



Corrections in Ontario

Directions for Reform

Independent Review of Ontario Corrections

September 2017

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PREFACE

Dignity. Respect. Legality. These values are integral to the delivery of correctional services. When paired with 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. Much has been written about the relationship between how people are treated and how they behave. Time and again the conclusion is the same – you reap what you sow. If the purpose of corrections is to contribute to a peaceful and just society by assisting those in conflict with the law to learn to live within it, then the work of corrections must be done in a way that models ethical, legal and fair behaviour.

Another way of saying this is corrections is all about human rights. In our free and democratic society, liberty is one of the most protected and valued rights. Our rights to free movement and association, coupled with the protection from arbitrary interference with these rights, are enshrined in our constitution. International standards, the *Canadian Charter of Rights and Freedoms* and our courts are clear: individuals in conflict with the law retain all rights other than those necessarily limited by lawfully imposed restrictions or sanctions.

Public safety is the outcome of a criminal justice process that is focused on fair, proportionate responses to crime. The chances of achieving this outcome are greatly enhanced when every component of our justice system plays its part in a coordinated way, reinforcing the principles and values that define our society. This means that corrections, where perhaps the greatest risk of excessive use of power and state control exist, must be constantly vigilant to minimize this risk.

This report follows these themes. Within these pages, I identify some key areas of correctional practice that, when done right, amplify a commitment to human rights. The areas of practice are not exhaustive, nor are they meant to be. Not all of the issues examined are big and complex. Sometimes it is important to sweat the small stuff. Getting small problems fixed can help prevent big problems, or at the very least, mitigate the impacts of larger concerns. The recommended changes and enhancements can be thought of as springboards or levers. For example, getting family engagement right automatically means a number of other practices, such as information sharing, respectful visiting practices, and management and security routines, will change. Better defining search policy will impact attitudes about other inmate-staff interactions. There will not be a “mission accomplished” moment after which we can say the job is done. Ensuring fair, safe, and humane corrections requires commitment every day.

- Howard Sapers, Independent Advisor

EXECUTIVE SUMMARY

The present report provides a targeted examination of select correctional practices in Ontario. In each section I reflect on Ontario law, policies and practices in light of the evidence of ‘what works’ in corrections and the underlying values of dignity, respect, and legality. The report contains 62 recommendations under the following themes:

- Human rights and correctional operations;
- Corrections and the presumption of innocence;
- Evidence-based correctional practice;
- 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. This 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.

Searches

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.

Compared to other Canadian jurisdictions, Ontario law imposes few limits on a wide range of institutional searches. Most inmate correspondence, for example, is subject to random interception and search, regardless of whether there is any reasonable belief that the communication conveys evidence of a crime or a security threat. Superintendents are granted broad authority to delete or refuse to send inmate correspondence. Despite the fact that Ontario law and policy does not permit censorship of letters to a range of elected representatives, inmates are told that this correspondence will be checked and returned to them if it contains, in the subjective opinion of the censor, “bad language,” or “unsuitable content.”

The use of strip searches in Ontario’s institutions is particularly troubling. The *Canadian Charter of Rights and Freedoms* strictly limits the use of strip searches due to their inherently humiliating and degrading nature, and most jurisdictions in Canada have legislative provisions that limit the use of these searches in correctional institutions. Ontario does not. In fact, ministry policy requires Ontario’s correctional institutions to carry out regular, routine strip

searches of all inmates on a bi-weekly basis. Policy also requires segregation cells to be searched daily, and states that inmates must be strip searched when a cell search occurs.

Inmate Complaints Processes

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.

Establishing such a grievance system requires clear legislation and policy guidance. Unfortunately, there is almost no law directing how inmate complaints are to be handled in Ontario. There are a variety of internal ministry policies relevant to handling complaints, however, these policies lack clarity and coherence and do not align with the information provided to inmates regarding the complaints process. Most institutions do not have dedicated complaint forms, and 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. Despite the fact that policy specifically directs that verbal complaints must be logged in writing, this rarely occurs.

The vast majority of inmate complaints are not centrally collected or tracked either at the institutional or corporate level. At the institutional level, the entire system depends on individual slips of paper being handed to individual correctional officers who must pass on these pieces of paper to the appropriate individual manager. This makes it impossible for senior administrators to perform any type of trend analysis or use the information to identify areas of systemic concern. Although correspondence directed to the highest levels of the ministry is tracked for administrative purposes, there is no analysis conducted on the subject, source, outcome, or volume of inmate complaints.

In my *Segregation in Ontario* report, I introduced the notion of an independent corrections inspectorate to enhance the oversight of the province's correctional system. Quickly moving forward with this recommendation would provide a means to improve accountability for addressing issues that are repeatedly raised about the existing inmate complaints process in particular and overall policy compliance more broadly.

Visits and Family Support

Canadian correctional policy has long recognized the importance of maintaining an inmate's connections with friends and family. Correctional institutions in Canada and around the world have put in place a range of measures to help facilitate family contact and support, including child-friendly play spaces, open visiting areas that allow for barrier-free interactions, private family visiting accommodations for longer stays, and mother-child programs that prevent the separation of mothers and young children.

Ontario's correctional institutions offer almost none of these opportunities. The vast majority of visits between inmates and their loved ones in Ontario are limited to 20- or 40-minute sessions during which visitors and inmates are physically separated by a barrier. Ministry policy states that "in maximum security institutions, including jails and detention centres, open visits are not routinely approved"; 25 of the ministry's 26 correctional institutions are classified as maximum security. In many institutions, the visit areas are cramped and offer only closely spaced side-by-side fixed stools for both the inmate and the visitor. This makes it difficult and uncomfortable for children, the elderly, or those with mobility issues to visit and provides absolutely no privacy. The momentum in Ontario in recent years has been to decrease in-person visiting: Ontario's two newest institutions have almost completely replaced in-person visits with remote video visitation.

Ontario has no mother-child programs, limited prenatal and postpartum support, and inadequate policy about issues as basic as breast feeding. Women who give birth while provincially incarcerated will be separated from their newborns as soon as they are medically cleared to leave hospital.

Inmate Trust Accounts

Inmates must surrender all personal property in their possession – including money – to the superintendent upon admission. The institution is responsible for operating an Inmate Trust Account for each individual; money in this account can be used to purchase personal items from the institutional canteen on a weekly basis. Traditionally the process of receiving money has been labour-intensive and prone to human error. While the ministry has leveraged technology to improve its ability to manage inmates' funds, inmates themselves cannot deposit money. There is no way to set up automatic deposits, and friends and family members who wish to put money into an inmate's account must do so in person or by mail. Numerous provinces have established systems whereby individuals can deposit money into inmates' accounts remotely over the internet or through community-based kiosks. While these systems are not without their flaws (concerns have been raised regarding the appropriate and convenient placement of kiosks, high user fees, and timely servicing of equipment), they represent an improvement over the status quo in Ontario.

Deaths in Custody

Over 150 people have died in Ontario's correctional institutions over the past decade. A responsible and responsive correctional system must treat every death in custody as both a tragedy and an opportunity to prevent similar deaths in the future.

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 systemic reflection or change is limited. Aside from specific ministry-wide policy updates that

might flow from individual inquests there is no process that allows for the identification of broader trends, analysis, or shared learning between institutions.

The Office of the Chief Coroner is required to investigate the circumstances of every death that occurs when an individual is in the custody of a correctional officer and must hold a full inquest if, as a result of the investigation, the coroner is of the opinion that the person may not have died of natural causes. In 2009, the *Coroners Act* was amended to remove the requirement for a mandatory inquest in cases of in-custody natural deaths. This has left a significant gap in the oversight of inmate deaths within Ontario's correctional institutions.

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. Ministry policy and memoranda provide conflicting directions regarding whether superintendents must contact the next of kin when an inmate dies. There are no ministry directions, resources, or policies regarding a number of other relevant issues, including funeral, burial, or cremation costs.

Finally, the Independent Review Team was unable to find definitive figures on the number of individuals who have died while in custody in Ontario. The legislative definitions of a death in custody are narrow, and there are a variety of circumstances where the ministry and the Office of the Chief Coroner consider that an inmate death is not a death in custody.

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. On any given day in 2015/16 two-thirds of Ontario's incarcerated population was on remand. Despite dropping crime rates and declining crime severity, the rate of pre-trial detention in Ontario has seen a long-term increase, rising by 137% over the past 30 years.

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 – and ultimately punitive – 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. Escorted temporary absences for remand inmates will only be considered “for medical or humanitarian reasons or other exceptional circumstances.” Unescorted absences are even more limited: they are only available if the remand inmate is on life support.

The treatment of immigration detainees also raises concerns. In 2016/17, there were over 1200 immigration admissions to Ontario's provincial correctional institutions. Despite not having been accused or convicted of any crime, 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. Maintaining contact with family members overseas can be difficult: long distance overseas calls are not generally permitted. At least one institution excludes immigration detainees facing deportation from participating in work programs and ministry policy significantly restricts immigration detainees' access to temporary absences. 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 targeted rehabilitative interventions based upon the principle of restraint and provide individuals with linkages to necessary social services. This report explores three areas of correctional practice: initial intake to institutions and community supervision, identifying and meeting programming needs, and gradual release and community integration.

Initial Intake to Institutions and Community Supervision

A thorough and careful intake process is a crucial first step in fulfilling the correctional system's mandate to provide appropriate care and custody. Every new admission must be subject to an individualized security risk assessment so that institutional placement and community supervision decisions can accord with the principle of restraint. The intake process must also identify the services an individual will need while under supervision or in custody.

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 medium-security institution is a specialized treatment facility.

The institutional intake process should also serve as the start of wrap-around service provision and discharge planning. For the majority of individuals, however, Ontario's institutional intake and admissions process captures only the most basic personal information. Placement on specialized units, including mental health units, special needs units and segregation, is often based on personal intuition and unverified information from previous custodial terms, a process that can easily reinforce stereotypes and result in both individualized and systemic discrimination. The vast majority of inmates in Ontario do not have access to effective

discharge planning. Discharge planning services are not consistently provided and, where available, vary in their quality and form.

While the intake process for those supervised in the community is better, there are instances where policy or law applies mandatory conditions or supervision requirements that do not align with evidence-based practice or the use of least restrictive measures. Conditions and levels of supervision should be responsive to individualized risk assessments, not blanket policy prescriptions.

Identifying and Meeting Programming Needs

Ensuring access to appropriate programming is a critical component of evidence-based correctional practice. General programs and activities – education, recreation, and work opportunities, for example – should be open to all. More intensive rehabilitative programs and interventions, however, must be carefully targeted. Evidence shows that providing this type of rehabilitative programming to individuals who do not present a significant risk to reoffend actually decreases their likelihood of successfully exiting the criminal justice system.

In Ontario participation in generalized programs is hampered by inconsistent availability and delivery. There is little dedicated funding for either staff or materials. The majority of general programs are run by community service providers, organizations, and volunteers who are usually required to supply the personnel, programming content, and any necessary supplies. Often, there is inadequate program space in institutions. Programing may be offered in hallways, chapels, “multi-purpose rooms”, converted cells, gymnasiums, or, most troubling, inside of wire mesh enclosures. Even when there is purpose built space, the space is subject to being “re-purposed” for pressing operational and administrative needs.

Programs can be cancelled or interrupted on short notice due to “operational requirements”. It is uncommon for a full slate of programs to be run on a firm or recurring schedule and neither inmates nor the staff can typically predict when a program will be offered. Ministry policy itself is a barrier for remand inmates and immigration detainees who collectively represent the majority of inmates. These populations are presumptively ineligible for custodial work opportunities and community programming.

For those who have higher risk profiles and are subject to longer custodial or community supervision terms, rehabilitative programming should be a core component of their sentence. Ontario’s correctional institutions, however, do not offer a full range of rehabilitative programming, and the vast majority of inmates are not being proactively provided with individualized information regarding which programs would be most appropriate for their participation. Individuals supervised within the community do have personalized programming plans. However, program access is uneven and gaps exist for those with complex needs.

The ministry has recently taken steps to reinforce effective and evidence-based community supervision by initiating the Strategic Training Initiative in Community Supervision program. It is encouraging that the province is investing in evidence-based practices and supporting staff in delivering services.

Gradual Release and Community Integration

Most individuals under the jurisdiction of Ontario's correctional system are supervised in the community. Of those who are incarcerated, the vast majority will be returning to their home communities within a matter of months, if not days. Even the briefest stay in custody, however, can result in a range of collateral consequences including loss of employment, loss of housing, missed medication and medical follow up, and the need for emergency care of dependents. All individuals who are incarcerated should be offered support to mitigate these impacts during custody and upon their release. For those subject to medium- to longer-terms of incarceration, the return to the community should be both gradual and supported.

Ontario's correctional system has a variety of tools that it could be using to enhance connections with the community and to provide for gradual, supported release. For example, inmates can be granted temporary absences from institutions to assist with their rehabilitation or for humanitarian or medical reasons. Despite the evidence of their utility, Ontario has dramatically decreased its use of temporary absences over the past few decades. In 1991/92 about 25,000 Ontario provincial inmates were granted temporary absences – a figure that dropped to 8481 in 2016. The vast majority of the temporary absences that occur in Ontario's correctional system are for medical reasons, not for rehabilitation.

There are a number of structural factors that may be contributing to the low use of temporary absences. First, despite the broad legislative authority and wide range of possible purposes for temporary absences, ministry policy significantly restricts inmate eligibility. The process surrounding temporary absence applications and reviews also represents a significant barrier. With the exception of medical temporary absences, the inmate normally bears responsibility for initiating the temporary absence process, including compiling the extensive supporting information required by the ministry or the Ontario Parole Board. In addition, the timelines for compiling and reviewing these applications are often longer than an individual's time in custody.

Parole, which allows for the early release of a sentenced, incarcerated inmate subject to conditions and supervision, has traditionally been a cornerstone of gradual, structured release and reintegration. Throughout the 1980s and early 1990s, average supervision counts ranged between 1200 and 1800 parolees per month. Starting in 1993, however, there was a dramatic decline in the number of people being granted parole, and within 10 years the number of

parolees in the province had dropped by 91.8%. Parole numbers never recovered: in 2015, an average of 207 individuals a month were supervised on Ontario provincial parole.

There are legislative provisions that appear to be designed to move individuals out of correctional institutions and into supervised parole release. Unfortunately, they are not working as intended. There is a mandatory legal obligation to determine whether parole would be appropriate for all inmates sentenced to six months or more. Although inmates can waive their right to a parole board hearing, this does not alleviate the duty of the board to determine the inmate's parole suitability. The Ontario Parole Board has not been conducting these proactive parole reviews and the ministry has not been forwarding the supporting information. Instead, board policy directs that if an inmate signs a hearing waiver, refuses to sign a waiver, or refuses to appear at the hearing, communicate with the board or relevant institutional staff, all parole consideration activity ceases.

The procedural fairness of Ontario's parole process is also a concern. The parole board is expected to provide written reasons for a decision as a basic component of procedural fairness. Parole applicants, however, are only given a "brief decision document" that does not include a full rationale for the parole decision. There are also concerns regarding whether the information placed before the board prior to a hearing is shared with the inmate – another core requirement of constitutional procedural fairness guarantees.

Parole procedure creates obstacles to timely gradual release. There are outstanding issues regarding the quality, timeliness and completeness of information placed before the Ontario Parole Board. The supports provided to inmates in the parole application process are inadequate. The expectation that inmates will be able to arrange and appropriately document a comprehensive release plan – from inside a correctional institution and within a short timeframe – is unrealistic. The timelines associated with preparing and reviewing parole applications are also a significant barrier: the majority of inmates will be released before they can even have a parole hearing.

The parole board has recognized many of these significant concerns and has initiated conversations with the Ministry of Community Safety and Correctional Services as well as the Ministry of the Attorney General to ensure it has the required information and resources to properly fulfill its statutory mandate. New resources and a firm commitment to transformation will be required to ensure provincial parole in Ontario fulfills its role in supporting gradual release, reintegration and community safety.

A variety of community resources could be leveraged to increase the use of temporary absences and parole, and to assist with release and reintegration. In the 1990s the ministry funded a number of "Community Resource Centres" which operated as halfway houses. These

community facilities were closed in the mid-1990s. Despite numerous recommendations for their reintroduction, the ministry has not taken any concrete steps in this direction.

The ministry has concluded a number of Community Residential Agreements (CRAs) with community agencies to provide housing and residential treatment or programming for inmates and community-supervised clients. Space at these facilities, however, is extremely limited. The few spaces that do exist are used almost exclusively by individuals who are already being supervised in the community. A wide range of community organizations, programs, and services have a wealth of experience assisting at-risk, marginalized populations. Ontario's correctional system could significantly increase its integration with existing community services and programs, enhancing rehabilitation, service provision, continuity of care and public safety.

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 and is just one symptom of centuries of colonialism and discrimination.

Although the Truth and Reconciliation Commission's (TRC) 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. The specific commitments made by Ontario's Correctional Services in response to the TRC focus exclusively on service delivery for Indigenous inmates and those under community supervision. The TRC's findings and Calls to Action regarding Indigenous peoples and the correctional system went much further than simply embedding Indigenous services and supports, and included calls to eliminate the overrepresentation of Indigenous people in custody, create additional Indigenous healing lodges and increase supports for Indigenous programming in halfway houses and parole services. While some of the Calls to Action are directly aimed at the federal government, they remain relevant to provincial corrections and should be considered as Ontario moves forward with modernization of the provincial system.

All recommendations in this Report must be examined through an Indigenous lens to identify particular barriers and measures to mitigate their impact on Indigenous individuals. Considerations regarding the circumstances of Indigenous people and the ongoing impacts of colonialism and systemic discrimination in the justice system must also be proactively applied to decision-making processes within corrections. In the 1999 decision *R v. Gladue*, the Supreme Court of Canada directed courts to pay attention to the particular circumstances of Aboriginal offenders in all sentencing decisions. 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 factors are actually taken into consideration in the Ontario correctional context.

The current organizational structure for addressing Indigenous issues within corrections has limitations. Recommendations that the ministry create a permanent, central Indigenous unit have not been implemented. 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.

Native Inmate Liaison Officers (NILOs) provide services to Indigenous inmates within correctional institutions. These positions, however, are not consistently staffed and NILO caseloads vary considerably across institutions. Interviewees reported that NILOs carry heavy caseloads, receive little training, relatively low pay, operate without back-up staff to cover vacation or sick days, and have little to no administrative support. Policy differences between NILOs' employers (often community organizations) and the ministry can undermine the underlying rationale for engaging external service providers in the first place.

Outside of institutions, the ministry contracts with individuals and First Nations communities to employ Community Correctional Workers (CCWs) who assist with community supervision in remote areas. There is no ministry policy outlining the role, responsibilities, or functions of CCWs, and the terms and conditions of the individual CCW contracts vary significantly. There are also significant staffing challenges: of the 44 available CCW positions in the Northern Region, only 18 (41%) are currently filled.

Health Care Service and Governance

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 the standards available in the community. The system is largely reactive, geared mainly at addressing the most acute and urgent medical conditions. At its root, it is a system that views health care as merely one among a number of services or programs offered to inmates, rather than as an essential right and a distinct government obligation.

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 (MOHLTC) 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. There is an international and academic consensus that the responsibility for health care in correctional facilities must rest with the government authority in charge of health. Many jurisdictions

around the world, including four provinces in Canada, have moved to transition responsibility for health care in their correctional facilities to their respective health authorities.

Reforming health services for this population and transitioning responsibilities to the MOHLTC is a complex, multi-step process. The relevant question, however, is not whether this should occur, but how. Ontario needs to clearly articulate a high level commitment to this transfer, set out a clear path to mapping the new system design, and develop a phased implementation plan.

Any proposed governance and service delivery models should be evaluated against their ability to provide a principled, health-focused approach to care in corrections and an enhanced accountability structure. Key principles against which proposed models must be measured include:

1. A broad definition of health and health care;
2. Ensuring equivalency, accessibility and continuity of care;
3. Clinical independence;
4. Integration with the provincial health care system;
5. Robust accountability mechanisms; and
6. A stable, health-focused employment environment for health care service providers within corrections.

My preliminary review of the models identified to date suggests that some level of centralized governance through the MOHLTC will be necessary. Ultimately, however, this is a decision that will necessitate broader and more in-depth consultation, study and research. The need for more reflection and study, however, should not unduly delay progress.

I. MANDATE AND METHODOLOGY

I commenced my appointment as the Ontario Independent Advisor on Corrections Reform on January 1, 2017. My mandate, outlined in the Terms of Reference, is three fold:

- To provide a report with advice and recommendations on immediate steps that can be taken with respect to the use of segregation;
- To provide a second report on further segregation reform as well as reform of Ontario adult corrections more broadly; and
- To work with the ministry on developing a phased implementation plan.

In May 2017, I released my first report, *Segregation in Ontario*. It addressed many issues surrounding segregation policy and practice and provided the Ministry of Community Safety and Correctional Services (MCSCS) with recommendations on ways to implement and create change. When the Government of Ontario responded to my 63 segregation focused recommendations on May 4, 2017, it committed to, amongst other things, a new Correctional Services Act. I provided a working draft Act and a background document in late spring 2017 to help inform the legislative drafting process.

This draft included the following principles:

- (a) the protection of society is the paramount consideration in the corrections process;
- (b) correctional policies, programs, practices and decisions respect gender, gender identity, ethnic, cultural and linguistic differences; are responsive to the special and specific social reintegration needs of women, individuals' caretaking responsibilities, Indigenous peoples, persons requiring mental health care and other *Human Rights Code* identified groups; and accommodate persons with disabilities and other *Human Rights Code*-related needs;
- (c) all decisions, laws, policies and rules are made or applied without any discrimination on the grounds of race, ethnic origin, sex, gender orientation, age, language, religion or other ground protected by the Ontario *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*;
- (d) the corrections process is carried out having regard to all relevant available information, including the stated reasons and recommendations of the court, information from the trial or sentencing process, the release policies of and comments from the Ontario Parole Board and information obtained from victims, inmates, offenders and other components of the criminal justice system;
- (e) inmates and offenders are individually screened and, where appropriate, assessed at intake, and a custodial and release plan is developed with them;

- (f) Ontario's Correctional Services use the least restrictive measures consistent with the protection of society, staff members, inmates, and offenders that are limited to only what is necessary and proportionate, with particular attention to the circumstances of Indigenous inmates and offenders;
- (g) inmates and offenders retain the rights and privileges of all members of society except those that are necessarily removed or restricted as a consequence of confinement or sentence;
- (h) inmates (those in pre-trial custody) are presumed to be innocent and shall be treated as such;
- (i) Ontario's Correctional Services enhances its effectiveness and openness through the timely exchange of relevant information with victims, inmates, offenders and other components of the criminal justice system and through communication about its correctional policies and programs to victims, inmates, offenders and the public;
- (j) offenders and inmates are clearly informed about any punishment or measure being imposed before the sanction begins, including the nature and purpose of the sanction and the conditions or obligations that must be respected; this must occur in a language the offender or inmate understands and, if necessary, in writing;
- (k) Ontario's Correctional Services facilitates the involvement of members of the public in matters relating to the operations of Ontario's Correctional Services;
- (l) correctional decisions are made in a procedurally fair manner, with access by the inmate and offender to an effective grievance procedure;
- (m) inmates and offenders are expected to obey institutional rules and conditions governing conditional release and, in the case of offenders, to actively participate in meeting the objectives of their correctional plans, including by participating in programs designed to promote their rehabilitation and reintegration; and
- (n) employees are properly selected and trained and are given
 - (i) appropriate career development opportunities;
 - (ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity; and
 - (iii) opportunities to participate in the development of correctional policies and programs.

The present report is based upon a targeted examination of select correctional practices in Ontario. The Independent Review Team employed a variety of methods to gather information

for this report. Institutions were toured and informal discussions with staff were held. We conducted both paper-based reviews of ministry and government materials as well as in-person interviews with ministry staff and stakeholders. Documents were requested, reviewed and retrieved from the ministry's mission statements, reports, studies, overviews, budgets, surveys, and policy and procedures handbooks. Ministry statistics were reviewed by members of the Independent Review Team as well as contracted experts in the field. Many external organizations and individual members of the public contacted the office of the Independent Review of Ontario Corrections to provide written submissions and present their concerns about the current state of the correctional system. Not every important topic could be addressed in this report. Issues were selected based upon our judgment about how illustrative they were of the broader reform that needs to occur and how well they aligned with our mandate and timeframes.

Once again, I was fortunate to have the cooperation of colleagues across the country. Many thanks to the Indigenous leaders and correctional and health professionals in Newfoundland and Labrador, Manitoba, Yukon, Ontario, British Columbia, Alberta and the federal public sector who generously gave their time and shared information.

II. CONTEXT AND BACKGROUND

Much has changed since early theories about crime and punishment shaped our justice policy. The late 18th and early 19th century philosophers whose work created the foundation of deterrence theory may well be amazed that any of their thinking continues to be reflected in modern responses to criminal behaviour. The rise of evidence-based practice has caused earlier assumptions to be challenged and some once bedrock policies and practices to be abandoned. This is not to say that all the riddles about human behaviour have been solved and that criminal justice is an entirely scientific pursuit. What our new knowledge does allow for is justice serving organizations to become learning organizations that integrate evidence into practice. This means that the best criminal justice interventions are increasingly based upon well-defined outcomes and measurements tied to clearly articulated policy goals.

Informed, evidenced-based responses to crime must also go hand in hand with the principle of legality and a fundamental respect for the dignity and rights of all persons. Unfortunately, evidence-based practice and a focus on core principles have not always flowed from rhetoric to practice. Persons housed in correctional institutions do not always experience humane treatment or conditions of confinement.¹ Messages about being tough on crime and a focus on the security side of corrections have resulted in disproportionate attention paid to securely keeping people in custody rather than how to best keep them out.

Legality requires that a correctional system embraces and upholds the rule of law. Correctional staff derives authority from the law and are sworn to act within it. Simply put, both correctional clients and correctional workers are expected to respect the law. Decisions must not be arbitrary and are to be made in a transparent and fair manner. There must be a commitment to effective oversight and accountability to ensure compliance and fairness. The correctional system must also contend with the presumption of innocence, and recognize that different considerations apply to remanded and other non-sentenced people in custody.

The principle of restraint requires that every decision within a correctional system must be made with the imperative that it be the least restrictive measure possible to achieve the desired goal. This principle is informed both by the law and by the evidence on effective correctional practice. There are numerous broad conclusions that flow from this principle. All areas of the correctional system should be focused on transitioning individuals into the community as soon as possible, with the supports and supervision necessary to ensure public safety and successful reintegration. Expanding access to community supervision, programs and services – for both those serving a sentence in institutions and in the community – should be a primary focus. As contemplated in the *Criminal Code*, incarceration must be used as a measure

¹ Alison Liebling, “Moral performance, inhuman and degrading treatment and prison pain,” *Punishment & Society* 13, no. 5 (2011) at 534.

of last resort, and within institutions individuals should be subject to the least restrictive setting possible. If an individual needs to be incarcerated, services and programming should occur within as normalized a setting as possible, including the use of community-based services.

Finally, respect for individual dignity and human rights must flow through all correctional laws, policies and actions. Imprisonment of course limits liberty and places certain restrictions on freedom of association, expression and assembly, but it does not mean total deprivation or absolute forfeiture of rights. Correctional authorities must be held to account in the daily exercise of care and control of inmates to ensure that basic rights and liberties such as the right to safety and security of the person, and the right to be treated humanely and be free from torture, degrading, or inhuman punishment are preserved behind prison walls. Correctional practices, like the democracies behind them, require an ongoing commitment to both accountability and transparency.

Making all this work requires clear and well drafted law, a carefully crafted regulatory and policy framework, adequate and modern technologically supported infrastructure, a flexible and realistic staffing model, and appropriate funding.

Legislation and policy, however, are not enough. Ultimately, staff-inmate relationships “lie at the heart of the prison system.”² How an institution ‘feels’ is largely shaped by the daily interactions that occur within it,³ and staff-inmate relationships often serve as the main source of human interaction for the incarcerated.⁴ Alison Liebling’s research and that of other scholars has concluded that the most important determinant of distress for inmates is whether they feel safe in prison.⁵ Inmates report feeling safer when the staff is responsive, approachable, and respectful.⁶ The ‘moral quality’ of a correctional institution matters. Greater respect for humanity, fairness, order, and better inmate-staff interactions make some correctional facilities more ‘survivable’ than others.⁷ Inmates often cite a lack of respect makes a sentence difficult to serve,⁸ and research has found that “respect is correlated with fairness, which in turn is correlated with order and well-being.”⁹

² Alison Liebling, “Women in Prison Prefer Legitimacy to Sex,” *British Society of Criminology Newsletter* no. 63 (Summer 2009), 19; Alison Liebling, *Prisons and Their Moral Performance: A Study of Values, Quality, and Prison Life* (Oxford: Oxford University Press, 2004).

³ Liebling, *supra* note 1 at 534.

⁴ Rachelle Larocque, “Penal Practices, Values and Habits: Humanitarian and/or Punitive? A Case Study of Five Canadian Prisons” (PhD diss., University of Cambridge, 2014) at 135.

⁵ Liebling, *supra* note 1 at 535.

⁶ Larocque, *supra* note 4; Liebling, *supra* note 1.

⁷ Liebling, *supra* note 1 at 532, 534.

⁸ Lacroque, *supra* note 4 at 166.

⁹ Liebling, *supra* note 1 at 534.

A thoughtfully recruited, well trained and supported workforce is critical. Corrections professionals who work in alignment with the values and principles that underpin the programs and services they provide are the key to success. Corrections staff face a challenging – and stressful – workplace. Decades of studies have shown that correctional work frequently entails a wide range of organizational, operational, and traumatic stressors, including difficult or demanding social interactions, low organizational support, harsh physical environments, and repeated direct and indirect exposures to violence, injury, and death events.¹⁰ A 2011 survey of correctional officers in British Columbia demonstrated just how prevalent stressful workplace incidents can be. Within the course of a year, out of the over 200 correctional officers surveyed:

- 90% had been exposed to blood, and more than 75% to feces, spit and urine;
- 90% had responded to requests for staff assistance and to medical emergencies;
- Two-thirds had received a credible threat of harm from an inmate;
- Almost 40% had been hit by feces, urine, vomit, spit;
- Over a quarter had been physically assaulted by an inmate; and
- More than 80% had responded to a serious injury of an inmate, while almost 20% had witnessed the death of an inmate.¹¹

There is no reason to expect that Ontario’s correctional environment is any different: province-wide surveys of public sector employees consistently find that employees in corrections report that their jobs are more stressful, and that their workplaces are less respectful and suffer from lower morale.¹² They also report higher levels of discrimination, harassment and violence in the workplace.¹³

¹⁰ Michael D. Denhof, Caterina G. Spinaris and Gregory R. Martin, *Occupational Stressors in Corrections Organizations: Types, Effects and Solutions* (U.S. Department of Justice: National Institute of Corrections, July 2014) at 7-8.

¹¹ Neil Boyd, *Correctional Officers in British Columbia, 2011: Abnormal Working Conditions* (Simon Fraser University, November 2011) at i.

¹² The 2017 Ontario Public Service (OPS) survey showed that MCSCS had the lowest scores across all government ministries in four out of the five categories measured (employee engagement, talent capacity, workplace culture, leadership and inclusion). Looking specifically at those employed in Ontario’s Correctional Services, 24.3% felt that the amount of stress they experienced at work was reasonable (OPS average 44%). 61.9% reported that they were treated respectfully at work (OPS average 78.4%), and only 28.7% stated that the morale in their work unit was good (OPS average 67.3%). 25.1% had experienced discrimination in their work unit in the past two years, and 28% had experienced harassment (OPS averages 12.6% and 14.8% respectively). Treasury Board Secretariat, *Summary Scorecard of the 2017 OPS Employee Survey Results* (Government of Ontario, May 2017) at 2, 4; Treasury Board Secretariat, *2017 OPS Employee Survey – Enterprise Report* (Government of Ontario, June 2017).

¹³ *Ibid* Summary Scorecard at 6; *Ibid* Enterprise Report.

I made nine specific recommendations related to staffing in my *Segregation* report. Progress on implementing these recommendations is essential to the success of the contemplated modernization of corrections in Ontario.

The province's justice system in general and its correctional service in particular needs to reaffirm a commitment to evidence-based practice and fundamental principles. Recent staff consultations within the ministry confirm that the current operation of Ontario's correctional system has room for improvement and most of those working within the system want reform in line with these principles.¹⁴ There is a window of opportunity to make these aspirations into a reality and have Ontario become a leader in humane, evidence-based and rights-respecting correctional practices.

¹⁴ From 2015 to 2017 MCSCS embarked on a corrections reform staff consultation, which resulted in two summary documents: a summary feedback report from the Correction Services Transformation Strategy Staff Ideas Campaign, and a summary of staff consultations conducted through numerous focus groups. This was the ministry's largest corrections employee engagement and consultation effort to date.

III. CORRECTIONAL OPERATIONS: AN EXERCISE IN HUMAN RIGHTS

Because correctional institutions control the most basic aspects of an individual's life, they also have the power to directly and dramatically impact individual dignity and human rights. A principle-based correctional service recognizes that corrections officials do not add to the consequences imposed by the courts – they administer those consequences. This is true pre-trial or post sentence; inside institutions or in the community. It is well established that incarcerated individuals retain all rights except those necessarily limited as a result of their confinement. It is up to the courts to balance the sometimes competing purposes of a sentence and come up with a result that is rational, proportionate and fair. It is up to corrections to create the safe, legal and humane environment to support both the care and custody needs of the people under supervision.

Each and every operational decision made by correctional authorities must be infused with the values of respect, dignity and legality. This is not an easy task. Correctional systems operate in a closed and difficult world increasingly defined by security and risk. Both forethought and vigilance are required to remain focused on the humanity and rights of those in conflict with the law.

Below I examine five operational areas that, in my view, should clearly reflect the core values of respect, dignity and legality: searches, inmate complaints processes, visits and family supports, inmate trusts, and the response to deaths in custody.

a. Searches in Ontario's Provincial Correctional Institutions

A wide range of searches take place in correctional institutions. In general, however, Ontario law provides very little guidance for or limits on these activities.

The *Ministry of Correctional Services Act* (MCSA) gives superintendents broad authority to “authorize a search, to be carried out in the prescribed manner,” of the correctional institution, the person or property of any inmate or other person on the premises of the correctional institution and any vehicle entering or on the premises of the correctional institution.¹⁵ The General Regulation briefly sets out a very broad search authority for most of these categories: the institution, the person or property of an inmate, and vehicles on institution premises can be searched at any time with authorization from the superintendent.¹⁶ Searches of employees are restricted to circumstances where the superintendent has “reasonable cause to believe that an employee is bringing or attempting to bring contraband into or out of the institution.”¹⁷ Ontario

¹⁵ *Ministry of Correctional Services Act*, RSO 1990, c M.22, s. 23 (hereafter, “MCSA”).

¹⁶ *General*, R.R.O. 1990, Reg. 778, s. 22(1) (hereafter, “Reg. 778”).

¹⁷ *Ibid* Reg. 778 at s. 22(2).

law contains no limits on or directions regarding visitor searches: the only direction on permissible searches of visitors comes from internal ministry policy documents.¹⁸

All of these provisions are considerably broader than the searches authorized by several other provincial and territorial laws as well as the federal *Corrections and Conditional Release Act* (CCRA) and Regulations (CCRR).¹⁹ The CCRA, for example, contains numerous relevant subsections on inmate search and seizure, searches of cells, searches of visitors, searches of vehicles and searches of staff members. The legislative provisions set out definitions of different types of searches (e.g. body cavity, frisk search, non-intrusive search),²⁰ clear limits on when different levels of searches may be conducted for different populations,²¹ the requirement to post notices to the public,²² and specific requirements in regard to a range of other search related issues.²³ In general, the statutory framework flows from a recognition of individuals' constitutional right to be free from unreasonable search and seizure and the requirement that any search or seizure must be justified based on specific identified security needs or the particular context. Ontario's legislative provisions are skeletal in comparison.

Ontario law and policy on searches of inmate correspondence are also troubling. The federal CCRR states that the Correctional Service of Canada may inspect general mail²⁴ sent to or received by inmates "to the extent necessary to determine whether the envelope or package contains contraband" but specifically prohibits the staff member from reading the contents of the correspondence.²⁵ The only exception to this general rule is where the institutional head or a designated staff member authorizes, in writing, that "communications between an inmate

¹⁸ Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Administration: Tours and Visits: Visiting* (Government of Ontario, June 11, 2014).

¹⁹ *Corrections and Conditional Release Act*, SC 1992, c 20, ss. 46-67 (hereafter, "CCRA"). For examples of narrower provincial and territorial statutes, see Saskatchewan (*Correctional Services Act*, 2012, c C-39.2, *Correctional Services Regulations*, 2013, RRS c C-39.2 Reg 1); British Columbia (*Correction Act*, SBC 2004, c 46; *Correction Act Regulation*, BC Reg 58/2005); and the Yukon (*Corrections Act*, 2009, SY 2009, c 3, s. 20(4), *Corrections Regulation*, YOIC 2009/250, s. 18).

²⁰ *Ibid* CCRA s. 46.

²¹ *Ibid* at ss. 47-64; *Corrections and Conditional Release Regulations*, SOR/92-620, ss. 47-49, 54, 56 (hereafter, "CCRR").

²² *Ibid* CCRA, s. 62.

²³ *Ibid* at ss. 65, 67; CCRR, *supra* note 21 at s. 43-46, 51-53, 55, 57, 58.

²⁴ Note that there are particular protections that apply to mail to and from legal counsel, the Office of the Correctional Investigator, privacy commissioners, provincial ombudspersons, the Canadian Human Rights Commission, provincial and federal elected representatives and a number of other specified persons or bodies. See *ibid* CCRR, s. 94(2), Schedule.

²⁵ *Ibid* CCRR, at s. 89(1).

and a member of the public, including letters, telephone conversations and communications in the course of a visit, be opened, read, listened to or otherwise intercepted.”²⁶ This authorization must be based on a reasonable belief that the communication contains evidence of an act that would “jeopardize the security of the penitentiary or the safety of any person, or a criminal offence or plan to commit a criminal offence” and that a communications intercept is the “least restrictive measure available in the circumstances.”²⁷

Ontario law contains no such restrictions on intercepting general inmate correspondence. The MCSA simply states that, with the exception of legal correspondence and correspondence to the Ombudsman or the Office of the Correctional Investigator,²⁸ “[a]ll letters and parcels sent to or from an inmate may be read or inspected by the Superintendent or by an employee designated by the Superintendent.”²⁹ In fact, Ontario policy requires that all general inmate correspondence as well as letters directed to the Minister, Deputy Minister, and other high-level ministry officials be left unsealed to facilitate review.³⁰

The provisions setting out what may happen after mail is intercepted are also problematic. Ministry policy broadly authorizes the sharing of private information that has been intercepted: intercepted information that “may be of assistance to the security and/or program needs of the institution or an inmate” are to be referred to the “appropriate employee.”³¹ Additionally, the superintendent must be informed of any inmate complaint in outgoing mail.³²

The MCSA Regulation states that the superintendent “may refuse to forward any letter or parcel or may delete part of a letter if, in the opinion of the Superintendent, the contents are

²⁶ *Ibid* at s. 94(1).

²⁷ *Ibid* at s. 94(1).

²⁸ Letters to the Ontario Ombudsman and the federal Office of the Correctional Investigator may not be opened, read or inspected for contraband. Letters to legal counsel may be opened in the presence of the inmate and two staff members; they may be inspected for contraband but “shall not be read by the Superintendent or the Superintendent’s designate unless there are reasonable and probable grounds to believe that it contains material that is not privileged as a solicitor-client communication.” Reg. 778, *Supra* note 16 at s. 17(3). Numerous other categories of privileged communication that is not to be “opened, copied, delayed, intercepted or censored in any way” are set out in policy (the list includes letters to the Information and Privacy Commissioner, the Human Rights Tribunal of Ontario, the Human Rights Commission of Ontario and the Office of the Independent Police Review Director). Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Inmate Management: Correspondence* (Government of Ontario, April 2014) at s. 6.15 (hereafter, “MCSCS: Correspondence”).

²⁹ MCSA, *supra* note 15 at s. 17(1).

³⁰ MCSCS: Correspondence, *supra* note 28 at s. 6.16.

³¹ *Ibid* at s. 6.6.1.

³² *Ibid* at s. 6.8.1.

prejudicial to the best interests of the recipient or are prejudicial to the public safety or the security of the institution.”³³ This is a broad standard and constitutes a significant limit on freedom of expression. Moreover, although the regulation restricts the superintendent’s power of censorship from any letter sent to a member of the Legislative Assembly of Ontario, the Parliament of Canada, or the Deputy Minister of Correctional Services, the Inmate Handbook that the ministry publicly posts on its website and makes available to all inmates clearly states that the institution will refuse to send these letters if they contain threats, bad language, or “unsuitable content”:

You may write to the Minister, Deputy Minister or other senior ministry staff. You may also write to members of the Ontario Legislative Assembly and the Parliament of Canada... . These letters will be checked for contraband, threats, bad language and unsuitable content. If your letter contains any of these, it will be returned to you. All other letters will be sent without delay and without changes.³⁴

This information directly contradicts ministry policy, which states that while this correspondence “may be read and inspected for contraband, it may not be delayed, intercepted or censored in any manner.”³⁵

Case Study: Strip Searches

Ontario’s legislative framework governing strip searches is inadequate, and ministry policy currently requires Ontario’s correctional institutions to carry out regular, routine strip searches of inmates.

As noted by the Supreme Court of Canada over 15 years ago, strip searches are “inherently humiliating and degrading for detainees regardless of the manner in which they are carried out”:

The adjectives used by individuals to describe their experience of being strip searched give some sense of how a strip search, even one that is carried out in a reasonable manner, can affect detainees: “humiliating”, “degrading”, “demeaning”, “upsetting”, and “devastating” Some commentators have gone as far as to describe strip searches as “visual rape” Women and minorities in particular may have a real fear of strip searches and may experience such a search as equivalent to a sexual assault. The

³³ Reg. 778, *supra* note 16 at s. 16.

³⁴ Ministry of Community Safety and Correctional Services, *Inmate Information Guide for Adult Institutions* (Government of Ontario, September 2015) (hereafter “MCSCS: Inmate Information Guide”).

³⁵ MCSCS: Correspondence, *supra* note 28.

psychological effects of strip searches may also be particularly traumatic for individuals who have previously been subject to abuse.³⁶

Because of their invasive nature, the Charter tightly circumscribes the government's authority to conduct strip searches. For example, while police generally have broad authority to search a person incidental to an arrest, the Supreme Court of Canada has determined that this power does not extend to strip searches. The decision to conduct a strip search must be grounded in an individual's particular circumstances; any policy or practice that requires random or routine strip searches for all individuals sent to police holding cells is unconstitutional.³⁷

There is no question that correctional centres and jails are different from police holding cells. The Supreme Court, in the same judgment, made it clear that routine suspicionless strip searches upon entry to prisons presented different considerations:

It may be useful to distinguish between strip searches immediately incidental to arrest, and searches related to safety issues in a custodial setting. We acknowledge the reality that where individuals are going to be entering the prison population, there is a greater need to ensure that they are not concealing weapons or illegal drugs on their persons prior to their entry into the prison environment.³⁸

The fact that there are greater security concerns upon admission to a prison, however, does not mean that constitutional limits do not apply. Numerous court decisions have affirmed that inmates continue to have constitutional rights, including the right to be free from unreasonable search and seizure, and that unlawful or unreasonable searches within prisons will violate Charter rights.³⁹

³⁶ *R v. Golden*, 2001 SCC 83 at para 90.

³⁷ *Ibid* at para 90.

³⁸ *Ibid* at para 96.

³⁹ In *Weatherall v. Canada (Attorney General)* (1993), 23 C.R. (4th) 1, [1993] 2 S.C.R. 872 the Supreme Court examined the constitutionality of random frisk searches within a correctional institution. Although the Court ruled that inmates have a "substantially reduced" level of privacy as compared to the outside community, the s. 8 framework did apply. It is notable that part of the Court's rationale in upholding the random frisk searches was that "[t]he frisk search, the count and the wind are all practices necessary in a penitentiary for the security of the institution, the public and indeed the prisoners themselves." In *R v. Blais*, 2004 CanLII 8466 (ON CA), the Ontario Court of Appeal ruled that inmates do retain a reasonable expectation of privacy regarding their personal belongings within a correctional institution, and although the inmate "could not reasonably expect that agents of the state would not inspect those goods, ... he could expect that the police would obtain a search warrant before actually taking them out of the possession of the gaoler who was under a duty to safeguard them." Other privacy-invasive practices within correctional institutions have been struck down as constitutional violations. In *R v Williamson* (1998), 2 C.R.R. (2d) 277, 123 C.C.C. (3d) 540 (Alta. Q.B.), for

Ontario policy states that inmates in Ontario institutions *must* be strip searched in all the following circumstances:

- On admission or return (e.g., from court, temporary absence, outside work gangs, etc.) to the secure area of the institution;
- Whenever there is reasonable cause to believe that the inmate is carrying contraband within, into or out of the institution;
- Whenever an inmate is admitted to segregation, whether on misconduct or administrative segregation or, when applicable, a special needs unit;
- Whenever an inmate is isolated as a suicide risk or other risk to themselves or other persons;
- When the inmate is involved in or suspected of being involved in a disturbance or other significant occurrence where the security of the institution has been or might be jeopardized;
- When searching an inmate's cell or dormitory;
- When an inmate is returning from a place or activity where highly toxic or dangerous items are located; and
- Prior to entering and or leaving an open visiting area.⁴⁰

The policy also allows for an institution's standing orders to "list any other circumstances under which the Superintendent decides that inmates will be routinely strip searched."⁴¹

Figure 1: Strip Search Area, Toronto South Detention Centre



❖ Strip search bays in Toronto South Detention Centre's admitting and discharge area

example, the Court found that a policy of taping all inmate telephone calls constituted an unreasonable violation of the right to be free from unreasonable search and seizure.

⁴⁰ Ministry of Community Safety and Correctional Services. *Institutional Services Policy and Procedures Manual: Security and Controls: Searches* (Government of Ontario, April 2015) at s. 6.5.2 (hereafter, "MCSCS: Searches").

⁴¹ *Ibid* at s. 6.5.11.

While some of these policy requirements are not surprising, many of the routine strip searches mandated in Ontario extend this search power to situations that are far beyond what is occurring across the rest of Canada.

Ontario's Searches policy requires that institutions search all areas of inmate accommodation on at least a biweekly basis, regardless of whether there is any reason to suspect the presence of contraband or other dangerous items.⁴² Because a strip search is required any time an inmate's cell or dormitory is searched, routine strip searches of all inmates must also occur on a biweekly basis. Interviews with numerous institutions confirmed that random units are being regularly chosen for searches and that all inmates on those units are strip searched as a result. The policy requirement to search the segregation area on a daily basis, if interpreted in a similar way, would also require daily, mandatory strip searches of all individuals held there. Management at several institutions, however, confirmed that they were not conducting daily strip searches of segregated inmates. The reasons provided varied: one deputy superintendent acknowledged this should be happening and thought it would be good practice but found it was not operationally feasible, while a superintendent at another institution did not believe such searches were necessary and expressed concern for inmates' dignity.

The majority of jurisdictions in Canada have put in place laws that explicitly prohibit the suspicionless strip searches that regularly occur in Ontario (see Textbox 1). In federal prisons, for example, inmates can only be routinely strip searched when entering or leaving a segregation area, in prescribed circumstances where the inmate has been in a place where there was a likelihood of access to contraband that is capable of being hidden on or in the body, or under exceptional circumstances when authorized by the institutional head.⁴³ Regulations specify that the prescribed circumstances are when entering or leaving a penitentiary or secure area, upon leaving an open visiting area, entering or leaving a family visit area, or leaving a work area with access to applicable contraband.⁴⁴ Numerous provincial and territorial jurisdictions have also taken this approach and have legislation or regulation that tightly limits suspicionless strip searches. In Ontario the legislation governing searches is extremely broad: it states that "the Superintendent may authorize a search, at any time, of... the person of an inmate."⁴⁵ In order to be constitutional, searches must be "authorized by law"; the vagueness

⁴² MCSCS: Searches, *supra* note 40 at s. 6.1.2(b). The policy notes that the superintendent may request an exemption to this and other similar provisions if the required minimum search requirements are "not operationally feasible due to the size of the institution."

⁴³ CCRA, *supra* note 25 at ss.48, 53.

⁴⁴ CCRR, *supra* note 25.

⁴⁵ Reg 778, *supra* note 16 at s. 22(1)(b).

of Ontario's legislation in this area and the authority delegated to superintendents to institute any other routine strip searches raise further constitutional concerns.⁴⁶

The need for routine strip searches upon admission must also be examined. Numerous correctional institutions in the United States and the United Kingdom do not strip search all inmates upon admission.⁴⁷ Ontario's reliance on strip searches is difficult to understand

Figure 2: Body Scanner, Elgin-Middlesex Regional Intermittent Centre



- ❖ Full body scanner installed in the admitting and discharge area of the Elgin-Middlesex Regional Intermittent Centre
- ❖ The ministry currently has scanners operational in 11 of the province's 26 institutions

⁴⁶ The Supreme Court in its 1987 decision in *R. v. Collins* stated that "a search will be reasonable if it is authorized by law, if the law itself is reasonable and if the manner in which the search was carried out is reasonable" ([1987] 1 S.C.R. 265 at 278). See also *Weatherall v. Canada, supra* note 39 at 394-95.

⁴⁷ The Corrections Center of Northwest Ohio and Kent County Jail in Grand Rapids Michigan, for example, do not require strip searches for all detainees upon on admission. Instead these facilities use a combination of mandatory frisk searches and more intrusive searches for specific individuals based on individualized suspicion or risk. In the United Kingdom, the National Security Framework: Searching of the Person restricts full-searches as a matter of routine for women prisoners. Interview with a Sergeant at Kent County Jail, July 20 2017; Ohio Department of Rehabilitation and Correction, *Corrections Center of Northwest Ohio – Policy and Procedures: Searches* (Government of Ohio, December 10, 2014); United Kingdom Ministry of Justice, National Offender Management Service, *National Security Framework: Searching of the Person* (Government of the United Kingdom, October, 26 2016) at s. 2.54.

because, in 2016, the Ontario government announced that all provincial institutions would be receiving advanced technology full-body scanners.⁴⁸ The scanners are currently operational in 11 of the province's 26 facilities, and full implementation is targeted for the end of 2018.⁴⁹ The body scanners provide a detailed view of any dense objects that an individual might be attempting to hide inside a body cavity. When a body scan is combined with a proper frisk search to detect any objects hidden in or under loose clothing, socks, shoes, etc., the need for a strip search is questionable.

As Ontario moves to introduce new legislation governing corrections, there is a clear need for a reformed legal and policy framework governing searches that recognizes Charter rights as its starting point.

Textbox 1: Provincial and Territorial Laws Governing Strip Searches in Correctional Institutions

The majority of Canadian jurisdictions have detailed legislative limits on strip searches in correctional institutions.

- Nova Scotia legislation limits routine strip searches to “situations in which the person has been in a place where there was likelihood of access to contraband that is capable of being hidden on the body.”⁵⁰
- New Brunswick legislation authorizes searches of inmates on admission; all other searches of inmates must be authorized by a superintendent “on reasonable grounds” or are limited to immediate searches “where the officer suspects, on reasonable grounds, that the inmate will dispose of contraband during the delay necessary to obtain the authorization of the superintendent.”⁵¹
- Quebec inmates may be strip searched upon entering or leaving a correctional facility, institutional vehicle, or a visiting area other than a secure area; they may be stripped searched upon leaving an area in the facility where they may have had access to contraband that could be hidden on his or her person; and when entering or leaving a solitary, administrative segregation or observation cell. Strip searches are also authorized if there are reasonable grounds to believe the inmate has contraband or evidence relating to a criminal offence and the search is necessary to find it; if an escape or hostage taking is feared; after a riot; or if “a situation is likely to trigger an emergency measure or the presence of contraband constitutes a clear and substantial danger to human life or safety or

⁴⁸ Ministry of Community Safety and Correctional Services, “Full-body Scanners to be Installed in all Adult Correctional Facilities,” *Newsroom Ontario* (Government of Ontario, May 3, 2016).

⁴⁹ *Ibid.*

⁵⁰ *Correctional Services Act*, SNS 2005, c37, s. 61.

⁵¹ *General Regulation*, NB Reg 84-257 ss 5, 6(2), 8.

- to the security of the facility.”⁵²
- Saskatchewan law limits strip searches conducted without individualized suspicion to inmates entering or leaving a correctional facility, a segregation area or a high security area; upon leaving a work or activity area within the institution where contraband was accessible; if contraband is found in the possession of the inmate; or upon entering an area for contact visits or completing a contact visit. Strip searches are also authorized in exceptional circumstances where the “director of the correctional facility is satisfied that there are reasonable grounds to believe that: (a) there exists, because of contraband, a clear and substantial danger to the safety of inmates, staff members or the public or to the security of the correctional facility; and (b) a ... strip search of all the inmates in the correctional facility or any part of the correctional facility is necessary in order to seize the contraband and avert danger.”⁵³
 - British Columbia’s legislation limits routine or random strip searches to the admission, entry, transfer or return of an inmate to the correctional centre; entry to or return from a cell in the segregation unit; and return of an inmate from a visit, work or program area in the institution if the inmate could have had access to an item that is contraband and that may be hidden on or in the inmate’s body.⁵⁴
 - In the Yukon routine strip searches are only authorized upon admission, entry, transfer or return to an institution; upon entering or returning from a segregation cell; or upon an inmate’s return from a visit, work or program area if the inmate could have accessed contraband that may be hidden on his or her body. All other strip searches must be based on individualized, reasonable grounds and absent exigent circumstances must be authorized by “the person in charge.”⁵⁵
 - At the federal level, inmates can only be routinely strip searched when entering or leaving a segregation area, in prescribed circumstances where the inmate has been in a place where there was a likelihood of access to contraband that is capable of being hidden on or in the body, or under exceptional circumstances when authorized by the institutional head.⁵⁶ Regulations specify that the prescribed circumstances are when entering or leaving a penitentiary or secure area, upon leaving an open visiting area, entering or leaving a family visit area, or leaving a work area with access to applicable contraband.⁵⁷

⁵² *Regulation under the Act respecting the Québec correctional system*, CQLR c S-40.1, r 1, ss. 27, 28.

⁵³ *Correctional Services Act*, 2012, c C-39.2, ss. 36, 43(1); *Correctional Services Regulations*, 2013, RRS c C-39.2 Reg 1, s. 28.

⁵⁴ *Correction Act Regulation*, BC Reg 58/2005.

⁵⁵ *Corrections Act*, 2009, SY 2009, c 3, s. 20(4); *Corrections Regulation*, YOIC 2009/250, s. 18.

⁵⁶ CCRA, *supra* note 19 at ss.48, 53.

