



LEGAL AID
RESEARCH SERIES

STUDY OF THE LEGAL SERVICES
NEEDS OF PRISONERS IN
FEDERAL PENITENTIARIES IN
CANADA



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Revised Final Report

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The views expressed in this report are those of the authors and do not necessarily reflect the views of the Department of Justice Canada.



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Executive Summary

The Department of Justice Canada, in cooperation with the provinces and territories, is developing a new legal aid and access to justice policy framework. The Department has funded 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. *Thérèse Lajeunesse and Associates Ltd.* were retained to conduct the second study, which is based on the perceptions of inmates, corrections officials and prisoner advocates, in addition to a review of corrections and other relevant documents.¹ The purpose of the research was: 1) to describe the range of legal matters faced by prisoners in federal penitentiaries and on conditional release, as well as legal aid services and related forms of legal information and support accessed by these groups; 2) to document the difficulties that prisoners experienced accessing legal advice and support and any unmet needs; and 3) to examine possible approaches for addressing those difficulties and needs, as well as the financial and other resources that would be required to do so.

In reviewing the legal context for the provision of legal aid services and legal information for inmates, it was found that the role of law inside prison walls has evolved extensively since the 1970's. A number of court cases and government reviews, as well as the creation of the *Corrections and Conditional Release Act* in 1992, have emphasized the need for due process, the Rule of Law and the Duty to Act Fairly. Also the Supreme Court has established that prisoners retain all of their civil rights other than those expressly taken away by law. It is clear that this framework provides an important backdrop to the assessment of the extent to which legal aid services should be provided in the penal environment.

A sample of 12 institutions was selected for the study which included a cross section of minimum, medium and maximum security institutions as well as penitentiaries that house Federally Sentenced Women and others, where the Aboriginal population is well represented. We also included two facilities for inmates with mental disorders. During site visits, another three units were included when time became available to conduct interviews there. Thus we added two maximum security units for Federally Sentenced Women and a minimum security institutions for men. This brought our total to 15 institutions or distinct complexes.

During our site visits we interviewed a 100 inmates, 49 Correctional Services of Canada (CSC) staff members, eight Stakeholders and five prison law lawyers for a total of 162 interviews. The number of staff member interviews was lower because many declined to be interviewed.

None of the inmates interviewed reported any public legal information activities in the sample locations.² This was reported as being a big gap as many inmates just assume that they have no rights. The most common problems identified by inmates as areas where legal assistance would

¹ The first study, which was conducted by Prairie Research Associates, is based on the perceptions of lawyers and other legal professionals serving inmates, as well as a review of legal aid and other relevant documents.

² Legal Aid Ontario (LAO) reported that LAO duty counsel conduct seminars for inmates at Grand Valley Institution in Kitchener. (This institution was not included in the study.) In addition, LAO plans to distribute a pamphlet on legal aid for inmates in early 2003.

be critical are serious disciplinary offences (75%); family law matters (70%); appeals (69%); involuntary transfers or requests for administrative segregation (65%); and conditional release (60%). Many also mentioned that there are issues related to the accuracy of their individual files that at times need to be contested for being false and limiting their chances to cascade to lower security levels and to obtain conditional release. The provision of legal aid services varies dramatically across the country with some institutions in Kingston and Montréal receiving some service while none is available in the province of Saskatchewan.

Federally Sentenced Women (FSW) tended to mention their needs in the area of family law more than male inmates did, although male inmates also named this area as a top concern. It was reported that anxiety about children can derail the focus on rehabilitation when women worry about potential child apprehension, the need to resolve issues related to temporary or permanent custody, and the whole range of other family law issues such as access. As women tend to be the major caregivers for children, issues related to children tend to dominate their periods of imprisonment. As many FSW were involved in abusive relationships prior to their imprisonment, an added concern often can include the safety of the child during the mother's absence. In the same vein, transfers away from family can also be problematic given the few locations across Canada where FSW are housed.

Male inmates were more concerned about access to children during their time in prison, although custody was sometimes mentioned as well.

Many inmates mentioned that aversive dynamics within their respective institutions can have a major negative impact on obtaining legal advice, such as negative repercussions by staff when a lawyer gets involved, attempts by staff to prevent or delay contact, and/or staff not knowing how to go about facilitating access to lawyers for individual prisoners. Inmates also mentioned that some lawyers are not very familiar with prison law. In some penitentiaries, there is a lack of confidentiality for discussions with lawyers as these conversations may happen on an open range or in the visitors' room within earshot of everyone else in the room. Others reported that lawyers would at times present themselves for a meeting with their client only to be told there is no room available for them to meet.

When asked what option would be best to provide quality legal services, the consensus among inmates was for there to be a regular presence by lawyers, with assigned lawyers for each institution, perhaps by using a staff lawyer approach. Others also mentioned that law schools could develop formal arrangements with some of the penitentiaries to provide students with an opportunity to become familiar with prison law while providing paralegal-type services.

Respondents within the mental health area felt that there is a need for "patient advocates" similar to those used in some provincial mental health facilities, as many inmates with mental disorders are often confused and cannot make informed decisions about treatment.

Interviews with CSC staff members indicated a similar array of top concerns as did inmates, with family matters being the major concern at (57%), involuntary transfers or requests for administrative segregation at (51%) and serious disciplinary offences, appeals and new unresolved criminal charges all obtaining 21% or 22% of responses regarding common concerns.



When asked about barriers to obtaining legal advice, many cited inmates' lack of information about legal rights and the lack of clear legal aid criteria that would increase staff understanding.

Respondents in both groups mentioned the unacceptable delays in obtaining approval for legal aid in cases that involve segregation or disciplinary charges. In their experience, it is not unusual for legal aid to be granted after the situation has passed and is too late for legal representation. They also emphasized that few lawyers are knowledgeable about prison law and the particular issues faced by Aboriginal peoples, visible minorities and inmates with mental disorders.

When asked about how to improve access to legal aid for prisoners, there were fewer responses but those who did respond tended to favour a staff lawyer model where service would be assured. All acknowledged, however, the need to avoid the perception that lawyers work for CSC, which would defeat the purpose of such an arrangement.

Stakeholders and prison law lawyers interviewed also concluded that an improved legal aid presence is necessary. Tariffs are low and non-competitive which results in few lawyers working in prison law. They echoed the findings that there is a need for specialized understanding of youth, Aboriginal women and gangs, among others. (leave this sentence in, Ab) Many lawyers interviewed have observed and/or experienced staff attempts to block their access to their clients. Delays in obtaining legal aid certificates can lead to clients proceeding without legal representation as it often is too late for an intervention. The accuracy of inmate files was often cited as a big problem where lawyers often must intervene to contest vague information on file that is detrimental to their clients.

Stakeholders also were convinced that access to legal aid would improve institutional behaviour as attention can more appropriately be focused on programs rather than the on feelings of frustration and powerlessness with the justice system or with redress mechanisms.

Most also felt that inmates are generally not aware of their right to legal counsel although this is less the case in large male penitentiaries. Respondents expressed worry that because inmates have no "political capital" to lobby politicians, it is unlikely that legal aid coverage will be extended to something that is adequate to the needs.

Briefly the conclusions, organized according to the research questions in the Request for Proposal are as follows:

- *What are the needs for legal advice and related forms of legal information and support experienced by prisoners in federal penitentiaries and on conditional release?*

The needs of federal inmates for legal advice and related forms of legal information are predominately related to the following:

- i) Involuntary transfers to or requests for administrative segregation (s. 33 and 35 of the *CCRA*);
- ii) Serious disciplinary offences (ss. 40 - 44);

- iii) Urinalysis demands (although this area is now well-settled, and the need for legal counsel has diminished, s. 54 - 57);
- iv) Search and seizure, including strip searches;
- v) Parole (accelerated, day and full parole) (ss. 122 - 126.1);
- vi) Detention (ss. 129 - 131);
- vii) Suspension, termination or revocation of parole or statutory release (s. 135);
- viii) Suspension, arrest and charges regarding long-term supervision orders (s. 136.1);
- ix) Assistance in making grievances (s. 90);
- x) Assistance in complaining to the Correctional Investigator (ss. 170, 171);
- xi) Involuntary transfers to other institutions (s. 29, *Act*, s. 12, *Regs.*); and,
- xii) Visiting privileges.

In addition, general public legal information and education is sorely needed in all institutions about legal aid criteria, rights under the *CCRA*, as well as the CSC policy framework for access to legal counsel.

- *What policies do Correctional Services Canada (CSC) and the penitentiaries in the study have concerning access to legal advice and related forms of legal information and support to prisoners? How are prisoners advised of the availability of such services?*

CD 084 defines access to legal counsel. Knowledge about legal advice and access varies by institution but is generally not as well known as would be desired. Some penitentiaries include information about access in their inmates' handbooks but others do not. The lack of information about legal rights was noted in all institutions sampled for this research.

- *What are the mechanisms for requesting and accessing such services? What proportion of prisoners are denied access and for what reasons? Are these prisoners referred to other services and if so, what are they? What are the limitations of available alternatives?*

Mechanisms vary by institution and by jurisdiction. It is not known how many are denied but many respondents indicated difficulty with access either due to eligibility or the lack of lawyers willing to work in prison law. There are no other services or alternatives.

- *How does the penitentiary context impact on access to legal advice and related forms of support, and the level and quality of such services?*

The consensus was that the penitentiary context often is generally not conducive to facilitating access to legal advice, although there are exceptions. There is a wide variation in levels of service depending on the institution.

- *What is the nature and extent of actual or potential unmet need? Which areas of law/issues should be targeted for an expansion of current or new services?*



Unmet needs exist in all areas of prison law. The greatest need was found to be in the area of serious disciplinary offences although family law was also high especially for FSW. Involuntary transfers and requests for administrative segregation were also identified as top inmate and staff concerns for improving legal aid services.

