant to our inquiry, as well as many studies and reports that could inform our study. Some of these, summarized later in this chapter, provide greater context for the issues we explored.

This first chapter introduces the research project, the research questions, CALC, the QDC, the Project Advisory Committee, and what we learned from other studies. Chapter Two explains how the research was carried out. Chapter Three outlines the main findings and makes observations about possible ways forward. Chapter Four sets out resources that were created as preliminary responses to the needs expressed. Chapter Five recommends possible next steps for CALC and other justice sector and community service partners to consider.

Research Questions

Three research questions informed the design of our local study:

1. What are the unmet civil legal needs of people who have been incarcerated or detained at the Quinte Detention Centre?
2. What resources exist in the local community to meet these needs?
3. What sustainable and collaborative strategies might help meet these needs?

The Research Project

This report details the research findings of CALC’s pilot study to assess the unmet *civil* legal needs of people who are or have been incarcerated in the QDC, the impact of those unmet legal needs and the capacity of the local community to meet these needs. By undertaking this research, we hoped to better understand how CALC and other organizations in the justice and social service sector could help meet those needs.

Civil legal needs are not *criminal* law or *prison* law needs, but instead arise from what has been called *poverty* law issues: legal rights and responsibilities related to, for example, income and housing security, employment, consumer contracts and debt, family relationship issues, human rights, and immigration laws. CALC staff hoped to use the research findings to improve their legal services to people who are or have been incarcerated at the QDC, and to design or recommend helpful resource and legal information materials. We also wanted to support a responsive local approach to identifying and resolving legal problems in the hopes that it would improve a convicted person’s chances of reintegrating more smoothly into the community after being released from QDC custody.



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

The research was partly funded by a grant from the Law Foundation of Ontario (LFO), an organization whose mandate includes funding projects to increase access to justice. The need for this research emerged from CALC’s work on rural justice issues undertaken in 2017 with other Central & Eastern Ontario community legal clinics. The Rural Justice project examined whether the equal justice needs of people residing in rural areas were being met. That initiative revealed that more work was needed to reach people who are or have been incarcerated in prisons located in rural and small urban communities. For the most part, this population has not really been considered as part of the community served by most legal clinics: living behind prison walls meant that their legal needs were not understood, expressed, or addressed. In the fall of 2018, CALC staff began this study with the help of an independent researcher.

The Research Sponsor & Partners

CALC is a non-profit community-based legal clinic governed by a volunteer Board of Directors, elected from the local community. Funded by LAO, CALC is mandated to serve residents living on a low income in a three-county area in south-eastern Ontario that includes the county of

Lennox & Addington, where the QDC is located, as well as the counties of Hastings and Prince Edward. From its main office in Belleville and satellite locations, CALC has provided services in the latter two counties and the Tyendinaga Mohawk Territory since 1980, and in Lennox & Addington since 2002.

CALC provides legal help for issues historically defined as “clinic law” under the *Legal Aid Services Act*, but that are better described and known as *poverty law* – these legal concerns most often adversely impact on people who are poor. CALC staff assist with legal problems related to income, housing, employment, consumer contracts, debts, discrimination and human rights – helping to keep a roof over one’s head, food on the table, and supporting safe and secure employment opportunities. These legal issues are related to what health care professionals call the *social determinants of health*: our legal help is intended to help to resolve these problems to promote social inclusion, prevent social exclusion, and ensure respect for human rights.

Legal help includes providing legal information, summary legal advice, and brief advocacy and support for self-help, as well as representing clients before courts and tribunals (within CALC’s policies on legal priorities). Staff also make referrals to help people navigate the *paths to justice* when the clinic can’t help, for example, with issues arising from criminal, family, or immigration law problems – issues that are normally handled by LAO. CALC’s legal help also includes providing *public legal education* also known as *community legal education* resources – such as our website, tip sheets, presentations, and legal information through social media posts, workshops, and self-help guides, as examples. Working with local service providers – *trusted intermediaries* - justice sector, community organizations and health care providers to improve the *legal health* of members of the community, and helping to increase *legal literacy*, *legal capability*, and *legal empowerment* are crucial components of the clinic’s holistic and legally-mandated approach. This approach also includes systemic advocacy, test case, and law reform activities to improve justice outcomes for vulnerable, low income individuals and communities.

CALC partnered with CLEO and the John Howard Society of Kingston & District (JHSK’D) to undertake this research. CLEO, one of Ontario’s specialty legal clinics, has a province-wide mandate for creating legal information resources and training resources for the staff of community organizations. When our study began, CLEO was researching what kinds of legal information materials were needed by people in custody and what avenues might exist to get this information to them. JHSK’D provides services to people who are or have been incarcerated at the QDC (as well as federal prisons in the area) from their office in Kingston, in adjoining Frontenac County. They also attend Bail Court daily in Napanee to provide a Bail Verification and Supervision Program. As a project partner, JHSK’D agreed to interview people who had been formerly incarcerated (FIP) at the QDC.

The Quinte Detention Centre (QDC)

The QDC is a provincial institution located in Napanee, mid-way between Kingston and Belleville. The QDC opened in 1970 and was designed for people on remand or who are serving sentences under two years.² The QDC has four separate areas of incarceration: dorms, segregation, maximum security, and hospital. Classification decisions are made on admission.

² Information retrieved from <https://easternontario.cioc.ca/record/KGN1588>

Approximately 2575 people pass through the QDC annually,³ with its stated capacity being 228 people.⁴ Significant overcrowding is frequently reported, reputedly with more than 300 people incarcerated. This results in very difficult living conditions for people incarcerated there, as well as challenging working conditions for QDC staff. Approximately 16% of people in custody identified as female, and 84% as male.⁵ Over a five-year period, the largest percentages of the population identified as White (80.8%), Indigenous (10.3%), and Black (3.5%).

Provincial detention and correctional centres (centres) fall under the jurisdiction of the Ministry of the Solicitor General (MSG).⁶ There are 18 such centres in Ontario. Ten out of Ontario's 18 centres have a Community Advisory Board (CAB).⁷ The CAB's role is to strengthen relationships between the community and the institution. Unfortunately, however, the QDC does not have a CAB. Institutional Duty Counsel (IDC) services, provided by LAO in seven of Ontario's centres, are also not available at the QDC.

People are usually incarcerated in the QDC for one of the following reasons:

- They may have been charged with a criminal offence but *remanded* into custody (on remand) awaiting a bail hearing or awaiting trial because they have not been granted bail. A small number of people appear to have been remanded for more than a year – at most 38 individuals, or less than 0.3% over a five-year period.⁸ Approximately two-thirds of the people in custody at the QDC are on remand.⁹
- They may have been *convicted* of a crime but are serving a short custodial sentence. Most people incarcerated at the QDC are there less than three months.¹⁰ It is not clear from the statistics provided whether they are serving a sentence, awaiting sentencing, or if this is a prolonged period of remand.
- They may have been convicted of a criminal offence and sentenced to more than two years but are being temporarily held in custody pending transfer to a federal prison to serve their sentence. Approximately 9% of the people incarcerated over a five-year period were held for this reason.¹¹
- They may be in immigration detention, possibly awaiting a hearing or deportation. Very few people are detained in the QDC for this reason – 38 individuals, or less than 0.3% were reported over a five-year period.¹²

³ These statistics were calculated as an annual average from statistics provided on August 19, 2019 in response to a Freedom of Information request to the Ministry of the Solicitor General for the period January 1, 2014 to December 31, 2018 listed in Table 1. The five-year total of 12,877 was divided by 5.

⁴ Retrieved from MSG website:

https://www.mcscs.jus.gov.on.ca/english/corr_serv/facilitieslocationsandvisitinghours/det_centres.html

⁵ Supra at 3, Table 1

⁶ There are also 9 jails and 4 treatment centres. For more information, see the MSG website:

https://www.mcscs.jus.gov.on.ca/english/corr_serv/CS_main.html

⁷ For more information on the role of CABs, see

https://www.mcscs.jus.gov.on.ca/english/corr_serv/CABs/CABs.html

⁸ Supra at 3, Table 4. We learned later that it is also possible that some of these 38 people may have been serving a longer sentence by special arrangement to allow them to serve their time by working there.

⁹ Ibid at 3, Table 5. More breakdown by period of custody is included later in the report.

¹⁰ Ibid at 3, Table 4

¹¹ Ibid at 3, Table 5

¹² Ibid at 3, Table 5

Project Advisory Committee (Committee)

CALC formed an expert Advisory Committee (Committee) to help guide the research, provide information on issues arising for people who are or have been incarcerated, review the research findings, and to help recommend next steps. The Committee first met in September 2018. Over the course of 14 months, it included 18 people – staff from LAO’s provincial and regional offices, community legal clinics, Queen’s University Faculty of Law’s student legal clinics, university professors who had done doctoral research examining issues facing people in custody, and the main organizations that support people who are or have been incarcerated – the John Howard Societies and Elizabeth Fry Kingston. (See [Appendix A](#) for a list of the members.)

During the course of CALC’s research study, in January 2019, John Howard Society Ontario (JHSO) – the provincial organization - received a Catalyst grant from the LFO to undertake their own provincial study to assess the *legal literacy* level of JHS staff to better understand what kind of training and resources were needed to offer enhanced support to their clients. They also wanted to explore their clients’ needs for legal assistance and how much their clients understood about their legal rights. Aspects of our study dovetailed well with their larger study. They have received a grant for a second year of research and will release a report of their research in 2020.

Participation of LAO staff was critical to the research because LAO had been studying prison law issues. LAO also employs staff lawyers to meet criminal, family, or immigration law needs; to act as Duty Counsel in the courts; as Advice Lawyers in Family Law Information Centres; and as Institutional Duty Counsel (IDC) in centres. LAO also funds private bar lawyers on legal aid certificates to help with these issues. (LAO staff do not provide poverty law services.) Over the past several years, LAO’s Policy Department had convened an expert Advisory Committee to advise on prison law issues. Staff had interviewed key stakeholders across Ontario to explore the unmet legal needs of prisoners and develop a responsive Prison Law strategy, in keeping with LAO’s current statutory mandate to provide appropriate access to justice services to vulnerable communities. They discovered that prisoners have far more legal needs than just *criminal* law, or those arising from the conditions of their incarceration, known as *prison* law – that is, *poverty* and other *civil* law needs must also be considered as part of a comprehensive service strategy.

Before the LFO funded CALC’s research project, we encouraged LAO’s Policy Department to host a provincial *community of practice* group for people and organizations who worked with prisoners. This group met between January and October 2018 to share ideas and approaches and included LAO staff who were working as IDC, in community legal clinics, academic researchers, and at CLEO, and JHSO. At the time we began meeting, LAO was preparing to release their Prison Law Strategy and to fund a few pilot projects. Unfortunately, in April 2019 the provincial government unexpectedly and retroactively cut LAO’s funding by 30%. As a consequence, this important strategy was put on hold, recommended pilot projects were abandoned, and the lead Policy Department lawyer was laid off. As the Committee wrapped up its work, we learned that LAO still hoped to release the Prison Law Strategy in the near future, although LAO still had no funding to implement any recommendations and cannot provide any new services at present.

Background Context - Overview of What We Learned from Other Studies

A federal Department of Justice study, *Lives of Trouble: Criminal Offending and the Problems of Everyday Life*, explored the prevalence of civil justice problems for people who have been charged with criminal offences relying on an analysis of the data produced from the 2008 National Survey of Justiciable Problems (Currie, 2009). A much larger percentage of the people in this group, relative to the population as a whole, experience problems with debt, housing and employment (Currie, p. 11). Furthermore, the problems cluster and occur with greater frequency and also involve physical and mental health problems. Currie connected the interconnectivity of problems to *social exclusion*, relying on a UK report that defines social exclusion “as a shorthand for what can happen when people or areas suffer from a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime, bad health and family breakdown” (p. 3). Discussing the implications of these findings, Currie concluded that a greater emphasis on problem-solving justice – an approach that favours more *holistic* approaches (including holistic criminal defence) might be more beneficial than exclusively emphasizing adversarial justice for preventing recidivism (p. 20).

A study of the legal service needs of prisoners in federal penitentiaries, *Report submitted to the Department of Justice Canada: Study of the legal services needs of prisoners in federal penitentiaries in Canada*, revealed unmet civil legal needs, in addition to problems arising in prison law and criminal law (Lajeunesse, 2002). The report recommended additional legal help within prisons, and the need for more legal information about legal problems that might arise.

Australian research by the Law and Justice Foundation of New South Wales and included in their ground-breaking report *Taking Justice into Custody* (Grunseit, Forell, & McCarron, 2008) was comprehensive. Data collection included interviews with 67 prisoners and ex-prisoners as well as 42 other stakeholders. The report highlighted that this population experience a unique range of barriers in meeting their legal needs, and that there are a range of civil legal problems that arise when people were suddenly incarcerated. Problems included employment, housing, property matters, debt, and immigration issues – and when left unaddressed, these problems caused further complications and resulted in adverse consequences. This report also looked at the opportunities and barriers to accessing justice, how legal information might be provided in prison, issues of prisoner capacity, and the need for legal information and advice in prison.

Similar findings and recommendations have emerged from other Australian studies¹³ including a study by the Australian Productivity Commission, as discussed in a report by the Law Council of Australia’s Justice Project,

Prisoners and Detainees (Law Council of Australia [LCA], 2018). This report noted that imprisonment exacerbates the impact of civil legal problems and “can provide serious barriers to



“WHERE [CIVIL] LEGAL ISSUES ARE NOT RESOLVED OPTIMALLY, THEY CAN ESCALATE AND FEED INTO THE CYCLE OF DISADVANTAGE EXPERIENCED BY MANY PRISONERS WHICH CAN LEAD TO THEIR EVENTUAL RETURN TO PRISON.”
(LAW COUNCIL OF AUSTRALIA, 2018)

¹³ Other studies include Schetzer & StreetCare (2013), and Queensland Productivity Commission (2019)

successful integration post-release. Where these issues are not resolved optimally, they can escalate and feed into the cycle of disadvantage experienced by many prisoners which can lead to their eventual return to prison.” (LCA, p. 4)

JHSO has released many reports exploring the issues faced by the population they serve. The impact of onerous bail conditions and the inability to secure bail have been identified as issues needing resolution (JHSO, 2013). (The issue of appropriate bail conditions has now been

considered in cases before the Supreme Court of Canada, see for example, *R. v. Antic* [2017] 1 SCR 509.) A later study noted that mental health issues were significantly related to justice involvement and incarceration.

Furthermore, people with mental health challenges who come into conflict with the law, “do not fare well.” (p. 5). *Unlocking Change: Decriminalizing Mental Health Issues in Ontario* recommended prevention by offering more mental health programming in the

community, as well as a more appropriate criminal justice response, one that diverts people away from the justice system, wherever possible (JHSO, 2015). The report further noted:

“Many people in provincial jails are not provided with proper medical or psychiatric assessments and treatment. Correctional institutions are not equipped to deal with people who have severe mental health issues, and access to prescription medication and health care for mental health issues is very limited. Continuity of an individual’s medication is a significant issue... sometimes have to wait weeks to get access to medication they were ... taking daily” (p. 13).

Loss of income and housing upon, and as a result of incarceration, as well as stigmatization, particularly double stigmatization – on the basis of mental health and criminalization – increase disadvantage. The report recommended, amongst many other important strategies, that “a criminal justice community be created that can respond appropriately to people with mental health issues,” (p. 24) and meaningful discharge planning on remand that helps with “arranging housing, mental health treatment, employment and other services” (p. 28).

JHSO’s report, *Fractured Care: Public Health Opportunities in Ontario’s Correctional Institutions*, noted that providing individuals the opportunity to improve their health while incarcerated can produce transformative changes in their lives, and recommended early intervention and screening of health issues (JHSO, 2016). Citing an American study, the report noted that “individuals leaving correctional institutions with health problems (physical, mental or substance use related) are more likely to face challenges to re-entering their communities” (p. 15).



