



LEGAL AID
RESEARCH SERIES

STUDY OF THE LEGAL SERVICES
PROVIDED TO PENITENTIARY
INMATES BY LEGAL AID PLANS
AND CLINICS IN CANADA



Study of the Legal Services Provided to Penitentiary Inmates by Legal Aid Plans and Clinics in Canada

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The views expressed herein are solely those of the author and do not necessarily reflect those of the Department of Justice Canada.



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Executive Summary

Life in federal penitentiaries involves continuous challenges arising from the desire to balance the protection of society and maintenance of control in the institution with the protection of inmates' rights. In this environment, prisoners can face difficulty navigating the prison system and dealing with the legal issues that can arise. While there are undoubtedly many in the correctional system who work well with prisoners, situations occur where this is not the case. A number of inquiries into the correctional system have found instances where prisoners were mistreated and where there has been a lack of recognition of prisoners' legal needs and rights.

The legal aid system in Canada is intended to provide eligible low-income people with legal counsel or funding to retain legal counsel. Each province and territory maintains its own Legal Aid Plan, with funding from both the provincial and federal governments. To receive legal aid services, applicants are expected to meet both financial eligibility requirements and a number of other criteria that differ substantially among jurisdictions. The nature of the penitentiary environment, coupled with these variations in Legal Aid Plans across Canada, can affect the level of access that prisoners have to legal aid services.

The Department of Justice Canada (DOJ), in co-operation with the provinces and territories, is developing a new legal aid and access to justice policy framework. The Department has been conducting a number of studies to support the policy renewal process. The research program included two studies of the legal needs of prisoners in federal penitentiaries. Prairie Research Associates Inc. (PRA) and SPS Research and Evaluation (SPS) were retained to conduct the first study, which is based on the perceptions of lawyers and other legal professionals serving inmates, in addition to a review of legal aid and other relevant documents.¹ The specific objectives of the research are as follows:

- ▶ To describe current levels of legal aid services and related forms of legal information and support provided to prisoners in federal penitentiaries and on conditional release.
- ▶ To document the difficulties that prisoners may experience in accessing legal advice and support, and any unmet needs.
- ▶ To examine possible approaches for addressing these difficulties and needs, as well as the financial and other resources that would be required to do so.

The methodology for this component of the research consisted of a review of relevant literature and documents, and interviews with legal aid lawyers and other professionals involved in the provision of legal services to federal inmates.

The literature review situated federal inmates within the correctional system and provided a brief overview of federal inmates' legal aid needs and the legal aid coverage that currently exists in each jurisdiction. The costs of providing legal aid coverage to federal prison inmates were not available, since they are not recorded separately from those of the general population.

¹ The second study, which was conducted by Thérèse Lajeunesse and Associates, is based on the perceptions of inmates, corrections officials and prisoner advocates, in addition to a review of corrections and other relevant documents.

Key informant interviews were conducted with a total of 25 lawyers and other professionals with experience in providing legal services to incarcerated federal offenders. The group comprised legal aid staff lawyers (10), private bar lawyers (8), paralegals (3), and others (4) – a provincial court judge and representatives from a non-profit legal clinic, a provincial parole board, and a non-profit legal advocacy group.

Legal Needs of Federal Inmates

The legal needs of federal prison inmates span a range of areas and issues but may be divided into two main categories. The first category includes the “general” legal needs that all members of the Canadian population might have, such as criminal, civil, and family law. The second category includes the specific legal needs that arise as a direct result of imprisonment, often referred to as “prison law.”

In the second category, the need for representation, legal advice, and/or legal education is most often associated with:

- ▶ disciplinary hearings (especially with more serious charges that could result in serious consequences such as involuntary segregation or transfer, fines, etc.)
- ▶ involuntary transfers to higher levels of security
- ▶ administrative segregation (“solitary”)
- ▶ parole or statutory release conditions
- ▶ sentence calculation
- ▶ post-suspension and revocation (of parole, conditional release, etc.) hearings
- ▶ detention hearings
- ▶ appeals to the court of administrative decisions.

In addition to these prison law needs associated with general inmate status, there are also particular issues and needs faced by subgroups of the prison population. For example, Aboriginal people may face language and/or cultural issues that can affect their need for, and access to, legal supports.

Provision of Legal Supports to Federal Inmates

In Canada, there is a statutory guarantee of the right to legal counsel. What is subject to discretion is the extent to which the state must provide counsel at the state’s expense. Each province maintains its own legal aid program, most governed by legislation, with varying rules for the nature and scope of legal matters covered. Few jurisdictions routinely provide comprehensive legal aid coverage for prison law issues.

The most important factors in determining eligibility for coverage include whether the matter involves “liberty issues,” whether it is reasonable that a person would want representation for such a matter, and whether there is likelihood of success. The legal aid provider’s discretion is an important factor in answering these questions. Legal aid policies and approaches vary widely across the country, especially with respect to prisoners. Most employ some mix of staff lawyers, judicare (using a per diem or tariff system), and/or duty counsel. British Columbia is unique in that prisoners’ legal needs are served by a dedicated agency (Prisoners’ Legal Services).



Obstacles

The main obstacles to meeting the legal aid needs of federal inmates are related to changes made in the 1990s to the various legal aid systems in Canada. Many Legal Aid Plans had to cap the level of coverage in response to increasing demand for legal aid services. Some Plans also made other adjustments to coverage, such as reductions in the tariff levels for certificates. Some Plans attempted to reduce costs by narrowing the range of legal issues covered by legal aid. These changes resulted in a related reduction in the legal profession's willingness to accept legal aid cases, especially in jurisdictions that use a *judicare* model of service delivery.

There are also structural/technical obstacles to the provision of legal services in the closed environment of the correctional institution. The restriction of communication between inmates and those outside the prison can restrict access to counsel and to the legal aid application process.

Unmet Needs

The nature and extent of unmet legal needs vary along with the different policies for eligibility and coverage in each province. In many instances, inmates are without representation at hearings that can result in serious consequences such as segregation, involuntary transfer to another institution, or revocation of parole.

Key informants suggested that the unmet needs of federal inmates could most effectively be addressed through increased funding and human resources, and secondarily by ensuring that inmates have access to “self-help” legal education materials.

Prison Law Needs are a Priority

While prisoners face more practical problems in gaining access to counsel as a result of their incarceration, coverage for many matters is technically no different for federal inmates than for the general population. The situation is very different with respect to addressing the legal aid needs resulting from prison-specific matters. There is sufficient evidence to conclude that a number of prison law matters can involve consequences (such as segregation, transfer, substantial fines, or loss of privileges) that are at least as serious as some matters for which coverage is routinely provided. These needs, therefore, should be given priority in any future consideration of access to justice issues for federal inmates.

The Legal Aid Needs of Inmate Subgroups Should Be Investigated

This research has provided evidence that subgroups within prison populations have legal needs beyond those faced by other inmates. There is evidence that Aboriginal people, women, and persons with disabilities face specific challenges in addition to those encountered by all inmates. Inmates with low levels of education, those for whom English is not a first language, and those with literacy problems can also experience additional obstacles to gaining access to legal services. While a general sense of several of these needs has emerged during the course of this research, they should be more thoroughly investigated in order to discover ways in which they can be addressed.

Legal Aid Legislation is Fragmented

Because legal aid legislation or regimes vary among jurisdictions, provision of legal services is inconsistent across the country. As noted above, most jurisdictions do not provide services that address the particular legal issues that arise as a direct result of imprisonment. For example, some jurisdictions, like Nova Scotia, provide prison law services in one geographic region on an *ad hoc* basis. Ontario, Alberta, and British Columbia have more institutionalized, province-wide coverage of prison law issues. Saskatchewan does not provide any specialized services for prison inmates. This inconsistency across the country can pose problems, especially for federal inmates who may be transferred among institutions in various jurisdictions. The result is differential access to legal services for federal inmates based only on the province in which they are incarcerated. National standards on what services will be provided to federal inmates would help to mitigate this situation.

Discretion Plays a Major Role in Legal Service to Federal Inmates

Ample evidence supports the conclusion that discretion is a key factor in whether federal inmates receive legal services, especially for prison law matters. It is also clear that this discretion can work both for and against the interests of the inmate. That is, having the right of inmates to legal counsel in specific situations enshrined in legislation could certainly be seen as a step toward protecting their interests. On the other hand, more strictly defined rules could reduce the flexibility of legal aid staff and private lawyers to respond to emerging legal issues and/or to accept exceptional cases that, in the interests of justice, should be defended, even if they are outside the standard parameters for legal aid coverage.

Denial of Legal Aid Should Be Based Only on Legal Issues

The large number of requests for legal aid, coupled with limited human and financial resources, means that many requests for counsel will be denied. All Legal Aid Plans offer a process for appeal of decisions; however, it appears that inmates do not often avail themselves of the opportunity. In the case of frivolous requests, denial of legal aid coverage is warranted and is not a cause for concern. In the case of requests that have merit, however, where denial is due simply to lack of resources, access to justice for federal inmates is being denied.

There is Wide Variation in Availability of Legal Services

It is clear that the level of legal support, particularly legal aid, available to federal inmates depends on many factors. These include provincial policies for eligibility, the area of law involved, the level of funding for Legal Aid Plans, and even the particular institution involved. Whether or not a federal inmate receives legal support appears to be, in many cases, a matter of chance.

There are a Number of Forms of Legal Support

While this research has concentrated on legal aid, it is clear that other important related legal supports can be provided to federal inmates. Legal orientation sessions for new inmates, toll-free legal advice services, and well-maintained law libraries in correctional institutions can provide a cost-effective supplement (or even an alternative) to legal aid, especially in light of past and



potential cuts to legal aid funding. These related forms of support should also be available in a range of media to reflect the varying needs and abilities of federal inmates.

Reduced Legal Aid Plans are Obstacles to Meeting Legal Aid Needs

The evidence indicates that recent changes to Legal Aid Plans, such as capping the level of coverage in response to increasing demand, inadequate tariff rates paid for certificates, and narrowing of the range of legal issues covered, are serious obstacles to meeting the legal aid needs of federal inmates. It may also be concluded that this situation has made specializing in prison law unattractive to many lawyers, despite the obvious demand.

Institutional Priorities Can Be Obstacles to Meeting Legal Aid Needs

The reduced right to privacy and the need to limit freedom of communication in the interests of institutional security conflict with providing legal services to inmates. While these are mainly the result of legitimate safety concerns, correctional policy needs to recognize inmates' rights to access legal counsel. While inmates naturally lose some of their rights as a result of their incarceration, the right to counsel is not among them.

Application Procedures are Potential Obstacles to Obtaining Legal Aid

It is clear that the various policies for application for legal aid coverage vary in ease of use. The toll-free telephone application system in British Columbia, for example, appears to provide federal inmates good access to legal advice. Each step added to the process will increase the degree of difficulty in obtaining legal support. Contacting private bar lawyers, completing application forms, submitting forms, etc. can all hinder access – especially when combined with the institutional priorities discussed above.

A Number of Legal Needs are Unmet

It is clear that federal inmates have a wide range of legal needs that are not currently being met. As noted above, the magnitude of the problem varies greatly, depending on the jurisdiction in which the prisoner is located. The common factor, however, appears to be limited financial and human resources for legal aid services.