⁵⁷ CCRR, *supra* note 21.

b. Inmate Complaints Processes

Jails and correctional centres are closed institutions. In the words of Justice Louise Arbour, “corrections is the least visible branch of the justice system.”⁵⁸ Prison walls not only keep inmates in, they keep the public out. The general public cannot easily or routinely visit or observe correctional institutions. The press cannot access them at will. The minute details of information flow, property management, staff conduct, inmate movement and treatment are carefully controlled, and almost all communication in and out is monitored. For the most part, the only individuals who have detailed knowledge of what is happening behind institutional walls are the men and women who live and work within them.

Even in the most transparent setting, it is not enough for rights to be set out in law and policy; a rights-respecting system must also provide mechanisms for complaint and redress. The closed nature of corrections heightens this imperative. A fair and expeditious⁵⁹ complaints process that allows inmates to complain about improper or illegal treatment without fear of reprisal is a critical component of a rights-respecting correctional system. An effective complaint procedure also has significant benefits for rehabilitation and institutional management. Timely and fair complaint resolution can assist rehabilitation by encouraging self-reliance and responsibility, teaching problem-solving skills, and serving as an example for treating others fairly.⁶⁰

Addressing complaints in a fair and timely manner can also ease institutional tensions and allow for the early identification and resolution of issues. The information gleaned from complaints can provide management with consistent data about the operations of the institution, allow for trends to be analyzed over time, and identify new or growing areas of concern.

International human rights instruments set out some minimum requirements for inmate grievance processes.⁶¹ These include:

- Regular opportunities to make requests or complaints to a variety of authorities, both inside and outside of the prison administration;

⁵⁸ The Honourable Louise Arbour, *Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (Ottawa: Solicitor General Canada, Government of Canada, 1996) at Preface.

⁵⁹ CCRA, *supra* note 19 at s. 90.

⁶⁰ Solicitor General Canada, *Influences on Canadian Correctional Reform: Working Papers of the Correctional Law Review 1986 to 1998* (Ottawa: Solicitor General Canada, Government of Canada, 2002) at 253-254.

⁶¹ UN General Assembly, *Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment*, (December 9, 1988), 43/173 (hereafter, “UN General Assembly Body of Principles”); UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)* (September 29, 2015), A/C.3/70/L.3 (hereafter, “Mandela Rules”).

- Guarantees of confidentiality upon request or when communicating requests or complaints to independent oversight bodies;
- Prompt action to address and reply to all requests or complaints;
- Avenues to bring delayed or rejected complaints before judicial or other independent authorities; and
- Safeguards to protect inmates against prejudice or retaliation for filing complaints.⁶²

There is a significant body of work on the best practices for complaints handling mechanisms. The Scottish Public Services Ombudsman, for example, has developed a series of complaints handling principles and best practices (see Textbox 2). Many of these guidelines, such as proactively informing individuals of complaints mechanisms, having front-line staff immediately resolve complaints wherever possible, and establishing clear timelines and staff responsibilities, echo recommendations that have also been repeatedly made in the corrections context. The Commission of Inquiry into Certain Events at the Prison for Women in Kingston (the “Arbour Inquiry”),⁶³ the federal Office of the Correctional Investigator,⁶⁴ reports commissioned by the Correctional Service of Canada⁶⁵ and a recent MCSCS Taskforce⁶⁶ have highlighted the importance of establishing a transparent and procedurally-fair process, resolving complaints at the lowest possible level, focusing on informal resolution through discussion or mediation wherever appropriate, having inmates involved in the grievance process, and putting in place dedicated staffing resources and models to ensure effective and timely redress.

Establishing a fair, expeditious, and effective grievance resolution process requires clear legislative and policy guidance. Unfortunately, there is almost no law directing how inmate complaints are to be handled in Ontario. The only substantive mention of the subject is in Regulation 778, which states that “Where an inmate alleges that the inmate’s privileges have been infringed or otherwise has a complaint against another inmate or employee, the inmate may make a complaint in writing to the Superintendent.”⁶⁷

⁶² *Ibid* UN General Assembly Body of Principles at principle 33; *Ibid* Mandela Rules at rules 56, 57.

⁶³ Arbour, *supra* note 58.

⁶⁴ Office of the Correctional Investigator of Canada, *Annual Report 2010-2011* (Government of Canada, June 29, 2011).

⁶⁵ Office of the Correctional Investigator of Canada, *Internal Audit: Audit of the Staff Grievance Process* (Government of Canada, January 11, 2013); David Mullan, *Report of External Review of Correctional Service of Canada Offender Complaint and Grievance Process* (Prepared for the Correctional Services of Canada, July 12, 2010).

⁶⁶ Ministry of Community Safety and Correctional Services, “Ottawa-Carleton Detention Centre Task Force Action Plan” (Government of Ontario, October 16 2016), Last Accessed: August 14, 2017 http://www.mcscs.jus.gov.on.ca/english/Corrections/OCDC_task_force.html.

⁶⁷ Reg. 778, *supra* note 16.

Textbox 2: A Model Complaints Process

The Scottish Public Service Ombudsman (SPSO) has published a series of practical tools to assist in developing robust, effective and insightful public complaints processes.

SPSO's Statement of Complaints Handling Principles:

An effective complaints handling procedure is:

- User-focused: it puts the complainant at the heart of the process.
- Accessible: it is appropriately and clearly communicated, easily understood and available to all.
- Simple and timely: it has as few steps as necessary within an agreed and transparent timeframe.
- Thorough, proportionate and consistent: it should provide quality outcomes in all complaints through robust but proportionate investigation and the use of clear quality standards.
- Objective, impartial and fair: it should be objective, evidence-based and driven by the facts and established circumstances, not assumptions, and this should be clearly demonstrated.

...and should:

- Seek early resolution: it aims to resolve complaints at the earliest opportunity, to the service user's satisfaction wherever possible and appropriate.
- Deliver improvement: it is driven by the search for improvement, using analysis of outcomes to support service delivery and drive service quality improvements.⁶⁸

Key elements from the SPSO's Guidance on a Model Complaints Handling Procedure:

Publicizing the complaints handling process

- Complaints processes must be easy to access, understand and navigate. Information should be communicated in the most effective and accessible manner.

A shared definition of what is and what is not a complaint

- Complaints are not the same as service requests, appeals of decisions or a request for a policy explanation. The SPSO states that a general definition of a complaint is "an expression of dissatisfaction by one or more members of the public about an organization's action or lack of action, or about the standard of

⁶⁸ Scottish Public Services Ombudsman, *SPSO Statement of Complaints Handling Principles* (Edinburgh: Scottish Public Services Ombudsman, January 2011).

service provided by or on behalf of the organization.” Frontline staff must be able to identify when a complaint is being made, and what process will apply.

A two-stage process where complaints are resolved as close to the frontline as possible

- Complaints that are “straightforward and easily resolved, requiring little or no investigation” are appropriate for frontline resolution by any and all staff. Staff should be provided with guidance on the types of complaints that are suitable for frontline resolution.
- Issues that could not be resolved at the frontline or that are more “complex, serious or high risk” should be subject to a more formal investigation to establish all of the relevant facts and “provide a full, objective and proportionate response that represents the service provider’s definitive position.” Final decisions on these complaints should involve senior management and may be resolved through mediation where appropriate.
- The final decision should include contact information for further independent review by the Ombudsman.

Clear timelines for processes

- Frontline resolution of complaints should take place immediately whenever possible, and if more information is needed should be complete in no more than five working days. The investigation stage should take 20 working days, including providing the organisation’s final decision in a written response.

Redress

- There should be a clear policy on redress that provides consistency and flexibility. Various options, including an apology, an explanation, correcting the error and/or financial compensation, should be available; the complainant’s wishes should be taken into consideration and respected where appropriate.

Recording of all complaints, regardless of manner of submission or resolution

Active learning from complaints through reporting and publicising complaints information.

- There must be “an organisation-wide, structured system for recording complaints, their outcomes and any resulting action...” and the resulting information should be “reviewed and used to improve service delivery”. Complaints information should be reviewed by senior management on a regular basis and procedures must facilitate effective and efficient responses to any issues that are identified. Data should be regularly published regarding complaints handling.⁶⁹

⁶⁹ *Ibid.*

Internal ministry policy does establish a more detailed process to handle inmate complaints about a wide range of issues, including:

- allegations of criminal acts;
- alleged violations of policy or law;
- to appeal a decision (e.g., temporary absence decision, misconduct disposition, etc.);
- to modify “privileges” for security, safety, or disciplinary reasons;
- to effect a change in policy or procedures; and
- to “resolve a condition existing within the institution that creates an unsafe, unsanitary or unsatisfactory living condition.”⁷⁰

As explained below, however, the policies for handling these complaints are unclear and contradictory and do not align with the explanation of the complaints process in the handbook provided to inmates. Given this legal and policy context, it should not come as a surprise that several community service providers and family members the Independent Review Team spoke with were not aware of any structured complaints mechanism in Ontario’s institutions, despite having extensive experience working with and advocating on behalf of inmates.

The ministry’s Inmate Complaints policy states that inmates “have access to both formal and informal complaint procedures for the fair and timely resolution of complaints, concerns and disputes arising from Correctional Services and institutional operations.” The policy, however, does not give any guidance about how a formal or informal process is triggered and does not set out what each process entails.

The policy does provide that inmates may complain to any staff member verbally or in writing. There is very little direction provided for the handling of written complaints within institutions. Policy simply states that “[w]hen an inmate complains in writing, the response will also be in writing” and requires that written responses contain the line, “In response to your complaint regarding _____ dated _____ I am providing the following information.”⁷¹ No direction is provided regarding the process for receiving, resolving or escalating written complaints at the institutional level.

The Independent Review Team surveyed several institutions’ written complaints practices. Only one had an actual form dedicated to complaints or grievances; in all other institutions, inmates would lodge complaints on the same general request form that is used to request services such as health care, special meals, or programming. All these forms must be given to front-line correctional officers for processing. It is likely that some inmates would be unwilling to file written complaints about staff behaviour given that the complaint or request forms are first

⁷⁰ Ministry of Community Safety and Correctional Services. *Institutional Services Policy and Procedures Manual: General Inmate Management: Inmate Complaints* (Government of Ontario, November 2013) at s. 6.5.6 (hereafter, “MCSCS: Inmate Complaints”).

⁷¹ *Ibid* at ss. 6.7.2, 6.7.3.

read and initially processed by front-line staff. Interviewees stated that in their experience, inmates had withdrawn complaints about staff members after being threatened with transfer or placement in segregation for their own protection. Some interviewees reported that it was common to hear that complaint forms had gone “missing.” In the vast majority of institutions, inmates are not given a copy of their complaint slip and are not able to retain any written record of the complaint having been received, read, or dealt with. Several interviewees reported that it was common for inmates not to know what, if any, action had been taken in response to their complaints.

Ministry policy provides more detailed direction for the handling of verbal complaints. Upon receiving a verbal complaint, policy directs that the complaint be logged in the unit log book.⁷² Notwithstanding, most of the institutional staff interviewed by the Independent Review Team stated that verbal complaints were rarely – if ever – documented in writing.

Policy directs staff members who receive a verbal complaint to initiate “corrective action” if it is within the scope of their responsibility.⁷³ If the matter is outside the scope of that staff person’s responsibility, the employee must notify the sergeant who “either attempts to resolve the matter or forwards the complaints to the superintendent or designate.”⁷⁴ If the sergeant does try to deal with the matter but the verbal complaint remains unresolved, it may be forwarded to the superintendent or designate for resolution by completing a Request form “where the Sergeant deems it appropriate.”⁷⁵ Although there is an additional obligation on staff to file an occurrence report for “verbal complaints of a serious nature (e.g. assault, theft, staff negligence or impropriety, etc.),” there is no further definition of a “serious complaint” and no indication of what should happen after the occurrence report is filed.⁷⁶

Regardless of whether a complaint is filed verbally or in writing, there are particular circumstances in which the Inmate Complaints policy directs managers to contact additional individuals or complete additional paperwork. If a complaint involves an allegation of criminal activity, for example, the Notification of Right to Pursue/Decline Criminal Charges form must be completed.⁷⁷ Complaints related to an alleged use of force incident are subject to a specific Use of Force Complaints policy. There is also a list of specific contacts⁷⁸ to be made and additional

⁷² MCSCS: Inmate Complaints, *supra* note 70 at s. 6.5.4.

⁷³ *Ibid* at s. 6.5.2.

⁷⁴ *Ibid* at s. 6.5.3.

⁷⁵ *Ibid* at s. 6.5.5.

⁷⁶ *Ibid* at s. 6.7.4.

⁷⁷ *Ibid* at s. 6.2.2 (regarding other inmates), s. 6.6 (generally).

⁷⁸ *Ibid* at s. 5.2. The organizations and individuals that must be contacted are: the manager/Regional Director, the CSOI, the police if the complaint/allegation involves criminal activity, and the CCRU.

Textbox 3: Reforming the Complaint System at the Ottawa-Carleton Detention Centre

On March 25, 2016 a Task Force was established to examine overcrowding, capacity and health and safety issues at the Ottawa-Carleton Detention Centre (OCDC). The Task Force, which was composed of community members, justice system professionals, and correctional leaders and staff, was asked to develop an action plan with specific recommendations.

One of the Task Force's recommendations addressed inmate requests and complaints tracking and processing:

MCSCS should review and revise the inmate request and internal complaint process to ensure the systems in place are tracked, clear and transparent, with clearly defined service standards for complainants. This should include annual public disclosure of the nature of inmate complaints made to the ministry, remedial action taken and number of days to resolution.⁷⁹

As a result of this recommendation, OCDC reviewed its procedures and updated the inmate complaint form.⁸⁰ OCDC reported that the reformed complaints process includes the following elements:

- Inmates will complete a 'BLUE' Inmate Request form if they have a complaint and submit it to an officer on duty. The form is now on blue paper so they can be easily identified.
- Once the form has been submitted, it will then be passed on to management.
- OCDC administration staff will record these complaints on the Complaint Tracking Sheet for monitoring, reporting and follow-up purposes.
- Complaint forms will be stamped with the date received and the form will be sent to the appropriate department for action/decision. A copy of the complaint will also be returned to the inmate.
- The inmate will receive written confirmation of the action or decision that was taken with regards to the complaint within 10 business days. Should the process

⁷⁹ Ministry of Community Safety and Correctional Services, "Ottawa-Carleton Detention Centre Task Force Action Plan" (Government of Ontario, October 2016), Last Updated: October 24, 2016 http://www.mcscs.jus.gov.on.ca/english/Corrections/OCDC_task_force.html#tracking.

⁸⁰ Ministry of Community Safety and Correctional Services, Ottawa-Carleton Detention Centre Task Force Recommendations: Progress Report #1 (Government of Ontario), Last Updated: October 27, 2016 <http://www.mcscs.jus.gov.on.ca/english/Corrections/OttawaCarletonDetentionCentreTaskForce/OCDCTaskForceProgressReport1.html>.

for resolution take longer than 10 business days (e.g. seriousness of complaint, feasibility of resolution), the inmate will be informed of the delay within the 10 business days.

- The deputy superintendent, operations, will receive a summary report of all outstanding and resolved complaints every two weeks. The deputy superintendent, operations, will be responsible for reviewing and monitoring the records on an ongoing basis to ensure accountability of staff in reviewing and responding to concerns.
- A summary report of the nature of inmate complaints, remedial action taken and the number of days to resolution will be made publicly available annually. The first report is targeted for January 2018.⁸¹

These reforms are promising and represent a welcome first step towards broader reform of the inmate complaints system.

reports filed when an inmate alleges sexual impropriety by an employee,⁸² criminal activity by an employee⁸³ or inmate,⁸⁴ or if the complaint is one that requires a “formal investigation” from an investigator external to the institution.⁸⁵

There are distinct complaint handling procedures set out in the ministry’s Correspondence policy that bear little to no relation to other inmate grievance processes.⁸⁶ Institutions have broad authority to read almost all inmate correspondence;⁸⁷ the Correspondence policy states

⁸¹ *Ibid*; Ministry of Community Safety and Correctional Services, “Ottawa-Carleton Detention Centre Task Force Recommendations: Progress Report #2” (Government of Ontario), Last Updated: January 31, 2017
<http://www.mcscs.jus.gov.on.ca/english/Corrections/OttawaCarletonDetentionCentreTaskForce/OCDCTaskForceProgressReport2.html>.

⁸² *Ibid* at s. 6.3.1.

⁸³ *Ibid* at s. 6.3.2.

⁸⁴ *Ibid* at s. 6.4.

⁸⁵ *Ibid* at s. 6.4 (allegation against inmate), s. 6.3.2 (allegation against employee). The policy does not define a “formal investigation,” state when a “formal investigation” must take place, or set out any further specifics about what process occurs once these contacts take place and the additional reports are filed. When asked about this policy gap, the ministry clarified that they understand a formal investigation to mean a “Level 1 Investigation”, which is defined in a different policy. Level 1 Investigations, which are led by inspectors from outside of the institution, “involve incidents that are deemed to constitute a significant contravention of the MCSA, policies and procedures.” Ministry of Community Safety and Correctional Services, *Correctional Services and Oversight Investigations: Policy* (Government of Ontario).

⁸⁶ MCSCS: Correspondence, *supra* note 28.

⁸⁷ *Ibid* at s. 4.

that, where an inmate's outgoing mail is examined and discloses a complaint, "the superintendent must be advised of the nature of the complaint."⁸⁸ If the complaint is of a "particularly serious nature," the superintendent must "promptly [forward] a report to the Regional Director" and a joint determination will be made as to whether the institution, a ministry inspector or the police will investigate.⁸⁹ The superintendent "investigates any concern(s) raised," attempts "to resolve the issue(s) to the satisfaction of the inmate," and "maintains a written record" of both the investigation and attempted resolution.⁹⁰ When the letter is received by the intended ministry official, he or she must "contact the superintendent to determine the nature and status of the inmate's concern(s)" so that a "suitable response" can be prepared.⁹¹ Two copies of the response are to be forwarded to the superintendent: one for the inmate and one that must be signed and dated by the inmate and placed in the inmate's file.⁹² The Correspondence policy also allows a regional director to, "on occasion," request that the superintendent respond directly to the inmate rather than providing a written response.⁹³

As a result, inmates who direct their complaints to individuals outside the institution should, according to policy, receive significantly more high-level and formalized attention than those who use internal institutional channels. There is no explanation for this parallel process which gives rise to a two-tier model that appears to be more about a communications strategy than the resolution of complaints.

In practice, all correspondence directed to the Minister, Deputy Minister, Associate Deputy Minister or any Assistant Deputy Minister is logged by the ministry's correspondence unit and assigned to a unit in the operational support division of the ministry for response. Before drafting a response to an inmate's letter, a ministry analyst will contact the superintendent or a relevant deputy superintendent, and, at times, the regional office, for feedback about the complaint. An analyst will also check the ministry's internal correspondence database and the Offender Tracking Information System (OTIS) for any information. A response will then be drafted and, unless it concerns a misconduct appeal, will be sent to the superintendent for review and approval. All correspondence will then be sent to the relevant Assistant Deputy Minister's office(s) and routed to the Associate Deputy Minister's office for approval. Throughout, the inmate is never contacted directly for additional information.

⁸⁸ *Ibid* at s. 6.8.1.

⁸⁹ *Ibid* at ss. 6.8.3, 6.8.4.

⁹⁰ *Ibid* at s. 6.16.7(b).

⁹¹ *Ibid* at s. 6.16.7(c).

⁹² *Ibid* at s. 6.16.7(d).

⁹³ *Ibid* at s. 6.16.7(f).

This process is not communicated to inmates. The ministry's Inmate Handbook, which is available online and in printed copy on every unit, explains the "internal" general complaints process as follows:

- You may put in a Request Form to the Superintendent, however if you want a response in writing it needs to be specified on the Request Form. The Operating Manager on duty will talk to you on behalf of the Superintendent. If you are not satisfied with the Operating Manager's response, you may ask to see the Superintendent.
- If you are not satisfied with the Superintendent's response, you may contact the Regional Director in writing to explain what steps you have taken to resolve your issue(s)...
- If you are still not satisfied, you may write to a senior ministry official including the Assistant Deputy Minister, Institutional Services ... and the Deputy Minister, and/or the Minister of Community Safety and Correctional Services to ask for further review. The senior ministry official or designate will respond to you and the Superintendent of any action taken regarding your complaint.⁹⁴

Although inmates are informed in the "Mail" section of the Handbook that all letters can be read by institutional staff and that letters to government officials "will be checked for contraband, threats, bad language and unsuitable content," there is no notice to inmates that all central ministry "reviews" of complaints will involve comment, vetting and approval by the relevant institution.⁹⁵ The lack of independent oversight of and disclosure and transparency about the operation of the complaints system undermine the procedural fairness of the process. It is not clear how multiple levels of review – many if not all of which ultimately defer to the relevant superintendent – further the goal of a fair and expeditious complaints system.

The vast majority of inmate complaints are not centrally collected or tracked either at the institutional or corporate levels. At the institutional level, verbal complaints are not generally logged and the entire written complaints system depends on individual slips of paper being handed to individual correctional officers who must pass on these pieces of paper to the appropriate individual manager. This makes it impossible for senior managers to perform any type of trend analysis or use the information to identify areas of systemic concern. Although correspondence directed to the highest levels of the ministry is tracked for administrative purposes, there is no analysis conducted on the subject, source, outcome, or volume of inmate complaints.

⁹⁴ MCSCS: Inmate Information Guide, *supra* note 34.

⁹⁵ *Ibid.*

Textbox 4: The Client Conflict Resolution Unit

The Client Conflict Resolution Unit (CCRU) is an internal ministry unit that “fields complaints directly from inmates/clients and provides advisory services to management to assist them in the resolution of complaints of differential treatment based on the prohibited grounds as outlined by the Ontario *Human Rights Code*.”⁹⁶ The CCRU’s contact information is prominently posted in every institution and is included in the inmate handbook as one of the primary methods for resolution of complaints.

The CCRU’s roots go back to the early 1990s, when the Commission on Systemic Racism in the Ontario Criminal Justice System recommended that the ministry work toward “eliminating systemic racism in Ontario’s prisons” by “appointing an Anti-Racism Co-ordinator for adult offenders.”⁹⁷ A lead was appointed and in 2005 the ministry formally established an Office of the Anti-Racism Co-ordinator (OARC). The OARC was responsible for investigating and responding to human rights complaints related to race and origin-related Code grounds. The OARC initially had dedicated office space and reported directly to the Assistant Deputy Minister, Institutional Services. In addition to fielding inmate complaints, the OARC was involved in staff training in the institutions and at the Ontario Correctional Services College, providing expert advice on embedding human rights principles into ministry policies, conducting trend analyses on human rights violations, and establishing and maintaining ongoing working relationships with racialized and other community groups.

In 2009, the OARC was relocated from St. Catherine’s to Toronto and placed within the ministry’s Organizational Effectiveness Division (OED). In 2010, it was renamed the Client Conflict Resolution Unit (CCRU) and its mandate was expanded to encompass almost all grounds of discrimination under the Code. At the same time, however, its staff was cut from five people to two. The drastic cut in staff meant that all the training and outreach functions of the Unit ended, and the remaining employees were dedicated solely to conducting site visits to institutions and managing the nearly 1000 yearly inmate calls. Over the next three years the ministry shuffled the two CCRU staff through five different areas within the OED. In 2011, the OED was disbanded, and the CCRU was incorporated into the ministry’s Operational Support Division.

⁹⁶ *Ibid* at s. 4.2.

⁹⁷ The Commission on Systemic Racism in the Ontario Criminal Justice System, *Racism Behind Bars: The Treatment of Black and Other Racial Minority Prisoners in Ontario Prisons* (Toronto: Queen’s Printer for Ontario, 1994).

Inmates who are not satisfied with how their complaint was handled by the ministry can contact the Ontario Ombudsman or, if it concerns a human rights matter, the Ontario Human Rights Commission, or the ministry's client conflict resolution unit (CCRU). The CCRU is an internal ministry unit whose duties include fielding complaints regarding inmates' claims of discrimination under the Ontario *Human Rights Code*.⁹⁸ It currently consists of two staff who are responsible for answering, investigating and, where possible, resolving complaints from about 1000 inmate calls per year. The CCRU does not have the power to compel institutions to comply with human rights obligations, but rather works with institutional staff and managers to find appropriate accommodations and solutions to human rights complaints. As an internal ministry unit, it is not independent and does not have any public reporting powers or functions.

The Ontario Ombudsman's mandate includes receiving and responding to inmate complaints including those about the grievance process itself. Complaints about correctional operations represent a very high proportion of the total complaints received by the Ombudsman's office, ranging between 14% and 34% of the annual complaints total since 2004/05.⁹⁹ In the 2016/17 fiscal year, for example, the Ontario Ombudsman received 3998 complaints about adult correctional facilities, accounting for 19% of all complaints filed that year.¹⁰⁰

As an office of last resort, the Ombudsman does not investigate or intervene in every case. While the Ombudsman performs a key role, it does not formally investigate the vast majority of inmate complaints. In 2014/15, of the 3010 complaints filed from the 10 most complained-about correctional facilities, only 75 (about 2%) were accepted for additional review and investigation.¹⁰¹ As explained in various annual reports, the Ontario Ombudsman triages and prioritizes inmate complaints to focus on serious health and safety issues such as "prolonged segregation placements, problems with accessing medical care, lockdowns, and assaults."¹⁰²

⁹⁸ MCSCS: Inmate Complaints, *supra* note 70 at s. 4.2.

⁹⁹ In its 2013/2014 annual report, the Ombudsman noted that "The province's correctional facilities have historically been a top source of complaints to the Ombudsman's office." Office of the Ombudsman of Ontario, *Annual Report 2013-2014* (Government of Ontario, June 23, 2014) (hereafter, "Ontario Ombudsman Annual Report 2013/14").

¹⁰⁰ *Ibid* at Top 10 Correctional Facilities by Volume, 2016-2017.

¹⁰¹ Office of the Ombudsman of Ontario, *Annual Report 2014-2015* (Government of Ontario, July 28, 2015).

¹⁰² Office of the Ombudsman of Ontario, *Annual Report 2015-2016* (Government of Ontario, November 2, 2015) (hereafter, "Ontario Ombudsman Annual Report 2015/16"). Similarly, in the 2013-2014 annual report the Ombudsman explains: "Our strategy to ensure complaints from correctional institutions are dealt with quickly and efficiently has been to prioritize serious health and safety issues. These involve inmate concerns about the use of excessive force by correctional staff (the subject of last year's systemic investigation report, The Code), prolonged

Textbox 5: Inmate Misconduct Appeals

Inmates can be found guilty of institutional misconduct for a wide range of actions, including disobeying a lawful order or violating institutional rules.¹⁰³ Regulations set out a number of disciplinary consequences that can be imposed as a result, including a verbal reprimand, a loss of privileges, placement in disciplinary segregation or a loss of earned remission.¹⁰⁴ Inmates who disagree with a finding of misconduct may “request a review by the Minister” who has the discretion to review the superintendent’s decision where the inmate alleges that the decision did not follow the procedures set out in regulation or if the inmate was disciplined through a loss of earned remission.¹⁰⁵

In practice, misconduct appeals are dealt with by the same ministry correspondence unit that handles regular inmate mail sent to Assistant and Associate Deputy Ministers, the Deputy Minister and the Minister. Unlike other inmate correspondence and complaints, misconduct appeals are subject to a formal triage process. The prioritization of this correspondence, however, is done on the basis of release date rather than the severity of the discipline imposed. This means that a remand inmate who is appealing a placement in disciplinary segregation will be assessed as a lower priority than a sentenced inmate who has had some privileges removed and whose release is imminent. It also means that, unless an inmate’s scheduled release falls within the next few days or weeks, it is likely that their disciplinary sentence will be served before they receive a decision on their misconduct appeal.

In practice this delay may not be that significant: it is extremely rare for a misconduct decision to be overturned. The permissible grounds of review, set out in legislation, are very limited. Reply letters are drafted based on the formal documents related to the appeal (occurrence report, misconduct report), any OTIS entries, a written “summary” prepared by the institution and discussions with the superintendent or a relevant deputy superintendent. The inmate does not have access to the latter three pieces of information, and is not contacted directly before a decision is rendered.

or inappropriate segregation, inadequate medical treatment, and inmate-on-inmate assaults.” Ontario Ombudsman Annual Report 2013/14, *supra* note 99.

¹⁰³ Reg. 778, *supra* note 16 at s. 29 (1).

¹⁰⁴ *Ibid* at ss. 32 (1), 33(2), 33(1).

¹⁰⁵ *Ibid* at s. 33 (1).

Ombudsman staff “encourages inmates to use the facilities’ internal complaints processes to address most other concerns.”¹⁰⁶ It is worth noting that the federal offender ombudsman, the Office of the Correctional Investigator, has a longstanding practice of accepting inmate complaints without requiring them to exhaust the internal grievance mechanism first. It is non-productive to refer complainants back to a process that is dysfunctional and may itself be the source of the complaint.

In my *Segregation in Ontario* report, I introduced the notion of an independent corrections inspectorate to enhance the oversight and accountability of the province’s correctional system.¹⁰⁷ Moving forward quickly with this recommendation would provide a means to more coherently address issues that are repeatedly raised about the existing inmate complaints process in particular and overall policy compliance more broadly. While the intent of the recommendation is to establish this new oversight office with statutory authority, there is no reason to wait for legislation. I note the Office of the Correctional Investigator was established in 1973, fully 19 years before it was enshrined in Part III of the *Corrections and Correctional Release Act*.

c. Visits and Family Support

Canadian correctional policy has long recognized the importance of maintaining an inmate’s connection with friends and family. In the late 1980s the federal government’s Correctional Law Review recommended clearly entrenching an inmate’s right to personal visits in legislation. The rationale for doing so relied on both a commitment to rehabilitation as well as a respect for individual rights:

Losing meaningful access to the outside world has been and continues to be one of the most debilitating aspects of incarceration. These ... proposals are designed to overcome, so far as may be possible, certain common aspects of incarceration which undermine and impede an inmate's chances of preserving meaningful contact with the outside world.

Outside prison, the freedom to visit with friends, talk on the telephone, or use the mails [sic] is not something that is provided for in legislation, nor is it specifically protected in the *Charter*. However these freedoms are matters falling within the ambit of the fundamental freedoms, such as freedom of expression, assembly and association, articulated in section 2 of the *Charter*, and should be protected to the greatest extent possible. In addition, they supply a vital link between the inmate and the outside world; numerous studies have concluded that reintegration of offenders into the community is

¹⁰⁶ Ontario Ombudsman Annual Report 2015/16, *supra* note 102.

¹⁰⁷ Howard Sapers, *Segregation in Ontario* (Ottawa: Independent Review of Ontario Corrections, Government of Ontario, March 2017) at 109.

enhanced where there has been regular contact between the inmate and the outside world during incarceration.

We therefore approach this area from the perspective that inmates retain the freedom to maintain contact with the outside world, through visits, correspondence and telephone. This freedom should be limited only where necessary to assure the security and good order of the institution, and the mechanisms chosen to limit the inmate's access to the outside world should be the least restrictive alternatives available.¹⁰⁸

Many of the Correctional Law Review's recommendations regarding visits, including legislating a clear right to in-person contact visits, were implemented when the federal government passed the *Corrections and Conditional Release Act* and regulations. Since that time, observers of federal prisons and correctional facilities have noted enormous changes in the federal approach to family contact and visitation. Professor Michael Jackson, for example, writes:

In the thirty years since I first entered a Canadian penitentiary, the areas in which the architecture of change is most visible are those which most members of the public never get beyond -- the places where prisoners visit with their families and friends. In contrast to the cramped and often dingy spaces of thirty years ago, the visiting areas of both new and renovated institutions are more spacious, have comfortable chairs, pop machines and toys for the kids; in medium and minimum security institutions, there are adjacent, open areas with swing sets and other apparatus upon which both kids and their parents can play. Canadian institutions, with the exception of the Special Handling Unit, have private family visiting houses or trailers in which prisoners can spend up to three days (and exceptionally longer periods) with their families; during this time they can cook their own meals and pursue the physical and emotional intimacy that is not possible in the normal visiting areas. In all maximum and in most medium security institutions there are still areas for "closed" visits where prisoners are separated from their visitors by glass partitions and where communication is through intercom phone; however, most visits now are "open" and prisoners can talk to and touch their visitors, so long as certain standards of decency and modesty are maintained.¹⁰⁹

Jackson points to the then-new rights-based federal correctional legislation as a key driver of these changes.¹¹⁰ Recently, increased attention has also been given to attending to the needs of children with incarcerated parents. A 2014 study, for example, urged governments across the country to work to enhance communications and visitation between children and their

¹⁰⁸ Solicitor General of Canada, *Influences on Canadian Correctional Reform: Working Papers of the Correctional Law Review 1986 to 1988* (Public Safety Canada, Government of Canada, 2002) at 226-227.

¹⁰⁹ Michael Jackson, *Justice behind the Walls: Human Rights in Canadian Prisons* (Toronto: Douglas & McIntyre, 2002).

¹¹⁰ *Ibid.*

incarcerated parents,¹¹¹ and a British Columbia Supreme Court decision prevented the closing of a provincial mother-baby program in a correctional facility on constitutional grounds.¹¹²

Ontario has not followed the same path. As outlined below, the vast majority of visits between inmates and their loved ones in Ontario are limited to 20- or 40-minute sessions during which inmates and visitors are physically separated by a barrier (commonly referred to as “closed visits”). There are limited open areas, no apparatus to facilitate outdoor play for children, no private family visiting houses, and no mother-child or mother-baby programs. The momentum in Ontario in recent years has been to decrease in-person visiting: Ontario’s two newest institutions have almost completely replaced closed visits with remote video visitation. Such policies not only constitute unnecessary restrictions on individual rights, they are also contrary to good correctional practice. Two specific areas of family support and visitation are examined below: personal visits in Ontario’s correctional institutions and parent-child and mother-baby programs.

Personal Visits

Research consistently shows that support from family and friends is closely tied to an incarcerated individual’s successful rehabilitation and reintegration.¹¹³ In its Visiting policy, the ministry recognizes the importance of visiting programs for maintaining contact with family, relatives, and the community at large and the positive impact that visits have on rehabilitation and reintegration.¹¹⁴

¹¹¹ Amanda V. McCormick, Hayli A. Miller and Glen B. Paddock, *In the Best Interest of the Child: Strategies for Recognizing and Supporting Canada’s At-Risk Population of Children with Incarcerated Parents* (University of the Fraser Valley, Centre for Safe Schools and Communities, 2014) at v (hereafter, “In the Best Interests of the Child”).

¹¹² *Inglis v. British Columbia (Minister of Public Safety)*, 2013 BCSC 2309 at paras 329-331.

¹¹³ William O’Grady and Ryan Lafleur, *Reintegration in Ontario: Practices, Priorities and Effective Models* (John Howard Society of Ontario and University of Guelph, 2016) at 35; HM Inspectorate of Prisons, “Resettlement provision for adult offenders - Families vital for prisoner rehabilitation, say inspectors,” *News Releases* (Government of the United Kingdom, September 16, 2014); Vera Institute of Justice, *Why Ask About Family? A Guide for Corrections* (Vera Institute of Justice, January 2011) at 1, Last Accessed: August 14, 2017 <https://www.vera.org/publications/why-ask-about-family-a-guide-for-corrections>; Urban Institute, *Family Support Is Key to Staying Out of Prison, Say Ex-Offenders in Chicago* (Urban Institute, December 8, 2004) Last Accessed: August 14, 2017 <http://webarchive.urban.org/publications/900762.html>; Christy A. Visher and Jeremy Travis, “Transitions from Prison to Community: Understanding Individual Pathways,” *Annual Review of Sociology* 29, no. 1 (August 2003).

¹¹⁴ MCSCS: Visiting, *supra* note 18.

By law, sentenced inmates have the right to receive at least one visit a week and remand inmates can have at least two weekly visits.¹¹⁵ Ministry policy grants superintendents the authority to set a range of limits on visits, including the length of time allowed per visit and the number of individuals that can visit at one time.¹¹⁶ Policy requires that visitation periods be scheduled for “normally a minimum of four hours duration each day, seven days a week, with some provision during the week for evening visits.”¹¹⁷ When developing the visiting schedule, superintendents are also directed to ensure “reasonable access by family, friends and others in the community and [consider] the availability of public transportation.”¹¹⁸ Finally, the superintendent has the authority to grant special visits over and above regular visiting hours, particularly in circumstances involving compassionate grounds or out of town visitors and relatives who are unable to visit during the regular hours.¹¹⁹

Given the amount of discretion provided to superintendents to set local visit policies, it is not surprising that Ontario correctional facilities have varying restrictions in place. The Independent Review Team surveyed 11 institutions regarding their visiting policies.¹²⁰ Most institutions have put in place very restrictive limits on the nature, frequency, and duration of visits. In many cases, a significant administrative burden is placed upon family members. Institutional staff also complained about the administrative requirements of supporting visits and the “disruptive” nature of accommodating and supervising visits. We found that:

- The vast majority of visits in Ontario are “closed visits”: interactions take place separated by a transparent barrier, preventing any physical contact with loved ones or friends.
- In many institutions, the visit areas are cramped and offer only closely spaced side-by-side fixed stools for both the inmate and the visitor. This makes it difficult and uncomfortable for children, the elderly, or those with mobility issues to visit and provides absolutely no privacy.
- In order to have a visit, most institutions require that the inmate complete a written request or authorization form with the visitor’s name and contact information. This form is then vetted and processed by institutional staff resulting in an “approved visitors list.” Of the six institutions the Independent Review Team surveyed that mentioned visitors lists in their Standing Orders, half permitted an inmate to have only six individuals listed at a time. In some institutions, for example Central North Correctional

¹¹⁵ Reg. 778, *supra* note 16 at ss. 14 (2), 14(3).

¹¹⁶ MCSCS: Visiting, *supra* note 18.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ On June 6, 2017, these combined facilities had 5792 inmates which represented 74% of the inmate population in Ontario on that day. This total also included 450 female inmates or 72% of women in Ontario Corrections.

Centre, Ottawa-Carleton Detention Centre and Toronto South Detention Centre, the lists can only be updated once a month.

- The minimum number of visits set out in law has, in many institutions, become a *de facto* maximum and the amount of time allocated for each visit is heavily restricted. The majority of facilities offer two 20-minute visits per week for remand inmates; in some facilities, sentenced inmates benefit from longer visits that range from 40 minutes to one hour.
- Most facilities require that visitors make an appointment at least 24 hours in advance to visit an inmate.
- Most facilities only allow two visitors per visit excluding children. The Maplehurst Correctional Complex defines a child as “a baby in arms less than one year old.” Because visiting children must be accompanied by an adult, this policy effectively prevents a caregiver from bringing more than one child at a time, forcing families to make multiple visits for their children and find alternate care arrangements.

Figure 3: Closed Visit Area, Kenora Jail



- ❖ Closed personal visits area at Kenora Jail
- ❖ Inmates and visitors are physically separated by the barrier and speak through telephone receivers

Figure 4: Male Closed Visits Area, Niagara Jail



❖ Closed personal visit area for male inmates at Niagara Jail

While there are provisions regarding open visits that would allow individuals to physically interact by hugging or kissing at the beginning and end of a visit and holding hands throughout their time together, ministry policy states that “in maximum security institutions, including jails and detention centres, open visits are not routinely approved.”¹²¹ Because 25 of the ministry’s 26 correctional institutions are classified as maximum security, this effectively eliminates open visits for almost all inmates regardless of whether or not a given visit would present an identified security risk. The rationale the ministry provides in its policy documents for restricting open visits at maximum security institutions explains that this limitation is in place due to:

- any unknown risk factors which many inmates at these institutions pose until they have been classified;
- the likelihood that maximum security inmates have been charged with or convicted of serious offences or have a poor behavioural or institutional history; and
- the high proportion of inmates at jails and detention centres who are still on remand and detailed information regarding them is not yet available.¹²²

¹²¹ MCSCS: Visiting, *supra* note 114 at s. 6.1.2.

¹²² *Ibid* at ss. 6.1.1-6.1.2.

Figure 5: Medium Security Open Visit Area, Maplehurst Correctional Complex



- ❖ Open personal visit area at Maplehurst Correctional Complex
- ❖ Open visits are reserved for medium security sentenced inmates
- ❖ Inmates and visitors may sit at the same table and have limited physical contact

The ministry does not routinely conduct classification or risk analyses for the purposes of determining institutional risk levels and most inmates are considered maximum security by default (for further details see section V of this report). This web of contradictory and incoherent policy results in the most restrictive, not least restrictive, practices regarding visits.

Of the many institutions surveyed, only the Ontario Correctional Institute – a medium security treatment centre – provides open visits to all of its inmate population (see Table 1). Two institutions provide open visits to medium security inmates or, in the case of South West Detention Centre, those who have exhibited good behaviour while on direct supervision units. In all these institutions, however, these populations represent a small proportion of the total inmate count. Although policy allows a superintendent to permit a maximum security inmate to have a contact visit in special or compassionate situations, this seldom occurs.¹²³

¹²³ *Ibid* at s. 6.1.3.

Figure 6: Open Visit Area, Ontario Correctional Institute



- ❖ Open visit area at the Ontario Correctional Institute, the province's only medium security institution
 - ❖ This area, which is used for professional and personal visits, also serves as the institution's lobby and reception area
-

In Ontario's two newest institutions, Toronto South Detention Centre (TSDC) and South West Detention Centre (SWDC), almost all visits are conducted entirely through remote video link. Although friends and family must travel to the institutions for these visits, they are not permitted to see their loved one in person; instead, they are ushered to a room with rows of video terminals and are given 20 minutes to speak to their friend or family member through a video screen. The inmate, in turn, never leaves his or her cell block: a small alcove with a video screen is provided on the inmate's unit. Although these video terminals were designed to allow families to remotely connect with their loved ones, alleviating the need to travel to the institution, this functionality has never been activated.

Both TSDC and SWDC have recently started offering closed visits and, in the case of SWDC, open visits for select inmates. The conduct requirements to be permitted these types of visits, however, are extremely high: inmates must have been on a direct supervision unit for one or two months and have consistently displayed good behaviour as judged by correctional staff. In May 2017 there were 17 closed visits at TSDC, while at SWDC there were two closed visits and four open visits – a very small number given that these two institutions combined house well over 1000 inmates on any given day.¹²⁴

¹²⁴ Based on the daily population count record, June 6 2017. Total population count for TSDC and SWDC on that day was 896 and 253.

Figure 7: Video Visit Area, Toronto South Detention Centre



- ❖ Three of Toronto South Detention Centre’s 70 personal video visit terminals, located in a room off the institution’s front lobby
- ❖ Personal visits occur almost exclusively via video link, with the inmate sitting in front of a similar video terminal on his unit

Other jurisdictions have more generous visiting guidelines. British Columbia corrections policy, for example, states that “[a]n inmate is entitled to a minimum of two hours of [family and friends] visits per week.”¹²⁵ The policy also explicitly references inmates’ Charter right to freedom of association and specifies that “restrictions on visiting are not imposed arbitrarily or without cause.”¹²⁶ In Yukon, visit policy allows for routine visits of one hour that may be either open or closed.¹²⁷ While mouth to mouth contact is not permitted, each visit may begin and end with an embrace.¹²⁸ Emergency and special visits, while discretionary, are typically granted for compassionate reasons.¹²⁹ There is no restriction in policy on the number of visits per week an inmate may receive.¹³⁰

¹²⁵ Ministry of Justice, British Columbia Corrections Branch, *Adult Custody Policy: Visitors* (Government of British Columbia, July 2014) at s. 1.11.5.

¹²⁶ *Ibid* at ss. 1.11.7, 1.11.8.

¹²⁷ Department of Justice, Corrections Branch, *Adult Custody Policy Manual: Inmate Programs and Services: Inmate Communications: “Inmate Visiting Schedule”* (Government of Yukon, January 1, 2012); Department of Justice, Corrections Branch, *Adult Custody Policy Manual: Inmate Programs and Services: Inmate Visits* (Government of Yukon, January 2012).

¹²⁸ *Ibid* at s. 16.

¹²⁹ *Ibid* at s. 11.

¹³⁰ *Ibid*.

Table 1: Types of Visits offered at Provincial Institutions

	Central East Correctional Centre	Central North Correctional Centre	Elgin-Middlesex Detention Centre	Maplehurst Correctional Complex	Monteith Correctional Complex	Ontario Correctional Institute
Type of visits	Personal: Closed Professional: Depends on type of professional. Open for lawyers	Personal: Closed Professional: Open & Closed	Personal: Closed Professional: Closed	Personal: most closed, but medium security units can have open visits Professional: Open	Personal: Closed Professional: Open	Personal: Open Professional: Open
Visits per week	Generally: 2 Institutional workers: 3	2	2	2	Sentenced: 1 Remand: 2	3 for most inmates
Visit length	20 minutes	Sentenced: 40 minutes Remand: 20 minutes	Generally: 40 minutes Institutional workers: 60 minutes	Medium security: 40 minutes Remand: 20 minutes	Sentenced: 60 minutes Remand: 20 minutes	60 minutes. Extended visits possible for good behaviour.
Number of visitors	2 excluding children	2 adults 2 children	3 excluding children under 16	No limit	2 excluding children	2 excluding children

	Ottawa-Carleton Detention Centre	South West Detention Centre	Toronto East Detention Centre	Toronto South Detention Centre	Vanier Centre for Women
Type of visits	Personal: Closed Professional: Open	Personal: Almost all video. Closed and open visits may be granted for good behaviour. Professional: Open	Personal: Closed Professional: Open	Personal: Almost all video. Closed visits may be granted for good behaviour. Professional: Open if space allows	Personal: Most closed. Sentenced medium security women may have open. Professional: Open if approved in advance
Visits per week	2	Direct supervision, infirmary and female mental health unit: 6 Indirect and segregation: 2	2	Direct supervision: 4 Other units: 2 Closed glass visit is maximum once a month	2
Visit length	20 minutes	25 minutes	20 minutes	Video - 20 minutes Glass visit - 50 minutes	30 minutes
Number of visitors	2 excluding children	1, children assessed case by case	2 excluding children	2 excluding children	2 adults 1 child

Parent-Child and Mother-Baby Programs

Children of incarcerated parents are a vulnerable population and have been called the “invisible victims” of our criminal justice system.¹³¹ Incarcerated mothers describe separation from their children as one of the greatest “pains of imprisonment.”¹³² In children, the effects of maternal incarceration depend on the age of the child and his or her developmental stage.¹³³ The impact of the separation and the disruption of the bonding process can create withdrawal and distress.¹³⁴

Separating mothers and babies, including newborns, raises particular concerns. Both the immediate postpartum and early childhood periods are important for the development of the mother-baby relationship. Rooming with the mother from birth promotes health and social benefits for both mothers and babies; experts have indicated that daily visits alone do not provide an adequate substitute.¹³⁵ Breastfeeding has also been shown to have health and nutritional benefits for infants and aids in psychosocial development. Separation of mothers from infants during incarceration has, predictably, been found to inhibit breastfeeding, and has been associated with depression and suicidal ideation, increased use of alcohol and drugs, and increased criminal activity in mothers.¹³⁶

Various jurisdictions in Canada have put in place specific programs to mitigate these impacts. Research has shown that appropriately supported contact between parents and children can strengthen the child-parent relationship, fostering resiliency in the child, and increasing the parent’s chances for successful reintegration.¹³⁷ British Columbia has successfully operated both mother-child and mother-baby programs. The province’s first mother-baby program, which opened in 1973, allowed pregnant women who were incarcerated to bring the babies back to the institution after the birth. Over the course of 18 years about 80 babies and mothers participated in the program. When the institution that had originally provided the mother-baby program closed, a similar program was started as a replacement. The second program allowed

¹³¹ Alison Cunningham and Linda Baker, *Invisible Victims: The Children of Women in Prison*, (Centre for Children & Families in the Justice System, December 2004) at 2.

¹³² Ann Booker Lopper et al., “Parenting Stress, Alliance, Child Contact, and Adjustment of Imprisoned Mothers and Fathers” *Journal of Offender Rehabilitation* 48 no. 6 (2009).

¹³³ Barabara J. Myers et al., “Children of Incarcerated Mothers,” *Journal of Child and Family Studies* 8 (1), (2009).

¹³⁴ Cunningham and Baker, *supra* note 131 at 2.

¹³⁵ *Inglis v. British Columbia*, *supra* note 112 at para 269.

¹³⁶ *Ibid* at para 329-331.

¹³⁷ *In the Best Interests of the Child*, *supra* note 111 at iii.

children up to the age of two to stay with their mothers; older children could stay with their mothers in private family visiting accommodation for up to a week.¹³⁸

In 2005, British Columbia opened its most recent mother-baby program at an institution that houses both sentenced and remanded inmates.¹³⁹ Although the province closed the program in 2008, the Supreme Court of British Columbia subsequently ruled that the termination of the mother-baby program violated constitutional rights. In the course of the ruling, the Court recognized not only the benefits of such programs for both the mother and child (see Textbox 6), but also the severely damaging consequences of parental separation and placement into the foster system.¹⁴⁰ British Columbia's mother-baby program was reinstated in 2014.¹⁴¹

A broader mother-child program exists at the federal level. In 2005 the Correctional Service of Canada implemented a mother-child program that allows young children to live with their mothers. In 2014, the Correctional Service of Canada announced they would be expanding this initiative by adding 15 new rooms in minimum security units that would be set aside for mothers and their children.¹⁴² In June 2017 nine mothers and 10 children were participating in the program: seven children ranging between two and half months and three years of age were living with their mothers full-time and three children (seven months, six and eight years old) stayed on a part-time basis.

Quebec has instituted an enhanced visitation program. Quebec's correctional services, in partnership with a non-profit organization *Continuité Famille auprès des détenues* (CFAD), provide the opportunity for children up to 14 years old to spend 24 hours together with their incarcerated mother in a dedicated area within the correctional institution. Staff from CFAD accompany the family for the duration of the visit.¹⁴³

¹³⁸ *Ibid* at para 39, 42.

¹³⁹ *Ibid* at para 80.

¹⁴⁰ *Ibid* at para 329-331.

¹⁴¹ Linda Givetash, "Mother-child Prison Program Giving Babies, Mothers 'A Better Chance,'" *The Star*, July 17, 2016.

¹⁴² Between 2008 and 2014, 14 children participated in the program; of those, eight were full-time. Leah Hennel, "Canada Expanding Rarely Used Program that Lets Mothers Live with Children in Minimum Security Prisons," *National Post*, May 19, 2014.

¹⁴³ *Continuité Famille auprès des Détenues* (CFAD), "Mother-Child Program," Last Accessed: August 14, 2017 <http://cfad.ca/en/>.

Textbox 6: Benefits of Mother-Baby Programs

In 2013 the Supreme Court of British Columbia ruled that the decision to close a mother-baby program at a British Columbia correctional institution was an unjustifiable violation of Charter rights.¹⁴⁴ Dr. Peggy Koopman, a psychologist with extensive experience in corrections and with mother-baby programs in particular, testified as an expert witness regarding the medical, psychological, and social benefits these programs provide to pregnant women, mothers, and their children. Her testimony, as summarized by the court, was that there are numerous benefits of keeping babies with their mothers during incarceration, including:

- Assistance regarding the secure bonding and attachment of baby to mother and perhaps as important, mother to baby. This bonding may assist the mother especially if she has been reared in an abusive environment.
- Mothers more readily engage in programming and education and develop parenting skills which may also benefit other children they have or will have in the future.
- It is easier for a mother to retain custody of a baby and be released with that baby than regain custody of the baby after release from prison.
- Several researchers, prison officials and advocates cite that recidivism is lower in women who keep their babies while in prison.
- While in the prison setting the women with babies appear to gain confidence and self-esteem.
- If a woman keeps her baby and retains custody of her other children there is a better chance for her family to stay together which has long-range positive implications for the future of the next generation. This is an example of how the cycle of criminal offending is lessened.
- Corrections officials, advocates and the writer's experience with women in prison indicates that nurturing a baby and developing a future with that child in a pro-social manner can be a major factor in breaking the cycle of criminality in a family constellation.¹⁴⁵

She also testified that “[t]here is no evidence that babies are at risk in the prison environment” and that “[w]hile there have been legitimate concerns about safety for these children the writer could find no evidence of a baby or child being harmed in ways that would not have happened in the community such as falling and scraping a knee etc..” Although there may be some negative impacts flowing from such programs in some contexts,¹⁴⁶ Dr. Koopman's expert opinion was that mother-baby programs have positive merits.¹⁴⁷

¹⁴⁴ *Inglis v. British Columbia supra* note 112.

¹⁴⁵ *Ibid* at para 256.

¹⁴⁶ *Ibid* at para 258

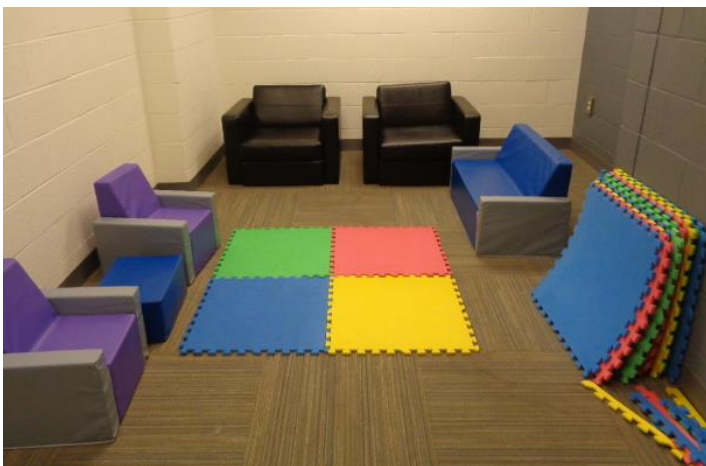
¹⁴⁷ *Ibid* at para 260.

Figure 8: Child Open Visit Area, Vanier Institute for Women



- ❖ Visiting room at Vanier Centre for Women dedicated to facilitating visits with children
- ❖ Vanier is the only institution that routinely offers contact visits with children
- ❖ Access to this visiting space is only available for women who have been sentenced and classified as medium security

Figure 9: Open Visit Area, South West Detention Centre



- ❖ Open visit area to facilitate contact visits, including visits with children, at the South West Detention Centre
- ❖ Open visits at the institution are primarily used as a good behavior incentive, and are available to men and women who are on a direct supervision unit who staff have judged as consistently demonstrating good behavior
- ❖ The area has also been used to facilitate compassionate visits

Ontario does not have any parent-child or mother-baby programs. Of the 16 provincial institutions that house women, only Vanier Centre for Women routinely offers contact visits between mothers and their children, and even this is only available to sentenced, medium-security inmates. The majority of institutions housing women indicated that they never facilitate open visits. The reality is that the vast majority of incarcerated mothers and fathers must interact with their children through closed visits for rarely more than 40 minutes per week. For many parents whose children live in faraway communities, contacts are infrequent or non-existent – a circumstance that disproportionately impacts Indigenous peoples.