“IN ONTARIO TODAY, WE SPEND HUNDREDS OF MILLIONS OF DOLLARS DETAINING LEGALLY INNOCENT PEOPLE EVERY YEAR. OUR PROVINCIAL JAILS ARE OVERCROWDED AND AT CAPACITY; PRISONERS, MOSTLY ON REMAND, SLEEP TWO TO THREE TO A CELL DESIGNED FOR ONE, AT TIMES ON A MATTRESS ON THE FLOOR... THERE IS SOMETHING WRONG WITH THIS PICTURE.”
(JOHN HOWARD SOCIETY, 2013)

In 2009, research revealed that government reforms in Ontario in the mid-1990s intending to reduce costs for corrections and “no frills” prisons ... [resulted in] ... fewer inmates having access to discharge planning and transitional supports.” (Gaetz & O’Grady, 2009, p. 6)

LAO undertook research to develop their Prison Law Strategy and identified that two thirds of people in provincial custody were being held on remand (LAO, 2018). Their consultations revealed:

- unmet legal needs and service gaps at every level including for legal information and advice
- prisoners need legal assistance to protect their rights inside the correctional system
- however, many of the legal needs experienced while incarcerated are not in *prison* law
- many unmet legal needs are in *poverty* law
- early assistance and intervention, as well as prevention, are important
- LAO service coverage is uneven and not well publicized
- the prison population includes a disproportionate number of individuals with mental health issues, from racialized communities, and who have been victims of violence (if female)
- access to adequate medical care is a serious issue
- barriers to access to justice were identified as:
 - lockdowns preventing access to legal counsel
 - problematic lack of adequate telephone access
 - siloed nature of LAO’s services resulting in LAO staff being unable to connect effectively with community legal clinics offering to poverty law services
 - problematic lack of access to counsel is when a person is in segregation
 - systemic disincentives for a person who is incarcerated discouraging court appearances (for example, travel time, disruption to sleep, or missed meals)

People and organizations LAO consulted also recommended the following approaches:

- providing services customized to local needs and responsive to clients
- expanding the services of IDC, as there is a critical need for onsite legal help is critical¹⁴
- *warm referrals* for help are crucial (that is, a direct handoff to legal help, not just providing a phone number which can lead to *referral fatigue*)
- providing access to basic legal information
- prioritizing pre-release and integration support in order to make a bigger difference in the lives of most inmates than some other legal help might
- screening and triaging for intersecting legal needs using a holistic and integrated approach
- making sure that the lawyers providing advice are proficient in family, civil, poverty, and criminal law issues – suggesting a holistic and integrated approach
- building relationships with local trusted intermediaries as a key factor – community-based agencies like JHS and EFry as well as correctional centre staff, including providing legal awareness, legal literacy, and legal capability training
- making sure that justice system stakeholders work together with community legal clinics as key partners

¹⁴ See p. 49 for a description of what Institutional Duty Counsel does.

Holly Pelvin's (2017) doctoral study examined the experiences and needs of remand populations in Ontario's prisons. Pelvin interviewed 120 prisoners in remand custody at four provincial prisons in Ontario as well as 40 staff members. She found that the disruption caused by sudden incarceration leads to a host of adverse consequences including: housing, property, income, and job stability; care of dependents; basic health needs; and basic income security. The impact of this disruption destabilizes people's lives, making it more difficult for them to reintegrate once they have been released. Uncertainty, disruption, and extra-legal punishments were themes emerging from her research, as well as variation of severity by institution and gender. Pelvin identified a need to address barriers for legal advice on the issues caused by this disruption.

CLEO's (2018) report, *Legal Information Needs of Persons who are Incarcerated*, highlighted similar themes to what we learned from our research participants. In particular:

- people are often disoriented when they are charged and don't understand what is happening to them at any of the various stages
- arrest and even brief time in custody significantly impacts on people's lives including losing custody of their children, their housing, belongings or jobs, and can disrupt medical treatment
- access to ways of communicating becomes very difficult – phone access is very limited, and internet access is not possible
- people are often unprepared to re-enter civil society on release for a variety of reasons and support is often unavailable during the transition
- language and literacy issues create huge barriers
- an online scan revealed few appropriate civil legal information resources written specifically for people who have been incarcerated, and some of it was of questionable quality
- the distribution channels for legal information resources are very difficult to map, as institutions have widely differing practices about what can be distributed and how, and the distribution of resources is not coordinated (CLEO, pp. 4 – 6)



“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)

CLEO's report also noted that “[o]ne 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, p. 15). Ideas on appropriate formats and delivery channels for legal information, and challenges faced, were similar to what we heard, and included:

- permission required to distribute written information in correctional centres
- print material can't be stapled
- lack of access to internet, and
- a lack of consistency around programming including pre-release planning and library services (p. 17)

Working with *trusted intermediaries* has emerged as an approach that is critical for helping vulnerable populations. The authors of the LFO-commissioned report *Trusted Help: The role of community workers as trusted intermediaries who help people with legal problems* thoroughly explained the crucial part played by community workers who “serve as trusted and accessible intermediaries between their clients and a complex legal system that many people, particularly vulnerable people, find confusing and impenetrable.” (Cohl et al., 2017, p. 15)

“MANY PEOPLE WE SPOKE TO ... VIEWED THE TRUSTED INTERMEDIARY ROLE AS IMPORTANT, DESCRIBING IT AS “CRITICAL,” “HUGELY IMPORTANT,” AND “ESSENTIAL.” THE MAIN FACTORS RELATE TO CLIENT COMFORT AND TRUST, EARLY INTERVENTION, DIFFICULTIES IN GAINING ACCESS TO LEGAL SERVICES, COMPLEMENTING THE ROLE OF LEGAL PRACTITIONERS, AND HOLISTIC APPROACHES.”
(COHL ET AL., 2017, P. 28)

Although they cannot give legal advice, community workers provide a broad range of helpful services that can help their clients better navigate and resolve problems that have a legal component. As the report noted: “Many people we spoke to in interviews and focus groups viewed the trusted intermediary role as important, describing it as “critical,” “hugely important,” and “essential.” Because of the trusting nature of their relationships with their clients, and how often they interact with them, trusted intermediaries provide crucial intervention points in a downward spiral of legal troubles, making it possible to ameliorate much earlier in this cycle festering issues that have a legal component. The report identifies their learning needs and describes several approaches, including justice and health partnerships, that have been successful in creating new collaborations between community organizations and lawyers. These working relationships can help broaden the opportunities for and approaches to helping vulnerable people with complex, intersecting needs and widen the possibilities to resolve their problems.



Figure 2: How people might resolve a legal problem (Excerpted from Cohl et al, 2017, p. 7)

An important reminder of the human rights of people who are incarcerated is provided by the report *Corrections in Ontario: Directions for Reform* (Independent Review of Ontario Corrections Team, 2017). Key findings relevant to our research include:

- “Most of the people behind bars in Ontario’s provincial institutions are legally innocent, awaiting trial or a determination of their bail... the rate of pre-trial detention in Ontario has seen a long-term increase, rising by 137% over the past 30 years.” (p. 5)
- evidence-based correctional practice should include that:
 - the intake process serves as “the start of wrap-around service provision and discharge planning” noting most inmates don’t have access to effective discharge planning. (p. 6)
 - programming needs are met appropriately noting that those on remand are “presumptively unavailable for ... community programming.” (p. 7)
 - planning for release and community integration should take place noting the impact of collateral consequences. “Even the briefest stay in custody ... can result in a range of collateral consequences including loss of employment, loss of housing, missed medication and medical follow up, and the need for emergency care of dependents. All ... should be offered support to mitigate these impacts during custody and upon their release.” (p. 8)
 - The Truth & Reconciliation Commission’s recommendations and *R. vs. Gladue* principles should be applied to Indigenous peoples
 - gaps in health care service should be remedied where they exist (p. 19)



“EVEN THE BRIEFEST STAY IN CUSTODY
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EMERGENCY CARE OF DEPENDENTS. ALL
... SHOULD BE OFFERED SUPPORT TO
MITIGATE THESE IMPACTS DURING
CUSTODY AND UPON THEIR RELEASE.”
(INDEPENDENT REVIEW OF ONTARIO
CORRECTIONS TEAM, 2017)

Recommendations echoed the concerns raised by CALC’s research participants and included:

- on release, inmates be provided with suitable clothing, travelling expenses, and sufficient prescribed medication, and be discharged on weekdays (3.4, p. 163)
- upon admission, each individual be assigned a case manager to ensure that “identified and evolving needs are met during custody and upon release” and that on discharge an individual is provided with help to address identified needs including clothing, medication, transportation, property return, and referrals to community supports and services (3.5, p. 163)
- sub-regional regular meetings between MCSCS, justice and health sector partners be convened “to explore ways to enhance access to community programming, discharge planning, temporary absences, parole and linkages between institutions and the community” as well as senior manager participation in local Human Services & Justice Coordinating Committees (HSJCC) (p. 167)

Figure 3 sets out the challenges faced by people who are in conflict with the law: it was produced by the Calgary John Howard Society for their report, *Igniting the Conversation* (Calgary John Howard Society, 2019). This report emphasized the importance of better serving justice-involved clients who have overwhelmingly experienced trauma as children. Noting that criminal behaviour can often be traced back to trauma suffered as child, and working with the Alberta Family Wellness Initiative, staff are to become certified on trauma-informed approaches and to gain a better understanding of the root causes of crime.

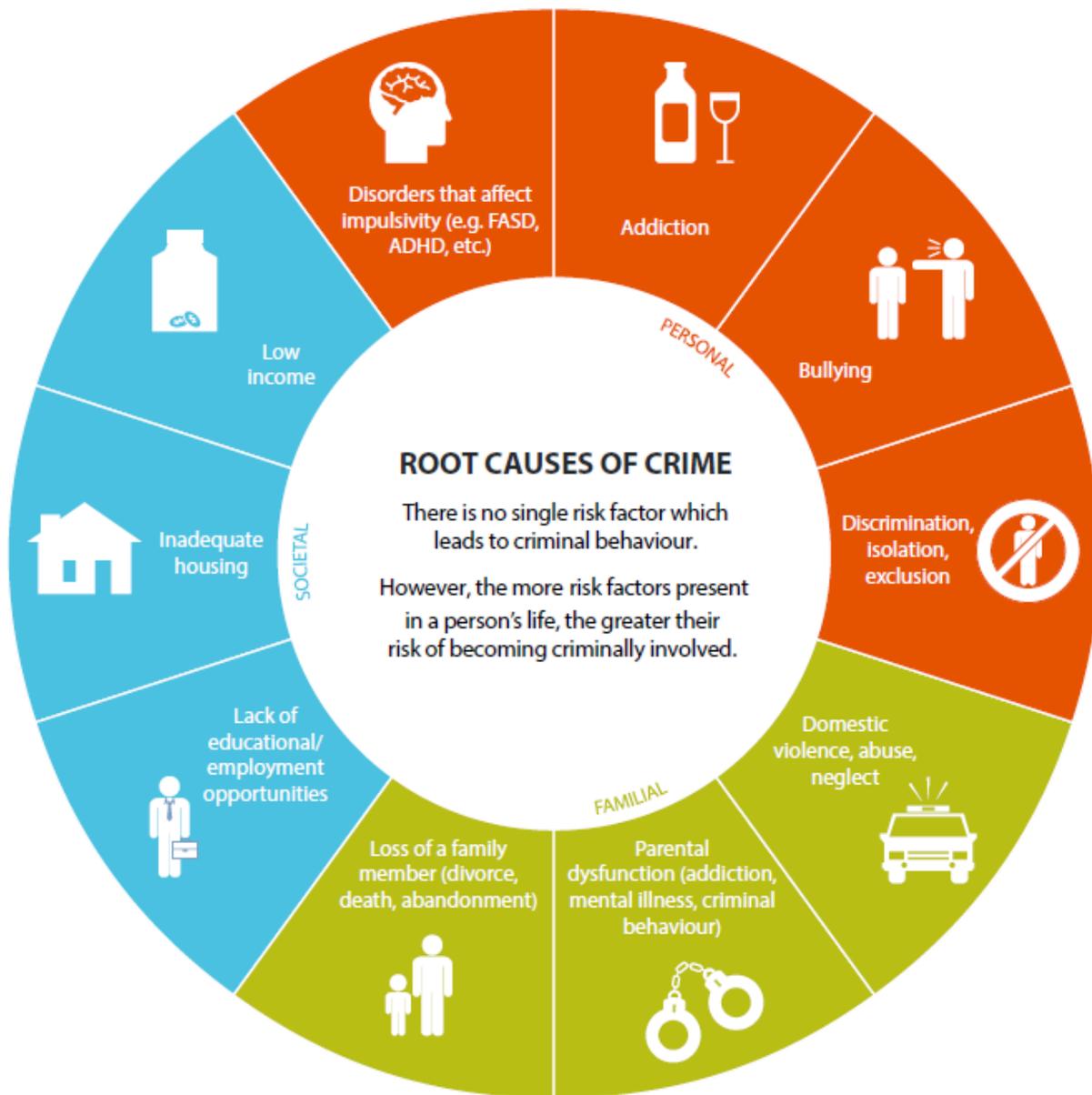


Figure 3: Root Causes of Crime (Calgary JHS, 2019)

Chapter Two – Conducting the Research

How We Carried out the Research

In this chapter we set out: our research methodology; how we collected data to answer our research questions; and the challenges we faced in collecting data.

Research methodology.

We used a qualitative research methodology because it is well suited to discovering information about an issue where very little has been documented and or is understood about the issue. The case study focused on the current unmet civil legal needs of people who were or had been incarcerated at the QDC in Napanee and was intended to be descriptive and exploratory.

We did not intend to look at unmet *criminal* law legal needs for help, including issues of unnecessary incarceration arising from being denied bail, or for assistance with *prison* law issues arising from conditions of incarceration or violation of rights while incarcerated. Our study also did not explore the problems that might be created by the LAO's denial of legal aid certificates for bail hearings or for legal services to people charged with a criminal or provincial offence that did not meet LAO's financial or case selection criteria. While these are all serious issues impacting on people who are in conflict with the law, and cause or exacerbate the problems faced by people incarcerated at the QDC, they were beyond the scope of our research.

Qualitative methods, primarily formal interviews, were used to find answers to the research questions. Informal conversations with various service providers also informed the study, as well as online searches for information about local services. All research participants participated anonymously in keeping with research ethics protocols for interviewing human subjects (Canadian Institutes of Health Research, Natural Sciences and Humanities Research Council of Canada, 2014). In addition to interviews and online searches, we collected relevant documentation, reviewed CALC's past legal advice records, located important similar studies, and engaged in limited observational research at the QDC.

It was not feasible within the scope of the project and its limited funding to interview people currently incarcerated at the QDC. People who are incarcerated are extremely vulnerable due to the conditions of their incarceration, research ethics rules are very stringent, and the logistical process for gaining access to the QDC was too complex and time-consuming to be undertaken for a small study. Rather than interview people while incarcerated, we hoped to collect sufficient data from people who had been in custody but were now released (formerly incarcerated people [FIP]), friends and relatives of people who were incarcerated, staff working for local community and justice sector organizations (service providers [SP]), and staff who work at the QDC.

Formal research ethics approval was sought for three groups of potentially vulnerable research participants. For FIP and for friends and relatives of incarcerated people – approval was sought and granted by a research ethics committee convened by the provincial JHSO. For QDC staff, research ethics approval was sought and granted by the Ministry of the Solicitor General (MSG).

Collecting data.

Ultimately, data was collected by:

1. Formally interviewing people who had been incarcerated (FIP) at the QDC
2. Formally interviewing service providers (SP) - staff working with service providers who assist people who are or have been incarcerated at the QDC
3. Gathering information informally, from local media sources and the internet about emerging or historical issues and local resources
4. Attending a Roundtable on Prison Law Issues related to the Central & East Correctional Centre organized by the local JHS and the Community Legal Clinic – Simcoe, Haliburton, Kawartha Lakes in October 2018
5. Making a request under the *Freedom of Information Act* in May 2019 to find out the demographic characteristics of people in custody at QDC, the reasons for their detention, and the length of time in custody
6. Meeting with interviewers in groups to debrief interviews in April and May 2019
7. Participating in a short tour of the QDC in August 2019
8. Receiving ongoing feedback and insights from members of the Advisory Committee based on their knowledge, experience, expertise and their own research, over the course of seven meetings, including April, May, and October 2019 when draft findings were presented
9. Incorporating the results of other research, summarized in Chapter 1, including research by CLEO, LAO, and John Howard Society exploring similar issues, as well as a broad range of studies including two doctoral dissertations (Iftene, 2015; Pelvin, 2017), federal Department of Justice (Currie, 2009; Lajeunesse, 2002), and Australian studies including *Taking Justice into Custody* (Grunseit, Forell, & McCarron, 2008) and others, including *Corrections in Ontario: Directions for Reform* (Independent Review of Ontario Corrections Team, 2017)
10. Undertaking additional internet-based research to supplement what we learned through the interviews including Ontario Human Rights Commission investigations, Ombudsman complaints, and other relevant articles and reports listed in the References and Reading list.