Unmet Needs Can Have Serious Consequences

Disciplinary hearings, involuntary transfers, segregation, etc. can have significant consequences both for inmates' safety and for the protection of their Charter rights. Most Legal Aid Plans, however, base their eligibility criteria on the kinds of legal matters that are faced by the general population. It is important to ensure that federal inmates have access to legal aid for the serious legal issues that have no equivalent outside the context of a correctional institution.



1.0 Introduction

The Department of Justice Canada (DOJ), in co-operation with the provinces and territories, is developing a new legal aid and access to justice policy framework. The Department has been conducting a number of studies to support the policy renewal process. The research program included two studies of the legal needs of prisoners in federal penitentiaries. Prairie Research Associates Inc. (PRA) and SPS Research and Evaluation (SPS) were retained to conduct the first study, which is based on the perceptions of lawyers and other legal professionals serving inmates, in addition to a review of legal aid and other relevant documents.²

1.1 Objectives of the Research

This study is expected to provide information on what legal aid services, information, and supports are available to incarcerated offenders at the present time, and to identify any barriers faced by incarcerated offenders in obtaining adequate service. The study will also assess whether additional services are required, and what resources would be required to meet such needs. The specific objectives of the research are as follows:

- ▶ To describe current levels of legal aid services and related forms of legal information and support provided to prisoners in federal penitentiaries and on conditional release.
- ▶ To document the difficulties that prisoners may experience in accessing legal advice and support, and any unmet needs.
- ▶ To examine possible approaches for addressing these difficulties and needs, as well as the financial and other resources that would be required to do so.

1.2 Methodology

The methodology for this component of the research consisted of a review of relevant literature and documents, and interviews with legal aid lawyers and other professionals involved in the provision of legal services to federal inmates.

1.2.1 Literature and Document Review

The purpose of the literature review was to situate federal inmates within the correctional system and provide a brief overview of federal inmates' legal aid needs and the legal aid coverage that currently exists in each jurisdiction, based on the available literature. A list of sources consulted

² The second study, which was conducted by Thérèse Lajeunesse and Associates, is based on the perceptions of inmates, corrections officials and prisoner advocates, in addition to a review of corrections and other relevant documents.

appears in Appendix A. The review of legal aid documents and other relevant literature was also informed by discussions with representatives of the Legal Aid Plans in each jurisdiction included in the study.³

Statistics addressing legal aid coverage for federal prison inmates could not be obtained from any jurisdiction. While some jurisdictions indicated that they thought they would be able to draw information from their databases, it was not possible to do so. No jurisdiction has a code in its database that would enable it to definitely identify prison inmates receiving legal aid services.^{4 5} Given that it is not possible for Legal Aid Plans to provide service statistics for federal inmates, it is also not possible to provide the actual or estimated costs of service to those inmates.

1.2.2 Key Informant Interviews

Prior to starting the key informant interview process, PRA and SPS contacted legal aid personnel in the eight jurisdictions involved in the study and interviewed a senior legal aid manager in each jurisdiction in order to obtain data to inform the development of the interview instrument. In consultation with DOJ Research and Statistics Division, PRA and SPS finalized the interview guide. The interview guide is attached as Appendix B.

During the key informant interview process, we consulted a total of 25 lawyers and other professionals with experience in providing legal services to incarcerated federal offenders. They included legal aid staff lawyers (10), private bar lawyers (8), paralegals (3), one provincial court judge, one staff member of a non-profit legal clinic, the former Chair of a provincial parole board, and a Board member of a non-profit legal rights organization. Respondents were sent the interview guide to allow them to prepare in advance of the actual interview. Most interviews were conducted by telephone; three respondents submitted written answers to the questions.

The interviews were intended in part to supplement previously obtained information on the structure, policies and procedures, delivery methods, and decision-making approaches to providing legal aid services to federal inmates. More importantly, the interviews gathered information on federal inmates' met and unmet legal aid needs, the obstacles to meeting those needs, and potential strategies for meeting the needs in the future.

³ British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, and Nova Scotia. Note that we only present detailed information from seven of these jurisdictions, since no interviews were conducted with respondents from Saskatchewan. Initial inquiries found that, in Saskatchewan, legal aid does not provide any services to inmates other than for new criminal charges while in custody.

⁴ Some jurisdictions thought that they would be able to isolate the prisoners included in the database by the postal code of the institution. However, this was not possible.

⁵ Nova Scotia is trying to determine if it is possible to definitely identify prison inmates by drawing files from the database that are dealt with by the paralegal. However, it is likely that this approach will also provide no data, given that some non-prison inmate files may also be included in the paralegal's list. The legal issues codes may or may not be sufficient to distinguish between prison inmates and others.



Obtaining co-operation from potential interviewees proved to be a challenge. In some cases, lawyers who had previously responded to interview requests for other research projects simply did not return telephone calls, believing that ours was not a new request. In other cases, it appears that perhaps legal aid lawyers are simply “burned out,” and are not inclined to participate in further legal aid research.

1.3 Outline of the Report

Section 2 presents the findings based on the literature review and key informant interviews. Information is organized according to the main research questions identified in the Statement of Work. Section 3 presents summary observations and conclusions.



2.0 Findings

This section presents the findings of the literature and document review and the key informant interviews. Following a description of the Canadian correctional system and legal aid in Canada as they pertain to this research, the findings in this section are organized in accordance with the research questions addressed in this study.

2.1 Context of the Research

The purpose of this section is to situate federal inmates within the correctional system and provide a brief overview of legal aid issues in Canada.

2.1.1 Federal Penitentiaries

Federal penitentiaries are governed by the *Corrections and Conditional Release Act* (CCRA). The Act provides for prisoners' rights, governing structures within the penitentiaries, procedures for discipline, and requirements for segregation. Under the CCRA, the Correctional Service of Canada (CSC) is mandated to maintain and operate all federal penitentiaries. The work of the CSC is guided by its Mission Statement:

The Correctional Service of Canada (CSC), as part of the criminal justice system and respecting the rule of law, contributes to the protection of society by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.⁶

Accompanying the Mission Statement are five Core Values,⁷ which are intended to guide the implementation of the Mission Statement in practice. They include:

Core Value 1: We respect the dignity of individuals, the rights of all members of society, and the potential for human growth and development.

Core Value 2: We recognize that the offender has the potential to live as a law-abiding citizen.

Core Value 3: We believe that our strength and our major resource in achieving our objectives is our staff and that human relationships are the cornerstone of our endeavour.

Core Value 4: We believe that the sharing of ideas, knowledge, values, and experience, nationally and internationally, is essential to the achievement of our mission.

Core Value 5: We believe in managing the Service with openness and integrity, and we are accountable to the Solicitor General.

The Mission Statement and Core Values guide operations on a daily basis, and, therefore, life in federal penitentiaries involves continuous challenges arising from the interaction of the components of the Mission Statement (i.e., protection of society, assisting offenders to become law-abiding, and maintaining control). Approaches to maintaining control may not assist

⁶ See "Our Mission" at www.csc-scc.gc.ca/text/organi/organe01_e.shtml

⁷ See "Our Values" at www.csc-scc.gc.ca/text/organi/organe01-02_e.shtml

offenders to become law-abiding. Approaches to assisting offenders may work against maintenance of control. Approaches to maintaining control and assisting offenders may not result in protection of society, both during an offender's confinement and following that confinement. While these challenges may occur in institutions of any level of security, maximum-security facilities present the most challenges. The greater the level of control thought to be required, the more difficult it is to ensure that offenders are assisted in becoming law-abiding citizens, since maintenance of control takes a high priority. Ideally, however, the components work in conjunction with each other, and all goals are achieved: control is maintained; offenders are assisted; and society is protected.

Federal penitentiaries are closed institutions. As such, it is difficult for the public to know how the CSC's Mission Statement, Core Values, and CCRA provisions are implemented on a day-to-day basis. The atmosphere/environment of closed institutions has the potential to wield great power over all who become part of them. The daily undertakings within the walls of the institution, like any other organization, are influenced by the attitudes and perceptions of everyone involved, from inmates and staff to the general public.

While there is no single attitude toward prisons and prisoners, the prevailing attitude historically has been one in which prisoners are viewed as being outside society, without any rights and responsibilities associated with membership.⁸ There is also an attitude that prison is for punishment of offenders—being sent to prison and losing one's liberty is not the punishment itself; rather, punishment occurs in prison. Rules and regulations regarding maintenance of control/order exist, but may not be followed in all situations. Further, when followed, the approach to implementing them may not be consistent with the intent of the rules.

Prison operations are affected by the multitude of complex needs that prisoners have, including legal, social, and psychological needs. While prison systems and staff are able to address many prisoner needs, they are not necessarily equipped to handle every one, and conflict may arise. For example, it is difficult for even the least vulnerable of prisoners to negotiate their way through prison procedures and practices, including disciplinary hearings, classification systems, involuntary transfers, administrative and other forms of segregation, and access to health services and programs. Prisoners who are more vulnerable, those with special needs for example, will have an even more difficult time navigating the prison system and dealing with social, psychological, and legal issues that may arise.

On occasion, the state of prisons and prisoners becomes apparent to the public. While there are undoubtedly many in the correctional system who work well with prisoners, situations arise where this is not the case. Many inquiries have been made into the correctional system. Generally, all have found similar things: prisoners are treated inhumanely; there is little respect for the Rule of Law among correctional service staff in their dealings with prisoners; there is little recognition of prisoners' needs and legal rights; there is inadequate response to prisoners' needs; there is a generally punitive attitude toward prisoners; and prisoners with special needs face greater difficulty in living within the prison and getting their needs met.⁹

The most recent Commission, the Commission of Inquiry into Certain Events at the Prison for Women in Kingston, was completed in 1996. The Commission was conducted by Madame

⁸ See Michael Jackson; Mary Campbell.

⁹ See Michael Jackson, *Justice Behind the Walls: Human Rights in Canadian Prisons* (Vancouver: Douglas & McIntyre, 2002).



Justice Louise Arbour and found similar issues to those listed above. The Commission was implemented to address events that led to the strip searches of six female inmates at the Prison for Women in Kingston, Ontario by male prison guards of the Institutional Emergency Response Team; subsequent body cavity searches; and the women's long-term segregation, from April 22, 1994 to January 19, 1995, following this incident. In the opinion of the Commissioner, the findings were indicative of situations that are commonplace in the correctional system. Generally, it was found that the Rule of Law does not exist within prisons and that there was nothing to suggest that the CSC was willing or able to reform without judicial guidance and control. As indicated by a Parliamentary Subcommittee during the 1970s, "*the Rule of Law must prevail inside Canadian penitentiaries and justice for inmates is a personal right and also an essential condition of their socialization and personal reformation.*"¹⁰ Madame Justice Arbour found that the conditions of segregation were emotionally and psychologically damaging and in violation of law, including correctional law.¹¹

While some changes did result from the recommendations of the Arbour Commission, an examination of the Correctional Investigator's annual reports indicates that many systemic issues addressed in Madame Justice Arbour's report continue to exist. The Correctional Investigator's reports raise systemic issues such as excessive delays in responding to grievance; inaccessibility of programs and timely conditional releases for all prisoners, but especially for Aboriginal prisoners; excessive time spent in segregation before transfer; overuse of force in contravention of the law;¹² use of force in support of mental health interventions; use of restraint equipment; lack of adequate investigation of inmates' injuries; lack of adequate response to self-injury and suicidal inmates lacking access to competent psychologists; lack of compliance with policies governing timely and fair investigation of prisoners' complaints of staff misconduct; involuntary transfer of inmates to mental health facilities under the guise of "risk assessment," and subjecting prisoners to psychiatric treatment without their consent; lack of critical incident stress intervention for inmates; sexual harassment of women prisoners by male staff; housing female prisoners in male penitentiaries in segregation units for excessive lengths of time; policy of placing all life-sentenced prisoners in maximum security facilities during their first two years of their sentence;¹³ and discrimination of Aboriginal offenders with respect to segregation, transfers, discipline, temporary absence, work release, adjournments and postponements of parole reviews, detention referrals, suspensions and revocations of conditional releases.¹⁴

¹⁰ Op cit. Interestingly, these comments directly address the components of the current CSC Mission Statement; the need to maintain control (in the absence of the Rule of Law) will result in prisoners' rights being violated, but the Rule of Law is absolutely necessary to address the prisoners' needs with respect to their reform. In the absence of these, the public is not protected.