- *What, if any, are the financial staffing and other resources required to meet those needs at the institutional level? What are the considerations impacting on costs? To what extent do these vary by jurisdiction?*

The favoured option is to have lawyers provide a regular presence in all situations. The cost would likely be quite high. Although institutions would vary according to their need, i.e. Kingston penitentiary would likely need several lawyers while smaller ones would only need a lawyer every week or two. The cost for services across Canada would likely be between five and six million based on an averaging formula of \$100,000 – \$150,000 per institution with a lawyer and perhaps a paralegal per institution times the number of institutions. The number of lawyers would then be adjusted according to need with more lawyers at the larger institutions. Ideally there would be no variance by jurisdiction. It is unlikely that legal aid plans would not want to finance this option given the very piecemeal services that exist or don't exist presently.

In reviewing potential models for meeting the need and increasing the adequacy and quality of legal representation for inmates, the favoured model was “staff lawyers” or “designated lawyers for each institution.” Whether the mechanics of individual legal aid plans and the desire to include federal inmates are likely to be improved is unknown but may be improbable. This conclusion can be drawn from the very piecemeal services that exist or don't exist at the moment across Canada.

The arguments for the regular presence of lawyers in federal institutions have been well articulated by respondents in this research study. Many spoke of the total control institutions have on inmates and perceptions of unfairness on the part of inmates and some staff. Not one respondent was happy with the level of legal aid services anywhere. The needs were enumerated, are many, and solutions sorely lacking. But many said that having lawyers in the institution would improve institutional behaviour, decrease stress, violence and conflict within, decrease the feeling that justice systems, whether disciplinary or other, are stacked against inmates, and improve an inmate's ability to focus on himself or herself thus increasing the likelihood that inmates will more successfully integrate with society on their release and decrease recidivism. Some also mentioned the possibility that staff/inmate conflict would be reduced enabling staff and senior managers in the institutions to focus on other pressing issues. One CSC respondent indicated that if these changes were made, there would likely be a backlash against them among CSC staff at first but that they would adjust, just as they did to the presence of Independent Chairpersons for disciplinary court when they were first introduced.

Due to the consistent feedback against the use of jailhouse lawyers and to some degree, paralegals working alone, they were not the favoured options for improving legal services for inmates. The idea of a national trust fund was also not favoured due to the difficulties inherent in the administration of it and reaching consensus about which cases would be funded. Respondents were not sure that adequate funding could be obtained through this method.

The two most favoured options were that of staff lawyers “to provide a regular presence” and developing relationship with Law Schools so that students could provide services under the supervision of their professors. This is essentially the Clinic model that exists at the Correctional Law Project at Queen’s University although the respondents interviewed for this study indicated that less service has been forthcoming of late due to the lack of student interest in prison law.³

In order to test the suitability of either staff lawyers or other methods to ensure a permanent presence in institutions, a number of Stakeholders, i.e. CSC respondents and prison law lawyers, suggested the avenue of pilot projects to test this model for the delivery of service. The objectives of the pilot projects were outlined to be:

- To test the consistent use of lawyers in five pilot sites;
- To reduce the time of CSC staff in court and other formal procedures;
- To produce cash savings by reducing the need for out of court settlements that often result in large cash payments by CSC;
- To resolve conflict before the use of court and tribunals is needed;
- To develop relationships with Law Schools, where appropriate, from increased student and professor involvement;
- To develop more effective processes than formalized court or other formal settings; and,
- To identify funding sources after the pilot period.

It was suggested that five sites be selected to ensure a cross section of different types of inmates and to account for regional differences. The five sites suggested are: Dorchester; Montée St François; Grand Valley; Saskatchewan Penitentiary and Matsqui. It was suggested that cost savings in staff time and out of court settlements could eventually offset the cost of this approach. As the number of trials dramatically dropped after the introduction of Independent Chairpersons for disciplinary hearings it is also anticipated that increased access to legal counsel would result in substantial savings once this model is established.

This model also has the advantage of giving prison law a higher profile and creating a “critical mass” that will help that area of law to grow as is clearly very needed. It is assumed that rotation would be required to avoid perceptions that lawyers become part of the CSC environment and thus internalize that mentality, and rotation would also allow for supervision and choices for inmates. The inclusion of law students would again have the extra advantage of exposing law students to prison law and hopefully attracting some of them to pursue a career in it.

Respondents held different views on who should fund this model. Some respondents suggested that it be cost shared with the provinces by the Department of Justice Canada, because of its involvement in Legal Aid. Respondents also felt that the service could be funded by the Ministry of the Solicitor General Canada, but not by Correctional Services Canada (CSC). Although CSC is a part of Solicitor General Canada, the perception was that lawyers might be biased because they are funded by CSC. This problem might be partly assuaged if the funding came from a

³ LAO reported that, based on information provided by the clinic director, the volume of service has been constant. Further, it is expected to increase due to the addition of a staff lawyer funded by LAO.



different source within Solicitor General Canada. Other respondents felt that the ideal solution would be to have this service totally funded by the provinces..

If the pilot projects cannot be established, at a minimum, PLEI organizations across Canada should be encouraged to provide legal information program for federal inmates and also staff members. Another option would be for the legal aid plans to encourage a Clinic approach with other Universities like the Correctional Law Project In Kingston.

- *What are the possible consequences of not providing adequate services for prisoners as well as the correctional and justice systems?*

Not providing adequate services has profound impacts. Despite the legislative and policy frameworks and legal obligations such as the Duty to Act Fairly, the Rule of Law and due process, there is little indication of compliance by CSC and the legal aid plans. Respondents indicated that access to legal counsel would likely result in better institutional behaviour due to lessened feelings of frustration and powerlessness among inmates. This in turn would lead to an improved ability among inmates to focus on their programming needs while incarcerated. Presently, as evidenced by respondents in this research, there are multiple problems associated with lack of access to legal counsel including the fear of repercussions, in some institutions, against inmates who request access. This builds up resentment against “the system” adding to any earlier perceptions of injustice on the part of some inmates. Poor institutional behaviour may often result from this frustration.

All respondents have clearly indicated the need for increasing the level and quality of services of Legal Counsel to federal inmates. Legislative and policy frameworks clearly outline the need to provide this service. It is hoped that funding will be made available, in whatever manner is possible, to at least increase access and quality of service, to provide basic legal information for inmates and hopefully CSC staff, and to develop partnerships with Universities and also ideally to fund the pilot projects Although there are competing demands on restricted legal aid dollars across the country, investing in the future of the federal incarcerated population will have long term benefits that we cannot yet anticipate.



1.0 Introduction

In Canada, there has not to date been an extensive review of the legal needs of federally incarcerated inmates. Past treatments of the coverage provided by legal aid and the legal needs of traditional users of legal aid services have focused on the poor in general, and women in particular.⁴ Although inmates tend to be at the lower-income levels, and a great deal of work has been done on the risks and needs of so-called “Federally Sentenced Women”, little attention has been paid, in a systematic way, to broad legal needs of, and access to legal aid for inmates, and how these differ from those of other low-income Canadians.

Inmates have both similar and unique legal needs as compared to the general Canadian population. Three general observations can be made about the legal needs of federal inmates. First, inmates require legal assistance in the traditional fields of law. For example, they need criminal legal counsel to conduct appeals of conviction and sentence, provide legal representation on new criminal charges and to make "faint hope" clause applications under *Criminal Code* s. 745. They require representation to deal with family law matters, such as divorce and the custody and access of children. They sue and can be sued. They have immigration and refugee problems. Extradition law issues have increasingly arisen. Contractual and estate matters arise. Because they are inmates, however, the content of the criminal law issues, family law issues, torts, contract and estate issues requires special knowledge and awareness of institutional issues on the part of Counsel.

Secondly, the nature of the penitentiary population raises unique issues: knowledge of AIDS law issues⁵; special understanding of youth, Aboriginal and gang issues; and, special realities and needs of the female penitentiary population.

Thirdly, the penitentiary population is unique because legislation, Correctional Services Canada (CSC) policy directives and rules governing individual institutions govern an inmate's entire existence. Where inmates live, how they live, when they get up, what, if any work they do, how much they are paid, who can visit them and for how long, with whom and how they can communicate etc., is determined according to law and policy directives. However it should be noted that there remains a considerable amount of staff discretion within these legal and policy directives. Thus there is a discrete area of administrative law known as "prison law." Legislative provisions governing *inter alia*, the placement, classification, transfer, internal discipline and release of inmates are comprehensively set out in the federal *Corrections and Conditional Release Act*, 1992, c.20 and the regulations passed pursuant to the *Act*, the *Corrections and Conditional Release Regulations*, SOR/92-620. Determinations made about those issues by the Correctional Service and the National Parole Board are of enormous significance to inmates.

⁴ Such as Status of Women Canada, (1998) National Association of Women and the Law, Lisa Addario, *Getting a Foot in the Door: Women, Civil Legal Aid and Access to Justice*. Ottawa.

⁵ For example, the issue of methadone treatment by right - see Canadian HIV/AIDS Policy & Law Newsletter "Is there a Right to Methadone Maintenance Treatment in Penitentiary? Vol. 2, No. 4, July 1996, Clay McLeod; "HIV/AIDS in Penitentiaries, New Developments, Vol. 4, No. 4, Summer 1999.

Access to legal aid also varies widely across the country and is further compounded by issues relating to financial eligibility, location, the availability of lawyers and their interest in penitentiary law. As a result of the need to further clarify the situation of Legal Aid and federal inmates, the Department of Justice Canada has commissioned this research study, which is based on the perceptions of lawyers and other legal professionals, as well as a review of corrections and other relevant documents.⁶

As identified in the Request For Proposal, the objectives of the study are:

- a) to describe the range of legal matters faced by prisoners in federal penitentiaries and on conditional release, as well as the legal aid services and related forms of legal information and support accessed by these groups;
- b) to document the difficulties that prisoners may experience in accessing legal advice and support, and any unmet needs;
- c) to examine possible approaches for addressing those difficulties and needs, as well as the financial and other resources that would be required to do so.