Formal research participants were recruited in a few ways:

- Service providers were invited by email based on recommendations received from the Advisory Committee, other service providers, or through email list serves.
- Formerly incarcerated persons, and friends and relatives of people who are incarcerated, were recruited by notices posted on bulletin boards at JHSK'D and EFry Kingston, as well as through CALC, and on CALC's social media feeds, website, and Bafflegab newsletter.

People who expressed an interest in participating were sent a formal Letter of Information. After they signed an Informed Consent, CALC or JHSK'D arranged interviews. All research participants were promised anonymity to the greatest extent possible. Interviews were held in person or by telephone and a note taker was also often present. The interviews were semi-structured and followed a common format that had been documented in Research Guides developed and customized for each group. (See [Appendix A](#) for examples of the interview format.) All but one formal interview were audio recorded, detailed notes kept, and transcript summaries were drafted.

CALC staff and a volunteer conducted interviews with the service providers. JHSK'D staff interviewed people who had been formerly incarcerated. Each person who collected or handled data was thoroughly briefed, trained, and had signed confidentiality agreements and complied with research ethics guidelines. (See [Appendix C](#) for a list of the interviewers and note takers).

The interview questions were designed to find out about the unmet civil legal needs before, during, or after a person's incarceration; how people dealt with these problems; their level of awareness about legal rights; their capacity to solve or help others to solve these problems; and what might prevent them from solving problems or difficulties they might face when attempting to solve problems. Ideas for how people might best be helped were solicited including formats and distribution channels for legal information, before, during, and after incarceration. Other ideas for how to help people transition after incarceration were also canvassed.

Formal interviews were held with 14 service providers (SP) between December 2018 and October 2019. SP participants included local community and justice sector organizations and lawyers providing services or supports to this population. Interviews took place in person or by phone and ranged in length from 44 to 92 minutes. Between April and May 2019, nine interviews took place with people who had formerly been incarcerated (FIP). FIP were interviewed by JHSK'D staff, took place in person and ranged in length from 15 to 41 minutes. The interviews provided rich detail, in-depth information about unmet civil legal needs and the degree of need, and first-hand lived experience and personal stories.

Additionally, SP helped CALC staff connect to organizations who had been committed to helping people who have been incarcerated and shared a common interest. Additionally, between September 2018 and October 2019, approximately 20 informal conversations with justice sector stakeholders and other interested individuals helped us understand the issues.

Challenges in collecting data.

Local community capacity.

Although we felt we had achieved *data saturation* on the question of unmet civil legal needs (meaning we did not discover any new data after interviewing a number of people), we did have difficulty collecting sufficient data to understand the resource capacity of the local community. It was difficult to interview service providers. Many said they did not work with this population or were not comfortable providing information. When service providers did agree to be interviewed, some had multiple demands on their time complicating the scheduling of the interviews. Unfortunately, in a few cases, we were not able to *formally* interview key service providers. We also had a very hard time getting enough information to understand the barriers and opportunities within QDC to receiving help, and about how to work most effectively with QDC staff. This challenge influenced our recommendations for future work.

We also discovered that it would be *almost impossible* to collect completely current and reliable data about available local services. We needed this information to create local resource lists and resource guides because we learned that people often did not know where to go for help on release. We discovered it was very hard for service providers to keep these referral lists up to

date because of their workloads, an ever-changing service landscape, as well as the complexity of keeping track of resources in at least three different communities to which people might be released. In the area surrounding the QDC there are three different service communities:

1. Napanee and Lennox & Addington County
2. Belleville, Quinte West (Trenton), Hastings County, and the Tyendinaga Mohawk Territory
3. Kingston & Frontenac County

CALC only provides legal services to people residing in the first two geographic communities, whereas Kingston Community Legal Clinic provides services to people residing in the third.

The ever-service changing landscape is a consequence of changing legal mandates as well as precarious government and charitable funding. For example, LAO and local organizations, including CALC, lost funding because of government cuts during the study. This forcefully brought home the reality that it is very difficult to create a reliable safety net for vulnerable populations. Social programs and access to justice services are continually at risk of defunding and/or program changes. These challenges made it almost impossible to ensure accuracy of our information about local resources other than on the day the data was collected – this compromised the longevity and sustainability of the resource documents we eventually created. Our information about available resources will need continual updates.

QDC Staff.

We were very disappointed that we were not able to formally interview staff who work at the QDC despite extensive efforts. The requirements for interviewing QDC staff were stringent and required research ethics approval through the MCSCS. To complicate matters, MCSCS disbanded and the approval process shifted to the MSG without warning. Even after research ethics committee approval, a second unanticipated approval was required – senior MSG staff had to give permission to interview QDC staff. After a long process, approval was granted, with MSG staff expressing great enthusiasm in the research. However, oddly, the MSG would only grant permission for staff to be interviewed *outside* work hours, on their *own time*, and *offsite*, making the likelihood that anyone would agree to be interviewed extremely unlikely. Not surprisingly, the Deputy Superintendent subsequently informed us that no staff were interested. The union also expressed their disapproval. Although MSG tried to ameliorate this problem later, advising that staff could complete anonymous surveys on their lunch hours, or during down time on the job, this was not helpful. The interview process was designed to allow researchers to meet QDC staff with a problem-solving focus and relationship-building approach to discuss issues of common concern: a survey would not accomplish the same objective.

Visiting the QDC.

We also had some difficulty arranging a tour of the QDC. We wanted to better understand the challenges faced by people who are living within the prison walls. We felt it important to understand the QDC's physical layout and how people in custody might access telephones, print resources, the internet, visitors, or assistance if they needed help with their civil legal needs while in custody and during pre-release planning.

However, in April 2019 after initially expressing a willingness in December 2018 to provide a tour and explaining the protocol for visit requests, the Deputy Superintendent refused to allow a visit. We never given the reason for being denied but wondered whether a death in custody in March 2019 contributed.¹⁵ In July 2019, the MSG intervened and told the QDC to provide a tour.

The two-hour visit took place on August 2, 2019. CALC's Executive Director and a lawyer involved in the research attended, learned a great deal about the challenges being faced by both the staff and by people who were incarcerated, and were heartened by the opportunity to meet some key staff who seemed quite interested in CALC's initiative. Follow-up discussions are now planned as part of CALC's usual approach to working with all community and justice sector service providers as *trusted intermediaries*, as well as to share the resources we have created.

Formerly incarcerated people (FIP).

JHSK'D faced challenges recruiting formerly incarcerated people to interview. However, after much effort, and rescheduling appointments many times, with at least seven "no shows", they interviewed nine people (six men and three women) who provided rich and difficult detail of their experiences and challenges. Only people who had been remanded or served their sentence at QDC within the last three years were interviewed. Their length of stay varied from three weeks to six months, with two reporting multiple stays over several years. All but two had been remanded or served time more than once. The sample was too small to be representative of the FIP population as a whole, and all those interviewed had some involvement with the JHSK'D. However, the size and diversity of the sample was not particularly problematic, because what we learned about their unmet civil legal needs and the challenges faced was generally consistent with what we had heard service providers, and by reading other research studies.

Friends and relatives.

Despite serious efforts to recruit friends and relatives of incarcerated persons for interviews, CALC researchers only received four expressions of interest and were still unable to schedule any interviews even after many attempts. We had been warned that it would be challenging to connect to these individuals because many people who are incarcerated often are or become estranged from their friends and relatives (see Comfort, 2016).

Analyzing and interpreting the interview data.

To elicit key findings and themes on the unmet civil legal needs, issues, and ideas for how to create local responsive approaches, CALC's Executive Director (ED), assisted by the Project Researcher, held debriefing meetings with groups of interviewers in April 2019 (SP interviews) and May 2019 (interviews with FIPs). These were important opportunities to analyze the data, and to explore what the interviewers had learned and observed. To elicit key themes using detailed interview notes and transcripts, NVivo qualitative data analysis software was used to code key findings and insights from the detailed notes/transcripts of the 13 SP interviews.

¹⁵ Steph Crosier (2019, March 19). Quinte Detention Centre inmate's death sparks investigations. *Kingston Whig Standard*. Retrieved from <https://www.thewhig.com/news/local-news/quinte-detention-centre-inmates-death-sparks-investigations>

Subsequently, the ED also listened to all the MP3 recordings of the nine FIP interviews three times, ensured detailed interview notes, and then manually coded these to identify themes.

The themes from the findings were shared with the Advisory Committee for comment and feedback in April, May, and October 2019. This provided an opportunity to check the findings from the data against the extensive knowledge and experience of members of the Committee.

The next chapter sets out what we learned from the research.

Chapter Three – What We Learned from the Research

In this chapter, we first set out what we discovered from our interviews with service providers (SP) and with formerly incarcerated people (FIP), informal conversations, other research studies, and the implications of these findings. We discuss what we learned related to the research questions “What are the unmet civil legal needs of people who have been incarcerated or detained at the QDC?” and “What is the capacity of the local community to meet the needs?” We then briefly explore a few of the proactive approaches for meeting problems we gleaned from other Ontario communities, other Canadian provinces, and international examples. Note that we provide possible answers to the third research question “What sustainable and collaborative strategies might help meet those needs?” in Chapters Four and Five.

What Did We Learn About the Civil Legal Issues?

When do the unmet civil legal needs arise?

Although the study was to be confined to exploring unmet civil legal needs arising *during* or *after* incarceration at the QDC, it became clear that a large number of problems – especially housing – *pre-dated* incarceration. This suggests that early intervention and proactive approaches to dealing with any civil legal issues would be at least as important for these individuals as they are for all CALC’s clients living on a low income, if not more so.

For the purposes of this study, we detail unmet civil legal needs that may arise during or as a consequence of remand, serving a sentence, and post-release. If unresolved civil legal problems predated incarceration, they were likely to have been exacerbated rather than resolved by time spent in custody. This suggests that they would be more complicated to resolve post-release.

Unmet legal needs in poverty law.

Lost access to financial resources and income support.

People lose access to their bank accounts when incarcerated and many find themselves without money at the QDC and unable to pay their bills, including rent – legal obligations that continue even while they are in custody. They do not have access to online banking to remedy this problem. Although it is possible to try and have someone help pay bills by providing access to a bank card if one is available and a PIN, the risk is high that bank accounts might be cleared out by the “friend,” with little legal recourse. Finding someone they can trust to help can become complicated by estrangement from friends and relatives who are no longer inclined to help.

Loss of government income support was identified as a major challenge, in particular, for Ontario Works (OW) and Ontario Disability Support Program (ODSP) benefits. The issues here quickly became complex and the consequences multiply:

- Losing access to one’s income source – regardless of length of time in custody – very quickly results in loss of housing.

- New challenges are created when one needs to be reinstated to income security programs post-release, particularly when ODSP pays at the end of the month, because ODSP pays in arrears rather than in advance, unlike OW, creating an impossible situation for destitute people.
- Some individuals are unsure about how to get their benefits reinstated and find themselves released after a bail hearing or after serving their sentence without any money at all.
- It appears that people are being told they must attend at their local municipal office (OW) or Ministry of Children, Community and Social Services (MCCSS) office (ODSP) to apply for or to be reinstated to benefits. This is difficult to accomplish without transportation or access to financial resources.
- Some people are in the middle of applying for ODSP when they are taken into custody, and then cannot find or lose their application documents and end up having to reapply.
- Others miss a review date for ODSP eligibility and are cut off and must fix the problem after they are released.

One SP participant advised of attempts to advocate with the MCCSS local office, asking them to pay benefits on release, but then assess an overpayment which could be paid back gradually. Not only does a lack of income support create issues for keeping or finding housing, it creates difficulties in retrieving any personal belongings from the QDC on release. If someone has been released from a court outside Napanee (for example, in Kingston, Belleville, or Picton) they must find a way back to the QDC to retrieve their belongings, including personal identification.

Several participants reported problems with ODSP overpayments being assessed. Some FIP participants reported being able to retain ODSP, at least partially, in confusing circumstances.

Loss of employment and loss of employment income.

Loss of employment and loss of income from employment create problems that are very difficult to recover from. As noted, losing income often results in loss of housing, an inability to pay bills, or meet family law support obligations. If there has been a conviction, the likelihood of finding future employment diminishes considerably.

Only one of the FIP participants was gainfully employed when remanded for three weeks, and job loss followed soon after release. From the facts described it might have been possible for him to retain that employment with his time away treated as a personal leave of absence. This person also was told he could not collect Employment Insurance benefits because job loss was deemed to be his fault. (It is important to get legal advice in these situations.) He expressed his belief that “in the trades you can be let go at any time.” (It is important to get legal advice about your rights in these situations.) A SP participant noted people lost their jobs when they had to take time off to appear in court.

Several SP participants thought increasing legal literacy around employment law rights would be helpful.

Obtaining employment after release.

Most FIP participants were not employed when they were remanded or incarcerated. Two who had been employed previously had not found work post-release from QDC at the time of interview. If they needed work income, SP participants noted how limited their options for employment were if they had a criminal record.¹⁶ It has a more punitive impact on those who have limited options overall.

The JHSK'D Restart Employment program offered in Kingston, as well as Career Edge in Napanee, were described as very helpful for people who live in these communities.

Threats to security of housing and to retaining housing.

A number of FIP participants lived in unstable housing situations or were homeless prior to QDC admission. All but two appear to have lost their housing while incarcerated. Housing is often lost in these circumstances, whether remanded (no conviction, waiting for bail or trial) or sentenced. Even with short remand periods, rental housing is at risk. Legal advice on rights and responsibilities to ascertain whether housing can be retained could help. Several participants reported their homes had been broken into and their belongings taken while at incarcerated. They had no one to secure or check on their premises, or they were unable to reach anyone to ask them to help. Two SP participants identified a need for pet care during incarceration and several participants mentioned a need for storage of belongings.

Although only one FIP participant referred to an eviction proceeding, tenants would have been entitled to receive a notice of eviction, and to be able to remedy any non-payment of rent within a short period of time, according to their rights under the *Residential Tenancies Act*. Rental housing rights and responsibilities are somewhat complicated, and other legal issues related to being a tenant may arise. To retain housing, ensuring people are aware of their legal rights and have access to legal representation could clearly be beneficial at this stage, especially during short periods in custody.



WHAT RIGHTS ARE THERE? A RIGHT TO BE HOUSED? I MEAN THERE ARE PEOPLE LIVING IN TENTS OUT THERE. DON'T REALLY KNOW ANYTHING ABOUT THAT. WHAT MY RIGHTS ARE

FIP Participant

Loss of housing meant that when released, not only did they need to find new housing but also to replace all their lost belongings. This is particularly challenging for people in receipt of OW or ODSP because they have few financial resources. The Community Start Up and Maintenance Benefit (CSUMB) used to help pay for first month's rent and moving costs but this benefit was cancelled in 2013, particularly disadvantaging people receiving ODSP. Extremely low vacancy rates make it very difficult for people to secure new housing. Furthermore, if they have been in conflict with the law, and they do not have good references, they may find it difficult to find a place to rent. If they have been evicted from social housing because of particular kinds of

¹⁶ The pervasive impact of a criminal record on employment prospects is discussed in Appendix D.

criminal charges, under new legislation introduced recently they may no longer be eligible to apply for social housing.¹⁷ Having a criminal record also presents a barrier to acquiring housing, and impacts on eligibility for and retaining of social housing.¹⁸



LOSING ACCESS TO CHILDREN
HAPPENS ALL THE TIME THEY DO
LOSE A LOT BECAUSE THEY OFTEN
MISS COURT DATES FOR THEIR KIDS.
IT'S DEVASTATING FOR THEM.
SP Participant

Lack of housing, and the stress created by inadequate or non-existent housing was repeatedly mentioned by all the participants, from both the SP and FIP participants. It became clear that lack of housing contributes to recidivism and continued conflict with the law. The lack of homeless shelters in some communities like Belleville, Napanee, and Picton was mentioned, and some concerns were also expressed by FIP participants about a particular Kingston shelter. We were also informed that upon release, some police were dropping people off at OW offices because they did not have a place to stay.

Unpaid debts and debts accumulating while incarcerated.

Most FIP participants reported that they did not have significant problems with unpaid debts which was surprising. Accumulated debts was mentioned as a problem and was reported to have been dealt with by making payments or, in one case, strong advocacy efforts to reduce a debt allegedly owed.