The ministry does not keep centralized records of the number of pregnant women in custody. Vanier Centre for Women, which does keep localized statistics, has housed over 100 pregnant women between 2013 and May 2017; at least 13 of these women were transferred to a hospital to give birth during their incarceration. In most institutions there are few if any targeted services and programs for pregnant women or those who have recently given birth. In 2012, a woman gave birth in a cell in an Ontario detention centre. Widespread media coverage and public outrage followed, and a review of the incident prompted the ministry to implement a policy on prenatal and postnatal care which came into effect in 2014.¹⁴⁸ Nevertheless, the reality for pregnant women and new mothers remains stark. Things that are taken for granted in the community – having a pillow for comfort while sleeping or wearing sandals because your feet are too swollen to wear anything else – are viewed as exceptions to institutional rules that must either be approved by the institutional physician or are just plainly refused. While Vanier Centre for Women, the primary institution for sentenced women, does provide access to Doulas to assist with pre-natal care, the birth, and the post-partum period, these services are not available to women incarcerated at other institutions.

An incarcerated mother who wishes to bond with her baby will not be given that opportunity while in custody in Ontario. There is no dedicated policy or program to facilitate postnatal contact between a mother and baby and most institutions housing women do not allow contact visits. After birth, the mother will have the opportunity to hold her baby, but as soon as she is medically cleared by the hospital doctor she will be escorted back to the correctional institution. Unless there is an approved kinship agreement, her baby will be placed in the care of the Children's Aid Societies (CAS). Some women report having been returned to custody within six hours of the birth. These women are at an increased risk of postpartum depression after having been separated from their babies, yet institutional staff report that some new mothers will refrain from crying or expressing sadness for fear of being placed in segregation on suicide watch.

¹⁴⁸ Ministry of Community Safety and Correctional Services, *Health Care Services Policy and Procedures Manual: Health Care Services for Women: Management of Prenatal and Postnatal Care* (Government of Ontario, March 25, 2014).

The ministry's new policy on prenatal and postnatal care does give new mothers the right to express breast milk and requires institutions to develop procedures to facilitate the drop off of the necessary supplies and pickup of breast milk.¹⁴⁹ In practice this arrangement is very rare and dependent upon the cooperation of the baby's guardian in the community. Under policy, institutions do have the ability to approve exceptional open contact visits which conceivably could be used to allow a mother to breastfeed her newborn. One institution did report a recent case where a partnership was established with CAS that allowed a new baby to visit the mother and breastfeed once a week. The ministry considers this arrangement to be innovative, progressive and exceptional, highlighting the lack of programs and services to attend to these needs in Ontario's correctional system.

d. Inmate Trust Accounts

Institutional life leaves little room for personal agency or autonomy. Every minute of every day is scheduled. The most basic activities – where and when you sleep, what you eat, the clothes you wear, the activities you can participate in, with whom you share a cell – are all outside of an individual's control. Within this environment, any avenue for individual choice stands out as an important acknowledgment of personal freedom and dignity.

An inmate's ability to purchase basic items from the institution's canteen is one of the limited areas in which inmates retain a degree of individual choice. Each week an inmate can choose to purchase items from a list of pre-approved products – paper, pens, reading glasses, magazines, books, personal hygiene products, cosmetics, and extra food – for their own personal use. Canteen purchases make it possible for incarcerated parents to send birthday cards to their children, elderly inmates to access non-prescription health aids, and ethnic minorities to get hair and skin care products that meet their particular needs. It is the only way inmates may purchase a bag of chips, a chocolate bar, or a can of soda; and the only way a purchase can be made from canteen is by asking the correctional institution to take the money out of the individual's Inmate Trust Account.

Access to canteen depends entirely on the appropriate institutional management of inmates' money. By law, inmates must surrender all personal property in their possession – including money – to the superintendent at the time of admission.¹⁵⁰ To allow inmates to purchase canteen items, the institution is responsible for operating an Inmate Trust Account for each

¹⁴⁹ *Ibid* at s. 6.13.

¹⁵⁰ MCSA, *supra* note 15 at s. 10.(1).

individual. Inmates are allowed to spend up to \$60 a week¹⁵¹ and typically may have a maximum of \$180 in their account at any given time.¹⁵²

Traditionally the process of receiving money from families has been labour-intensive and prone to human error. Account reconciliation was facilitated through multiple sets of systems that increased staff workload and interfered with timely responses to inmates' requests regarding account balances. The ministry has recently instituted a new electronic tracking system that has enhanced its capacity to reconcile and provide detailed reports on inmate accounts, as well as increased the efficiency of processing inmates' canteen orders. Despite this improvement, the system remains cash-based and open to error. In order to mitigate this risk, two staff must be present when receiving and processing inmate money.

While the ministry has leveraged technology to improve its ability to manage inmates' funds, deposits to inmate accounts are still required to be made in person or by mail. Those who want to give money to their loved ones while incarcerated must attend the institution in person, or mail cash or a money order to be deposited into the inmate's account. Several institutions in Ontario are located on the outskirts of towns and at times in remote communities. For many individuals and families it is simply not feasible to travel to these institutions on a regular basis. This is particularly the case for single parents, low income families, those with physical disabilities, and individuals from distant communities. While the option to mail money alleviates travel, sending cash through the postal system is slow and insecure and the use of money orders incurs additional expenses.

Current technology allows the public at large to manage their accounts, make payments and transfer money without having to attend a bank in person. Numerous provinces have established systems whereby individuals can deposit money into inmates' accounts remotely over the internet or through community-based kiosks.¹⁵³ While these systems are not without flaws (concerns have been raised regarding the appropriate and convenient placement of kiosks, high user fees, and timely servicing of equipment) they represent an improvement over the status quo. High per-transaction user fees are a particular concern. If the ministry decides to explore electronic fund transfer options, any cost savings gained by modernization must be used to offset potential user fees for those in custody or their family and friends in the community.

¹⁵¹ *Ibid* at s. 19.(2).

¹⁵² Ministry of Community Safety and Correctional Services. *Resource Planning: Inmate Trust: Inmate Trust Account: Procedural Guidelines: Key Activities* (Government of Ontario).

¹⁵³ Alberta, Manitoba, Saskatchewan, Prince Edward Island, New Brunswick and Nova Scotia have put in place some form of remote funds depositing for their correctional facilities.

Textbox 7: Transforming the Ontario Public Service for the Future

The Ontario government is committed to utilizing digital platforms to deliver customer-centred services in a more efficient and accessible manner. As described in the February 2017 discussion document, *Transforming the Ontario Public Service for the Future*:

Mobile technology has become ubiquitous, and the public now expects to access services from anywhere at any time, including government services. To meet the increasing expectations of the public, government digital services must mirror the simplicity and effectiveness Ontarians have experienced in the private sector. To accomplish this ambitious goal, we need to rethink how government programs and services are delivered.

Digital government provides an opportunity to put people first, delivering customer-centred services that are efficient and easy to access.¹⁵⁴

Ontario's Correctional Services has an opportunity to take the lead and leverage lessons learned from other jurisdictions regarding the use of digital technology to better serve those in its care and custody. Online money transfers to inmate trust accounts, remote video visits with family members that are unable to visit institutions in person, digital health records, the ability to place telephone calls to cellular phones,¹⁵⁵ and inmate access to basic email and intranet services are all technologies that could significantly improve services for incarcerated Ontarians and their families. Correctional facilities operated in the United States by the Federal Bureau of Prisons permit the electronic depositing of inmate funds as well as provide inmates the opportunity to stay connected with family and friends via a secured intranet-based electronic messaging.¹⁵⁶ Similarly, the majority of prisons in England, Scotland, Wales and Northern Ireland allow members of the general public to send email messages to inmates.¹⁵⁷

¹⁵⁴ Secretary of the Cabinet, *Transforming the Ontario Public Service for the Future: Discussion Document* (Government of Ontario, February 2017) at 26.

¹⁵⁵ Currently in Ontario all inmates in provincial custody can only place collect phone calls to individuals that have a landline: collect phone calls cannot be made to cell phones or internet-based phone services. Ontario's telephone management system only supports collect calling across continental North America. Inmates who wish or need to make a long distance phone call outside of North America must request staff assistance in order to place the call. Usually this is not a request that can be facilitated on the unit and must be processed through management.

¹⁵⁶ Federal Bureau of Prisons, "Stay in touch," Federal Government of the United States, Last Accessed: August 14, 2017 <https://www.bop.gov/inmates/communications.jsp>.

¹⁵⁷ Email a Prisoner, "About Email a Prisoner," Last Accessed: August 14, 2017 <http://www.emailaprisoner.com/about.cfm>.

e. Deaths in Custody

Over 150 people have died in Ontario’s correctional institutions over the past decade.¹⁵⁸ Most of them died of “natural causes” – although, as the Office of the Correctional Investigator has aptly said, “[t]here is little that is natural about dying in a ... penitentiary.”¹⁵⁹ Many in custody deaths are preventable. Whether it is improved medical care, better emergency responses, implementing harm reduction measures, making cells safer for vulnerable individuals, or the enhanced use of compassionate release, the bottom line is the same: there are measures that can be taken to prevent the loss of a life behind bars.

A responsible and responsive correctional system must treat every death in custody as both a tragedy and an opportunity. The circumstances surrounding each death including related policies, protocols, actions and omissions, must be subject to independent expert investigation. Staff should be interviewed, documents reviewed, and the cause of death determined. The purpose of this must be focused on establishing what happened and documenting issues. Deficiencies and remedies should be clearly identified and findings must be shared to foster learning from these tragedies, all in the aid of preventing future deaths. There must be a surveillance mechanism by which trends are identified and a process in place to track broader systemic changes, either in response to an individual case or pattern of events. Ideally, information on deaths in custody should be shared and compared on a national basis, so that lessons can be learned across regions and jurisdictions. Finally, reports into the circumstances surrounding individual deaths, contributing factors, long-term trends, recommendations and follow up on ministry actions or responses should be publicly available.

The correctional system must also have measures in place to sensitively and compassionately respond to the human dimensions of a death in custody. Notifying and providing information to families, funeral and cremation costs, transportation of deceased persons, repatriation of personal possessions, and family support for travel to institutions or coroners inquests are all central to providing support to a family and community whose loved one has died while under government care and supervision. These issues must be clearly addressed in legislation and policy and followed through in practice.

As outlined below, Ontario’s correctional system can improve both with regard to the investigation and review process as well as interactions with the family of the deceased person. The majority of deaths in custody in Ontario are not subject to a thorough fully arms-length and

¹⁵⁸ The exact number of individuals that have died in provincial custody is uncertain; see Textbox 9.

¹⁵⁹ Office of the Correctional Investigator of Canada. *Correctional Investigator’s Assessment of the Correctional Service of Canada’s Progress in Responding to Deaths in Custody*. (Government of Canada, September 16, 2013), at 1 (hereafter, “OCI: Assessment”).

independent review. Even where this does take place, the extent to which these reviews lead to systemic reflection or change appears limited. There is little direction given to institutions regarding the information and supports that should be provided to justice system stakeholders including the coroner, and most importantly, to families whose loved ones have died.

Review of Deaths in Custody

There are two distinct bodies that investigate deaths occurring within and during the time of transition from correctional facilities in Ontario: the ministry's internal Correctional Services Oversight Investigations office and the Office of the Chief Coroner, which under the authority of the *Coroners Act* is an independent death investigation service. The ministry's corporate health care unit will also conduct a health care review of inmate deaths.

The Correctional Services Oversight and Investigations office (CSOI) is the ministry division currently charged with investigating deaths in custody. CSOI was formed in 2013 in response to recommendations from the Ontario Ombudsman and an internal ministry report regarding use of force oversight and investigations. Ultimately, in addition to use of force oversight, CSOI was also given a mandate to oversee investigations into deaths in custody.¹⁶⁰ Neither the Ombudsman nor the ministry's internal report provided guidance as to how these two investigative processes – use of force and deaths in custody – should differ, whether they should pursue different goals, or if the two types of investigations required distinct expertise. Despite the fact that both reports recommended that CSOI be independent from the ministry, there is an absence of structural and functional independence guaranteed either in law or policy. Although when first created CSOI reported directly to the Deputy Minister responsible for Correctional Services, ministry processes were realigned in February 2016: the office (along with all Correctional Services Assistant Deputy Ministers) lost its direct reporting relationship and currently reports through the Associate Deputy Minister of Correctional Services.¹⁶¹

Although CSOI is mandated to investigate in-custody deaths, policy does not state the purpose of these investigations. One interviewee reported that the purpose of the investigation was to examine “whether MCSCS appropriately cared for the deceased” and “outline sequence of events leading to the death.” Much of the final report and investigation process, however, centres on whether individual staff members followed policies and procedures, and the unit will

¹⁶⁰ In 2015, CSOI policy was developed and now includes mandatory investigations into deaths, escapes, improper release, serious injury and other investigations at the discretion of the Chief, executive or senior executive. CSOI also has a well-defined compliance function that reviews policy compliance on a range of areas that impact the safe, humane treatment of inmates in custody, i.e. Suicide Prevention Policy compliance review, segregation review, contraband.

¹⁶¹ Ministry of Community Safety and Correctional Services, *2015 Annual Report of Correctional Services Oversight and Investigations* (Government of Ontario, September 2016) at 3 (hereafter, “CSOI: 2015 Annual Report”).

give priority to death investigations that may result in staff suspensions. This suggests that, although CSOI takes the position that its mandate encompasses preventing future deaths by identifying learning opportunities through death investigations, in practice much of the process focuses on staff compliance with existing policy.

A typical CSOI death investigation will commence when the relevant regional office contacts CSOI to request a Level 1 investigation.¹⁶² These requests are made any time an inmate dies in an institution, in the hospital under correctional escort, or when an institution learns that an inmate who was in the community but not being directly supervised by a correctional officer has died.¹⁶³ A CSOI inspector will be assigned to the investigation and will attend the scene, conduct interviews and review relevant videos, documentation, photographs and any other evidence. The health care file is given to corporate health care for a file review and CSOI will request the official cause of death from the coroner's office; no other external experts are used in their investigations.

After the investigation is completed, CSOI issues a report of their factual findings and analysis to the ministry's legal services branch and the relevant regional director. There is no requirement for the findings to be shared further. Examples of typical findings include that staff conducted improper clock rounds, that visual checks were not done properly, that the response time for an emergency code was inadequate, that an incident was not properly recorded or that documentation in log books or notebooks did not meet ministry standards. The final report also includes a sign-off form where the regional director must indicate what they have done in response to the report's findings. Once the region has finalized their response, the sign off form is returned to CSOI and, if CSOI is satisfied with the region's actions, the file is closed.

CSOI has not been conducting any form of trend analysis. They do track the number of death investigations per year, the means and cause of death, demographic information about the deceased or the number of days it takes to complete an investigation. CSOI recently implemented a new investigations database in an attempt to assist with trend analysis, but at the time of writing the project was still in its initial stages.

¹⁶² According to ministry policy, Level 1 Investigations involve incidents that are deemed to constitute a significant contravention of the MCSA, policies and procedures. They are authorized by the Chief of Oversight and Investigations as delegated by the Minister of Community Safety and Correctional Services on their own initiative or following a request by a Director or Assistant Deputy Minister and are led by CSOI Inspectors who are designated under section 22 of the MCSA. Ministry of Community Safety and Correctional Services, *Correctional Services Oversight and Investigations* (Government of Ontario).

¹⁶³ Ministry of Community Safety and Correctional Services. *Institutional Services Policy and Procedures Manual: Inmate Management: General Inmate Management: Death of an Inmate* (Government of Ontario, July 2016) (hereafter, "MCSCS: Death of an Inmate").

There is no automatic public disclosure of CSOI findings.¹⁶⁴ Upon request, file disclosures are provided for the purposes of a related labour proceeding, civil litigation, or other legal matter. Coroners may request CSOI reports to inform their investigations. Concern about the release of CSOI reports, however, is common, as they often contain information of a confidential human resources nature. This is a further complication, as inquest proceedings are publically accessible.

Although CSOI is required to submit an annual report, its first such report, published in September 2016, was not made public. The report did not provide information related to specific case findings or ministry responses to findings from death investigations, even though deaths accounted for 22% of CSOI investigations in 2015.¹⁶⁵

Deaths in custody are also reviewed by corporate health care, a four-person internal ministry unit that is responsible for all health care policies, provincial protocols, and training within provincial correctional institutions. Upon being notified of an inmate's death, a nurse in the unit will conduct a medical file review to examine the health care that was provided to the inmate. The review will include an examination of whether there were enough staff on duty to facilitate the appropriate care for the inmate, the availability and proximity of medical equipment, the ability of staff to use available medical equipment as well as whether or not there were any circumstances identified in the medical file that may have contributed to the death. If an initial file review raises any questions or concerns regarding the medical treatment the individual received, the unit will contact the health care manager at the relevant institution for more information to determine if there are any localized concerns within the health care department, information gaps, or issues with practice standards. This review may result in health care-related recommendations including suggested changes in health care protocols and policies, additional health care training or education. Staff may conduct an informal trend analysis to inform their recommendations and relate cases to other situations they might have previously experienced. While these reviews are tracked internally by corporate health care the results are not always shared with the relevant health care manager, superintendent, regional director, or Assistant Deputy Minister.

¹⁶⁴ The ministry stated that CSOI's information is disclosed in line with the government's "Open Data Initiative" and that any public disclosure of information needs to be aligned with the Open Data parameters. The Open Data Initiative is a government-wide initiative that took effect in 2016 with the aim of increasing government openness and transparency by proactively disclosing a range of government data sets to the public. To date no CSOI data has been published under this initiative. It is concerning that a government initiative intended to increase public transparency is referenced as an explanation for the lack of proactive information sharing.

¹⁶⁵ CSOI: Annual Report 2015, *supra* note 161.

There is no official ministry policy directing when corporate health care should conduct these reviews, what must be included or with whom the results should be shared. In practice, corporate health care will be contacted to conduct a medical file review as part of the broader CSOI investigation, but the notification of the inmate death through the CSOI investigation process is not always timely. If corporate health care becomes aware of a death through informal channels prior to being contacted by CSOI they will initiate the medical file review proactively.

The Office of the Chief Coroner is required to investigate the circumstances of every death that occurs when an individual is in the custody of a correctional officer and must hold a full inquest if, as a result of the investigation, the coroner is of the opinion that the person may not have died of natural causes.¹⁶⁶ A coroner's inquest is mandated to answer five questions: the identity of the deceased, the medical cause of death, when and where the death occurred, and by what means (natural, suicide, accident, homicide, or undetermined). The investigative findings are used to inform potential recommendations with the intention of improving public safety with the goal of preventing future deaths in similar circumstances.¹⁶⁷

Prior to 2009 the coroner was required to hold an inquest into every death in custody. Inquests into deaths from natural causes regularly gave rise to recommendations about the accessibility of necessary medical equipment,¹⁶⁸ the availability of medical professionals within the institution,¹⁶⁹ electronic medical records,¹⁷⁰ tracking of inmate health complaints,¹⁷¹ and setting mandatory response timelines for inmate requests for medical treatment.¹⁷² In 2009, however, the *Coroners Act* was amended to remove the requirement for a mandatory inquest in cases of

¹⁶⁶ *Coroners Act*, RSO 1990, c C.37, s. 10(4.5).

¹⁶⁷ Ministry of Community Safety and Correctional Services, "Death Investigations in Ontario: About Death Investigations in Ontario" (Government of Ontario, June 24, 2016), Last Accessed: August 14, 2017 http://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/DI_intro.html; Ministry of Community Safety and Correctional Services, "Death Investigations: About Inquests" (Government of Ontario, February 8, 2016), Last Accessed: August 14, 2017 <http://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/Inquests/AidToInquests.html>.

¹⁶⁸ Jury Recommendations: Coroner's Inquest into the death of Baljit Singh Deol (Government of Ontario, 2003)(hereafter, "Inquest: Deol"); Jury Recommendations: Coroner's Inquest into the death of Sidney Hodge (Government of Ontario, 2003)(hereafter, "Inquest: Hodge"); Jury Recommendations: Coroner's Inquest into the death of Patrick Marley (Government of Ontario, 2002).

¹⁶⁹ *Ibid* Inquest: Deol; Jury Recommendations: Coroner's Inquest into the death of Jonathon Mark Dew (Government of Ontario, 2014)(hereafter, "Inquest: Dew").

¹⁷⁰ *Ibid* Inquest: Dew; Inquest: Hodge, *supra* note 169; Jury Recommendations: Coroner's Inquest into the death of Sheik Kudrath (Government of Ontario, 2002).

¹⁷¹ *Ibid* Inquest: Dew; *Ibid* Inquest: Hodge,

¹⁷² *Ibid* Inquest: Dew; Inquest: Deol, *supra* note 169.

in-custody natural deaths. This change appears to have been implemented in part as a measure to reduce the wait times for inquests.¹⁷³ Despite removing these deaths from the inquest caseload inquest delays remains an issue. In 2014, there were 15 deaths in custody¹⁷⁴ that the ministry had identified as requiring an inquest; as of June 2017 only five of those inquests had been held and a further two were ongoing. Of the eight custody-related inquests that did take place in 2016, most dealt with deaths that had happened over two and a half years prior and two inquests had been pending for over seven years.¹⁷⁵

Removing the requirement for mandatory inquests for natural causes has left a significant gap in the oversight of inmate deaths within Ontario correctional institutions. Since 2010, there have been 52 cases where the coroner's investigation found that the inmate died of 'natural causes'; of these cases only four have resulted in an inquest. In cases where no inquest is held, the only reviews of the circumstances of the inmate's death are internal to the ministry bodies.

The ministry's Coroner's Inquest/Review policy defines the process and timelines for the ministry to respond to coroners' inquests, reviews, and recommendations. At the conclusion of an Inquest, the ministry receives the recommendations and, after some time, the accompanying verdict explanation. These are shared with the responsible regional director who is to initiate and complete the ministry's response within six months¹⁷⁶ of receiving the explanation. Generally this will involve conference calls between the region, the relevant institution and the ministry's legal services branch to determine what policy changes or other actions are necessary. Responsibility for different types of actions are assigned as appropriate

¹⁷³ Delay in holding mandatory inquests has been addressed by the Ontario Ombudsman. Office of the Ombudsman of Ontario, *Annual report 2009-2010* (Government of Ontario, June 6, 2010). The Independent Review Team was also informed that Coroners, medical examiners and other observers have expressed two further, somewhat competing, sets of concerns influenced the decision to remove the mandatory inquests for natural in-custody deaths. First, many investigations and reviews into natural cause deaths result in similar findings and provide little new direction for the prevention of similar fact deaths. Second, there is a frustration these repeated recommendations into previously identified issues indicate corrections' limited capacity to learn from previous experience. It is clear that there is a need to conduct the reviews, share the information and hold authorities accountable to not only implement remedies but also to ensure lessons learned are sustained over time and across the system.

¹⁷⁴ Note that this figure uses MCSCS' definition of a death in custody which is narrower than other interpretations. See Textbox 9 for details.

¹⁷⁵ According to ministry tracking, the median wait time for inquests related to deaths in custody that occurred in 2016 was two years and four months; the mean wait time was three and a half years.

¹⁷⁶ Prior to January 2017 the ministry had 12 months to submit their response to coroners' inquests, reviews and recommendations.

and a final response to the Office of the Chief Coroner is completed, approved by the Deputy Minister, and signed by the Assistant Deputy Minister, Institutional Services.

Aside from specific ministry-wide policy updates that might flow from individual inquests there is no process that allows for the identification of broader trends, analysis, or shared learning between institutions. Policy requires that the ministry's final response to the coroner's office be distributed for information purposes; there is no indication, however, as to how the information is disseminated, the extent of the distribution, or the measures taken for the prevention of similar incidents and future deaths.¹⁷⁷ The superintendents contacted by the Independent Review Team could not remember receiving formal updates or information on inquest or death investigations other than those that directly related to their institutions.

Historically, the ministry's staff person who tracks and coordinates the coroners' inquest process was sending a quarterly summary report to all the regions that captured inquest recommendations and responses. The comprehensive database that the staff person created to facilitate this process, however, has not been operational for more than two years and as a result, the ministry has not been producing or circulating any summary reports. It is expected that a new database will be operational this year. When implemented, it will track the circumstances surrounding the inmate's death, coroners' recommendations, ministry responses, and completion of outstanding commitments. Even when the ministry resumes the production of quarterly reports, it is unclear how the information will be used and how the organization will draw lessons learned in preventing future deaths of inmates in custody without a coordinated ministry wide analysis and response. At present, there are no plans to make this information available to the public.

The Independent Review Team analyzed over a decade of coroners' jury recommendations and ministry responses stemming from inmate deaths in custody related to suicide.¹⁷⁸

Recommendations repeatedly focused on specific key areas: the need to review the admission and intake process, particularly the screening for inmates who may be suicidal; concerns about the way health data is collected and shared; issues with cell design, specifically ligature suspension points; training of staff, particularly regarding suicide awareness and prevention; and a focus on the importance of log book entries, communication amongst staff and the workings of the Offender Tracking Information System (OTIS) alert process.¹⁷⁹ Jury

¹⁷⁷ Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Administration: General Administration: Coroner's Inquest/Review*, (Government of Ontario, February 11, 2014).

¹⁷⁸ The Independent Review Team focused on deaths caused by ligatures or by hanging. This included 33 inquests, held between 2005 and 2017; five of which had no ministry response yet.

¹⁷⁹ Each of these areas had approximately 10 coroner jury recommendations from different inquests. Some inquests had multiple recommendations for each of these.

recommendations also frequently noted concerns with how cell checks are carried out; a need for increased nursing and healthcare resources as well as supplies; the need for non-tearable bedding and clothing; and issues surrounding emergency response. Finally, multiple inquests, some dating to 2008, repeatedly call for the implementation of electronic medical records.

Textbox 8: Death Investigation Oversight Council

In April 2007, the Ontario government struck a public inquiry to conduct a systemic review of pediatric forensic pathology (“the Goudge Inquiry”). One of the Goudge Inquiry’s key recommendations was to strengthen the oversight of the death investigation process to allow for greater accountability and transparency. In December 2010, the government created the Death Investigation Oversight Council (DIOC). DIOC’s mandate is to enhance accountability and oversight of Ontario’s death investigation system by providing advice and recommendations to the Chief Coroner and the Chief Forensic Pathologist on matters that include:

- Financial resource management;
- Strategic planning;
- Quality assurance, performance measures and accountability mechanisms;
- Compliance with the *Coroners Act*; and
- Administration of a public complaints process.¹⁸⁰

One of DIOC’s key recommendations to increase transparency was to ensure that inquest verdicts and recommendations are easily accessible to the public.¹⁸¹ In 2015, the Office of the Chief Coroner began posting jury verdicts and recommendations for inquests that took place after January 2014. The posted documents do not include detailed information regarding the circumstances of the death or the rationale for the recommendations. Coroners do prepare fuller Inquest verdict explanations for each inquest, which include the circumstances surrounding the death and commentary regarding the evidence that formed the basis of each jury recommendation. These documents, however, are not publicly posted. For some time Ontario verdict explanations were being publicly provided through CanLii, a free web-based case law and legislative database. As of March 2017, however, all verdict explanations were removed and currently these documents are only available upon request. The responses to jury recommendations, including those from the ministry and others are also not available online but are available upon request.

¹⁸⁰ Death Investigation Oversight Council, “Welcome” (Government of Ontario), Last Accessed: July 31, 2017 <https://www.sse.gov.on.ca/mcscs/dioc/en/pages/home.aspx>.

¹⁸¹ Death Investigation Oversight Council, *Annual Report 2015* (Government of Ontario, January 2017) at 14.

Textbox 9: Deaths in Custody: Who Counts?

The Independent Review Team was unable to find definitive figures on the number of individuals that died while in custody in Ontario. Three different data sets on deaths in custody were reviewed: one was provided by the Office of the Chief Coroner (OCC) pursuant to a request from a community organization, a second was provided to the Independent Review Team directly from the OCC, and a third that is maintained internally by corrections. The data sets did not align.

The source of this confusion may lie, in part, in varying definitions of a death in custody. Sentenced and remanded inmates who are pronounced dead in a correctional institution clearly fall within the category of a death in custody. There are, however, a variety of other circumstances where the ministry considers that an inmate death is not a death in custody. For example:

- Inmates in provincial institutions that are on immigration hold but are transferred to hospital before their death and, while there, supervised by the Canadian Border Services Agency.
- Inmates who were on an unescorted temporary absence when they passed away are not considered “in-custody” because they were not in an institution or under the direct supervision of a correctional officer. This includes inmates who die while participating in a mandatory correctional community work program or those who suffer very serious injuries or medical issues while in custody and are granted an unescorted temporary absence because they are on life support and unlikely to recover.
- Remanded inmates whose charges have been stayed. This includes remanded inmates who suffer very serious injuries or medical issues while in custody and whose charges are stayed while receiving medical care in hospital.

These situations are not uncommon. In 2015 and 2016, of the 34 deaths that the ministry was tracking, seven individuals were determined to not have officially died while “in custody.” Four were on an unescorted humanitarian temporary absence permit, two died while at a forensic hospital and one individual was entered into the ministry’s Offender Tracking Information System after his death. Even though in many of these cases the coroners’ recommendations are directed exclusively towards MCSCS, these cases are excluded from the ministry’s official statistics on total inmate deaths in custody. The criteria outlined in the *Coroners Act* provides the basis for “in custody” definition and therefore at least some of these cases would be excluded from the OCC figures.

The source of this particular interpretation of a death in custody stems from legislation. Under the *Coroners Act* an investigation is mandatory if “a person dies while committed to a correctional institution, while off the premises of the institution and while in the

actual custody of a person employed at the institution.”¹⁸² In the *Correctional Services Act* an inmate is “deemed to be in the custody of a correctional institution for the purposes of this Act even if he or she is not on the premises of the correctional institution, so long as he or she is in the custody of a correctional officer.”¹⁸³

It is notable that the ministry’s internal death investigation processes and tracking does include deaths that are not technically “in-custody” deaths. Corporate health care, for example, will review the medical files of deceased inmates if an injury occurred in an institution or the individual had health problems while incarcerated. The ministry’s coroner’s inquest database, which they expect to be operational this year, is also broader than the legislative definition of deaths in custody and will include information on:

- Those on immigration hold who were transferred to hospital where they were supervised by CBSA;
- Individuals in the custody of the police;
- Inmates on humanitarian temporary absence passes;
- Death of a probationer;
- Recommendations from the Domestic Violence Death Review Committee that impacts Correctional Services; and
- Federal offenders.

CSOI’s investigative mandate is also broader than the ministry’s narrow death in custody definition, and CSOI will be notified when an institution learns that an unescorted inmate has died in hospital.

Many of the ministry responses acknowledged the recommendations but confined the response to the individual institution at issue. Similar recommendations are seen again in later inquests, suggesting that a ministry-wide change had not been made. The repetitive nature of the jury recommendations suggests that either the ministry is not treating recommendations as issues of systemic concern or is not effectively implementing the recommended changes. Without centralized tracking and independent oversight of the ministry’s implementation of its formal commitments, there is inadequate accountability for compliance.

Other jurisdictions have much more robust death investigation systems. In the United Kingdom, for example, the independent Prisons and Probation Ombudsman (PPO) investigates the deaths of any prisoners or detainees in government custody, regardless of the causes, and “can also

¹⁸² Coroners Act, *supra* note 166 at s. 10(4.5).

¹⁸³ MCSA, *supra* note 15 at s. 27.1.

investigate the death of someone who has recently been released” from custody.¹⁸⁴ Each fatal incident is assigned a lead investigator, who will gather all relevant records and policies and conduct interviews with staff, prisoners or residents if required. The PPO also works with England’s National Health Service to “commission an independent clinical review of the health care provided while in custody to the person before their death.”¹⁸⁵ Finally, a family liaison officer is assigned to each case to be the primary contact with the bereaved family, offer support, answer any questions, inform the investigation of the family’s concerns, and generally keep the family informed of the process.¹⁸⁶

Once the investigation is completed, an initial report is shared with the family and the institution, along with accompanying relevant documentation such as the health care review and interview transcripts. Both the family and the institution “can comment on the factual accuracy of the initial report before the final version is issued.”¹⁸⁷ The final report, which will often include recommendations, is sent to the family, the UK prison service and the coroner. Investigations will look into a variety of factors surrounding an inmate death. For example, in circumstances where the death was foreseeable due to an underlying terminal illness, UK death investigations will include:

- The appropriateness and timeliness of the diagnosis process of the terminal illness.
- The appropriateness of the information provided to the inmate about his or her illness and treatment options.
- Assessment of the appointments, treatments, and follow-up evaluations in the case of the inmate in comparison with the standards in the community.
- Appropriateness of the palliative care plans and administration of pain relief medication.
- Appropriateness and timeliness of the decisions regarding the most suitable location for the inmate and the conditions of detention.
- Whether alternatives to incarceration have been considered in a timely manner from diagnosis of a possibly terminal illness to the determination of palliative status.
- The appropriateness of the liaison with the family with consent of the inmate.
- The measures taken to ensure that the inmate was able to make decisions or that substitute consent was secured where needed.¹⁸⁸

¹⁸⁴ Prisons & Probation Ombudsman, “Why does the Ombudsman investigate deaths?” Last Accessed: July 12, 2017 <http://www.ppo.gov.uk/investigations/investigating-fatal-incidents/why-investigate-deaths/>.

¹⁸⁵ Prisons & Probation Ombudsman, “How we investigate fatal incidents,” Last Accessed: July 12, 2017 <http://www.ppo.gov.uk/investigations/investigating-fatal-incidents/how-we-investigate/> (hereafter, “PPO: How we investigate fatal incidents”).

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ Office of the Correctional Investigator of Canada, *An Investigation of the Correctional Service of Canada’s Mortality Review Process* (Government of Canada, December 18, 2013).

Textbox 10: United Kingdom’s Ministerial Council on Deaths in Custody

The United Kingdom has spent more than a decade reforming and refining a national death in custody oversight mechanism. In 2003, following a civil society report into deaths in custody, a House of Lords Joint Committee on Human Rights launched an inquiry into the subject. Their report, released in 2004, recommended that a cross-departmental expert task-force with access to human rights expertise be established to examine deaths in custody, with the functions of:

- sharing information on good practice and developing guidelines in relation to the prevention of deaths in custody;
- reviewing the systems for conducting investigations into deaths in custody;
- developing good practice standards on training;
- reviewing recommendations from coroners, public inquiries, and research, and monitoring progress in their implementation;
- collecting and publishing information on deaths in custody; and
- commissioning research and making recommendations to Government.¹⁸⁹

In the fall of 2005, the UK Government convened a Forum for Preventing Deaths in Custody that brought together senior representatives from a range of governmental and non-governmental organizations including the Association of Chief Police Officers; Coroners' Society; Department of Health; Her Majesty's Chief Inspector of Constabulary; Her Majesty's Chief Inspector of Prisons; Home Office, Border and Immigration Agency; Mental Health Act Commission; and Youth Justice Board.¹⁹⁰ Within a few years of its convening, however, the Forum itself noted that its structure was subject to “some weaknesses.”¹⁹¹ In the context of a government review into its operation, a discussion paper produced by the Forum noted that:

¹⁸⁹ Joint Committee on Human Rights, “Third Report – Summary” (Parliament of the United Kingdom, December 14, 2004).

¹⁹⁰ The full list includes the Association of Chief Police Officers; Coroners' Society; Department of Health; Her Majesty's Chief Inspector of Constabulary; Her Majesty's Chief Inspector of Prisons; Home Office, Border and Immigration Agency; Independent Police Complaints Commission; INQUEST; Mental Health Act Commission; Safer Custody Group, National Offender Management Service; National Probation Directorate; Prisons and Probation Ombudsman; Prison Service; and Youth Justice Board. Independent Police Complaints Commission, “Forum for Preventing Deaths in Custody Publishes First Annual Report,” *News Release: Independent Police Complaints Commission on behalf of the Forum for Preventing Deaths in Custody* (September 21, 2007).

¹⁹¹ Forum for Preventing Deaths in Custody, *Annual Report – 2006-2007*, (United Kingdom: Independent Police Complaints Commission, 2007) at 32.

- The Forum does not have the resources to commission or undertake research;
- Current resources limit the Forum’s remit to England and Wales despite the fact that the same death in custody issues are replicated in other UK jurisdictions;
- The Forum itself currently has no remit to collate and analyse reports issued by the coroners, and does not have sufficient resources to monitor whether and how they are implemented;
- The Forum is a largely independent committee but has no formal powers and no clear reporting lines to Ministers.¹⁹²

It also noted that the “organisational structure of the Forum could be criticised” as “[t]he Chair of the Forum is not transparently independent from its member organisations” and “[i]t has no academic members and no human rights expertise at its disposal....”¹⁹³ The Joint Committee for Human Rights similarly stated that it was “not persuaded that a body of this type, with no formal powers and few resources, could effectively provide the type of active and interventionist role envisaged by” the Committee.¹⁹⁴

A subsequent independent review, the Fulton Report, made a number of recommendations to strengthen mechanisms to prevent deaths in custody.¹⁹⁵ It recommended that a new Ministerial Board with three tiers be created in order to change the structure and improve accountability of death in custody investigations. Key elements of the new arrangement were that it be authoritative, effective, evidence and expert-based, representative, and independent.¹⁹⁶

In April 2009, the new national Ministerial Council on Deaths in Custody was launched. The purpose of the Council is to bring about a long-term reduction in both the total number and the rate of deaths in all forms of state custody across England and Wales by bringing together senior decision makers as well as experts and practitioners in the

¹⁹² *Ibid* at 32.

¹⁹³ *Ibid* at 32.

¹⁹⁴ Letter to Rt. Hon. David Hanson M.P. (Minister of State, Ministry of Justice) from the chairman of the JCHR, Andrew Dismore M.P. (November 12, 2007) cited in Robert Fulton, “Review of the Forum for Preventing Deaths in Custody – Report of the Independent Reviewer,” (UK Parliament: Ministry of Justice, February 2008).

¹⁹⁵ Independent Advisory Panel on Deaths in Custody, “Ministerial Council on Deaths in Custody,” Last Accessed: August 1, 2017, <http://iapdeathincustody.independent.gov.uk/about/ministerial-council-on-deaths-in-custody/> (hereafter “IAPDC: Ministerial Council on Deaths in Custody”).

¹⁹⁶ Robert Fulton, “Review of the Forum for Preventing Deaths in Custody – Report of the Independent Reviewer” (Parliament of the United Kingdom, Ministry of Justice, February 2008).

field.¹⁹⁷ It employs a cross-sectorial approach focused on information sharing and is jointly funded by the Ministry of Justice, Department of Health and the Home Office. The Council consists of three tiers:

1. Ministerial Board on Deaths in Custody¹⁹⁸

The Ministerial Board brings together key decision-makers who are responsible for policy and issues related to deaths in custody including the Office of the Chief Coroner and the Prisons and Probation Ombudsman. Its mandate includes all types of death in state custody – those which occur in prison, in or following police custody, in immigration detention, in approved premises (i.e. community residential centres), and the deaths of those detained under the *Mental Health Act* in Hospital.

2. Independent Advisory Panel (IAP)¹⁹⁹

The IAP's role is to provide independent advice and expertise to the Ministerial Board. It provides leadership on policy and best practices across sectors and makes recommendations to Ministers as well as to those in charge of key agencies. It also consults and engages with relevant stakeholders in order to collect, analyze and disseminate information about all deaths that occur in custody. The IAP is not itself responsible for investigating individual deaths in custody, as another body carries out this responsibility. The IAP does, however, undertake a review of certain deaths that appear to be related to patterns of unsatisfactory practice.

3. Practitioner and Stakeholder Group²⁰⁰

The Practitioner and Stakeholder Group is comprised of a variety of organizations (i.e. police, Youth Justice Board, UK Border Agency, private sector custody providers, and non-governmental organizations) as well as operational staff working within the different custody sectors to provide expertise and input into the IAP's projects. Families are encouraged to join this group in order to ensure that their needs are being met by the Council on Deaths in Custody. The primary goal of the group is to "provide expertise and input into the IAP's projects."²⁰¹

¹⁹⁷ IAPDC: Ministerial Council on Deaths in Custody, *supra* note 195.

¹⁹⁸ *Ibid.*

¹⁹⁹ Independent Advisory Panel on Deaths in Custody, "Independent Advisory Panel," Last Accessed: August 1, 2017, <http://iapdeathsincustody.independent.gov.uk/about/ministerial-council-on-deaths-in-custody/independent-advisory-panel-iap/>.

²⁰⁰ Independent Advisory Panel on Deaths in Custody, "Practitioner & Stakeholder Group," Last Accessed: August 1, 2017, <http://iapdeathsincustody.independent.gov.uk/about/ministerial-council-on-deaths-in-custody/practitioner-stakeholder-group/>.

²⁰¹ *Ibid.*

Once the final report is received the UK prison service must indicate whether the recommendations are accepted and, if so, when implementation will occur. The prison ombudsman also places an emphasis on “learning lessons from collective analysis of [their] investigations” and publishes thematic reports and shorter “Lessons Learned” bulletins to contribute to system-wide improvements.²⁰²

In addition to the ombudsman investigation and report, the UK coroner “will normally hold an inquest into any death that occurs in a prison, immigration removal centre, in the custody of the courts or secure training centre.”²⁰³ After the coroner’s inquest is complete the ombudsman’s final report is published on the ombudsman’s website.²⁰⁴ The reports are easily sortable by date, location, gender, age, cause of death, and particular institution.²⁰⁵

Within Canada, the Office of the Correctional Investigator has reviewed the federal death investigative process on numerous occasions.²⁰⁶ Although considerably more elaborate than Ontario’s, significant gaps have been identified in the federal system as well. Relevant recommendations from the Office of the Correctional Investigator include:

- A comprehensive public accountability and performance reporting on measures and progress made to prevent deaths in custody;
- A timely investigative process, review of recommendations and implementation of corrective measures;
- Direct oversight and monitoring at the senior corporate level;
- Independent mental health professionals chair investigations involving offender suicides and serious and chronic self-injuries; and
- A vital need to adequately integrate, implement, communicate corrective actions across different sectors of operations and interventions, namely security, health care, case management, programs, and psychological treatment.²⁰⁷

²⁰² PPO: How we investigate fatal incidents, *supra* note 185.

²⁰³ Note that the United Kingdom’s inquest system is significantly different from the Ontario system; an “inquest” in the UK is not equivalent to the Ontario process. Prisons & Probation Ombudsman, “Coroner’s inquest,” Last Accessed: July 12, 2017
<http://www.ppo.gov.uk/investigations/investigating-fatal-incident/coroners-inquest/>.

²⁰⁴ PPO: How we investigate fatal incidents, *supra* note 185 .

²⁰⁵ Prisons & Probation Ombudsman, “Fatal Incident reports,” Last Accessed: July 11, 2017
<http://www.ppo.gov.uk/document/fii-report/>.

²⁰⁶ OCI: Assessment, *supra* note 159.

²⁰⁷ *Ibid.*

Textbox 11: Tracking Fatality Inquiry Recommendations in Alberta

In an effort to improve transparency and accountability and to help prevent future deaths the government of Alberta has committed to publicly track fatality inquiry recommendations and responses. In June 2017, the Alberta government launched a new website to provide those in Alberta who have lost loved ones with information on what the government is doing to assist in preventing similar deaths in the future. The information that is tracked and publicly reported includes:

- deceased's name
- date of report
- cause and manner of death
- relevant circumstances
- list of the specific recommendations
- name of the entity responsible (government department/organizations) to address the recommendation
- status of the response (either waiting for response, accepted, accepted in principle, rejected, other or no response) and a date of the response
- the response, in full, from the entity responsible

Alberta is the first province to have such a tracking system.

Information and Support for the Deceased Person's Family Members

There is no formal ministry policy regarding provision of information and supports for the family members of the deceased person. Once an inmate dies in custody, the ministry's Death of an Inmate policy requires the superintendent or institutional on-call administrator to ensure that the police have notified the next of kin; if this has not occurred, the superintendent or on-call administrator must contact the family.²⁰⁸ A memorandum linked as a "Related Document" in the Death of an Inmate policy provides contradictory direction regarding contacting family members. The 2007 memorandum, titled *Death of Inmate in Custody: Notification of Next of Kin*, states that, even if police officials have already notified the family, superintendents are also required to notify the next of kin when an inmate dies in custody and that this responsibility is not to be delegated.²⁰⁹ The memorandum goes on to state that "Superintendents are to exercise both compassion and empathy when providing this news" and must "offer both

²⁰⁸ MCSCS: *Death of an Inmate*, *supra* note 163.

²⁰⁹ Steven F. Small, *Death of Inmate in Custody: Notification of Next of Kin* [Memorandum to Superintendents] (Ministry of Community Safety and Correctional Services, Government of Ontario, March 22, 2007).

condolences and support to the next of kin.”²¹⁰ Superintendents were also directed to “provide the next of kin with as much information as possible about the death and to offer assistance to the next of kin concerning such matters as collection of the inmate’s property.”²¹¹

The Independent Review Team spoke with three superintendents regarding how they contacted families of inmates who died. None was aware of the requirement to contact the family directly and none had ever spoken to the next of kin in the event of an inmate death. One superintendent stated that while it was the institution’s responsibility to contact the next of kin, they would first ask the institution’s chaplain to perform this task and then turn to the police if the chaplain was not available. The other two superintendents relied on the police or, in one case, hospital staff to get in touch with the family. One superintendent stated that they were not trained in notifying families regarding the deaths of their loved ones, and believed further instruction would be necessary if the ministry wanted superintendents to take on this role. All the superintendents confirmed that the families receive very little information from the institution and that it would generally be limited to the fact that there was a death and the police were investigating. Only one superintendent mentioned the coroner’s office, stating that families could seek further information from the OCC’s website.

At the three institutions contacted, the families are expected to travel to the institution to pick up their loved one’s possessions. One superintendent mentioned that a courier could be used as a backup option if the family was unable to attend in person, but that the family was encouraged to attend in person instead because a signature was necessary to acknowledge receipt of the property.

There are no ministry directions, resources, or policies regarding a number of other relevant issues, including funeral, burial, or cremation costs, or general supports for the family. One superintendent noted that currently nothing is done for families and that it would be good to have resources available in the community to assist them with their grieving process.

These issues have recently been raised at the federal level. A 2016 investigative report from the Office of the Correctional Investigator identified the lack of information provided to families in the event of an inmate death. Key information that was withheld included how their family member had died, the responsibilities of correctional authorities and the post-incident investigative process.²¹² Relevant recommendations included:

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² Office of the Correctional Investigator of Canada, *In the Dark: An Investigation of Death in Custody Information Sharing and Disclosure Practices in Federal Corrections – Final Report*, (Government of Canada, August 2, 2016).

- Proactive disclosure of factually relevant information to families of the deceased immediately following the death in custody and, develop and implement a facilitated disclosure process based on best practices;
- Define procedures and protocols to inform and facilitate access by next of kin when an inmate is taken to an outside hospital for a medical emergency;
- Establish a family liaison position in each region to coordinate with institutions and corporate in providing information to the next of kin from the point of notification until the completion of the investigative process;
- Train staff in communicating with families following a death;
- Send a letter of condolence to the next of kin; and
- Develop a guide for families on Correctional Services' policy, responsibilities and investigative process following a death in custody.²¹³

The Independent Review finds these recommendations apply equally in the provincial context.

Key Findings and Recommendations

- Corrections is a human rights enterprise that must be evidence-based, principle driven, and embrace oversight and accountability; operational decisions must be infused with the values of respect, dignity, and legality.

Recommendation 1.1: I recommend that the Corrections Act for Ontario be structured around recognition of individual dignity and human rights, and that it incorporate the following guiding principles:

- That inmates retain the rights and privileges of all members of society except those that are necessarily removed or restricted as a consequence of confinement or sentence;
- That Ontario's Correctional Services use the least restrictive measures consistent with the protection of society, staff members, and inmates that are limited to only what is necessary and proportionate, with particular attention to the circumstances of Indigenous inmates; and
- That all correctional decisions, laws, policies, rules, programs, and practices are made or applied without discrimination and are responsive to the special and specific social reintegration needs of women, individuals with caretaking responsibilities, Indigenous peoples, persons requiring mental health care and other particular groups protected by the Ontario *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*.

²¹³ *Ibid.*

Recommendation 1.2: I recommend that ongoing training and an online evergreen resource be developed highlighting significant judicial and tribunal decisions regarding human, legal, and constitutional rights in corrections.

Searches

- Ontario law provides little guidance or limits on the wide range of searches that take place within its provincial correctional institutions.
- Ministry policy authorizes the random interception and search of generic inmate correspondence, regardless of whether there is any reasonable belief that the communication conveys evidence of a crime or a security threat. Superintendents are also granted broad authority to delete or refuse to send certain correspondence.
- Due to their invasive nature, the Charter tightly circumscribes the government's authority to conduct strip searches. Ontario law, however, provides no explicit limits on strip searches and ministry policy requires Ontario's correctional institutions to carry out regular, routine strip searches of inmates in circumstances that are specifically prohibited by laws in other jurisdictions.

Recommendation 1.3: I recommend that the Corrections Act for Ontario include a constitutionally compliant framework governing searches that is based upon recognition of Charter rights.

Recommendation 1.4: I recommend that regulations pursuant to the Corrections Act for Ontario include a constitutionally compliant framework governing the interception and handling of inmate correspondence.

Inmate Complaints Processes

- The internal ministry policy for handling inmate complaints is unclear and contradictory, and it does not align with the explanation of the complaints process in the handbook provided to inmates.
- Most institutions do not have dedicated complaint forms, and 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.
- Despite the fact that policy specifically directs that verbal complaints must be logged in writing, this rarely occurs.
- The vast majority of inmate complaints are not centrally collected, tracked, or handled either at the institutional or corporate levels. At the institutional level, the entire system depends on individual slips of paper being handed to individual correctional officers who must pass on these pieces of paper to the appropriate individual manager. Neither

institutions nor the ministry as a whole conducts any type of trend analysis or uses the information to identify areas of systemic concern.

Recommendation 1.5: I recommend that the Corrections Act for Ontario include provisions establishing a fair and expeditious inmate complaints process, including:

- A requirement to establish a procedure for fairly and expeditiously resolving inmates' complaints on matters within the jurisdiction of the superintendent;
- A provision stating that every inmate shall have complete and timely access to the complaints procedure without negative consequences;
- A requirement to display and provide upon admission written information regarding the complaints procedure as well as any other information necessary to enable an inmate to adapt to the operation of the institution;
- A requirement that complaints be resolved in a non-adversarial and non-escalating manner whenever possible; and
- A provision to deal with inmates who persistently submit complaints that are frivolous, vexatious or not made in good faith.

Recommendation 1.6: I recommend that the ministry develop policy to operationalize a fair and expeditious inmate complaints process that provides clear direction to staff and incorporates best practices regarding the handling of complaints.

Recommendation 1.7: I recommend that resolving complaints in accordance with law and policy form part of senior administrators' performance commitments.

Visits and Family Support

- By law, sentenced inmates have the right to receive at least one visit a week, and remanded inmates can have at least two weekly visits. The minimum number of visits set out in law has, in many institutions, become a *de facto* maximum. Ontario's correctional facilities have limited areas for open visits, no apparatus to facilitate outdoor play for children, and no private family visiting houses.
- In many institutions, the visit areas are cramped and offer only closely spaced side by side fixed stools for both the inmate and the visitor. This makes it difficult and uncomfortable for children, the elderly, or those with mobility issues to visit and provides absolutely no privacy.
- Various jurisdictions in Canada have put in place specific programs to mitigate the impacts of incarceration on children and parents, including mother-child programs. Ontario does not have a mother-child program. 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. There is no dedicated policy or program to facilitate postnatal

contact between a mother and baby and most institutions housing women do not allow contact visits.

Recommendation 1.8: I recommend that the Corrections Act for Ontario:

- Contain a statement of purpose for visits;
- Establish a general right to visitation, including a right to a minimum of two visits per week and a presumptive right to open visits; and
- Allow for regulations to establish and provide for parent-child and mother-baby programs.

Recommendation 1.9: I recommend that ministry policy:

- Establish minimum visit durations;
- Reflect the legislative presumption of open visits and provide guidance on the circumstances in which closed visits may be justifiable;
- Provide guidelines for visits involving multiple minor children; and
- Expanded use of remote access video visit technology to complement, not replace, in-person visitation rights.

Recommendation 1.10: I recommend that the ministry systematically track data on pregnant women, births in custody, and inmates with significant caregiver obligations.

Recommendation 1.11: I recommend that the Ministry of Community Safety and Correctional Services work with the Ministry of the Attorney General and community organizations to provide community alternatives to pre-trial incarceration for caregivers with dependent children and for pregnant women.

Recommendation 1.12: I recommend that the ministry promptly revise policy to put in place child-friendly practices to support parent-child visitation and require a consideration of the best interests of the child in all relevant decisions regarding an inmate who is a parent or caregiver.

Recommendation 1.13: I recommend that in all new builds and retro-fit projects, priority be given to visiting space that allows for family contact, a degree of privacy, and a suitable environment for children.

Recommendation 1.14: I recommend that the ministry establish a parent-child and mother-baby program and that policy provide guidance on open contact visits for minor children, breastfeeding and postpartum care.

Inmate Trust Accounts

- While the ministry has leveraged technology to improve its ability to manage inmates' funds, there is no way for family members or loved ones to remotely send money to inmate trust accounts: deposits to inmate accounts are still required to be made in person or by mail. Numerous other provinces have established systems whereby

individuals can deposit money into inmates' accounts remotely over the internet or through community-based kiosks.

Recommendation 1.15: I recommend that the ministry explore options that would facilitate the electronic and secure transfer of money to an inmate's account. Any cost savings gained by modernization must be used to offset potential user fees for those in custody or their family and friends in the community.

Recommendation 1.16: I recommend that the ministry establish a pilot project at a minimum of one site to test technology and applications that facilitate staff documentation and reports, inmate access to resources (including canteen goods, legal and recreational reading material), inmate access to legal disclosure and research materials, and contact with the outside world.

Deaths in Custody

- Over 150 people have died in Ontario's correctional institutions over the past decade.
- The majority of deaths in custody in Ontario are not subject to a thorough, fully arms-length and independent review. In 2009, the *Coroners Act* was amended to remove the requirement for a mandatory inquest in cases of in custody natural deaths. This has left a significant gap in the oversight of inmate deaths within Ontario's correctional institutions.
- Jury recommendations from coroner inquests are often repetitive. This repetition suggests that either the ministry is not treating recommendations as issues of systemic concern, or it is not effectively implementing the recommended changes. Currently there is no tracking or oversight of the ministry's responses, commitments, or follow through.
- The Independent Review Team was unable to find definitive figures on the number of individuals who have died while in custody in Ontario. The legislative definitions of a death in custody are narrow, and there are a variety of circumstances where the ministry and the Office of the Chief Coroner consider that an inmate death is not a death in custody.
- There is no detailed ministry policy regarding the provision of information to and supports for the family members of the deceased person. There are also no ministry directions, resources, or policies regarding a number of other relevant issues, including funeral, burial, or cremation costs.