¹¹ See Louise Arbour, Commission of Inquiry into Certain Events at the Prison for Women in Kingston (1996), p. 54, pp. 140–147, pp. 185–187.

¹² Overuse of force in contravention of the law is an issue that relates to Madame Justice Louise Arbour's finding that there is an absence of respect for the Rule of Law among correctional institution staff.

¹³ As with the overuse of force in contravention of the law, this policy demonstrates an absence of respect for the Rule of Law.

¹⁴ See The Correctional Investigator Canada, *Annual Report 2000-2001*, *Annual Report 1999-2000*, and earlier annual reports.

In her report to the DOJ, Lisa Addario indicates that there are problems for women with security classification systems, given that the risk assessment tools used for security classification are designed for use with males and often result in over-classification of women. Further, she notes that people with mental health problems are often moved into increasingly more secure facilities and treated more harshly in an effort to control behaviour. In the meantime, however, their mental health issues are not addressed. Difficulties experienced by women prisoners generally are more pronounced for Aboriginal female inmates, given their unique cultural background and needs.¹⁵

Based on the above discussion, it is apparent that there are many areas in which prisoners have need for legal services to assist them in dealing with issues arising as a result of their imprisonment. Further, it is apparent that those who have special needs are more vulnerable to the inability of the prison system to understand and deal with those needs and the issues that may arise from the interaction between the prison and other systems. They may also be more vulnerable than other inmates to the impacts of prison system practices.

2.1.2 Legal Aid in Canada

The legal aid system in Canada is intended to provide eligible low-income people with legal counsel or funding to retain legal counsel. Each province and territory maintains its own Legal Aid Plan. Funding for the Plans comes from both the provincial and federal governments. A detailed description of the Legal Aid Plan coverage in each of the jurisdictions is included in Appendix C.

To receive legal aid services, applicants are expected to demonstrate financial eligibility. While the levels of income that constitute “low income” differ from one jurisdiction to the next, given differences in cost of living, a minimum level is set in each jurisdiction. Depending on their income levels, applicants may be eligible for legal aid without having to make a financial contribution, or eligible only if they make some contribution in the way of payment. When their income is too high to qualify for full coverage, they can be provided with services under a service repayment agreement in which they agree to repay all or part of the costs of the legal aid services. Arrangements of this type can be developed in all jurisdictions.

In addition to financial eligibility, the applicant must meet criteria for coverage of legal issues. While there are some basic requirements that Legal Aid Plans ensure coverage for some criminal and family law issues, the coverage provided by Legal Aid Plans across Canada differs substantially between jurisdictions.¹⁶ Some key areas of criminal and family law are consistent across jurisdictions. For example, all jurisdictions cover criminal law issues in which there is a statutory minimum imprisonment term if the person is found guilty (e.g., charges of murder). Additionally, situations in which the applicant is likely to be imprisoned if found guilty are eligible for legal aid coverage. However, there is a large degree of discretion involved in determining whether or not imprisonment is the likely outcome if found guilty. Hence, where the coverage may be consistent across jurisdictions in policy, in practice there may be variations in the coverage of charges. In family law, child welfare issues, financially eligible parents are generally covered in each jurisdiction if the child was apprehended by the child welfare

¹⁵ See Lisa Addario, *Six Degrees From Liberation: Legal Aid and Other Legal Services Needs of Women in Criminal and Other Legal Matters*. Draft Final Report, July 2002.

¹⁶ See Appendix C for information about coverage of legal issues by Legal Aid Plans included in the study.



authorities or if the parent is at risk of losing custody of the child. Divorce and custody proceedings are also generally covered in each jurisdiction. In other areas of family law, coverage is less consistent across jurisdictions.

During the 1990s, many issues arose in the legal aid system in Canada. Many Legal Aid Plans had to cap the level of coverage in response to high demand for legal aid services. Plans also made other adjustments to coverage. For example, in jurisdictions that use(d) a *judicare* model for service delivery, the tariff levels for certificates were reduced. In addition, Plans eliminated some issues in each area of law that were formerly included for coverage. Changes in Plan coverage have therefore resulted in reduction of the level of coverage available to the public in each area of law.

In addition to reductions in access to justice through the changes made to Legal Aid Plans, the legal profession's response to the changes has resulted in further reductions in the accessibility of justice services in those areas that use a *judicare* model of service delivery. When reductions in the type, level, and payment schedules of legal services were announced, many members of the legal profession determined that they would no longer accept legal aid clients. When clients did obtain a certificate for legal aid services, they were often unable to find a lawyer who would take a certificate case. Those lawyers who continued to take legal aid certificates became overburdened and, therefore, were often unavailable to accept certificates. In recent years, lawyers have protested publicly the lack of coverage under the Legal Aid Plans.¹⁷

In response to the crisis in legal aid, many jurisdictions have completed extensive reviews of their legal aid systems. This has resulted in the development of new approaches to governance of Plans¹⁸ and more experimentation with innovative approaches to the delivery of legal aid services.

The DOJ, in co-operation with the provincial and territorial Legal Aid Plans, is currently undertaking extensive research. The results will assist in developing a new access to justice framework that will potentially address some of the issues that have arisen since the early 1990s in the provision of legal aid services in Canada.

2.2 Legal Needs of Federal Inmates

The literature review revealed the multitude of complex needs that prisoners have, including legal, social, and psychological needs. While prison systems and staff are able to address many prisoner needs, they are not necessarily equipped to handle every one, and conflict may arise. For example, it is difficult for even the least vulnerable of prisoners to negotiate their way through prison procedures and practices, including disciplinary hearings, classification systems, involuntary transfers, administrative and other forms of segregation, and access to health services and programming. Prisoners who are more vulnerable, those with special needs for example, will have an even more difficult time navigating the prison system and dealing with the various social, psychological, and legal issues that may arise.

¹⁷ Public protests have occurred in both Ontario and British Columbia.

¹⁸ For example, Ontario has changed its governance approach to one in which the responsibility for legal aid rests with the Board of Directors of the plan. The Board is made up of members of the government, members of the legal profession, representatives from the Law Society of Upper Canada, and other stakeholders. Previously, the plan was governed by the Law Society of Upper Canada.

The legal needs of federal prison inmates span a range of areas and issues but may be broadly divided into two main categories. The first category includes the “general” legal needs that all members of the Canadian population might have, such as criminal, civil, and family law. The second category includes the specific legal needs that arise as a direct result of imprisonment, often referred to as “prison law.”

2.2.1 General Legal Needs

The legal and legal aid needs of federal prison inmates are broad in scope and encompass all the areas of law for which the general population has need. Areas of law in which inmates’ needs lie include: criminal, family, child welfare, wills and estates, civil law, small claims, mental health, human rights, and immigration. Key informants pointed out that prisoners are not considered any differently than members of the general public with respect to these legal needs, and, therefore, they are not extensively addressed in this research. It is important to note, however, that the prisoner status may still result in significant difficulties in gaining access to the services for which they are theoretically eligible.

2.2.2 Prison Law Needs

In addition to the legal services and legal aid needs that the general population potentially has, prisoners have particular needs that are directly related to their incarceration. The literature and document review found that prisoners need legal representation to address a number of areas identified by reviews of the correctional system, including the reports of the Arbour Commission and the Correctional Investigator of Canada. The need for representation, legal advice, and/or legal education is most often associated with:

- ▶ disciplinary hearings (especially with more serious charges that could result in serious consequences such as involuntary segregation or transfer, fines, etc.)
- ▶ involuntary transfers to higher levels of security
- ▶ administrative segregation (“solitary”)
- ▶ parole or statutory release conditions
- ▶ sentence calculation
- ▶ post-suspension and revocation (of parole, conditional release, etc.) hearings
- ▶ detention hearings¹⁹
- ▶ appeals to the court of administrative decisions.

Data from key informants reinforced data obtained from the literature and document review. While lawyers reported providing a wide range of legal services to federal inmates and persons on conditional release, the most common responses involved “prison-specific” services such as:

- ▶ parole/conditional release issues²⁰

¹⁹ Section 130 of the CCRA enables the National Parole Board to order that an offender thought to be an extreme risk to commit a serious crime on release be detained until expiry of the full term of the sentence.



- ▶ disciplinary hearings
- ▶ involuntary transfers
- ▶ involuntary segregation
- ▶ criminal matters (while in the institution)
- ▶ abuse of Power of Attorney given to someone outside the institution
- ▶ visiting issues.

In addition to these prison law needs associated with general inmate status, key informants also identified particular issues and needs faced by subgroups of the prison population. Aboriginal-specific issues included language and cultural issues, dealing with the effects of residential schools, and the need for specialized programming for Aboriginal offenders in federal institutions. Key informants also identified needs specific to women in federal prisons, including access to programming equal to that for male inmates, as well as issues related to the care and/or custody of inmates' children during their incarceration.

2.3 Legislative Requirements for Provision of Legal Aid

In Canada, there is a statutory guarantee of the right to legal counsel. What is subject to discretion is the question of the extent to which the state must provide counsel at the state's expense. Each province maintains its own legal aid program, most governed by legislation,²¹ with varying rules for the nature and scope of legal matters covered. The CCRA states that, during their incarceration, inmates retain the same rights and privileges as members of the general population, "*except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence.*"²² Therefore, prisoners will be eligible for the same legal aid services as other members of society in any given jurisdiction. That is, financially eligible prisoners are entitled to legal services for all criminal and family matters that are available to the public. However, there is little legislation that deals with the provision to inmates of legal services in the area of prison law. Most jurisdictions, therefore, do not routinely provide services that address the particular legal issues that arise from imprisonment.

As illustrated in Appendix C, legal aid coverage of legal services for inmates is limited in most jurisdictions. Legal aid services for prison inmates are not a requirement of Legal Aid Plans across Canada at present, although as indicated, some jurisdictions routinely provide legal aid services. While financially eligible prisoners are entitled to legal services for all criminal and family matters that are available to the public, most jurisdictions do not provide services that address the legal issues that arise from their imprisonment. Some jurisdictions, like Nova Scotia, provide services in one geographic region on an *ad hoc* basis. Ontario, Alberta, and British Columbia have more institutionalized, province-wide coverage of prison law issues. There are some notable exceptions to the general lack of legislation regarding provision of legal aid to prisoners, which are described in more detail below.