In addition to the objectives the following research questions were identified:

- What are the needs for legal advice and related forms of legal information and support experienced by prisoners in federal penitentiaries and on conditional release?
- What policies do Correctional Services Canada (CSC) and the penitentiaries included in the study have concerning access to legal advice and related forms of legal information and support to prisoners? How are prisoners advised of the availability of such services?
- What are the mechanisms for requesting and accessing such services? What proportion of prisoners are denied access and for what reasons? Are these prisoners referred to other services and if so, what are they? What are the limitations of available alternatives?
- How does the penitentiary context impact on access to legal advice and related forms of support, and the level and quality of such services?
- What is the nature and extent of actual or potential unmet need? Which areas of law/issues should be targeted for an expansion of current or new services?
- What, if any, are the financial, staffing and other resources required to meet those needs at the institutional level? What are the considerations impacting on costs? To what extent do these vary by jurisdiction?

⁶ Another study of the legal needs of federal inmates, based on the perceptions of lawyers and other legal professionals as well as a review of legal aid and other relevant documents, was undertaken by Prairie Research Associates.



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- What are the possible consequences of not providing adequate services for prisoners as well as the correctional and justice systems?



2.0 The Legal Landscape and Penitentiaries in Canada

Over the years, penal philosophies have changed dramatically, but not as dramatically as the role of law inside prison walls. In the 1970's the federal prison system experienced a number of riots, hostage takings, murders and strikes after a comparatively quiet time. One of the first of many inquiries and reviews to be called to investigate the federal prison system was that of the House of Commons Sub-Committee on the Penitentiary System in Canada. In a report tabled in 1977, parliamentarians listed continuing failures of the prison system to rehabilitate offenders and to protect society. The report advocated for the Rule of Law and commented on prisoners' rights:

Justice for inmates is a personal right and also an essential condition of their socialization and personal reformation. It implies both respect for the person and property of others and fairness in treatment. The arbitrariness traditionally associated with prison life must be replaced by clear rules, fair disciplinary procedures and the provision of reasons for all decisions affecting inmates.⁷

The Sub-Committee further recommended that Commissioner's Directives be consolidated into a code of regulations that would have the force of law for both inmates and staff. In addition, it was recommended that an inmate grievance system be established and that independent chairpersons be appointed in all institutions to preside over disciplinary hearings. The Sub-Committee also viewed the courts as playing an important role as a remedy for establishing due process while following the principles of natural justice.

The principles sought by this Sub-Committee proved to be difficult to implement, at least in terms of the role of courts. It would take a decade of court cases to expand the definition of judicial review. One of the more pivotal cases, *Martineau v. Matsqui Institution Inmate Disciplinary Board*, eventually led to the development of modern prison law and further defined the Duty to Act Fairly. A year after the final ruling on *Martineau*, the *Solosky* case resulted in the Supreme Court of Canada endorsing the view that "a person confined to prison maintains all of his civil rights, other than those expressly or impliedly taken away from him by law" (*Solosky v. the Queen*, (1980) 1 S.C.R. 821 at 823).

Since that time, the *Canadian Charter of Rights and Freedoms* became law in 1982 and further expanded the role of the Judiciary and the notion of rights, as well as establishing a culture of respect among government and citizens for fundamental human rights.⁸

⁷ House of Commons Sub-Committee on the Penitentiary System in Canada. *Report to Parliament*. Ottawa: Minister of Supply and Services. 1977. p. 87.

⁸ Jackson, Michael. *Justice Behind the Walls. Human Rights in Canadian Prisons*. Vancouver: Douglas & McIntyre. 2002. p.62.

In 1982 the Department of Justice established the Criminal Law Review, which included a review of correctional law. The Correctional Law Review developed a statement of purpose and a set of principles and also examined the issue of balancing inmate rights with the interests of the institution:

Of major significance in balancing the various factors involved is the recognition that prison practices and programs vary in degree of intrusiveness on inmate rights, and that as the level of intrusiveness increases, the objective must be increasingly important and protections and safeguards must correspondingly increase. (CLR Working Paper No. 5 at 12 – 15)

The Correctional Law Review also endorsed the notion that prisoners are sent to prison as punishment and not for punishment and while there, they cannot be stripped of their rights as ordinary citizens. The review further emphasized that as prisoners will eventually return to society, the best interests of the public are better served if the rights of inmates have been respected to avoid building up resentments and frustration that will lead to further criminal activity after release.

In 1992 the *Corrections and Conditional Release Act* finally replaced the *Penitentiary Act* of 1886. With this legislation came significant advances in correctional law that further recognized due process.

Thus it is the context of the legal principles of the Rule of Law, the Duty to Act Fairly and due process that provides the framework for the assessment of present legal aid services and determinations of what is required to meet adequate standards of service.



3.0 Methodology

In consultation with our contact persons at the Department of Justice Canada and CSC, an approach was developed to facilitate our access to the institutions. A memo was sent out to all the Wardens of selected institutions by our CSC contact person, explaining the purpose of the research and introducing ourselves as the researchers. There are a total of 52 federal institutions in the country including five regional facilities for Federally Sentenced Women, although women in maximum security are housed in separate Units within male facilities. The selection of institutions was based both on the location of Team members and the need to include a good sample of Aboriginal peoples, visible minorities and Federally Sentenced Women, as well as the general male population. Two institutions were selected for its inmate population that is referred for mental incapacities. We have also included a cross section of maximum, medium and minimum security institutions. Institutions included:

- Matsqui Institution, B.C.;
- Elbow Lake, B.C.;
- Edmonton Institution for Women;
- Regional Psychiatric Centre, Saskatoon;
- Saskatchewan Penitentiary, Prince Albert, Saskatchewan;
- Stony Mountain Penitentiary, Manitoba;
- Kingston Penitentiary, Ontario.;
- Regional Treatment Centre, Kingston, Ontario.;
- Montée St. Francois, Laval, Québec;
- Special Handling Unit, Ste Anne des Plaines, Québec.;
- Springhill Penitentiary, Nova Scotia; and
- Nova Institution for Women, Nova Scotia.

In addition to this list, during site visits, we visited the Women's Unit at Saskatchewan Penitentiary and also included the minimum facility and Women's Unit at Ste Anne des Plaines.

In general, as for inmates, we approached inmates groups such as the Inmate Welfare Committees, Lifers Groups and Brotherhoods and also enlisted any other inmates who wanted to be included in the study. This approach varied by institution, depending on the amount of ability Team Members were able to circulate and approach other inmates. In one of the Treatment Centres we were only able to interview one inmate, as the others were too low functioning to be able to participate. Similarly, in one of the maximum institutions, a lower number of inmates was interviewed due to the low functioning of some of the inmates in that environment. In the same vein, many inmates were not able to totally complete the interview due to a variety of reasons including, going into detail about their own situations, but we used all the relevant information as much as possible. Despite this, we obtained 100 interviews, including 26 Federally Sentenced Women and a good proportion of Aboriginal and other inmates belonging to visible minorities. As we did not include a question on racial origin due to proven difficulties with individuals self-identifying, observations made by Team members indicate that a good

proportion of Aboriginal and visible minorities were included in our sample. In institutions such as Elbow Lake and Saskatchewan Penitentiary, the Aboriginal population was well represented. In some institutions, interview numbers were lower because there were lockdowns during our assigned days.

As for CSC staff interviews, participation varied by institution. Team members observed a general reluctance to be interviewed on this topic although this also varied. In one institution, all staff members declined despite repeated attempts made to different individuals by the researcher. The reason cited by all those approached was that discussions regarding legal aid should remain between lawyers and their clients. Some CSC respondents were however happy to be included but they formed the minority of respondents. Unfortunately, due to these difficulties, our staff sample is somewhat smaller than we had hoped. We were, however, able to complete 49 interviews.

In terms of Stakeholders, the following representatives were interviewed:

- Kim Pate, Canadian Association of Elizabeth Fry Societies;
- Charles Haskell, Legal Counsel, CSC;
- Ed McIsaac, Executive Director, Office of the correctional Investigator;
- Joanne Connelly, Office of the Correctional Investigator;
- Todd Sloane, Legal Counsel, Office of the Correctional Investigator;
- Bill Staubi, Director General, Rights, Redress and Resolution, CSC;
- Graham Stewart, John Howard Society Canada; and
- Barb Hill, John Howard Society of Canada.

In addition, five prison law lawyers were interviewed in Kingston, and Montréal.

Table 1 summarizes the number of interviews completed for this research study.

TABLE 1: INTERVIEW SAMPLE SIZE	
Inmates	100
CSC Staff Members	49
Lawyers	5
Stakeholders	8
Total	162



4.0 Findings

a) Policy Framework

The Correctional and Conditional Release Act defines the obligations of the Correctional Service and inmates in addition to addressing issues related to conditional release. CD 084 is a Commissioner's Directive entitled: "Inmates' Access to Legal Assistance and the Police" and its scope includes "instructions on inmates' access to the police, the right to counsel under the *Canadian Charter of Rights and Freedoms* and a requirement for considering legal counsel in minor disciplinary charges under certain circumstances".

Its policy objective is:

To ensure respect for the rights of inmates by providing them with reasonable access to legal counsel and the courts, as well as to appropriate legal and regulatory documents, and to ensure the right of access by inmates to the police in a secure and confidential manner.