Recommendation 1.17: I recommend that the Corrections Act for Ontario and the *Coroners Act* include a broader definition of death in custody that captures inmates who die after being transferred to a community health care setting regardless of whether they were under direct ministry supervision at the time of their death.

Recommendation 1.18: I recommend that the ministry amend the *Coroners Act* to require a mandatory inquest or an alternate coroner-led review process for all in-custody natural deaths.

Recommendation 1.19: I recommend that the Corrections Act for Ontario include provisions that:

- Require the body of a deceased inmate to be treated with respect and dignity, and require that the body be returned to next of kin or other contacts as soon as legally and reasonably possible, in a respectful manner;
- Require that the ministry facilitate the respectful and appropriate disposition of remains in accordance with applicable laws, if there is no other party willing or able to do so; and
- Require that reports related to deaths in custody be proactively shared with the Office of the Chief Coroner, next of kin and other contacts of the deceased, and any other relevant oversight bodies as early as possible.

Recommendation 1.20: I recommend that the ministry establish policy regarding deaths in custody that provides for:

- Defined procedures and protocols to inform and facilitate access by next of kin when an inmate is taken to a community hospital due to a medical emergency;
- Establishing a family liaison position in each region to coordinate with institutions and ministry leadership in order to provide information to the next of kin from the point of notification until the completion of all investigative processes; and
- An immediate letter of condolence to be sent to the next of kin.

Recommendation 1.21: I recommend that staff and management responsible for speaking with family members after a death in custody receive the necessary training and support.

Recommendation 1.22: I recommend that the ministry develop a guide for families on Ontario's Correctional Services policy, responsibilities and investigative process following a death in custody.

Recommendation 1.23: I recommend that the ministry centralize data collection of deaths in custody and publicly post all inquest verdicts, verdict explanations, and ministry responses to allow for appropriate trend analysis and follow up regarding the implementation of coroner's inquest jury and other relevant recommendations.

Recommendation 1.24: I recommend that a coroner-based Deaths Review Panel be established and the Memorandum of Understanding between the coroner and corrections be updated to enhance and better structure information sharing.

Recommendation 1.25: I recommend that Ontario champion the establishment of a national Canadian roundtable on the prevention of deaths in custody.

IV. 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. On any given day in 2015/16 Ontario held on average over 5200 adults in pre-trial detention, more than double the number of inmates who were serving time after having been found guilty and sentenced for a crime.²¹⁴ On average, 66% of all people incarcerated within Ontario are on remand status.²¹⁵

The increase in pre-trial detention is not reflective of a crime spree. Ontario's overall crime rate and violent crime rate are both lower than they have been for over 40 years.²¹⁶ The number of adults charged in Ontario has decreased,²¹⁷ provincial incarceration rates for sentenced offenders have dropped by 62% since 1980,²¹⁸ and the number of individuals supervised on probation and for conditional sentences has also declined.²¹⁹ In the face of this decline, the rate of pre-trial detention has seen a long-term increase, rising by 137% over the past 30 years.²²⁰

²¹⁴ On any given day in 2015-2016 there were on average 7961 people in custody in Ontario's correctional institutions; 2526 individuals (32%) were sentenced offenders, and 5222 (66%) were on remand. Statistics Canada, "Table 251-0005: Adult Correctional Services, Average Counts of Adults in Provincial and Territorial Programs, Annual" (Government of Canada, March 2016) (hereafter, "Statistics Canada: Table 251-0005").

²¹⁵ *Ibid.*

²¹⁶ The most recent figures show that in the past 20 years Ontario's overall crime rate decreased by 55%, and violent crime has decreased 38% since 1998. Homicide rates in Ontario declined by about 13% in the same period. Although there have been some very small increases in some estimates of the rate and number of total and violent crime incidents and adults charged in Ontario in the past two years, these year-to-year variations are minor compared to the size of the long-term decreases in the most recent (2016) numbers compared to 3, 5, or 10 years ago. Statistics Canada, "Table 252-0051: Incident Based Crime Statistics, By Detailed Violations – Ontario, 1998-2016" (Government of Canada, July 2017).

²¹⁷ *Ibid.* Between 1998 (when data comparable to those being collected today became readily available) and 2015 (the latest available data at the time of writing), the number of adults charged in Ontario has decreased from 178,322 to 169,732, a decrease of 4.8%. Expressed as a rate per 100,000 adults in Ontario, the rate decreased from 2065 to 1527, a decrease of 26%.

²¹⁸ The number of sentenced inmates in custody on an average day in Ontario decreased by about 10% between 2005 and 2015. In rates per 100,000 general population this decrease (from 22.3 to 18.3) is about 18%. The decrease in the sentenced population, however, is dramatic: the rate of sentenced inmates in 1980 was 47.8. In 2015 it was 18.3 per hundred thousand Ontario residents. Statistics Canada: Table 251-0005, *supra* note 214.

²¹⁹ *Ibid.* Over the past decade (2005 to 2015), the number of people being supervised on probation on an average day dropped from 52,228 to 41,584, a decline of about 20%. The number being supervised on conditional sentences also dropped during this same period: from 3887 to 2186, a drop of about 44%.

²²⁰ *Ibid.* The number of remand inmates has increased slightly in the past 10 years. In 2005, there were an average of 5125 remand inmates in custody in Ontario on an average night. In

Numerous studies examining the causes of the rising remand population have pointed to the justice system itself: an inefficient, overly risk adverse bail system, backlogged courts, and growing pre-trial delays.²²¹ The inevitable conclusion is that there are many people who are being unnecessarily detained in Ontario's correctional institutions prior to their trial.²²²

These patterns of detention have serious consequences. Detention prior to trial makes it more likely an individual will be found guilty and receive a custodial sentence.²²³ Remanded inmates can have greater difficulty defending themselves against their charges as they are less able to actively assist in their defence or communicate easily with their lawyers.²²⁴ Pre-trial detention can also impact an individual's decision about whether or not to plead guilty.²²⁵ Outside of the justice system, there are frequently collateral consequences for employment, housing and dependent family members.²²⁶

Holding a large remand population also presents specific challenges to the correctional system. The population is generally more transient, typified by short stays and unpredictable entry and exit dates. Traditional correctional practices, including methods of evaluating an individual's risks and needs, which require an in-depth examination of the inmate's history, behavior and life circumstances, are not necessarily compatible with the presumption of innocence and the accused person's right to silence. Assuming that it would be appropriate to provide services and

2015, there were about the same number (5222). Given the increase in Ontario's population, the rate, therefore, has decreased slightly from 40.9 to 37.9 per hundred thousand Ontario residents. This relative stability in the past 10 years, however, ignores the changes in the size of the remand population since 1980. In 1980 there were 12.2 remand inmates per 100,000 population. The rate in 2015 was 37.9. The remand rate (per hundred thousand Ontario residents) increased dramatically in the past 30 years from a rate of 16 per hundred thousand in 1985 to 37.9 in 2015, a rate increase of 137%.

²²¹ Anthony N. Doob, Jane B. Sprott and Cheryl Marie Webster, "Looking Behind (Prison) Doors: Understanding Ontario's Remand Population" (A Report to the Ministry of the Attorney General, Government of Ontario, January 5, 2017) at 21; Raymond E. Wyant, *Bail and Remand in Ontario* (Ministry of the Attorney General, Government of Ontario, 2017); Abby Deshman and Nicole Myers, *Set Up to Fail: Bail and the Revolving Door of Pre-Trial Detention* (Canadian Civil Liberties Association and Education Trust, July 2014); John Howard Society of Ontario, *Reasonable Bail?* (The Centre of Research, Policy & Program Development, September 2013).

²²² *Ibid* Wyant; *Ibid* Deshman and Myers; *Ibid* John Howard Society of Ontario.

²²³ Pamela Koza and Anthony N. Doob, "The Relationship of Pre-trial Custody to the Outcome of a Trial, *Criminal Law Quarterly* 17 no.4 (1975) at 391; Martin L. Friedland, *Detention Before Trial: A Study of Criminal Cases Tried in the Toronto Magistrates' Courts* (Toronto: University of Toronto Press, 1965).

²²⁴ Juleyka Latingua-Williams, "Why Poor, Low-Level Offenders Often Plead to Worse Crimes," *The Atlantic*, July 24, 2016; Deshman and Myers, *supra* note 221.

²²⁵ Doob, et al., *supra* note 221.

²²⁶ *Ibid* at 4.

programming for a population that has not been found guilty of any crime, planning for such services is difficult when you do not know how long the person will be detained. Particular attention must be paid to the constitutional fair trial rights of those who are in pre-trial detention. The correctional system must facilitate an inmate's efforts to prepare for trial including by providing fulsome access to legal materials and completely confidential communication with legal counsel (both through in-person professional visits and over the telephone). Institutions that provide insufficient time or space to allow lawyers to see and speak with their clients can violate the constitutionally-protected rights to make full answer and defence and a fair trial.²²⁷ Finally, there are unique logistical demands. Compared with sentenced populations, remand inmates require frequent transport to and from court and regular contact with legal counsel. Individuals who are released directly from court can also find themselves effectively stranded, released to the street without any of their personal belongings, street clothes, or transportation back to their home community or to the pre-trial institution to retrieve their property.²²⁸

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 – and ultimately punitive – conditions of confinement, regardless of their individual

²²⁷ See for example, *R v Tossounian*, 2017 ONCA 618; *Re Maltby and A. G. Sask.* (1983), 1982 CanLII 2320 (SK QB), 2 C.C.C. (3d) 153 at 159, 143 D.L.R. (3d) 649, 20 Sask. R. 366; *Soenen v. Edmonton Remand Centre*, 1983 CanLII 1113 (AB QB); *Criminal Trial Lawyers' Association v. Alberta (Solicitor General)*, 2004 ABQB 534.

²²⁸ The ministry has made attempts to address the most serious impacts of this problem. In 2010 the “Red Bag Program” (later renamed the Red Envelope Program) was initiated at the Ottawa Carleton Detention Centre (OCDC) whereby inmates with special needs who have been identified as likely to be released from court in a distant location would be transported to court with critical belongings (personal identification, keys, medical card, short term supply of medication and contact information for local supports). In 2014 the OCDC Community Advisory Board reported that the program was meeting with resistance:

Over time, it has been met with significant resistance by police transporting inmates to their court appearances. They are unwilling to accept ownership of these personal belongings. This causes problems when the inmate is released (into Cornwall, for example) and has no means to return to OCDC to retrieve their identification and personal belongings. This can have significant consequences, including breaching conditions and return to custody, if the offender does not have access to money or needed medications.

In 2015 the Minister of Community Safety and Correctional Services publicly announced that the initiative would be expanding province-wide. Expansion, however, has been slow. The target date for expanding the initiative to four other sites is now October 2017.

Ministry of Community Safety and Correctional Services, *Community Advisory Board Annual Report – Ottawa-Carleton Detention Centre* (Government of Ontario, March 31, 2015).

circumstances. Currently in Ontario, almost all remand inmates are presumptively²²⁹ classified as maximum security and held under maximum security conditions.²³⁰ Moreover, despite clear legislative authority to grant any inmate permission to temporarily leave an institution for medical, humanitarian, or rehabilitation purposes, ministry policy significantly restricts this discretion. Escorted temporary absences for remanded inmates will only be considered “for medical or humanitarian reasons or other exceptional circumstances.”²³¹ Unescorted absences are even more limited: they are only available if the remanded inmate is on life support.²³² Ministry figures demonstrate how rare it is for remanded inmates to receive temporary absences. In 2016, only 50 non-medical temporary absences were granted for pre-trial inmates.²³³

Maximum security classification also means that many remanded inmates have limited access to programs and interventions. The ministry’s Work Program policy, for example, presumptively prevents remand inmates from taking part in in-custody work opportunities because this population is not given full security assessments and is therefore universally regarded as a high security risk.²³⁴ Although policy does allow institutions to establish local criteria for remand inmates to participate in institutional work activities, the determination must be based on

²²⁹ A number of ministry policies outline presumptions whereby specific groups of inmates will be held in high security settings or denied access to work programs until they can establish that they do not represent an unacceptable security risk. Such presumptions are contrary to the principle of restraint, which requires a correctional system to impose the least restrictive conditions of confinement possible based on an individual’s needs and circumstances. This principle, if properly applied, would require that all inmates be held under the least restrictive conditions of confinement and have full access to activities such as work programs until information is received that demonstrates a reasonable, evidence-based, and individualized security concern that must be addressed through more restrictive measures.

²³⁰ Ministry policy states that “Jails and detention centres house mostly unsentenced inmates and therefore are classified as ‘maximum security.’” Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Administration: General Administration: Facility Profiles: Facility Types* (Government of Ontario, July 2012) (hereafter, “MCSCS: Facility Types”). The only institution that conducts institutional security risk assessments that can result in remand inmates being placed on medium security units is Vanier Centre for Women.

²³¹ Ontario Parole Board, *Policy and Procedures Manual: Temporary Absence: Eligibility* (Government of Ontario, May 2008) (hereafter, “OPB: Temporary Absence Eligibility”).

²³² *Ibid.*

²³³ Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services.

²³⁴ Ministry of Community Safety and Correctional Services, *Institutional Service Policy and Procedures Manual: Programs: Work Programs* (Government of Ontario, December 2009).

Textbox 12: A Profile of the Remand Population

Everyone who is charged with a crime has the constitutionally-protected rights to be presumed innocent until proven guilty and to access reasonable bail. For most people this means that there is a presumption they will be free, without conditions, while waiting for their trial. The only reasons a person can be detained prior to their trial or subject to monitoring or restrictions in the community are set out in the *Criminal Code*: where necessary to ensure the accused returns to court;²³⁵ where necessary for the protection or safety of the public due to a “substantial likelihood” an accused will commit an offence or interfere with the administration of justice;²³⁶ or where necessary to “maintain confidence in the administration of justice, having regard to all the circumstances.”²³⁷ Pre-trial detention must be a last resort: the courts have the ability to impose conditions and supervision requirements on people who are released before their trial to address any concerns.

Despite these rights, over the past 30 years, the number of individuals remanded into custody before their trial has grown at an alarming rate. And despite the fact that pre-trial detention should primarily be reserved for those who present a significant risk to public safety or the few cases where there is a genuine concern the person will not return to court, Ontario data from 2014/2015 regarding who is being remanded to custody reveals several troubling trends:

1. A significant number of people in pretrial custody are facing less serious, non-violent charges:
 - Just under half (48.4%) of the remand population were accused of committing a non-violent offence.²³⁸
 - About one in six was facing charges only related to morals, administration of justice and public order.²³⁹
2. Even those facing less serious charges can spend a significant time in pre-trial detention:
 - Over a quarter (26.3%) “of accused persons who were in remand for 91 days or more had a less serious offence as their most serious charge.”²⁴⁰

²³⁵ *Criminal Code*, RSC 1985, c C-46, s 515(10)(a) (hereafter, “Criminal Code”).

²³⁶ *Ibid* at 515(10)(b); *R v Morales*, 1992 3 SCR 711 at 737, 77 CCC (3d) 91.

²³⁷ *Ibid* Criminal Code at c C-46, s 515(10)(c).

²³⁸ Doob et al., *supra* note 221 at 20. Based on the most serious charge. This figure also excludes non-violent offences that involved the exploitation of children (e.g. possession of child pornography).

²³⁹ *Ibid*.

²⁴⁰ *Ibid* at 21.

3. Many people in pretrial custody will never be found guilty of any crime – but it can still take months for their cases to be dealt with, even when their charges were less serious:
 - In 2013/2014, nearly a third of the people initially detained for bail (28.9%) ultimately had their charges stayed, withdrawn or dismissed.²⁴¹ And about a third of those people had five or more bail appearances before this occurred.²⁴²
 - There were 11,592 individuals in 2013/2014 who were detained for over 91 days, were regularly appearing in bail court (six or more appearances) and eventually had all their charges withdrawn, stayed or dismissed. Just over half of this population was not facing any allegations of violence.²⁴³

“a comprehensive risk analysis, previous staff knowledge, a relatively minor offence, good behaviour or successful work program participation during an earlier incarceration, and such other factors as the superintendent and the Inmate Work Board consider appropriate.”²⁴⁴ The fact that this policy refers to a remand inmate’s “offence” as opposed to the charges the accused person is facing is a further indication of the extent to which the ministry blurs the line between sentenced and non-sentenced individuals and runs counter to the presumption of innocence. Relying heavily on staff knowledge of an inmate’s behaviour during previous periods of incarceration for institutional or work placement may unfairly disadvantage some inmates, particularly the first-time accused.

The Independent Review Team requested statistical information on the number and legal status of inmates who participated in programming in 2016. Although the information available was limited and excluded a significant number of institutions, the data provided show that only three, out of the over 13,500²⁴⁵ remand inmates that were admitted to Ontario’s largest

²⁴¹ *Ibid* at 25.

²⁴² *Ibid* at 54. 16.8% of those cases where the most serious case outcome was a stay, withdrawal or dismissal appeared in bail court 5 to 7 times; 15% had 8 or more bail appearances.

²⁴³ *Ibid* at 55. In 2013/14 there were 5,449 cases that did not involve charges of violence but that had been detained for a bail hearing for more than 91 days and had more than 6 appearances before the charges were ultimately dropped.

²⁴⁴ *Ibid*.

²⁴⁵ In 2016 Central East Correctional Centre admitted 3881 remand inmates; Central North Correctional Centre admitted 2616 remand inmates; Monteith Correctional Complex admitted 634 remand inmates; and Maplehurst Correctional Complex had 7334 remand admissions. Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services.

correctional centres, participated in work programs last year.²⁴⁶ The data available from detention centres and jails, which are primarily used for remand inmates and those serving short custodial sentences, showed that 473 of the 23,402 pre-trial inmates admitted to 11 of these institutions participated in work programs in 2016.²⁴⁷ Similarly, staff from the correctional centres that were interviewed by the Independent Review Team reported that remanded inmates have very limited access to non-work programming. In some correctional centres the pre-trial population can only access programs and services such as medical care, urgent psychiatric care, spiritual and religious reading materials and services, one-on-one addictions counselling, and education through correspondence. Furthermore, discharge planning services, to assist individuals in finding housing, medical care, income supports, or other social services in the community, is not required by policy for remand inmates and these services are not provided to the vast majority of the pretrial population.²⁴⁸

These policies have harmful consequences. Holding low-risk accused persons in maximum security institutions with little to no opportunities for meaningful activity needlessly punishes individuals, families, and communities. Preventing remand inmates from taking advantage of temporary absences also eliminates one tool the correctional system could use to mitigate the collateral consequences of pre-trial detention. The fact that nearly a third of the individuals held in pre-trial detention will eventually have all their charges stayed, withdrawn, or dismissed

²⁴⁶ Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services. Central North Correctional centre reported that two of the 289 inmates who participated in work programs in 2016 were on remand. Central East Correctional centre reported one remand inmate out of 133 participants. Monteith Correctional Complex had no remanded inmates participating in work programs. Although Maplehurst Correctional Complex did not report any work Institutional Work Program data, its policies prohibit remanded inmates from participating in these activities.

²⁴⁷ Institutions reporting this information were Toronto East Detention Centre, Toronto South Detention Centre, Ottawa-Carleton Detention Centre, Quinte Detention Centre, Monteith Jail, Brantford Jail, Elgin-Middlesex Detention Centre, Hamilton-Wentworth Detention Centre, Niagara Detention Centre, Stratford Jail and South West Detention Centre.

²⁴⁸ Where mental health issues are identified or if the individual self identifies as trans, ministry staff will provide discharge planning support. Discharge planning services are not well tracked across the province and it was not possible to get an accurate picture of all the volunteer services and contracted positions that might perform this function for the remand population. At Toronto South Detention Centre, for example, remand inmates can request to meet with volunteer service providers for discharge planning purposes. At Ottawa-Carleton Detention Centre there is a community organization that provides a discharge planner for that institution's remand population.

underscores the unnecessary and wasteful cost – both financial and personal – of such high incarceration rates for this population (see Textbox 12).²⁴⁹

Remand inmates who have successfully participated in a range of institutional work or rehabilitation programs in the past are typically excluded from doing so again until an exception is granted on a case-by-case basis or they are found guilty and sentenced. Those who had been receiving ministry supervision and programming in the community at the time of their arrest have no way of continuing with those community programs or supports – even where they were making progress and have the support of their community probation and parole officer. Indeed, about a quarter of the remand population was under community supervision when they were brought back into custody.²⁵⁰ According to the best available data, a significant proportion of these individuals would have been returned for violations of a condition of their release or an allegation of a non-violent crime.²⁵¹ Although there is no information about the specific charges these individuals were facing, of those who were under community supervision in 2013/14 and were subsequently convicted of another criminal offence, only 2% were reconvicted for serious violence or a violent sexual act.²⁵² Continuing or allowing for community programming would appear to be particularly appropriate for those who are facing nonviolent charges or accused of violating conditions of their community supervision order. Even if the accused is eventually sentenced for a new offence, this does not directly translate into an increased public safety risk. Indeed, almost half of those who were found guilty of another crime within two years of having been under community supervision were again sentenced to probation or conditional sentence upon reconviction.²⁵³

²⁴⁹ In 2013/14, nearly a third of the people initially detained for bail (28.9%) ultimately had their charges stayed, withdrawn or dismissed. Doob at al., *supra* note 221 at 25.

²⁵⁰ Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services.

²⁵¹ In 2013/14, for example, of the individuals who had been under community supervision and were subsequently convicted of another criminal offence, only 2% were convicted of serious violence or violent sexual acts. A further 20% were convicted of assault and related offences, and 3% were found guilty of a weapons offence (based on most serious offense). 17% were convicted of an administration of justice offence (e.g. fail to comply with conditions), and 22% were found guilty of theft possession, fraud and related offences. Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services.

²⁵² *Ibid.*

²⁵³ *Ibid.*

Textbox 13: Immigration Detainees in Ontario

In 2016/17, there were a total of 1212 immigration admissions to Ontario's provincial correctional institutions.²⁵⁴ Like those on remand, these people are not being incarcerated as punishment for a crime, but rather are being held for immigration-related matters.

The Canadian Border Service Agency (CBSA) has jurisdiction over immigration detainees. In addition to detaining individuals at an immigration holding centre in Toronto (IHC) the CBSA has an agreement with the Ministry of Community Safety and Correctional Services that allows immigration detainees to be placed in provincial correctional facilities. CBSA states that it uses provincial institutions to detain:

- Individuals that they have deemed “higher-risk detainees”;
- Lower-risk detainees in areas not served by an immigration holding centre; and
- Individuals with mental health issues who “may be detained in a provincial detention facility that provides access to specialized care.”²⁵⁵

Media reports have noted that, while “[a]ccording to the CBSA’s own policies, immigration detainees with non-violent criminal record should, in most cases, be held in an Immigration Holding Centre rather than a provincial jail,” the agreement with the company running Toronto’s IHC “appears to preclude the housing of immigration detainees with any criminal record – even non-violent, petty offences that did not result in any jail time.”²⁵⁶ In 2015/16 the national average length of detention was 23 days; hundreds of detainees, however, wait for months or years before their case is resolved.²⁵⁷

Immigration detainees, despite not having been accused or convicted of any crime, are held under the same conditions as all other inmates. They are held in maximum security settings where they are regularly strip searched, confined to their cell, and can receive only limited personal visits. Only one institution – Central East Correctional Centre – has dedicated units for immigration holds, and those that are held there are only able to participate in some volunteer-run programming subject to space availability. In all other institutions, contrary to international standards, immigration detainees are placed in units with other inmate populations.²⁵⁸

²⁵⁴ Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services.

²⁵⁵ Canada Border Services Agency, “Arrests, detentions and removals: Detentions,” (Government of Canada, May 17, 2017) (hereafter, “CBSA: Detentions”).

²⁵⁶ Brendan Kennedy, “Ottawa is Rethinking its Approach to Immigration Detention,” *The Star*, April 9, 2017.

²⁵⁷ *Ibid.*

²⁵⁸ Rule 11 of the United Nations’ Standard Minimum Rules for the Treatment of Prisoners states that “[t]he different categories of prisoners shall be kept in separate institutions or parts

Immigration detainees face indefinite periods of detention and many have no idea when they will be released – a practice that is the subject of an ongoing constitutional challenge.²⁵⁹ Maintaining contact with family members overseas can also be difficult: long distance overseas calls are not generally permitted, and may only be authorized by the superintendent if an inmate makes a written request.²⁶⁰ At least one institution excludes immigration detainees facing deportation from participating in work programs.²⁶¹ Finally, ministry policy allows sentenced inmates to be authorized to temporarily leave the institution for escorted and unescorted medical, humanitarian or rehabilitative reasons. Policy directs that individuals on immigration hold, however, should “be considered security risks” and “may only be granted an escorted TA [temporary absence] for medical or humanitarian purposes or to expedite deportation.”²⁶²

The treatment of immigration detainees in Canada has been the subject of numerous critical reports²⁶³ and media articles,²⁶⁴ and in August 2016 a class action lawsuit was launched against the federal government and the Province of Ontario alleging human rights violations in relation to the treatment of immigration detainees in Ontario institutions.²⁶⁵ The federal government has subsequently released a new National Immigration Detention Framework. This framework includes initiatives to expand national alternatives to detention, expand and enhance services at IHCs, and sign

of institutions” including separating those detained for civil reasons from those imprisoned as a result of a criminal offence. Mandela Rules, *supra* note 61.

²⁵⁹ Colin Perkel, “Indefinite Immigration Detention in Canada under Fire in Federal Court,” *The Globe and Mail*, May 15, 2017; Levon Sevunts, “Immigration Detainees in Ontario Go on Third Hunger Strike this Year,” *Radio Canada International*, October 24, 2016; Kathleen Harris, “Last Resort: Why Canada Indefinitely Jails Immigration Detainees, Including Kids,” *CBC News*, May 16, 2017.

²⁶⁰ Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Inmate Management: Inmate Telephone Communication* (Government of Ontario, February 2017).

²⁶¹ Maplehurst Correctional Complex, “Admission Criteria: Inmate Work Program” (Ministry of Community Safety and Correctional Services, March 6, 2015).

²⁶² OPB: Temporary Absence Eligibility, *supra* note 231.

²⁶³ Hannah Gross and Paloma Van Groll, “‘We Have No Rights’: Arbitrary Imprisonment and Cruel Treatment of Migrants with Mental Health Issues in Canada,” (Toronto: University of Toronto, International Human Rights Program, 2015).

²⁶⁴ Rachel Kronick and Michaela Beder, “Jailing Immigration Detainees a Gross Injustice,” *The Star*, May 18, 2016; Kate McGillivray, “Immigration Detainee Freed after being Held in Canada for 7 Years Due to ‘Legal Limbo,’” *CBC News*, May 1, 2017; Debra Black, “Human Rights Chief Seeks Overhaul in Jailing of Immigration Cases,” *The Star*, April 12, 2016;

²⁶⁵ Koskie Minsky, “Immigrant Detainee Class Action,” Last Accessed: August 14, 2017, <https://kmlaw.ca/cases/immigrant-detainee-class-action/>.

provincial agreements that would standardize and improve the treatment of the “highest risk” detainees that would continue to be held in provincial correctional facilities.²⁶⁶ A number of recommendations regarding the use of provincial institutions were also highlighted through public and stakeholder consultations:

- Co-mingling of criminal detainees with immigration detainees in correctional facilities should be avoided completely for reasons related to exposure (i.e., drugs, gangs), safety and mental health.
- Amend existing laws to specify the factors to be considered when deciding to transfer a detainee to a provincial jail, establish a clear policy and transparent processes for transfers in and out of IHCs and provincial facilities for any reason (i.e., uncooperative behaviour, mental health), and include opportunities for detainees to challenge decisions.
- A meeting room must be made available to non-governmental organizations (NGOs) and partners at provincial facilities.
- CBSA detention standards should be enforced at provincial facilities, such as ensuring immigration detainees have the same level of access to services, programs and information (i.e., medical and mental health care, interpreters, NGOs, designated representatives, family visits, etc.) as compared to detainees in IHCs as well as other provincial inmates.
- Ensure provincial facilities are informed and trained on the particularities of individuals detained for immigration purposes (administrative not criminal).
- Continue to explore other ways to reduce reliance on provincial facilities for immigration detention.²⁶⁷

Reform in this area presents an incredible opportunity. Remand inmates account for 66% of Ontario’s custodial population.²⁶⁸ Significant changes in the way this population is treated have enormous potential to reduce overcrowding, mitigate the impacts of pre-trial detention and enhance community safety by minimizing disruption to employment, housing, and providing continuity of programming and services.

Ontario can draw inspiration from the treatment of remand inmates in other jurisdictions. The Winnipeg Remand Centre, for example, is a maximum security facility with multi-level units dedicated exclusively to pre-trial detention. Upon admission, every inmate is seen by a case manager who uses a security screening tool to determine appropriate institutional placement. They will then be sent to a unit based upon their assessed security risk. This institution, which is

²⁶⁶ CBSA: Detentions, *supra* note 255.

²⁶⁷ *Ibid.*

²⁶⁸ On any given day in 2015/16 there were on average 7961 people in custody in Ontario’s correctional institutions; 2526 individuals (32%) were sentenced offenders, and 5222 (66%) were on remand. Statistics Canada: Table 251-0005, *supra* note 214.

located in downtown Winnipeg, is dealing with a complex inmate population including individuals with addictions issues, mental health needs, and gang affiliations. Nevertheless, the Manitoba correctional system is able to successfully screen this population for institutional risk.

Key Findings and Recommendations

- There are many people who are being unnecessarily detained in Ontario's correctional institutions prior to their trial. In 2015/16, on any given day, 66% of all people incarcerated within Ontario were on remand. Nearly a third of the individuals held in pre-trial detention will eventually have all their charges stayed, withdrawn, or dismissed.
- Almost all remand inmates and immigration detainees are presumptively classified as maximum security and held under maximum security conditions.
- Under current Ontario policy, remand inmates are presumptively excluded from participating in institutional work and rehabilitative programs.
- Despite clear legislative authority for superintendents and/or the Ontario Parole Board to grant any inmate permission to temporarily leave an institution for medical, humanitarian, or rehabilitation purposes, ministry policy significantly restricts remanded inmates' access to temporary absences.
- Discharge planning services are not provided to the vast majority of the pre-trial population.

Recommendation 2.1: I recommend that the Corrections Act for Ontario:

- Include the principle that remand inmates are presumed to be innocent and must be treated as such; and
- Allow for remand inmates' optional participation in programming, work, education and discharge planning.

Recommendation 2.2: I recommend that the Ministry of Community Safety and Correctional Services work with Justice Sector partners to expand temporary absence eligibility to remand inmates.

Recommendation 2.3: I recommend that the ministry align policy and operational practices with the principles of presumption of innocence and least restrictive measures in the following ways:

- Explore non-institutional forms of pre-trial detention, including alternatives to incarceration used in other jurisdictions;
- Institute an institutional security risk assessment, completed during intake, to appropriately place and supervise remand inmates and establish policies and procedures for institutional placement of remand inmates that operationalize a clear

presumption that this population will be held in minimum security unless the risk assessment confirms additional security measures are required; and

- Establish dedicated minimum, medium and maximum security housing for the remand population.

V. EVIDENCE-BASED CORRECTIONAL PRACTICE

There are many decades of research and evidence about what works in corrections and why. We know that careful assessment of individual needs and circumstances followed by targeted interventions delivered by well trained and supported professionals in a way that matches the clients' learning preferences and abilities leads to good correctional outcomes. Chances for success are increased when careful attention is paid to the amount of time in a program (the "dosage") and when the intervention is delivered in as normal an environment as possible – ideally in the community. Support from pro-social family and friends also makes a difference. This tailored approach may result in extensive programming and follow up or hardly any intervention at all.

Evidence also points to what does not work. Sending large numbers of people to custody does not on its own result in a safer society: there is no evidence crime rates respond to incarceration rates. Many who enter correctional institutions do not emerge better equipped to deal with daily life outside of prison walls; some emerge actually more at risk of increased conflict with the law. Decades of studies have consistently found that, when compared with serving a sentence in the community, sending someone to custody increases the likelihood that they will become re-involved in some form with the criminal justice system. The principle of restraint responds directly to these findings, prioritizing community supervision, programming and services, and requiring that incarceration be used as a last resort.²⁶⁹

Finally, many individuals who come into conflict with the law are from high needs populations. Whether in custody or in the community, the system must be equipped to facilitate access to the services – health care, counselling, housing, education, income assistance – necessary to support their success in the community. Wrap-around care and support should be provided so that upon entry to and exit from the correctional system stabilizing services and programs are not interrupted.

²⁶⁹ Francis T. Cullen, Cheryl Lero Jonson and Daniel S. Nagin, "Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science." *The Prison Journal* 91 (2011); James Bonta and Paul Gendreau, "Reexamining the Cruel and Unusual Punishment of Prison Life," *Law and Human Behavior* 14 (1990); Paul Gendreau and Claire Goggin, "The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences," *Public Safety Canada* (Government of Canada, 2002); William D. Bales and Alex R. Piquero, "Assessing the Impact of Imprisonment on Recidivism," *Journal of Experimental Criminology* 71, no. 8 (2012).

Textbox 14: Local and Regional Crime Prevention and Criminal Justice System Diversion Initiatives

The government's primary focus should remain on providing the services and supports to prevent conflict with the law. For those who do become involved in the justice system, there must be multiple, appropriate diversion strategies to safely move as many people as possible away from negative outcomes associated with having a criminal record and a history of incarceration. To its credit, the Ontario government has recently developed several broad initiatives that focus on this dual imperative of prevention and diversion. The province's Strategy for a Safer Ontario (SSO) discussion paper, for example, prioritizes community safety and well-being by "improving collaborative partnerships between police, the public and other sectors such as education, health care and social services."²⁷⁰ Community safety plans involve not only police response, but also social welfare supports and interventions to assist individuals struggling with issues such as homelessness or substance abuse. The preliminary SSO vision also promotes the goal of improving outcomes for Ontarians by "ensuring those in crisis are connected with appropriate resources and services as soon as possible."²⁷¹ The government's response to the Truth and Reconciliation Commission's report on the legacy of residential schools also focuses on the need to divert Indigenous people, already over-represented in our correctional system, away from correctional institutions by expanding Community Justice Programs that provide alternatives to incarceration.²⁷²

There are also numerous local and regional efforts that take a broad social perspective on crime prevention and focus on diverting individuals from the criminal justice system to more appropriate social services. The Waterloo Region Crime Prevention Council, for example, has developed a strategy that focuses on improving social well-being and generating a greater public understanding of the root causes of crime.²⁷³ The Council brings together political representatives from numerous local municipalities, community and neighbourhood support agencies, and representatives from a wide range of government entities including policing, education, public health, justice, corrections, housing, and social services.²⁷⁴ These combined efforts promote safer communities by reducing opportunities for crime to occur, developing programs to help the groups most

²⁷⁰ Ministry of Community Safety and Correctional Services, *Strategy for a Safer Ontario: Public Discussion Paper* (Government of Ontario, February 2016).

²⁷¹ *Ibid.*

²⁷² Ministry of Indigenous Relations and Reconciliation, *The Journey Together: Ontario's Commitment to Reconciliation with Indigenous Peoples* (Government of Ontario, June 5, 2017).

²⁷³ Waterloo Region Crime Prevention Council, "Municipal Engagement," Last Accessed: August 11, 2017 <http://preventingcrime.ca/our-work/national-municipal-network/> (hereafter: "Municipal Engagement")

²⁷⁴ Waterloo Region Crime Prevention Council, "Our Story," Last Accessed: August 11, 2017 <http://preventingcrime.ca/our-story/>

at risk, providing public spaces that increase human interaction, and engaging youth in meaningful activities.²⁷⁵

In the northern region of the province, the Thunder Bay Crime Prevention Council tracks risk factors and trends associated with crime while engaging municipal services, local agencies, community groups, and the public to establish community-based strategies and programs. Targeted crime prevention strategies in the Thunder Bay area have included services such as Shelter House's Street Outreach Program, which helps provide transportation for intoxicated, homeless at-risk individuals thereby reducing their contact with police.²⁷⁶

The Toronto Police Service, through its Transformational Task Force, has highlighted feedback from their public consultation sessions which included recommendations to combine resources with community organizations in an effort to minimize duplication, reduce costs, share expertise, and share the responsibility for police-community partnerships.²⁷⁷

Targeted interventions based upon the principle of restraint and linkages to necessary social services support an effective and humane correctional system. Ontario's transformational vision for corrections reflects this approach. In 2015, the ministry began pursuing a long-term transformation strategy with a focus on personalized and integrated case management, supporting the rehabilitation and integration of individuals by providing services and programs tailored to individuals' risks/needs.

Below I examine three critical elements of evidence-based and humane correctional practice: initial intake, identifying and meeting individualized programming needs, and gradual release mechanisms and linkages to the community.

a. Initial Intake to Institutions and Community Supervision

Ontario's correctional system has a dual mandate to provide care and custody to those under its supervision. A thorough and careful intake process is a crucial first step in fulfilling this mandate. In order to provide appropriate custody, the correctional system must have adequate tools to assess individuals upon intake and put in place the least restrictive level of physical control and supervision based upon their risk. Appropriate care is a multi-faceted obligation

²⁷⁵ Municipal Engagement, *supra* note 273.

²⁷⁶ Lee-Ann Chevette, *Snapshot in Time: Risk Factors, Protective Factors and Trends of Crime in Thunder Bay* (City of Thunder Bay: Crime Prevention Thunder Bay, September 2016) at 17.

²⁷⁷ Toronto Police Service Transformational Task Force, *Action Plan: The Way Forward – Modernizing Community Safety in Toronto* (Toronto Police Service, January 2017) at 6.

that includes providing individuals with social supports, general programming (e.g. education and work opportunities), services (e.g. medical, religious), appropriate conditions of confinement, and comprehensive release planning. Care must begin at intake by identifying the specific services a person needs and ensuring that continuous supports are in place both during incarceration and after discharge to maximize an individual's chance at successful reintegration.

Measuring Risk: Implementing the Principle of Least Restrictive Measures

Within institutions, determining the appropriate custody level requires an individualized institutional risk assessment to establish whether an individual can be safely held in a minimum security setting or whether more security measures are justified. The vast majority of Ontario institutions do not employ an institutional security risk assessment tool.²⁷⁸ In the absence of such a tool, almost all inmates are placed in maximum security by default. The only facilities that are conducting targeted assessments for institutional security risks are Vanier Centre for Women and the Ontario Correctional Institute (OCI).²⁷⁹ Vanier is currently using an internal classification form that was developed locally, shortly after the institution opened in the early 2000s; both remand and sentenced inmates are eligible for placement on a medium security

²⁷⁸ The ministry's *Classifying Provincially Sentenced Inmates* policy does direct institutional staff to use the Adult Institution Initial Assessment and Placement Report (AIIAPR) as part of the admission intake process for sentenced inmates. The AIIAPR was developed to address overcrowding in pre-trial facilities by allowing staff to conduct a rapid risk assessment, which is a precondition to transfer a sentenced inmate to a correctional centre. It was never designed to assess institutional security risk or assist in appropriate security classification. Regardless of its purpose, it is not currently being used. The ministry confirmed that in 2012 they recommended institutions stop using the AIIAPR because it was not consistently used across all institutions and was not facilitating rapid inmate transfer as intended. The ministry's classification policy has not been updated since 2011 and therefore does not reflect this change in practice. Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Inmate Management: Classifying: Classifying Provincially Sentenced Inmates* (Government of Ontario, January 2011) (hereafter, "MCSCS: Provincially Sentenced Inmates").

²⁷⁹ The province's direct supervision facilities, Toronto South Detention Centre and South West Detention Centre, do have internal risk screening mechanisms to assist with institutional placement. At Toronto South individuals are housed in a maximum security "intake unit" for up to 30 days until they are screened for appropriate institutional placement based on the facilities' own intake risk assessment. Due to crowding, the intake unit at the South West Detention Centre is not currently available to screen new inmates and as a result they are not currently using a formal screening tool; instead, the institution simply places all inmates who do not present any obvious behavioural issues on a direct supervision unit. Even when screening does occur at these detention centres, it will not result in medium- or minimum-security confinement: the internal screening tool is used to determine whether an inmate will be placed in a direct or indirect supervision maximum security setting.

unit.²⁸⁰ OCI, a specialized treatment centre for male offenders, pre-screens applicants to ensure that they are suitable for a medium-security setting prior to their arrival. Neither of these processes, however, takes place upon admission. At all other institutions, inmates are presumed (without assessment) to be maximum security.

To a certain extent, the lack of effective security screening is moot: all but one of Ontario's correctional institutions is designated maximum security.²⁸¹ Some maximum security institutions maintain a limited number of lower security units to meet specific operational needs; this is the case, for example, at Vanier Centre for Women. The ministry, however, does not centrally track the existence of these units. Moreover, because conditions of confinement are not recorded or standardized, these housing areas can be physically identical to the maximum security units.²⁸² The only operational differences prescribed by policy are that lower security units are "predominantly" dormitory (medium) or cottage and dormitory (minimum) accommodation, and that inmate movement and association is subject to lower levels of supervision.²⁸³

Ultimately, the common element in medium or minimum security units in Ontario is not the conditions of confinement, but rather the fact that they house individuals who the institution has deemed to pose less risk to staff, other inmates, and the community. Frequently, these units are reserved for those inmates who have been given permission to leave their unit for institutional work. With the exception of inmates admitted at the OCI, the vast majority of individuals in Ontario's correctional facilities experience their incarceration in highly controlled and austere security environments, regardless of what level of risk they pose within the institution.

²⁸⁰ The information considered includes information from the offender's client profile, LSI-OR (if completed), main records file, OTIS information and unit behaviour report. Sentenced offenders must have an LSI-OR completed before they can be classified to the medium security unit.

²⁸¹ MCSCS: Facility Types, *supra* note 230. The one medium security facility in the province is the Ontario Correctional Institute, a treatment centre for select sentenced inmates who meet its restrictive eligibility criteria.

²⁸² *Ibid.* See also, related document: Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Administration: General Administration: Facility Profiles* (Government of Ontario, August 2, 2012).

²⁸³ *Ibid.*

Figure 10: Maximum Security Unit, Maplehurst Correctional Complex



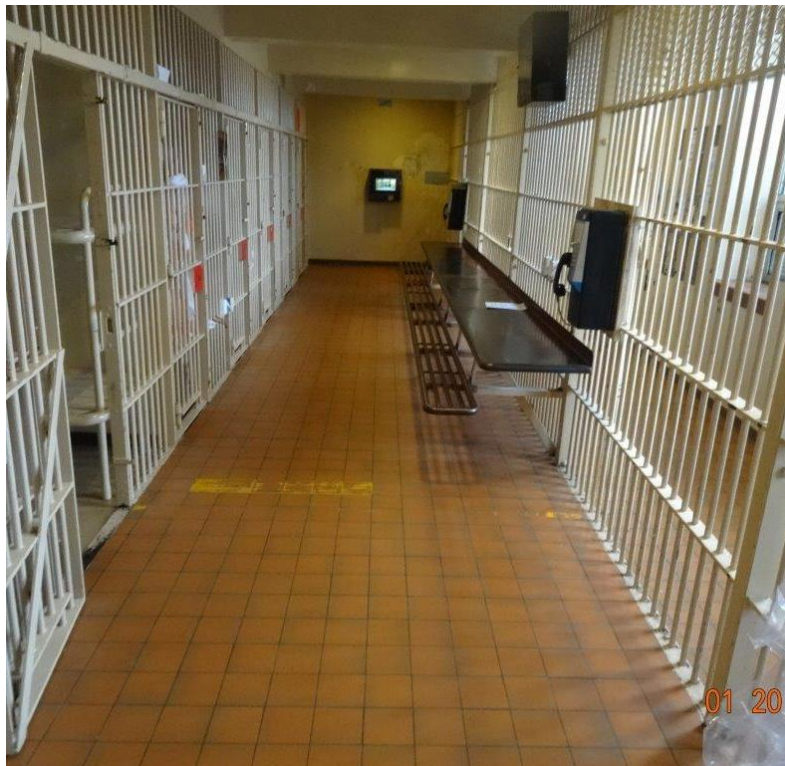
- ❖ General population maximum security pod-style unit with 32 inmates, two inmates per cell
- ❖ Inmates are subject to a fixed lock/unlock schedule and eat meals confined to their cells

Figure 11: Maximum Security Step Down Unit Day Room, Central North Correctional Centre



- ❖ Day room in a pod-style unit used primarily for inmates needing protective custody
- ❖ The day room has been segmented into two metal enclosures. This allows for inmates who the institution has determined are incompatible to be left in the dayroom at the same time

Figure 12: Maximum Security Unit, Thunder Bay Jail



- ❖ General population maximum security linear-style unit at the Thunder Bay Jail
- ❖ The unit holds 14 inmates, two per cell
- ❖ Inmates typically eat all meals in the dayroom area seen above

Figure 13: Yard, Central North Correctional Centre



- ❖ Yard at the Central North Correctional Centre used to allow inmates on maximum security units access to fresh air and outdoor time

Figure 14: Yard, Maplehurst Correctional Complex



- ❖ Typical maximum security yard at the Maplehurst Correctional Complex used to allow inmates access to fresh air and outdoor time

Figure 15: Step Down Unit Yard, Central North Correctional Centre



- ❖ Yard used for inmates on a step-down unit at Central North Correctional Centre
- ❖ Inmates that use this space are primarily those in need of protective custody
- ❖ The space has been segmented into numerous metal enclosures to allow inmates who the institution has deemed to be incompatible to be left in the yard space at the same time

Figure 16: Maximum Security Unit, Niagara Detention Centre



- ❖ Dorm-style unit for maximum security male inmates at Niagara Detention Centre
- ❖ Unit has 26 beds and typically houses intermittent inmates

Figure 17: Minimum Security Unit, Ottawa-Carleton Detention Centre



- ❖ Minimum security dorm-style unit at the Ottawa-Carleton Detention Centre
- ❖ Unit is reserved for inmates who have been accepted as institutional workers

Figure 18: Yard, Ontario Correctional Institute



- ❖ Yard at the Ontario Correctional Institute, a specialized treatment centre and the province’s only medium security institution
- ❖ Inmates are able to access the yard at will during the day so long as they are not scheduled for programming

Other provinces do not operate this way. British Columbia, for example, currently operates 10 institutions, three of which are medium security and one of which provides flexible custody for women ranging from open custody (minimum security) to secure (maximum).²⁸⁴ Nova Scotia operates four institutions: two medium security, one medium/minimum security, and one maximum security direct supervision facility.²⁸⁵ There is one provincial maximum security institution in Newfoundland; the province also operates two minimum security correctional centres and three minimum and medium security facilities.²⁸⁶

The principle of least restrictive measures also applies in a community supervision setting. In the community, risk assessments should be used to inform the level of supervision imposed on a person. For the most part, this is the standard practice in Ontario. Policy requires that all offenders that have a community supervision order with a reporting condition undergo a

²⁸⁴ Ministry of Justice, British Columbia Corrections Branch, *Adult Custody Policy: Case Management* (Government of British Columbia, July 2014) at s. 4.5.8.

²⁸⁵ Nova Scotia Department of Justice, “Adult Correctional Facilities.” (Government of Nova Scotia, November 28, 2016).

²⁸⁶ Department of Justice and Public Safety, “Adult Corrections: Institutional Services,” (Government of Newfoundland and Labrador, May 9, 2017).

preliminary “risk screening” as part of the community intake process.²⁸⁷ The goal of this initial screening is to:

- identify potential Intensive Supervision Offenders – individuals who pose the greatest risk of re-offending as well as a significant imminent threat to life or a threat of serious bodily harm;
- provide guidance on reporting frequency requirements and on the need for immediate versus longer term follow up;
- prioritize and accelerate case management activities and referrals; and
- initiate victim contact, where victim safety issues have been identified or victim contact is required by policy.²⁸⁸

Within six to eight weeks after intake most individuals in the community will also receive a more detailed risk/needs assessment using both general and, where appropriate, specialized risk assessment tools.²⁸⁹ Based upon an individual’s assessed risks and needs an Offender Management Plan is developed and the individual is placed in one of several supervision/programming “streams”; those assessed as very low risk are provided with very little oversight, while individuals who are at a high risk to reoffend are closely supervised.²⁹⁰

Despite this level of individualization, there are circumstances when policy imposes mandatory supervision requirements. For example, sex offenders, those serving conditional sentences and parolees are prohibited from being placed in the lowest supervision stream; those serving a sentence for a domestic violence offence are also presumptively excluded.²⁹¹ Parolees are subject to regular in-person monitoring for the first three months of their parole term regardless of their individual circumstances or assessed risk of recidivism.²⁹² There is no principled reason for these restrictions. In 2016 over a third of the individuals released on

²⁸⁷ Ministry of Community Safety and Correctional Services, *Probation, Parole and Conditional Sentence Policy and Procedures Manual: Probation and Parole Service Delivery Framework: Case Management Process: Intake/Risk Screening and Assignment* (Government of Ontario, August 29, 2012)(hereafter, “MCSCS: Probation/Parole Intake/Risk Screening and Assignment”)

²⁸⁸ *Ibid.*

²⁸⁹ Ministry of Community Safety and Correctional Services, *Probation, Parole and Conditional Sentence Policy and Procedures Manual: Probation and Parole Service Delivery Framework: Case Management Processes: Overview* (Government of Ontario, November 28, 2016) (hereafter, “MCSCS: Probation, Parole and Conditional Sentence Overview”).

²⁹⁰ Ministry of Community Safety and Correctional Services, *Probation, Parole and Conditional Sentence Policy and Procedures Manual: Probation and Parole Service Delivery Framework: Case Management Processes: Stream Placements* (Government of Ontario, September 2008)

²⁹¹ *Ibid.*

²⁹² Ministry of Community Safety and Correctional Services, *Probation, Parole and Conditional Sentence Policy and Procedures Manual: Parole: Supervision* (Government of Ontario, March 2011).

parole and nearly a quarter of those given a conditional sentence presented a low or very low risk to reoffend as measured by the ministry's own evidence-based risk assessment tool.²⁹³

Evidence-based risk/needs assessments should also be used to inform the conditions an individual is subject to while in the community. Courts and the Ontario Parole Board have wide-ranging discretion in setting conditions that a person must follow while on probation, serving a conditional sentence or released on parole. The parole board will be given the results of an individualized, evidence-based risk/needs assessment before making a parole determination and judges may order that a pre-sentence report, which includes criminogenic factors, strengths, needs and responsivity issues, be completed to inform sentencing. Parole and probation officers (PPOs) can also be given discretion to set the parameters of imposed conditions, including the power to order an individual to attend particular treatment or programs, obey specific curfews, not travel outside Ontario, or live at a specific address. The conditions that are imposed should be tied to an individual's particular circumstances, and the discretion exercised by PPOs should be tied to the least restrictive means principle and an individual's risk/needs assessment. Ministry policy directs PPOs to consider a list of individualized factors when determining whether or not to exercise their discretion to allow an offender to leave his or her residence while on house arrest.²⁹⁴ The Offender Management Plan should also assist by tailoring any direction to attend treatment or programs towards identified criminogenic needs.

As with supervision levels, however, law and policy dictate certain mandatory conditions. Regulation 778, for example, sets out mandatory conditions that apply to all individuals released on parole – an artifact from decades ago when evidence-based risk assessment was in its infancy.²⁹⁵ Several of these conditions, which the ministry's policy manual call "standard

²⁹³ Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services. In 2016, 38% of parolees and 23% of individuals on conditional sentence had an LSI-OR risk level of "Very Low" or "Low".

²⁹⁴ Ministry of Community Safety and Correctional Services, *Probation, Parole and Conditional Sentence Policy and Procedures Manual: Conditional Sentencing: Guidelines and Best Practices for Granting Permission for Community Outings* (Government of Ontario, June 2011).

²⁹⁵ Reg. 778, *supra* note 16 at s, 48. It is a condition of every grant of parole, unless the board orders otherwise, that the parolee shall,

- (a) remain within the jurisdiction of the Board;
- (b) keep the peace and be of good behaviour;
- (c) obtain the consent of the Board or the parole supervisor for any change of residence or employment;
- (c.1) keep a copy of his or her certificate of parole with him or her at all times and produce it to a probation officer, parole officer or police officer on request, unless, under subsection 47 (2), the certificate of parole has not been completed and signed;
- (d) report as required to the parole supervisor and the local police force; and

conditions” are extremely broad and vague. Parolees, for example, are released with the standard condition that they must “keep the peace and be of good behaviour,” a term that converts any violation of any law – federal, provincial or municipal – into a potential parole violation.²⁹⁶ There are a number of court decisions that have found that this condition prohibits conduct that is otherwise completely legal,²⁹⁷ an outcome that has been criticized as unfair.²⁹⁸

Parolees are also required to “refrain from associating with any person who is engaged in criminal activity or, unless approved by the parole supervisor, with any person who has a criminal record.”²⁹⁹ Given that most people do not announce their criminal activities or history in the course of their daily interactions, parolees are at constant risk of unintentionally violating this condition. Conditions that are this broad set an individual up for breaches, contributing to a revolving cycle of incarceration without meaningfully contributing to public safety. Imposing “standard” conditions that do not have any relationship with the risk, needs, and circumstances of the individual under supervision is inappropriate, counterproductive, and violates the principle of least restrictive measures.

Ensuring Appropriate Care at Intake

In addition to a security risk assessment, the initial intake process should also serve as the start of wrap-around service provision and, for those in institutions, discharge planning. Basic physical, mental, and social health screening should be performed upon intake, and identified needs should form the basis of individualized service, assistance, and referral plans. If an individual requires personal identification, a health card, legal information or representation, emergency child care, housing, employment assistance, or mental health referrals, the correctional system should provide a means to identify and address these issues, either directly or by way of appropriate referrals.

There are instances in the current system where this does occur. For example, when a person who self-identifies as trans is brought into a correctional institution, an immediate assessment will take place to determine appropriate individualized care, including gender identity, preferred pronoun use, clothing preference and individual instructions regarding physical

(e) refrain from associating with any person who is engaged in criminal activity or, unless approved by the parole supervisor, with any person who has a criminal record.

²⁹⁶ See for example, *R v Griffin*, 2013 O.N.C.J 811.

²⁹⁷ See for example, discussion in *R v Docherty*, 1989 2 S.C.R. 941, quoting *R v Stone*, 1985 22 C.C.C. (3d) 249.

²⁹⁸ *R v Gosai*, 2002 O.J. 359 at para 27.

²⁹⁹ Reg. 778, *supra* note 16 at s. 48.

searches and institutional placement.³⁰⁰ A case manager will then be assigned to complete a more in-depth assessment including identifying any need for particular services such as mental health supports, counselling, medication, or institutional transfers.³⁰¹ An interdisciplinary conference call will also be held to coordinate the inmate's care and custody.³⁰²

This institutional individualized case management is the exception, not the norm. For the majority of individuals the institutional intake and admission process captures only the most basic personal information. Correctional officers verify legal documents, conduct a brief interview with each newly admitted inmate, and complete the admission screens in the Offender Tracking Information System (OTIS). The required OTIS information includes asking an individual their religion, their nationality, dietary needs, and race. Aside from asking for a person's particular diet, however, there are no questions about what non-medical accommodations or services an individual may need while incarcerated or upon release.