SP participants identified additional issues including challenges getting bank accounts without identification, credit card debts that never get paid off, problems caused when “street debts” are owed, needing to declare bankruptcy, and the impact of poor credit scores. Financial literacy was identified as a big issue. There is a sense that people just walk away from and ignore these problems when it is possible to do so, rather than deal with them. Resolve Credit Counselling was often suggested as a useful service in this context.

Unmet Legal Needs in Family Law.

Most of the information about family law issues came from service providers, largely about Children’s Aid Society issues. It was noted that women who are incarcerated face issues about childcare that men don’t, including breastfeeding issues. SP participants noted that it was difficult to get clients with family issues out of QDC (presumably on temporary absence passes) to deal with their issues in Family Court. Losing access to their children because they’ve missed court dates is devastating. Access to family law lawyers was also noted as a concern, as few wanted to travel to the QDC.

¹⁷ See Bafflelegab article “Do you need social housing? Changes to rules may affect you...,” retrieved from <http://communitylegalcentre.ca/tcodownloads/bafflelegab-fall-2019/>

¹⁸ The pervasive impact of a criminal record on housing is discussed further below in Appendix D.

We also learned from participants that relationship issues were often the cause of incarceration.

One FIP participant reported challenges with having her child looked after when she was incarcerated unexpectedly, and with child visitation arrangements post-incarceration. Another FIP participant experienced problems paying for family law support obligations which were still being enforced by the Family Responsibility Office despite being on ODSP and incarcerated.

Immigration issues.

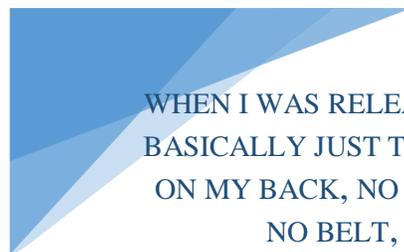
Although the numbers of people detained on immigration issues at the QDC is not large, a SP participant noted the difficulty of retaining immigration lawyers – according to this SP, people on immigration holds are languishing in the QDC. Finding a lawyer to undertake immigration work in CALC’s service area is already a known justice gap.

Other issues or unmet legal needs.

A number of other issues were reported that we would not have typically considered to be “civil legal problems,” but that have an adverse impact on people who have been incarcerated.

Loss of ID and loss of belongings on release.

Many FIP participants reported loss of personal ID as a problem. This problem often arose by people not having a way to get back to the QDC to pick up their belongings after being released from court in another city. SP participants explained the problems created for opening bank accounts without a driver’s license, causing people to rely on payday loan agencies which then reduces their available income. Repeated loss of a birth certificate can result in key details needed to apply for a new one are forgotten. Lack of a birth certificate then causes problems with being eligible for OW and ODSP, health coverage, and prescription drugs. Lack of access to prescription drugs can lead some to self-medication, leading to a further downward cycle.



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

Several suggestions were made for ameliorating these situations including:

- providing new Service Ontario IDs
- providing consent forms for couriering ID in the event of release being left with QDC when an inmate attends court outside Napanee
- taking photos of ID cards for clients and keeping them on file
- setting up an ID bank
- providing a free ride back to QDC if released at court, and
- allowing the possibility of belongings being returned by taxicab

Several FIP participants reported that they lost all their personal belongings when remanded or incarcerated, in several cases due to break-ins or other adverse circumstances, such as a condition of probation that prohibited or restricted their returning to a former residence.

Incarceration for non-payment of fines.

We were also informed that some people were incarcerated at QDC for the non-payment of fines after appearing in Provincial Offences Court. It would seem they did not have the benefit of legal counsel to provide legal advice or help. In one instance, a person was allegedly held for 180 days for a \$5000 fine without recourse to bail court or legal counsel. This issue was beyond this study's scope but was referred to LAO to consider future action. Although LAO does not generally provide a legal aid certificate to retain a lawyer when an individual has been charged with a provincial offence, when incarceration is a risk, if they are financially eligible, it would appear they should receive publicly-funded legal help to ensure that their rights under the Canadian *Charter of Rights and Freedoms* have been protected. CALC's Freedom of Information request recorded four individuals as incarcerated in a five-year period due to fines.¹⁹

An SP participant noted that unpaid fines can lead to a suspension of a driver's licence, preventing someone from driving.

Capacity to Deal with Issues or Resolve Problems

We learned that the capacity of people to deal with their civil legal needs is impacted by many factors. These range from education and literacy levels, to awareness of legal rights and remedies, length of incarceration, mental health and addictions issues, communication barriers and the conditions of incarceration.

Level of education and literacy.

SP participants reported a lack of high school education and low literacy levels amongst FIPs. Specific concerns were expressed about people with intellectual disabilities and those with fetal alcohol spectrum disorder (FASD) and their ability to problem solve.²⁰ Research by the Canadian FASD network estimated that the "prevalence of FASD in Canadian offenders is 11-23% for youth and 10-18% for adults (Flannigan, Unsworth, and Harding, 2018). A couple of FIP participants identified low literacy levels as a barrier to understanding amongst other inmates. We note that most FIP participants interviewed for this study had at least a high school diploma, which is not representative of the inmate population as a whole.

¹⁹ Supra at 3, Table 5.

²⁰ More information on fetal alcohol spectrum disorders designed for use in the justice sector can be found at <https://fasdjustice.ca> and at <https://canfasd.ca/topics/justice/>. A systematic review of the literature identified that much more work remains to be done to understand the challenges raised by FASD for people who are justice-involved (Flannigan, Pei, Stewart & Johnson, 2018)

Level of legal literacy and capability.

SP participants indicated that levels of legal literacy and legal capability were low, and they perceived that some incarcerated or formerly incarcerated people think they know more about the law than they actually do. Some participants expressed a distrust of lawyers, leading one FIP participant to represent herself. For a variety of reasons, SP participants felt most people faced numerous barriers to being able to advocate effectively for themselves.

According to the interviewees, it was challenging to elicit answers from FIP participants about how much they knew about their civil legal issues or how capable they were of dealing with them. One exception was a participant who had a law degree. Interestingly, even that participant required legal help to deal with a civil legal problem. The data was very clear that the level of legal literacy was very low, especially on housing law matters. The participant with the strongest work force attachment appeared not to be well informed about employment rights.

Both FIPs and SP participants providers claimed a lack of understanding about the court and the bail process. No one referred to *prison* law information, including human rights issues, available from the [Inmate Information Guide for Adult Institutions](#) which is published online by the MSG.

Length of incarceration.

Many people are only incarcerated at the QDC for short periods of time and are in crisis during that period due to the suddenness of their incarceration and the disruption to their lives. As noted, 69% of people are admitted on remand. We were informed that only shorter sentences are normally served at the QDC, with sentences usually being less than 14 days, unless they are intermittent sentences. The information about length of sentence being served was not consistent with what FIP participants told us. We learned also that the QDC ensures that inmates serving longer sentences are housed at the QDC to provide support with laundry and the kitchen work: this can be up to 10 – 15 people at any given point in time.

Table 5: Quinte DC - Total Admissions/Transfers by Admit Reason - CY 2014 to 2018		
Admit Reason	Quinte Detention Centre Admission	Initial Admission
Other	371	5
Immigration Hold	38	38
Intermittent Schedule	102	154
Intermittent Sentence	577	703
Remand	8,001	9,994
Sentenced	1,299	1,511
Transfer (H/C)	2,489	0
Total Admissions/Transfers	12,877	12,877

Table 1: QDC - Total Admissions/Transfers by Admit Reason 2014-2018²¹

²¹ FOI request data, Inmates Incarcerated at QDC 2014-2018, supra at 3.

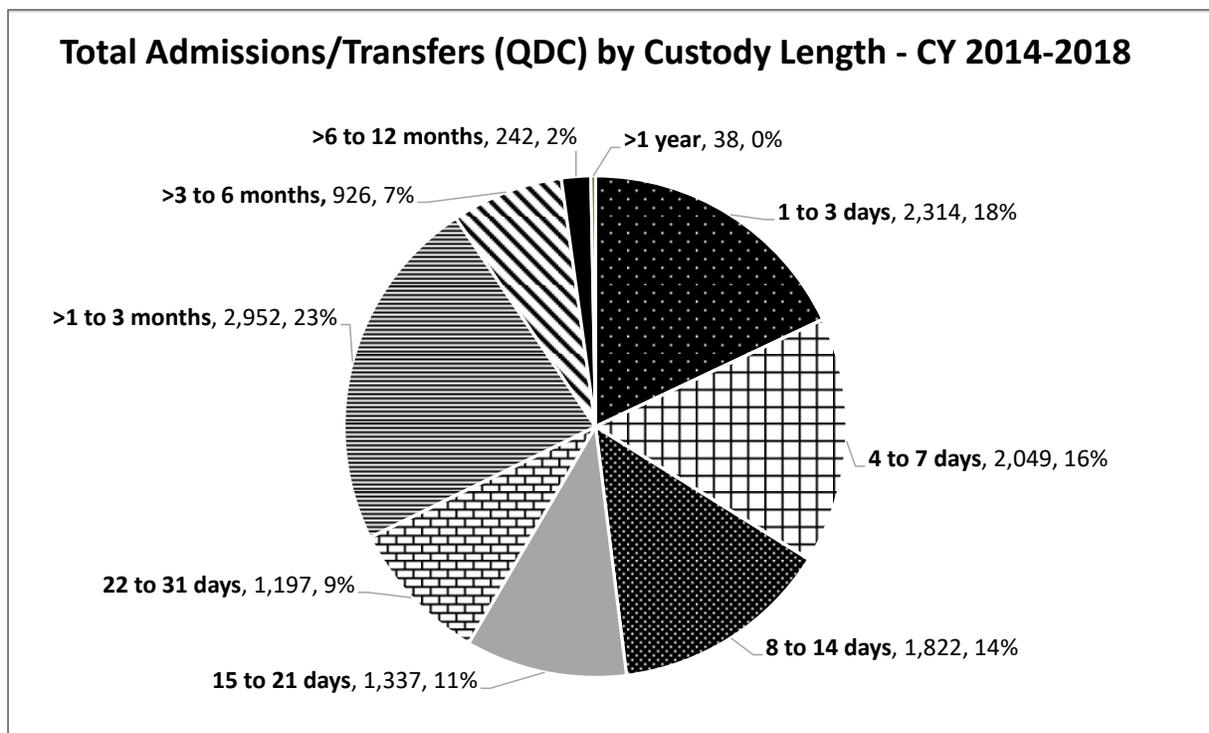


Figure 4: Length of time incarcerated at the QDC²²

Mental health, physical health, and addictions challenges.

We heard a lot about the mental health difficulties of incarcerated people. SP participants reported on the overwhelming number of clients who had been the victims of abuse earlier in their lives. Most of the FIP participants reported issues coping with their mental health or substance use while in custody, while SP participants commented on problems with medication transfers and changes to medication on admission and release. Coping with mental health issues will make it difficult to deal with any legal problems. Some SP participants mentioned difficulties people experience with not being able to plan, how overwhelmed people are, and can be lacking confidence. Issues of suicide watches were also raised, and the life-changing impact for many of being charged for the first time. SP participants also noted a lack of rehabilitation programming, and that social work assistance is only available for stays over 30 days.

The challenges that people with mental health issues faced is exacerbated by their conditions of incarceration. This is confirmed by letters to the Solicitor General documenting investigations by the Ontario Human Rights Commission (OHRC). Although the OHRC has not visited the QDC, the Chief Commissioner has been touring jails and correctional centres across Ontario since 2016 as part of their monitoring of a settlement of human rights complaint by *Jahn*.²³ These letters document unsatisfactory conditions of confinement (including overcrowding, unsanitary and dangerous conditions) and a failure to accommodate people with mental health disabilities.

²² FOI Request Data, Inmates Incarcerated at QDC - 2014 – 2018, supra at 3.

²³ This is discussed further below at page 40. Information about the *Jahn* settlement was retrieved from the MSG website: <https://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement.html>

SP and FIP participants reported mixed perceptions of the adequacy of medical care while at QDC. Issues of adequate medical care in the community post-release, and continuity of care seemed to be a much larger issue. SP participants noted increasing issues of incarcerated people with dementia, while one FIP participant described her efforts to provide support to a fellow inmate suffering from dementia.

Addictions and access to illicit drugs while at QDC.

Participants reported significant challenges in coping with substance abuse and easy access to illicit substances while at QDC. Some reported a lack of access to remedial health treatments such as methadone to counteract drug withdrawal, with consequent physical and mental health problems suffered while detained. Recently, efforts to ease drug withdrawals may have been remedied by the QDC's healthcare team's ability to assess for methadone program eligibility while incarcerated. However, a FIP participant incarcerated within the last six months had not been assessed during his three-week stay, and another noted a three-month waiting period.

We also learned about the special training QDC staff received in the use of Naproxen to counteract fentanyl overdoses, an ever-present threat at QDC.

Communication barriers: Lack of access to phone numbers, cell phones, telephones, and the internet.

We learned that communication barriers are significant, with restricted access to telephones. There are many written and unwritten rules: telephone numbers must be recalled from memory, and there is very limited time allowed for calls (depending on classification level). The limitations of the telephone system at QDC create significant problems: for example, only collect calls can be made, meaning that calls cannot be placed to cell phones, only to landlines. There must also be a live attendant, as calls cannot be transferred. This makes communication virtually impossible, including to service providers. Accessing criminal lawyers can be difficult also as they are often in court during the day when most of the phone access times occur.

We also learned that outgoing calls from the QDC are disconnected if the person receiving it puts the call on hold. This creates special challenges for reaching service providers like CALC, where calls need to be transferred internally from reception to legal staff.

Lack of phone access prevents problem-solving and getting help, severs connections to support networks, and compromises relationships. Several instances were given of missing important specialist appointments without being able to call and reschedule. Issues contacting lawyers, and several issues about contacting LAO were cited, including one where the allowable time for a call was significantly less than what was needed to deal with LAO.

We also learned that LAO provides a toll-free dedicated line for inmates to reach LAO’s Client Service Centre. Although this is helpful, this dedicated phone access is only to apply for legal aid certificates in family or criminal law – a necessary administrative step but does not provide any legal advice or assistance. As well, unfortunately, the way LAO designed this call centre to date, has not allowed for callers to be screened to identify *poverty* law issues that may need resolution. SP and FIP participants provided examples of difficulty reaching LAO staff by phone – waiting many hours, or calls taking longer than the 20 minutes allowed.

We heard stories about a “trap line” system that for a reportedly large initiation fee of \$160, and monthly payments of \$60, incarcerated people could get better access. One FIP participant reported owed \$600 to others when he left QDC as a result of having to call collect to reach his only two relatives who had landlines. We also learned during our August QDC visit that a new phone system would provide fairer access to the outside world,

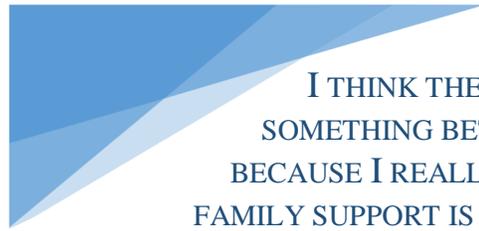
including cell phones, with the use of PIN numbers, and was soon to be installed, although we were unclear about the timelines. The planned new system is purported to be less costly.

People in custody at the QDC also do not have access to the internet or to personal cell phones. It can be challenging for one even to access phone numbers in cell phone contact lists. Special permission must be sought and granted to have personal property retrieved from storage. Also, it is not uncommon for a cell phone to have been retained by the police as part of an investigation. A SP participant mentioned that no accommodation was made for an inmate with a learning disability who could not remember phone numbers (which would be human rights issue based on a failure to accommodate a disability).

We understand that internet access is almost impossible to acquire, except through QDC staff as part of pre-release planning. We were told that many people incarcerated at the QDC are not eligible for pre-release planning because their sentences are less than 30 days, or because they are only there on remand. Although an institutional library might provide internet access through a librarian, in the case of the QDC, the library room is unstaffed, no one has independent access to it, it is used for programming, and there appeared to be no computer. Lack of internet access will create difficulties for getting legal information to people while in custody.

Reported and observed conditions of incarceration.

Conditions of incarceration at the QDC were beyond the study’s scope as they related to *prison* law. However, the conditions became relevant as we assessed whether people would realistically be able to deal with their civil legal problems while incarcerated. The conditions reported by



I THINK THERE SHOULD BE SOMETHING BETTER IN PLACE BECAUSE I REALLY THINK THAT FAMILY SUPPORT IS IMPORTANT. A LOT OF PEOPLE ARE FIRST TIME OFFENDERS AND THEY’RE LOST AND SCARED AND DON’T REALLY KNOW WHAT TO DO AND IT’S EVEN WORSE FOR THEM IF YOU CAN’T GET A HOLD OF SOMEBODY.