The key description about access to and representation by Legal Counsel is found in Section 7 as follows:

According to Section 10 of the *Canadian Charter of Rights and Freedoms*, everyone has the right on arrest or detention to retain and instruct counsel without delay and to be informed of that right. Subsections 97(1) and (2) of the *Corrections and Conditional Release Regulations* specify some of the situations in a penitentiary context in which access to counsel is to be provided. There may be other situations in which section 10 applies.

Other Sections describe when an inmate should be informed of his rights and define "without delay" as meaning within 24 hours. Inmates may retain counsel to act in the capacity of an assistant at National Parole Board hearings and must be given an opportunity to retain counsel prior to a disciplinary hearing on a serious disciplinary charge. Although there is no right to counsel for minor disciplinary proceedings, the Institutional Head or designated staff member conducting the hearing must consider any request for counsel based on the circumstances of the case, including its complexity.

In addition to CD 084, Regulations 97(1) and (2) of the *Correctional and Conditional Release Act* specify that an inmate is given reasonable opportunity to retain and instruct legal counsel without delay where the inmate:

- (a) is placed in administrative segregation; or
- (b) is the subject of a proposed involuntary transfer pursuant to section 12 or has been the subject of an emergency transfer pursuant to section 13.

Regulation 97 (3) states that “the Services shall ensure that every inmate has reasonable access to:

- (a) legal counsel and legal reading materials;
- (b) non-legal materials, including
 - (i) Commissioner’s Directives,
 - (ii) Regional instructions and institutional standing order, except those relating to security matters, and
- (c) a commissioner for taking oaths and affidavits.”

There do not appear to be regional or institutional standing orders relating to access to Legal Counsel.

Regulation 31 speaks to the right to counsel at disciplinary hearings for serious offences.

b) Interviews with Inmates

Provision of Public Legal Education and Information

Inmates were first asked whether they were aware of any community organizations or groups that provide basic legal information for inmates. Almost none of the inmates interviewed reported any public legal education and information program or activities in any of our sample locations. A few long term inmates in Saskatchewan Penitentiary indicated that a local public legal education and information (PLEI) association used to provide such a service but that was the only mention of any PLEI made.⁹

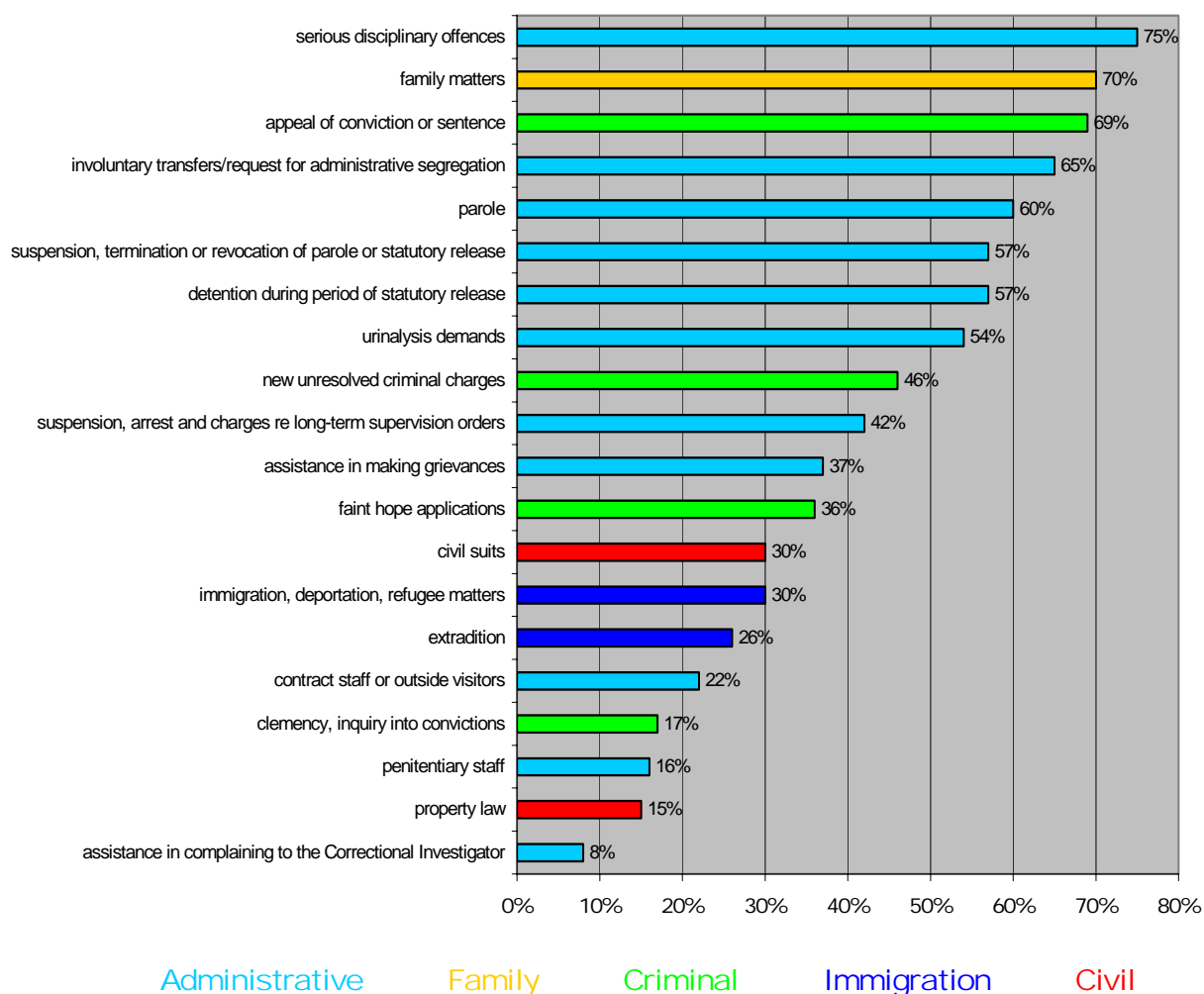
Most Common Problems

Inmates were then asked to list “the most common problems for which inmates here need legal education or help”. Table 2 illustrates their responses:

⁹ Legal Aid Ontario (LAO) reported that LAO duty counsel conduct seminars for inmates in Grand Valley Institution in Kitchener. (This institution was not included in the study.) In addition, LAO plans to distribute a pamphlet on legal aid for inmates in early 2003.



Table 2 - Most Common Problems Identified by Inmates



Serious disciplinary offences, at 75% of responses, was the area most often identified by inmates as the most common problem where legal help is needed. Family matters was a close second at 70% and appeals of conviction or sentence followed closely at 69% of responses. Involuntary transfers and requests for administrative segregation also received a high rate of responses at 65%. Clearly, the inmates interviewed indicated a strong need for legal advice in administrative law and family matters.

For the category of “other”, inmates identified:

- The fact that the legal system is not receptive to the needs of inmates;
- Accuracy of file (five mentions);
- Forbidding visits used as instrument of punishment;
- Not knowing how to appeal denial of legal aid;
- Need for specialized lawyers, i.e. lawyers familiar with both Aboriginal law and the socio-economic conditions of Aboriginal peoples, for Aboriginal inmates;
- Illegal cell searches;
- Police brutality; and
- Delays in investigations and procedures.

Most Serious Problems

Next, inmate respondents were asked to identify the most serious problems. Their responses tended to focus on the types of situations, i.e. disciplinary hearings, and/or on aversive dynamics within institutions.

In terms of types of situation, the most common responses were:

- Institutional charges;
- Family matters;
- Involuntary transfers;
- Lack of regular reviews when in segregation; and
- Parole hearings.

Federally Sentenced Women tended to mention their needs in the area of Family Law more than male inmates did, although male inmates also named this area as a top concern. It was reported that anxiety about children can derail the focus on rehabilitation when women worry about potential child apprehension, the need to resolve issues related to temporary or permanent custody and the whole range of other family law issues such as access. As women tend to be the primary or sole caregivers for children, issues related to children tend to dominate their periods of imprisonment. As many FSW were involved in abusive relationships prior to their imprisonment, an added concern often can include the safety of the child during the mother’s absence. In the same vein, transfers away from family can also be problematic given the few locations across Canada where FSW are housed.

Male inmates were more concerned about access to children during their time in prison, although custody was sometimes mentioned as well.

As for aversive dynamics, they identified:

- Negative repercussions by staff when a lawyer gets involved (ten mentions);
- Lawyers don’t know enough about prison law (eight mentions);
- Attempts by staff to prevent contact with lawyers (eight mentions);



- Lack of information about legal rights of inmates (eight mentions);
- Delays in getting legal aid, at times too late e.g. involuntary transfers (six mentions);
- No money to hire lawyers (five mentions);
- The use of “supplements” in Québec where legal aid lawyers demand additional funds to take a case (five mentions);and
- The erroneous perception that there is a \$25 user fee in Ontario,¹⁰ which is half of canteen money for two weeks.

Many of these issues were also raised at other times during the interviews. In addition to mentions of attempts by staff to prevent contact with lawyers, many inmates indicated that the accuracy of their files is an important problem that can be the result of trying to obtain a lawyer. The most common example of this provided by respondents is that information like “an anonymous source has indicated that inmate x is selling drugs inside” placed on file can then have disastrous ramifications for cascading down to lower security levels and for the ability to obtain parole. The issue of accuracy of files was also raised in other contexts later during interviews.

Barriers to Obtaining Legal Advice

The next two questions asked inmates “what barriers are there that get in the way of inmates who want to get legal advice or help and cannot afford their own lawyer?” A follow-up question asked for “any other barriers” to ensure that we captured all their thoughts.

Table 3 outlines major barriers identified by inmates. Most inmates mentioned more than one barrier thus this Table represents all mentions.