Textbox 15: Admission, Classification and Placement of Trans Inmates

The admission, placement and care of trans inmates is guided by a process aimed at ensuring respect for the inmate's dignity and privacy and determining appropriate care and custody based on individual needs.³⁰³ Upon admission, each trans inmate is assigned a case manager. This staff person, in consultation with the inmate and the superintendent or designate, must create a multi-disciplinary case management team. Membership may include social workers, rehabilitation officers, Native Inmate Liaison Officers, operational managers, health care practitioners, parole and probation officers as well as external community or personal supports as requested by the inmate.

The case management team must, in consultation with the inmate, assess the individual's health care needs, psychological state, institutional housing, required programming and any other *Human Rights Code*-related needs. The case manager must continuously monitor and evaluate the needs of the inmate and share information with the case management team, superintendent and designated living unit staff.

If the inmate is transferred to another institution or will be under community supervision upon release, the case manager must contact the receiving institution or probation and parole office to transfer information to ensure continuity of care.

³⁰⁰ Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Inmate Management: General Inmate Management: Admission, Classification and Placement of Trans Inmates* (Government of Ontario, January 26, 2015).

³⁰¹ *Ibid.*

³⁰² *Ibid.*

³⁰³ *Ibid.*

Once the basic intake information is obtained the admitting correctional officer determines in which unit the inmate will be placed. While most inmates are placed in general population housing, all correctional institutions have at least some alternate housing cells or units. These alternate housing areas can include special needs units, mental health units, protective custody units, and segregation. There are, however, few policies specifying who should be placed within these units and almost no formal classification procedures.³⁰⁴ (For a more complete discussion of alternative housing in Ontario corrections, see the Independent Review of Ontario Corrections' 2017 *Segregation in Ontario* report.)

In the absence of classification tools, correctional staff report that in most institutions unit placement is determined by a variety of subjective factors. This can include placements during previous periods of incarceration, notes other correctional staff have put into OTIS, the individual officer's observations of the inmate during their brief intake assessment, and their own work experience. For a variety of reasons, this results in individuals with significant mental health issues and/or special needs often being automatically placed in highly restrictive alternate units or segregation.³⁰⁵ Numerous institutions also reported that they have many "return clients" who would be sent to the same unit that they were held in last time, unless new information suggests otherwise. Of course, detailed new information is not always collected on returnees as decision makers will typically defer to what was done last time. This process, which relies on personal intuition and often unverified information from previous custodial terms, can easily reinforce stereotypes and result in both individualized and systemic discrimination.

Health care screening has its own distinct process. Policy requires that newly admitted inmates receive basic mental and physical health screening from a registered nurse.³⁰⁶ The language setting out when this is to take place and what is to happen afterwards is very vague:

Where possible, every inmate shall be assessed by a registered nurse within 48 hours of admission to a jail or detention centre. In some cases, the initial assessment shall consist of an assessment of immediate health care concerns and medications followed by a more in-depth assessment to meet admission requirements as soon as practicable.³⁰⁷

Although the initial health care screening will identify existing medication needs and any immediate risk of self-harm or suicide, most institutions do not have a process that allows for effective patient triage or prioritization of treatment. While clearly identifiable physical health

³⁰⁴ For more information on alternate units in Ontario, see Sapers, *supra* note 107.

³⁰⁵ *Ibid.*

³⁰⁶ Ministry of Community Safety and Correctional Services, *Health Care Services Policy and Procedures Manual: Admission, Readmission, Transfer and Release of Inmate: Admission to Jail or Detention Centre* (Government of Ontario, October 1999).

³⁰⁷ *Ibid.*

needs such as open wounds will most often be treated on a priority basis, mental health issues that do not present as suicidality or create institutional management concerns are unlikely to be effectively or appropriately triaged at admission. The introduction of the Brief Jail Mental Health Screen (BJMHS) and the Jail Screening and Assessment Tool (JSAT)³⁰⁸ has improved the time it takes to identify individuals with mental health concerns. Even so, resources to follow through with in-depth assessments and interventions remain limited. While physicians are required to review the patient’s medical history and assessment, and perform a physical examination “as soon as possible” after admission,³⁰⁹ in practice the wait time to see a physician for this further examination can be weeks.

Some inmates do receive the benefit of enhanced mental health screening, triage, and assessment. The Forensic Early Intervention Service (FEIS), operating at the Toronto South Detention Centre (TSDC) and the Vanier Centre for Women, for example, provides comprehensive mental health services to remand individuals who may be found Not Criminally Responsible (NCR) or unfit to stand trial.³¹⁰ FEIS clinicians, who are employed by the Centre for Addiction and Mental Health, triage all inmates who screen positive for potential mental health issues as a result of the BJMHS and JSAT. Recommendations are then made regarding whether individuals meet the FEIS program criteria. Those who remain in the FEIS stream benefit from immediate access to an interdisciplinary team that includes a dedicated psychiatrist, social workers, an advanced practice clinical leader, occupational therapists, registered nurses, and administrative support. While the FEIS team will not provide medical treatment, they will refer patients back to MCSCS clinicians for appropriate follow up. The vast majority of inmates will not be assisted by this process either because they are sentenced or because they are not likely

³⁰⁸ In 2015, the ministry rolled out a two-stage mental health screening process. Upon admission, an initial health assessment screen (the Brief Jail Mental Health Screener or BJMHS) is completed by an admitting nurse. If the inmate screens positive for potential mental health concerns, they are referred to clinical staff – mental health nurses, social workers or psychologists – for the completion of a more in-depth mental health assessment using the Jail Screening Assessment Tool (JSAT). Sapers, *supra* note 107 at 67. See also, Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Placement of Special Management Inmates*, “Institutional response to mental health needs flow chart,” (Government of Ontario, December 6, 2016).

³⁰⁹ Ministry of Community Safety and Correctional Services, *Health Care Services Policy and Procedures Manual: Admission, Readmission, Transfer and Release of Inmate: Admission to Jail or Detention Centre* (Government of Ontario, October 1999).

³¹⁰ Generally an inmate is considered eligible for FEIS if he/she has been found Unfit to Stand Trial; if they are experiencing a condition or illness such that their fitness to stand trial may be in question; is at risk of becoming Unfit to Stand Trial; is undergoing or requires an assessment for criminal responsibility in relation to the NCRMD; and/or has been ordered to a forensic hospital under the *Criminal Code of Canada* and is awaiting admission to hospital.

to meet the legal threshold of NCR or of being unfit to stand trial. At the TSDC of the 6519 admissions in 2016 only 312 individuals became FEIS clients.³¹¹

Discharge Planning

In many correctional systems broader social needs are identified and addressed through discharge planning. Discharge planning is “the process of preparing individuals for their eventual release from prison and reintegration into the community.”³¹² Poor release planning is linked to negative outcomes, including greater recidivism rates, homelessness, and physical and mental health problems.³¹³ Best practice literature indicates that effective discharge planning should include three components: assessment, the development of a release plan, and transferring care for the individual to the community.³¹⁴ It should start as soon as the person is sentenced to custody; their risks and needs should be assessed so that their release plan identifies the most pressing needs (e.g. housing, mental health, substance abuse treatment).³¹⁵ The last part of the plan, the transfer of care to the community, requires correctional agencies to link those being released with community-based services and supports prior to their release.³¹⁶ Such linkages provide for continuity of care, make for a smoother transition into society, and reduce the chances of recidivism.³¹⁷

The vast majority of inmates in Ontario do not have access to effective discharge planning. Policy does direct that sentenced inmates serving between 30 days and six months must have a Discharge Plan which will “address the programs they will be involved in during their incarceration.”³¹⁸ Policy also requires that programming for these short term inmates be

³¹¹ The Forensic Early Intervention Service at the Toronto South Detention Centre, *A Report of our 2016 year* (Centre for Addiction and Mental Health, May 2017) at 10.

³¹² O’Grady and Lafleur, *supra* note 113. See also, Stephen Gaetz and Bill O’Grady, *The Missing Link: Discharge planning, Incarceration and Homelessness* (The John Howard Society of Ontario, October 2006, revised July 2017).

³¹³ Holly Hills, Christine Siegfried and Alan Ickowitz, *Effective Prison Mental Health Services: Guidelines to Expand and Improve Treatment* (Washington, D.C.: National Institute of Corrections, 2004); Fred Osher, Henry J. Steadman and Heather Barr, “A Best Practice Approach to Community Reentry from Jails for Inmates with Co-Occurring Disorders: The APIC Model,” *Crime and Delinquency* 41 no.1 (2003).

³¹⁴ O’Grady and Lafleur, *supra* note 113.

³¹⁵ *Ibid.*

³¹⁶ *Ibid.*

³¹⁷ *Ibid.* See also, Jacques Baillargeon, Stephen K. Hoge and Joseph V. Penn, “Addressing the Challenge of Community Re-entry among Released Inmates with Serious Mental Illness,” *American Journal of Community Psychology* 46, no.3-4: (2010); Gaetz and O’Grady, *supra* note 312.

³¹⁸ MCSCS: Provincially Sentenced Inmates, *supra* note 278.

targeted towards enhancing their discharge plans.³¹⁹ There is no current requirement that the Discharge Plan identify any needs or issues beyond programming during incarceration. Policy also does not require a Discharge Plan for remand inmates, or individuals sentenced to less than 30 days or more than six months. There is also no policy direction regarding when the discharge planning process should begin, how discharge needs are identified, establishing linkages to community-based services, or the process by which identified discharge needs should be met in the community. The only specific direction regarding services to inmates upon discharge is the ministry's Transportation on Discharge policy, which requires superintendents to provide bus tickets to inmates who do not have transportation or funds to travel home upon their release.³²⁰

Given the lack of policy guidance, discharge planning services are not consistently provided and, where available, vary in their quality and form. The most robust discharge planning services in the province are reserved for special needs populations, including those with mental illness or developmental delays; almost all other inmates must request these services in order to receive assistance.³²¹ The Independent Review Team found that only five of the 26 provincial institutions have a staff member who is solely dedicated to discharge planning.³²² Other institutions may provide some level of individualized discharge planning through institutional social workers, rehabilitation officers, or correctional officers. The individual staff members involved in this work are also typically responsible for a range of other duties including core program delivery and individual crisis intervention.

³¹⁹ *Ibid.*

³²⁰ Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Inmate Management: Discharge: Transportation on Discharge* (Government of Ontario, July 2008).

³²¹ At Toronto South Detention Centre and Vanier Centre for Women inmates that are part of the Forensic Early Intervention Service will receive comprehensive discharge planning from the Centre for Addiction and Mental Health. Ministry policy also directs that, upon admission of an inmate who has been the subject of a prior community supervision order and who is actively classified as an Intensive Supervision Offender (i.e. poses an imminent risk of harm to others and is at highest risk of committing serious new offences), the probation and parole officer must contact the appropriate institution staff for assessment and discharge planning purposes. The focus of this policy, however, is on ensuring appropriate supervision and communication occurs to maintain victim and community safety; it does not address the provision of social services upon release and does not direct what further steps must be taken with regards to discharge planning. Ministry of Community Safety and Correctional Services, *Probation, Parole and Conditional Sentence Policy and Procedures Manual: Specialized Cases: Intensive Supervision Offenders* (Government of Ontario, September 9, 2014).

³²² In addition, St. Lawrence Valley Treatment and Correctional Centre, which is a designated Schedule 1 facility for men with acute mental health needs, does provide comprehensive discharge planning which is carried out by hospital staff.

Textbox 16: Discharge Planning at the Winnipeg Remand Centre

The Winnipeg Remand Centre's policy directs that every offender in custody will have a "Custody Release Plan" which begins at admission and continues until release.³²³ Each plan is to contain the following information:

- Address upon release;
- Probation Services appointment date;
- Social Worker's Name and phone number;
- Social Worker appointment date;
- Court Ordered Appearances;
- Court address and phone number;
- Lawyer's name and phone number;
- Employment and Income Assistance appointment date and contact information;
- Employer Name/Start Date;
- Employment Plans;
- School Name/Start Date;
- School Plans: Legal Guardian/Agency (if applicable);
- Other Community Workers;
- Other Appointments (i.e., medical, counselling, etc.);
- Immediate Transportation Needs;
- Immediate Clothing Needs;
- ID needs (e.g., birth certificate, SIN etc.);
- Other/Urgent Concerns (i.e., suicide risk);
- Sources of support for the inmates and corresponding phone numbers; and
- Steps to help the inmate stay out of custody once discharged.³²⁴

In addition to identifying immediate supports required upon discharge, the Winnipeg Remand Centre also includes community corrections intake reporting instructions for individuals who have community supervision to follow. This includes information such as appropriate reporting phone numbers and addresses as well as reminders to bring specific documentation that will be required for the first community supervision meeting.

Each inmate is provided with a copy of their completed discharge plan prior to leaving the facility.

³²³ Winnipeg Remand Centre, "Custody Release Plan – Overview" (Government of Manitoba, June 13, 2017).

³²⁴ *Ibid.*

Textbox 17: Planning for Weekend Releases

Small measures that, in the past, facilitated discharge planning and community reintegration have been eroded. Prior to 2005, for example, the *Ministry of Correctional Services Act* contained a specific provision permitting superintendents to release an inmate a day or two early if their official date of release occurred on a weekend or holiday and the director or superintendent was “of the opinion that release during the weekend or holiday would inconvenience the inmate in obtaining transportation, lodging or any other service necessary for his or her adjustment to community life outside the correctional institution...”³²⁵ Since the repeal of this section – a change that occurred via a 2002 omnibus bill entitled the *Government Efficiency Act*³²⁶ – the ministry has struggled to put in place more complicated screening and decision-making processes to replace this legislative authority. In 2013, for example, a proposal was drafted to use temporary absences to facilitate early releases for inmates who would otherwise be discharged on a weekend or holiday. Although a pilot was launched in 2014 and is ongoing, as of March 2016 only facilities in the Northern and Eastern regions showed an increase in the use of these Community Reintegration Temporary Absences.³²⁷ The ministry is only now formally updating its policy and expanding the initiative to all regions.

Discharge planning, where it is available, does not start upon intake. Inmates will typically meet with someone a month or less before their scheduled discharge date. The Independent Review Team also found that the staff responsible for discharge planning typically do not work evenings and weekends, which, due to programming activities and court operation times, are the periods when inmates are most likely to be available for one-on-one planning sessions.

Depending on the institution there may be programs and services that could be strategically used as part of a broader preparation for release. Some institutions, for example, run clinics where inmates can apply for basic identification; this is not, however, a standard ministry initiative. Similarly, basic vocational programs such as resume-writing and interview skills do exist but vary in their availability and depend on willing volunteers from the community. Because of the lack of centralized or organized discharge planning these services are not targeted to those with the greatest need. In most cases, sign-up sheets to participate in these types of services or programs are simply posted in a correctional unit and participation depends upon the initiative of the inmate.

³²⁵ MCSA, *supra* note 15.

³²⁶ Statutes of Ontario, 2002, chapter 18, Schedule N, section 32.

³²⁷ Ministry of Community Safety and Correctional Services. *Transformation Strategy Business Case: Community Reintegration Planning Strategy*, Draft (Government of Ontario, March 3 2016).

There are also insufficient linkages between institutions and community services and organizations. Contracting with community-based organizations to provide discharge planning would provide inmates with individualized community contacts and organizational support upon release. In Ontario, although some release assistance may be offered to inmates through contracted community services or a volunteer community group, core “discharge planning” duties are reserved for institutional ministry staff. A wide variety of community services and organizations could be better engaged to assist with a smooth transition back into the community.

The ministry has recognized that discharge planning in Ontario needs to be significantly improved and, over the years, has articulated numerous visions outlining how discharge planning could be provided to all inmates. None of these plans has come to full fruition. Most recently, in September 2013, the ministry proposed an Enhanced Discharge Planning strategy that focused on preparing all inmates for discharge at the first point of custodial contact. This proposed framework includes the following principles:

- Discharge Planning is to begin upon admission at all institutions;
- Discharge Planning is available for all eligible inmates (federally sentenced and immigration detainees excluded);
- All inmates are to be provided a Discharge Planning Checklist;
- Mandatory minimum requirements for discharge planning must be met;
- Resource Reallocation/Dedicated Resources are required; and
- Discharge Planning consists of a three stage process that reflects the inmate’s legal status and length of stay.

The three stages are outlined as follows:

Stage 1 – Basic Discharge Plan for all inmates – ideally within 24 Hours of Admission:

- Discharge Planning Checklist/form to be filled in within first 24 hours of admission for all new admits – remand and sentenced.
- Each institution will need to determine who fulfills this role (designated person).
- Within the first three days, the inmate receives an orientation from the institution regarding programs and services.

Stage 2 – For Inmates who are staying 10 days or more:

- Inmate and designated discharge planner to meet and clarify components of the discharge plan including current needs during incarceration and needs upon discharge.
- Recognition that 50% of remanded inmates are released within seven days.

Stage 3 – For all Straight Sentenced Offenders [i.e., sentenced offenders not on an intermittent sentence] with sentences of over 30 days:

- Individualized and detailed discharge plan developed based on risk, need, and length of sentence.
- Discharge planning discussions and plan to include housing, referrals, treatments needs, and supports post incarceration.
- Standardized template to use for all discharge plans.

This plan represents a thoughtful approach to discharge planning and I encourage the ministry to move it from paper to implementation.

Textbox 18: Linking Discharge Planning to Community Services and Supports

Close linkages to community-based services and supports are essential to effective discharge planning. In Ontario there are a number of community-based organizations and services that could be leveraged to provide a smoother transition between institutions and the community.

Health Care

Meeting the health care needs of those recently released is critically important. Numerous community health care providers have health care discharge planning expertise that assists with continuity of medical care. There are also health service providers that specialize in providing services to transitory populations with complex needs. Given the high rates of addictions and mental health issues experienced by the incarcerated population, linkages with community organizations that are equipped to assist these individuals are particularly important.

Transitional and Supportive Housing

There are organizations that are currently providing transitional and supportive housing (see also Textbox 21); these services, however, are not provincially-coordinated and often lack linkages to or integration with discharge planning and the provincial correctional system. St. Leonard’s Society of Peterborough, for example, offers several transitional housing initiatives that are reserved for individuals that exit their local federal half-way house.³²⁸ Other local initiatives are focused on individuals with mental health needs or addictions issues. The Canadian Mental Health Association of Toronto, in partnership with the City of Toronto, offers a Post Incarceration Housing Program which provides support in finding and maintaining appropriate housing for individuals with mental health concerns who have recent or current involvement in the criminal

³²⁸ Ontario Halfway House Association, “St. Leonard’s Society of Peterborough: Edmison House,” Last Accessed: August 14, 2017

[http://halfwayhouses.ca/en/region/ohha/facility/edmison_house/.](http://halfwayhouses.ca/en/region/ohha/facility/edmison_house/)

justice system.³²⁹ Specific supportive housing initiatives are also available in a variety of communities.³³⁰

Indigenous Support

A wide range of Indigenous organizations and community support networks are available in Ontario. Friendship Centres, for example, serve the needs of urban Indigenous people and those transitioning from remote communities, by providing culturally appropriate services in urban settings.³³¹ Connections with these and other Indigenous organizations could be leveraged to provide greater support for Indigenous persons exiting Ontario's provincial institutions.

Community Supervision

A number of not-for-profit organizations run bail verification and supervision programs (BVSPs) which supervise individuals who are released prior to their trial and who would have, without support or supervision, been detained. BVSPs provide judges with a clear plan of community supervision as an alternative to custody and can offer supports to individuals through appropriate assessment and case management.³³² These services are provided by a range of local community organizations in many areas of the province. Currently, however, this form of alternative community supervision is limited to bail supervision, and is not available to assist individuals on temporary absences, probation, parole, or conditional sentences.

³²⁹ Canadian Mental Health Association Toronto, "Post Incarceration Housing Program," Last Accessed: August 14, 2017 http://toronto.cmha.ca/programs_services/post-incarceration-housing-program/.

³³⁰ The Access Point provides supportive housing for those with mental health issues and who are involved with the criminal justice system at the time of housing intake. The Access Point, "The Toronto Mental Health and Addictions Access Point: About," Last Accessed: August 14, 2017 <http://theaccesspoint.ca/about/>. LOFT provides supportive housing for those in conflict with the law with mental health concerns and who homeless or at risk of being homeless and who can live safely and independently in the community with minimal assistance. LOFT, "Adults with Mental Health Issues in Conflict with the Justice System," Last Accessed: July 31, 2017 <http://www.loftcs.org/programs/supports-for-adults/mental-health-and-justice-initiative/>.

³³¹ National Association of friendship Centres, "About the NAFC," Last Accessed: July 31, 2017 <http://nafc.ca/en/who-we-are/about-nafc/>; Ontario Federation of Indigenous Friendship Centres, "Find a Friendship Centre," Last Accessed: August 18, 2017 <http://www.ofifc.org/about-fc/centres/list>.

³³² John Howard Society of Ontario, "Bail Verification and Supervision Program," John Howard Society of Peel, Halton and Dufferin, Last Accessed: July 31, 2017 <http://johnhoward.on.ca/peel-halton-dufferin/services/bail-verification-supervision-program/>; St. Leonard's Community Services, "Adult Bail Verification and Supervision," Last Accessed: July 31, 2017 <https://www.st-leonards.com/justice/programs/adult-bail-verification-and>; Elizabeth Fry Society of Sudbury, "Bail Verification and Supervision Program," Last Accessed: August 14, 2017 <http://efrysudbury.com/programs/bailverification/>.

The intake process for individuals supervised in the community differs from that in institutions. There is an initial intake interview with a probation and parole officer obtaining basic personal information, reviewing an individual's terms and conditions, filling out required paperwork, and completing an initial risk assessment. The information collected includes personal details such as marital status, number of dependents, religion, language, race, and Aboriginal ancestry/heritage, which may assist with the provision of ethno-culturally sensitive services.³³³ Furthermore, one of the policy objectives of the community supervision intake is to deal with "any immediate concerns (accommodation, mental health issues) without delay" and the intake process includes some questions that may identify immediate needs.³³⁴ Some relevant concerns, however, may not be identified or confirmed until the completion of the more comprehensive assessment process.

b. Identifying and Meeting Programming Needs

Ensuring access to appropriate programming is a critical component of evidence-based correctional practice. Some programs and activities within an institution should be open to all: anyone should be able to further their formal education, engage in recreational activities, participate in work opportunities, or generally expand their knowledge and experience. More intensive rehabilitative programs and interventions, however, must be carefully targeted. These rehabilitative programs are the interventions designed to address key underlying criminogenic factors: substance abuse issues, weak family or social connections, pro-criminal attitudes or a host of other influences that increase an individual's likelihood to come into negative contact with the justice system. Evidence shows that providing this type of rehabilitative programming to individuals who do not present a significant risk to reoffend actually decreases their likelihood of successfully exiting the criminal justice system.³³⁵ As a result, rehabilitative programs must be reserved for those with identified needs who are at a medium- or high-risk of reoffending. Interventions must also be sensitive to an individual's specific learning styles and needs. This type of targeted, selective intervention model is founded upon "risk-needs-responsivity" research.³³⁶

³³³ MCSCS: Probation/Parole Intake/Risk Screening and Assignment, *supra* note 287

³³⁴ *Ibid.*

³³⁵ James Bonta and D.A. Andrews, *The Psychology of Criminal Conduct*, 6th ed., (Routledge, 2016); Paula Smith and Paul Gendreau, "The Relationship Between Program Participation, Institutional Misconduct and Recidivism Among Federally Sentenced Adult Male Offenders," *FORUM on Corrections Research* (Correctional Service of Canada, Government of Canada, 2007); James Bonta, D.A. Andrews and Robert Hoge, "Classification for Effective Rehabilitation: Rediscovering Psychology," *Criminal Justice and Behavior* 17 (1990).

³³⁶ The risk-need-responsivity (RNR) model was formalized in 1990 as a model used by the criminal justice system to help develop recommendations for how prisoners should be assessed in order to receive treatment to reduce their risks of recidivism. It is comprised of three

In addition to an individual's assessed risks and needs, an inmate's legal status and the length of sentence should also inform whether and how he or she can access rehabilitative programming. Individuals on remand are legally innocent, and as such cannot be compelled to engage in programming. If remanded inmates do participate in programs, it should be understood and measures put in place to ensure that this in no way erodes the presumption of innocence.

Those who have been found guilty and sentenced may not be incarcerated or supervised for long enough to benefit from targeted rehabilitative interventions. Sentencing courts must be cognizant that short, sharp sentences of incarceration provide little opportunity for correctional interventions and that these sentences would be best served in the community. Both remand inmates as well as those sentenced to a short term of custody should at a minimum receive discharge assistance to ensure that they have the basic social supports to succeed, unsupervised, upon release. These individuals should also be able to participate in a range of general activities, including recreational, educational, and work programs.

The ministry offers four main types of programs: life skills, education, work, and rehabilitative programs (see Textbox 19). The first three categories are designed as sessions or activities that would be appropriate for all individuals in custody and, with the exception of work programs, are generally available to both remanded and sentenced populations. Policy outlines that rehabilitative programming, in contrast, must be primarily reserved for sentenced offenders that have identified criminogenic needs and present a medium or high-risk to reoffend. There are processes established both within institutions and the community to allow for targeted evidence-based rehabilitative interventions.³³⁷

principles: (1) the risk principle which posits that criminal behaviour can be reliably predicted and therefore treatment should be focused on those inmates with the highest risk profiles – treatment should be matched to the risk the individual poses; (2) the need principle which focuses on the importance of assessing criminogenic needs and targeted them in treatment; and (3) the responsivity principle, which describes how treatment should be provide in order to maximize the intervention – tailoring to the learning style, motivation, abilities and strengths of the individual. This last principle can further be divided into two categories: general and specific responsivity. General responsivity requires use of cognitive social learning strategies to influence behaviour regardless of the type of offender (i.e., female offender, Aboriginal offender. Specific responsivity is the refinement of those strategies and takes into account the strengths, learning style, personality, motivation, and bio-social (e.g., gender, race) characteristics of the inmate. James Bonta and D.A. Andrews, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation 2007-06* (Public Safety Canada, Government of Canada, 2007).

³³⁷ Ministry of Community Safety and Correctional Services, *Rehabilitative Programs: Orientation Programs for Men: Change is a Choice Series* (Government of Ontario) (hereafter, "MCSCS: Rehabilitative Programs").

Textbox 19: Ministry Program Categories

- Life skills programs “address a variety of health living needs in short, often single session programs.”³³⁸ Examples can include budgeting, gambling, goal setting, job searching, computer skills, and parenting. These programs can be delivered by ministry staff, contract agencies, and/or volunteers.³³⁹
- Education programs are delivered by a variety of partners, including teachers, education instructors, literacy instructors, and ministry volunteers. These programs are offered to both remand and sentenced offenders through a variety of partnerships.³⁴⁰
- Work programs are “intended to provide practical skills” to assist with reintegration. These could include working in the institutional kitchen, laundry, landscaping, or cleaning units.³⁴¹ There are also “industry programs” that allow inmates to participate in specialized work activities, such as woodworking and carpentry, and textile production. The products made by these activities are marketed to government organizations as well as school boards and not for profit organizations.³⁴²
- Rehabilitative programs “address criminal behaviour and factors that can contribute to re-offending.”³⁴³ The areas targeted by these programs include anger management, anti-criminal thinking, substance abuse, domestic violence, and sexual offending. Within each category there are different levels of program intensity ranging from orientation/introductory to intensive.³⁴⁴ These programs are generally intended to address specific needs of sentenced offenders that have been identified as being at a medium- to high-risk of reoffending.³⁴⁵

³³⁸ Ministry of Community Safety and Correctional Service, “Correctional Services: Offender Programs and Services.” (Government of Ontario, March 2016), accessed August 14, 2017, https://www.mcscs.jus.gov.on.ca/english/corr_serv/OffenderProgramsServices/ProgramsServices/offender_programs.html (hereafter, “MCSCS: Offender Programs and Services”).

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ *Ibid.*

³⁴² Ontario Ministry of Community Safety and Correctional Services, “Correctional Services: Adult Offenders – Treatment Programs: Trilcor Industries” (Government of Ontario, July 2016), Last Accessed: August 14, 2017 https://www.mcscs.jus.gov.on.ca/english/corr_serv/OffenderProgramsServices/treat_prog_trilcor/treat_prog_trilcor.html.

³⁴³ MCSCS: Offender Programs and Services, *supra* note 338.

³⁴⁴ *Ibid.*

³⁴⁵ MCSCS: Rehabilitative Programs, *supra* note 337.

In practice program availability, assignment and participation within institutions departs significantly from policy guidance. In general, program participation is hampered by inconsistent program availability and delivery. Programs offered by community partners can be cancelled or interrupted on short notice due to the “operational requirements” of the host institution. Institutional staffing levels also play a central role in determining availability. Life skills, education, and rehabilitative programs are often one of the first things to be cancelled when there are staff shortages. It is uncommon for a full slate of programs to be offered on a firm or recurring schedule. Neither inmates nor staff can typically predict when a program may be offered.

Often, there is inadequate program space available in institutions. Programming may be offered in hallways, chapels, “multi-purpose rooms”, converted cells, gymnasiums, or, most troubling, inside of wire mesh enclosures with inmates inside the enclosures and program staff on the outside. Even when there is purpose built space, the space is subject to being “re-purposed” for pressing operational and administrative needs. Planning for program delivery includes infrastructure planning and, the availability of adequate and appropriate program space must be accorded a high priority.

Specialized programming for Indigenous clients and women is offered by the ministry, but access and quality of these programs vary from location to location. For inmates interested in accessing a larger range of Indigenous programs, often the only way to do this is by transferring to an institution in Northern Ontario. Women also have limited access: institutions that house less than 30 women have little capacity to provide women-centred programs and services. The only correctional institution that houses more than 30 sentenced female inmates is Vanier Centre for Women.

General programs and activities – educational opportunities, work programs, recreation and general learning sessions – have little dedicated funding for either staff or materials. The majority of general programs are run by community service providers, organizations, and volunteers who are usually required to supply the personnel, programming content, and any necessary supplies. The availability of this programming therefore varies considerably across institutions. Ministry policy itself represents a barrier for remand inmates and immigration detainees – a group that collectively represents the majority of inmates. As reviewed in section IV of this Report, these populations are presumptively ineligible for participating in institutional work programs while in custody.

Figure 19: Program Room, Vanier Centre for Women



❖ Room used for group programming at Vanier Centre for Women

Figure 20: Program Room, Monteith Correctional Complex



❖ Room used for group programming and activities for women and protective custody male inmates at the Monteith Correctional Complex

Figure 21: Woodworking Shop, Ontario Correctional Institute



- ❖ Woodworking shop for inmates at Ontario's only medium security institution
- ❖ Woodworking is an activity that is generally available to all inmates within the institution

Figure 22: Segregation Interview Space, Central East Correctional Centre



- ❖ Space used to facilitate one-on-one discussions between segregated inmates and institutional staff such as rehabilitation officers or social workers

Figure 23: Segregation Group Programming Space, Central East Correctional Centre



- ❖ Space within a day room area where up to six segregated inmates can be confined to receive programming
- ❖ Segregated inmates who must be monitored after receiving their methadone dose are also placed in this area
- ❖ Staff or volunteers delivering programming remain outside the metal enclosure

Figure 24: Indigenous Program Room, Monteith Correctional Complex



- ❖ Room used for Indigenous group programming and spiritual activities such as Smudging at the Monteith Correctional Complex

The availability of rehabilitative programming is also an issue within institutions. Although ministry policy requires programming to be tracked, this is not reliably occurring. As a result, there is no central compilation of institutional programs being delivered and participation or completion rates. Based on reports prepared at the request of the Independent Review Team from four the provincial correctional centres, it is clear that there is little to no intensive rehabilitative programming occurring within institutions. Some of the correctional centres do offer “orientation” rehabilitation programs: five to six sessions that provide an introduction to dealing with issues such as anger management, substance abuse, or criminal thinking.³⁴⁶

In 2016, for example, Central East Correctional Centre ran only three intensive rehabilitative programs: Hope Behind Bars, Intensive Anger Management, and Pro-Social Thinking. Maplehurst Correctional Complex, Monteith Correctional Complex, and Central North Correctional Centre indicated that they did not offer any intensive rehabilitative programs for sentenced offenders in 2016. In 2016, nearly 3000 inmates cycled through these institutions.³⁴⁷

Even when there are rehabilitative programs offered, the vast majority of inmates are not being provided with individualized information regarding which programs would be most appropriate for their participation. The province uses a risk/needs assessment tool, the Level of Service Inventory – Ontario Revision (LSI-OR), to identify an individual’s risk to reoffend and their particular criminogenic factors. The LSI-OR is administered to all inmates with longer custodial terms.³⁴⁸ Ministry policy also attempts to match offenders with appropriate rehabilitative programs by requiring that sentenced inmates serving six or more months are provided with a Program Plan that is initiated by a classification counsellor or social worker.³⁴⁹ Policy requires that the Program Plan be informed by the LSI-OR and endeavour to “provide the inmate with a

³⁴⁶ Ministry of Community Safety and Correctional Services, “Facility Profile: Maplehurst Complex” (Government of Ontario, April 2017); Ministry of Community Safety and Correctional Services, “Facility Profile: Central East Correctional Centre” (Government of Ontario, June 2017); Ministry of Community Safety and Correctional Services, “Facility Profile: Central North Correctional Centre” (Government of Ontario, April 2017).

³⁴⁷ In 2016, Central East Correctional Centre admitted 1063 sentenced inmates, Central North Correctional Centre admitted 615 sentenced inmates and Maplehurst Correctional Complex admitted 1310 sentenced inmates. Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services.

³⁴⁸ In institutions inmates sentenced to less than 30 days or 90 days (Ministry policy provides conflicting direction) are not required to be assessed with the LSI-OR unless they apply for parole, an unescorted temporary absence, an institutional work program, or fall into a number of other specific categories. Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Inmate Management: Classifying: Level of Service Inventory* (Government of Ontario, July 2004) (hereafter, “MCSCS: Level of Service Inventory”); MCSCS: Provincially Sentenced Inmates, *supra* note 278.

³⁴⁹ *Ibid* MCSCS: Provincially Sentenced Inmates.

balance of work and rehabilitative programming.”³⁵⁰ Program staff on the unit are responsible for implementing the offender’s Program Plan and must also “coordinate with the institution work board, educational resources, health care, operational, and clinical staff to ensure that the Offender Program Plan is meeting the inmate and institutional needs.”³⁵¹ Policy states that inmates are to be advised of their plan's requirements and the expectations regarding program participation and behaviour; policy also requires that they be told that failure to abide by any of the requirements may adversely affect earned remission.³⁵²

Most institutions are not using Offender Program Plans and, when interviewed by the Independent Review Team, institutional staff members were generally unaware of the obligation to do so. Given the lack of policy compliance, it is not surprising that each correctional centre has established different procedures to target their rehabilitative programs. At Central North Correctional Centre inmates can sign up for rehabilitative programming via a unit sign-up sheet. Inmates who are interested in particular programs will be assessed by the institutional program placement board which makes recommendations based on a variety of individual factors, including LSI-OR score, police record, and the correctional client profile. Priority is given to inmates with upcoming release dates and whose individual assessment matches the program criteria. Central East Correctional Centre refers individual sentenced inmates to targeted programs based on a social worker’s assessment of the LSI-OR, staff referrals, inmates’ requests, or recommendations from the transferring institution. Any inmates who are referred to a program will also be individually assessed by the program facilitator for motivation.

In contrast, Maplehurst Correctional Complex does not use LSI-OR scores to target programming and bases rehabilitative program participation solely on sign-up sheets. This failure to target participation in rehabilitative programming can lead to both over-programming for low-risk individuals as well as under-programming for the high needs population; both of these outcomes decrease the likelihood of success upon release. Given that Maplehurst only offered a total of 10 hours of group rehabilitative programming in 2016 the impact of these failings is somewhat blunted.

The reality in the majority of correctional institutions stands in contrast with the targeted programming that occurs when a person is supervised in the community. A subset of sentenced offenders who are supervised in the community are assessed using the LSI-OR.³⁵³ Where

³⁵⁰ *Ibid.*

³⁵¹ *Ibid.*

³⁵² *Ibid.*

³⁵³ An LSI-OR is not completed on a community client if there is no reporting condition on the supervision document or if there is a reporting condition but the order requires the offender to report once only; the order requires the offender to report once only and to complete a task;

appropriate, individuals supervised in the community may also be assessed with a more rapid low risk identifier assessment or specialized risk assessment tools targeting particular populations (e.g. sex offenders, domestic violence).³⁵⁴ Program referrals and participation are closely tied to the results of the individual's risk/needs assessment through an individualized Offender Management Plan (OMP). Similar to the intention of the Offender Program Plan within institutions, the community-based OMP must address, amongst other things, "the offender's criminogenic needs that are identified as medium and higher on the LSI-OR" as well as any other risks, criminogenic needs, or concerns identified by the probation and parole officer.³⁵⁵ The OMP also sets out tasks, programs, referrals and services that target improvement in the identified areas for higher risk individuals. Policy specifically requires that the OMP "take into consideration the principle of least intrusive intervention consistent with public safety."³⁵⁶

Managers conduct regular, random case management reviews to audit policy compliance, the results of which are rolled up on a regional and provincial basis for broader trend analysis and to inform any necessary systemic changes. These audits examine a wide range of measures, including timely completion of required assessments as well as the quality and appropriateness of supervision and programming plans. In addition to corrective actions that might occur on a regional or provincial basis area managers are expected to address any identified shortcomings on an individual basis. Work is ongoing to ensure that policy aligns with the most recent evidence regarding effective community supervision and that the case management review process is similarly reflective of evidence-based best practices.

There are areas of the province where access to specific programming continues to be an issue for individuals who are supervised in the community. In 2014, the Auditor General of Ontario noted a number of shortcomings in the availability and tracking of community programs, including:

- Programs were not consistently available across the province. About 40 of 100 offices "did not have available core programs, such as for anger management and substance abuse, to offer to their offenders, and the most that any one office offered was five of the 14 core programs available. The ministry did not know if externally delivered

the Low Risk Identifier has been completed and its score indicates an LSI-OR is not required; or the community sentence is less than eight weeks in length. Ministry of Community Safety and Correctional Services, *Probation, Parole and Conditional Sentence Policy and Procedures Manual: Probation and Parole Service Delivery Framework: Case Management: Level of Service Inventory – Ontario Revision Assessment/Re-assessment* (Government of Ontario, November 28, 2016).

³⁵⁴ MCSCS: Probation, Parole and Conditional Sentence Overview, *supra* note 289.

³⁵⁵ *Ibid.*

³⁵⁶ *Ibid*

programs were making up the shortfall of needed core programs at probation and parole offices.”

- Visits to select offices consistently indicated that “several popular programs ... had long wait times, up to several months, but they did not formally monitor these wait times.”
- Referrals to external community programs were only being tracked manually, making it very difficult to get any information on program and service attendance and completion.³⁵⁷

The Auditor General recommended that the ministry “regularly track the availability of and wait times for rehabilitative programs and services for offenders under its supervision across the province, identify areas where assessed offenders’ rehabilitation needs are not being met, and address the lack of program availability in these areas.”³⁵⁸

The Auditor General issued a follow up report in 2016, noting that all probation and parole offices had completed an analysis of programming availability and that “regions were addressing identified programming gaps” on an ongoing basis.³⁵⁹ Since that time, the ministry has continued to conduct regular programming gap audits and regions have elaborated various strategies to address identified needs. At the time of writing this report, the ministry was piloting the tracking of offender participation in contracted programs and also planned to pilot a programming waitlist feature in its offender management database in August 2017. Unfortunately, because community referrals continue to be tracked manually, the waitlist feature will only capture data for ministry-delivered programs. The ministry plans to transition the tracking of community referrals from the current manual system to OTIS by September 2018.

The ministry has recently taken steps to reinforce the effective application of the risk-needs-responsivity model in community corrections by initiating a Strategic Training Initiative in Community Supervision (STICS). STICS focuses on providing probation and parole officers with the skills and knowledge they need to appropriately target criminogenic factors when interacting with their clients. The training, which was originally developed by Public Safety Canada, has been the subject of numerous Canadian evaluations, all of which have found that when implemented properly, the program significantly increases the effectiveness of community supervision.³⁶⁰ The implementation of STICS in Ontario is adhering to and improving

³⁵⁷ Office of the Auditor General of Ontario, *Annual Report 2014* (Government of Ontario, Queen’s Printer for Ontario, Fall 2014) at 63 (hereafter, “Auditor General: Annual Report 2014”).

³⁵⁸ *Ibid* at 63.

³⁵⁹ *Ibid* at 17.

³⁶⁰ James Bonta et al., *The Strategic Training Initiative in Community Supervisions: Risk-Need-Responsivity in the Real World 2010-01* (Public Safety Canada, Government of Canada, December 2015). Ministry of Justice, British Columbia Corrections Branch, “Strategic Training

upon best practices and lessons from other jurisdictions, and is incorporating a robust focus on evaluation, training, and staff support. It is encouraging that the province is investing in evidence-based practices that reinforce the effectiveness of existing policies and support staff in delivering the needed services. Effective implementation of STICS will require not only initial training, but active and ongoing centralized support and capacity-building for staff to ensure that these new models of client interaction continue to be implemented.³⁶¹

c. Gradual Release and Community Integration

Most individuals under the jurisdiction of Ontario's correctional system are supervised in the community. Of those who are incarcerated, the vast majority will be returning to their home communities within a matter of months, if not days. Even the briefest stay in custody, however, can result in a range of collateral consequences including loss of employment, loss of housing, missed medication and medical follow up, and the need for emergency care of dependents. All those who are incarcerated should be offered support upon release. For those subject to longer terms of incarceration the return to the community should be both gradual and supported. Abruptly placing someone in the community after months or years of maximum-security confinement is jarring and disorienting. Research has consistently shown that conditional release from incarceration is "more effective in promoting a prisoner's successful reintegration into society as a law-abiding citizen than would be his/her sudden freedom – at sentence expiry – without any assistance or supervision."³⁶²

Ontario's correctional system has a variety of tools that it could be using to enhance connections with the community and to provide for gradual, supported release. The MCSA provides broad authority for inmates to be granted temporary absences from institutions to assist with their rehabilitation or for humanitarian or medical reasons.³⁶³ Sentenced inmates are also eligible for parole after serving a third of their sentence, and can be released on parole before that point where there are compelling or exceptional circumstances.³⁶⁴ If an inmate is released on parole he or she will serve the remainder of the sentence in the community under the supervision of a probation and parole officer. A variety of community resources could be leveraged to increase the use of temporary absences and parole and to also assist with release,

Initiative in Community Supervision" (Government of British Columbia), Last Accessed: July 7, 2017 <http://www2.gov.bc.ca/gov/content/justice/criminal-justice/corrections/reducing-reoffending/strategic-training-initiative>.

³⁶¹ James Bonta at al., "Taking the Leap: From Pilot Project to Wide-Scale Implementation of the Strategic Training Initiative in Community Supervision (STICS)" *Justice Research and Policy* 15, no. 1 (2013).

³⁶² Anthony N. Doob, Cheryl Marie Webster and Allan Manson, "Zombie Parole: The Withering of Conditional Release in Canada," *Criminal Law Quarterly* 61 (August 2014) at 304-305.

³⁶³ MCSA, *supra* note 15 at s. 27(1).

³⁶⁴ Reg 778, *supra* note 16 at s. 41(1)-(2).

reintegration, and the provision of targeted community-based services. These three areas – temporary absences, parole and community integration – are further examined below.

Temporary Absences

The *Ministry of Correctional Services Act* provides legislative authority for all inmates to apply for and be granted temporary absences (TAs) from institutions for medical or humanitarian reasons, or to assist with their rehabilitation.³⁶⁵ Ministry policy details the following general categories for temporary absences:

- Humanitarian temporary absences which are “intended for purposes such as attending to essential personal affairs, family visits, serious illness and funerals of family members. There must be a compelling reason for the family visit.”³⁶⁶
- Immediate temporary absences “apply to inmates serving sentences of 90 days or less whose employment or education will be jeopardized by their absence.” The sentencing judge must record comments and the recommendation for this immediate temporary absence on the committal warrant in order for it to be considered³⁶⁷
- Medical temporary absences which may be “granted to allow an inmate to obtain necessary medical/clinical treatment that is unavailable at the institution.”³⁶⁸
- Rehabilitative temporary absences which are intended to assist with rehabilitation and reintegration by allowing an inmate to “participate in educational/training programs or attend specialized counselling programs in the community.” They include participation in activities or programs such as treatment activities (e.g., substance abuse treatment programs), rehabilitation activities (e.g., family violence counselling, unique spiritual, or cultural ceremonies) and reintegration activities (e.g., general or specialized education programs, technical training programs, or employment).³⁶⁹
- Work program temporary absences which permit inmates to work outside of the institution, whether it be in paid employment or through “institution sanctioned community work programs.”³⁷⁰
- Intermittent temporary absences that allow “carefully selected intermittently sentenced inmates” to serve part of their sentence in the community. Most intermittent temporary absences are approved to allow inmates to participate in the Intermittent Community Work Program (ICWP), whereby they reside in the community and take part in approved

³⁶⁵ MCSA, *supra* note 15, at s. 27(1)

³⁶⁶ Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Programs: Temporary Absences: Temporary Absence Program* (Government of Ontario, January 2011) (hereafter, “MCSCS: Temporary Absence Program”).

³⁶⁷ *Ibid.*

³⁶⁸ *Ibid.*

³⁶⁹ *Ibid.*

³⁷⁰ *Ibid.*

volunteer community work during the time (usually weekends) they would otherwise be required to be in the institution.³⁷¹

Superintendents have the legislative authority to grant or deny all escorted temporary absences as well as any unescorted absences under 72 hours; longer unescorted temporary absences fall under the jurisdiction of the Ontario Parole Board.³⁷² Although there is no maximum duration set out in legislation, parole board policy states that non-medical temporary absences can only be granted to a maximum of 60 days.³⁷³ When approving a temporary absence, the superintendent or parole board member can decide to impose conditions “that they consider appropriate.”³⁷⁴ Ministry policy also permits superintendents to grant “recurring temporary absences”: a series of back-to-back absences, each under 72 hours, in situations where it is “impractical for the inmate to return to the institution.”³⁷⁵

Temporary absences can be powerful tools to decrease reliance on correctional institutions and facilitate an individual’s safe, timely, and successful reintegration back to the community through gradual and structured release. When used correctly, they can link inmates with high needs to community-based services and resources that are not available in institutions. For those serving short sentences, they can facilitate a faster, more effective gradual release than the more cumbersome parole process, which is typically so lengthy that the time needed to prepare the application and receive a decision is longer than most sentences.³⁷⁶ For inmates serving longer sentences, temporary absences can be a first early step towards community reintegration, allowing individuals to maintain and strengthen existing community ties, as well

³⁷¹ *Ibid.*

³⁷² Reg 778, *supra* note 16 at s. 38(1).

³⁷³ Ontario Parole Board, *Ontario Parole Board Policy and Procedure Manual: Temporary Absence: Duration of Temporary Absences* (Government of Ontario, May 2008).

³⁷⁴ Reg 778, *supra* note 16 at s. 39. Additional legislative requirements are:

- Applications must be in writing (s. 37(1));
- Parole Board must review TAP requests “as soon as possible” and in any case not later than 30 days after chair receives the request (s. 38(2));
- Inmates are entitled to attend before the board to make oral representations;
- Both board and superintendent must notify inmate of decision in writing with reasons; and
- Inmates who disagree may ask for a review from the chair of the board.

Temporary absences can be cancelled for a variety of reasons, and there is a review process for this as well.

³⁷⁵ MCSCS: Temporary Absence Program, *supra* note 366.

³⁷⁶ Three quarters of inmates are serving sentences of three months or less, and most are released, without conditions or supervision, after serving two thirds of their sentence. In 2014 the Auditor General noted that the parole application process generally takes about 60 days meaning the majority of inmates will have been released before they could even have a parole hearing.

as demonstrate that they can be successfully supervised outside of a correctional institution. Research shows that inmates participating in TAs are significantly more likely to receive discretionary release such as parole, reintegrate more successfully into the community by finding post-release employment, and are less likely to reoffend.³⁷⁷ Successful, cumulative participation in temporary absences or work releases have also been found to lead to fewer returns to custody for any reason.³⁷⁸

Studies conducted at the federal level show that the vast majority of temporary absences are successfully completed. In 2001, for example, Correctional Services Canada's Research Branch completed a study on reintegration temporary absences and their impact on rates of re-admission. They concluded that:

Given the low rate of failure (less than 1%) while on a temporary absence, and the positive effect of TA participation on outcome, TAs are a safe and effective method of providing offenders opportunities for short periods of release and are a good first step in the process of gradual reintegration. In this way, TAs provide offenders with opportunities to establish credibility for future release, and once released, offenders with prior TA experience are likely to have better outcomes following release than those who had not participated in TAs.³⁷⁹

More recently, figures show that the average successful completion rate for federal escorted and unescorted temporary absences was 99% and 95% for work releases.³⁸⁰

Despite the supportive evidence, Ontario has dramatically decreased its use of temporary absences over the past few decades. The Auditor General has repeatedly reported on this trend. In 2008, the report on Institutional Services noted:

In our 2000 audit we noted that temporary absences had decreased from 25,000 in 1991/92 to 4,000 in 1998/99, with temporary absences for employment decreasing from 3,500 per year to about 300, and absences for academic study or vocational training decreasing from 360 to 13. Our examination at that time showed that, over eight years, the program's success rate had remained constant at 97%, with only minor violations, such as missing a curfew. Ministry staff reported no cases of offenders having committed a serious crime while on temporary absence. Accordingly, we recommended

³⁷⁷ Leonidas K. Cheliotis, "Before the Next Storm: Some Evidence-Based Reminders about Temporary Release," *International Journal of Offender Therapy and Comparative Criminology* 53, no. 4 (2008).

³⁷⁸ Office of the Correctional Investigator of Canada, "Annual Report 2015-2016" (Government of Canada, June 2016) (hereafter, "OCI: Annual Report 2015-2016").

³⁷⁹ Sara L. Johnson and Brian A. Grant, "Using Temporary Absence in the Gradual Reintegration Process," *Forum on Corrections Research* (Correctional Service of Canada, Government of Canada, Archived Content 2015).

³⁸⁰ OCI: Annual Report 2015-2016, *supra* note 378.

that the ministry make more effective use of its Temporary Absence Program because it had the potential to provide operational savings of as much as \$50 million a year.

In our current audit, we noted that temporary absences for employment had decreased from 300 in 1998/99 to about 100 in 2007/08, and absences for academic study or vocational training continued to remain low as well.³⁸¹

Temporary absence utilization has continued to decline since that time.³⁸² Today, the vast majority of inmates who receive temporary absences for rehabilitative purposes (i.e. to facilitate participation in work, education, community programming, etc.) are those serving an intermittent sentence, who are already spending the weekdays in the community and are authorized to be absent from their weekend incarceration if they participate in approved work or programs.³⁸³ It is rare for other sentenced inmates to be granted rehabilitative temporary absences. In 2016, only 68 employment-related and four educational temporary absences were granted.³⁸⁴ There were no immediate temporary absences granted in 2016.³⁸⁵

There are a number of structural factors that may be contributing to low use of temporary absences. First, despite the broad legislative authority and wide range of possible purposes for TAs, ministry decisions, not the law, significantly restricts inmate eligibility (see Figure 26). As discussed in section IV of this report, the majority of inmates in Ontario institutions are being held on remand status and are therefore ineligible by policy for most temporary absences. Remanded inmates and immigration detainees are only eligible for unescorted temporary absences if they are on life support. They are also not eligible to participate in any kind of rehabilitative programming outside the institution whether escorted or not.³⁸⁶

Although sentenced inmates are eligible for a wider range of temporary absences, the most commonly-used non-medical temporary absence program – the Intermittent Community Work Program (ICWP) – also has significant exclusionary criteria.³⁸⁷ Policy contains absolute prohibitions on an individual participating if he or she:

³⁸¹ Auditor General: Annual Report 2014, *supra* note 357 at 63.

³⁸² Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services.

³⁸³ *Ibid.*

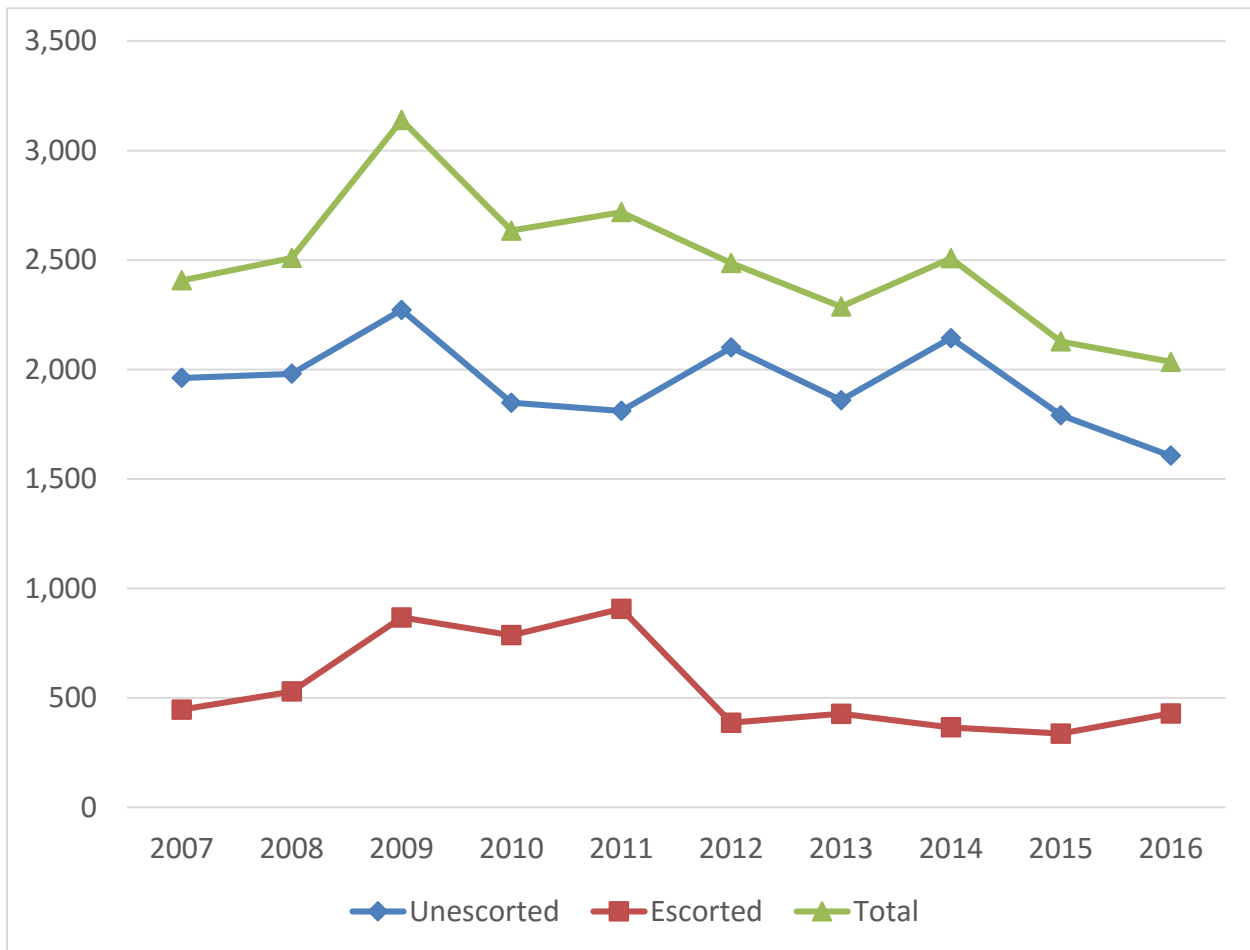
³⁸⁴ *Ibid.*

³⁸⁵ MCSCS: Temporary Absence Program, *supra* note 366.

