

Independent Review of Ontario Corrections

Corrections in Ontario: Directions for Reform Released

Backgrounder (Toronto – October 3, 2017)

Dignity, respect and legality are integral to the delivery of correctional services. When paired with evidence-based correctional practice and the principles such as restraint in the use of state authority and a default to the least restrictive measure, the outcome is safe, effective correctional practice.

The report released today, *Corrections in Ontario: Directions for Reform*, examines Ontario's correctional law, policies and practices in light of the evidence of 'what works' in corrections and the underlying values of dignity, respect, and legality. Specific themes examined include:

- Human rights and correctional operations: searches, inmate complaints processes, visits and family supports, inmate trust accounts, and deaths in custody;
- Corrections and the presumption of innocence;
- Evidence-based correctional practice: initial intake, identifying and meeting programming needs, and gradual release and community integration;
- Indigenous people and Ontario corrections; and
- Health care service and governance in corrections.

Correctional Operations: An Exercise in Human Rights

Correctional institutions control the most basic aspects of an individual's life, and as such have the power to directly and dramatically impact human rights. Each and every operational decision made by correctional authorities must be infused with the values of respect, dignity, and legality. The report examines five operational areas that should clearly reflect these core values: searches, inmate complaints processes, visits and family supports, inmate trusts, and responding to deaths in custody:

- There is a clear need for a renewed legal and policy framework governing searches in Ontario correctional facilities that recognizes Charter rights as its starting point. Ontario law provides little guidance or limits on the wide range of searches that take place within its institutions. In fact, MCSCS policy requires Ontario's provincial correctional institutions to carry out regular, routine strip searches of inmates in circumstances that are specifically prohibited by laws in other jurisdictions.
- A fair and expeditious complaints process that allows inmates to raise concerns about improper or illegal treatment without fear of reprisal is a critical component of a rights-respecting correctional system. There is almost no law directing how inmate complaints are to be handled in Ontario, and what policy there is lacks clarity and coherence. When a written complaint is filed inmates are not generally given a copy and are not able to retain any written record of the complaint having been received, read, or dealt with.
- Canadian correctional policy has long recognized the importance of maintaining an inmate's connections with friends and family. The vast majority of visits between inmates and their loved ones in Ontario, however, are limited to 20- or 40-minute sessions during which visitors and inmates are physically separated by a barrier. The minimum number of visits set out in law has, in many institutions, become a de facto maximum. Although various jurisdictions in Canada have put in place specific programs to mitigate the impacts of incarceration on children and parents, including parent-child and mother-baby programs, Ontario has not followed suit. If a woman gives

birth while in Ontario custody she will be separated from her newborn as soon as she is medically cleared to leave the hospital.

- Correctional institutions are responsible for operating an Inmate Trust Account for each individual. While the ministry has leveraged technology to improve its ability to manage inmates' funds, friends and family members who wish to put money into an inmate's account must do so in person or by mail.
- The majority of deaths in custody in Ontario are not subject to a thorough, fully arms-length, and independent review. Even where this does take place, the extent to which the findings lead to system wide reflection or change is limited. There is also almost no direction given to institutions regarding the information and supports that should be provided to families whose loved ones have died.

Corrections and the presumption of innocence

Most of the people behind bars in Ontario's provincial institutions are legally innocent, awaiting trial or a determination of their bail. The treatment of the remand population should accord with their legal status: innocent. Instead, ministry policy and practice require that pre-trial detainees be held under highly restrictive conditions of confinement, regardless of their individual circumstances. Currently in Ontario, almost all remand inmates are presumptively classified as maximum security and held under maximum security conditions. Maximum security classification also means that many remand inmates have limited access to programs and other activities. Moreover, despite clear legislative authority for superintendents or the Ontario Parole Board to grant any inmate permission to temporarily leave an institution for medical, humanitarian, or rehabilitative purposes, ministry policy significantly restricts this discretion.

The treatment of immigration detainees also raises concerns. Immigration detainees face indefinite periods of detention in maximum security settings where they are regularly strip searched, confined to their cells, and can receive only limited personal visits. Only one institution has dedicated units for immigration holds; in all other institutions, contrary to international standards, immigration detainees are held on units with other inmate populations.

Evidence-based Correctional Practice

There are decades of research and evidence about what works in corrections. An effective, evidence-based and humane correctional system must deploy evidence-based targeted rehabilitative interventions and provide individuals with linkages to necessary social services.