²⁰ It should be noted that one key informant stated that federal inmates do not need legal services for parole hearings since it is a non-adversarial process, and that the needs of those who are unable to speak for themselves could be addressed through a social worker, paralegal, or prison advocacy group.

²¹ An exception is Alberta, the only province that does not have legal aid legislation. This creates a unique situation with respect to the use of discretion. Section 2.5.2 discusses the use of discretion in more detail.

²² Corrections and Conditional Release Act, S.C. 1992, c. C-20; section 4(e).

2.3.1 The *Howard* Decision

The *Howard* decision²³ in 1984 resulted in recognition of a prisoner's right to representation at a disciplinary hearing when the implications for the prisoner's liberty were significant (e.g., the prisoner would be placed in segregation). However, the decision did not address the issue of payment for legal counsel through a Legal Aid Plan. Hence, a prisoner who wanted counsel at a disciplinary hearing had a right to counsel but did not have a right to have the counsel provided through a Legal Aid Plan.

2.3.2 The *Winters* Decision

The *Winters* case was based on a situation arising in British Columbia in which an inmate was charged with assaulting another person while serving a life sentence. After spending 38 days in solitary confinement, he tried to obtain a lawyer from the British Columbia Legal Services Society to represent him at a disciplinary hearing. He was advised that disciplinary hearings were not covered. He then petitioned the British Columbia Supreme Court and was again rejected. Eventually, his case was heard by the Supreme Court of Canada, which stated that prisoners in federal institutions are entitled to legal aid services for Disciplinary Court when charges could lead to solitary confinement or other serious consequences.²⁴ It was, however, up to the Legal Aid Society to determine what type of service should be provided (e.g., counsel, duty counsel, paralegal service).

However, the *Winters* case dealt directly with British Columbia statutes regarding legal aid services rather than Charter arguments. Had it been argued using the Charter, the finding would have applied to all jurisdictions, leading some to believe that it is only a matter of time before a Charter argument is raised.

Despite the fact that the *Winters* decision does not apply outside British Columbia, it might act as a warning to other provinces. Legal Aid Alberta, for example, will take applications for disciplinary hearings, and obtain legal opinions in many cases to determine if coverage will be provided. However, many of the smaller jurisdictions have not yet begun to provide coverage of issues related to disciplinary hearings or to broader issues in prison law.

²³ See *Howard v. Stony Mountain Institution*, [1984] 2 F.C. 642.

²⁴ www.johnconroy.com/winters.html; www.browndevans.com/comment_05.html



2.4 Legal Aid Policies and Approaches

As noted earlier, legal aid policies and approaches vary widely across the country, especially with respect to prisoners. A complete description of the various approaches to legal aid across Canada is included in Appendix C. The following is a brief summary of legal aid approaches and policies in the jurisdictions examined in this study:

British Columbia

This jurisdiction employs a mixed staff and judicare model. Applications for coverage are made to Prisoners' Legal Services by toll-free telephone line.²⁵

Alberta

Key informants reported that the delivery method is "mostly judicare," but that there is a mixed duty counsel and clinic model in some areas for some federal institutions. In institutions that are visited by legal aid staff, inmates are able to book appointments with legal aid staff to submit applications. We were told that the exception is the Edmonton institution, from which applications are taken by telephone.

Saskatchewan

This province operates on a staff-based model. Staff lawyers are available through local offices, and *Brydges* services through a contract with a private lawyer. Lawyers from the Prince Albert office attend at the Provincial Court that sits monthly at the Prince Albert Penitentiary to deal with criminal charges arising within the institution and other criminal charges that inmates may want to dispose of before their sentence. Applications for legal aid that are within the range of legal aid services in Saskatchewan are completed either by telephone or in person by legal aid staff. No specialized services for prison law are provided to prisoners in federal institutions.

Manitoba

This province employs a mix of legal aid staff lawyers, duty counsel, drop-in clinics, and judicare certificates. Applications for coverage are made by contacting a private lawyer who must attend the institution to complete an application, or by seeing a lawyer at a clinic (in institutions where clinics are available).

Ontario

Coverage is provided mainly under a judicare model; however, duty counsel provided by Legal Aid Ontario are available in institutions to take applications and to provide legal advice and representation. Lawyers and students at the Kingston Correctional Law Project also provide advice and representation. Two-hour certificates for initial consultations with a private bar lawyer are issued on a discretionary basis. Lawyers provide an opinion to Legal Aid Ontario on the merits of the case with respect to whether or not it qualifies for legal aid.

²⁵ As a result of the restructuring of legal aid services in British Columbia, Prisoners' Legal Services will cease operations on August 30, 2002. At the time the research was conducted, a tender had been issued for supplying legal services to prisoners.

Québec

Coverage is provided under a mixed model of legal aid staff lawyers and *judicare*. Inmates may make an application for legal aid coverage by telephone; a legal aid representative visits the institution to evaluate the case and decide whether to issue a certificate.

New Brunswick

A *judicare* model is used to supply legal services. Key informants reported that certificate applications are available from Corrections staff and that they can be faxed to the legal aid office from prisons. Security considerations determine whether an inmate is allowed to fax the application or whether he/she must rely on a Corrections staff member.

Nova Scotia

Legal aid staff lawyers provide most of the services; however, certificates are used if there is a conflict of interest. Requests for application forms can be made to the local legal aid office by telephone. Forms are sent to the inmate to be completed and returned to the legal aid office. A key informant also noted that, at the Springhill institution, a staff lawyer collects applications weekly.

2.5 Coverage

Again, the amount and scope of legal aid coverage for prison law matters vary quite widely among the jurisdictions. Appendix C contains a detailed description of the areas of law covered and the eligibility criteria for each jurisdiction; these areas are briefly discussed below. This is followed by the findings addressing the issues of the use of discretion in granting legal aid to prisoners in federal penitentiaries, as well as issues surrounding the denial of legal aid service.

2.5.1 Eligibility Criteria

In general, qualifying for legal aid coverage depends on the client meeting two tests. One involves financial eligibility requirements; the other depends on the area of law involved. Criteria in these two categories vary considerably by province and are discussed fully in Appendix C. The following is a brief summary of eligibility criteria for each province:

British Columbia

This province uses the same financial means test for federal inmates as for the general public. However, key informants also reported that detailed financial information is rarely pursued for inmates, since nearly all meet requirements and the few exceptions that might be caught would not justify the expense of checking. Coverage is only provided for liberty²⁶ issues that have a good chance of success and that are deemed to be reasonable. Exceptions can be made, key informants reported, where there is the probability of a financial settlement that would allow legal costs to be recouped.

²⁶ Liberty, in this context, refers to the section 7 Charter guarantee. As it is used in other parts of this report, the term refers more generally to any action that could lead to restriction of an inmate's freedom (e.g., involuntary segregation) beyond the initial incarceration. This issue is more fully discussed in Section 2.5.2.



Alberta

Coverage is based assessments of financial means and of merit, based on the legal opinion requested from a lawyer. Consideration is given to whether the request is reasonable, whether having a lawyer will make a difference in the outcome, and whether the inmate is capable of making an argument without the assistance of counsel.

Saskatchewan

Coverage is based on a financial means test and on the merit of the case. All indictable charges are covered; however, summary offences are only covered if there is a likelihood of imprisonment or loss of livelihood. All Crown-initiated appeals are eligible; coverage can be provided for other appeals if the case has merit. Family matters including divorce, custody, access, child protection, maintenance, restraining orders, and adoption are eligible. Appeals on family law matters are covered if the applicant remains financially eligible and there is professional merit to the appeal. We were told that there is no legal aid coverage for prison law matters.

Manitoba

Key informants reported that coverage in this province depends on a financial means test and a consideration of the specific legal issue involved. We were told that a lawyer will only be appointed for criminal or quasi-criminal issues where the inmate's liberty is at stake, and for family issues if there is a "*reasonable expectation of benefit.*"

Ontario

Coverage is based partly on a financial means test, which, key informants told us, is not difficult for most prisoners to meet. They can be asked to contribute if they have money in their prison account; some key informants indicated that this can be a hardship. There is also an assessment of merit, based on an opinion letters that is submitted by the prospective lawyer. We were told that Legal Aid Ontario usually accepts the advice provided by the lawyer in the opinion letter. Loss-of-liberty issues are considered to be the most important; for parole hearings, one respondent stated that coverage is "*almost automatic.*" The service involves assistance in preparing for the hearing, and some attendance by counsel at parole hearings.

Québec

Key informants reported that eligibility for federal inmates is the same as for the general public. We were told that legal aid is always granted to financially eligible inmates for family, youth protection, young offenders, indictable offences, applications involving automobile insurance, worker's compensation, unemployment insurance, and income security matters. Other matters, such as civil and summary conviction, can be covered at the discretion of legal aid. The factors considered in these cases include likelihood of imprisonment, loss of livelihood, and whether it is "*in the interests of justice*" to provide coverage.

New Brunswick

Key informants reported that legal aid will cover criminal matters if a loss of liberty is likely and that "*almost nothing else*" is eligible.

Nova Scotia

Coverage depends on a financial means test and the area of law involved. Key informants reported that loss-of-liberty and criminal matters are the priority; other issues may be considered if resources are available.

Key informant interviews provided some additional illustrations of eligibility issues. With respect to civil law matters, the only legal aid staff lawyers who reported regularly providing family and general civil legal services were in Manitoba. One private bar lawyer in Ontario reported taking civil cases. Specific civil issues covered include:

- ▶ mistreatment by institutional staff
- ▶ assaults/injuries suffered in the institution
- ▶ medical/dental mistreatment.

We were told that Legal Aid in British Columbia will provide coverage for civil issues only for the occasional case that has a good chance of resulting in a financial settlement. Two private bar lawyers in Ontario reported specializing in *Criminal Code* section 690 (application for mercy of the Crown) and “faint hope”²⁷ applications.

2.5.2 Discretion

The information presented in Section 2.5.1 above suggests that while there are a number of clearly defined guidelines regarding eligibility for legal aid, there is also a substantial degree of latitude inherent in the decision-making process. Most of the key informants described the use of discretion in a number of eligibility issues and at several points in the process of determining eligibility for legal aid coverage. Some illustrations of the main areas where discretion is used are presented below.

Financial Means

Legal Aid Plans generally use a set formula to calculate whether a client falls within the financial threshold for full, partial, or repayable legal aid coverage. Beyond that, however, we were told that, in some cases, actual practice can depart from the formula if necessary. One example is found in cases where inmates have enough funds in their prison account to warrant a request for a contribution. Discretion may be exercised where it is believed that demanding payment could cause undue hardship to an incarcerated person. In another example, some inmates with sufficient resources to retain their own counsel “slip through” because it is assumed that the vast majority of prison inmates will easily meet the financial means test.