³⁸⁶ *Ibid.*

³⁸⁷ The ICWP is by far the most common non-medical reason for receiving a temporary absence. Last year the Intermittent Community Work Program permitted 873 individuals to complete volunteer community work instead of spending a few days a week in an institution. Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services.

Figure 25: Non-Medical Temporary Absences Granted to Inmates in Ontario’s Correctional Institutions, 2007-2016



- This chart illustrates the number of unescorted, escorted and total non-medical temporary absences granted to inmates in Ontario’s correctional institutions per year. The general trend shows a decline in the total number of approved temporary absences.
- In 2007, 2,407 temporary absences were granted. After a peak of 3,139 temporary absences in 2009 the total number of granted temporary absences decreased to 2,035 in 2016.
- The number of escorted temporary absences granted fluctuates between 337 (2015) and 907 (2011). The number of unescorted temporary absences fluctuates between 1,606 (2016) and 2,272 (2009).

- is currently sentenced for a sex offence, or has a history of sex offence(s);
- is currently sentenced for driving while impaired causing bodily harm;
- is currently sentenced for an offence that includes domestic violence;
- has an outstanding warrant for arrest that is enforceable within the current geographical location;
- has a conviction related to "firearms"; or
- has been admitted to custody on warrant(s) of committal issued under the Family Responsibility and Support Arrears Enforcement Act.³⁸⁸

These criteria, which prevent the participation of an estimated third of intermittent inmates,³⁸⁹ are imposed on individuals who typically spend weekdays unsupervised in the community and apply without regard to an individual's circumstances. The ICWP policy also states that "if the inmate does not meet TAP criteria (i.e., significant opposition by police/probation or judicial recommendations, no fixed address, no telephone, or a history of offending while on TA or parole) he/she will not be eligible" which suggests that in practice a number of non-enumerated criteria will also prevent an individual's participation.³⁹⁰ As a practical matter, for example, every ICWP participant is subject to electronic surveillance by voice verification, which requires individuals to have access to a land line telephone at their home.³⁹¹ This dated policy requirement eliminates the possibility of a TA for the growing number of Ontarians who exclusively use cellular telephones.

The process surrounding temporary absence applications and reviews also represents a significant barrier. With the exception of medical temporary absences, the inmate normally bears the responsibility for initiating the temporary absence process by requesting and completing a written "Temporary Absence Application."³⁹² Inmates are also responsible for providing the "necessary supporting information (i.e., names of employers and other contacts)" and "supporting documentation ... (e.g. letter of employment or confirmation of residence)" which can be challenging to obtain while incarcerated.³⁹³

³⁸⁸ Ministry of Community Safety and Correctional Services, *Corrections Intermittent Offender Management Strategy: The Intermittent Community Work Program* (Government of Ontario, January 2006).

³⁸⁹ *Ibid.*

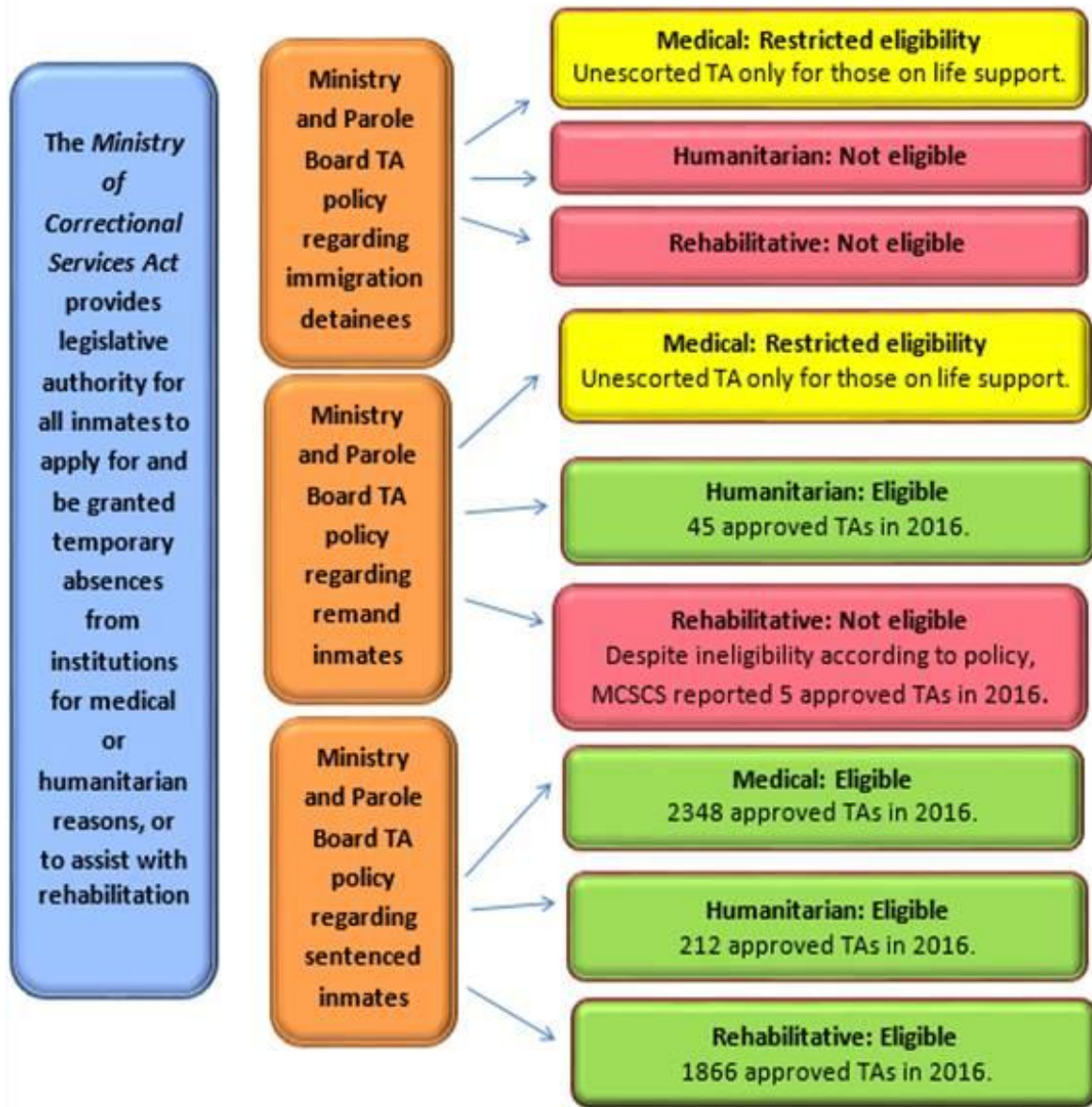
³⁹⁰ Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Programs: Intermittent Community Work Program* (Government of Ontario, July 2008).

³⁹¹ *Ibid.*

³⁹² MCSCS: Temporary Absence Program, *supra* note 366. The policy states that "To apply for any TA, except a medical TA, an inmate must initiate the process by requesting and completing a "Temporary Absence Application". If required or requested by the inmate, a staff member will help the inmate complete the application."

³⁹³ *Ibid.*

Figure 26: Temporary Absence Eligibility According to Legislation and Policy



- This figure illustrates the legislative and policy temporary absence eligibility criteria.
- Ontario legislation states that all inmates are eligible to receive temporary absences. Ministry and parole board policy, however, restrict this eligibility in a variety of ways.
- Sentenced inmates are generally eligible for all types of temporary absences. In 2016 they received 2348 medical TAs, 212 humanitarian TAs, and 1866 rehabilitative TAs.
- According to policy remand inmates are generally eligible for humanitarian temporary absences. They are not, however, eligible for rehabilitative TAs; despite this, the ministry reported that 5 such TAs were approved in 2016. Eligibility for medical TAs is restricted: remand inmates can only be granted unescorted medical TAs if they are on life support.
- According to policy immigration detainees are not eligible for humanitarian or rehabilitative temporary absences. They have restricted eligibility for medical temporary absences, as unescorted medical temporary absences are only available to immigration detainees on life support.

Once the inmate signs the application, a temporary absence coordinator reviews it for basic eligibility and completeness. The temporary absence coordinator is also responsible for collecting a lengthy list of supplementary documents to assist in risk assessment (see Textbox 20), preparing an individualized plan for the supervision of standard conditions and conducting a community investigation which must, at a minimum, include:

- confirming the details of the proposed residence and persons residing there;
- confirming the details regarding the purpose for the absence (e.g., employment, education, treatment, etc.);
- confirming the TA location and details of the planned activity (i.e., location, hours, etc.);
- obtaining comments from the arresting police and the police at the inmate's destination if the offence(s) involve(s) serious violence against a person. This may include liaising with the probation and parole office (PPO) in the area where the inmate proposes to reside. In addition, the TA coordinator may determine, on a case by case basis, that comments from police and the supervising PPO may prove useful in determining recommendations and TA suitability;
- confirming information about the inmate's method of transportation including time (i.e., train, bus, personal vehicle, institution vehicle, etc.) from the institution to the proposed residence and from the residence to the proposed activity;
- confirming information about the inmate's vehicle, driver's license number, proof of ownership and insurance if the inmate is permitted to drive; and
- confirming information about the name of the designated driver (e.g., spouse/partner, other), the designated driver's vehicle, driver's license number, proof of ownership and insurance if the inmate is not permitted to drive.³⁹⁴

For escorted temporary absences or unescorted absences under 72 hours, compiled information is considered by a three-person Temporary Absence Committee, which then makes recommendations to the superintendent for consideration.³⁹⁵ According to policy, the committee is chaired by either a senior manager or the TA coordinator, but the membership can vary and may include “a Classification Officer, the TA Coordinator, Deputy Superintendent, Operational Manager, Correctional Officer, Health Care staff, Administration staff, etc.”³⁹⁶ All applications for unescorted absences over 72 hours are forwarded to the Ontario Parole Board and include the coordinator’s monitoring plan, a summary of the investigation, recommendations, and supporting reasons.³⁹⁷ There is no reliable data regarding the average length of time it takes to process TA applications, and there appear to be significant

³⁹⁴ *Ibid.*

³⁹⁵ *Ibid.*

³⁹⁶ *Ibid.*

³⁹⁷ *Ibid.*

Textbox 20: Documentation Required for a Temporary Absence Application

Even an application for a short escorted temporary absence requires a significant amount of documentation to be processed. According to policy,³⁹⁸ a temporary absence application should include copies of the following minimum required documents to assist decision-making:

- the application, including the stated purpose of/reason for the requested absence from custody;
- the inmate's criminal history and current CPIC [criminal record check];
- the particulars of the current offence(s);
- the pre-sentence report, if applicable;
- the most recent LSI-OR completed within the last six months. In situations where the inmate is applying for an extension to a current TA, the LSI-OR should be the most recently completed report and can be older than six months at the discretion of the vice chair or designate.
- current OTIS Special Management Concerns;
- the inmate's institutional conduct and institutional program participation, normally provided in the institution case file and/or institution report;
- results of the community investigation, including letters from sponsors, employers, educational facilities and other relevant sources
- the monitoring plan;
- an updated progress report in situations where the inmate is requesting an extension of the current TA;
- the TA coordinator's recommendations regarding suitability for TA; and
- recommendations for special conditions.

Additional documentation, which may be of assistance, when available, includes:

- Crown Briefs and/or Judge's Reasons for Sentencing, if available
- Police reports
- Clinical report (if deemed necessary by Superintendents/OPB)
- Other readily available relevant information from other sources/reports (e.g. judicial recommendations, opinions from the crown attorneys/investigating police service, family and friends, copies of assessments presented in court)

Probation and parole staff in the community where the inmate will be residing on TA may be able to provide additional information to assist in decision making. When possible, they should be consulted. This information may include the community response, interest group reactions and the potential effect on the victim(s), and documentation related to violations of any community supervision orders (i.e., conditional sentence, probation, etc.

³⁹⁸ *Ibid.*

impediments to swift processing. Ministry staff report that the requirement to complete the LSI-OR is a barrier to processing TAs for those inmates sentenced to less than 30 days. Indeed, the timelines outlined in policy for completing this process add up to over six weeks (10 weeks in the case of parole board decisions) from completed application to decision.³⁹⁹ Given that most sentenced inmates will spend less than a month in an institution,⁴⁰⁰ the timeframe set out in policy would represent an insurmountable barrier for most of the sentenced population.

Finally, although the law allows for the imposition of “appropriate” conditions, the ministry has elaborated “standard” conditions that will apply to all temporary absences. These include requirements to:

- Keep the peace and be of good behaviour;
- Not associate with any person involved in criminal activity;
- Not associate with any person known to have a criminal record, without approval; and
- Obtain consent for any change to residence or employment.⁴⁰¹

The parole board also considers these to be “standard” for temporary absences, although policy does allow board members to delete these conditions when “deemed reasonable to do so.”⁴⁰² It is notable that internal parole board policies, which were in fact drafted by the ministry, place additional restrictions on the decision-making powers of parole board members above and beyond what is set out in the law. This raises a significant concern in regard to independence and fairness. Moreover, as discussed previously in this report, the imposition of vague and broad standard conditions, irrespective of an individual’s circumstances or risk profile, is inappropriate.

³⁹⁹ MCSCS: Temporary Absence Program, *supra* note 366. Completed applications must be investigated and reviewed by the TA Coordinator or Committee within 30 days. A recommendation is forwarded to the superintendent within seven days. The superintendent makes a decision (no timeline). The inmate must be notified in writing of that decision within seven days. The process is the same for parole board consideration, with the added specification that the board must make a decision within 30 days of receiving the application.

⁴⁰⁰ Ontario’s median sentence length ordered in 2015-2016 was 27 days, and most individuals will be released from an institution prior to the end of their sentence. Statistics Canada, “Table 251-0024: Adult Correctional Services, Sentenced Custody Admissions to Provincial and Territorial Programs by Sex and Sentence Length Ordered, Annual – CANSIM” (Online: Statistics Canada, Government of Canada).

⁴⁰¹ Ministry of Community Safety and Correctional Services, “Template: Temporary Absence Permit” (Government of Ontario).

⁴⁰² Ontario Parole Board, *Ontario Parole Board Policy and Procedure Manual: Temporary Absence: Terms of Conditions* (Government of Ontario, May 21, 2015).

Parole in Ontario

Parole, which allows for the supervised conditional release of a sentenced inmate, has traditionally been a cornerstone of gradual, structured reintegration. In Ontario all sentenced inmates are eligible for parole at one third of their custodial sentence or earlier where there are “compelling or exceptional circumstances.”⁴⁰³ Inmates who are serving a term of imprisonment under six months can apply for parole at any time; however, they are not automatically entitled to a hearing before the board.⁴⁰⁴ Those with sentences six months or longer must be automatically considered for parole before a third of their sentence has passed, and have a right to an in-person hearing unless it is waived in writing.⁴⁰⁵

The use of parole responds directly to the significant body of criminological research showing that conditional release promotes successful reintegration.⁴⁰⁶ While data at the provincial level is sparse, federal studies show that conditional release on parole has been – and continues to be – very successful. Overall, the majority of parole revocations are due to breached conditions rather than new substantive offences.⁴⁰⁷ In 2012/13, for example, there were 1190 people who completed full federal parole; three of them had their parole revoked for a violent offence.⁴⁰⁸ In 2015/16, the successful completion rate for day parole was 91.2% and 87.6% for full parole. For those who were subject to statutory release⁴⁰⁹ rather than parole, the success rate fell to 63.1%.⁴¹⁰ During each of the last five years, individuals on statutory release were far more likely

⁴⁰³ Reg 778, *supra* note 16 at s. 41.

⁴⁰⁴ *Ibid.* at s. 42.

⁴⁰⁵ *Ibid.* at s. 43. If the inmate withdraws the waiver before the board makes a decision regarding parole the board must conduct a hearing of the matter.

⁴⁰⁶ Doob et al., *supra* note 362. See also, Larry Motiuk, Colette Cousineau, and Justin Gileno, “The Safe Return of Offenders to the Community: Statistical Overview April 2015,” (Correctional Service of Canada, Government of Canada, April 2015); Donald A. Andrews and James Bonta, “Rehabilitating Criminal Justice Policy and Practice,” *Psychology, Public Policy, and Law* 16, no. 1 (2010).

⁴⁰⁷ *Ibid* Doob et al.

⁴⁰⁸ *Ibid.*

⁴⁰⁹ Statutory Release is term of law that defines a form of sentence management to explain a mandatory release. Most federal offenders must be released by the Correctional Service of Canada with supervision after serving 2/3's of their sentence, if federal parole has not already been granted. Offenders on statutory release are required to follow standard conditions. Offenders can be returned to custody if they violate their conditions of release or are believed to present an undue risk to the public. Government of Canada, “Types of Conditional Release,” Last Modified September 26, 2016 <https://www.canada.ca/en/parole-board/services/parole/types-of-conditional-release.html>. In Ontario offenders are release at their “discharge possible date” without conditions. The discharge possible date is approximately 2/3 of their aggregate sentence. Ministry of Community Safety and Correctional Services, *Sentence Administration Policy and Procedures Manual* (Government of Ontario).

⁴¹⁰ Public Safety Canada, *2016 Annual Report - Corrections and Conditional Release: Statistical Overview* (Public Works and Government Services Canada, Government of Canada, April 2017).

to be revoked for either a breach of condition or a new offense as compared to individuals on either day or full parole.⁴¹¹

Historically, Ontario's parole system has played an important role in reintegration. Throughout the 1980s and early 1990s, average supervision counts ranged between 1200 and 1800 parolees per month.⁴¹² Starting in 1993, however, there was a dramatic decline in the number of people obtaining parole, and within 10 years the number of parolees in the province had dropped by 91.8% (see Figure 27).⁴¹³ Parole numbers never recovered: in 2015, an average of 207 individuals a month were supervised on Ontario provincial parole. Although it is true that fewer people today are receiving long sentences, the drop in parole rates far outstrips any drop in the number of individuals sentenced to longer terms of incarceration.⁴¹⁴ Ontario's low parole rates are even more dramatic when considering the Indigenous incarcerated population. Indigenous inmates are less likely than non-Indigenous inmates to be granted parole for each and every sentence length.⁴¹⁵

⁴¹¹ Government of Canada, *Parole, Pardons and Clemency (2015/16)*, Last Modified October 20, 2016 <https://www.canada.ca/en/parole-board/corporate/publications-and-forms/fact-sheets/statistics-parole-pardons-and-clemency.html>.

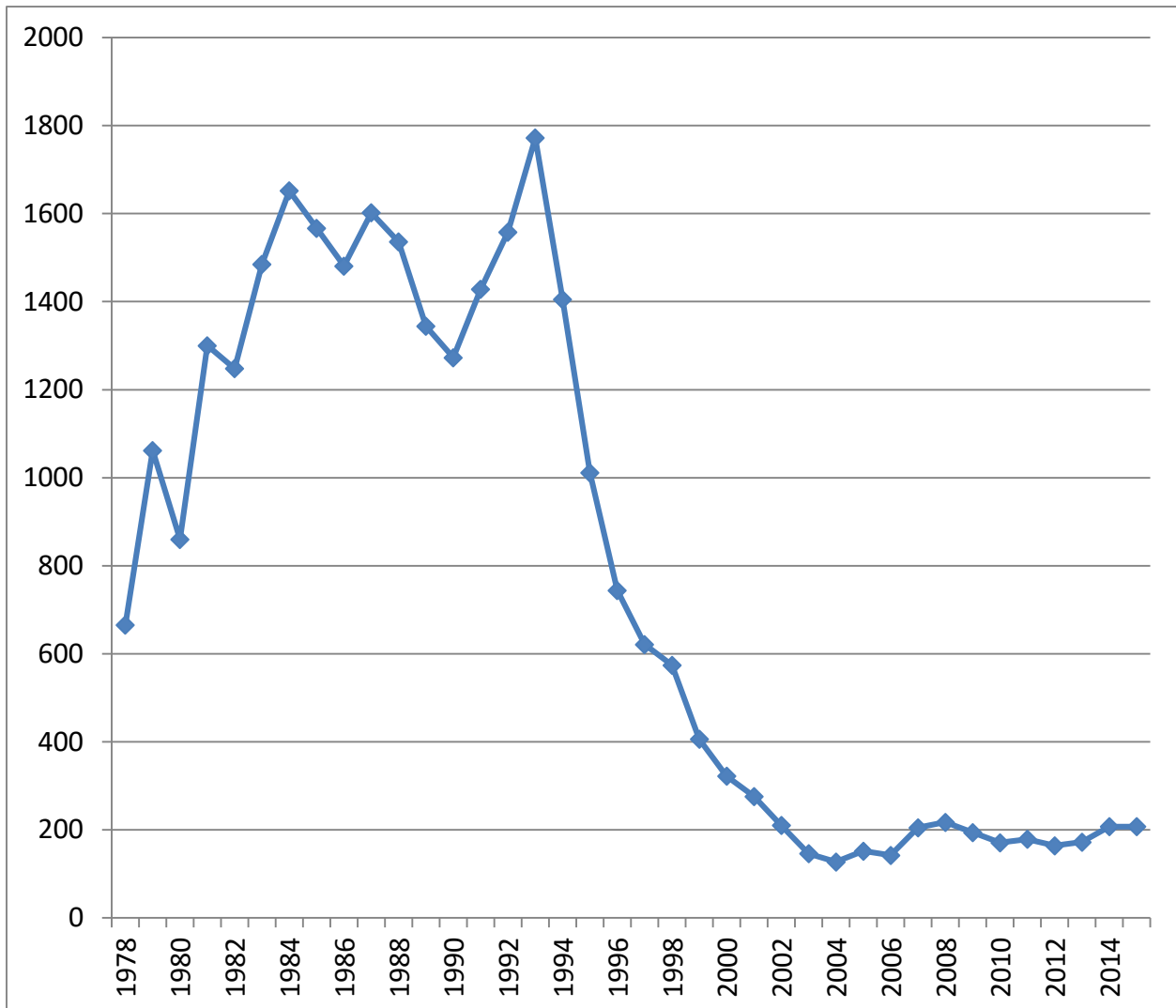
⁴¹² Statistics Canada, Table 251-0005, *supra* note 214.

⁴¹³ In 1993, there were an average of 1772 people supervised on Ontario parole each month; in 2003 average monthly supervision was 146.

⁴¹⁴ We examined the rates of parole supervisions per 100 people admitted on longer (six to 24 month) sentences. The rate of parolees declined from a high of 32.6 per 100 admissions in 1987 to 7.8 in 2010.

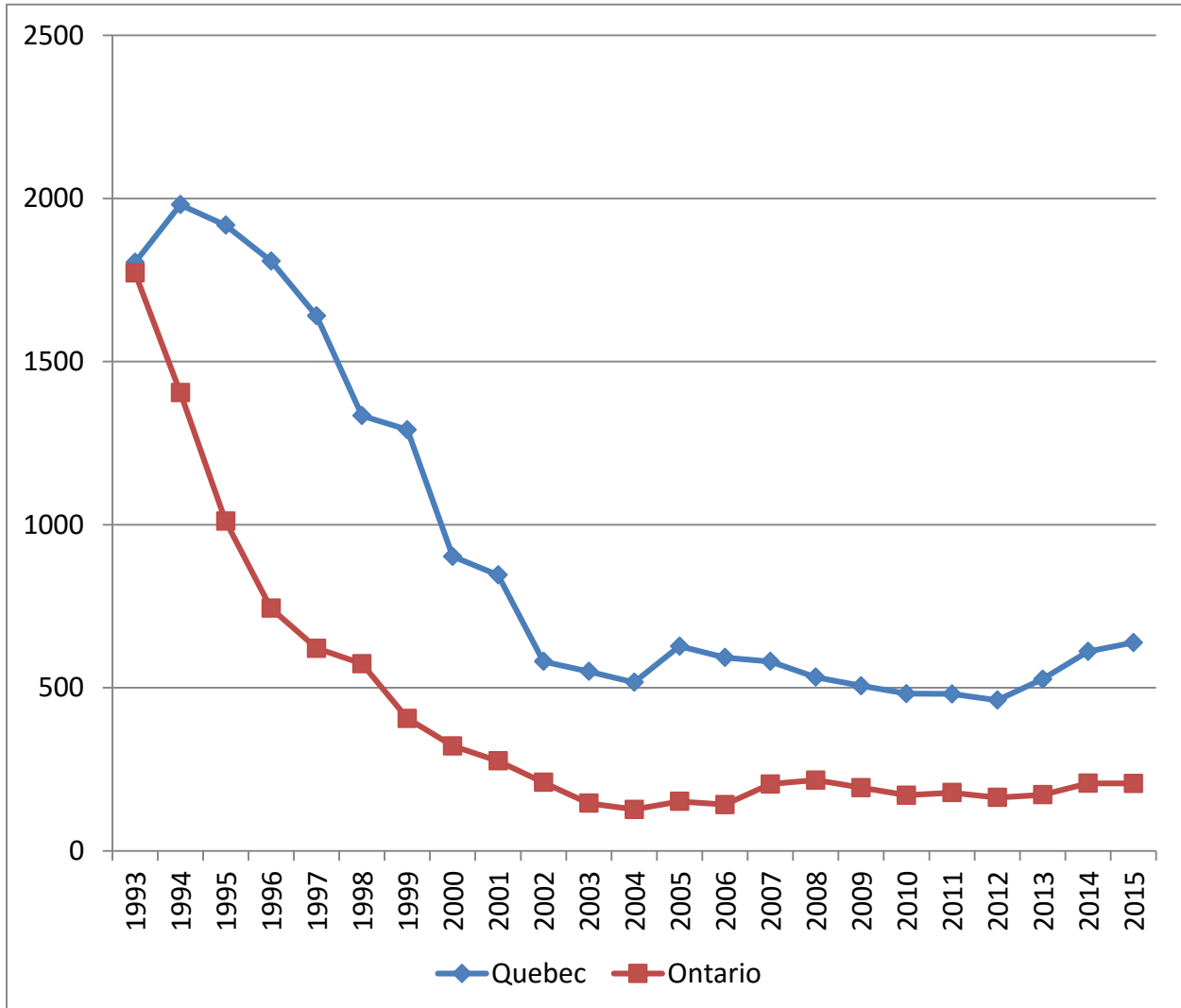
⁴¹⁵ While 2.4% of non-Indigenous inmates were granted provincial parole, this percentage drops to less than 0.8% for Indigenous inmates. In other words, of the 306 individuals granted parole in 2015/2016, only 15 of them were Indigenous.

Figure 27: Average Monthly Counts of People Supervised on Ontario Provincial Parole, 1978-2015



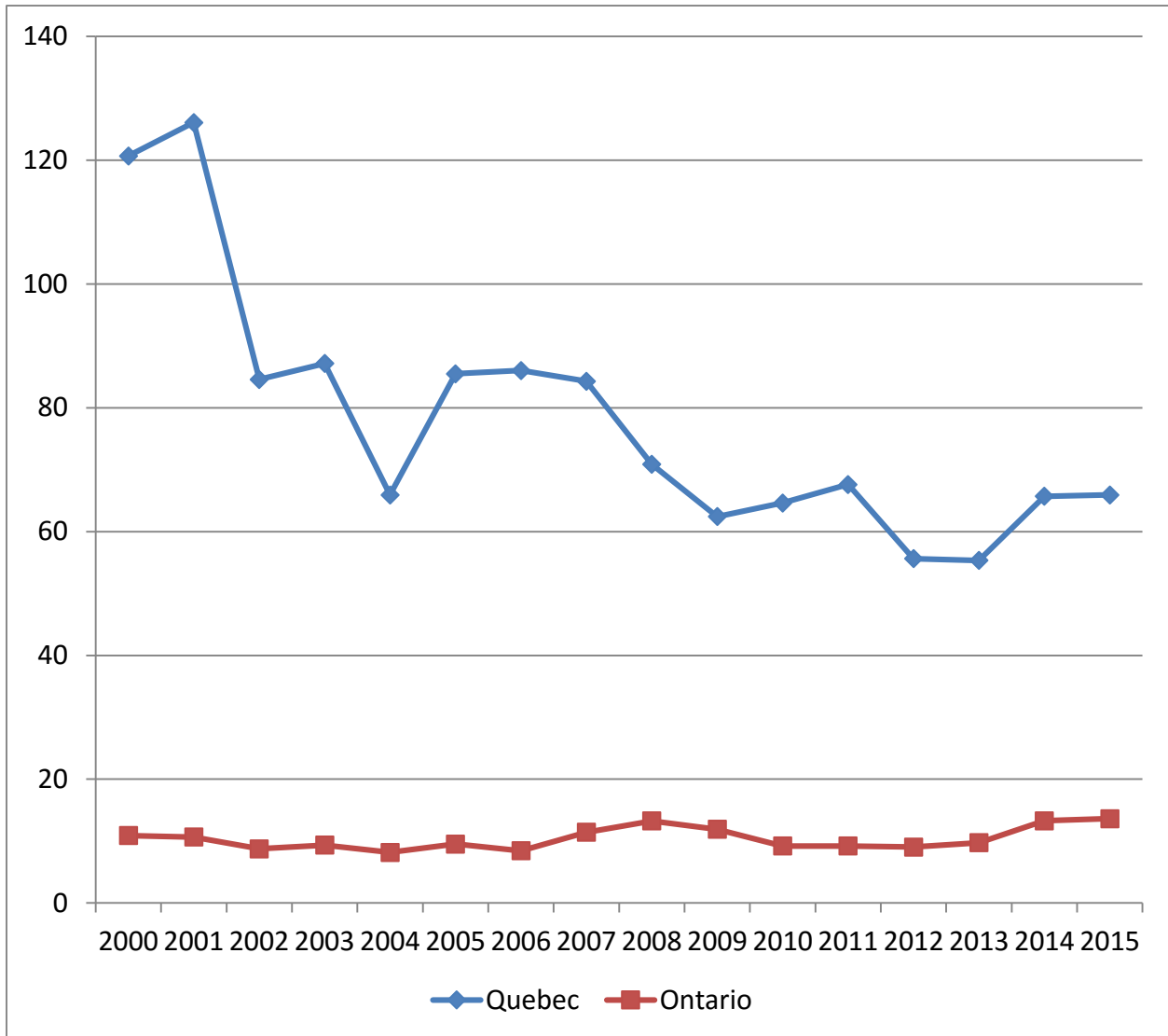
- This figure illustrates the average monthly counts of the number of people supervised on Ontario provincial parole between 1978 and 2015. The chart illustrates an overall increase in the use of Ontario provincial parole between 1978 and 1993, and then a steep decline from 1993 to 2004.
- In 1993, the average number of people being supervised was 1772. The following year the average dropped to 1405, hitting a low of 127 people per month in 2004. Between 2004 and 2015 the averages range from 127 to 207.

Figure 28: Number of Individuals on Provincial Parole in Quebec and Ontario, Average Monthly Counts, 1993-2015



- This figure compares the average monthly count of provincial parolees in Quebec and Ontario from 1993 to 2015.
- The figure illustrates that in 1993 both Ontario and Quebec had approximately 1770 individuals on provincial parole each month. Since that time there has been a general decline in the average number of individuals on provincial parole in both provinces.
- Though provincial parole declines in both jurisdictions, Ontario’s numbers are consistently below Quebec’s by 300-800. For example, in 1999 the average monthly count for provincial parolees in Quebec was 1291; in Ontario it was 406. Between 2002 and 2015 the average monthly counts ranged between 462 and 638 people in Quebec and between 127 and 210 people in Ontario. In 2015 the average monthly count for parole was 638 for Quebec and 207 for Ontario.

Figure 29: Ontario and Quebec Provincial Parolees per 100 Provincial Inmates Admitted with Sentences Over Six Months, 2000-2015



- This figure illustrates the rate of provincial parolees in Ontario and Quebec per 100 provincial inmates admitted with a longer sentence (between 6 and 24 months).
- The rate of provincial parolees is consistently higher in Quebec, which starts at 121 in 2000 and drops to a low of 55 in 2013. Ontario's rate of provincial parolees is relatively constant, fluctuating between 8 and 13 parolees per 100 sentenced inmates with longer provincial sentences between 2000 and 2015.

Ontario is not alone in experiencing this waning use of community release. Similar drops in the use of parole can be seen in various jurisdictions across the country.⁴¹⁶ Ontario's decline in parole, however, was both more precipitous and deeper than elsewhere (see Figure 28).⁴¹⁷

What were the drivers of this dramatic decline? Diagnosing underlying causes for broad trends is an inexact science. In this case, however, there are strong indications that parole in Ontario has been impacted by an increasing aversion to risk in parole decision-making. Risk-aversion has been a trend noted in a number of areas of the criminal justice system.⁴¹⁸ There has been a growing disconnect between evidence-based research findings and political discourse and resulting policies put in place over the last decade.⁴¹⁹ Often, risk aversion influenced through policy change has been linked to rhetoric about and media coverage of significant cases. The history of risk aversion in the Ontario parole system has at least one particularly identifiable source. In October 1993, a 29-year-old Sudbury police officer was shot and killed during a routine traffic stop.⁴²⁰ The man charged and eventually convicted of his murder had been recently released on provincial parole.⁴²¹ There was an understandable public outcry and demands for political accountability.⁴²² Numerous reviews of the parole board were conducted⁴²³ and following the release of one independent review of the parole board's

⁴¹⁶ Doob et al., *supra* note 362.

⁴¹⁷ *Ibid.*

⁴¹⁸ Cheryl Marie Webster, Anthony N. Doob and Nicole Myers, "The Parable of Ms. Baker: Understanding Pre-Trial Detention in Canada," *Current Issues in Criminal Justice* 21, no.1 (2009); Doob et al., *supra* note 362; Nicole Marie Myers, "Creating Criminality: The Intensification of Institutional Risk Aversion Strategies and the Decline of the Bail Process" (PhD diss., University of Toronto, 2013).

⁴¹⁹ See Ivan Zinger, "Human Rights and Federal Corrections: A Commentary on a Decade of Tough on Crime Policies in Canada," *Canadian Journal of Criminology and Criminal Justice* 58 no.4 (2016); Alana N. Cook and Ronald Roesch, "'Tough on Crime' Reforms: What Psychology Has to Say about the Recent and Proposed Justice Policy in Canada," *Canadian Psychology/Psychologie Canadienne* 53, no. 3 (2012).

⁴²⁰ Alex McCauley, "Outgunned Sudbury Officer was Catalyst for Change," *CBC News Sudbury*, October 7, 2013.

⁴²¹ *Ibid.*

⁴²² See for example, T. Tyler, "Officer slain after parole blunder Convict fooled board to let him out early," *Toronto Star* (March 5, 1995); K. Toughill, "Parole flaws admitted in officer's death," *Toronto Star* (March 5, 1995); Toronto Star Editorial, "Parole puzzle skill unsolved," *Toronto Star* (March 10, 1995); C. Sumi, "Criminals wrongly being set free: MPP," *The Hamilton Spectator* (March 16, 1994); C. Sumi, "Parole system blasted: Crack down on board members, police groups demand," *The Kitchener-Waterloo Record* (March 10, 1995).

⁴²³ See for example, Bonnie J. Wein, *Release by Ontario Board of Parole of Clinton Victor Suzack* (Toronto: Ministry of the Attorney General, Constitutional Law and Policy Division, Government of Ontario, 1993); Office of the Auditor General of Ontario, *Committee Documents: Standing Committee on Public Accounts – 1995 Annual Report, Provincial Auditor* (Legislative Assembly of

handling of the case, the chair of the parole board was fired.⁴²⁴ Over the next few years some procedures were changed, including measures to ensure that the board had sufficient information before a decision was made, the implementation of evidence-based risk assessments within the ministry generally, enhanced training and the requirement to appoint board members with a criminal justice background.⁴²⁵

The repercussions of a quarter century of ingrained risk adverse decision making can be seen in the outcomes of current Ontario Parole Board (OPB) operations. Today only about one out of a hundred of Ontario's provincially-sentenced inmates will be released on parole.⁴²⁶ A 2015 independent review of the OPB's mandate and operational performance (the Mandate Review) found that avoiding risk undermined the board's ability to come to well-reasoned and robust parole decisions and, ultimately, effectively deliver on its mandate.⁴²⁷ The Mandate Review found that:

- Many interviewees highlighted that the culture both within MCSCS historically and within the OPB at present has been one of decision making with a high degree of risk aversion.⁴²⁸
- When asked, many interviewees spoke only to errors related to the premature release of a dangerous offender rather than considering the possible long term reduction in risk to society that might be possible if supervised and assisted release through parole were offered to the offender and only considered long-term decision-making when prompted.⁴²⁹
- Representatives at MCSCS suggested that there were many offenders in institutions who do not present significant threats to public safety and could benefit from conditional release.⁴³⁰
- Each parole member has a different process for coming to a decision and did not seem to have a solid understanding of what factors are relevant to making a decision and they need guidance on what factors not to consider (e.g., getting a "feeling" for the offender

Ontario, Government of Ontario, January 1996) (hereafter, "Auditor General: Standing Committee").

⁴²⁴ *Ibid.*

⁴²⁵ Office of the Auditor General of Ontario, "Follow-up Recommendations in the 1995 Annual Report" in the *1997 Annual Report: Chapter 4* (Government of Ontario, 1997); Auditor General: Standing Committee, *supra* note 423.

⁴²⁶ Doob et al., *supra* note 362.

⁴²⁷ Optimus/SBR, *Mandate Review of the Ontario Parole Board – Final Report* (Ministry of the Attorney General, Government of Ontario, December 23, 2015) at 90-92 (hereafter, "Optimus/SBR: Mandate Review").

⁴²⁸ *Ibid* at 91.

⁴²⁹ *Ibid.*

⁴³⁰ *Ibid.*

during the hearing or whether or not they would be comfortable with the offender as their neighbour).⁴³¹

- Members are only given the outcome of parole hearing when an offender's parole is revoked due to not abiding by conditions or committing a new offence. No feedback is provided on those who successfully complete parole. Additionally, the full-time members and associate chair (when there was one) reviewed all of the grant decisions but not the denial decisions.⁴³²

Ultimately, the review concluded that “in recent years the OPB has not been effectively carrying out its mandate,” resulting in “offenders not being granted parole when their rehabilitation would have been supported without putting undue risk on society.”⁴³³

Data on the risk profile of individuals who are granted parole in Ontario also supports the conclusion that there are many more people that could be safely supervised in the community. The parole board decides which individuals will be supervised on parole; other individuals under community supervision –those on probation or conditional sentence – are supervised pursuant to a judge's order. The LSI-OR scores of individuals on parole are much more likely to be low or very low-risk than other community supervision populations. In 2016, for example, nearly two-thirds of women and over one-third of men granted parole in Ontario had been assessed as presenting a “very low or low” risk of reoffending (see Tables 2 and 3). This same category of individuals only accounts for about a quarter of those who are supervised in the community pursuant to a judge's imposition of a conditional sentence or probation (see Tables 2 and 3). Similarly, a low proportion of parolees have a “high or very high” risk level as compared to individuals under other types of community supervision.⁴³⁴ Even within a criminal justice system that works hard to limit risk, the Ontario Parole Board stands out for its seeming unwillingness to conditionally release.

⁴³¹ *Ibid* at 93, 95.

⁴³² *Ibid* at 98.

⁴³³ *Ibid* at 101.

⁴³⁴ Theoretically the relatively high percentage of parolees with very low and low risk LSI-OR scores could be broadly reflective of the overall LSI-OR scores of Ontario inmates and/or parole applicants rather than decisions made by the Ontario Parole Board. The overall LSI-OR scores of sentenced inmates show that this is not the case. In 2016, 92.9% of inmates admitted for a straight sentence of incarceration had an LSI-OR on file. The overall risk distribution was as follows: 1.2% very low; 3.8% low; 18.1% medium; 39.1% high; 37.7% very high. Similarly, the risk profiles of those who were denied parole in 2016 show that a significant number of individuals with medium or high risk profiles are applying for parole but are being denied. Of those denied parole last year with an LSI-OR on file, 3.7% had a very low LSI-OR risk assessment; 12.4% were low risk; 33.2% medium; 35.9 high; and 14.8 very high.

Table 2: LSI-OR Scores for Women on Ontario Community Supervision in 2016 Broken Down by Parole, Conditional Sentence, and Probation⁴³⁵

	Percentage of supervised population with very low or low risk	Percentage of supervised population with medium risk	Percentage of supervised population with high or very high	Total number of women under community supervision
Parole	61.1%	25.0%	13.9%	36
Conditional Sentence	29.3%	35.7%	35.0%	711
Probation	29.9%	36.3%	33.8%	4673
Total	30.1%	36.1%	33.8%	5420

Table 3: LSI-OR Scores for Men on Ontario Community Supervision in 2016 Broken Down by Parole, Conditional Sentence, and Probation⁴³⁶

	Percentage of supervised population with very low or low risk	Percentage of supervised population with medium risk	Percentage of supervised population with high or very high	Total number of men under community supervision
Parole	35.0%	42.0%	22.9%	314
Conditional Sentence	23.3%	38.5%	38.2%	2,436
Probation	25.6%	36.6%	37.8%	21,294
Total	25.5%	36.8%	37.7%	24,044

⁴³⁵ Data obtained from Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services.

⁴³⁶ *Ibid.*

There are legislative provisions that appear to be designed to move individuals out of correctional institutions and into supervised parole release. Unfortunately, they are not working as intended. As summarized above, the parole board is legally required to determine whether parole would be appropriate for all inmates sentenced to six months or more. This review must take place prior to an inmate's parole eligibility date.⁴³⁷ Although inmates can waive their right to a board hearing, this does not alleviate the duty of the board to determine the inmate's parole suitability.

The parole board has not been conducting these proactive parole reviews. Instead, board policy directs that if an inmate signs a hearing waiver or refuses "to appear at the hearing or communicate with the Board/ILO [institutional liaison officer] and/or sign a waiver... all parole consideration activity terminates and the Board takes no further action unless the inmate withdraws the waiver, in writing."⁴³⁸ Ministry staff similarly has not consistently been forwarding the information required to the parole board in order to allow for reviews of these cases. The parole board has flagged this as a serious issue and is in the process of reforming its procedures to ensure that all inmates have their legally-required parole reviews. Although the parole board has initiated discussions with the ministry to ensure that all required information is placed before the board in a timely fashion, no solutions have been implemented.

It has become increasingly common for inmates to waive their right to a parole hearing: in 2014, the Auditor General of Ontario noted that 68% of the 3300 inmates serving a sentence of six months or more waived their right to a hearing.⁴³⁹ The policy to terminate all parole consideration activity if the inmate cannot or does not communicate with the ILO effectively excludes several categories of inmates from accessing parole, including those with cognitive and intellectual deficits, those suffering with significant and chronic mental illness, and those whose first language is neither French nor English.

Individuals interviewed by the Mandate Review reported that "information received from MCSCS is variable in terms of quality and completeness" and that the file "often arrives late, and new information to support the offenders participation in programming or release plan is often received during the hearing itself."⁴⁴⁰ The Mandate Review also found that parole application files are only provided to board members on the day of the hearing, and that members only have approximately an hour to review the files which "can be dozens or hundreds of pages and are not organized in a fashion that allows information to be extracted

⁴³⁷ Reg 778, *supra* note 16 at s. 43(1).

⁴³⁸ OPB: Temporary Absence Eligibility, *supra* note 231.

⁴³⁹ The Office of the Auditor General, "Adult Community Corrections and Ontario Parole Board" in the *Annual Report 2014: Chapter 3* (Government of Ontario, 2014) (hereafter, "Auditor General: Annual Report 2014").

⁴⁴⁰ *Ibid* at 92.

easily.”⁴⁴¹ Overall parole board members “felt that the information provided in the parole file was not sufficient or of high enough quality in order to make a proper risk assessment.”⁴⁴²

Board interviewees that spoke with the Independent Review Team reinforced that the timeliness and completeness of the material provided by the ministry continues to constitute a significant concern. As discussed below, the parole board reports that lack of information frequently leads to adjournments and constitutes a barrier to the parole board completing their proactive reviews as required by law. The ministry reported that in fall 2015 it established a point of contact for the parole board to inform them of any instances of missing or incomplete information on an ongoing basis, and that to date only one such complaint had been received. One explanation for the nearly non-existent number of complaints is that current OPB leadership have told the Independent Review that they are unaware of this avenue of redress.

It is difficult to definitively pinpoint the source of delays. Neither the board nor the ministry track parole file management, timing, information quality, or application quality, and the Mandate Review was unable to determine whether “delays are caused by delays in information transfer from MCSCS or delays in OPB processes.”⁴⁴³

Even those sentenced to over six months who do not waive their right to a hearing may not have their parole determined prior to their eligibility date as required by law. A 2015 case taken up by the Ontario Ombudsman found that an inmate had been “asked” to sign a consent to delay his parole hearing past his parole eligibility because the parole board was not available to hold a hearing sooner.⁴⁴⁴ Hearings that must be adjourned and rescheduled can also result in delayed parole consideration. Between April 1 2016 and June 30 2017, 289 hearings were rescheduled (see Table 4); the parole board reports that while some of these hearings were rescheduled due to a lack of quorum or time constraints on a particular hearing day, the majority were adjourned because the board was not provided with required information. Given the delays in receiving the legally required documentation and the operational and scheduling challenges of holding hearings, the rescheduled date often extends beyond the applicant’s parole eligibility date. The parole board has taken steps to address these issues and ensure that all hearings take place within the legally-mandated time frames. In 2016 it eliminated the inmate consent form at issue in the case raised by the Ombudsman, and has recently notified MCSCS that it will be discontinuing the practice of rescheduling hearings. Holding hearings within legally-mandated timelines, however, will require joint efforts to ensure that hearings can proceed as scheduled.

⁴⁴¹ *Ibid* at 95.

⁴⁴² *Ibid* at 117.

⁴⁴³ *Ibid* at 116.

⁴⁴⁴ Ontario Ombudsman Annual Report 2015/16, *supra* note 102.

Table 4: Number of rescheduled parole hearings by institution, April 1 2016 to June 30 2017⁴⁴⁵

Institution	Number of Rescheduled Parole Hearings
Brockville Jail	1
Central East Correctional Centre	87
Central North Correctional Centre	62
Elgin Middlesex Detention Centre	1
Hamilton-Wentworth Detention Centre	4
Maplehurst Correctional Complex	49
Monteith Correctional Complex	4
Ontario Correctional Institute	3
Ottawa-Carleton Detention Centre	3
Quinte Detention Centre	2
St. Lawrence Valley Correctional and Treatment Centre	20
South West Detention Centre	1
Toronto East Detention Centre	23
Thunder Bay Correctional Centre	2
Toronto South Detention Centre	11
Vanier Centre for Women	16

The procedural fairness of Ontario’s parole process is a concern. A decision about whether or not an individual remains incarcerated directly engages the Charter right to life, liberty, and security of the person. Such processes must be scrupulously fair, transparent, and unbiased. Several parole board and ministry practices, however, have undermined the independence, and procedural fairness of Ontario’s parole system.

Providing reasons for a decision is a component of the constitutional requirement to achieve procedural fairness.⁴⁴⁶ Where adjudicative bodies are deciding issues as significant as a person’s liberty, these reasons must be provided in writing and be sufficiently detailed to allow for meaningful appellate review and inform the individual of the reason the decision was made.⁴⁴⁷ Currently, Ontario parole board members have a very short time for the entire adjudication process: board members must arrive at the institution, review all file information, conduct the

⁴⁴⁵ Data obtained from the Ontario Parole Board.

⁴⁴⁶ *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s. 7 (hereafter, “The Constitution”); *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 49, 174 D.L.R. (4th) 193.

⁴⁴⁷ *Ibid Baker v. Canada* at para 43; *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 at para 100. For a discussion of the adequacy of reasons in a correctional context see *MacKenzie v. LeBlanc*, 2007 BCSC 768.

hearing, deliberate and write and deliver a decision all on the same day. The Ontario Parole Board provides offenders with a “brief decision document” that does not include a full rationale for the decision; according to the Mandate Review the “summaries provided are not comprehensive and do not provide detailed reasoning.”⁴⁴⁸ Current parole board policy directs that “the opinions and recommendations of other criminal justice partners(i.e. police, PPO's, clinicians) should not be contained in the written decision shared with the offender, but rather in the rationale section” which is not disclosed to the applicant.⁴⁴⁹

It is not clear that all file information placed before the board prior to a hearing is shared with the inmate. Regulation 778 requires the board to “inform the inmate of any information in the board’s possession that may affect its decision,” and one of the guiding principles of the parole board is that “offenders are provided with relevant information... to ensure a fair and understandable conditional release process.”⁴⁵⁰ Constitutional procedural fairness requirements also require that an administrative decision-maker disclose the information relied upon so that the individual knows the case that he or she has to meet.⁴⁵¹ Concerns that the parole board only provides disclosure to parole applicants upon request further undermine the procedural fairness of hearings.

The parole board’s independence has been identified as an issue. Currently the parole board is an independent adjudicative tribunal and is administratively clustered within the Ministry of the Attorney General’s Safety, Licensing Appeals and Standards Tribunals Ontario. Prior to 2013 the board was housed within the Ministry of Community Safety and Correctional Services and it continues to be heavily reliant on MCSCS for information and policy support. The 2015 Mandate Review noted:

We heard that members often reach out to MCSCS staff to clarify or obtain additional information not included in the parole file and vice-versa (e.g., MCSCS staff including ILOs and parole officers sometimes reach out to board members for guidance). This is inappropriate as information pertaining to offender applications must go through the appropriate channels otherwise members may be influenced by their MCSCS counterparts. The OPB and MCSCS should interact but only at the administrative level and the interaction should not involve members.⁴⁵²

Parole board policies, which continue to be hosted on the MCSCS intranet, provide significant and substantive direction to parole board members – at times appearing to limit the discretion

⁴⁴⁸ Optimus/SBR, *supra* note 427 at 98.

⁴⁴⁹ Ministry of Community Safety and Correctional Services, *Ontario Parole Board: Policy and Procedures Manual: Parole: Making/Writing Decisions Policy* (Government of Ontario, May 21, 2015).

⁴⁵⁰ Reg. 778, *supra* note 16 at s. 44(2)(d); CCRA, *supra* note 19 at s. 101(e).

⁴⁵¹ *May v. Ferndale*, 2005 SCC 82.

⁴⁵² Optimus/SBR, *supra* note 427 at 99.

provided to the board by law – and contain language that frequently mirrors the policies written for MCSCS staff. Legislation gives the Ontario Parole Board authority to release any inmate on a 72 hour or more unescorted temporary absence for medical, humanitarian or rehabilitative purposes.⁴⁵³ Parole board policy, however, states that “[n]o inmate will be granted an employment TA unless” certain insurance or waiver requirements are met, restricts Board Members from granting temporary absences to destinations outside Ontario to “exceptional circumstances,” and states that “escorted TAs will only be considered for remanded inmates for medical or humanitarian reasons or other exceptional circumstances.”⁴⁵⁴ All of these limitations appear verbatim in ministry policy governing superintendents’ TA-granting authority.⁴⁵⁵ Similarly, despite legislative authority to release any sentenced inmate on parole where the statutory requirements are met, board policy restricts this discretion by directing that the “Board will not grant parole to an offender where the PPO does not recommend placement in a proposed residential facility because the facility does not meet ministry standards.”⁴⁵⁶

The quality of release plans put before the board is also an issue.⁴⁵⁷ The expectation that inmates will be able to arrange and adequately document a comprehensive release plan – from inside a correctional institution and within a short timeframe – is unrealistic for most of those behind bars. Currently the burden rests almost entirely on an inmate to formulate his or her release plan, including putting in place treatment or counselling, housing, employment, and a “sponsor” that will assist the individual upon release. This is an extremely difficult task; finding guaranteed housing, treatment space, or mental health counselling is hard enough. The fact that inmates are required to put together this plan from inside correctional facilities, with extremely limited access to resources, telephones, or contact information, makes the process all the more daunting. A significant portion of inmates also face the challenges associated with mental illness, histories of trauma, addictions, and low literacy, and all will face the stigma of

⁴⁵³ Reg 778, *supra* note 16 at s. 39.

⁴⁵⁴ Ministry of Community Safety and Correctional Services, *Ontario Parole Board: Policy and Procedures Manual: Temporary Absence: Temporary Absence Terms and Conditions* (Government of Ontario, May 21, 2015).

⁴⁵⁵ Ministry of Community Safety and Correctional Services, *Probation and Parole Administrative Process Manual: Parole: Temporary Absence Program* (Government of Ontario, January 2005); MCSCS: Temporary Absence Program, *supra* note 366.

⁴⁵⁶ Ministry of Community Safety and Correctional Services, *Ontario Parole Board: Policy and Procedures Manual: Parole: Case Preparation: Information Gathering: Information Requirements* (Government of Ontario, April 13, 2015).

⁴⁵⁷ *Ibid* at 89, 114-117; Auditor General: Annual Report 2014, *supra* note 439 at 91. Both the Mandate Review and the Auditor General’s report noted that the quality of inmates’ release plans was an issue impacting parole grant rates, and that the amount of support provided to inmates in compiling release plans was inadequate.

having been incarcerated and having a criminal record. Staff within the institution that are involved in the parole process primarily fulfill an administrative role; little structural supports or assistance is available.

The timelines associated with working through the parole application and adjudication process present significant barriers. Three quarters of inmates are serving sentences of three months or less, and most are released, without conditions or supervision, after serving two thirds of their sentence.⁴⁵⁸ As noted by the Auditor General in 2014, “the process for applying for early release generally takes about 60 days,” meaning the majority of inmates will have been released before they could even have a parole hearing.⁴⁵⁹ The Auditor General also found that staffing resources to facilitate the parole application process varied significantly between institutions and, depending on when staff initiated the pre-parole process, “in some cases the time that inmates had to wait for a parole hearing after his or her parole eligibility date varied from one week to more than three months.”⁴⁶⁰ Although the Auditor General’s 2014 report recommended tracking and assessing the delays in completing parole applications and using this information to streamline the process, the 2016 follow up on this recommendation noted that the ministry had made little to no progress.⁴⁶¹

Fundamentally, a risk adverse process will not be remedied by providing more information or issuing policy clarification memos. The Mandate Review found that “ultimately members were concerned with exposing the community to any level of risk through the release of an offender.”⁴⁶² Zero risk is a standard that is impossible to satisfy regardless of the level of detailed information provided in the file. The evidence that gradual supervised release reduces, not increases, the risk to reoffend must be put into practice. This means understanding the difference between mitigating and managing risk, and making decisions based upon the total avoidance of risk.