TABLE 3: BARRIERS IDENTIFIED BY INMATES	
Type	Number of Mentions
CSC related barriers:	
Access through staff difficult	12
Institutional mentality against rights	11
Inmates not understanding rights &/or process	7
Transfers between provinces	2
Legal Aid related Barriers:	
Lawyers lack of knowledge about prison law	20
No money to hire private lawyers	10
Legal Aid Turned Down	8
Lawyers not interested or too constrained	8
Delays in getting legal aid	5
Lack of confidentiality	3
Lack of help in family matters	3
Lack of knowledge of Aboriginal needs	2
Legal Aid lawyer pressuring for guilty pleas	2

¹⁰The User fee in Ontario was abolished nearly five years ago, effective March 1st, 1998. The individuals interviewed may not have applied for legal aid during that lengthy period.

Again the issue of staff beliefs and attitudes was raised in answer to these questions. Typically comments such as “there is a mentality within the institution against rights – there are ramifications for those who try to obtain lawyers – institutions don’t like lawyers – if you fight the system it could negatively hurt your parole chances” were made. Many inmates felt that the lawyers they had dealt with lacked sufficient knowledge about prison law, this despite the presence of many prison law lawyers in the cities of Montréal, Kingston and Vancouver.

As for the category of “access through staff difficult”, comments included: “you have to fill out a requisition that goes through staff before you can call a lawyer and they decide”, and “it’s hard to get access to the telephone” as well as “they claim there is no interview room when my lawyer arrives despite advance notice”. Others made comments like, “calls are made through V and C (visiting and correspondence) and we get the run around” and “the guards have the list of lawyers and it is hard to get them to tell us who is on that list”. Many commented on the lack of adequate legal information in prison libraries and also that access is at times limited to these libraries, as in “it depends on who is in charge”.

Issues relating to lack of confidentiality usually had to do with experiences when inmates had to meet their lawyers on their ranges within earshot of everyone else. Other complaints related to meeting lawyers in the regular visiting room where other inmates and/or visitors can also hear what is discussed.

The other categories are self-explanatory. The second last category, i.e. “lawyers not interested or too constrained” included situations where arrangements had been made and the lawyer “didn’t show up” as well as situations when lawyers only have legal aid coverage for a certain amount of time per case and can only have a 30 minute interview with the inmate prior to the case proceeding. A few made comments like “if there was more Legal Aid coverage, there would be less frustration and violence in here”.

Required Resources for Adequate Services

A final set of questions asked, “what kinds of resources would it take to really meet the legal needs of inmates in here?” During discussions about this question we probed for their reactions to a number of models such as staff lawyers in the institution with or without a paralegal, training so-called “jailhouse lawyers” to be paralegals and natural helpers in the institution, the need for written information or presentations about PLEI, the idea of a national Trust Fund supported by modest contributions by inmates for class action types of cases, and any other options respondents wanted to discuss.

The favoured option was to “have lawyers in here regularly”, and there was some support for staff lawyers although some felt that these lawyers might become too associated with the mentality of CSC staff. Respondents who had those concerns, however, felt that if lawyers were rotated, and if they maintained an office on the outside, there would a reduced chance that lawyers would be perceived as being too close to CSC. Respondents also felt that when there is a formal arrangement made for a permanent presence, lawyers’ private offices within the institution would be available to ensure confidentiality and improve access. Also, these lawyers would, as a function of their role, become experts in prison law, something inmates feel is really



needed. The presence of lawyers in the institutions would also ensure, through presentations and the production of written materials, that inmates are aware of their rights, a point that was made many times. They thought that “a lawyer affiliated with each institution would be important especially to deal with institutional charges which can affect chances of parole”. Respondents expressed frustration and confusion about why duty counsel who come in to take legal aid applications in most, but not all, institutions, are not able to represent them on the same matters. We assume that is the case because lawyers are generally not allowed to solicit and Law Societies could view the duty counsel role as such. Inmates get frustrated because they develop a relationship with these lawyers and then feel that the system doesn’t work when their cases are delayed during the approval process and again when a new lawyer arrives to begin the process of collecting information. It was also understood by respondents during the course of these discussions that the availability of a lawyer would depend on the size of the institutions, i.e. smaller institutions would only require the presence of a lawyer once a week or every two weeks while the larger institutions would merit at least one full time rotating lawyer position. Most Aboriginal respondents mentioned the need for native lawyers who understand the culture and socio-economic situations of those who get in trouble with the law.

Inmate respondents within the mental health area felt that there is a need for “patient advocates” similar to those used in some provincial mental health facilities. Respondents indicated that the need for patient advocates should be considered a higher priority within correctional settings than within provincial psychiatric facilities.

Inmates in Québec saw a big advantage to staff lawyers in not being asked to pay “supplements” on top of their Legal Aid tariffs, which affects an inmate’s ability to buy cigarettes, toiletries etc. Since the interviews in Ontario were completed, we were informed that user fees had been abolished, another indication of how inmates (Use the original phrase)

Many respondents from almost every institution suggested that law students could play an important role both in learning and in acting as paralegals for either staff lawyers or private bar lawyers on the outside. Arrangements like these used to exist with Dalhousie University, the University of Manitoba, the University of Saskatchewan and the University of British Columbia. It was reported by both inmates and by Stakeholders in the following section that Queen’s University is not as active as it once was in providing students for prison law in the Kingston area and that it is becoming more difficult to attract law students to this subject matter.¹¹

The idea of training “jailhouse lawyers” to be paralegals was not a popular one. Many felt that jailhouse lawyers may not be able to respect confidentiality and respondents indicated that the jailhouse lawyer might find himself or herself in difficult situations when knowing too much information about other inmates. Also it was indicated that these inmates would be in a position to extract personal gain. Finally there were fears that CSC staff members might “punish” jailhouse lawyers for helping other inmates.

¹¹ LAO reported that, based on information provided by the clinic director, the volume of service has been constant. Further, it is expected to increase due to the addition of a staff lawyer funded by LAO.

There is a strong need expressed by almost all respondents for increased information, written and verbal, about inmates' legal rights. This was a theme that pervaded almost all questions asked in these interviews.

Final conclusions about preferred models and costing can be found in the last section of this report.

c) Interviews with CSC Staff Members

Provision of Public Legal Education and Information

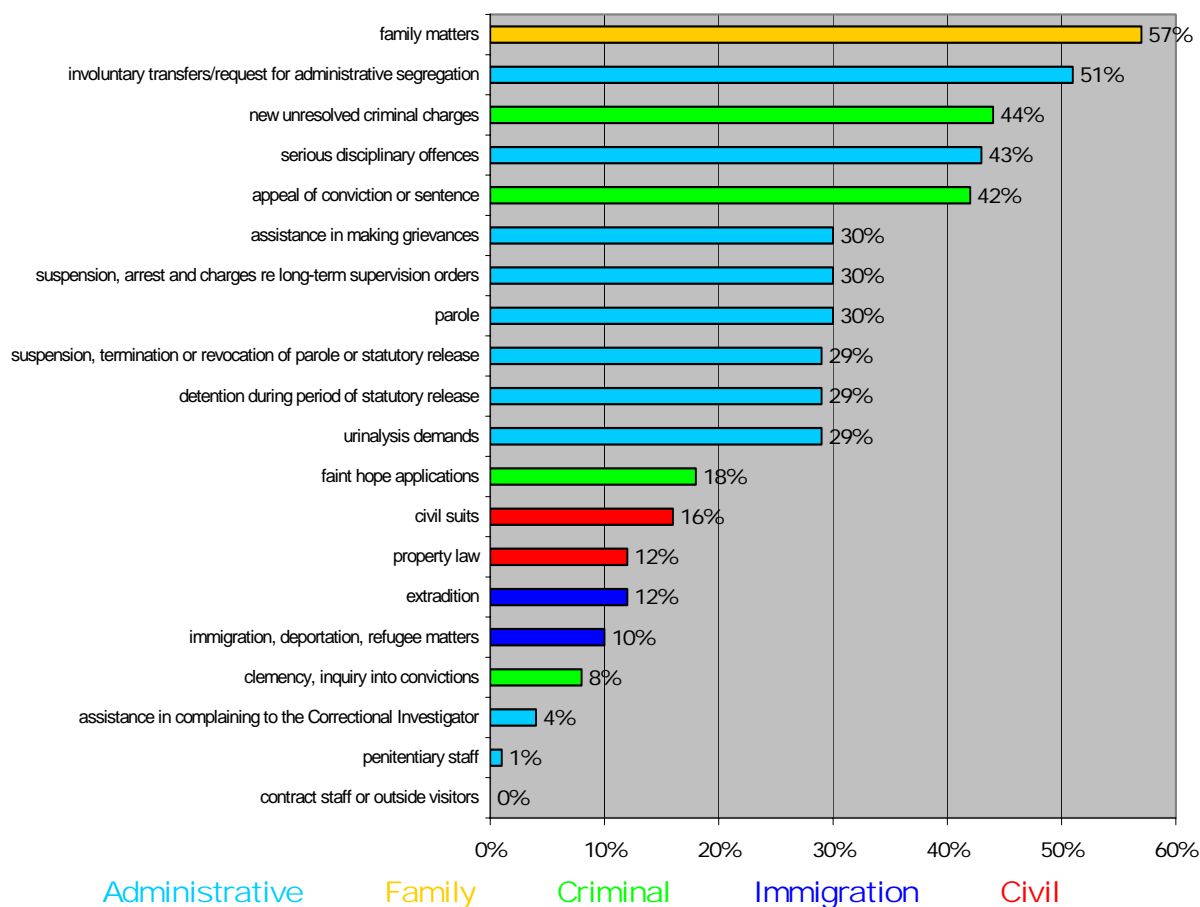
As with inmates, staff members were first asked whether they were aware of any community organizations or groups that provide basic legal information for inmates. Responses were identical to those of inmates, as none of the staff respondents reported any PLEI activities in the sample locations.