FIP Participant

participants, as well as the ones we observed during our visit are not conducive to understanding, discussing, or solving problems. This is due to serious overcrowding (three to a cell with two beds, as an example), lack of privacy, challenges of sleeping in physical discomfort (thin “mattress” pads and “blankets” as well as sleeping on the floor in an overcrowded cell), mental and physical ill health, complaints and fears of inadequate medical care, threats of violence, excessively noisy and brief visiting opportunities, lack of privacy, access to illicit substances, lack of social or emotional support, distrust and dysfunction, and high stress and anxiety levels. Stress and fear are known impediments to learning, absorbing information, and problem solving.

We also learned that programming for people serving short sentences or on remand is very limited. Programming is also often cancelled due to overcrowding and the need to use programming space as sleeping quarters. Lockdowns also result in it being cancelled.

And discharge planning is reportedly only available if sentenced to a term of imprisonment of more than 30 days. In recent years, however, additional attention has been paid to discharge planning for people with mental health difficulties as described below.

It was interesting that many participants commented on the good quality of the food at the QDC, leading one FIP participant to comment that he ate more healthily there than at home.

Research revealed that multiple approaches are being taken to improving conditions of incarceration in correctional centres across Ontario, particularly for those with mental health issues. These include reports by the Independent Review of Ontario Corrections Team (2017),²⁴ and reports of Special Advisors after the settlement of the human rights *Jahn* case,²⁵ and by OHRC visits to centres.²⁶ An internet search revealed there are at least two pending class action law suits raising the issue of the constitutionality of lockdowns on the grounds of cruel and unusual punishment,²⁷ at least one on issues of solitary confinement,²⁸ as well as another claiming systemic negligence at the Elgin-Middlesex Detention Centre.²⁹



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

²⁴ The relevant findings and recommendations of this report are further discussed on page 22. Retrieved from www.mcscs.jus.gov.on.ca/english/Corrections/IndependentReviewOntarioCorrections.html

²⁵ Details of the work of the special advisors can be found on the MSG website: <https://www.mcscs.jus.gov.on.ca/english/Corrections/JahnSettlement.html>

²⁶ See the discussion about the work of the OHRC below at page 50 as well as the References and Reading List.

²⁷ Information about these lawsuits was retrieved from https://kmlaw.ca/wp-content/uploads/2017/11/CertificationOrder_20171127.pdf and <https://www.theglobeandmail.com/news/national/ontario-inmates-file-class-action-lawsuit-for-relentless-lockdowns/article31425656/>

²⁸ Media coverage retrieved from <https://www.cbc.ca/news/canada/toronto/segregation-class-action-1.4830482>

²⁹ Media coverage retrieved from <https://www.thestar.com/news/gta/2017/11/18/inmates-allege-systematic-negligence-at-southern-ontario-prison.html>

Overcrowding: Large numbers of people on remand.

As its name suggests, the QDC is a detention rather than a correctional centre, which reflects the reality that people are not intended to be incarcerated there for long periods. It appears that 63% of those admitted to the QDC are on remand.³⁰ Short periods of detention create challenges for reaching and helping people while they are incarcerated.

SP participants had indicated that up to 350 people were being held daily at the QDC, in an institution built to hold 228. This was before the 2019 changes to publicly funded advice and representation at bail hearings as a result of government cuts to LAO (now being represented by LAO staff Duty Counsel). We were informed that QDC staff were seeing many more people admitted on remand: this unfortunate situation is worsening current overcrowding. As a result, QDC is reportedly now sending people to other centres, particularly Toronto. This introduces a whole host of other complications for those who are detained including being further removed from where they live and any support networks they may have, greater disruption to their lives, more communication challenges, more difficulty to connect with their legal counsel, and more incarcerated people missing local court dates.

Some SP participants noted a disproportionate impact on women when space is an issue because they may be moved to the Ottawa Correctional & Detention Centre (OCDC), and find it difficult to return for local court dates due to distance, and are further from their support networks.

Transportation issues.

Problems noted earlier with respect to loss of ID and belongings are caused in part by transportation issues. But other issues were noted by SP participants, including not being able to get to court dates or health care appointments. One SP participant suggested a court order was needed to ensure that the inmate would be transported to a trial because temporary absence passes are discretionary. Another problem was release conditions that require an individual to be somewhere at a particular time when there is no public transportation to get there and the individual has no resources to pay to get there. A further challenge is transportation post-release to find work and to find housing in areas where there is no public transportation, which is most of the communities that CALC serves.

Language and interpretation issues.

Two of the SP participants mentioned a problem getting translation for Middle Eastern inmates, and that the costs of translation are excessive. Sign language availability was also raised.

Impact of a criminal record & collateral consequences.

Several SP participants raised the issue of the impact of a criminal record on an individual's ability to reintegrate successfully, mentioning specifically problems with employment and acquiring housing. Stigma becomes a major issue. This perception is confirmed by a memo

³⁰ Statistic calculated using 8001 over a five-year period, supra note 3.

prepared by LAO’s Clinic Resource Office in 2015 that provided preliminary details of the pervasive impact of a criminal record on people who are poor – raising problems with respect to income support (while incarcerated), and then post-release on issues related to housing, employment, family law, immigration, and other (see [Appendix D](#) for the memo).

Expungement of a criminal record was also noted as an issue by SP participants in particular, with several citing a lack of understanding of the process and where to refer people for help.

Indigenous peoples in custody.

Indigenous peoples are overrepresented in Canada’s prisons, and this holds true at the QDC. Statistics provided through the Freedom of Information request to the MSG revealed that more than 10% of the people incarcerated in provincial centres identify as Indigenous.³¹ Several of the FIP participants identified as having Indigenous heritage. No specific legal needs issues were related to their Indigeneity, except for one person who did not understand the steps needed to be formally recognized as an Indigenous person. The challenges being faced by Indigenous inmates requires further investigation and input from service providers who are Indigenous.

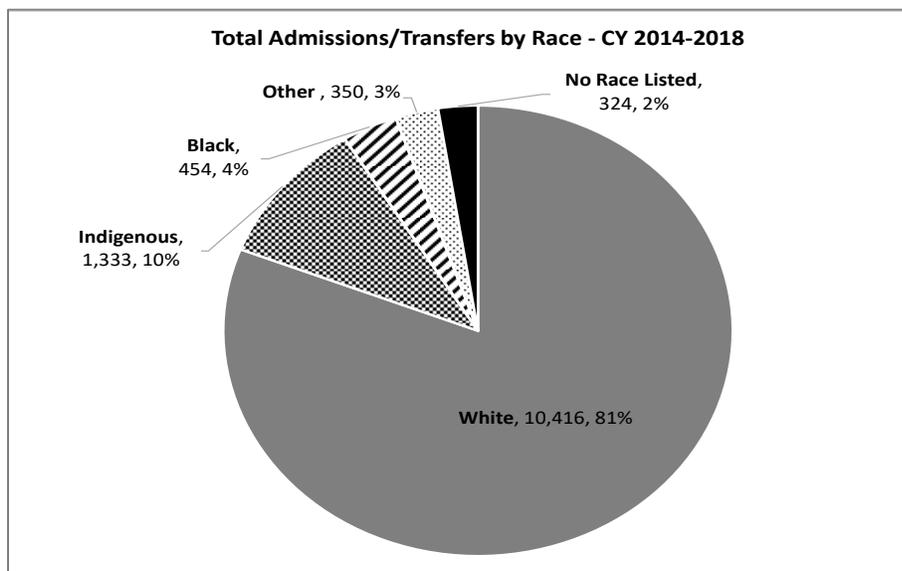


Figure 5: Statistics about Indigenous or Racial Origin of People Incarcerated at the QDC³²

Preferred or recommended methods for getting legal information.

Participants expressed a preference for in-person consultations or sessions while incarcerated, as well as printed materials, with several suggesting an orientation package on admission would be helpful. It did appear that the *Inmate Information Guide for Adult Institutions* is being provided. Although some referred to materials posted on bulletin boards, it was unclear how well read these documents were. Post-incarceration, social media, the internet, radio, and television were

³¹ This is based on a calculation of 1333 over a five-year period, supra note 2.

³² FOI Request Data, Inmates Incarcerated at QDC 2014-2018, supra at 3.

thought to be useful, although two FIP participants reported that they really didn't use the internet for information. Suggestions for content on the internet portal specifically mentioned the need for comprehensive resource information.

Possible intervention points for providing legal help.

For people in conflict with the law, we learned there are different time periods that could be technically (but not always logistically) opportune for intervening in some way to identify or help with unmet civil legal needs:

- (1) when arrested and held in custody by the police
- (2) when bail hearings are held at the courthouse
- (3) when remanded to QDC
- (4) while incarcerated in QDC serving a sentence
- (5) pre-release at QDC
- (6) post-release from QDC

Much complexity is generated by where the individual is geographically located at points (1) and (2), the logistics of access to individuals at these time periods, the diverse roles of various justice system stakeholders, and the lack of viable access to legal information, advice and assistance at most of these times. This suggests a complex mapping is necessary of who could be offering what help, when, and how. Given the current structure of LAO's services and significant government funding cuts to LAO in 2019 and potentially 2020, we can expect that available services will be further restricted. In addition to LAO staff, private bar lawyers were recommended as important intervention points.

Research participants suggested that the following might be helpful:

- having access to legal information in bail court (while consulting with Bail and Supervision Program worker, Duty Counsel, lawyer, in holding cell)
- solving issues like replacing lost identification documents before released from the QDC
- streamlining release so that belongings are returned when released which is a particular issue when bail has been granted at the courthouse, and the incarcerated person cannot travel back to QDC to retrieve their belongings

Although this analysis requires much more discussion before any decisions can be made to identify the most fruitful points of intervention on unmet civil legal needs, we present several representations as a working hypothesis of which justice sector player could intervene. As CALC staff has not historically worked in these contexts, experimenting with *warm referrals*, *secondary consultations*, and collaborative working relationships would be useful.

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 or 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

Table 2: Possible intervention points for providing legal help

What Resources Exist in the Local Community to Meet the Needs?

To answer this second research question, we needed to map the existing resources in Napanee and the surrounding communities that could help people when they are released. SPs and FIPs provided information about services that they had used or recommended that worked well, as well as commenting on approaches that had not worked. All participants were very interested in accessing reliable and updated information about local resources and made recommendations about how it could be made available.

CALC gathered this information primarily for the areas that the clinic serves – the counties of Hastings, Prince Edward, and Lennox & Addington as well as Tyendinaga Mohawk Territory. Kingston and Frontenac County is outside CALC’s geographic service area but is served by the Kingston Community Legal Clinic.

We also wanted to find out more about the learning needs of service providers because they play such important roles as *trusted intermediaries* – linking people who have legal problems with the legal help they need and sometimes providing legal information to their clients (Cohl et al., 2017). We wanted to be able to support professional development opportunities for promoting *legal literacy*: the term includes both having an *awareness* of legal rights and responsibilities, as well as the *understanding* about what can be done about those rights.

Programs being offered at the QDC.

Programs offered by QDC Staff.

Although we could not interview QDC staff to understand what internal programming was being offered, we did learn about programming and QDC staff roles from our research participants and through informal conversations. The programs and roles were helpful because they provide possible *intervention* points where legal awareness, information, or assistance might be useful.

Roles of particular interest are the two Deputy Superintendents, two social workers, and two staff who provide pre-release planning, the Native Inmate Liaison Officer (NILO), a Volunteer Coordinator, and the full-time chaplain. The QDC Health Care team could provide a cross-disciplinary intervention point using a *justice & health partnership* approach – building on CALC’s experience in promoting these partnerships in the community). Although there is a library at QDC, it is not staffed by a librarian, and it cannot be visited – and must be requested. The library room is used for programming by volunteers or Kingston Literacy & Skills.

The Volunteer Coordinator works three days per week and has computer access in her office. Volunteers offer Bible studies, creative writing, cooking, parenting issues, and Narcotics and Alcoholics Anonymous. We heard about craft programs for women as well as manicures.

The QDC also provides an office onsite to the Kingston, Frontenac and Lennox & Addington’s Addiction and Mental Health Services (AMHS). The AMHS staff member works five days a week connecting inmates to resources, arranging transport, and conducting discharge planning. We learned that there are weekly discharge meetings for some people with serious mental health issues who are high risk discharges involving a multidisciplinary team made up of staff from the QDC, the AMHS, and probation officers, and that these meetings were very effective. A further description is provided in the next section.

Programs offered by community organizations.

AMHS offers adult mental health counselling within QDC, and had been offering counselling in the community after release. During the course of our study the post-release counselling program was cancelled, although we heard very good things about the program, and it may well have been reinstated as this post-release program was picking people up from the QDC on release, assisting with appointments, securing housing, and getting food, as examples. The program in QDC is called “Release from Custody” and the staff person facilitates with a bail plan, liaising with a lawyer, helping to get legal aid, helping with phone calls, getting medication issues resolved, making appointments rather than just make referrals, and helping to get belongings returned on release. A discharge plan is formalized in a written document and a community resource package is provided, including a list of all the crisis teams.

EFry Kingston also offers pre-release planning for women. A domestic violence intervention program was also described by SP participants. It appears that neither JHSK’D nor JHS – B currently offers programming within the QDC.

Kingston Literacy & Skills program offers literacy classes. These are offered using pencil and paper, because computer and internet access are not permitted. Individualized learning plans are developed and can include working towards high school credits. A pilot project was so successful that it is now funded by the Ministry of Colleges and Universities.

Other programs are offered in QDC including:

- Programming for Indigenous peoples, including services offered by Indigenous elders
- High school classes by a high school teacher.

Useful programs offered by other local service providers in the community.

Municipal departments administering OW offer employment-related programming in the community as well as financial assistance in some circumstances for the costs associated with replacing lost identification, as well for criminal record expungement to help secure work. For employment help, the Kingston Restart Program (part of JHSK'D) and Career Edge's program in Napanee were cited.

The JHSK'D, JHS – B, and EFry Kingston offer various types of programming. Faith-based organizations also provide many different services, including replacing personal belongings or sometimes retrieving belongings from the QDC. These and other helpful services are included in the Resource Lists and Guides available through CALC's new [online portal](#) (see Chapter Four).

Getting legal information to people: distribution channels & formats.

Recommendations made by SP and FIP participants were consistent. SP advised that all materials in the QDC must be approved by the Deputy Superintendent. Several staff roles could provide useful conduits for information to inmates including the social workers and chaplain.

Due to a lack of online access while at QDC, the following formats could be useful:

- in-person visits to pods & advice clinics
- making printed materials available
- posting materials on bulletin boards including "tear-away" posters, and
- plain language, and language specifically designed for low literacy levels

Post-incarceration, the response was more highly varied. The following formats could be useful:

- printed materials
- online legal information
- use of TV and radio



MAYBE THEY SHOULD HAVE A LITTLE
PACKAGE THAT GOES TO EACH
INMATE COMING IN... WHAT'S
AVAILABLE, WHAT YOUR RIGHTS ARE.

FIP Participant

In considering what information CALC should place in the online web portal that CALC was creating, participants recommended a *holistic* approach meaning that both legal information and local resources information should be included.

Challenges faced by service providers.

Funding for programs both within the QDC and in the community is often threatened with few programs having guaranteed permanent funding. Those that currently offer programming within the QDC can sometimes find that it is cancelled due to overcrowding (when the classroom is used as a dorm) or during lockdowns (caused by a staff shortages or security concerns).

Legal literacy training for trusted intermediaries.

Several SP mentioned that they would welcome public legal education workshops to identify legal issues and remedies to be better support their clients. More information on employment-related issues would be helpful, as well as family law resources at these *legal literacy* sessions.

Suggestions for other programming that would be beneficial.

Participants made many other suggestions of programming within QDC and in the community that would be beneficial including:

- a better phone system
- life skills and financial literacy training
- social enterprise or work programs for people who have records
- mentoring
- more discharge planning, particularly with respect to housing issues and income security issues
- access to addictions counselling within QDC
- immediate admission to substance abuse programs when released, if willing, which would also require a capacity to do the “Gain screener” testing which currently takes two hours
- emergency shelters
- temporary housing for three to six-month periods
- more long-term housing – the housing crisis is making it very difficult to find
- getting people set up with bank accounts so they don’t go to pay-day loan companies
- stronger agency connections and communications
- a centralized help network or hub
- streamlining OW applications and ODSP reinstatements for people who are being released



SOME KIND OF TEMPORARY HOUSING OR SHELTER UNTIL PEOPLE CAN FIND HOUSING. BAIL BEDS. BIGGEST ROAD BLOCK IN TRYING TO GET PEOPLE RELEASED IS LACK OF HOUSING. BEING PENALIZED FOR HOMELESSNESS - WHICH IS NOT ACTUALLY ILLEGAL

SP Participant

What We Learned about Approaches Available or Being Tried Elsewhere.