Liberty Issues

As noted in the Eligibility section above, the concept of liberty is a key factor in determining eligibility in most jurisdictions. The chance that an inmate’s freedom might (further) be affected by lack of counsel was reported by several key informants to be an important consideration. It is also apparent that discretion becomes an issue in the definition of what does or does not constitute a “liberty issue.” According to some key informants, discretion is often used to decide

²⁷ Often referred to as the “faint hope clause,” s. 745.6 of the *Criminal Code* allows persons convicted of murder to apply to have their parole ineligibility reviewed by a jury.



when the possibility of segregation or involuntary transfer constitutes a true liberty issue that is therefore deserving of legal aid.

Reasonableness

Most key informants indicated that, to qualify for legal aid coverage, the case must pass a “reasonable person test.” As one lawyer summed it up, “*would the average reasonable person, in a similar situation, hire a lawyer for this?*” The answer to this question is normally subject to the discretion of legal aid personnel or private bar lawyers who offer letters of opinion for potential clients.

Likelihood of Success

Similar to the issue of reasonableness, we were told by key informants that a case must have “*a good chance of success*” to be considered for legal aid coverage. Again, this determination will depend mostly on the discretion of legal aid personnel and/or lawyers offering letters of opinion.

2.5.3 Denial of Services

Most key informants reported that denials of legal aid coverage are common and that reasons for denial correspond to the eligibility criteria discussed in Section 2.5.1 above. We found that little quantitative data is available regarding the rate of denials of prison inmates for legal aid coverage. Prisoners’ Legal Services in British Columbia reported that more than half (56 percent) of intake interviews result in a file being opened. It is important to note that this figure includes inmates of both provincial and federal institutions, so the denial rate for federal prisoners is unknown. One key informant from this organization estimated that perhaps one in three federal inmate requests for legal aid is passed to the next stage of the process, which is a merit assessment by a paralegal.

In general, nearly all respondents indicated that appeals of denial of coverage decisions are rare. Most indicated that appeals are time-consuming and unlikely to succeed; therefore, very few prisoners bother to pursue them. The exception is in Alberta, where, we were told, many inmates appeal decisions. One private bar lawyer in Ontario told us that he instructs all clients denied legal aid coverage to appeal the decision. This key informant reported that if a lawyer writes or calls on behalf of the client, the appeal is usually successful.

2.6 Obstacles

The literature review found that perhaps the major obstacle to meeting the legal aid needs of federal inmates is related to changes made in the 1990s to the various legal aid systems in Canada. Many Legal Aid Plans had to cap the level of coverage in response to increasing demand for legal aid services. Some Plans also made other adjustments to coverage, such as reductions in the tariff levels paid for certificates. Some Plans attempted to reduce costs by narrowing the range of legal issues covered by legal aid. The literature indicates that these changes in coverage have resulted in reduction in both the level of coverage and the scope of issues eligible for legal aid.

These changes resulted in a related reduction in the legal profession’s willingness to accept legal aid cases, especially in jurisdictions that use a *judicare* model of service delivery. The relevant literature shows that when reductions in the type, level, and payment schedules of legal services

were announced, many members of the legal profession determined that they would no longer accept legal aid clients. Thus, even clients who were able to obtain a certificate for legal aid services were often unable to find a lawyer who would take a certificate case. Those lawyers who continued to take legal aid certificates became overburdened and, therefore, were often unavailable to accept certificates. In recent years, lawyers have protested publicly the lack of coverage under Legal Aid Plans.²⁸

The responses of key informants regarding the obstacles to meeting federal prisoners' legal aid needs mirrored the findings of the literature review. Respondents unanimously identified insufficient financial and human resources as major obstacles to legal aid service delivery. The most common responses are listed below; frequency of response appears in parentheses:

- ▶ lack of funding/low tariffs (7)
- ▶ few lawyers interested in doing prison law (5)
- ▶ few lawyers with the specialized expertise required (3)
- ▶ staff lawyers/duty counsel overworked (2).

Key informants also reported a number of structural/technical obstacles to the provision of legal services. Many of these are related to the fact that the correctional system naturally restricts communication and the passage of information. It is important to note that many of these are only potential obstacles, since they are not encountered in all cases or in all institutions. Furthermore, we were told that prison law experience enables lawyers to mitigate or avoid many of these obstacles. Specific obstacles identified by key informants are listed below:

- ▶ There is a lack of information/legal materials for inmates.
- ▶ There are communication problems (lack of access to telephones, mail sometimes opened by correctional staff, deliveries not getting into and out of institutions).
- ▶ Legal aid staff are no longer given time to make a legal orientation presentation to new inmates.
- ▶ There are difficulties/delays in obtaining disclosure documents.
- ▶ Notice of parole hearings is not long enough for qualified clients to obtain legal aid.
- ▶ Corrections staff can deny or limit inmates' access to legal resource materials and/or legal representation, and the grievance process can be slow to address it.
- ▶ Some inmates are only allowed to make collect calls, and/or can only call persons on a list (which does not necessarily include a lawyer).
- ▶ Corrections does not necessarily provide service in both official languages (which can be an obstacle when staff assistance/permission is required to contact a lawyer).

Finally, key informants reported some individual-level factors that can act as obstacles to provision of legal services to federal prison inmates. These included matters of competency such as language and/or literacy barriers and mental health issues.

²⁸ Public protests have occurred in both Ontario and British Columbia.



2.7 Unmet Needs

Not surprisingly, we found that the nature and extent of unmet needs vary along with the different policies for eligibility and coverage in each province. By province, key informants identified the following unmet needs:

British Columbia

According to key informants, the major unmet need in this province is access to legal information for inmates. We were told that law library resources, especially books, are often in a state of disrepair or are missing altogether. It should be noted that information provided by the CSC indicates that a CD-ROM containing statutes and other legal documents is distributed to each CSC library on a quarterly basis. Other unmet needs included help with civil issues such as medical care, dietary requests, and visits. Key informants noted that all of these needs could be met with increased funding but that resources would likely continue to decrease. Therefore, they believed that providing inmates with self-help legal materials is crucial.

Alberta

Alberta is the only province without legal aid legislation. We were told that this allows considerable internal flexibility to provide coverage for any issue that is perceived to be reasonable and that it allows legal aid staff to respond when new needs emerge. For that reason, legal aid staff consulted in Alberta believed that “*inmates’ legal needs are pretty well met.*”

Manitoba

Key informants reported that the major unmet needs are in the areas of launching civil suits (against the institution or other inmates) and suits for increased liberties. We were told that the need could be met through better funding and management of public interest law centres.

Ontario

The major needs identified in this province are related to the lack of information on the range of legal resources available to prisoners; the limited number of lawyers with knowledge of prison law; the insufficiency of legal aid coverage for institutional disciplinary, transfer and /segregation hearings; and the fact that most inmates are attending parole hearings without counsel. Two potential needs identified were based on an expectation of future need for increased legal services for women and their children (in light of increasing incarceration of females), and the complexity of the process for section 690 applications.

Québec

The major unmet need identified by key informants in this province is that appeals of correctional decisions (e.g., involuntary transfers) are not covered by the provincial Legal Aid Plan.

New Brunswick

Key informants reported that, since so few prison law issues are eligible for legal aid coverage, the major needs are numerous and broad. Specific needs listed are legal aid coverage for disciplinary hearings and “*other administrative prison law.*”

Nova Scotia

The major need identified by key informants was for “*prison law services*” in general. They cited some specific examples: there is no legal aid coverage for civil matters; there is no provision for disbursements to cover the costs associated with having an opinion letter developed by a lawyer; and there is a lack of lawyers with expertise in prison law.

2.8 Meeting Needs

2.8.1 Cost of Meeting Needs

There is little data upon which to base an answer to the question of the cost of addressing the unmet legal needs of prisoners. Statistics addressing legal aid coverage for federal prison inmates could not be obtained from any jurisdiction. While some jurisdictions indicated that they thought they would be able to draw information from their databases, it was not possible to do so. No jurisdiction has a code in its database that would enable it to definitely identify prison inmates receiving legal aid services.^{29 30} Given that it is not possible for Legal Aid Plans to provide service statistics for federal inmates, it is also not possible to provide the actual or estimated costs of service to those inmates.

We were able to obtain some data from the Prisoners’ Legal Services of British Columbia. However, the clinic does not maintain separate statistics for federal and provincial inmates. Therefore, the figures may be somewhat misleading. In addition, the figures provided are only for services provided through Prisoners’ Legal Services, and therefore deal only with prison law issues.

Prisoners’ Legal Services has an annual budget of \$650,000. Of this, \$500,000 goes directly into operations of the office. The remaining \$150,000 per annum is used for coverage of referrals to the private bar. Prisoners’ Legal Services has a staff of eight, including one lawyer, three paralegals, and four administrative assistants.

The numbers of clients served is limited by the clinic’s ability to handle intake. When all phone lines are busy, callers sometimes give up and, therefore, do not appear in the statistics maintained by the clinic. If no staff are available to take on a file, the issue is usually dealt with through summary advice rather than opening a file. There is more demand for service than there are phone lines and staff available to provide service.

²⁹ Some jurisdictions thought that they would be able to isolate the prisoners included in the database by the postal code of the institution. However, this was not possible.

³⁰ Nova Scotia is trying to determine if it is possible to definitely identify prison inmates by drawing files from the database that are dealt with by the paralegal. However, it is likely that this approach will also provide no data, given that some non-prison inmate files may also be included in the paralegal’s list. The legal issues codes may or may not be sufficient to distinguish between prison inmates and others.



Over a year, the clinic does about 2135 intake interviews. Files are opened for any case that involves more than two hours of work or more than quick summary information/advice. The clinic opens about 1200 files per annum. Approximately 70 percent of these files (840) are for federal prisoners.

Disciplinary hearings³¹ account for about 46 percent of the files opened (552). About 40 percent of these are for federal inmates (220). Provincial inmate matters predominantly pertain to disciplinary hearings. Federal prisoner issues include:

▶ administrative segregation	22%	143/yr.
▶ involuntary transfers	15%	97/yr.
▶ grievances	13%	84/yr.
▶ parole suspension/revocation	13%	84/yr.
▶ parole applications	8%	52/yr.
▶ sentence calculations	7%	45/yr.
▶ visits and correspondence	7%	45/yr.
▶ all others (except disciplinary)	15%	97/yr.

2.8.2 Strategies for Meeting Needs

We asked key informants how the unmet needs of federal inmates might be addressed. Responses varied by province; however, the identification of increased funding (thereby allowing increased human resources) was common to all key informants. Specific responses for key informants from each province are listed below:

British Columbia

We were told that increased funding would allow all of the outstanding needs to be addressed. Key informants also believed, however, that the reverse is far more likely to happen. For that reason, they suggested ensuring that inmates have access to “self-help” legal education materials such as relevant legislation and legal texts. One respondent suggested creating a prisoner position of law librarian who could not only act as an advisor, but could also help protect the materials from damage. They also emphasized the importance of having lawyers with prison law expertise because federal prisoners require “*specialized service from people who know what inmates’ needs are.*”

Alberta

As discussed above, key informants in this province pointed out that the lack of provincial legal aid legislation allows a great deal of latitude with respect to providing coverage for federal inmates. The result, we were told, is that there are few unmet needs since they have the flexibility to address any area of perceived need. They also noted, however, that increased funding and human resources would allow provision of regular clinics at all institutions, thereby ensuring that no inmate’s legal needs would be unmet.