⁴⁵⁸ In 2015/16, 75.4% of sentenced inmates admitted to a provincial institution were serving a sentence of three months or less, 47.4% served a sentence of one month or less and 17.7% served between just one to seven days. 10.9% of sentenced inmates were serving a provincial sentence of more than six months, and a further 5.8% of were serving a federal sentence but were held at least for a portion of the time in a provincial institution. Program Effectiveness, Statistical Applied Research, Ministry of Community Safety and Correctional Services.

⁴⁵⁹ The Independent Review Team looked at Ministry data for the last 10 years and found that the average time between the date an inmate is given a parole hearing date and the decision date of the parole board is 63.7 days, suggesting that long wait times are a longstanding trend. Auditor General: Annual Report 2014, *supra* note 439 at 89.

⁴⁶⁰ *Ibid* at 90.

⁴⁶¹ The Office of the Auditor General, *Annual Report 2016* (Government of Ontario, 2016) at 20.

⁴⁶² *Ibid* at 117.

The parole board, to its credit, recognizes many of the above issues and has taken steps to try to address the situation. As mentioned above, the parole board has engaged the ministry regarding the completeness and timeliness of information provided to the board. New parole board members have been recruited and the parole board anticipates that new appointees will help to overcome historical risk aversion. The board has also expanded training for both new and current board members and has placed a focus on culturally appropriate review and decision making for Indigenous inmates. The parole board works with an Elder in one institution to put in place a process whereby the Elder assists inmates interested in parole with their application and parole hearing preparation. Finally, the OPB has requested significant new resources to assist it in meeting its statutory requirements and fulfilling its mandate. New resources and a firm commitment to transformation will be required to ensure provincial parole in Ontario fulfills its role in supporting gradual release, reintegration and community safety.

Linkages to Community Supports and Services

One resource that the province historically used to facilitate gradual release, and in particular release on parole, were “Community Resource Centres” (CRC): designated facilities in a community setting away from a correctional institution that assisted with the rehabilitation and supervision of inmates, parolees or probationers.⁴⁶³ Although the province eliminated CRCs in the mid-1990s, multiple internal strategic plans and staff consultations have urged their reintroduction. A wide range of community-based resource centres and housing options could be realized through this model, including reporting centres, community-based service and programming hubs, Healing Lodges and halfway houses (see Textbox 21). Such facilities could also be used to help manage and supervise individuals on intermittent sentences. Despite numerous recommendations for their reintroduction in some form and internal staff support, the ministry has not taken any concrete steps to move forward with this important option.

The ministry has signed Community Residential Agreements (CRAs) with community agencies contracted to provide housing and residential treatment or programming for both inmates and community-supervised clients. Inmates can be granted temporary absences in order to receive treatment and programming at these facilities, while community clients can be referred as part of the terms of their supervision. Space at these facilities, however, is extremely limited. The province currently has only 12 contracts in place with funding to provide services to an average of 37 individuals per day for the entire province.⁴⁶⁴ There are no CRAs that house men in either the central or eastern regions of Ontario. Moreover, CRA spaces are used almost exclusively by clients who are already being supervised in the community and interviews with CRA staff

⁴⁶³ MCSA, *supra* note 15 at s. 15.

⁴⁶⁴ Total bed days for all contracts is 13653, giving an average daily usage of 37.4 people. Data obtained from Ministry of Community Safety and Correctional Services.

confirm that the majority of referrals from the provincial system are individuals on probation or conditional sentence – not parole. The lack of integration between CRAs and individuals in custody may explain why there are reports that probation and parole area managers, who have the administrative responsibility for many of the CRAs, often have difficulties finding enough clients to fill the contracted spaces. The ministry’s data on temporary absences confirms just how rare it is for an inmate to be housed in a CRA. In 2016 two inmates received recurring temporary absences specifically so they could attend a CRA; both of these individuals, however, were serving intermittent sentences.⁴⁶⁵ The parole board granted a further 23 unescorted temporary absences for the purposes of rehabilitation generally, but these were not necessarily linked to CRA residency.⁴⁶⁶

Textbox 21: Exploring Gradual Release Housing Supports

A significant number of individuals released from provincial custody struggle with finding appropriate housing. Many of those released are in fact homeless – defined as staying at a public homeless shelter, a treatment centre, a friend’s residence, or on the street – or are at an increased risk of becoming homeless upon their release.⁴⁶⁷ Gradual release into the community is one way to provide housing support and has been linked to low recidivism rates.⁴⁶⁸ In order to foster gradual release, there are a variety of community-based resource centres and housing options that should be considered during the discharge planning process.

Non-residential options that facilitate correctional supervision and can provide general or specialized programs and services include:

- **Day Reporting Centres/Attendance Centres:** Physical location where offenders report in person or by telephone as part of a larger supervision plan (e.g. TAs, probation order, parole, ICWP).
- **Community-Based Service and Programming Hubs:** Physical location away from the correctional facility where individuals can access services and programs in the community from a variety of service providers. This could include referrals to additional supports upon discharge from custody.

Options that provide housing, correctional supervision and can provide general or specialized programs and services include:

⁴⁶⁵ *Ibid.*

⁴⁶⁶ *Ibid.*

⁴⁶⁷ O’Grady and Lafleur, *supra* note 113.

⁴⁶⁸ John Howard Society of Alberta, *Halfway Houses* (John Howard Society of Alberta 2001), Last Accessed: August 16, 2017 <http://www.johnhoward.ab.ca/pub/old/pdf/halfway.pdf>.

- **Healing Lodges:** Provide a safe environment and opportunities for holistic healing and learning based on the principles of Indigenous cultures.
- **Halfway Houses:** Government or privately run residential facilities that provide a variety of services such as accommodation, counselling, employment preparation and supervision to those recently released from custody or under community supervision. Ontario does not currently operate any provincial halfway houses.
- **Community Residential Agreements:** Privately run supervised residential facilities where the ministry pays a per diem rate for bed use. Depending on the location, the CRA may offer specialized in-patient treatment.

Options that provide housing and can provide general or specialized services include:

- **Housing First Models:** Residential facilities that provide a recovery-oriented approach to a homeless person through immediate access to permanent housing. Abstinence from drugs and alcohol is typically not a prerequisite. There is no requirement for “housing readiness”; rather, participants are supported by having staff periodically visit them at their new homes. Significant focus is placed on social and community integration through socially supportive engagement and the opportunity to participate in meaningful activities.
- **Transitional Housing:** Temporary housing that acts as an intermediate step between emergency crisis shelter and permanent housing. It is more long-term and service intensive than emergency shelters but is usually capped at stays ranging from three months to three years. Requires a readiness to transition into more stable long-term housing and the availability of permanent housing.
- **Supportive Housing:** Permanent housing that offers individuals ongoing support and services. Generally this housing is subsidized but it typically involves long wait times.

The ministry does not need to tackle all these issues on its own. A wide range of community organizations, programs and service providers have a wealth of experience assisting at-risk, marginalized populations. Coalitions currently exist that work to coordinate services and better meet the needs that cross boundaries between the criminal justice and social service sectors. The Human Justice and Services Coordinating Committees, for example, have provincial, regional and local components that bring together a wide range of justice and social service stakeholders to expand knowledge, coordinate services and share information and perspectives on emerging issues, research and best practices. Ontario’s correctional system could significantly increase its integration with a variety of community service and program providers, enhancing quality, access, and continuity of care. If correctional institutions and probation and parole offices maintain close ties to the broader community and community-based services there is a greater likelihood that beneficial services and programming an individual receives while under supervision will be maintained upon release.

Key Findings and Recommendations

Initial Intake to Institutions and Community Supervision

- Ontario does not currently routinely employ an institutional security risk assessment tool. In the absence of an institutional security risk assessment tool, almost all inmates are placed in maximum security by default.
- Twenty-five out of Ontario's 26 correctional institutions are maximum security. The Ontario Correctional Institute, a specialized treatment facility, is the province's only medium-security institution. For the majority of individuals, Ontario's institutional intake and admissions process captures only the most basic personal information.
- The vast majority of inmates in Ontario do not have access to effective discharge planning. There are insufficient linkages between institutional activities and programming and community services and organizations. A wide variety of community services and organizations could be engaged to assist with a smooth transition back into the community.
- While the intake process for those supervised in the community is better, there are instances where policy or law applies mandatory conditions or supervision requirements. Conditions and levels of supervision should be responsive to individualized risk assessments, not blanket policy prescriptions.

Recommendation 3.1: I recommend that the Corrections Act for Ontario reflect the principle of least restrictive measures by:

- Including the principle of least restrictive measures as a guiding principle;
- Requiring the ministry establish maximum, medium and minimum security institutions or units and providing definitions of these types of custody;
- Requiring an evidence-based institutional security risk assessment that is validated for gender identity, Indigenous and non-Indigenous persons be conducted for all inmates upon intake;
- Requiring that where a person is, or is to be, confined in an institution, the ministry takes all reasonable steps to ensure that the institution is one which provides the least restrictive environment for that person, taking into account individualized circumstances and needs;
- Requiring that reclassification occur at least once every six months and be conducted in accordance with applicable regulations; and
- Requiring that inmates be given written reasons for the initial security classification and any subsequent reclassification.

Recommendation 3.2: I recommend that the ministry align policy, institutional placement processes and conditions of confinement with the principle of least restrictive measures; this must include:

- Policy clearly establishing the definitions of, conditions of confinement and operational procedures in minimum, medium and maximum-security units and facilities;
- Development and deployment of an evidence-based institutional security risk assessment tool that is administered to all inmates at intake; and
- Policy directing that individuals are to be placed in the least restrictive level of supervision and physical control necessary.

Recommendation 3.3: I recommend that mandatory conditions and supervision levels that are not linked to an individual's risk/needs assessment be eliminated from law and policy.

Recommendation 3.4: I recommend that the Corrections Act for Ontario provide for appropriate in-custody service and discharge planning by:

- Including as a guiding principle that inmates will be individually assessed at intake to inform the development of a custodial and release plan;
- Requiring that, upon admission to a correctional institution, the ministry take all reasonable steps to obtain, as soon as is practicable, relevant information about an inmate's charge or offence, personal, social, economic and criminal history, any judicial reasons, transcript, recommendations or court reports related to the individual's detention and sentencing, and any other information relevant to administering the detention or sentence including existing information from the victim;
- Requiring the ministry to, where necessary, provide an inmate with clothing suitable to the season, travelling expenses to the destination, and sufficient medically-prescribed medication upon their release from a court or correctional institution; and
- Allowing for regulation to stipulate that inmates whose scheduled release date falls on a weekend or holiday must be released on the prior weekday unless a risk assessment concludes that such release is contrary to public safety.

Recommendation 3.5: I recommend that ministry policy provide for appropriate in-custody service and discharge planning, including by:

- Requiring that, upon admission, each inmate be assigned a case manager who will be named on discharge planning documents and will be responsible for ensuring that the inmate's identified and evolving needs are met during custody and upon release; and
- Requiring that upon discharge from an institution or a court an individual will be provided with the necessary assistance to address identified needs, including but not limited to clothing, medication, transportation, facilitation of property return from the institution, and referrals to community supports and services.

Identifying and Meeting Programming Needs

- The majority of general programs in Ontario are run by community service providers, organizations, and volunteers who are usually required to supply the personnel, programming content, and any necessary supplies. Participation in these generalized programs is hampered by inconsistent availability and delivery.
- There is a general lack of programming space in institutions. Programing may be offered in hallways, chapels, “multi-purpose rooms,” converted cells, gymnasiums, or, most troubling, inside of wire mesh enclosures. Even when there is purpose built space, the space is subject to being “re-purposed” for pressing operational and administrative needs.
- Ministry policy is a barrier to program participation for remand inmates and immigration detainees – a group that collectively represents the majority of inmates. These populations are presumptively ineligible for custodial work opportunities and community programming.
- Rehabilitative programs should be reserved for those with identified criminogenic needs who are assessed as presenting a medium or high risk to reoffend.
- Although inmates with longer sentences are receiving an evidence-based risk/needs assessment within Ontario institutions, the vast majority of inmates are not being proactively provided with individualized information regarding which programs would be most appropriate for their participation.
- Individuals supervised within the community have personalized Offender Management Plans that identify programming needs which generally correspond to an individual’s risk/needs assessment.
- The ministry has recently taken steps to reinforce the effective application of the risk-needs-responsivity model in community corrections by initiating a Strategic Training Initiative in Community Supervision.

Recommendation 3.6: I recommend that the Ontario Corrections Act include provisions requiring the ministry to establish or contract for programs, program delivery and meaningful activities in which inmates may work, study, or participate and that, for rehabilitative programs, comply with needs identified in individual assessments.

Recommendation 3.7: I recommend that the ministry immediately conduct an audit of program space in each institution to determine the availability of adequate and appropriate space to meet program needs. The determination of the adequacy of the space must be based upon the unique population demographics of each institution and identified best practices in classroom and program delivery methods. Retrofits to address gaps identified through the audit must be addressed on a priority basis and all new builds must include program space based upon the identified best practices.

Recommendation 3.8: I recommend that the ministry implement comprehensive, centralized tracking of all programming availability and delivery. A program manual listing all programs offered and the frequency and locations of these programs should be produced, regularly updated, and made publicly available.

Recommendation 3.9: I recommend 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.

Recommendation 3.10: I recommend that all inmates sentenced to over 30 days be provided with an individual program plan that includes rehabilitative programming where appropriate. Rehabilitative programs must be targeted based on individualized risk/needs assessments.

Recommendation 3.11: I recommend that the ministry continue its work to implement the Strategic Training Initiative in Community Supervision and that the rollout be appropriately paced and resourced in order to maximize the effectiveness of the initiative. The ministry should review and, where required, revise, existing policies, programming, procedures, and terminology related to community supervision to ensure alignment with evidence-based best practices.

Gradual Release and Community Integration

- Temporary absences can be powerful tools to decrease reliance on incarceration and facilitate an individual's successful reintegration back to 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.
- The process surrounding temporary absence applications and reviews represents a significant barrier. With the exception of medical temporary absences, the inmate normally bears the responsibility for initiating the temporary absence process and compiling the extensive documentation necessary to support the application.
- Although the law allows for the imposition of "appropriate" temporary absence conditions, the ministry has elaborated "standard" conditions that apply to all temporary absences regardless of individual circumstances.
- 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 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.
- Parole procedure creates obstacles to timely gradual release. There are questions regarding the procedural fairness of the parole process, the quality, timeliness, and completeness of information placed before the board, as well as the supports provided to inmates in the parole application process.
- Ontario stopped using Community Residential Centres in the mid-1990s. Despite numerous recommendations for their reintroduction, the ministry has not taken any concrete steps in this direction.
- The ministry has signed Community Residential Agreements (CRAs) with community agencies contracted to provide housing and residential treatment or programming for both inmates and community-supervised clients. Space at these facilities, however, is extremely limited and there are no CRAs that house men in either the central or eastern regions of Ontario.
- CRA spaces are used almost exclusively by clients who are already being supervised in the community.

Recommendation 3.12: I recommend that the Corrections Act for Ontario expand access to and use of temporary absences by:

- Providing superintendents exclusive authority to grant, deny or revoke all temporary absences; and
- Directing that all eligible inmates will be automatically considered for a temporary absence at one-sixth of their sentence in accordance with regulation.

Recommendation 3.13: I recommend that the Corrections Act for Ontario:

- Include a definition of the purpose of conditional release;
- Expand access to and use of parole by including provisions for review without a hearing and a requirement to release an individual on parole if the board is satisfied that there are no reasonable grounds to believe that the offender, if released, is likely to commit an offence involving violence before the expiration of the sentence; and
- Incorporate an obligation to comply with the principles of fundamental justice throughout the parole decision making process.

Recommendation 3.14: I recommend that the Corrections Act for Ontario include provisions requiring the Ontario Parole Board to publicly release annual performance reports on all areas of operation including, but not limited to, the measures taken to reduce the over-representation of Indigenous men and women held in Ontario correctional institutions.

Recommendation 3.15: I recommend that the Ministry of Community Safety and Correctional Services and the Ontario Parole Board immediately put in place policies and procedures, including the timely sharing of all required and requested information, to ensure that parole consideration for inmates is taking place within legislated time limits and that inmates sentenced to six months or more have their parole reviewed as required by law.

Recommendation 3.16: I recommend that the Ontario Parole Board conduct a full policy and procedures revision to ensure that Ontario's parole process is procedurally fair, transparent, effective and independent. This should include:

- The principle that decisions are made in a procedurally fair and understandable manner, including by providing inmates with relevant information, reasons for decisions and access to a meaningful review of decisions and an effective appeal procedure;
- The principle that decisions shall be written and communicated in a manner that is clear and understandable;
- Limiting the time between parole application and the rendering of a decision;
- Ensuring that parole board policies do not improperly fetter the discretion of board members;
- Ensuring the decision making criteria for granting or denying parole, including Gladue considerations, are clear to all board members and are being appropriately applied and documented in written decisions that are provided to the inmate; and
- Creating the capacity to operate and maintain a standalone case management administration and reporting tool.

Recommendation 3.17: I recommend the ministry provide or facilitate access to support and assistance for inmates who are completing applications for parole or temporary absences.

Recommendation 3.18: I recommend that the ministry explore best practices for linking to community supports and enhanced community housing and supervision options.

Recommendation 3.19: I recommend that regular meetings between the Ministry of Community Safety and Correctional Services, justice, and health sector partners be convened at a sub-regional level to explore ways to enhance access to community programming, discharge planning, temporary absences, parole and linkages between institutions and the community. As part of these efforts institutions should ensure that at least one senior manager regularly and actively participates in local Human Services and Justice Coordinating Committees.

VI. INDIGENOUS PEOPLE AND ONTARIO CORRECTIONS

Indigenous people account for approximately 2% of Ontario's population⁴⁶⁹ and yet in 2016 represented 13% of those in provincial custody.⁴⁷⁰ One in three Indigenous people admitted to Ontario's correctional institutions last year, and over half of the Indigenous people admitted to segregation, were flagged with a suicide risk alert.⁴⁷¹ Both of these rates are higher than in the non-Indigenous population. Last year, once placed in segregation, Indigenous men spent an average of 15 continuous days segregated – two more days than the average amount of time spent by non-Indigenous male inmates.⁴⁷² The proportion of individuals entering probation in Ontario who are Indigenous has also been increasing over the past 15 years.

While these figures are troubling, they are not surprising. When it comes to Indigenous populations, the failings of the criminal justice system have been acknowledged, understood, and documented for decades.⁴⁷³ As the Government of Ontario recently stated,

Clear links have been established between the overrepresentation of Indigenous people involved in the justice system and Indigenous communities' experience with residential schools. Indigenous offenders feel a deep alienation behind the bars of correctional institutions just as they (or their parents or grandparents) felt inside the walls of residential schools. These institutions are places where racism is common.⁴⁷⁴

The justice system is not alone in these failings. Indeed, corrections is often an end point on a long journey of injustices for Indigenous peoples. For many, it is a journey that involves the

⁴⁶⁹ Statistics Canada, "2011 National Household Survey by Statistics Canada, - Catalogue no. 99-004-XWE" (Ottawa: Statistics Canada, May 8, 2013); Statistics Canada, "2006 Census by Statistics Canada, - Catalogue no. 92-565-XWE" (Ottawa: Statistics Canada, March 4, 2010); Indigenous and Northern Affairs Canada, "Aboriginal Demographics from the 2011 National Household Survey" (Planning, Research and Statistics Branch, Government of Canada, 2013).

⁴⁷⁰ Sapers, *supra* note 107 at 3. Custodial population calculated by taking the average of 12 random daily snapshots (one per month for the year of 2016) showing total institutional counts and population characteristics for those days.

⁴⁷¹ *Ibid* at 199. 20% of for non-Indigenous inmates, 20% of those admitted to custody and 33% of those admitted to segregation in 2016 had a suicide risk alert.

⁴⁷² *Ibid* at 126.

⁴⁷³ *R. v. Gladue*, [1999] 1 S.C.R. 688, 1999 CanLII 679. See also Michael Jackson, "Locking Up Natives in Canada: A Report on the Committee of the Canadian Bar Association on Imprisonment and Release" (1989) 23 U.B.C. Law Review 220, cited by the Supreme Court of Canada in *R. v. Williams*, [1998] 1 S.C.R. 1128, [1998] S.C.J. No. 49 at para. 58; Jonathan Rudin, "Aboriginal People and the Criminal Justice System" (Toronto: Prepared for the Ipperwash Inquiry, 2005); Paul L.A.H. Chartrand, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Royal Commission on Aboriginal Peoples, 1995) at 309.

⁴⁷⁴ Government of Ontario, *The Journey Together: Ontario's Commitment to Reconciliation with Indigenous Peoples*, "Creating a Culturally Relevant and Responsive Justice System".

inter-generational trauma of Indian Residential Schools, forced relocation, community displacement, loss of identity, loss of language, loss of culture, involvement with the child welfare system, extreme poverty, racism, systemic discrimination, gender discrimination, violence, physical abuse, sexual abuse, emotional abuse, depression, and death. The correctional system was not designed and is not equipped to contend with all of these harms. The over-representation of Indigenous peoples in our correctional system is just one symptom of centuries of colonialism and discriminatory treatment and cannot be addressed in isolation. This pressing matter will not be “fixed” as a result of this review or siloed corrections reform. In order to address the urgent matter of Indigenous overrepresentation in Ontario’s correctional system, the province needs to carefully examine the criminal justice system as a whole and its relation to broader social structures. It is noteworthy that Ontario has never conducted a province-wide inquiry regarding Indigenous peoples and the justice system.⁴⁷⁵

Although many of the underlying issues are systemic, the impact on individual lives, families, and communities is intensely personal. One former corrections staff member who spoke to the Independent Review Team was moved to tears when recalling the stereotypes of Indigenous peoples expressed by colleagues at a ministry-delivered cultural sensitivity training course. The emotional scars from historic and contemporary injustices against Indigenous peoples run deep. And while the repercussions are certainly felt by those in conflict with the law and correctional staff, the consequences are also directly relevant to the wider Ontario community, both Indigenous and non-Indigenous. I invite the ministry, in concert with provincial partners, to take on broader, more transformative actions as necessary steps on the path to reconciliation.

⁴⁷⁵ Government of Alberta, The Board of Review on Native Peoples, *The Administration of Justice in the Provincial Courts of Alberta* (Alberta: Board of Review, Provincial courts, 1975); Government of Canada, the Mackenzie Valley Pipeline Inquiry, *Northern Frontier Northern Homeland* (Ottawa: Supply and Services Canada, 1977); Government of Nova Scotia, Royal Commission on the Donald Marshall Jr. Prosecution, *Commissioner’s Report: Findings and Recommendations* (Halifax: McCurdy’s Printing and Typesetting Limited, 1989); Government of Manitoba, Aboriginal Justice Inquiry of Manitoba, *Report of the Aboriginal Justice inquiry of Manitoba* (Winnipeg: 1999), Aboriginal Justice Implementation Commission, *Report of the Aboriginal Justice Inquiry of Manitoba* (November 1999); Government of Canada, Royal Commission on Aboriginal Peoples; Vol. 1-5, (Ottawa: Supply and Services Canada, 1996); Government of British Columbia, *Report on the Cariboo-Chilcotin Justice Inquiry* (Victoria: Cariboo-Chilcotin Justice Inquiry, 1993); The Honourable Mr. Justice David H. Wright, *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* (Government of Saskatchewan, October 2004); Truth and Reconciliation Commission, *Final Report of the Truth and Reconciliation Commission of Canada* (2015); Missing Women Commission of Inquiry, *Forsaken* (Government of British Columbia, 2012).

Textbox 22: The Truth and Reconciliation Commission and the Ontario Government's Response

The Truth and Reconciliation Commission of Canada (TRC) was established in 2009 with a mandate to compile a historical record on the policies and operations of residential schools, publish a report and recommendations, and establish a national research centre to serve as a lasting resource on the residential school legacy.

In 2015, the TRC published a six-volume report on the residential school system and its contemporary impacts. It found that there was an intimate connection between the legacy of trauma left by residential schools and the over-incarceration of Indigenous peoples:

The causes of the over-incarceration of Aboriginal people are complex. The convictions of Aboriginal offenders frequently result from an interplay of factors, including the intergenerational legacy of residential schools. Aboriginal overrepresentation in prison reflects a systemic bias in the Canadian justice system. Once Aboriginal persons are arrested, prosecuted, and convicted, they are more likely to be sentenced to prison than non-Aboriginal people.⁴⁷⁶

The TRC also found that the correctional system had inadequate programming to address and respond to the conditions and precursors that Indigenous offenders may experience,⁴⁷⁷ and that there was a lack of realistic alternatives to custody.⁴⁷⁸

The TRC's findings led to 94 Calls to Action, many of which are relevant to corrections and the criminal justice system. These included:

- Eliminate the overrepresentation of Indigenous people in custody over the next decade;⁴⁷⁹
- Provide funding to implement realistic alternatives to imprisonment for Indigenous offenders and respond to the underlying causes of offending;⁴⁸⁰
- Undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder;⁴⁸¹ and
- Provide more supports for Aboriginal programming in parole services.⁴⁸²

⁴⁷⁶ Truth and Reconciliation Commission of Canada, *Summary of the Final Report of the Truth and Reconciliation of Canada*, (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) at 170 (hereafter, "TRC: Summary of Final Report").

⁴⁷⁷ *Ibid* at 176.

⁴⁷⁸ *Ibid* at 173.

⁴⁷⁹ Truth and Reconciliation Commission of Canada, *Calls to Action*, (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) (hereafter, "TRC: Calls to Action").

⁴⁸⁰ *Ibid*.

⁴⁸¹ *Ibid*.

⁴⁸² *Ibid*.

In May 2016, Ontario published its response to the TRC's report, committing to invest over \$250 million over a three year period to support programs and actions focused on reconciliation.⁴⁸³ One commitment area was the creation of a Culturally Relevant and Responsive Justice System, which is to be achieved in part by closing gaps in corrections service delivery and ensuring the development and availability of community-led restorative justice.⁴⁸⁴

a. The McKinnon Case and a Decade of Wavering Corporate Commitment to Reform

The Ministry of Community Safety and Correctional Services has its own particular history of confronting claims of systemic discrimination. The longest-running human rights case in Canadian history, the matter of *Michael McKinnon v. the Ontario Ministry of Correctional Services*,⁴⁸⁵ began in 1988 when Michael McKinnon, an Indigenous correctional officer at the Toronto East Detention Centre, filed a series of complaints about racial discrimination at his workplace. Ten years later a Board of Inquiry⁴⁸⁶ found “Mr. McKinnon’s workplace and that of his spouse and fellow correctional officer Vicki Shaw McKinnon, to be poisoned by discriminatory conduct including racist comments, reprisals after he objected to the behavior, and a failure on the part of the Employer to effectively address the problem.”⁴⁸⁷ Between 1998 and 2011, when the parties reached a final settlement, the ministry was brought back to the board and the Ontario Human Rights Tribunal multiple times to respond to claims that they had failed to comply with the various systemic and individual orders. On multiple occasions the

⁴⁸³ Government of Ontario, “The Journey Together: Ontario’s Commitment to Reconciliation with Indigenous Peoples.” Last updated June 5, 2017, <https://www.ontario.ca/page/journey-together-ontarios-commitment-reconciliation-indigenous-peoples> (hereafter, “The Journey Together”).

⁴⁸⁴ *Ibid.*

⁴⁸⁵ Numerous decisions have been issued over the course of several decades. See for example, *McKinnon v. Ontario (Correctional Services)*, 2009 HRTO 482 (CanLII); *McKinnon v. Ontario (Correctional Services)*, 2007 HRTO 4 (CanLII); *McKinnon v. Ontario (Ministry of Correctional Services) (No. 3)* (1998), 32 C.H.R.R. D/1, at D/70; *Ontario v. McKinnon*, [2004] O.J. No. 893.

⁴⁸⁶ The Board of Inquiry Decisions (1963-2002) are the predecessor to the HRTO decisions (2003 - current). The Board of Inquiry Decisions are based on the *Ontario Human Rights Code* prior to the formation of the Human Rights Tribunal of Ontario. Ontario Human Rights Commission (OHRC), “Human Rights Tribunal of Ontario (HRTO) Board of Inquiry Decisions,” Last Updated November 19, 2013 <https://archive.org/details/boardofinquirydecisions&tab=about>.

⁴⁸⁷ Ontario Human Rights Commission, “Landmark human rights case settled.” Last Updated August 27, 2011 http://www.ohrc.on.ca/en/news_centre/landmark-human-rights-case-settled (hereafter, “OHRC: Landmark Human Rights”).

adjudicator found that the ministry had failed to comply with its obligations and ordered further remedies aimed at addressing the findings of individualized harassment and ongoing systemic discrimination.⁴⁸⁸

Over this same time period the ministry made various attempts to address systemic discrimination in corrections. In 2007, for example, the ministry created the organization effectiveness division (OED). The OED was comprised of five units, one of which was the office of Aboriginal issues. The total complement of staff working within the OED ranged between 32 to 40 people. Of that total, only two persons made up the office of Aboriginal issues, both of whom were in low level advisory positions with no decision-making authority to effect change. In 2011, four years after its creation, the OED was dismantled, and along with its demise, the two-person office of Aboriginal issues was eliminated.

The dismantling of the OED came on the heels of the 2011 *McKinnon* settlement, which obligated the ministry to continue working on systemic discrimination against Indigenous peoples. Primary responsibility for tackling Indigenous issues was taken up by Project Charter, an initiative that flowed directly from the settlement and aimed to eliminate discrimination within correctional services with a special focus on Indigenous peoples' needs and concerns. Project Charter convened an Aboriginal advisory subcommittee (AAS) that assisted in the development of a 2013 Indigenous Strategic Plan that identified the establishment of a permanent Indigenous human rights unit as the "highest priority" for reform. In the opinion of the AAS, a dedicated permanent unit was critical to the implementation of the Indigenous Strategic Plan. The AAS also specified that the primary focus of the unit should be the Indigenous human rights of both employees and clients⁴⁸⁹ and that it should be set up as an Indigenous unit with a human rights focus, not as a human rights unit with an Indigenous focus.⁴⁹⁰

This recommendation was not immediately adopted; instead, the AAS's advice was used to inform the development of a multi-year Human Rights Plan (HRP). The HRP, which was initiated in 2014, laid out five specific commitment areas: embedding Indigenous expertise, improving human rights-compliant service delivery, building internal Indigenous competency, ensuring an inclusive workplace, and improving the employee complaints system. The HRP is a phased, multi-year action plan. Phase one, which ran from September 2014 to August 2017, was focused on building the foundation for organizational changes. Phase two, which at the time of

⁴⁸⁸ Please see *McKinnon and Ontario Human Rights Commission v. Ontario (Ministry of Correctional Services) et al.*, 2002 O.H.R.B.I.D. No. 22 ("McKinnon No. 5"); *Ministry of Correctional Services v. McKinnon*, 2010 ONSC 2896 s.6.

⁴⁸⁹ Ministry of Community Safety and Correctional Services, *Indigenous Strategic Plan*, (Government of Ontario, February 2017) at 3.

⁴⁹⁰ *Ibid* at 3.

writing is scheduled to begin in September 2017 and continue until 2021, will build upon the work from the first phase to effect human rights organizational change.

A nine-person team was assembled with a mandate to implement the HRP. Prior to 2016, staff with some Indigenous expertise collaborated with the ministry's Aboriginal advisory subcommittee to pursue change. In 2016, two Indigenous advisors joined the team, one of whom is specifically dedicated to implementing the TRC-related commitments. Over the past few years, some recommendations from the Indigenous Strategic Plan have moved forward. The ministry, for example, has adopted an Indigenous Lens Tool that assists in identifying Indigenous-specific impacts and helps to ensure that Indigenous peoples are included in relevant decisions and policy development. To date, however, there has still been no decision regarding whether the ministry will adopt the original AAS recommendation to create a permanent, central Indigenous unit. At the time of writing, the ministry was in the process of finalizing an options paper examining this issue, and expected the document to be submitted for necessary approvals by the end of August 2017.

It has been over six years since the *McKinnon* case was finally settled and the ministry openly acknowledged the need to tackle systemic discrimination against Indigenous peoples within corrections.⁴⁹¹ In conversations with the Independent Review Team, many Indigenous people who have been involved in the ministry's work and reform efforts to date expressed deep and abiding frustration. Progress both before and after the settlement has been slow, and has even halted on occasion due to sustained organizational turmoil, a lack of sufficient Indigenous expertise and guidance, dedicated resources, and an absence of clear direction and commitment.

There are limitations to what can be accomplished within the existing structure. The Human Rights Plan traces its origins to the McKinnon case and attempts to simultaneously tackle discrimination against both Indigenous staff as well as Indigenous inmates and community supervision clients. These are two very distinct groups with very different needs. It is difficult to envision a single systemic change strategy that could cohesively address the barriers faced by both these populations. In another nod to its origins, the Human Rights Plan also approaches its work from the perspective of the provincial *Human Rights Code*. Although the provincial

⁴⁹¹ The McKinnon settlement was entered into in August 2011. At the time the Deputy Minister of Government Services stated: "While the settlement brings an end to the litigation and represents closure for the McKinnons, it also signals a new beginning for Corrections. The Ministry of Community Safety and Correctional Services is fully committed to working closely with the OHRC and concentrating its efforts on promoting essential values, respect and accountability throughout the ranks of Correctional Services. It will continue to strive for excellence in achieving a healthy work environment that is truly reflective of diversity, equity and inclusion as part of the Corrections commitment to professionalism." OHRC: Landmark Human Rights, *supra* note 487 at 6.

government's response to the TRC's Calls to Action has recently been added as a guiding document, the approach remains relatively entrenched in remedying Code-based discrimination. A more comprehensive understanding of Indigenous realities is required – one that is not limited to a focus on discrimination but rather includes impacts such as residential schools, colonialism, diverse Indigenous culture, language, traditions, ceremonies, teachings, and the importance of families and communities.

Ultimately, regardless of the scope of work or the legal lens used, change of such a magnitude requires sustained, high-level commitment supported by ongoing internal and external stakeholder engagement. 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.

b. Elders and Indigenous Spirituality within Correctional Institutions

Within Indigenous cultures, Elders are highly respected and honoured spiritual leaders who have been entrusted with sacred teachings and ceremonies. As knowledge keepers trusted to care for the spirit of nations, they provide guidance and direction on all matters of importance. Elders also have a crucial role in the holistic healing of the Indigenous communities and people – a role that is particularly relevant to corrections. The Truth and Reconciliation Commission called on governments to “work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.”⁴⁹² For this to occur, Ontario's Correctional Services must provide a welcoming and respectful space for Elders and Indigenous spirituality both within institutions and in the community. The ministry must also ensure that safe space and the sacred items necessary for Indigenous spiritual ceremonies and activities are readily accessible to all Indigenous inmates.

To its credit, the ministry has a detailed policy that specifically addresses Indigenous spirituality. The Aboriginal Spirituality policy affirms the ministry's commitment to “providing Aboriginal inmates access to their traditional spiritual practices in a manner that recognizes and encourages their traditions and affords Aboriginal spirituality and practices the same status and protections afforded to other faith groups.” The policy includes definitions of important Indigenous spiritual ceremonies, sacred items, and ceremonial clothing.⁴⁹³ Access to Indigenous spiritual leaders, Elders, or Healers must be provided upon request, and visits are to be coordinated and facilitated by the chaplain, Native Inmate Liaison Officer (NILO), Inuit Liaison

⁴⁹² TRC: Final Report Summary, *supra* note 476.

⁴⁹³ Ministry of Community Safety and Correctional Services, *Institutional Services Policy and Procedures Manual: Services: Religious/Spiritual Care Services: Aboriginal Spirituality* (Government of Ontario, October 29, 2015) at s. 4 (hereafter, “MCSCS: Aboriginal Spirituality”).

Worker (ILW), or other person designated by the superintendent.⁴⁹⁴ Traditional ceremonies such as the Sweat Lodge Ceremony, Healing Circles, Pipe Ceremonies, and Feasts are also to be provided upon request and, with the exception of Smudging, must be conducted in the presence of or overseen by a NILO or Elder.⁴⁹⁵ Indoor space for Smudging “must be provided or established through consultation between the Superintendent and the Aboriginal Elder, NILO, or other Aboriginal Spiritual leader”; Smudging may also occur outdoors “where weather permits and as requested by the inmate(s).”⁴⁹⁶

Policy documents also provide specific guidance regarding the handling and searching of sacred objects. Elders, Teachers, or Healers carrying sacred bundles may be asked to provide a “visual inspection only of the contents of their bundle” for the purposes of safety and security upon entry to a facility.⁴⁹⁷ Once cleared by the security manager and the NILO, ILW or chaplaincy department, Indigenous inmates may be provided with sacred items and are permitted to keep their medicine bags or amulets with them in their living unit at all times.⁴⁹⁸ When an Indigenous inmate is searched he or she “may be asked to open a medicine bag for visual inspection only;”⁴⁹⁹ staff are generally prohibited from handling spiritual items, and the only persons who are permitted to touch the articles in a medicine pouch are the NILO, ILW, Elder, Teacher or Healer, and the inmate who has received the pouch or amulet.⁵⁰⁰

Figure 30: Indigenous Program Room, Ontario Correctional Institute



❖ Room used for Indigenous programming and spiritual activities such as Smudging

⁴⁹⁴ *Ibid* at s. 6.1.

⁴⁹⁵ *Ibid* at s. 6.2.1.

⁴⁹⁶ *Ibid* at ss. 6.5.2, 6.5.3.

⁴⁹⁷ *Ibid* at s. 6.7.1.

⁴⁹⁸ *Ibid* at s. 6.7.2.

⁴⁹⁹ *Ibid* at s. 6.7.2.

⁵⁰⁰ *Ibid* at s. 6.7.3.

Unfortunately, these policies are not always followed in practice. Not all institutions have appropriate spaces available to allow inmates to meet with Elders. When space within the institution is provided, often times the area does not allow for Smudging. Even when sites specifically designed for Indigenous populations are developed, there can still be barriers to inmate participation. Vanier Centre for Women, for example, has a Sacred Yard for planting and growing sacred medicines and a designated space where ceremonies including Sweat Lodges can be held. The space has never been used. Establishing a space for such purposes is an important step. As made clear by this example, however, focused and dedicated leadership is required to ensure that initial investments translate into sustained and effective Indigenous programs and initiatives.

The majority of provincial institutions do not provide regular access to Elders as part of the services available to Indigenous inmates and the Independent Review Team was informed that it is a challenge to establish these contracts. Currently only Central North Correctional Centre has a formalized contractual relationship with an Elder for services. Two additional sites, Algoma Treatment and Remand Centre and Thunder Bay Correctional Centre, have Elders attend on a routine basis. At all other institutions, when an Indigenous inmate wants to see an Elder, he or she must put the request through a NILO or the chaplain who is then responsible for trying to find an Elder willing to attend the institution; it can be very difficult to secure these services on an *ad hoc basis*. There is no clear policy on Elder compensation and honorariums have ranged from a low of \$30 per hour to \$800 for a ceremony. The ministry should provide clear guidelines regarding honorariums that reflect a respect for the value and worth of Indigenous knowledge.

Figure 31: Indigenous Programming Space, North Bay Jail



- ❖ Teepees for Indigenous programming and spiritual activities in an outdoor yard space at the North Bay Jail

Current policy establishes procedures that unnecessarily imply a hierarchy between Elders and chaplains. Ministry policy specifies that “[t]he [Native Inmate Liaison Officer], [Inuit Liaison Worker] and/or the institution chaplain, are responsible for facilitating the provision of First Nation, Métis or Inuit spiritual activities to meet the needs of Aboriginal inmates.”⁵⁰¹ In practice, this means that in many institutions Indigenous inmates must place a request to see an Elder with the chaplain, and an Elder must, in turn rely upon the chaplain for access to the facility. This arrangement is disturbing to some given the history of the church’s role in the Indian Residential Schools system, and the fact that Canada has a 150-year history of government-funded, church-run schools that operated with the intent to destroy Indigenous languages, cultures, and spirituality. When set against this history, requiring an Elder to seek permission from a chaplain can be seen as degrading and reinforcing the notion that Indigenous spirituality and culture are inferior.

Ensuring that Elders are afforded respect and that institutions provide space for meaningful engagement with inmates is one way to improve access to Elders. Respect can be demonstrated in multiple ways, including through individual staff-Elder interactions, ensuring appropriate compensation, and by putting in place culturally-appropriate procedures. There is work to do on all these fronts.

c. Native Inmate Liaison Officers and Inuit Liaison Workers

Native Inmate Liaison Officers (NIOs) and Inuit Liaison Workers (ILWs) play key roles in facilitating access to culturally-appropriate services and programs for Indigenous inmates.

NIOs are contracted to work within correctional institutions and depending on the institution and the particular contract, may provide a variety of services for inmates, including:

- Access to Elders;
- Reintegration/discharge planning;
- Applying for treatment;
- Applying for Parole;
- Referrals to community services;
- Providing medicines for Smudging or medicine bags/pouches;
- Coordinating and/or conducting ceremonies such as the Feast, Sweat Lodge (if they are Sweat Lodge conductors), Smudge, Pipe Ceremonies (if Pipe Carriers are available);
- Assisting with culture awareness training for staff;
- Facilitating Aboriginal Core Programs where they have been trained to do so;
- Facilitating traditional spiritual or cultural programs; and
- One on one counselling.⁵⁰²

⁵⁰¹ *Ibid.*

⁵⁰² Ministry of Community Safety and Correctional Services, *Aboriginal Spirituality Terminology* (Government of Ontario) as referenced in: Ministry of Community Safety and Correctional

ILWs perform similar roles for Inuit inmates; currently, however, the province only has one ILW, paid for by the Nunavut Government, who operates out of the Ottawa-Carleton Detention Centre.⁵⁰³

Twenty of the ministry's 26 institutions have contract-based NILO positions that are either filled via a community service provider or arranged for directly with an individual.⁵⁰⁴ Only two of these institutions have more than one full-time NILO: Monteith Correctional Complex and Thunder Bay Correctional Centre. In June 2017 these institutions reported Indigenous populations of 69 and 48 inmates respectively.⁵⁰⁵ Other institutions, such as Kenora Jail and the Central North Correctional Centre, have significantly higher Indigenous populations; in June 2017 the NILO to Indigenous inmate ratios in these institutions was 1:154 (Kenora Jail) and 1:119 (Central North Correctional Centre).⁵⁰⁶

The relationship between NILOs and other correctional staff can be difficult. Multiple interviewees informed the Independent Review Team that NILOs do not feel well supported within correctional institutions. Interviewees reported that NILOs carry heavy caseloads, receive little training, relatively low pay, operate without back-up staff to cover vacation or sick days, and have little to no administrative support. The workload leaves insufficient time to properly liaise with the community, assist in the development of release plans, and advocate on behalf of inmates. In institutions where there is inadequate or no access to Elders, NILOs may also be expected to provide spiritual guidance to Indigenous inmates. The NILO's unique work circumstances, whereby most operate within a ministry correctional institution but are employed by a community organization, can mean that NILOs are required to follow two distinct sets of policies and operating philosophies. If policy conflicts arise, the institutional contract manager – often the deputy superintendent of programs – will contact the outside organization to try to arrange a solution. Ultimately, however, NILOs are contracted to provide specific services for the ministry within the governing policies and protocols of the institution. This can undermine the underlying rationale for engaging external service providers in the first place.

Services, Institutional Services Policy and Procedures Manual: Services: Religious/Spiritual Care Services: Aboriginal Spirituality (Government of Ontario, October 29, 2015).

⁵⁰³ *Ibid.*

⁵⁰⁴ There are currently three institutions that do not have a NILO position: Niagara Jail, Stratford Jail and Fort Frances Jail. While they do not have a formal contract for services they do have volunteers who provide some services to the populations at these jails. Three of the of the correctional facilities that have a NILO position available – Hamilton-Wentworth Detention Centre, South West Detention Centre and Sarnia Jail – have indicated that as of July 31 2017 the 2016/17 contract positions were still vacant.

⁵⁰⁵ Data obtained from Program Effectiveness, Statistical Applied Research, MCSCS.

⁵⁰⁶ Data obtained from Professional and Shared Services, MCSCS.

Figure 32: Indigenous Teaching Lodge, Kenora Jail



- ❖ Indigenous teaching lodge in an outdoor space at the Kenora Jail, used for Indigenous programming and spiritual activities
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d. Community Correctional Workers

Outside of institutions, the ministry contracts with individuals and First Nations communities to employ Community Correctional Workers (CCW). CCWs assist with community supervision in more remote locations, facilitating Indigenous people's return to their home communities while on probation, parole or a conditional sentence. There is no ministry policy outlining the role, responsibilities or functions of CCWs. According to one ministry report, however, the CCW's core function is to act as a local liaison in the community between the Indigenous person and the probation and parole officer located outside of the First Nations community.⁵⁰⁷ The CCW is to assist with the supervision of probationers, parolees, and conditional sentence offenders. Responsibilities can include:

- gathering and providing information for the court and parole board reports;
- assisting with the development of discharge planning while the individual is still in custody;
- liaising with program and service providers and community members regarding the discharge plan;

⁵⁰⁷ Paula Davis and Ken Mugford, "Collaborative Evaluation Process: Akwesasne First Nations Supervision Program", (Ministry of Community Safety and Correctional Services, Program Effectiveness, Statistics and Applied Research, Government of Ontario, May 2, 2011) at 14.

- meeting regularly with the case manager to conference cases, developing supervision plans, and evaluating progress;
- ensuring reporting requirements are adhered to; and
- reporting any violations for the terms of release.⁵⁰⁸

That said, the terms and conditions of the individual CCW contracts vary significantly. The Independent Review Team was advised that there is inconsistent service delivery across the province in terms of what the CCW does to support the rehabilitation of Indigenous offenders.

The CCW program has the potential to be an effective tool to assist in the transition from a correctional institution to the community. In order to fulfill that promise there needs to be consistent services and a clear definition of CCW roles and responsibilities. As part of the Ontario government's response to address the TRC's Calls to Action, Correctional Services has committed to developing revised or new contractual relationships with Indigenous community organizations to implement new and/or expand existing NILO and CCW services. This will include identifying contract and service delivery issues and barriers as well as developing an Indigenous services policy framework to support and provide direction on enhanced services and contracts. To date, the ministry has drafted new contracting templates for NILO and CCW positions but at the time of writing these templates remained in draft. It is anticipated that the updated contracting processes for these positions will be completed in early 2018.

The identification of and addressing service delivery barriers will be important steps in this process. The majority of available CCW positions in Northern Region are vacant: of the 44 available CCW positions in the Northern Region, only 18 (41%) are currently filled. One interviewee explained that some remote communities did not have the local human resources to fill a CCW position. Even in communities where a person has been hired, that individual may require additional professional preparation and training prior to engaging in program delivery or more in-depth service provision. Given this context, resources must be made available to help build capacity in communities that identify this need.

e. Tackling Systemic Discrimination and Over-Incarceration

There is no doubt that the TRC's findings and Calls to Action have breathed new life into the search to meaningfully address systemic discrimination within corrections.⁵⁰⁹ The TRC directed governments "to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade"⁵¹⁰ and "to work with Aboriginal communities to provide culturally

⁵⁰⁸ *Ibid.*

⁵⁰⁹ TRC: Calls to Action, *supra* note 479.

⁵¹⁰ *Ibid* at 30; Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Executive Summary* (2015) at 324 (hereafter, "TRC: Executive Summary").

relevant services to inmates.”⁵¹¹ In response to the TRC report, Ontario released *The Journey Together: Ontario’s Commitment to Reconciliation with Indigenous Peoples*.⁵¹² The specific commitments that Ontario Corrections has identified in response to the TRC are:

- Enhancing healing and cultural supports for Indigenous clients in custody and under community supervision; and
- Working collaboratively with Indigenous partners, organizations and communities to design and develop these services and supports.⁵¹³

In 2016, the ministry assigned an Indigenous human rights advisor to lead the development and implementation of an action plan to address correctional services’ commitments. An Elders Council comprised of four Elders was established to offer “advice and spiritual and cultural guidance and supports” and provide recommendations on how the ministry should move forward with the correctional commitments made in *The Journey Together*.⁵¹⁴ In consultation with various partners the ministry also undertook six engagement sessions across the province to discuss and share expertise on Indigenous needs, existing services and programs, barriers, best practices, and recommendations. These sessions, which included ministry employees and managers as well as Indigenous service providers and partners from across the province, resulted in numerous further recommendations. The ministry has now elaborated a two-year plan, centering on the work of Elders, NILOs, and CCWs to “enhance healing and cultural supports for Indigenous clients in custody and under community supervision.”⁵¹⁵

The TRC’s findings and Calls to Action regarding Indigenous peoples and the correctional system, however, went much further than simply embedding Indigenous services and supports. They also called for:

- A commitment to eliminating the overrepresentation of Aboriginal people in custody, and in particular Aboriginal youth in custody, over the next decade;
- Sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment and respond to the underlying causes of reoffending;
- Providing community, correctional, and parole resources to maximize the ability of people with Fetal Alcohol Spectrum Disorder to live in the community;
- The elimination of barriers to the creation of additional Aboriginal healing lodges within the federal correctional system; and

⁵¹¹ *Ibid* TRC: Calls to Action at 36; *Ibid* TRC: Executive Summary at 324.

⁵¹² *The Journey Together*, *supra* note 483.

⁵¹³ Ministry of Community Safety and Correctional Services, *The Journey Together Engagement Session: Findings, Recommendations and Next Steps* (Strategic Projects Unit, Human Rights Plan Operational support, Government of Ontario, May 2017).

⁵¹⁴ *Ibid*.

⁵¹⁵ *Ibid*.

Textbox 23: Summary of Recommendations from Elders and Engagement Sessions

As part of Ontario's response to the TRC, Correctional Services convened a series of engagement sessions with Indigenous Elders and a range of Indigenous organizations and stakeholders. This resulted in numerous recommendations.

The Elders Council recommended that Correctional Services:

1. Begin cultural teachings and services for Indigenous clients as early in their incarceration as possible;
2. Prioritize the needs and concerns of Indigenous women (e.g., "no woman in jail" as a strategic objective);
3. Integrate and embed cultural knowledge and teachings into correctional planning as well as healing services as a step in correctional plans for Indigenous clients;
4. Provide Indigenous service providers with appropriate space in institutions to do their work (e.g., Elders in living units) and access to institutions and information;
5. Perform Smudging at institutions where Indigenous clients have lost their lives (i.e., "set their spirits free"); and
6. Provide Indigenous peoples with a safe space for healing (share teachings and education).

Key recommendations from engagement sessions included:

1. Provide Elder services in all institutional and community services;
2. Accommodate Indigenous cultural and spiritual practices within ministry buildings;
3. Define and standardize NILOs' and CCWs' roles, responsibilities and reporting relationships;
4. Explore dedicated Indigenous units;
5. Enhance Indigenous cultural competency training;
6. Integrate Indigenous traditional foods into food services for all institutions at least four times per year;
7. Address service gaps for Inuit clients;
8. Standardize and provide policy direction on the application of Gladue to consider alternatives to segregation; and
9. Provide cultural services and programs for remanded Indigenous clients to provide immediate benefits and assist in motivating clients toward Indigenous programming when sentenced and/or to access it in the community upon release.⁵¹⁶

⁵¹⁶ *Ibid.*

- Increased supports for Aboriginal programming in halfway houses and parole services at the federal level.⁵¹⁷

Many of these Calls to Action are directly relevant to provincial corrections and those that target the federal government should also have broad resonance when examining the provincial system.

Ontario's response to these Calls to Action does propose several initiatives intended to divert individuals away from the criminal justice system and address systemic discrimination. The specific commitments, however, are focused on pre-trial processes: developing culturally-appropriate community supervision for those facing charges; increasing funding to restorative justice programs which reduce incarceration by providing alternatives to the traditional criminal trial and sentencing process.⁵¹⁸

Systemic discrimination, and the need to take into account decades of over-policing, over-charging, and over-incarceration, does not end once an individual is sentenced. There are many ways in which correctional decisions reflect the historical criminalization of Indigenous peoples. A robust response to the TRC's Calls to Action would critically examine all aspects of correctional practice, recognize the impacts of systemic discrimination, and adopt measures and invest in sustainable efforts to reverse these trends.

This report has highlighted a number of mechanisms that, if used more fulsomely, could dramatically improve rehabilitation and reintegration and contribute to reduced incarceration. All recommendations in this report, including for example the reinvigorated use of temporary absences and parole, must also be examined through an Indigenous-specific lens to identify particular problems and possible solutions in regard to differential outcomes for Indigenous people involved with Ontario's criminal justice system. For those who are incarcerated, temporary absences must be proactively used to facilitate access to culturally-appropriate community-based services and programs. Geography frequently poses unique challenges for community supervision of Indigenous people. Although expanding and enhancing the CCW role may address some of these issues, as reviewed above, there are significant hurdles that will need to be overcome to achieve the ultimate goal of providing robust programming and supervision needs in remote communities. Unless broader issues are tackled, standardizing roles and responsibilities may have little positive impact for Indigenous people in conflict with the law. Work must be undertaken on multiple fronts and other Indigenous specific community solutions should form part of corrections' response. Options that could be explored include: allowances for remote supervision by phone or video link to allow higher risk Indigenous offenders to return to their communities earlier; the provision of tele-counselling services and

⁵¹⁷ TRC: Calls to Action, *supra* note 479.

⁵¹⁸ The Journey Together, *supra* note 483.

programming that aligns with the ministry's increased focus on tele-health for those in custody; and program co-facilitation between PPOs and CCWs, with PPOs working remotely to expand program delivery. This difficult work cannot be successful without targeted resources and structural changes within the ministry.

Considerations of the particular 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. In the 1999 decision *R. v. Gladue*, the Supreme Court of Canada directed courts to explore alternatives to imprisonment in sentencing with special attention to the circumstances of Aboriginal offenders.⁵¹⁹ Twenty years later these principles have evolved: Gladue factors are clearly applicable beyond the sentencing stage and must be taken into account whenever an Indigenous person's liberty interests are at stake.⁵²⁰ Although Gladue Reports are the most obvious means through which the justice system takes these considerations into account (see Textbox 24), the obligation to consider systemic discrimination is broader and needs to be embedded throughout correctional policy and practice.⁵²¹ Case law, for example, has found that the impact of systemic discrimination and an Indigenous person's cultural, spiritual, programming, and service needs must be taken into account when determining whether an Indigenous person should be placed in segregation.⁵²² These considerations should similarly be taken into account when determining an Indigenous inmate's security classification, institutional placement and parole, as well as when adjudicating and providing consequences for institutional misconduct, approving or denying temporary absences, setting conditions individuals must abide by while in the community, and determining appropriate levels and modes of community supervision. Human rights obligations also require that standard policies and operating procedures within institutions – including for example the amount of time that visitors can spend with an inmate or the impact of long-distance phone charges – be examined through an Indigenous lens to ensure that any unintended discriminatory impacts are mitigated.