In this section, we summarize some key initiatives discovered in the course of our research that are worthy of further exploration or implementation.

LAO's Institutional Duty Counsel Program (IDC).

LAO's IDC are responsible for providing services to clients in six correctional institutions across the province. Each IDC works in conjunction with criminal court Duty Counsel at their respective courthouse as part of a team to ensure the clients' following court appearance is a meaningful one. The responsibilities of IDC include:

- communicating with criminal court Duty Counsel, the Crown, private lawyers, and external stakeholders about in-custody clients
- preparing or following up on bail plans so that the client's bail plan is "ready-to-go" at the next appearance, avoiding unnecessary adjournments for bail plan prep
- providing summary legal advice and preparing clients for guilty pleas
- performing video bail and video remand hearings.

Unfortunately, IDC services are not currently available at the QDC. IDC, if trained and supported by CALC staff, could offer a very helpful point of intervention on *poverty law* issues.

Queen's Prison Law Clinic.

The Queen's Prison Law Clinic is funded by LAO to provide legal advice, assistance, and representation to *federal* prisoners at the following prisons: Collins Bay, Joyceville, Bath, Millhaven, and Warkworth.³³ Prisoners may contact the clinic for advice or assistance with any *prison* law matters (such as disciplinary charges, parole hearings, segregation, grievances, conditions of confinement, and health care or human rights issues.) Client services are generally provided by law students working under the supervision of clinic lawyers.

Expansion of this program to serve provincial institutions like the QDC would be very helpful.

"Red Envelope" program at the Ottawa Correctional and Detention Centre (OCDC).

We heard about the "red bag" program but had difficulty finding information about it until we located a provincial HSJCC webinar about the "red envelope" program at the OCDC, designed for people with mental health difficulties (Dunn, 2015). The red envelope is stored at the courthouse by the Ontario Provincial Police's Transport Unit and can contain wallets, personal identification, keys, and medication scripts. The program appears to have evolved from a partnership between chaplains, CMHA, and the Ontario Provincial Police.

A program like this, if it has been proved successful, would be worthy of exploring given the degree to which losing personal identification and belongings was identified as a serious issue.

³³ Further information can be found at the clinic's website: <https://queenslawclinics.ca/prison-law>

Telephone advice services pilot at Ottawa-Carleton Detention Centre (OCDC).

Students and professors at the Carleton University and the University of Ottawa began staffing the Jail Accountability and Information Line (JAIL) Hotline three hours daily as part of a Criminalization and Punishment Education Project in December 2018. The purpose of the hotline is to connect people incarcerated at the Ottawa-Carleton Detention Centre (OCDC) with legal information when they need it.³⁴ Funded by a small grant from the Canadian Bar Association's Law for the Future Fund, CLEO is working with the University of Ottawa Law School to develop an online repository of legal information resources that will help volunteers who staff the phone hotline find relevant legal information and referral resources easily.

Central East Correctional Centre (CECC) Travel Fund.

We learned that the Central East Correctional Centre (CECC) in Lindsay has a travel fund to ensure that people who are released from incarceration have transportation to leave. The travel fund was a condition of local approval to locate this super jail in that rural community. The QDC has purportedly not been able to access this type of funding from the MSG, despite similar challenges finding transportation faced by people who are released from the QDC.

Ontario Ombudsman: Complaints.

In 2017/ 18, the Ontario Ombudsman reported 5010 complaints by inmates, an increase of 300 over the year prior (Loriggio, 2018). In 2018/ 19, total complaints were up to 5711, an increase of 701 from the year prior (Ombudsman, 2019). In the Ombudsman's 2015/ 2016 Annual Report (Ombudsman, 2016), the QDC was listed as #10 of the top 10 correctional facilities by complaint volume. The Ombudsman also visits correctional facilities across Ontario to meet with correctional officers and inmates, explain their services, and see conditions firsthand.

We provide this information because inmates should be aware that they can complain to the Ombudsman's office about issues related to the conditions of incarceration. The top five complaints on a provincial basis were lockdowns (meaning lack of access to phones, showers, programs), being placed in segregation, excessive use of force, inmate-on-inmate assaults, and lack of



“WHAT WE OFTEN DISCOVER IS THAT THE MOST ENTRENCHED ISSUES ARE PROBLEMS THAT PUBLIC SECTOR BODIES ARE AWARE OF AND OFTEN WOULD LIKE TO FIX... THEY USUALLY STEM FROM RULES THAT ARE TOO RIGIDLY APPLIED, PROCEDURES THAT ARE OVERLY CUMBERSOME, OR JUST CUSTOMER SERVICE THAT IS JUST NOT UP TO PAR. SOMETIMES IT IS DUE TO LACK OF RESOURCES.”

Ombudsman Paul Dube, quoted in Loriggio, June 27, 2018)

³⁴ Media report retrieved from <https://ottawacitizen.com/news/local-news/hotline-to-open-for-detention-centre-inmates-and-their-families>

provision of Indigenous-specific services. The most recent report also medical issues, including access to health care is a significant complaint including issues of methadone treatment timing, and attending medical appointments. Overcrowding was also noted as well as problems with voting (Ombudsman, 2019).

Ontario Human Rights Commission: Visits to correctional & detention centres.

As noted earlier, as a result of a settlement of the human rights complaint in the *Jahn* case in 2013, the government has taken steps to improve the treatment of prisoners with mental health disabilities in Ontario's correctional facilities. Following this settlement, the OHRC has been visiting provincial correctional centres and detention centres. Our research revealed that the Commissioner has spoken out about the barriers to communication as a human rights issue because of excessive telephone costs issues in several detention centres that have the same type of phone arrangement as the QDC (OHRC, 2019a). Also, a letter written by the OHRC to the Solicitor General after a subsequent visit to the Hamilton Wentworth Detention Centre, revealed concerns around the lack of addiction treatment programming (OHRC, 2019b).

Human Rights Legal Support Centre (Ontario).

The Human Rights Legal Support Centre provides free advice and assistance to people who believe they are facing discrimination on human rights grounds under the *Ontario Human Rights Code* and who are considering a complaint to the OHRC. People can call 1-866-625-5179 toll-free Monday to Friday. Specific times the lines are open are on [their website](#). If they know someone is incarcerated, they prioritize the call.

Human Services & Justice Coordinating Committee – Lindsay.

Lindsay's HSJCC has taken an active interest in easing transition back into the community following release from the CECC. Members created a resource list for their geographic area and shared it widely. In 2018, many HSJCC members participated in a facilitated community dialogue on how best to help incarcerated people organized by their local JHS and the Community Legal Clinic - Simcoe, Haliburton, and Kawartha Lakes.

West Coast Prison Justice Society.

This non-profit organization in British Columbia provides legal supports to prisoners in federal and provincial institutions, promoting the "rule of law within prisons and the fair and equal treatment of prisoners."³⁵ Funded by the Legal Services Society (B.C.'s legal aid system) and the Law Foundation of British Columbia, they also provide assistance with human rights and health care issues.

In Ontario, there is no such organization for people who are incarcerated in *provincial* institutions.

³⁵ Information about this organization was retrieved from <https://prisonjustice.org/>

Australian and American programs to assist people who are or have been incarcerated.

There are many examples of successful programs in Australia and the United States that can provide inspiration. To name a few Australian examples: Legal Aid New South Wales developed an innovative legal information program for people who have been incarcerated and produced legal information in various formats. The NSW Legal Assistance Forum produced an excellent resource on promising practices for “[Civil law outreach to prisoners: what works?](#)” (See [Appendix E](#)). Provincial and Regional Legal Assistance Forums with Prisoners Working Groups are convened in many of the Australia States (see for example Victorian Legal Assistance Forum, 2015). Justice Connect, the pro bono organization for the state of Victoria offered a Debt and Tenancy Legal Help for Prisoners Project. (Justice Connect, 2015, 2016).

American legal service providers have also been heavily involved in projects to reduce recidivism including expunging criminal records, and helping to reduce the consequences of criminalization. Steinberg (2013) described the Bronx Defenders and a new defence paradigm (See also Joshi, 2017). Approaches in other countries will be in the forthcoming JHSO report.

Limitations of the Study

Although this study helped us achieve good insight into the unmet civil legal needs locally, despite challenges that we faced collecting data that we noted in Chapter Two, much more work is needed to engage effectively with other community services to meet the needs revealed by our research. This will be a work-in-progress. We were surprised by the amount of conflicting information about the services that were available both within QDC and in the surrounding communities. It was challenging to get accurate information. If it was difficult for us when we were focused on acquiring it for research purposes, we can only surmise how difficult it is for everyone else, including people who are or have been incarcerated. As we have noted, we were stymied in our efforts to gain useful knowledge about how to work effectively with the QDC. Our report and its recommendations would have been much strengthened by interviews with QDC staff.

We hope to remedy any research data limitations by post-study consultations and meetings with QDC staff, the two local HSJCCs, and senior managers at LAO, as well as community organizations. Since completing the data collection in October 2019, developments have been encouraging, and meetings are planned for 2020.

Chapter Four – Creating Resources on Local Services

Some participants did not know where to turn or where to refer people for help, so we created reference documents. There was little information: The Project Researcher spent many hours verifying the information. We used what we learned from interviews, conversations, and online searching to create three new resources ([online portal to legal information](#), compact local resource lists, local resource guides) to improve access to legal and other appropriate help. The resources have been shared with the research participants, interested service providers, and participants at CALC’s November 2019 Forum “Challenging Justice Gaps: Building a Community Response”, the Hasting Prince Edward HSJCC in November 2019, and the Lennox & Addington HSJCC in January 2020, and through CALC’s website and social media.

Portal to Online Legal Information

We designed a web portal to provide information for people who are in conflict with the law, or who are or have been incarcerated at the QDC. CLEO’s research on credible sources of legal information was helpful for locating useful resources. We were surprised at how little legal information had been produced for people who are incarcerated. Although while incarcerated people do not have direct access to the internet, we anticipate that trusted intermediaries – friends and relatives, service providers, and QDC staff - will find these resources helpful and share them.

- People in conflict with the law: <http://communitylegalcentre.ca/legal-info/criminal-law/>
- People who are or have been incarcerated: <http://communitylegalcentre.ca/legal-info/incarcerated-persons/>

Local Resource Information Created

Local resource lists.

Local resource lists created are current as of October 31, 2019, and are available through our [web portal](#). We created separate lists for counties of [Hastings and Prince Edward](#), and [Lennox & Addington County](#) because the services differ. The lists are designed to help people find help while incarcerated or after being released. The lists are formatted to be printed on a two-sided page. They can be easily read online and printed easily and inexpensively. These lists contain information on crisis and mental health services, financial help and income support, getting help with food and personal belongings, help while incarcerated, legal help, literacy and employment programs.

Local resource guides.

We created local resource guides to provide more detailed information about the local and other services that are current as of October 31, 2019. As with the lists, separate guides were created for the counties of [Hastings and Prince Edward](#), and [Lennox & Addington Counties](#). These multi-page documents can be reviewed online but may be better printed. These guides provide similar information to the resource lists but with more detail on specific services offered.

Chapter Five – In Conclusion - Recommended Next Steps

In this chapter, to conclude this study, we recommend 10 actions based on the research findings and after consulting with the Advisory Committee. We believe that taking a *justice ecosystem* approach will help make significant inroads into meeting people's complex and intersecting legal and social needs. Our research has deepened our admiration and appreciation for the people and organizations who provide help to people in conflict with the law, in very challenging circumstances, particularly JHS and EFry. To build this type of approach, new collaborative partnerships will be required. Without partnerships, CALC's desire to help people with *poverty* law problems and take action to try and narrow justice gaps will be incremental at best.

The degree and complexity of need faced by people who are or have been incarcerated is overwhelming, given their disadvantage. It is difficult to know where best to intervene to make any significant difference at all. We believe it is important to begin new initiatives as pilot projects, employing action research strategies. Action research helps us better understand the situation at the same time as we try to improve our services (Leering, 2017; Rempel, 2005). Continually gathering information to increase our understanding of how best to work is still necessary. Realistically, there are many challenges to moving forward quickly and easily: service providers are widely geographically dispersed and differentiated, and under- and unpredictably-resourced. Although the justice and community service sectors do not appear to have convened in the recent past around the issues and needs revealed by our study, there appears to be significant interest in meeting to discuss the findings.

Recommendation 1: Share the Research Report & Discuss Possible Future Action

We believe it is useful to circulate the report to key stakeholders to share the information and perspectives that were offered to us by the participants in the research. We would like to review any findings that may be of interest or concern, ensure accuracy, and discuss opportunities for moving forward. The report will also be shared with research participants.

Legal Aid Ontario (LAO).

We will share this report with LAO's Policy Department, the Vice-President for Clinic Law Services, and the Regional Director/General. Although LAO has put the Prison Law Strategy on hold due to government funding cuts, we would like to discuss what steps LAO might still take. We would like to explore how more holistic legal help could prevent unnecessary incarceration, and how LAO staff and local lawyers funded by LAO might work together to identify unmet civil legal needs that may be creating a barrier to income security, and employment, housing, and relationship stability after release, whether from remand, or after serving a sentence. We are particularly interested in exploring whether, as an interim measure, LAO could appoint a part-time Institutional Duty Counsel (IDC) to provide legal advice and assistance within QDC.

We would welcome the opportunity to convene a regional or sub-regional prisoners' working group, perhaps as part of a larger LAO-sponsored regional *Legal Assistance Forum* to work collaboratively with other justice system and social service sector stakeholders to meet unmet legal needs. We also recommended this in our 2019 submission to the Ministry of the Attorney

General's Modernization Review. We have been inspired by the Australian example of convening forums to encourage a "systems approach" to creating more access to justice for marginalized and socially excluded groups – an approach we call evolving a *justice ecosystem*.

As an interim measure, we recommend convening a local Prisoners' Working Group with LAO staff, community legal clinic and Queen's Prison Law Clinic staff, and local criminal defense lawyers to discuss this report and possible ways that we could work together more collaboratively on the issues raised, specifically focused on the people who are or have been incarcerated at the QDC (see further Recommendation 5 below).

Quinte Detention Centre (QDC).

The report will be shared with the Deputy Superintendent and interested staff at the QDC. We want to be transparent about the research findings in the hope that we can discuss the report and develop constructive and productive working relationships (see also Recommendation 2 below).

Ministry of the Solicitor General (MSG).

We are required to share this report with the MSG to satisfy CALC's "Researcher's Agreement" – a condition of their research ethics' and logistical approval. We would like to discuss how the MSG might better support non-academic researchers and non-profit organizations who are trying to find ways to help people who are incarcerated through community-based and evidence-informed approaches. The impediments to conducting our research were very real, very time-consuming, and ultimately made it very difficult to carry out our original stated intention, which was to support a community-based response to unmet civil legal needs.

We would also like to discuss whether a Community Advisory Board (CAB) might be convened as the QDC is one of the provincial institutions that does not have one. It is possible that a CAB might strengthen the connections between the QDC and the community and justice sector. Whether a travel fund can be established for the QDC is another issue worthy of consideration.

Law Foundation of Ontario (LFO).

The LFO has received the draft report. Their funding made this study possible. Our research findings support the LFO-funded provincial initiative being carried out by the JHSO. The JHSO's multi-year Catalyst project that began in 2019 is designed to gain a better understanding of their client's civil legal needs, to assess the JHS offices' ability to aid their clients with these issues, and to develop training approaches and resources.

Human Services & Justice Coordinating Committees (HSJCC) – Lennox & Addington, and Hasting Prince Edward.

We will share this report with both Human Services & Justice Coordinating Committees (HSJCCs) in CALC's service area – Lennox & Addington, and Hastings Prince Edward – and meet to discuss possible action within their mandates. We have not worked with some of the

organizations represented on the HSJCCs on these issues before. Given their wide-ranging membership, their feedback on possible realistic and productive next steps is crucial. We wonder whether HSJCC's support and advocacy might help bring about some of the ameliorative approaches tried by in other communities like a transportation subsidy post-release, or a program to help retrieve personal belongs from the QDC such as the OCDC "red envelope."