³¹ Disciplinary hearings are those cases that arise as a result of the *Winters* decision.

Manitoba

Funding was identified as the key factor in addressing the unmet needs of federal inmates. The increased use of public interest law centres was also suggested.

Ontario

Key informants suggested ensuring that prisoners' advocacy groups have a better sense of what is covered by legal aid and what resources are available. More legal education for inmates,³² a system for duty counsel (trained in prison law),³³ more emergency certificates, increased tariffs (including disbursements), and, in one respondent's terms, a "*properly funded*" clinic would help address unmet needs. Another key informant believed that it would help for the CSC to "*be serious*" about using alternative dispute resolution. However, this respondent believed that some means of addressing the power imbalance between the correctional system and the inmate is necessary if mediation attempts are to be effective.³⁴

New Brunswick

Videoconferencing was suggested as a way to improve inmates' access to lawyers, while also addressing the safety concerns of some female lawyers about visiting federal penitentiaries.

Nova Scotia

We were told that there is a need to address the problems with legal aid in general. Specific suggestions included expanding the scope and value of legal aid certificates, developing the political will to adhere to international obligations regarding rights of the poor to representation, increasing funding and human resources, and creating a specialized prison law clinic.

2.9 Consequences of Unmet Needs

The document review found that a number of systemic issues can involve serious consequences for federal prisoners, particularly if they do not have access to legal counsel. The reports of the Correctional Investigator contain an extensive list of specific issues, including:³⁵

- ▶ excessive delays in responding to grievances
- ▶ inaccessibility of programs and timely conditional releases (especially for Aboriginal prisoners)
- ▶ excessive time spent in segregation before transfer
- ▶ overuse of force in contravention of the law (Rule of Law issues)

³² Legal Aid Ontario's (LAO) Prison Law Advisory Committee also identified the need for public legal information for inmates. A pamphlet on legal aid services will be available for inmates in early 2003.

³³ LAO has produced a prison law manual for duty counsel.

³⁴ LAO, through its needs assessment process and discussion with its Prison Law Advisory Committee, has identified the need for better access to counsel, particularly for prisoners in segregation or during a prison lockdown; improved access to treatment and programs, particularly for Aboriginal prisoners and prisoners suffering from mental illness (possibly through the strategic use of test cases); and the development of information dissemination methods that take into account prisoner literacy levels.

³⁵ The Correctional Investigator Canada, *Annual Report 2000-2001*, *Annual Report 1999-2000*, and earlier annual reports.



- ▶ use of force in support of mental health interventions; involuntary transfer of inmates to mental health facilities
- ▶ use of restraint equipment
- ▶ lack of adequate investigation of inmates' injuries
- ▶ lack of adequate response to self-injury and suicidal inmates
- ▶ lack of compliance with policies governing timely and fair investigation of prisoners' complaints of staff misconduct
- ▶ sexual harassment of female prisoners by male staff
- ▶ housing female prisoners in male penitentiaries in segregation units for excessive lengths of time
- ▶ discrimination against Aboriginal offenders (with respect to segregation, transfers, discipline, temporary absence, work release, adjournments and postponements of parole reviews, detention referrals, suspensions and revocations of conditional releases).

In addition to the consequences for federal inmates of unmet needs, there can be consequences for the reputation of the justice system as well. Key informants pointed out that failing to allow proper access to legal representation could be interpreted as violating the Core Values of the CSC as well as the provisions of the CCRA.

Key informants in British Columbia stated that when federal inmates with serious legal needs (like those listed above) are denied access to legal aid, it could be considered a violation of the protections found in section 7 of the Charter. A discussion memo provided by Prisoners' Legal Services notes that "*where the individual circumstances of the case lead to a conclusion that representation by counsel is essential to a fair process, then funded counsel is a component of the principles of fundamental justice.*"³⁶

From the documents reviewed and the key informant interviews, it is apparent that there are many areas in which prisoners need legal services to assist them in dealing with issues arising as a result of their imprisonment. Further, it is apparent that those with special needs (e.g., Aboriginal people, women, persons with mental/physical health problems) are even more vulnerable to the consequences of lack of legal representation.

³⁶ Prisoners' Legal Services, *Legal Services to Prisoners in British Columbia Mandated by Section 7 of the Charter* (2002).



3.0 Conclusions

This section presents conclusions and observations resulting from the analysis and integration of the information presented in the Findings section. Information in this section is organized according to the research questions (listed in the Terms of Reference for this study) that can be addressed through the methodology employed for this component of the research.

3.1 Legal Needs of Federal Prisoners

3.1.1 Prison Law Needs are a Priority

While prisoners face more practical problems in gaining access to counsel as a result of their incarceration, coverage for many matters is technically no different for federal inmates than for the general population. The situation is very different with respect to addressing the legal aid needs resulting from prison-specific matters. There is sufficient evidence to conclude that a number of prison law matters involve potential consequences (such as segregation, transfer, substantial fines, or loss of privileges) that are at least as serious as some matters for which coverage is routinely provided. These needs, therefore, should be given priority in any future consideration of access to justice issues for federal inmates.

3.1.2 The Legal Aid Needs of Inmate Subgroups Should Be Investigated

This research has provided evidence that subgroups within prison populations have legal needs beyond those faced by other inmates. There is evidence that Aboriginal people, women, and persons with disabilities face specific challenges in addition to those encountered by all inmates. Inmates with low levels of education, those for whom English is not a first language, and those with literacy problems can also experience additional obstacles to gaining access to legal services. While a general sense of several of these needs has emerged during the course of this research, they should be more thoroughly investigated in order to discover ways in which they can be addressed.

3.2 Legislative Requirements for Legal Services to Prisoners

3.2.1 Legal Aid Legislation is Fragmented

Because legal aid legislation or regimes vary among jurisdictions, provision of legal services is inconsistent across the country. As noted above, most jurisdictions do not provide services that address the particular legal issues that arise as a direct result of imprisonment. For example, some jurisdictions, like Nova Scotia, provide prison law services in one geographic region on an *ad hoc* basis. Ontario, Alberta, and British Columbia have more institutionalized, province-wide coverage of prison law issues. Saskatchewan does not provide any specialized services for prison inmates. This inconsistency across the country can pose problems, especially for federal inmates, since they may be transferred among institutions in various jurisdictions. The result is a differential access to legal services for federal inmates based only on the province in which they

are incarcerated. National standards on what services will be provided to federal inmates would help to mitigate this situation.

3.3 Policies for Provision of Legal Services to Prisoners

3.3.1 Discretion Plays a Major Role in Decisions Surrounding Legal Service to Federal Inmates

Ample evidence supports the conclusion that discretion is a key factor in whether federal inmates receive legal services, especially for prison law matters. It is also clear that this discretion can work both for and against the interests of the inmate. That is, having the right of inmates to legal counsel in specific situations enshrined in legislation could certainly be seen as a step toward protecting their interests. On the other hand, more strictly defined rules could reduce the flexibility of legal aid staff and private lawyers to respond to emerging legal issues and/or to accept exceptional cases that, in the interests of justice, should be defended, even if they are outside the standard parameters for legal aid coverage.

3.4 Prisoners Denied Legal Aid

3.4.1 Denial of Legal Aid Should Be Based Only on Legal Issues

The large number of requests for legal aid, coupled with limited human and financial resources, means that many requests for counsel will be denied. All Legal Aid Plans offer a process for appeal of decisions; however, it appears that inmates do not often avail themselves of the opportunity. In the case of frivolous requests, denial of legal aid coverage is warranted and is not a cause for concern. In the case of requests that have merit, however, where denial is due simply to lack of resources, access to justice for federal inmates is being denied.

3.5 Current Level of Legal Advice and Support to Federal Inmates

3.5.1 There is Wide Variation in Availability of Legal Services

It is clear that the level of legal support, particularly legal aid, available to federal inmates depends on many factors. These include provincial policies for eligibility, the area of law involved, the level of funding for Legal Aid Plans, and even the particular institution involved. Whether or not a federal inmate receives legal support appears to be, in many cases, a matter of chance.

3.5.2 There Are a Number of Forms of Legal Support

While this research has concentrated on legal aid, it is clear that there are other important related legal supports that can be provided to federal inmates. Legal orientation sessions for new inmates, toll-free legal advice services, and well-maintained law libraries in correctional institutions can provide a cost-effective supplement (or even an alternative) to legal aid, especially in light of past and potential cuts to legal aid funding. These related forms of support should also be available in a range of media to reflect the varying needs and abilities of federal inmates.



3.6 Obstacles to Legal Services

3.6.1 Reduced Legal Aid Plans Are Obstacles to Meeting Legal Aid Needs

The evidence indicates that recent changes to Legal Aid Plans (capping the level of coverage in response to increasing demand, inadequate tariff rates for certificates, and narrowing of the range of legal issues covered) are serious obstacles to meeting the legal aid needs of federal inmates. It may also be concluded that this situation has made specializing in prison law unattractive to many lawyers, despite the obvious demand.

3.6.2 Institutional Priorities Can Be Obstacles to Meeting Legal Aid Needs

The reduced right to privacy and the need to limit freedom of communication in the interests of institutional security conflict with providing legal services to inmates. While these are mainly the result of legitimate safety concerns, correctional policy needs to recognize inmates' rights to access legal counsel. While inmates naturally lose some of their rights as a result of their incarceration, the right to counsel is not among them.

3.6.3 Application Procedures Are Potential Obstacles to Obtaining Legal Aid

It is clear that the various policies for application for legal aid coverage vary in ease of use. The toll-free telephone application system in British Columbia, for example, appears to provide federal inmates good access to legal advice. Each step added to the process will increase the degree of difficulty in obtaining legal support. Contacting private bar lawyers, completing application forms, submitting forms, etc. can all hinder access – especially when combined with the institutional priorities discussed above.

3.7 Unmet Needs

3.7.1 A Number of Legal Needs Are Unmet

It is clear that federal inmates have a wide range of legal needs that are not currently being met. As noted above, the magnitude of the problem varies greatly, depending on the jurisdiction in which the prisoner is located. The common factor, however, appears to be limited financial and human resources for legal aid services.

3.7.2 Unmet Needs Can Have Serious Consequences

Disciplinary hearings, involuntary transfers, segregation, etc. can have significant consequences both for inmates' safety and for the protection of their Charter rights. Most Legal Aid Plans, however, base their eligibility criteria on the kinds of legal matters that are faced by the general population. It is important to ensure that federal inmates have access to legal aid for the serious legal issues that have no equivalent outside the context of a correctional institution.



Appendix A

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Appendix B

Interview Guide



Study of the Legal Aid Needs of Federal Prison Inmates

The Department of Justice Canada, in co-operation with the provinces and territories, is developing a new legal aid and access to justice policy framework. This particular study focuses on the needs of federal prison inmates.

- 1) For what types of legal matters have you provided legal advice or representation to prisoners in federal penitentiaries or on conditional release? (Probe for specific case examples, outcomes.)

- 2) What legal aid needs do federal inmates have (*consider all areas of law, including issues related to conditional release and types of cases, volume, as well as needs of equity groups (e.g., women, Aboriginal people, people with disabilities)*)? What needs are specific to their status as federal inmates?