Most Common Problems

Staff members were then asked to list "the most common problems for which inmates here need legal education or help". Table 4 illustrates their responses:



Table 4 - Most Common Problems Identified by Staff



Family matters was the area most often identified by staff respondents about legal aid needs, at 57% of responses. The category of involuntary transfers or requests for administration segregation was the next highest at 51%. Unresolved criminal charges and appeals of conviction or sentences attracted the next most frequent number of responses.

For the category of “other”, respondents identified:

- Use of force;
- The taking of DNA samples;
- The need for reviews of segregation;
- The dangerous offender designation; and
- Allegations about assaults inside the prison.

Most Serious Problems

Respondents were asked: “Based on your experience, what would you say are the most serious problems for which inmates here need legal advice or help”? There were similarities between most common problems identified in the first question and responses to this question. The most serious problem by far was family matters, followed by institutional charges, involuntary transfers, outstanding charges and appeals. Some of the others included:

- Racism and bias against First Nations’, peoples;
- “Female offenders have rights but no access, they don’t seem to believe they have rights because they have such low self-esteem, they don’t ask and they feel they don’t deserve”;
- Lack of comprehension about the complexity of mental health cases;
- ;
- “If an offender asks for a legal phone call it sometimes depends on the staff member’s ability to know how to do this”;
- “Lawyers think NPB hearings are like court”; and,
- “Inmates feel frustration when they don’t get help” (from Legal Aid).

Barriers to Obtaining Legal Advice

As with inmate respondents, the next two questions asked staff members “what barriers are there that get in the way of inmates who want to get legal advice or help and cannot afford their own lawyer?” with a follow-up question of “anything else?”

Not all respondents answered but those who did provided the following information. Many identified multiple barriers, all relating to difficulties with the legal aid systems rather than CSC related barriers. The only CSC barrier identified was about access being a problem at times and that staff are not clear about legal aid criteria.

Type	Frequency of Mentions
Inmates lack information about legal rights	13
Legal aid criteria not clear to staff and access is a problem	10
Not enough time for lawyer or unavailable when called	9
Legal aid limited or denied	8
Lawyers lack understanding of prison law	7
Delays by legal aid	4
Lawyers have negative views about offenders	3
No help with language barriers	2
Not enough legal help with detention reviews	2
Lawyers forcing guilty pleas	2
Not enough lawyers handle prison law	2



Staff respondents who answered these questions were clearly sympathetic to inmates' legal rights. Those who indicated a need to protect legal rights and to provide more legal help with detention reviews made comments such as “there is no rhyme or reason why one gets help and another doesn't” and “we should be policed by outside agencies” to ensure that there is a systematic process for accessing legal aid. When identifying that access is a problem, one respondent stated “staff are uncomfortable in legal areas, some staff interfere (to prevent contact with lawyers) when they shouldn't” and “there are systemic barriers for women offenders”. These systemic barriers had to do with the fact that women in the penitentiary system, because of their small numbers, do not have their unique features addressed by the larger system, and tend to experience greater disempowerment which translates into less knowledge about legal rights. Others indicated that it is difficult to put collect calls through to lawyers, and that lawyers often do not answer. Lack of literacy was identified by three of the staff respondents who emphasized a need for legal information for inmates. Many spoke of their own need to understand the legal aid system better so as to be able to provide more accurate information to inmates. When indicating that some lawyers have negative views of inmates they cited the case of women offenders as well as inmates with mental disorders. The use of “supplements” in Québec was cited by two respondents under “legal aid limited or denied”.

Required Resources for Adequate Services

As previously mentioned, the final section of the interviews concerned “what kinds of resources would it take to really meet the legal needs of inmates in here?” As with inmate respondents, discussions about this question probed for respondents' reactions to staff lawyers in the institution with or without a paralegal, training so-called “jailhouse lawyers” to be paralegals, the need for written information or presentations about PLEI, and the idea of a national trust fund supported by inmate contributions for class actions and any other options respondents wanted to discuss.

As for staff lawyers, they said:

- “Need a dedicated lawyer for each institution”;
- “Good idea but likely costly”;
- “They would be overwhelmed by little issues”;
- “Lawyer would at times have trouble picking sides”;
- “I would worry about their independence from CSC”;
- “Would need to be in an arm's length relationship with CSC”;
- “Yes, but would need education about prison law and would be called on to provide legal education to inmates in general”;
- “Could adjudicate segregation reviews and establish a firm process”;
- “Staff would say why not us, we have a right to legal advice too”;
- “It's better for individuals to have their choice of lawyers, and I would be afraid of there being a perception of a CSC bias”.

As for paralegals, it was indicated that there is some merit but it would involve a lot of supervision by lawyers and it would be complicated and maybe lead to delays.

As with inmate respondents, few liked the idea of so-called “jailhouse lawyers” because of the difficulties inherent in setting up such a system within the institutional context. They stated:

- “They (inmates) know just enough to get things confused and inmates have their own agendas”;
- “It would create chaos”;
- “Confidentiality would be a problem”; and
- “It would create an underground economy”.

A few respondents indicated that jailhouse lawyers, with the benefit of training, could operate as paralegals although this was a minority view. Those who opposed the notion were primarily concerned about the creation of an underground economy and confidentiality issues.

Many emphasized the need for PLEI for inmates as well as staff and indicated that lawyers who take cases need to be more visible.

d) Interviews with Stakeholders and Lawyers

Exploratory interviews with prison law lawyers as well as informal interviews with the stakeholders listed in the Methodology Section concentrated on the following research questions as identified in the original research proposal. Interviews were semi-structured to allow for a fuller discussion.

- To what extent are incarcerated offenders unable to access various legal aid services?
- What steps do they need to take to obtain services?
- What are the possible consequences of not providing adequate services to incarcerated offenders?
- What are the key barriers that may prevent the provision of expansion of legal aid services to incarcerated offenders?
- Which service areas (e.g., prison law, family law, immigration/refugee law, criminal law) should be targeted for an expansion of services offered to incarcerated offenders?
- Based on the legal aid delivery model in place (judicare, staff lawyers, and clinics), what unique challenges exist in order to provide an expansion of legal aid services offered to incarcerated offenders?
- What is the cost estimate of implementing identified new legal aid services to incarcerated offenders?



Briefly, respondents indicated that inmates face a number of difficulties in accessing legal aid services. Many provincial/territorial legal aid plans do not provide funding for prison, law matters, and federal penitentiaries are often located in more remote locations, thus necessitating considerable travel by lawyers in some cases. In addition, none of the respondents were aware of any PLEI initiatives. Also, three of the five lawyers interviewed in Ontario mentioned that there has been no financial review of tariffs in 15 years. Respondents indicated that the following topics are those most likely to require access to Legal Counsel:

- i) Involuntary transfers or requests for administrative segregation (s. 33 and 35);
- ii) Serious disciplinary offences (ss. 40 - 44);
- iii) Urinalysis demands s. 54 - 57);
- iv) Search and seizure, including strip searches;
- v) Parole (accelerated, day and full parole) (ss. 122 - 126.1);
- vi) Detention (ss. 129 - 131);
- vii) Suspension, termination or revocation of parole or statutory release (s. 135);
- viii) Suspension, arrest and charges regarding long-term supervision orders (s. 136.1);
- ix) Assistance in making grievances (s. 90);
- x) Assistance in complaining to the Correctional Investigator (ss. 170, 171);
- xi) Involuntary transfers to other institutions (s. 29, *Act*, s. 12, *Regs.*)
- xii) Visiting privileges.

In addition to the above, areas of law where inmates are most likely to require legal expertise include:

- i) Appeals of conviction and sentence;
- ii) New criminal charges;
- iii) Serious disciplinary offences;
- iv) Parole hearings;
- v) Detention issues, such as “gating”;
- vi) Faint hope applications (CCC s. 745);
- vii) Family law- (divorce, custody and access);
- viii) Extradition;
- ix) Contractual and estate matters (wills and power of attorney);
- x) AIDS law issues;
- xi) Civil suits (usually industrial accidents and negligence);
- xii) Broader Charter issues; and
- xiii) Dangerous offender designations.

Lawyers also indicated that it is difficult to develop a client-solicitor relationship and rapport when legal aid limits the amount of time they can spend on files. For instance, some reported that it is not unusual to only have 30 minutes to interview an inmate, which is not very long to gain an inmate’s trust. When acting as duty counsel, there cannot be a solicitor-client relationship.

The time frame for obtaining legal aid certificates can also be a problem. If it takes too long to obtain approval, it may be too late to intervene in prison law matters concerning segregation or involuntary transfers. Segregation is noted as being a “big problem” in the Kingston area.

According to the stakeholders and lawyers interviewed, it is not unusual to see inmates “plead out” (i.e. plead guilty) just to have the process move faster and because they are not aware of their rights.

Lawyers are extremely concerned about issues relating to the reliability of the information included in inmate files. As mentioned earlier in this report, this includes circumstances where information is noted on file that “an anonymous inmate has informed us that inmate x is selling drugs” or any number of other activities. Many respondents argued that this information is fabricated in many instances, and reported some success in having this type of information removed. The repercussions can be quite serious, from an inmate being involuntarily transferred to being placed in administrative segregation to having his or her chances of parole being nullified. Respondents also indicated that inmate rights, as outlined in the *Corrections and Conditional Review Act*, are often not respected, for instance when placed in administrative segregation or when an inmate is the subject of a proposed involuntary transfer. They were also concerned about inmates with mental disorders who are shy, do not understand the charges against them, and automatically plead guilty to circumstances they do not understand.