Local Law Associations.

We will share this report with local Law Associations to discuss how criminal defense lawyers might become part of a justice eco-system approach to deal with the complex and intersecting legal problems revealed by this study. We will offer a workshop and apply to the Law Society of Ontario for accreditation as a Continuing Professional Development (CPD) activity.

Recommendation 2: Develop a Good Working Relationship with QDC Staff

Building a solid working relationship with the staff who work at the QDC will be critical for reaching people who are currently incarcerated, and for providing just-in-time legal advice and assistance on *poverty* law issues that might be complicating their release or their reintegration. Although CALC is not able presently able to provide onsite legal services, we would like to provide *secondary consultations* to QDC staff on poverty law issues impacting inmates. We would also be interested in providing *legal literacy* workshops to staff and volunteers to help red flag legal issues, support problem-solving, and streamline referrals for help. We will investigate whether forming a *justice & health partnership* with the health care providers who work within the QDC might also provide a constructive intervention point.

We would also be interested in developing *legal literacy* workshops for problems in housing, employment, consumer & debt issues, and income security for people who are incarcerated.

Recommendation 3 – Consider a Pilot Project to Provide Legal Help to Incarcerated People

Initially, we had anticipated that a next step might be developing a proposal for a collaborative pilot feasibility study for civil legal help to people in the QDC, prior to their release. Unfortunately, due to current LAO budget constraints and funding cuts, including to CALC, we are not in a position to provide any significant amount of new legal services to this highly complex and vulnerable population. Furthermore, a constructive working relationship with staff who work at the QDC would be critical to getting this project off the ground.

Additionally, to operate productively, a great deal of coordination with LAO is needed. Their legal staff's *criminal* and *family* law expertise is needed to supplement the CALC's *poverty* law expertise. Furthermore, given the complexity of challenges faced by people who are incarcerated, even on remand, and their intersecting legal and social needs, we recommend that we form partnerships with *trusted intermediaries* such as JHS, EFry, or AMHS. The trusted intermediary approach would appear to be the most constructive way forward for intervening fruitfully with people needing our help (see Recommendation 9 below).

If a funding opportunity should arise, a pilot project for legal help could be developed with these partners. However, the current timing is not opportune.

Recommendation 4: Improve CALC’s Capacity to Serve People who are Incarcerated

CALC staff immediately took steps to mitigate problems that might be caused by our new VOIP system when we learned about the QDC phone system. We will continue to monitor that service providers, QDC staff, and people who are incarcerated can reach a staff person immediately. This access will be critical for people who are incarcerated, as the QDC’s current phone system doesn’t allow people to be placed on hold or transferred.

To raise the visibility of our services, we also must make sure our toll-free line and how our services can help are posted within the QDC. Noting that the MSG’s *“Inmate Information Guide for Adult Institutions”* does not include information about the legal services offered by CALC and other community legal clinics. We will ask the MSG to have this changed.

CALC’s policy set by our Board of Directors restricts our legal services to people who reside in our catchment area. The meaning of “reside” will be interpreted to include people temporarily resident at the QDC. This may cause some challenges since people may not normally live in our area. This means we will be less aware of the local service infrastructure in their home community, making it potentially more difficult to help solve their problems. We will find ways to solve this challenge by collaborating with their “home” clinic.

Given the complex needs and life histories of this population, we will ensure that all CALC staff receive training on trauma-informed approaches, as well as Fetal Alcohol Spectrum Disorders.

Recommendation 5: Work with Legal Aid Ontario to Provide Holistic, Responsive Services Focused on Early Intervention

Focus on early intervention and prevention with LAO staff.

CALC welcomes the opportunity to work with LAO staff to help them screen for poverty-related legal problems, provide secondary consultations, and take warm referrals. An option, endorsed by LAO’s draft Prison Law Strategy, could be that LAO staff would provide CALC’s contact information, and then follow up to make sure a connection had been made within 24 to 48 hours. In the spirit of action learning, the project could be evaluated, and recommendations made for next steps. Possible early intervention points for identifying poverty law needs include:

- when the individual calls the Client Service Centre (a 1-800 number is available to inmates)
- when an application for a legal aid certificate is taken at the QDC by LAO staff
- when meeting with LAO Duty Counsel in preparation for bail hearings
- during incarceration (if an Institutional Duty Counsel is appointed at the QDC).

[Appendix F](#) presents more detail on what these interventions might look like.

Work proactively with LAO-funded service providers (lawyers on legal aid certificates).

CALC welcomes the opportunity to work more closely with local criminal defence lawyers who are helping clients on legal aid certificates or who are acting as LAO-funded per diem Duty Counsel. We would like to help identify poverty law problems as early as possible, including the collateral consequences of being remanded, as well as the repercussions of a criminal record on people who are poor. (For a list of some of the collateral consequences, see [Appendix D.](#)) We are prepared to offer secondary consultations on poverty law issues by phone or email.

Recommendation 6: Improve Legal Rights Awareness, Legal Literacy, and Capacity to Act

Many issues were identified that could be ameliorated by raising awareness of legal rights and responsibilities for both service providers and people who have been in conflict with the law. Developing professional development workshops for service providers on *legal literacy* issues would be helpful.

Increase awareness of CALC's new resources.

It will be important to work with other stakeholders to increase awareness of and access to CALC's new [legal information portals](#), and new resource lists and guides described in Chapter Four. CALC will embark on a publicity and social media campaign in 2020.

Rights with respect to employment: Encourage early advice.

Understanding employment rights is a complex area that usually requires one-on-one legal advice, which CALC can provide. People might benefit from proactively considering how they should handle informing their employer about their incarceration, particularly if it will be of very short duration, to try and preserve the employment relationship.

Having a criminal record will usually also make it more difficult to find employment. CALC can provide legal information and advice on this issue.

Work with CLEO to create legal information resources & legal literacy training.

It would be beneficial to work with CLEO to create legal information resources. The diverse formats they are exploring would be highly useful. (For example, legal information columns are to be included in PASAN's "Cell Count" newsletter that is distributed to prisoners, institutions, and agencies.³⁶)

Furthermore, collaborating to develop in-person and online training resources for trusted intermediaries to help red-flag legal issues early, and make appropriate referrals, would be an efficient use of limited resources.

³⁶ PASAN, founded in 1991, is a Canadian community-based organization exclusively providing HIV and HEP C prevention, education, support and whole health and harm reduction to prisoners, ex-prisoners, and their families. For more information about their newsletter, see <http://www.pasan.org/what-we-do.html>

It could be beneficial to work with Kingston Literacy & Skills to develop legal information sessions suitable for inclusion in their literacy programs at QDC, if desired. Building on existing basic legal literacy skills curricula that CLEO has developed for literacy organizations could also be fruitful.

Recommendation 7: Streamline Entitlement to Income Security Programs, and Undertake Systemic Advocacy and Recommend Law Reform on Income Security Issues

Ontario Disability Support Plan (ODSP): Working with the provincial Ministry to streamline processes and advocating for change.

Participants commented on how difficult it was to have ODSP disability benefits reinstated quickly upon release. Unlike the current Ontario Works (OW) Policy Directive (see [Appendix G](#)) that allows for OW applications to be taken ten days prior to release from custody, there is no equivalent ODSP Policy Directive. This delay in getting benefits reinstated for people with disabilities is exacerbated because ODSP is paid only in arrears – at the end of each month. For example, if a person is released on the 2nd day of the month, they cannot be paid their ODSP benefits until the end of the month. This makes it difficult if not impossible for them to secure housing or buy food, increasing the precariousness of their post-incarceration lives.

Several SP and FIP participants commented that they were able to retain ODSP benefits while incarcerated for short periods or on intermittent sentences. Normally, the government declares a benefit overpayment for the time period that someone is incarcerated, even if they still have a legally binding tenancy agreement and have to pay rent. An exception is that while incarcerated, ODSP income support should continue for a spouse and dependents. There are complex ODSP rules about how income support is pro-rated in the month a person is taken into or released from custody. Declaring overpayments during short periods of incarceration should be stopped.

Several issues arise from the rights, or lack of rights, in the *Ontario Disability Support Plan Act*, its regulations, and its interpretation in Policy Directives. For example, MCCSS Policy Directive 2.6 states that a person is not eligible for income support when incarcerated. This has been interpreted to mean that one is disqualified from receiving ODSP while incarcerated – even if only on remand, subsequently proven not guilty and released without sentence.

CALC will continue to provide legal advice to help people better understand these rules and to enforce their rights to income support. CALC will ask to meet with MCCSS staff to discuss how to streamline the reinstatement process. A complaint to the provincial Ombudsman or the Human Rights Commission is being considered. For people with disabilities, being unable to apply from within the QDC to be reinstated and requiring travel to MCCSS offices to reapply is especially onerous, even more notably when impecunious, and may, in appropriate circumstances, give rise to a human rights *duty to accommodate* special needs. People who are impacted by these regressive rules should seek legal advice.

Systemic advocacy and law reform is needed to create a new policy to allow applications from within correctional facilities, as well as change the policy to allow people to retain ODSP income support for short periods of incarceration. (Even some American jurisdictions allow this.) Ending the disqualification of income support would help people with disabilities maintain their housing

and avoid the disruption that results from losing housing and personal belongings, a desperate situation described by many research participants. We recommend systemic advocacy on this issue, including with the OHRC and the Ombudsman. The feasibility of a legal challenge should be investigated, using an appropriate test case or cases, to challenge whether the problematic policy directive is in fact authorized by the Act, and/or whether it violates the Charter of Rights and Freedoms.

Furthermore, supplemental benefits are no longer available for exceptional start-up costs like first and last months' rent. The Community Start-up and Maintenance Benefit (CSUMB) was eliminated in 2013. An inability to afford first and last month's rent makes it impossible for people who are being released to secure housing if they have lost it, or to pay rent owing if they have fallen behind. It would be helpful to have this supplemental benefit reinstated.

Ontario Works (OW) benefits: Working with municipal departments to streamline entitlement processes and advocating for change.

People who are incarcerated can apply for OW income assistance up to 10 days before release according to MCCSS policy. This possibility is not well known. Ontario Works Directive 6.12 (see [Appendix G](#)) states that a person can apply for OW while in a correctional facility provided they will be released within 10 days. There appear to be many impediments to this working efficiently – communication issues already identified, the unpredictability of release on remand and the current lack of pre-release planning for people incarcerated less than 30 days. Exploring ways to ensure people always apply 10 days prior to release, even if not eligible for pre-release planning, would be beneficial. CALC will meet with both municipal income security programs in CALC's geographic area, the County of Hastings, and the counties of Prince Edward and Lennox & Addington, to see if processes can be streamlined. CALC will reach out to the Kingston Community Legal Clinic, to see if they can advocate for improved processes for people who will be residing in Frontenac County.

The *Ontario Works Act* also disqualifies a person from receiving benefits even during short periods of incarceration, and the loss of the CSUMB to support re-entry has been very problematic: these are problems that require concerted systemic advocacy and law reform attention.

Recommendation 8: Respond to Other Issues Raised

There were other issues identified that could benefit from developing ameliorative approaches at a local level, some of which already exist in other jurisdictions.

Preventing and replacing lost personal identification documents.

We recommend investigating the feasibility of creating a “red envelope” program like the one the Ottawa-Carleton Detention Centre (OCDC) had piloted to prevent the loss of personal identification documents and keys.

When personal identification documents have been lost, it would be helpful to raise awareness of how people can apply to replace them, including information about when and fee waivers may be available, or where subsidies to defray the costs might be available from. We also recommend that eligible non-profit organizations who work with homeless and marginalized people investigate the Service Ontario program that allows fees for birth certificates to be waived for people working with approved non-profit organizations.

Preventing loss of personal belongings.

The loss of personal belongings was repeatedly referred to by both SP and FIP participants: it is destabilizing, demoralizing, and complicates efforts to reintegrate. The first problem is the loss of belongings when a person's place of residence is not adequately secured, and/or goods are stolen after arrest or during incarceration. The second problem arises when a person is released after appearing at court, and the person doesn't have the resources to return to the QDC to pick up their belongings.

Further discussions with service providers who can help ameliorate this challenging situation to develop local solutions would be helpful.

Transportation after release from the QDC or court.

This was another issue that was identified many times by research participants and requires attention. Advocacy with the MSG may be a suitable response given that this funding is available, for example, to people incarcerated at the correctional centre in Lindsay, the Central East Correctional Centre who are able to access funding for transportation post-release.

CALC encourages all interested justice and social service sector organizations to advocate with MSG to create a travel fund to be administered by the QDC or other suitable institution.

Obtaining a criminal record pardon (suspension) after conviction: Raise awareness.

Although FIP participants did not specifically say that they needed help to obtain a pardon of a criminal record (now called a record suspension), many people are not aware that some JHS branches may help with the paperwork required to get a record suspension. There may be possible sources of subsidies to defer the government fees for applying. Non-profit organizations provide free help: people **should not pay** for services by for-profit organizations like Pardons Canada.

Recommendation 9: Collaborate More Effectively with Trusted Intermediaries

CALC would like to better support the service providers – *trusted intermediaries* – who are working under such challenging conditions to help people who are in conflict with the law. We suggest several possible approaches to strengthen our relationships with these organizations.

John Howard Society & Elizabeth Fry.

CALC would welcome the opportunity to work more closely with crucial lead organizations that help people in our service area who have been in conflict with the law. We whole-heartedly support the JHSO LFO-funded provincial research project and encourage the implementation of their study's recommendations for staff training and legal rights awareness-building. In the interim, we would be able to provide *legal awareness, literacy, and capability* training to their local staff as professional development opportunities on *poverty* law issues. We would also like to provide *secondary consultations* to JHSK'D, JHS – B, and EFry staff who have clients at QDC, or residing in our service community and who need legal information and advice about poverty law issues, and to extend our *service provider hotline* for that purpose.

Other community organizations.

We would be pleased to offer the same assistance described above to staff of other organizations who are working to improve the lives of people who have been in conflict with the law.

Recommendation 10: Future Research Recommended

There were two issues that we could not explore within the scope of this research project: whether Indigenous people are differently impacted and require different approaches, and the situation facing people who are detained on immigration matters at the QDC. Should resources become available, the unmet legal needs of these people should be explored.

Although the barriers to working effectively with people while they are detained or incarcerated at the QDC seem very high, we are still interested in engaging in action research to experiment with “what works” should an opportunity become available.

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Appendix A: Advisory Committee Members (Alphabetical Order)

Reza Ahmadi	John Howard Society of Ontario (began March 2019)
Kristina Brousalis	Community Legal Education Ontario (CLEO)
Cindy Bruinsma	Regional Office, Legal Aid Ontario
Krista Byne	Elizabeth Fry Kingston
Neil Burrell	Former Probation Officer & CALC Board Chairperson
Dr. Adelina Iftene	Schulich Faculty of Law, Dalhousie University
Michelle Keast	John Howard Society of Ontario (finished Jan. 2019)
Emma Kuranowicz-Vyse	John Howard Society of Kingston & District
Julie Langan	John Howard Society of Kingston & District (finished Jan. 2019)
Lisa Loader	Community Legal Clinic Simcoe, Haliburton, & Kawartha Lakes
Heather Loudon	Elizabeth Fry Kingston
Jana Mills	Queen's Legal Aid
Julie Parent	John Howard Society of Kingston & District
Dr. Holly Pelvin	Faculty of Arts, University of Alberta
Paul Quick	Queen's Prison Law Clinic
Jonathan Robart	John Howard Society of Ontario (began March 2019)
Keith Taller	Policy Department, Legal Aid Ontario
Debbie Woods	John Howard Society of Belleville

Community Advocacy & Legal Centre

Allie Beacon	Articling Student & Lawyer
Michele Leering	Executive Director/Lawyer & Project Lead
Deirdre McDade	Co-Director Legal Services
Trisha Simpson	Lawyer
Nicola Paviglianiti	Project Researcher & Facilitator

Appendix B: Sample Interview Questions

Service Provider interviewees (trusted intermediaries) were asked these questions:

- How do you help incarcerated persons, or formerly incarcerated persons?
- At what stage(s) do you help people?
- Are people experiencing problems related to their housing immediately before, during, or after incarceration at QDC? What kind of problems are/were they experiencing? Please provide examples.
- [if problems] How do these people tend to deal with these problems and concerns?
- How aware would you say they are of their legal rights and responsibilities in these matters?
- How would you rate their ability to solve these issues on their own?
- What might prevent them from solving these issues on their own?
- Do you or your organization provide any help to deal with these issues?
- [If help] What difficulties do you have trying to assist with housing problems?
- [If help] Do you have any examples of what has worked well when you (or your organization) have helped with these problems?
- What else/what do you believe would help better resolve challenges related to housing?
- The same questions were asked about problems related to income, work, relationships, consumer and debt issues, property and assets, immigration, indigenous issues, and health
- Are there any other particular strategies, programs, initiatives relevant to help incarcerated persons at the QDC not yet discussed that you know of?
- What formats and distribution channels would be most useful or accessible pre and post release from the QDC to help with legal matters?
- Where is the best location for printed legal information intended for people incarcerated in the QDC to access?
- Are you aware of any good contacts for staff or volunteers at QDC who might be interested in participating in this study?
- What kinds of challenges that have not already been covered do you think people who are being released and transitioning out from the QDC might face?
- What kinds of supports and services are people using to transition back into the community?
- What kind of successes have you seen? Can you provide examples?
- What kind of barriers have you noticed? Can you provide examples?
- Do you have other ideas on what might help people transition back into the community in the future?
- What support would assist you or your agency to better assist these people with their problems and legal challenges?
- How can CALC work more effectively with you to address challenges and help solve legal problems for these people?
- CALC is developing a web portal with resources and direction to supports to help these people and the people who help them find information and help with their common legal problems. What information should be included to make it most helpful?
- Is there anything else that you think is important to understanding the problems that we haven't covered? Or anything else you would like to offer this study?