- 3) What methods does the Legal Aid Plan use to provide legal services to federal prison inmates (e.g., *judicare, clinics*)? What are the relevant policies and procedures? Does this differ from the way in which legal aid services are provided to the general population? If so, how?

- 4) What is the application process for inmates used by the Legal Aid Plan? How can inmates make applications to obtain legal aid services? How does Legal Aid receive applications made by inmates?

5) What is the Legal Aid Plan process for decision-making about eligibility for service for federal prison inmates? In your experience, how is discretion exercised in decision-making in those areas in which legal aid coverage is not mandatory? Under what circumstances is provision granted/denied? What effects does discretionary decision-making have on the ability to address federal prison inmates' legal issues and legal aid needs?

6) In your experience, do federal inmates who have been denied legal aid appeal the decision? How frequently (volume, proportion denied)? What reasons are given for being denied legal aid? With what results?

7) To what extent do institutional policies affect your ability to provide legal services to prisoners, either positively or negatively? (Probe for the nature of policies and procedures as well as the penitentiaries concerned.)

8) What legal aid needs of federal inmates are unmet within the current coverage of the Legal Aid Plan? To your knowledge, are/can they be met in other ways? If so, how? What are the potential consequences of not meeting these needs for the prisoners involved, and the correctional system?

9) What obstacles exist to meeting federal prisoners' legal aid needs? What impact do the obstacles have on the level and quality of legal services?



10) How might unmet legal aid needs of federal prisoners be addressed? (Probe for financial, human and other resources required.)

11) (*For members of the private bar*) Do you provide services to federal inmates who are not assisted by legal aid? If yes, approximately what proportion of your federal inmate clients are assisted by legal aid and what proportion are private clients? Who covers the cost of those not assisted by legal aid?

12) Do you know of any relevant case law? List.

13) Do you have any suggestions of other key informants within Legal Aid and/or affiliated clinics who should be interviewed about provision of legal services to federal prison inmates (*names of clinics, lawyers, paralegals, Courtworkers specializing in prison law/prisoners, contact information*)?

Respondent _____

Gender M ___ F ___

Province _____

Private bar _____

Total years in practice _____

Legal aid staff lawyer _____

Total years prison law _____

Other _____



Appendix C

Legal Aid Coverage by Province



Table 1: Legal Aid Plan Coverage

	British Columbia	Alberta	Saskatchewan	Manitoba
Method of service delivery to general public	<p>Mixed judicare, staff system.</p> <p>Structure and services:</p> <p>Staff offices and community law offices supplement services provided through the private bar. 44 offices throughout BC (branches, community law offices, Native law offices). Use of lawyers and paralegals. Community and Native law offices are independent of LSS.</p> <p>Duty counsel: available in most criminal courts. Some duty counsel for apprehension of children cases. Not generally available in family court. Pre-court duty counsel for those in detention.</p> <p>Special services: Judicial Appeals, Native services, prisoners services, legal information services.</p> <p>Policies and procedures:</p> <p>Coverage:</p> <p>Coverage of both criminal and civil matters.</p> <p>Applications assessed by Area Director re: eligibility. (14 communities).</p>	<p>Primarily judicare services.</p> <p>Structure and services:</p> <p>Legal aid is provided through the Legal Aid Society of Alberta, under agreement with the Alberta Government and the Law Society of Alberta.</p> <p>No legal aid legislation.</p> <p>Provincial Office and 11 regional offices under the Northern and Southern Directors. Each regional office serves additional circuit points.</p> <p>Criminal Duty Counsel program in all locations (56). Duty counsel services in Edmonton and Calgary are provided through staff lawyers.</p> <p>Coverage is predominantly through judicare via certificate. Clients choose lawyer or Plan has a rotating roster. Two offices have staff lawyer.</p> <p>Policies and procedures:</p> <p>Coverage:</p> <p>Financial eligibility; federal indictable offences; summary offences where conviction is likely to lead to imprisonment or loss of livelihood. Crown-initiated appeals of decisions in indictable matters mean automatic coverage for financially eligible.</p>	<p>Operates on staff-based model.</p> <p>Structure and services:</p> <p>Central office and 13 area offices.</p> <p>Commission reports to Minister of Justice.</p> <p>Pilot project duty counsel in Regina and Saskatoon.</p> <p><i>Brydges</i> services through contract with private lawyer.</p> <p>No specialized programming.</p> <p>Policies and procedures:</p> <p>Coverage:</p> <p>Services provided in all matters only if case has merit.</p> <p>Criminal: All indictable charges; summary only if likelihood of imprisonment or loss of livelihood; coverage for all Crown-initiated appeals; coverage of other appeals if merit.</p> <p>Civil: Family matters: divorce, custody, access, child protection, maintenance, restraining orders, adoption. Appeals on family law matters are covered if the applicant remains financially eligible and there is professional merit to the appeal.</p>	<p>Structure and services:</p> <p>Staff, duty counsel, private bar.</p> <p>Duty counsel services for criminal and civil matters provided by both staff and private bar.</p> <p>Staff lawyers provide legal advice and representation to individuals and organizations serving low-income people at community law offices; provide services to prisoners in penitentiaries through these offices.</p> <p>Other specialized offices, including Aboriginal Law Centre.</p> <p>Policies and procedures:</p> <p>Coverage:</p> <p>Criminal: Indictable offences; summary; provincial only if likelihood of imprisonment or loss of livelihood; appeals by Crown covered, appeals by person only if case has merit and accused received prison term.</p> <p>Family law: Cost-benefit analysis first, then if case has merit. Divorce, custody, access, child protection, restraining orders, maintenance and adoption, <i>amicus</i> services for children at request of court.</p>

Table 1: Legal Aid Plan Coverage

	British Columbia	Alberta	Saskatchewan	Manitoba
	<p>Criminal: Likelihood of imprisonment, loss of livelihood, deportation.</p> <p>When an offence has a mandatory prison term, person must select private bar lawyer.</p>	<p>Accused-initiated appeals: coverage based on merit.</p> <p>Family and civil law: financial eligibility; case must be within jurisdiction of court, have merit or likelihood of success.</p> <p>Repayment agreements required if applicant's income falls within contribution range.</p>	<p>Eligibility:</p> <p>If on social assistance, if financial resources equal to or less than what would be on social assistance, if private counsel would reduce financial resources to level of social assistance; if not receiving social assistance, may be asked to provide some of the costs.</p>	<p>Other civil matters: Limited coverage if case has merit – motor vehicle, property, landlord-tenant, workers compensation, damage actions, wrongful dismissal, personal injury, social assistance, unemployment insurance. Refugee groups can get legal aid: matter stems from common concern, matter of public interest.</p>
<p>Method of service delivery to general public (continued)</p>	<p>Victims and witnesses named in disclosure are covered if they need legal representation (in situations where counsel wants to see their personal records – counselling for example).</p> <p>Immigration issues covered.</p> <p>Eligibility:</p> <p>Financial and type of case.</p> <p>Repayments agreements for all or part of legal aid costs are possible.</p>			<p>Eligibility:</p> <p>Family income and family size under guidelines; considers both people's incomes/assets where spouse defined as two people living together in relationship of mutual financial support and dependency, regardless of the marital status. If person does not meet financial standards, can still obtain legal aid if retaining lawyer would mean having to dispose of principal residence or assets required to live. \$25 application fee for processing although some people will be exempted (social assistance). Where indicated, Legal Aid will provide service to those slightly above financial guidelines, with some or all repayment.</p>



Table 1: Legal Aid Plan Coverage

	British Columbia	Alberta	Saskatchewan	Manitoba
Method of service delivery to federal prison inmates	<p>All offices provide services ranging from summary advice to legal representation for family, immigration, and criminal matters to financially eligible prisoners.</p> <p>Abbotsford: Prisoners' Legal Services deals exclusively with prison and parole-related legal issues for men and women incarcerated in prisons and penitentiaries from Vancouver to Aggasiz.</p> <p>Program staff give legal information, summary advice, make written submissions, negotiate on behalf of clients, litigate where necessary.</p>	<p>Primarily judicare services as per to the general public.</p> <p>A staff lawyer in the Red Deer office provides prison law services at Bowden Institution as part of job responsibilities.</p>	<p>No specialized services are provided to prisoners in federal institutions.</p> <p>Staff offices provide coverage of issues available to the general public</p> <p>Elizabeth Fry Society and John Howard Society may provide some services.</p>	<p>Areas provided: Criminal/prison law; family law; general civil law.</p> <p>Criminal and family matters dealt with as per the general population using legal aid.</p> <p>Services are offered to prisoners because they are needed.</p> <p>Generally, services are provided by a staff lawyer, with other lawyers doing cases where there is a conflict.</p> <p>Organize prison law drop-ins once a week where summary advice is provided by an articling student or paralegal. Inmates place their name on a list for the service during the week prior to the clinic.</p>
Method of service delivery to federal prison inmates (continued)				<p>Each institution holds an institutional court once a week and legal aid provides representation but inmates do not have choice of counsel. Use articling students where possible and training a paralegal to provide service.</p> <p>National Parole Board hearings: use lawyer for these hearings.</p>

Table 1: Legal Aid Plan Coverage

	British Columbia	Alberta	Saskatchewan	Manitoba
				Occasionally a certificate is issued for specific matters that occurred within the institution. Previously authorized funding for the voting issue.
Policies and procedures regarding federal prison inmates	<p>Cover disciplinary hearings, parole hearings, involuntary transfers or solitary confinement placements, sentence calculations, involuntary treatment issues, assaults on prisoners, parole or statutory release conditions, institutional interference with family visits and correspondence.</p> <p>Financial eligibility required.</p> <p>If legal representation required, either represented by Prisoners' Legal Services staff or referred to lawyers under regular tariffs.</p> <p>Judicial Reviews under section 745.6 of CCC: Protocol for handling inter-provincial reviews – Plan in jurisdiction where hearing will take place where crime and conviction occurred; appoints and pays lead counsel who will manage the case. Lead counsel calls on Plans in other jurisdictions to provide and pay for work that must be done in that jurisdiction.</p>	<p>Coverage:</p> <p>Criminal: All indictable offences; summary conviction if conviction will likely increase term of imprisonment; parole hearings where a legal opinion indicates merit as well as revocation of parole (gating).</p> <p>Civil: Treated much the same as applications from the general public; case must have merit and meet financial requirements.</p> <p>Immigration: May be granted on a discretionary basis depending on merit.</p> <p>Institutional charges: Normally do not cover these charges. Take an application, obtain a legal opinion in all but most minor cases and, if opinion indicates some coverage warranted, coverage may be granted (e.g., case where lengthy term of solitary confinement may be imposed).</p>	<p>Services provided in all matters only if case has merit.</p> <p>Criminal: All indictable charges; summary only if likelihood of imprisonment or loss of livelihood; coverage for all Crown-initiated appeals; coverage other appeals if merit.</p> <p>Civil: Family matters – divorce, custody, access, child protection, maintenance, restraining orders, adoption. Appeals on family law matters are covered if the applicant remains financially eligible and there is professional merit to the appeal.</p>	<p>No formal policies for service provision because this is not one of their areas of responsibility.</p> <p>The exception is with the drop-in clinics in the institutions</p>