Most respondents felt that inmates are generally not aware of their right to Legal Counsel, although this is less the case in larger men’s institutions where “jailhouse lawyers” are more likely to be present. Jailhouse lawyers, however, are not viewed as being a realistic option to meet the legal needs of inmates. The more marginalized groups, e.g., Aboriginal inmates and immigrants, are less likely to be aware of their rights. There is a presumption of disempowerment among the more marginalized groups.

Assistance in dealing with suspension, termination or revocation of parole or statutory release, as well as assistance in lodging grievances and accessing the Correctional Investigator’s Office were also identified as particular needs. Respondents also argued that many complaints lodged with the Office of the Correctional Investigator (CI) need to make services better known and to hire more staff. Many complaints lodged with the CI do not get resolved.

As contact with families is linked to the will to successfully complete their sentences, respondents argued that not meeting the needs of families has a profound impact on inmates’ institutional behaviour and ability to cope, especially for federally sentenced women, but also for male inmates

There are few Aboriginal lawyers to meet the needs of Aboriginal inmates which is very unfortunate as there are “heavier degrees of dispossession, the more marginalized they are the less they know how to ask for help” and “the lack of knowledge is a key barrier given the high illiteracy rate”

Knowing rights and how to access legal aid is a big problem. To a certain extent the access problem relates literacy levels of inmates. (leave this section in – Ab)
Legal advice and assistance would be useful in mental health cases. In particular, assistance would be useful in explaining and obtaining legal consent for specific treatments, among other needs.



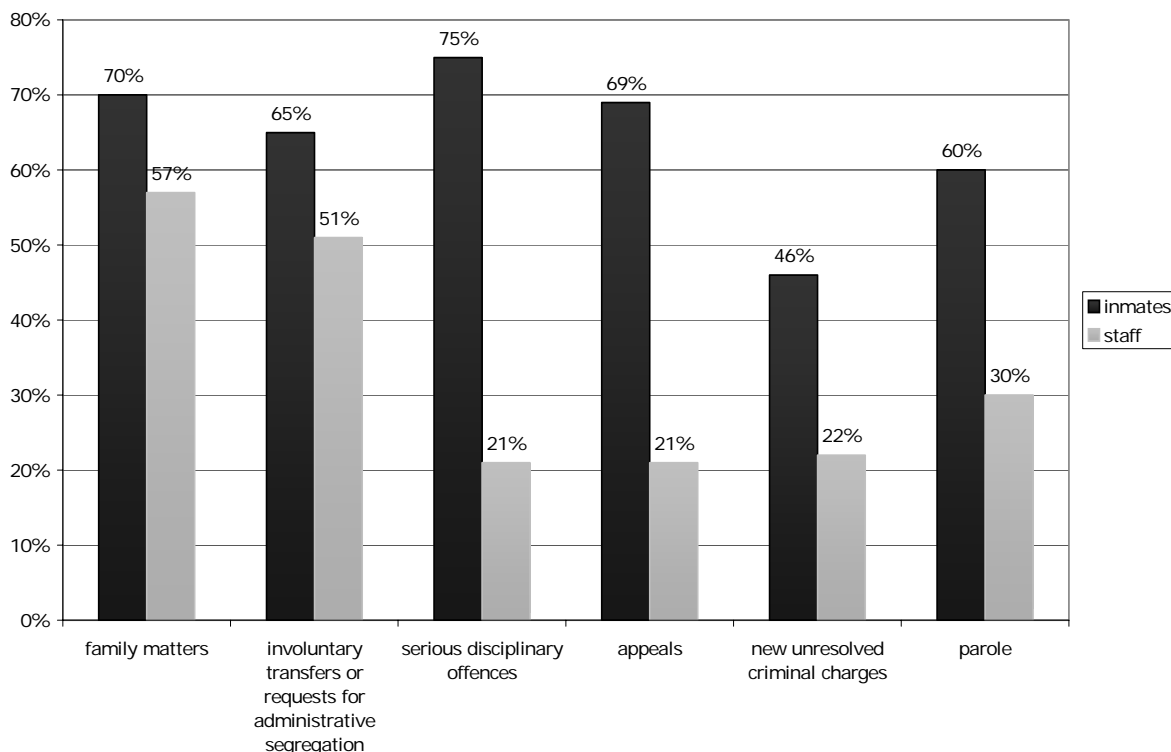
Part of the problem is viewed as “prisoners don’t have political capital”. They have no political lobby to advocate for rights that already exist but are not respected. The lack of funding for legal aid and the lack of availability of lawyers who will do prison law exacerbates the situation. Respondents indicate that there has not been enough research completed on this topic

All respondents indicated the need for more access to legal counsel than currently exists. A few cited the Prisoners Legal Services model that existed in B.C. prior to the cutbacks, as a good model. (However, the inmates interviewed in B.C. felt that Prison Legal Services were not that useful, based on their perception that they have always only taken cases that could result in further incarceration.) Others mentioned the need for staff lawyers directly placed in penitentiaries, along with a paralegal, perhaps in a Clinic setting. It was noted that after the introduction of Independent Chairpersons for disciplinary hearings, fewer cases went to trial. It is strongly believed by those respondents who mentioned this option that having a lawyer looking after legal needs would lead to better behaviour in institutions. There would be less frustration and powerlessness and “lawyers can settle things down, sort and focus issues and advise” clients. Their role, however, would not necessarily be limited to the solicitor/client relationship, as lawyers could also negotiate, mediate and find resourceful ways of resolving conflict, which could also assist staff in difficult situations. As a lot of inmates feel victimized by the system, this approach could help alleviate these feelings, and the inmates will feel that they have been “heard” by having a neutral assist them in problem-solving.

e) Comparison of Staff and Inmate Interviews

It has been a surprising finding to note the number of areas where staff and inmates share the same perceptions. Table 6 below compares the top five most common concerns of inmates and staff members.

Table 6 - Comparison of Top 5 Inmate & Staff Concerns



Although there were fewer staff members than inmates interviewed, and even fewer staff persons who chose to respond to the last questions, their responses, as for the top four concerns, are identical. Issues relating to conditional release were, in fact, the sixth top concern for staff. Inmates named it as number five. New unresolved criminal charges was also among the top concerns for inmates.

As well, there was complete consensus among staff respondents in the sample locations about the lack of, and need for, PLEI for inmates about legal rights. A number of staff respondents mentioned that PLEI for staff in this area would also be very useful.

As many inmate respondents indicated that the institutional “mentality” does not support rights, which is not surprising given their other responses about repercussions for those who do obtain lawyers, so too did a few staff members mention that they had observed this phenomenon. Both groups of respondents indicated that lawyers, in general, lack sufficient knowledge about prison law and both commented extensively about the lack of adequate service by legal aid. Difficulties inmates experience in accessing legal services were noted by some respondents from both groups. Comments also indicated a need for lawyers obtaining specialized understanding when dealing with Aboriginal inmates, as well as inmates who suffer from mental disorders.



Both groups of respondents expressed a desire for higher visibility for lawyers and that having a specific lawyer “designated” for each institution would go a long way in not only increasing the profile, but presumably in ensuring that these lawyers become specialized in prison law and can reduce delays. Reduced delays would also ensure that matters such as involuntary transfers, that need to be acted on swiftly, would be more likely to attract the necessary action within the required time frame.



5.0 Conclusions and Proposed Strategies for Improvement

Research findings are summarized according to the research questions included in the RFP as follows.

- *What are the needs for legal advice and related forms of legal information and support experienced by prisoners in federal penitentiaries and on conditional release?*

The needs of federal inmates for legal advice and related forms of legal information are predominately related to the following:

- i) Involuntary transfers to or requests for administrative segregation (s. 33 and 35 of the *CCRA*);
- ii) Serious disciplinary offences (ss. 40 - 44);
- iii) Urinalysis demands (s. 54 - 57);
- iv) Search and seizure, including strip searches;
- v) Parole (accelerated, day and full parole) (ss. 122 - 126.1);
- vi) Detention (ss. 129 - 131);
- vii) Suspension, termination or revocation of parole or statutory release (s. 135);
- viii) Suspension, arrest and charges regarding long-term supervision orders (s. 136.1);
- ix) Assistance in making grievances (s. 90);
- x) Assistance in complaining to the Correctional Investigator (ss. 170, 171);
- xi) Involuntary transfers to other institutions (s. 29, *Act*, s. 12, *Regs.*); and
- xii) Visiting privileges.

In addition, general public legal information and education is sorely needed in all institutions about legal aid criteria, rights under the *CCRA*, as well as the CSC policy framework for access to Legal Counsel.

- *What policies do Correctional Services Canada (CSC) and the penitentiaries in the study have concerning access to legal advice and related forms of legal information and support to prisoners? How are prisoners advised of the availability of such services?*

CD 084 defines access to legal counsel. Knowledge about the availability of legal assistance varies by institution, although generally, the information is not as widely available as would be desired. Some penitentiaries include information about access in their inmates' handbooks but

others do not. The lack of information about legal rights was noted by respondents in all of the institutions sampled for this research.

- *What are the mechanisms for requesting and accessing such services? What proportion of prisoners are denied access and for what reasons? Are these prisoners referred to other services and if so, what are they? What are the limitations of available alternatives?*

Mechanisms for accessing legal aid vary by institution and by jurisdiction. It is not known how many inmate applications are denied. However, many respondents indicated difficulty with access either due to eligibility or the lack of lawyers willing to work in prison law.

- *How does the penitentiary context impact on access to legal advice and related forms of support, and the level and quality of such services?*

The consensus was that the penitentiary context is generally not conducive to facilitating access to legal advice, although there are exceptions. There is a good deal of variation depending on the institution. No institution in the sample was found to offer a high quality of access or service, although many of the problems were attributed to the restrictions of respective legal aid plans.