Formerly Incarcerated People (FIP) were asked about the following:

- About their age, ethnicity, level of schooling completed, and how long they had spent at the QDC
- Questions were asked about problems related to housing, income, work, relationships, consumer and debt issues, property and assets, immigration, indigenous issues, and health using the following seven questions. (Prompts of included problems were sometimes given.)
- Did you experience problems related to housing (substitute other types of problems as above) before, during, or after being incarcerated at the QDC? What kind of problems did you experience?
- How did you deal with these problems and concerns?
- How aware are you of your legal rights and responsibilities in housing? (A rating system was provided but was found not to be useful, so discontinued.)
- How would you describe your ability to solve these problems? (This question was not consistently asked.)
- Have you sought or accessed any help to deal with these problems?
- Did you have any difficulties getting help?
- What else would help you?
- Have you had any other problems you have not told us about?
- Were there any programs or initiatives at the QDC that were able to help you?
- What kind of legal resources and help might be helpful for people incarcerated in the QDC?
- What formats and ways of distributing information would be helpful while at the QDC and post release from the QDC?
- Did you use any supports or services to transition back to the community? How did they help you?
- Do you have any other ideas on what might better help people transition?
- What formats and sources of information do you prefer and tend to access the most?
- CALC is developing an online web portal with resources and direction to supports to help find information about common legal problems. What information should be included to make it most helpful?
- Is there anything else that you think is important to understanding the problems that we haven't covered? Or anything else you'd like to offer to this study?

Appendix C: Interviewers & Note Takers (Alphabetical Order)

Community Advocacy & Legal Centre

Allie Beacon	Articling Student & Lawyer
Michele Leering	Executive Director/Lawyer
Deirdre McDade	Co-Director of Legal Services
Jane Ohlke	Volunteer
Trisha Simpson	Lawyer
Nicola Paviglianiti	Project Researcher & Facilitator

John Howard Society – Kingston

Stacey Ison	Bail Supervisor / Court Worker
Emma Kuranowicz-Vyse	Team Leader
Melissa Noakes	Bail Supervisor / Court Worker
Alicia Royce	Bail Court Staff

Appendix D: Summary of Collateral Consequences of a Criminal Record For The Poor Provided by LAO's Clinic Resource Office

This list summarizes some collateral consequences of a criminal record on people who are poor. These consequences increase the punitive impact of remand and incarceration. Note the list and the law has not been updated since 2015 and is not an exhaustive list.

Income Security

- Access to social assistance
 - no impact (unless you are detained/incarcerated – your benefits will be cut off or reduced)
- Eligibility for Employment Insurance – if criminal record is for employment-related "misconduct"
- Workers' Compensation – it can have consequences in the return to work process – but it is one that is appealable.

Housing

- Loss of housing
 - See termination for cause provisions under the *Residential Tenancies Act*, (ss.61, 64 and 66)
 - note: the standard of proof is balance of probabilities – you can be evicted even w/o a criminal record, but the criminal record makes it much more difficult to defend against such an eviction application (in fact, usually makes it a slam dunk for the LL) – note also that the offence has to relate in some way to the tenancy or residential complex
- See "*Right at home: Report on the consultation on human rights and rental housing in Ontario*" (OHRC, 2008) - [Criminal records and record of offences](#)³⁷

³⁷ ** Excerpt (OHRC, 2008) Criminal records and record of offences [cites omitted]

Although “record of offences” is not currently a prohibited ground of discrimination in housing, a number of important human rights issues were raised in the consultation. Submissions relating to Code amendments are discussed in section 4.5. “Enforcing housing rights.”

About 10% of the adult population has a criminal record. Consultees noted that due to discrimination, historical disadvantage and other factors, there may be links between criminal records and prohibited grounds of discrimination, such as disability, race or receipt of social assistance. For example, Aboriginal people comprise 16.7% of federally sentenced adult offenders but only 2.7 of the Canadian adult population. Conflict with the law may be associated with the racialization of poverty and the criminalization of poverty (JHSO). For example, the Commission was told that people with low incomes, including people on social assistance, tend to be viewed more reprehensively and receive more severe criminal sanctions than wealthy people who have similarly broken the law.

The Commission heard that differential treatment based on one’s criminal history is widespread and yet very difficult to prove. In many cases, the unit in question may suddenly become “unavailable” when the landlord finds out about a prospective tenant’s criminal record through a criminal record check or a discussion. In other cases, prospective tenants walk away from a suitable unit when they find out that a criminal check is a required condition of tenancy. When successful in obtaining a unit, some people with criminal records are told that they will be

- Some social housing providers in particular have a zero tolerance approach to illegal acts.
- Private market housing – some landlords require criminal record checks before renting
- Eligibility for social housing or access to rent-geared-to-income assistance.
 - Reg. 367/11 under the *Housing Services Act* – convictions relating to receipt of rent-geared-to-income assistance may disentitle someone for RGI (a rent subsidy) – either *Criminal Code* offence or *HSA* offence
 - If a client is the sole occupant of RGI housing & is incarcerated, the client may be in breach of the local “absence from unit” policy under the *HSA* and lose eligibility for RGI assistance. Although there are exceptions in the City of Toronto policy (listed below) for bail conditions & incarceration while awaiting trial, there does not seem to be any exception for incarceration following a trial.

A local “absence from unit” policy is authorized by Regulation 367, Section 37 of the *Housing Services Act* (HSA).

Exceptions: Absences Due to Criminal Charge/Conviction

- v. If a household has one member, and the member is absent because they are being held in jail while awaiting trial, the household will not be considered absent from the unit.
- vi. If a household has one member, and a bail condition of release prevents the member from living in the unit, the household will not be considered absent from the unit.

Employment

- Loss of immediate livelihood
 - Manual labour jobs such as cleaners often require the employee to be bonded
- Loss of income earning potential
 - Increasingly, employers of all kinds have come to view the criminal record check as a precondition of hiring, even for relatively unskilled jobs
- Loss of professional licencing accreditation
 - Individuals convicted of a criminal offence are automatically barred from practicing in a range of trades and professions, from teaching to massage therapy
- Inability to travel outside Canada which restricts employment opportunities

watched and more closely scrutinized than other tenants. These kinds of experiences may also arise from the intersection of a criminal record and other grounds of discrimination such as being in receipt of social assistance and/or being racialized.

Some consultees raised concerns about blanket policies that restrict or ban people with criminal records from housing, such as those which exist in various parts of the United States. One consultee notes that: “if such a situation were to become a reality here in this province ... our hopes of housing this very vulnerable population would be lost.”...

CERA pointed out that such policies will result in human rights violations for individuals who have addictions, or other disabilities such as mental illness or cognitive disabilities, if housing providers are not sensitive to the individual circumstances of each prospective tenant. “If a person’s disability was a contributing factor to criminal activity, that person should not be refused housing for having a criminal record unless the housing provider can prove that providing them with accommodation would pose undue hardship.”

- e.g. truckers – or anyone who needs to cross the border for work – may be prevented from doing so

Family Relationship Issues

- Prejudice in child custody and family proceedings
 - Parent applying for custody must provide information about current or previous involvement in criminal proceedings – s. 21(2) of the *Children’s Law Reform Act*.
 - In child protection proceedings, the court may consider as evidence the past conduct of a person toward a child including a finding or the reasons for a decision in an earlier criminal proceedings – s.50(1) of the *Child and Family Services Act*.
 - Where an individual has been convicted of assault arising out of the incident of domestic violence, the conviction is admissible as prima facie proof that the individual committed the assault.
- Loss of opportunity to adopt or act as foster parent

Immigration

- Non-citizens may face immigration detention, bars on obtaining status, removal from country^[1]
 - Permanent Resident: Loss of permanent resident status, potential loss of appeal rights and deportation
 - Foreign National: Deportation
 - Protected Person / Refugee: Ineligible for permanent resident status. However, may only be deported if Minister issues a “Danger opinion”
 - Refugee Claimant: Ineligible for permanent resident status if they later become a protected person. Will become ineligible for a refugee hearing, and will be deported, if convicted of an offence punishable by a maximum of 10 years or more

Other

- Loss of offence-related property by forfeiture proceedings
- Restrictions on volunteer and community involvement by a vulnerable persons record check
- Identification as a registered sexual offender under both provincial and federal legislation which restricts future employment opportunities and involvement in the community
- Restrictions on driving which restrict employment opportunities, and which have a disproportionate impact on rural residents
- Increased sentences for future offences
- Cannot serve on a jury if you have a criminal record

^[1] See Moustacalis, Anthony, “A Rough Overview of Some of The Immigration Consequences of Conviction or “Why You Should Befriend an Immigration Lawyer”, paper presented at Criminal Lawyers’ Association conference, November 2014.

Appendix E: New South Wales (AU) Legal Assistance Forum – “Civil Law Outreach to Prisoners: What Works?”

Civil law outreach to prisoners: what works?

Good working relationships are the key to success

- Develop relationships with staff at the prison:
 - Meet (regularly) with management, welfare and educational staff of the prison.
 - Offer to provide information sessions to education and welfare staff about your service.
 - Facilitate or offer to provide training and information to welfare and education staff about identifying legal problems of their prisoner clients.
- Develop relationships with prisoners (potential clients):
 - Visit prisons regularly to build trust and familiarity between the legal service and the prisoners.
 - Combine CLE and 'legal advice clinics' for prisoners. CLE sessions followed by 'advice clinics' are an effective and efficient way of engaging with prisoners.
 - Attend information days or pre release expos at the prison.

Work in partnership with other stakeholders

- Approach other local organisations about partnerships:
 - Consider public and private legal service providers.
 - Consider non legal service providers who may be able to assist prisoners e.g. financial counsellors.
 - Think outside the square – partnerships can take different forms:
 - alternate legal visits to prisons; or
 - one partner delivers CLE and provides advice and the other accepts warm referrals to take on case work.

Don't reinvent the wheel – share existing resources

- Consider ways to share and update resources with other legal services.
- Use existing CLE resources (e.g. 'Back on Track' DVD collection produced by Legal Aid NSW).
- Use existing sample letters / authorities to release information.

Acknowledgements

This 'tip sheet' was developed on the basis of the ideas raised during the service planning forum about civil law outreach to prisons that formed part of the Legal Aid NSW seminar on civil law issues and prisoners (25.310).

In 2009, the NLAFF Prisoners Working Group (subgroup on legal needs of prisoners) undertook a survey of legal assistance providers for the purposes of mapping the provision of civil law services to prisoners. The information in the prison profiles is based on the results of that survey.

For more information about NLAFF or the NLAFF Prisoners Working Group contact:
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www.nlaf.org.au

Appendix F: How Holistic, Responsive LAO Services Might Work

Note: This is a work in progress, for future discussion with LAO. Format is based on *Connecting across Language and Distance* (Cohl & Thomson, 2007).

Incarcerated person calls LAO’s Inmate Hotline (CSC)

What client would experience	How the system would work
Client would be asked about civil legal problems.	<ul style="list-style-type: none"> • Through questioning beyond the presenting issue, CSC staff will screen for other legal issues • CSC staff will be able to recognize a client’s presenting problems include a poverty law aspect such as income security, housing, employment, work injuries, consumer & debt, etc.) • CSC staff will make a warm referral to CALC staff
LAO correspondence will note possible poverty law problems and refer to CALC	<ul style="list-style-type: none"> • All LAO correspondence to clients would contain a “one-liner” about the common legal problems for which they can consult community legal clinics

Incarcerated person meets with LAO staff at QDC to apply for legal aid

What client would experience	How the system would work
Client would be asked about civil legal problems.	<ul style="list-style-type: none"> • Same as above • LAO staff would provide Resource List • Warm referral to CALC, if appropriate or possible

Person meets with LAO Duty Counsel to prepare for bail hearing

What client would experience	How the system would work
Client would be asked about civil legal problems.	<ul style="list-style-type: none"> • Same as above • Duty Counsel would consider whether timely referral to CALC could assist with difficulty with bail conditions. CALC would provide secondary consultation to Duty Counsel to assist client • Duty Counsel would provide Resource List

Incarcerated person meets with LAO Institutional Duty Counsel

What clients would experience	How the system would work
Client would be asked about civil legal problems	<ul style="list-style-type: none"> • Same as above • IDC would work with clinic lawyer to understand and resolve poverty law legal issues • IDC would ensure family & criminal law help as appropriate

Appendix G: Ontario Works Directive Effective as at October 2018

6.12 Persons Detained in Custody

Legislative Authority

Section 2 and 7 of the Act. Sections 46 of Regulation 134/98.

Audit Requirements

Documentation to support a decision about the maintenance or reduction of assistance for persons detained in custody is on file.

Application of Policy

Persons who are incarcerated are not eligible for assistance until such time as they are released from custody.

An applicant or recipient serving a conditional sentence (e.g. "house arrest") is not considered to be incarcerated, and therefore may be eligible for assistance.

For incarcerated persons who are soon to be released from custody and are applying to Ontario Works, the application process (by telephone) can be initiated from the correctional facility provided they will be released within 10 days and can provide information that reasonably points to meeting eligibility conditions within that time period.

If eligible, the basic needs amount is prorated in the month of release for the length of time that the person is in the community. The Administrator may pay the full shelter amount in the month of release to enable the person to secure or maintain accommodation.

In board and lodging situations, if a shelter amount can be determined, a portion of the assistance may be provided at the discretion of the Administrator to cover the shelter amount in the month of release. If this cannot be determined, the monthly assistance is prorated based on the period of time the person is in the community.

An applicant or recipient who is on temporary absence, parole or probation, or serving a conditional sentence and who is residing in a community residence funded in whole or in part by the Ministry of Community Safety and Correctional Services is eligible for assistance in the amount of \$149 per month for personal needs.

If the delivery agent has knowledge that an applicant or recipient is incarcerated before financial assistance has been issued, the payment should be stopped if the participant is single, or recalculated to exclude that participant from the benefit unit.

If an applicant or recipient is incarcerated after financial assistance is issued, an overpayment for both basic needs and shelter based should be established for the time the individual was incarcerated.

If the applicant or recipient is a member of a benefit unit, the individual is removed from the budget for the benefit unit for the entire period of incarceration. Upon release, the individual would be reinstated into the benefit unit for the purposes of calculating assistance.

The days of entering and leaving are not considered full days of incarceration. The "day-in" and "day-out" should not be included in the calculation of reduction to the person's basic needs allowance.

Part-time Incarceration

Where persons are incarcerated on a part-time basis (e.g., on weekends), it should be assumed that the person has budgetary needs for each full and part day they are living in the community.

The reduction to the basic needs allowance should be calculated using only the number of whole days per month in which the person remains incarcerated. The Administrator may also provide the full shelter amount for a person who is incarcerated part-time, where it is necessary for that person secure or maintain accommodation in the community.

In board and lodging situations, if a shelter amount can be determined, an amount for the shelter costs may be provided in order to maintain community accommodation. If a shelter amount cannot be determined, the monthly assistance is prorated based on the number of full and part days the person is in the community.