Table 1: Legal Aid Plan Coverage

	British Columbia	Alberta	Saskatchewan	Manitoba
Policies and procedures regarding federal prison inmates (continued)	<p>Tariff for judicial review is \$700 per half day of hearing (minus 10% holdback). Payments for complex cases requiring significant preparation time will be negotiated between counsel and the Director of Tariff. Disbursements costly since expert reports are usually required Case costs vary widely (\$14,000 through \$34,000).</p> <p>LSS must provide aid when the individual may be imprisoned or confined through civil proceedings or has a legal problem which threatens his/her family's physical or mental safety or health, ability to feed, clothe and provide shelter for family, livelihood.</p> <p><i>Landry vs LSS</i>, 1986. BC Court of Appeal held that prison disciplinary proceedings do not fall within the mandate of the LSS Act since they are not criminal or civil proceedings.</p> <p><i>Winters vs LSS</i>. BC Court of Appeal dismissed the case but it was appealed to Supreme Court of Canada. In September 1999, S.C. ruled that LSS Act requires LSS to provide legal service coverage for disciplinary proceedings in prisons where the consequences of</p>			

Table 1: Legal Aid Plan Coverage

	British Columbia	Alberta	Saskatchewan	Manitoba
	proceedings can be solitary confinement and/or loss of remission and that LSS can provide legal services by non-lawyers; LSS has the discretion to determine when mandatory services require legal representation. The decision applies to both federal and provincial institutions.			
Process for decision-making regarding service eligibility	<p>Financial eligibility assessed.</p> <p>Merit: If application for Judicial Review received, senior in-house counsel assess the application to determine whether it has merit. Only applications with merit are given coverage (in effect since July 1996).</p>	<p>Application received; financial eligibility determined; if financially eligible, legal opinion re strength and merit of case is obtained; decision made based on legal opinion (usually follows legal opinion).</p> <p>If lawyer is ambiguous, usually refused. If case has little merit but is serious, often grant coverage</p> <p>Appeals: Two levels of appeal – first to regional committee then to appeals committee of the Board of Directors.</p>		<p>Financial and case eligibility is assessed by the Area Director. If the case is accepted, a certificate is provided to the lawyer. If the case is not accepted, the applicant can appeal to the Executive Director. The Executive Director examines the case and reasons for appeal. If rejected, the applicant can appeal to the Board of Directors.</p>



Table 1: Legal Aid Plan Coverage

	Ontario	Québec	New Brunswick	Nova Scotia
Method of service delivery to general public	<p>Structure and services:</p> <p>Predominantly judicare, with some clinics.</p> <p>Director of Services, Area Director (51 areas in province).</p> <p>Clinics funded through legal aid but independent, with own boards – include lawyers and paralegals.</p> <p>Some experimentation with clinic services in other areas (immigration, family).</p> <p>Application taken, financial eligibility testing included in assessment of eligibility for aid, case details assessed, decision re: granting aid.</p> <p>Services: Judicare certificates, clinics, duty counsel, advice lawyers, student legal aid services.</p> <p>Doing pilot projects re. expanded duty counsel in family law, staff offices etc.</p> <p>Duty counsel in every criminal court – advise re: rights, bail hearings, guilty pleas, sentencing on guilty pleas.</p>	<p>Structure and services:</p> <p>Mixed judicare-staff service provision – if client wants private lawyer, can. If doesn't have one, usually staff lawyer appointed. Staff offices use private bar in some cases to expand expertise for specific cases or if too busy, conflict of interest.</p> <p>Structure: Legal Aid Commission, 11 regional and two local centres. Each centre has its own Board of Directors appointed by Commission. Regional centres establish local legal aid offices within catchment area.</p> <p>Receive applications at local offices. Services provided by staff lawyers of offices in 128 offices in 106 cities in Québec. Non-lawyers aren't usually used to provide services.</p> <p>Staff lawyers provide duty counsel services in criminal, civil, and administrative courts.</p> <p>Policies and procedures:</p> <p>Can appeal decision to Review Committee (members not Commission or centre employees) re: granting legal aid within 15 days of decision.</p> <p>Eligibility:</p>	<p>Structure and services:</p> <p>Mixed model of service delivery.</p> <p>Legal Aid New Brunswick provincial office and eight regional offices, legal aid panels and duty counsel.</p> <p>Domestic legal aid run through Legal Aid New Brunswick / Department of Justice using staff lawyers—court social worker is first contact, screened to mediation, legal services or external service. Family solicitors under contract with Legal Aid New Brunswick engaged to provide services.</p> <p>Criminal coverage where jail term likely, loss of livelihood or other extenuating circumstances, provincial offences can be included, municipal by-laws are not.</p> <p>Duty counsel can be used. Provided in all criminal courts.</p> <p>Policies and procedures:</p> <p>Appeals eligibility requires lawyer's opinion letter re: likelihood of success and copy of order being appealed, area staff consider it reasonable to appeal, application submitted to area committee, area committee approves.</p> <p>Family law: Only coverage is permanent</p>	<p>Structure and services :</p> <p>Staff model with private bar hired on certificate to provide services in situations of conflict or criminal counsel choice (only in cases where possible sentence is mandatory life imprisonment); administrative office and 13 regional offices, three sub-offices.</p> <p>Duty counsel: A formal Cells Duty Counsel Program is offered to all persons in custody at the criminal intake court in Halifax and Dartmouth only. After-hours duty counsel for detained people.</p> <p>Partial funding to Dalhousie Legal Aid Service.</p> <p>Policies and procedures:</p> <p>Coverage:</p> <p>Criminal and civil, criminal takes priority, indictable covered, summary where likelihood imprisonment, appeals by Crown and accused. No civil matters expressly excluded from legal aid.</p> <p>Family: divorce, spousal assault, custody, access, support, child protection, marital property.</p>

Table 1: Legal Aid Plan Coverage				
	Ontario	Québec	New Brunswick	Nova Scotia
	Duty counsel – two in family courts on motions days – allow representation both sides.	Always granted, if financially eligible, for family, youth protection, young offenders, indictable offences, applications involving automobile insurance, workers compensation, unemployment insurance, income security.	guardianship and variation applications for payers found unable to pay. Department of Justice provides a staff lawyer covering victims of spousal abuse, mediation services, and legal services for beneficiaries of support. No financial means tests for these services.	Priorities: indictable, summary where imprisonment; domestic violence, custody, child welfare, maintenance; situations where livelihood may be problem.
Method of service delivery to general public (continued)	<p>Duty counsel accompany circuit courts in remote areas and attend immigration hearings in Toronto and Mississauga.</p> <p>24-hour telephone advice service for adults/kids in custody.</p> <p>Legal Advice Lawyer: Summary advice, assistance and review of legal documents, 83 communities 1-3 times per week, 2-3 hours/session.</p> <p>Legal clinics: 70 clinics plus specialized clinics.</p> <p>Six student clinics. For example, lawyers and students at the Correctional Law Project offer both advice and representation.</p> <p>Policies and Procedures:</p>	<p>Other civil and summary conviction cases at discretion of legal aid (likelihood of imprisonment, loss of livelihood, interests of justice to provide).</p> <p>Appeals by crown covered. Appeals by defendant at discretion of legal aid.</p> <p>Coverage: total or partial with repayment.</p>	<p>Financial eligibility: means test administered, flexibility in test, assets, liabilities, income, expenses, spouse, dependents. Spouse is not defined but generally taken to mean relationship of significant duration with couple still cohabiting.</p> <p>Also consider merit of case, complexity of case, total amount of legal aid the applicant has received from legal aid, urgency of situation, whether reasonable person who has similar case would pay for lawyer for it.</p> <p>Repayment of all or part of the costs is possible</p>	<p>Eligibility:</p> <p>Financial needs test: income, expenses, debt, assets; take into account spouse: person living with the applicant and contributing financially to home.</p> <p>Repayment of all or part of the costs is possible</p>



Table 1: Legal Aid Plan Coverage

	Ontario	Québec	New Brunswick	Nova Scotia
	<p>Guidelines for eligibility set by AG.</p> <p>Eligibility: Application, assess financial eligibility, assess case using guidelines.</p> <p>Local committees (mainly lawyers on committee) hear appeals of decisions; appeals of appeal cases go to provincial level. Coverage of appeals in criminal and civil depends on reasonableness of proceeding and probability of success. Usually give certificate to respond to Crown appeals. Appeals by person only if merit.</p> <p>Immigration coverage priority to refugee claims.</p>			
Method of service delivery to general public (continued)	<p>Family law priority to cases where safety of child/spouse at risk and where threatened child removed from parent. Custody, access, support, property, child protection, restraining orders, wife assault may be covered.</p> <p>Civil: Civil sexual assault, mental health, income maintenance, landlord-tenant,</p>			

Table 1: Legal Aid Plan Coverage				
	Ontario	Québec	New Brunswick	Nova Scotia
	<p>worker's compensation, unemployment appeals, prison appeals in sexual assault cases may be covered.</p> <p>Eligibility: Needs test including income and assets, person and spouse (three years living together continuously, any with kids living together). Flexibility in test. Includes liabilities, extenuating circumstances, seriousness of case.</p> <p>Repayment of all or part of the costs is possible</p>			
Method of service delivery to federal prison inmates	<p>Judicare and other.</p> <p>Duty counsel attend provincial and federal institutions to take applications, provide summary advice, investigate potential problems, as well as attend federal disciplinary hearings on serious charges. Annual and biannual reviews (test for sufficiency of evidence) for inmates with mental disorders are covered, as are "faint hope" applications.</p>	<p>There is no specialized service delivery for federal prison inmates. Prison inmates are eligible for the same coverage as the general public.</p> <p>Most federal offenders are represented by a lawyer for issues such as: parole hearings and appeals, and disciplinary tribunals. Appeals of transfer requests by correctional staff are not covered by legal aid in Québec.</p>	<p>There are no specialized services for federal prison inmates.</p> <p>Prison inmates are eligible for the same coverage as the general public</p>	<p>The is no coverage of prison issues</p> <p>The Amherst Office provides some coverage of prison law issues, transfer of charges from another jurisdiction</p> <p>A paralegal visits the institution once a week, provides advice, where appropriate, can open a file and provide assistance and/or representation on hearings and other issues.</p>



Table 1: Legal Aid Plan Coverage

	Ontario	Québec	New Brunswick	Nova Scotia
Policies and procedures regarding federal prison inmates	Duty counsel must have knowledge of CCC, federal <i>Corrections and Conditional Release Act</i> , Access to Information and Privacy Acts. Area Director may require counsel to attend special training provided by LAO.	The offender must call a lawyer, who submits a request to legal aid. Legal aid sends someone to the prison to evaluate the client's case and if the client meets the eligibility criteria, will issue a certificate. Legal aid has established tariffs for prison law and has specified tariffs for parole hearings, appeals, disciplinary tribunals, etc.	N/A	N/A
Process for decision-making regarding service eligibility	Decision-making is the responsibility of the Area Director. If accepted, a certificate is provided to the counsel of choice. If rejected, the applicant can appeal to the Director.	The eligibility criteria are the same for offenders as for the general public.	Decision-making is the responsibility of the Area Manager. If eligible, the client is provided with a staff lawyer. If ineligible, the applicant can appeal the decision.	Decision-making is the responsibility of the Area Manager. If eligible, the client is provided with a staff lawyer. If ineligible, the applicant can appeal the decision.