- *What is the nature and extent of actual or potential unmet need? Which areas of law/issues should be targeted for an expansion of current or new services?*

Respondent identified unmet legal needs with respect to all types of legal matters. However, the greatest need was found to be in the area of serious disciplinary offences. Needs in the family law area were also deemed to be high, especially for FSW. Involuntary transfers and requests for administrative segregation were also identified as top inmate and staff concerns for improving legal aid services.

- *What, if any, are the financial staffing and other resources required to meet those needs at the institutional level? What are the considerations impacting on costs? To what extent do these vary by jurisdiction?*

The favoured option is to have lawyers provide a regular presence in all penitentiaries. The cost would likely be quite high. Although institutions would vary according to their need, i.e. Kingston penitentiary would likely need several lawyers while smaller institutions would only need a lawyer every week or two.

- *What are the possible consequences of not providing adequate services for prisoners as well as the correctional and justice systems?*

Both inmate and staff respondents expressed a high level of unmet need. Respondents indicated that access to legal counsel would likely result in better institutional behaviour due to lessened feelings of frustration and powerlessness among inmates. This in turn would lead to an improved ability among inmates to focus on their programming needs while incarcerated. Presently, as evidenced by respondents in this research, there are multiple problems associated with lack of



access to legal counsel including the fear of repercussions, in some institutions, against inmates who request access. This builds up resentment against “the system”, adding to any earlier perceptions of injustice on the part of some inmates. Poor institutional behaviour may often result from this frustration.

Conclusions about specific sub-groups in the penitentiary system are summarized as follows:

Federally Sentenced Women

Although family law was expressed as the major need for legal counsel by inmates and staff, it is particularly the case among federally sentenced women (FSW). It was reported that anxiety about children potential child apprehension, the need to resolve issues related to temporary or permanent custody and the whole range of other family law issues such as access can disrupt the focus on rehabilitation. As women tend to be the principal or sole caregivers for children, issues related to children tend to dominate during the period of imprisonment. As many FSW were involved in abusive relationships prior to their imprisonment, an added concern often can include the safety of the child during the mother’s absence. In the same vein, transfers away from family can also be problematic given the few locations across Canada where FSW are housed.

In addition to family law concerns, other issues include involuntary transfers, administrative segregation and need for legal counsel for serious disciplinary offences.

Issues Related to Mental Health

Respondents indicated a number of concerns specific to inmates with mental health problems. The major issue was about the need to explain and obtain legal consent for treatment to avoid the use of forced treatment, at times by the Emergency Response Teams. Inmates with mental disorders also need legal advice and support for disciplinary hearings. As one respondent explained, “they tend to be shy and don’t understand and automatically plead guilty to circumstances they don’t understand”. Finally, inmates with mental disorders need access to legal counsel during their annual or biannual reviews as required by the Criminal Code of Canada. Staff respondents working with these inmates expressed a desire for patient advocates as used in some of the provincial mental health systems.

Aboriginal Inmates

Aboriginal inmates tend to be among the most marginalized in the penitentiary system. In addition, Aboriginal inmates tend to experience significant illiteracy problems related to the general low educational attainment rate among Aboriginal peoples in general. As with FSW, the level of dispossession tends to result in inmates not knowing what questions to ask and assumptions that there is no entitlement to rights, including access to legal counsel.

Many Aboriginal respondents indicated that they need lawyers who have specific knowledge about the socio-economic conditions of Aboriginal peoples in order to have a better understanding of their specific needs while inside institutions. In addition, specialized knowledge about Aboriginal law was also deemed to be a desirable attribute among lawyers.

Lifers

Lifers are particularly affected by any actions which result in further loss of liberty through involuntary transfers and administrative segregation due to the longer spans of time they must spend in prisons. They also have special requirements such as the need for legal counsel for Faint Hope applications. Although they were viewed as being a pertinent group to become so-called “jailhouse lawyers”, and to provide a certain level of service within prisons, as previously reported, this idea was not popular among all types of respondents.

General Options for Consideration

In the vocabulary of rights there is a popular saying that there is no right if there is no remedy. In a similar vein, the Community Legal Association of Manitoba’s motto is: “unknown rights are not rights at all”. It would seem that both these sayings ring true when assessing the extent to which legal aid plans are able to provide adequate services for inmates to access the remedies, and to be aware of their rights.

As mentioned in the Introduction to this report, inmates are not only typically from the lower echelons of society but also live in an environment where legislation, policy directives and rules govern every aspect of their lives. Many inmate respondents spoke at length about instances of injustice where prison officials exercised discretion in a way that had a negative impact on their lives. They also spoke of their lack of understanding of what their rights are, and if they knew them, how difficult it is for them to be able to obtain access to legal aid. Some staff members also acknowledged these same difficulties.

This reality is even more grave given the legislative and regulatory framework that has evolved, particularly in the 90’s, as described in the section entitled: “The Legal Landscape and Penitentiaries in Canada”. Many of these same court cases have called for greater accountability and transparency on the part of CSC. Given the fact that principles of the Rule of Law, the Duty to Act Fairly and due process must be applied to the penitentiary environment, it would seem that improving access and quality of legal representation is long overdue.

The fact that this needs to happen was not denied by any of our respondents, although we can speculate that the lower number of staff respondents may indicate that only those who were at least somewhat supportive of this notion agreed to be interviewed.

In reviewing potential models for meeting the need and increasing the adequacy and quality of legal representation for inmates, the favoured model was “staff lawyers” or “designated lawyers for each institution.” The arguments for the regular presence of lawyers in federal institutions have been well articulated by respondents in this research study. Many spoke of the total control institutions have on inmates and perceptions of unfairness on the part of inmates and some staff.



Not one respondent was happy with the level of legal aid services anywhere. The needs were enumerated, are many, and solutions sorely lacking. But many said that having lawyers in the institution would improve institutional behaviour, decrease stress, violence and conflict within, decrease the feeling that justice systems, whether disciplinary or other, are stacked against inmates, and improve an inmate's ability to focus on himself or herself thus increasing the likelihood that inmates will more successfully integrate with society on their release and decrease recidivism. Some also mentioned the possibility that staff/inmate conflict would be reduced, enabling staff and senior managers in the institutions to focus on other pressing issues. One CSC respondent indicated that if these changes were made, there would likely be a backlash against them among CSC staff at first but that they would adjust, just as they did to the presence of Independent Chairpersons for disciplinary court when they were first introduced.

Due to the consistent feedback against the use of jailhouse lawyers and to some degree, paralegals working alone, they were not the favoured options for improving legal services for inmates. The idea of a national trust fund was also not favoured due to the difficulties inherent in the administration of it and reaching consensus about which cases would be funded. Respondents were not sure that adequate funding could be obtained through this method.

The two most favoured options were that of staff lawyers "to provide a regular presence" and developing relationship with law schools so that students could provide services under the supervision of their professors. This is essentially the clinic model that exists at the Correctional Law Project at Queen's University although respondents indicated that less service has been forthcoming of late due to the lack of student interest in prison law.¹²

In order to test the suitability of either staff lawyers or other methods to ensure a permanent presence in institutions, a number of Stakeholders, i.e. CSC respondents and prison law lawyers, suggested the avenue of pilot projects to test this model for the delivery of service. The objectives of the pilot projects were outlined to be:

- To test the consistent use of lawyers in five pilot sites;
- To reduce the time of CSC staff in court and other formal procedures;
- To produce cash savings by reducing the need for out of court settlements that often result in large cash payments by CSC;
- To resolve conflict before the use of court and tribunals is needed;
- To develop relationships with law schools, where appropriate, from increased student and professor involvement;
- To develop more effective processes than formalized court or other formal settings; and
- To identify funding sources after the pilot period.

It was suggested that five sites be selected to ensure a cross section of different types of inmates and to account for regional differences. The five sites suggested are: Dorchester; Montée St François; Grand Valley; Saskatchewan Penitentiary and Matsqui. It was suggested that cost savings in staff time and out of court settlements could eventually offset the cost of this

¹² As previously mentioned, this perception was not confirmed by data provided by the clinic director, which indicated that service levels had remained constant.

approach. As the number of trials dramatically dropped after the introduction of Independent Chairpersons for disciplinary hearings, it is also anticipated that increased access to legal counsel would result in substantial savings once this model is established.

This model also has the advantage of giving prison law a higher profile and creating a “critical mass” that will help that area of law to grow as is clearly very needed. It is assumed that rotation would be required to avoid perceptions that lawyers become part of the CSC environment and thus internalize that mentality, and rotation would also allow for supervision and choices for inmates. The inclusion of law students would again have the extra advantage of exposing law students to prison law and hopefully attracting some of them to pursue a career in it.

Interview respondents held different views on who should fund this model. Some respondents have suggested that it be cost shared by the Department of Justice Canada, because of its involvement in Legal Aid, and the Solicitor General Canada. However, it was felt that Correctional Services Canada should not be involved in funding legal services. Although CSC is a part of Solicitor General Canada, the fear of the perception that lawyers are biased because they are funded by CSC could be partly assuaged if the funding came from a different source within Solicitor General Canada. Other respondents felt that the ideal solution would be to have this service totally funded by provincial governments.

If the pilot projects cannot be established, at a minimum, PLEI organizations across Canada should be encouraged to provide legal information to federal inmates and also staff members. Another option would be for the legal aid plans to encourage a clinic approach with other universities like the Correctional Law Project In Kingston.

All respondents have clearly indicated the need for increasing the level and quality of legal services to federal inmates. Legislative and policy frameworks clearly outline the need to provide this service. It is hoped that funding will be made available, in whatever manner is possible, to at least increase access and quality of service, to provide basic legal information for inmates and hopefully CSC staff, and to develop partnerships with universities and also ideally to fund the pilot projects. Although there are competing demands on restricted legal aid dollars across the country, investing in the future of the federal incarcerated population will have long term benefits that we cannot yet anticipate.