A thorough and careful intake process is a crucial first step in fulfilling the correctional system's mandate to provide appropriate care and custody. For the majority of individuals Ontario's institutional intake and admissions process captures only the most basic personal information and the vast majority of inmates in Ontario do not have access to effective discharge planning. Ontario does not have a province-wide institutional security risk assessment tool. Almost all inmates are placed in maximum security by default. Unlike other provinces, almost all Ontario institutions are maximum security: the province has no minimum-security institutions and the only designated medium-security institution is a specialized treatment facility.

Temporary absences can be powerful tools to decrease reliance on incarceration and facilitate an individual's successful reintegration into the community. Despite supportive evidence, Ontario has dramatically decreased its use of temporary absences over the past few decades. The majority of inmates in Ontario institutions are being held on remand status and are therefore ineligible by policy for most temporary absences. Historically Ontario's parole system has played an important role in reintegration. Starting in 1993, however, there was a dramatic decline in the number of people

granted parole, and within 10 years the number of parolees in the province had dropped by 91.8%. Parole numbers never recovered, and today only about one out of a hundred of Ontario's provincially-sentenced inmates will be released on parole. A 2015 Mandate Review of the Ontario Parole Board highlighted unnecessary risk aversion and concluded that in recent years the board has not been effectively carrying out its mandate. As a result, offenders were not being granted parole even when doing so would have facilitated their rehabilitation without an undue risk to society.

Indigenous People and Ontario Corrections

Indigenous people account for approximately 2% of the total population in Ontario and yet in 2016 represented 13% of those in provincial custody. The over-representation of Indigenous peoples in the correctional system has been well documented. The current organizational structure for addressing Indigenous issues within corrections, however, has limitations, and recommendations that the ministry create a permanent, central Indigenous unit have not been implemented. Although the Truth and Reconciliation Commission's findings and Calls to Action have breathed new life into efforts to meaningfully address systemic discrimination within corrections, much work is left to be done. Considerations regarding the circumstances of Indigenous people and the ongoing impacts of colonialism and systemic discrimination in the justice system must be proactively applied to decision-making processes within corrections. Despite clear legal decisions specifying that Gladue principles apply whenever an Indigenous person's liberty is at stake, it is unclear when and how Gladue principles are actually taken into consideration in the Ontario correctional context.

It is questionable whether, in the absence of a central and permanent Indigenous Division with dedicated, high ranking leadership and decision-making authority, the necessary fundamental change will occur.

Health Care Service and Government

Despite laudable effort on the part of the clinical professionals working in corrections, Ontario struggles to meet the complex health needs of the incarcerated population. Important gaps exist in the health care services provided in provincial correctional facilities, with health care provision in some instances falling below community standards. At least part of the problem in Ontario can be traced to the current governance and service delivery structure. In Ontario the Ministry of Health and Long-Term Care is responsible for the vast majority of health care in the province. For the adult correctional population, however, responsibility for health care accrues to MCSCS, a ministry whose principal mandates lie in community safety and correctional services, not health. The Government of Ontario has recognized the need for change in the way health care is provided in its correctional facilities. This is a welcome and encouraging development that should be pursued on a priority basis.

Recommendations

The report contains 62 recommendations that aim to enhance rights-respecting, evidence-based correctional practice as well as increase community safety through a more responsible, more effective correctional system. Key recommendations include:

- The introduction of a new Corrections Act for Ontario that is structured around recognition of individual dignity and human rights;
- Recommendations to align law, policy and practice with key principles such as the presumption of innocence and a requirement to use the least restrictive measures;
- Introducing legislative provisions and policy changes that will provide for appropriate in-custody service and discharge planning;
- That the ministry put in place the appropriate resources and supports to ensure that evidence-based rehabilitative programs are routinely scheduled and consistently available within institutions

and in the community;

- Expanded access to and use of temporary absences and provincial parole through legislative and policy changes;
- The creation of a high-level, centralized Indigenous Policy and Programs Division within Correctional Services;
- Working with Indigenous communities to create and utilize Healing Lodges to enhance community supports and reduce recidivism; and
- A recommendation that the Government of Ontario clearly articulate a commitment to transfer responsibility for provision of health care within correctional institutions to the Ministry of Health and Long-Term Care.

The Independent Review of Ontario Corrections (IROC) provides arm's length advice and recommendations on reforming Ontario's adult correctional system. IROC's activities are independent of the government and guided by public **Terms of Reference**.

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