Despite the broadening of Gladue principles to apply whenever an Indigenous person's liberty is at stake, it is unclear when – if ever – Gladue factors are actually taken into consideration in the Ontario correctional context. The only time ministry policy refers to Gladue is in the context of

⁵¹⁹ *R v. Gladue*, *supra* note 473.

⁵²⁰ *Frontenac Ventures Corporation v. Ardoch Algonquin First Nation*, 2008 ONCA 534; *United States v. Leonard*, 2012 ONCA 622, affirmed in *R v Anderson*, 2014 SCC 41.

⁵²¹ Jillian Anne Rogin, "The Application of Gladue to Bail: Problems, Challenges, and Potential," (LLM Thesis, Osgoode Hall Law School of York University, September 29, 2014).

⁵²² See for example, *Hamm v. AG (Can.)*, 2016 ABQB 440 (decision to place Indigenous inmates in segregation was not reasonable in part because the placement assessment did not taken into account their Indigenous background and the potential rehabilitation benefits of Indigenous-focused programs).

Textbox 24: Gladue Reports

A Gladue Report provides an overview of the life circumstances of an Indigenous offender and, where appropriate, provides alternatives to imprisonment. Gladue Reports identify both the systemic and individual factors that contributed to the individual's involvement with the criminal justice system. Systemic factors identified and contextualized within a report may include: the legacy and intergenerational trauma of the Indian Residential School system; the 60s Scoop; involvement with the child-welfare system; the *Indian Act*; socio-economic barriers; and forced community and/or family relocation.

The reports are written by Indigenous people and tell the individual's life story, including their own words as quoted in the reports and those of persons who can offer insight and perspective into the individual's life circumstances. The reports are prepared in neutrality, as a friend of the court, for the judge's consideration in sentencing an Indigenous offender. The reports are not advocacy pieces. They are distinguishable from pre-sentence reports which are template-based reports that provide an opportunity to recommend community supervision and "appropriate sanctions specific to Aboriginal heritage" but are prepared by government employees of probation and parole pursuant to a judge's order.

Gladue Reports are named after the 1999 Supreme Court of Canada decision in *R. v. Gladue*, where the Court interpreted s. 718.2(e) of the *Criminal Code*, which directs sentencing judges to explore alternatives to imprisonment with special attention to the circumstances of Indigenous offenders. The curative intent of this section of the *Criminal Code* was to address the overrepresentation of Indigenous people in correctional institutions.

pre-sentence reports, which are requested by and provided to the judiciary before sentencing.⁵²³ There are no policies that specifically direct ministry staff or employees to apply Gladue principles to the myriad of correctional decisions that impact an individual's liberty interests. Although policy directs staff to pay attention to an individual's Indigenous background in the provision of culturally appropriate supports and programming,⁵²⁴ this

⁵²³ Ministry of Community Safety and Correctional Services, *Probation, Parole and Conditional Sentence Policy and Procedures Manual: Court Ordered Reports: Pre-Sentence Reports* (Government of Ontario, March 23, 2016).

⁵²⁴ See for example, Ministry of Community Safety and Correctional Services, *Probation, Parole and Conditional Sentence Policy and Procedures Manual: Parole: Supervision* (Government of Ontario: March 2011); Ministry of Community Safety and Correctional Services, *Core Programs – Programs for Indigenous Offenders* (Government of Ontario).

direction is entirely focused on appropriate service provision rather than redressing underlying systemic failings.

Particular attention should be paid to the interaction between systemic discrimination and Corrections' use of risk/needs assessments. As explained in previous sections of this report, risk/needs assessments are evidence-based tools used to get a rough measure of an individual's likelihood to reoffend when returned to the community. They also will serve to identify specific criminogenic areas (e.g., education, substance abuse, and employment) that are increasing the risk of recidivism, thereby allowing correctional staff to properly target effective programming and interventions. Although measures designed to predict future offending are better than chance, they are not perfect. Risk and needs assessment and prediction measures and tools must be culturally appropriate and not further import systemic bias into correctional decision making. Arguments have been made that risk assessment tools are culturally biased and that when applied to Indigenous inmates, they result in a higher score thereby impacting classification, access to programming, and release eligibility.⁵²⁵ The factors by which Indigenous inmates are assessed can make them *appear* higher risk than they actually are.⁵²⁶ The reason for the perceived bias is attributed to the weight afforded to static factors, such as past criminal behaviour and current offence, as well as various dynamic risk factors (e.g. lack of education, employment, and housing in remote communities) that actually reflect systemic issues rather than individualized problems.⁵²⁷ In the context of Indigenous peoples, the identified needs could be significantly higher given the ongoing legacy of colonization and the Indian Residential School system. There is, however, no policy direction on how to take Gladue principles into consideration when applying the LSI-OR to Indigenous offenders.

Ontario's correctional system uses risk/needs assessments in a variety of contexts. As summarized in section Vb of this report, Ontario uses the Level of Service Inventory – Ontario

⁵²⁵ Holly Wilson and Leticia Gutierrez, "Does One Size Fit All?: A Meta-Analysis Examining the Predictive Ability of the Level of Service Inventory (LSI) With Aboriginal Offenders," *Criminal Justice and Behaviour* 41, (2014); Kelly Hannah-Moffat, Paula Maurutto, and Sarah Turnbull, "Negotiated Risk: Actuarial Illusions and Discretion in Probation," *Canadian Journal of Law and Society* 24 (2009); Kelly Hannah-Moffat and Paula Maurutto, "Youth Risk/Need Assessment: An Overview of Issues and Practices" (Ottawa: Department of Justice Canada, 2003).

⁵²⁶ *Ibid* Wilson and Gutierrez, at 199. See also, Joane Martel, Renée Brassard and Mylène Jaccoud, "When Two Worlds Collide: Aboriginal Risk Management in Canadian Corrections," *British Journal of Criminology* 51, (2011); Alfred Allan and Deborah Dawson, "Assessment of the Risk of Reoffending by Indigenous Male Violent and Sexual Offenders," *Trends & Issues in Crime and Criminal Justice* (2004); Robert G. Hann and William G. Harman, "Predicting release risk for Aboriginal penitentiary inmates" (User Report No. 1993-12), (Ottawa: Correctional Service Canada, 1993).

⁵²⁷ *Ibid* Wilson and Gutierrez; Kelly Hannah-Moffat and Paula Maurutto, "Re-Contextualizing Pre-Sentence Reports: Risk and Race," *Punishment & Society* 12, no 3 (2010).

Revision (LSI-OR) as its standard risk/needs assessment tool. Policy requires that the LSI-OR be completed in a variety of circumstances: when an inmate is sentenced to over 30 days incarceration; when an inmate is being considered for an unescorted temporary absence, permission to work in the community, or applying for parole; and for most individuals who are subject to community supervision.⁵²⁸ Policy also requires that LSI-OR results be considered in “all decisions concerning inmate classification, transfer/placement, programming, conditional release and community supervision.”⁵²⁹ As a result, an individual’s LSI-OR score can have a broad impact at many junctures in the correctional system.

Broad risk/needs tools are generally developed and validated based on a Caucasian male inmate population, and their application to subgroups with particularized cultures, characteristics and needs is controversial.⁵³⁰ Numerous published academic studies have criticized the use of risk assessment tools for Indigenous people.⁵³¹ Although there are no published studies regarding the LSI-OR’s applicability to Indigenous offenders, researchers have found that the Level of Service Inventory – upon which the LSI-OR is based – is a less reliable risk assessment tool for the Indigenous population than it is for non-Indigenous offenders.⁵³² An unpublished ministry-commissioned evaluation found that the LSI-OR was predictive for Indigenous inmates both in the community and in custody. The internal study, however, did not have a non-Indigenous comparison group; the authors cautioned that “it is unknown whether or not the predictive validity found in the current analyses would differ from the predictive validity found with a similar group of Caucasian offenders.”⁵³³

⁵²⁸ MCSCS: Provincially Sentenced Inmates, *supra* note 278 ; MCSCS: Level of Service Inventory *supra* note 348.

⁵²⁹ Ministry of Community Safety and Correctional Services, *Institutional Service Policy and Procedures Manual: Inmate Management: Classifying* (Government of Ontario, July 2004).

⁵³⁰ David Milward, “Locking up those dangerous Indians for Good: An Examination of Canadian Dangers Offender Legislation as Applied to Aboriginal Persons,” *Alberta Law Review* 51, no 3 (2014): 620; Hannah-Moffat and Maurutto, *supra* note 527. Also see *Ewert v. Canada* 2017 CarswellNat 663, 2017 CarswellNat 664, on application of leave to Supreme Court of Canada allowed from *Canada (Commissioner of Correctional Services) v. Ewert*, [2016] F.C.J. No. 853, 2016 FCA 203 (Federal Court of Appeal), currently on appeal to the Supreme Court of Canada.

⁵³¹ Wilson and Gutierrez, *supra* note 525; Martel et al., *supra* note 527; Hannah-Moffat and Maurutto, *supra* note 527; Hannah-Moffat et al., *supra* note 525; Hannah-Moffat and Maurutto, *supra* note 525.

⁵³² *Ibid* Wilson and Gutierrez; *Ibid* Martel et al.; James Bonta, “Native Inmates: Institutional Response, Risk, and Needs,” *Canadian Journal of Criminology* 31 (1989).

⁵³³ Carrie L. Tanasichuk and J. Stephen Wormith, “The Predictive Validity of the Level of Service Inventory – Ontario Revision (LSI-OR) with Aboriginal Offenders” (Prepared for Ontario Ministry of Community Safety and Correctional Services, 2009) at 34.

In 2015/16, while 2.4% of non-Indigenous inmates were granted parole, this percentage dropped to less than 0.8% for Indigenous inmates. We found that Indigenous inmates were less likely to be granted parole than non-Indigenous inmates in every category of sentence length. In 2015 the Ontario Parole Board introduced a policy allowing for Circle Hearings to “create an environment which facilitates a culturally sensitive hearing process for Aboriginal offenders (i.e., First Nations, Inuit, and Métis), and one that will allow board members to gain a better understanding of the offender and the offender’s circumstances, plans, etc..”⁵³⁵ The

Textbox 25: The Ontario Justice System and the Consideration of the Circumstances of Indigenous People

Considerations of the particular circumstances of Indigenous people and the ongoing impacts of colonialism and systemic discrimination in the justice system must be taken into account whenever an Indigenous person’s liberty interests are at stake.⁵³⁴

Ontario data shows that judges seem to be taking Gladue factors into account at the time of sentencing. Indigenous individuals in Ontario are more likely to be given shorter custodial sentences than non-Indigenous individuals, even when controlling for seriousness (i.e. violence) of the offence. Even for those with at least one charge of violence, Indigenous individuals continue to be more likely to receive shorter sentences than non-Indigenous individuals. Indigenous probationers continue to be more likely than non-Indigenous probationers to have a number of characteristics (i.e. charges of violence and administration of justice offences) that might be considered to be indicators of problematic or ‘risky’ offenders. Despite this, sentencing judges are still releasing them into the community. Notwithstanding the seemingly more serious nature of Indigenous cases, they are more likely than non-Indigenous people to receive shorter probation terms in Ontario. Finally, it would appear that Indigenous people are more likely to get shorter conditional sentences, notwithstanding a higher likelihood of having a violent charge associated with the case as well as a history of administration of justice offences. Despite the fact that Indigenous cases seemingly have a greater likelihood of possessing case characteristics which might loosely be considered to be indicators of problematic or ‘risky’ offenders, sentencing judges are still willing to hand down conditional sentences – and shorter ones – to them.

Despite these trends, there continues to be a significant over-representation of Indigenous people in the justice system. This suggests that more attention must be paid

⁵³⁴ *Frontenac Ventures Corporation v. Ardoch Algonquin First Nation*, 2008 ONCA 534; *United States v. Leonard*, 2012 ONCA 622, affirmed in *R v Anderson*, 2014 SCC 41.

⁵³⁵ Ministry of Community Safety and Correctional Services, *Ontario Parole Board Policy and Procedures Manual: General: Aboriginal Circle Hearings* (Government of Ontario, 19 March 2015)

to the role of other actors within the justice system, including police, prosecutors, bail courts, corrections and the Ontario Parole Board.

parole board has placed considerable emphasis on the appropriate and meaningful operationalization of this policy, including by providing enhanced training to new and existing board members. These efforts are commendable and should yield positive results. Given the highly concerning statistics regarding Indigenous inmates' likelihood to be released on parole,⁵³⁶ targeted measures on the part of the parole board and the ministry are necessary. This is elaborated in the Gradual Release and Community Integration subsection of this report.

Key Findings and Recommendations

- Indigenous people account for approximately 2% of the total population in Ontario and yet in 2016 represented 13% of the custodial population. The proportion of individuals entering probation in Ontario who are Indigenous has been increasing over the past 15 years.
- The over-representation of Indigenous peoples in Ontario's correctional system is just one symptom of centuries of colonialism and discriminatory treatment and cannot be addressed in isolation.
- The current organizational structure for addressing Indigenous issues within corrections has limitations. Recommendations that the ministry create a permanent, central Indigenous unit have not been implemented.
- In the Ontario government's response to the Truth and Reconciliation's Calls to Action, Correctional Services committed to improving service delivery for Indigenous inmates and those under community supervision.
- Despite clear legal decisions that have specified that Gladue principles apply whenever an Indigenous person's liberty is at stake, it is unclear how Gladue factors are actually taken into consideration in the Ontario correctional context.
- The majority of provincial institutions do not provide regular access to Elders.
- Native Inmate Liaison Officer (NILO) positions are not consistently staffed and NILO caseload varies considerably across institutions.
- The ministry contracts with individuals and First Nations communities to employ Community Corrections Workers (CCWs) to assist with community supervision in remote areas. There is no ministry policy outlining the role, responsibilities or functions of CCWs, and the terms and conditions of the individual CCW contracts vary significantly.

⁵³⁶ In 2015/16 while 2.4% of non-Indigenous inmates were granted provincial parole, this percentage dropped to less than 0.8% for Indigenous inmates; Indigenous people were less likely to get parole than non-Indigenous inmates in every category of sentence length.

Recommendation 4.1: I recommend that within six months of this report's release, the ministry appoint an Assistant Deputy Minister responsible for a fully staffed, fully resourced Indigenous Policy and Programs Division within Correctional Services.

Recommendation 4.2: I recommend that the ministry broaden its response to the Truth and Reconciliation Commission's Calls to Action by critically examining all aspects of correctional practice, recognizing the impacts of systemic discrimination, and adopting measures to counteract these trends. Specific attention should be paid to the meaningful incorporation of Gladue factors into every decision impacting an Indigenous person's liberty.

Recommendation 4.3: I recommend that the ministry work with Indigenous communities to create and utilize Healing Lodges to enhance community supports and reduce recidivism.

Recommendation 4.4: I recommend that the ministry review its current Indigenous focused training for correctional employees; the recently developed four part Bimickaway, Indigenous Realities curriculum delivered by the Indigenous Justice Division, Ministry of the Attorney General should be used as a point of comparison.

Recommendation 4.5: I recommend that the Corrections Act for Ontario include:

- A guiding principle stating that correctional policies, programs, practices, and decisions are responsive to the special and specific social reintegration needs of Indigenous people;
- A requirement that the ministry establish an Indigenous Advisory Committee to provide advice on the provision of correctional services to Indigenous inmates;
- A requirement that the ministry take all reasonable steps to ensure the services of an Indigenous spiritual leader or Elder is available to all Indigenous inmates;
- A provision affirming that Indigenous spirituality and Indigenous spiritual leaders and Elders have the same status as other religions and other religious and spiritual leaders;
- A provision authorizing the Minister to enter into an agreement with an Indigenous community for the provision of correctional services to Indigenous people; and
- A provision allowing for the ministry to share information for the purposes of release planning with an Indigenous community where an inmate expresses an interest in being released to that community and provides his or her consent.

Recommendation 4.6: I recommend that the ministry update all policies and contracts to reflect appropriate terms and language as determined through consultations with Indigenous communities and organizations with a particular focus on developing consistent language regarding the Community Corrections Worker and Native Inmate Liaison Officer job descriptions, and roles and responsibilities.

Recommendation 4.7: I recommend that each institution provide inmates with regular access to Elders in an appropriate space and that standing orders be updated to reflect the need for designated space for ceremonies such as Smudging and Sweat Lodges.

Recommendation 4.8: I recommend that ministry policy provide for stable, multi-year funding arrangements with Indigenous individuals or Indigenous operated and staffed organizations to provide Community Corrections Workers, Native Inmate Liaison Officers, and related services.

Recommendation 4.9: I recommend that Indigenous Program Support Units be established within each correctional institution. These units must be properly resourced, including a sufficient budget to ensure continued service delivery throughout the year and at least one Native Inmate Liaison Officer, one Elder, and sufficient administrative support. Planning and operationalization of these units must occur under the leadership of the Indigenous Policy and Programs Division.

VII. HEALTH CARE SERVICE AND GOVERNANCE

Individuals who are incarcerated rely on the correctional system to provide for their safety, health, and well-being. The government, in turn, has a legal and ethical obligation to provide these individuals with adequate health care while they are in custody.

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 the standards available in the community. The system is largely reactive, geared mainly at addressing the most acute and urgent medical conditions. At its root, it is a system that views health care as merely one among a number of “service programs” offered to inmates, rather than an essential right pivotal for achieving correctional goals, and a primary and distinct government obligation. Ontario is not the only jurisdiction to face these challenges: studies and reports into correctional systems in many countries have documented a failure to provide adequate medical care in prisons,⁵³⁷ difficulties recruiting and retaining medical staff,⁵³⁸ and ethical and practical tensions between health care and security.⁵³⁹

⁵³⁷ For an overview see Colleen A. Hanrahan, “Assigning Responsibility for Mental Health Services in a Prison: A Case Study” (PhD. diss., Walden University, 2015) at Chapter 2.

⁵³⁸ *Ibid.* See for example, Paul Hayton, Alex Gatherer and Andrew Fraser, *Patient or prisoner: Does it matter which Government Ministry is responsible for the health of prisoners? A briefing paper for network meeting, Copenhagen October 2010* (Copenhagen: World Health Organization Regional Office for Europe, 2010)(noting that the recruitment of health professionals to work inside prisons as employment in a prison health service is viewed by practitioners as limiting their skills and their professional development and it could not be assumed that any health professional was prepared or willing to work inside a prison, or with prisoners); Ruth M. Crampton, “Horizons Revealed; Post-Anaesthetic Care for Prisoner Patients,” (PhD. diss., Deakin University, Melbourne Australia, 2010) (noting that professional development opportunities and staff training were limited for correctional staff working inside prisons and they had a relatively low level of knowledge and training about the delivery of mental health services in prisons).

⁵³⁹ International Centre for Prison Studies, *Prison Health and Public health: The Integration of Prison Health Services* (Report from a Conference: International Centre for Prison Studies, 2004)(hereafter, “Centre for Prison Studies”); John Service, *Under Warrant – A review of the Implementation of the Correctional Service of Canada’s ‘Mental Health Strategy’*, (Prepared for the Office of the Correctional Investigator: John Service Consulting, September 2010); Office of the Correctional Investigator, *Risky Business: An Investigation of the Treatment and Management of Chronic Self-injury Among Federally Sentenced Women – Final Report* (Government of Canada, October 10, 2013)(hereafter, “OCI: Risky Business”); Philip R. Magaletta, Alix M. McLearn and Robert D. Morgan, “Framing Evidence for Correctional Mental

At least part of the problem in Ontario can be traced to the current governance and service delivery structure for health care in correctional settings. Numerous international and trans-national bodies, as well as experts with authority in the areas of health, health care and prison health care, have outlined overarching principles for providing appropriate correctional health care. There is a broad consensus that the responsibility for health care in correctional facilities must rest with the government authority in charge of health. Many jurisdictions around the world, including four provinces in Canada – Alberta, Nova Scotia, Newfoundland and Labrador, and British Columbia – have either transitioned responsibility for health care in their correctional facilities to their respective authorities for health or have announced their intention to do so.⁵⁴⁰ For many of these jurisdictions, core concerns regarding the quality of care offered in institutions and the role of medical professionals in a correctional environment motivated the change.⁵⁴¹

Health Services” *Corrections Today* (December 2007); L. Walsh “Please Ensure Your Mask is Securely Fitted Before Assisting Others,” Presentation: Delivered at the Custody and Caring 12th Biennial Conference, (Saskatchewan: Regina, October 7, 2011).

⁵⁴⁰ For example, England, Wales, Scotland, France, Norway and New South Wales. See Paul Hayton and John Boyington, “Reform Efforts in Public Services: Prisons and Health Reforms in England and Wales” *American Journal of Public Health* 96, no. 10 (October 2006) at 1730, 1732; Paul C. Webster, “Integrating Prison Health Care into Public Health Care: The Global View” *Canadian Medical Association Journal* 185, no.7 (April 2013) at 283; British Columbia will transfer its health care governance on October 1, 2017. Government of British Columbia, “Continuity of Care is the Focus of Inmate Health-Care Change” *BC Government News, News Release* (March 6, 2017)(hereafter, “Continuity of Care”); Newfoundland is working on transferring responsibility for the provision of health services in prison to the health and community services system, with a target implementation date of March 2021. All-Party Committee on Mental Health and Addictions, *Towards Recovery: A vision for a renewed mental health and addictions system for Newfoundland and Labrador*, (Newfoundland and Labrador, March 2017). Government of Newfoundland and Labrador, *The Way Forward: Towards Recovery: The Mental Health and Addictions Action Plan for Newfoundland and Labrador*, (Government of Newfoundland and Labrador, June 2017).

⁵⁴¹ World Health Organization Regional Office for Europe and United Nations Office on Drugs and Crime, *Good Governance for Prison Health in the 21st century: A Policy Brief on the Organization of Prison Health*, (Copenhagen: World Health Organization Regional Office for Europe, 2013)(hereafter, “WHO: Office on Drugs and Crime”); Hayton and Boyington, *supra* note 540 at 1730, 1732; Webster, *supra* note at 540; Continuity of Care, *supra* note 540; The College of Family Physicians of Canada: Prison Health Program Committee, Community of Practice in Family Medicine, “Position Statement on Health Care Delivery” (July 14, 2016)(hereafter, “College of Family Physicians of Canada”).

Textbox 26: The World Health Organization’s Whole-Prison Approach and Guiding Principles for Correctional Health Care Governance

The World Health Organization (WHO) has undertaken extensive work on health care delivery and governance within correctional systems. The WHO promotes a whole-prison approach to health, which recognizes that prisons must be safe; secure; reforming and health promoting; and grounded in decency and a respect for human rights.⁵⁴² Human rights and decency underpin all aspects of prison life and are therefore foundational in the promotion of health. A whole-prison approach “address[es] prisoners’ health promotion needs as defined through health needs assessment and written into the health improvement program.”⁵⁴³ At the same time, where appropriate, staff health promotion needs should be addressed through healthy workplace initiatives.⁵⁴⁴

In order to adopt a whole-prison approach, the government needs to ensure that prisons promote health and do not only provide health care.⁵⁴⁵ Prisons must produce a policy statement on health promotion which clarifies work commitments and resource implications, as well as any training required.⁵⁴⁶ Adopting a whole-prison approach to health promotion must be seen as integral to prison planning and practice. The following measures should form the basis of prison health promotion:

- Treatment for prisoners that respects the law;
- Maintaining facilities that are clean and properly equipped;
- Providing prompt attention to prisoners’ proper concerns;
- Protecting prisoners from harm;
- Providing prisoners with a regime that makes imprisonment bearable;
- Fair and consistent treatment by staff.⁵⁴⁷

In 2013 the organization also released a policy brief to assist governments in identifying best practices for prison health governance. The brief identified four legal cornerstones of prison health:

⁵⁴² World Health Organization, Regional Office for Europe, *Health in Prisons: A WHO Guide to the Essentials in Prison Health* (Copenhagen: World Health Organization Regional Office for Europe, 2007) at 17.

⁵⁴³ *Ibid.*

⁵⁴⁴ *Ibid.*

⁵⁴⁵ *Ibid.*

⁵⁴⁶ *Ibid.*

⁵⁴⁷ *Ibid.*

- Individuals who are incarcerated have a right to health.⁵⁴⁸ Public health and health care facilities, goods and services must be available, physically and economically accessible, acceptable (i.e. respect medical ethics, confidentiality and improve health statuses) and scientifically and medically appropriate and of good quality.⁵⁴⁹
- Governments have a special duty of care to “prevent all forms of avoidable health impairment or damage to the well-being of its prisoners.”⁵⁵⁰
- Health personnel in prisons should “act in their professional capacity completely independent of prison authorities and in the closest possible alignment with public health services.”⁵⁵¹
- Health care delivery in prisons must be guided by the principles of equivalence and integration: prisoners must have access to the health care services equivalent to those available in the community, and health care provision must form an integral part of the broader health care system.

The whole-prison approach and WHO’s governing principles have guided the reform of correctional health care governance and delivery in Canada. British Columbia, for example, has explicitly referenced the WHO’s reports and the whole-prison approach in its transitional material. Based on this body of work, the province identified three key principles that guide BC Corrections’ goal of reducing recidivism by addressing immediate health needs and supporting inmates on a long term path to health:

- **Equivalency** of services compared to those available in the community;
- **Independence** of health service delivery within the public safety/security context of a correctional setting; and
- **Integration** of health services within local health authority policies and systems.

⁵⁴⁸ The Constitution Act, *supra* note 446. In the Canadian constitutional context this would be encompassed into the *Charter* right to life, liberty and security of the person.

⁵⁴⁹ World Health Organization Regional Office for Europe and United Nations Office on Drugs and Crime, *Good Governance for Prison Health in the 21st Century: A Policy Brief on the Organization of Prison Health* (Copenhagen: World Health Organization Regional Office for Europe, 2013) at 3-4.

⁵⁵⁰ *Ibid* at 8.

⁵⁵¹ *Ibid* at 9.

The Ministry of Health and Long-Term Care (MOHLTC) is responsible for the vast majority of health care in Ontario.⁵⁵² In the case of the adult correctional population, however, responsibility for health care lies with MCSCS,⁵⁵³ a ministry whose principal mandates are community safety and correctional services, not health.

This fragmentation of health care responsibility bears emphasis: inmates in Ontario receive health care services that are delivered and managed in isolation from those provided to virtually everyone else in the province, absent the dedicated resources, experience, expertise, strategic vision and mandate of the ministry responsible for health. MCSCS, as a ministry, has no particular expertise in the design, delivery, management, or oversight of either health care or public health services, or in the development of appropriate health care strategies for any patient population, let alone the complex and vulnerable correctional population.

There is no general requirement for MCSCS to align its correctional health care services with MOHLTC services and objectives, or to consult with MOHLTC when developing health care policies. Sporadic collaborations do occur. MCSCS, for example, recently reported collaborating with MOHLTC on the province's Mental Health and Addictions Strategy.⁵⁵⁴ The MOHLTC's 2016 *Strategy to Prevent Opioid Addiction and Overdose* included working with MCSCS to provide naloxone kits free of charge to at-risk inmates at the time of their release from provincial correctional institutions.⁵⁵⁵ There have also been provincial efforts to create better linkages

⁵⁵² The federal government provides the funding and/or delivery of primary and supplementary services to certain groups of Ontarians: First Nations people living on reserves; Inuit; serving members of the Canadian Forces; eligible veterans; inmates in federal penitentiaries; and some groups of refugee claimants.

⁵⁵³ Reg 778, *supra* note 16 at s. 2(1), enacted pursuant to the *Ministry of Correctional Services Act*, states that the "Superintendent of a correctional institution is responsible for the management of the institution and for the care, health, discipline, safety and custody of the inmates under the Superintendent's authority". Although s. 4(1) of Reg. 778 states that there shall be one or more health care professionals in each institution "to be responsible for the provision of health care services within the institution" and "to control and direct the medical and surgical treatment of all inmates," health care managers in correctional facilities ultimately report to and receive direction from their respective superintendents, who are not health care professionals.

⁵⁵⁴ Government of Ontario, "Mandate letter progress: Community Safety and Correctional Services," To the Honorable Kathleen Wynne (Toronto: From the Minister of MCSCS, January 11, 2016), Last Accessed: August 17, 2017 https://www.ontario.ca/page/mandate-letter-progress-community-safety-and-correctional-services?_ga=2.62663400.590723471.1499146926-1344529213.1350318744.

⁵⁵⁵ Through joint efforts with MOHLTC, training regarding the administration of naloxone nasal spray kits is underway for front-line correctional staff. Both ministries have also worked together to implement the province-wide Take Home Naloxone Program for inmates who are at risk of opioid overdose when released from custody. The MCSCS Take Home Naloxone Program

between corrections and community health service providers. For example, funding for five new psychiatric beds in two forensic programs for correctional clients was recently announced. When operational, these beds will provide short-term psychiatric acute care and stabilization plus a care plan that will be communicated to the correctional facility upon discharge from hospital. At the Toronto South Detention Centre and Vanier Centre for Women, localized efforts in collaboration with MOHLTC resulted in the establishment of the Forensic Early Intervention Service (FEIS), which provides some inmates with enhanced mental health screening, triage and assessment from a community health care service provider.⁵⁵⁶ At these institutions, individuals who are identified as having possible mental health needs will be assessed by the FEIS team and, where warranted, treatment recommendations will be submitted to the health care staff of the correctional facility. The FEIS program does not provide direct mental health treatment; MCSCS staff in the facilities have the final say over the course of medical treatment.

The Government of Ontario has recognized the need for change in the way health care is provided in its correctional facilities. On May 4, 2017, following the release of my earlier report, *Segregation in Ontario*, the government pledged to “[w]ork to transform healthcare services in correctional facilities, including exploring options to shift the oversight and provision of healthcare services from the Ministry of Community Safety and Correctional Services to the

is a component of the publicly funded MOHLTC Ontario Naloxone Program. Since October 31, 2016, more than 1,407 naloxone kits have been distributed to inmates through the MCSCS Take Home Naloxone Program. Ministry of Health and Long-Term Care, “Strategy to Prevent Opioid Addiction and Overdose,” *Newsroom* (Government of Ontario, October 12, 2016); Ministry of Community Safety and Correctional Services, “Naloxone First Responders” (Information Note, Government of Ontario, May 10, 2017).

⁵⁵⁶ The MOHLTC-funded Forensic Early Intervention Service (FEIS), operating at Toronto South Detention Centre and Vanier, provides comprehensive mental health services to select remand inmates. Via a Memorandum of Understanding between MCSCS and the Centre for Addictions and Mental Health (CAMH), FEIS clinicians, who are employed by CAMH, triage all inmates who screen positive on the BJMHS. Recommendations are then made regarding whether the individual meets the FEIS program criteria. If the FEIS criteria are met, the individual will remain a FEIS client and benefit from immediate access to an interdisciplinary CAMH team that includes a dedicated psychiatrist, social workers, an advanced practice clinical leader, occupational therapists, registered nurses and administrative support. Generally an inmate is considered eligible for FEIS if he/she has been found Unfit to Stand Trial; if they are experiencing a condition or illness such that their fitness to stand trial may be in question; is at risk of becoming Unfit to Stand Trial; is undergoing or requires an assessment for criminal responsibility in relation to the NCRMD; and/or has been ordered to a forensic hospital under the *Criminal Code of Canada* and is awaiting admission to hospital. Centre for Addiction and Mental Health, “Forensic Early Intervention Service (FEIS),” Last Accessed: August 3, 2017 https://www.camh.ca/en/hospital/care_program_and_services/law_and_mental_health_program/Pages/Forensic-Early-Intervention-Service-FEIS.aspx.

Ministry of Health and Long-Term Care.”⁵⁵⁷ This, the government stated, would include the provision of health care for those with complex needs and continuity of care for those entering and leaving the correctional system.⁵⁵⁸

I understand that discussions between MCSCS and MOHLTC to re-vision correctional health care have begun. This is a welcome and encouraging development.

Textbox 27: Uncoordinated Mandates for Transformation

The Ministry of Community Safety and Correctional Services (MCSCS) and the Ministry of Health and Long-Term Care (MOHLTC) have both been tasked with long-term transformational mandates. For the most part, however, these initiatives, which should be closely linked given the state of health of the correctional population, appear to have operated in silos.

The MCSCS 2014 and 2016 Mandate Letters from the Premier tasked the Minister of Community Safety and Correctional Services with longer-term transformation of the correctional system; health care, however, was not specifically mentioned in this transformation.⁵⁵⁹ The 2014 Mandate Letter did direct the Minister to coordinate and work with “community partners, stakeholders and other ministers” to “consider mental health and substance abuse issues when delivering frontline services – such as emergency response, police services and correctional services.”⁵⁶⁰ The Minister’s 2016 response letter, which details progress achieved in the 2014-2015 period, noted that MCSCS was collaborating with MOHLTC on mental health issues in both policing and corrections.⁵⁶¹ The focus on mental health was not included in the most recent MCSCS Mandate Letter.

⁵⁵⁷ Ministry of Community Safety and Correctional Services, “Ontario Taking Action to Reform Correctional System – Province Investing in New Jails in Thunder Bay and Ottawa, Modernizing Legislation,” *Newsroom* (Government of Ontario, May 4, 2017).

⁵⁵⁸ Ministry of Community Safety and Correctional Reform, “Backgrounder: Corrections Reform,” *Newsroom* (Government of Ontario, May 4, 2017).

⁵⁵⁹ Government of Ontario, “2014 Mandate letter: Community Safety and Correctional Services,” To the Honorable Yasir Naqvi, (Toronto: From the Premier of Ontario, September 25, 2014); Government of Ontario, “September 2016 Mandate Letter: Community Safety and Correctional Services,” To the Honorable David Oraziatti (Toronto: From the Premier of Ontario, September 23, 2016).

⁵⁶⁰ Government of Ontario, “2014 Mandate letter: Community Safety and Correctional Services,” To the Honorable Yasir Naqvi, (Toronto: From the Premier of Ontario, September 25, 2014).

⁵⁶¹ Government of Ontario, “Mandate Letter Progress: Community Safety and Correctional Services,” To the Honorable Kathleen Wynne, (Toronto: From the Minister of MCSCS, January 11, 2016).

At the same time, MOHLTC has been pushing forward a sweeping strategy for transforming the province's health care system. Most recently, in 2015, MOHLTC noted significant gaps in care that need to be better addressed in the province, acknowledging that some Ontarians have not always been well-served by the health care system, including Indigenous peoples and those with mental health and addictions challenges.⁵⁶² It stated that health services across the province "are fragmented in the way they are planned and delivered"⁵⁶³ and identified a need for a patient-centred system "that moves patients more seamlessly from one care setting to another" and ensures "timely access to the most appropriate care in the most appropriate place."⁵⁶⁴ It sought to "truly integrate the health care system so that it provides the care patients need no matter where they live."⁵⁶⁵

All these health care barriers apply with force to those in provincial custody, and the broader vision for a better system should encompass this population. There is no evidence, however, of efforts to align these two parallel transformation efforts, and health care for incarcerated individuals is not within the scope of MOHLTC's systemic work. Despite formal submissions from stakeholders urging MOHLTC to consider correctional facilities in its transformation strategy⁵⁶⁶ and repeated calls for MCSCS to relinquish health care governance, the incarcerated population has, until now, been largely excluded from broader considerations of health care in Ontario.

⁵⁶² Ministry of Health and Long-Term Care, *Patients First: A Proposal To Strengthen Patient-Centred Health Care in Ontario – Discussion Paper* (Government of Ontario, December 17, 2015) at 4, 10-11 (hereafter, "MOHLTC: Patients First").

⁵⁶³ *Ibid* at 4.

⁵⁶⁴ Ministry of Health and Long-Term Care, *Ontario's Action Plan for Health Care: Better Patient Care Through Better Value from our Health Care Dollars – Let's Make Healthy Change Happen* (Government of Ontario, 2012) at 10.

⁵⁶⁵ MOHLTC: Patients First, *supra* note 562 at 2.

⁵⁶⁶ John Howard Society of Ontario, *Submission to the MOHLTC – Feedback on Patients First: A Proposal to Strengthen Patient-Centred Health Care in Ontario* (Centre of Research, Policy and Program Development, February 25, 2016); Provincial Human Services and Justice Coordinating Committee, Letter to The Honourable Eric Hoskins, "Re: Provincial Human Services and Justice Coordinating Committee's Response to the Proposal to Strengthen Patient-Centred Health Care in Ontario" (February 29, 2016), Last Accessed: August 18, 2017 <http://www.hsjcc.on.ca/our-work/hsjcc-document-library/submissions/433-january-29-2016-patients-first-proposal-response/file>.

a. The Health of the Correctional Population

It is widely recognized that the correctional population, as a group, is unhealthy.⁵⁶⁷ Although MCSCS tracks a few key health indicators related to specific diseases and treatment needs,⁵⁶⁸ the ministry does not broadly collect data on the health status⁵⁶⁹ of the incarcerated population in Ontario. The most comprehensive picture of the health of this population comes from external academic studies that rely on limited data⁵⁷⁰ provided by the ministry. The research has shown that the health of those who have been incarcerated in Ontario tends to be poorer than that of the general population.⁵⁷¹ Key findings include:

- Those who have been incarcerated also are at a higher likelihood of early death due to both preventable and treatable causes (e.g., overdose, heart disease, HIV and suicide).⁵⁷²
- When compared to the non-custodial population, those who have been incarcerated have a higher rate of death for almost all diseases.⁵⁷³
- For those who have been incarcerated, the risk of death is highest in the period immediately following their release.⁵⁷⁴
- After controlling for age, people who have been incarcerated are four times more likely to die than the general population; they are also twice as likely to die while in custody.⁵⁷⁵
- Incarceration has also been associated with a shortened life expectancy – 4.2 years less for men and 10.6 years less for women compared to the general population.⁵⁷⁶

⁵⁶⁷ See for example, World Health Organization: Regional Office for Europe, *Prisons and Health*, Stefan Enggist et al. (Eds), (Copenhagen: World Health Organization Regional Office for Europe, 2014) (hereafter, “WHO: Prisons and Health”); College of Family Physicians of Canada, *supra* note 541 ; Fiona Kouyoumdjian, Andrée Schuler, Flora I. Matheson and Stephen W. Hwang, “Health Status of Prisoners in Canada,” *Canadian Family Physician*, 62 (March 2016).

⁵⁶⁸ The ministry’s corporate health care unit tracks, for example, number of persons on antiretroviral therapy and number of cases of specific infectious diseases such as chlamydia.

⁵⁶⁹ Standard measures that could be collected would include mortality after release, chronic diseases, injury, reproductive health, and health care access and quality.

⁵⁷⁰ The available data tends to be cross-sectional and therefore may be associated with the oversampling of individuals who are in custody for longer periods. It is rarely representative and tends to be focused on those in federal custody or on provincial population subgroups. Kouyoumdjian et al., “Health Status,” *supra* note 567 at 219.

⁵⁷¹ *Ibid.*

⁵⁷² Fiona G. Kouyoumdjian, Lori Kiefer, Wendy Wobeser, Alejandro Gonzalez and Stephen W. Hwang, “Mortality Over 12 Years of Follow-up in People Admitted to Provincial Custody in Ontario: A Retrospective Cohort Study,” *CMAJ Open* 4, no 2 (April 27, 2016).

⁵⁷³ *Ibid* at E155.

⁵⁷⁴ *Ibid* at E157.

⁵⁷⁵ *Ibid.*

⁵⁷⁶ *Ibid.*

- The association between mortality and incarceration is greatest for women and younger persons.⁵⁷⁷
- Based on a survey of a sample of the Ontario Correctional population, 41.6% suffer from depression, 20.8% have bipolar disorder, mania, manic depression, or dysthymia, 4.8% report being diagnosed with schizophrenia and 18.4% have hepatitis C.⁵⁷⁸

These health indicators reflect the high levels of marginalization and victimization in this population – factors that also play a role in the overall quality of health. As compared to the general population inmates are more likely to have experienced poor social determinants of health (see Textbox 28). They are more likely to have been victims of personal trauma, including childhood trauma,⁵⁷⁹ to live in poverty and have lower rates of formal education.⁵⁸⁰ They have also often faced multiple and complex barriers to accessing primary health care services prior to admission.⁵⁸¹ It is not surprising that these individuals often have complex health needs, with a higher prevalence of physical and mental illnesses when compared with the non-custodial population.⁵⁸²

Once in custody, the correctional facilities themselves can pose further health risks.⁵⁸³ Unhealthy living conditions such as overcrowding, a lack of fresh air and inadequate means of maintaining personal hygiene can exacerbate, promote the transmission of, and cause illness.⁵⁸⁴ The lack of harm-reduction measures in correctional institutions can also lead to high-

⁵⁷⁷ Fiona G. Kouyoumdjian, Evgeny M. Andreev, Rohan Borschmann, Stuart A. Kinner and Andres McConnon, “Do People Who Experience Incarceration Age More Quickly? Exploratory Analyses Using Retrospective Cohort Data on Mortality from Ontario, Canada,” *PLOS One* 12, no. 4 (April 14, 2017).

⁵⁷⁸ Samantha Green, Jessica Foran and Fiona G. Kouyoumdjian, “Access to Primary Care in Adults in a Provincial Correctional Facility in Ontario,” *BMC Research Notes* 9 (2016) at 3.

⁵⁷⁹ Fiona Kouyoumdjian et al., “Health Status,” *supra* note 567.

⁵⁸⁰ *Ibid* at 216-217.

⁵⁸¹ Green et al., *supra* note 578.

⁵⁸² College of Family Physicians of Canada, *supra* note 541. See for example, WHO: Prisons and Health, *supra* note 567; Fiona Kouyoumdjian et al., “Health Status,” *supra* note 567.

⁵⁸³ John Howard Society of Ontario, *Fractured Care: Public Health Opportunities in Ontario’s Correctional Institutions* (John Howard Society of Ontario, 2016) at 10 (hereafter, “JHSO: Fractured Care”); College of Family Physicians of Canada, *supra* note 541.

⁵⁸⁴ Global Ministerial Conference on Healthy Lifestyles and Noncommunicable Disease Control, *Moscow Declaration*, (Moscow, April 28/29, 2011). International studies also find that incarceration is a risk factor for increased rates of mortality, in particular of suicide. See for example, Stuart A. Kinner, Simon Forsyth and Gail Williams, “Systematic Review of Record Linkage Studies of Mortality in Ex-Prisoners: Why (Good) Methods Matter,” *Addiction Review* 108 (2012); Fiona G. Kouyoumdjian et al., “Mortality Over 12 Years of Follow-up,” *supra* note 572 at E155.

Textbox 28: The Social Determinants of Health

Social determinants of health are “conditions in which people are born, grow, work, live, and age.”⁵⁸⁵ Personal health is determined by an individual’s behaviour as well as their social, physical and economic environment.⁵⁸⁶ A variety of factors – age, education, income, race, gender and social norms – all contribute to and shape both behaviour and the surrounding environment. These determinants do not act independently or in isolation of one another, but act together to shape the conditions of a person’s life and subsequently, their health.⁵⁸⁷ The social determinants of health are habitually responsible for health inequalities and illustrate the often inequitable differences in health statuses.⁵⁸⁸

Social determinants of health are particularly relevant when considering the health profile of the incarcerated population and the conditions in which they live. Many individuals who come into conflict with the law have themselves been victims of personal trauma⁵⁸⁹ and are found to be disproportionately poor, disenfranchised and chronically ill.⁵⁹⁰ There is also an over representation of Indigenous inmates⁵⁹¹ and of women who have experienced physical and sexual abuse.⁵⁹² It is also well documented that the poor conditions of confinement often exacerbate inmates’ pre-existing mental and physical health conditions.⁵⁹³

⁵⁸⁵ World Health Organization, “The Determinants of Health,” Last Accessed: August 2, 2017 <http://www.who.int/hia/evidence/doh/en/> (hereafter, WHO: Determinants of Health”).

⁵⁸⁶ World Health Organization, “The Social Determinants of Health: Introduction,” Last Accessed: August 2, 2017. http://www.who.int/social_determinants/sdh_definition/en/(hereafter, “WHO: Introduction”).

⁵⁸⁷ WHO: Determinants of Health, *supra* note 585.

⁵⁸⁸ WHO: Introduction, *supra* note 586.

⁵⁸⁹ Fiona Kouyoumdjian et al., “Health Status,” *supra* note 567.

⁵⁹⁰ Stuart A. Kinner and Emily A. Wang, “The Case for Improving the Health for Ex-Prisoners,” *American Journal of Public Health* 104, no. 8 (2014).

⁵⁹¹ Sapers, *supra* note 107 at 3.

⁵⁹² *Ibid* at 64.

⁵⁹³ Alyna Reesor and Francine Poulin, *Step-down Unit Ottawa-Carleton Detention Centre*(Ministry of Community Safety and Correctional Services, Government of Ontario, 2016); *R. v. Gladue*, *supra* note 473.

risk health behaviours such as unprotected sex and needle sharing.⁵⁹⁴ The correctional environment can be unhealthy in other, more intangible ways as well. There are limited opportunities to stimulate and challenge the mind and body, and the isolation from social supports, including family, friends and community all potentially contribute to a deterioration of physical, mental and social health.⁵⁹⁵ Providing health care to this segment of the population is complex. The health needs are layered, chronic and often poorly addressed even in the community setting. The custodial setting poses further logistical and ethical challenges. Many jurisdictions have noted that there is a tension between providing appropriate medical care and security needs.⁵⁹⁶ Securitized space, confidentiality concerns, secure transportation logistics and any number of other considerations unique to the carceral system can and do represent barriers to appropriate care.

The transient nature of the population also raises issues. The fact that most will only be incarcerated for short periods of time – a matter of days or weeks – heightens the challenge of providing appropriate care both upon entry to an institution as well as during the transition back into the community. At the same time, institutional health care planning cannot rely on the presumption that an individual will be returning to community care within a short timeframe. While most will stay in custody for days or weeks, others remain incarcerated for months, even years. Individuals can move fluidly between correctional facilities and the general community, with many cycling in and out of the system repeatedly.⁵⁹⁷ Integration between community and institutional health services is critical.⁵⁹⁸

It is clear that the acute and primary health care needs of this population are significant. Addressing immediate medical needs, however, is just a starting point. Health and well-being in

⁵⁹⁴ Needle sharing, tattooing and piercing promote the transmission of blood-borne infections, such as HIV and Hepatitis C, and sexual activity. See World Health Organization, “Fact Sheet: HIV/AIDS,” Last Updated July 2017 <http://www.who.int/mediacentre/factsheets/fs360/en/>; S. Ha et al., “Hepatitis C in Canada and the Importance of Risk-Based Screening,” *Canada Communicable Disease Report* 42 (2016).

⁵⁹⁵ College of Family Physicians of Canada, *supra* note 541. ; World Health Organization Europe, “Trencin Statement on Prisons and Mental Health,” (Slovakia, October 18, 2007); JHSO: Fractured Care, *supra* note 583.

⁵⁹⁶ WHO: Office on Drugs and Crime, *supra* note 541; Centre for Prison Studies, *supra* note 539; Service, *supra* note 539; OCI: Risky Business, *supra* note 539.

⁵⁹⁷ Fiona G. Kouyoumdjian et al., “Mortality Over 12 Years of Follow-up” *supra* note 572 at E155

⁵⁹⁸ As summarized by Colleen A. Hanrahan, “Integration of services between systems — that is, the prison health care system with the larger health care system and community-based mental health services — is fundamental when it comes to achieving continuity of care for patient-prisoners. In Canada, there is a trend toward integration of health services including mental health services from a broader health system perspective.” Hanrahan, *supra* note 537 at Chapter 2.

the correctional context must include not only the care and treatment of physical and mental illness, but also health promotion, health protection and health resilience. This holistic approach requires an environment that provides more than just adequate conditions of confinement and extends to broader considerations of nutrition, hygiene, physical exercise and family and community relationships among others.⁵⁹⁹ Given the broader challenges facing many in this population – housing, income insecurity, chronic addiction and mental and physical illnesses – any new model of health care service delivery must encompass a broad range of services, supports and interventions. Linkages to associated services that will address the broader social determinants of health are key elements of appropriate health care for this population. A quality, evidence-based, patient-centred, and well-resourced “continuum of care” framework is critical to the sustained health and well-being of this often transient population.⁶⁰⁰

b. Changing Correctional Health Care in Ontario: Next Steps

Reforming health services for this population and transitioning responsibilities to the Ministry of Health and Long-Term Care is a complex, multi-step process. Further discussion on this should be focused on how this change can be brought about – not if it should happen. Ontario must now clearly articulate a high level commitment to this transfer including a definition of what is to be transferred, invest the necessary time and resources into system design, and develop a phased implementation plan in consultation with stakeholders. Numerous issues must be considered in determining the most appropriate model of governance and service delivery. At a minimum, there must be a consideration of:

- The appropriate definition of health care services, including the “totality” of services beyond acute and primary care that will be covered by the new model;

⁵⁹⁹ This must include, for example, adequate nutrition, hygiene, cleanliness, sanitation, temperature, lighting, ventilation, physical exercise and sports, work skills and training, maintenance of family and community relationships, spiritual and religious care. Alex Gatherer, Stefan Enggist, Lars Møller, “The Essentials About Prisons and Health,” in Enggist et al (Eds), *Prisons and Health* (Copenhagen: World Health Organization Regional Office for Europe, 2014) at 3-4; Mandela Rules, *supra* note 61 at rule 35.

⁶⁰⁰ As summarized by Colleen Hanrahan, “In Livingston’s (2009) review of minimum standards and best practices of mental health and substance use services in correctional facilities, he identified the need to provide services along a continuum of services. ... Suter, Oelke, Adair, and Armitage (2009) reviewed the literature regarding integration of health services and identified ten principles as components for success. The first principle identified was to promote continuity of care so services are delivered along a continuum. Further, standards of practice were adopted by both the Canadian Psychiatric Association and the College of Family Physicians of Canada for the integration of primary care with specialist care in the field of mental health (Kates et al., 2010). An identified goal was to develop a continuum of care which could facilitate continuity of care for the benefit of patients.” Hanrahan, *supra* note 537 at Chapter 2.

- The volume of service provision required in the correctional context;
- Horizontal linkages between health services and the ministries with responsibilities that relate to the broader social determinants of health such as housing, education and income security;
- Actual and projected cost of services, including a cost analysis of current service delivery and projected cost – including systems-wide and long-term savings – under alternate governance and service delivery models;
- The need to introduce comprehensive and Electronic Medical Records in the correctional setting;
- Appropriate governance, standard-setting, oversight and management structures;
- Dispute resolution mechanisms between lead ministries; and
- Labour relations implications.

There is a need to establish an appropriate framework to examine and address these issues. An *ad-hoc* working group is insufficient to tackle the complexity of this task. A more formal structure, taking a multi-level and inter-ministerial approach, is necessary, including leadership and clear direction from the highest levels in the relevant ministries. There must be defined governance roles at the Deputy Minister, Assistant Deputy Minister and director levels and an overarching technical advisory committee to provide external subject-matter expertise. Service providers with expertise and experience in providing health care in a correctional setting must be included in discussions regarding front-line service delivery and clinical management structures. A wider range of ministries should also be engaged, including Indigenous Relations and Reconciliation, the Attorney General, Community and Social Services, Children and Youth Services, Housing, Education, Labour, and Advanced Education and Skills Development. Not all of these ministries need to have a central role guiding the process. All, however, should have input and be brought into the broader discussion about how to meet the health and social needs of the correctional population, both within institutions as well as upon transition back to the community.

Once a framework has been established there are some clear ‘first steps’ that need to be tackled to ground the work to come. A census of MCSCS’ current health care infrastructure and service provision within institutions, including their cost and service volume, needs to be conducted. The ministry’s existing linkages to community health providers and services also need to be mapped. Other jurisdictions’ experience with the transfer of correctional health care, both nationally and internationally, should also form part of the background research. Once this foundational work has been completed, attention should turn to focus on the specific models of governance and service delivery that might be available in Ontario. In considering the various options, a number of factors, including infrastructure, staffing and the ideal therapeutic model, must be kept in mind.

Textbox 29: International Experiences with Correctional Health Care Reform

Over the past decades numerous countries have transitioned their correctional health care provision and governance from their correctional to health authorities. A review of the transference of responsibility in four jurisdictions – England and Wales, France, Norway and New South Wales (Australia) – shows a number of commonalities.⁶⁰¹ Examining the issues and barriers overcome during the transitions in these jurisdictions may provide lessons and inspiration to Ontario as the province embarks on its own journey.

Every jurisdiction has found that transitioning correctional health care is a complex endeavour. Common issues that were identified included:

- Tensions between health and prison cultures: corrections employees can see the arrival of external medical staff, who are outside the chain of command and operate within a distinct culture, as an intrusion. Existing correctional health professionals may feel threatened. And public health authorities may resist taking on more responsibility for a complex patient base.
- Timescale – lengthy, gradual or staged transitions can assist with this complex undertaking.
- Hospital care – different countries established various solutions to the question of how best to deal with the logistical and practical problems of needing to provide security for inmates who need care in hospitals.
- Resources – in several jurisdictions it became clear that correctional health had been dramatically under-funded and more resources were necessary to provide adequate care.
- Personnel – it was necessary to examine the professional affiliations, training and bargaining representation of health care staff working within correctional settings to ensure that the goals of independence and integration were achieved.
- Ethical issues – health care professionals working in corrections encounter difficult ethical issues, including questions regarding medical assessments requested for judicial or correctional purposes and patient privacy. These issues need to be fully and carefully explored.
- Decentralization – transferring health services may involve decentralization from a national to local service, and different jurisdictions have implemented solutions to try to maintain consistent service provision in different institutions.

All of these issues are likely to arise in the Ontario context as well. They are shared areas of concern that arise across a number of jurisdictions – and other governments have navigated successful resolutions through the transition process.

⁶⁰¹ Centre for Prison Studies, *supra* note 539.

Evaluations of the transference of responsibility in the four jurisdictions also identified some common benefits. These include:

- Policy gains – correctional health “tends to take a reactive approach” and the transfer to public health “can lead to more analysis of the health needs of the whole prison population and the introduction of measures to meet the identified needs.” Broader health strategies also have an increased awareness and incorporation of the health needs of inmates.
- Better health care – evaluations found that the standard of care provided to inmates improved. Patients may be easier to track, community health resources easier to access, and a broader approach to health (including education on public health issues such as hygiene, and infection protection) can be more easily facilitated.
- Improvements for staff – recruiting medical staff to work in a correctional context can be difficult. Integrating correctional health care with the wider health system can assist, as staff may have access to joint trainings and “see the advantages of more career possibilities, the opportunity to carry out research and the opportunity to teach specialists and generalists about prison health.” Integration can also lead to the development of relevant sub-specialities in medical training programs.

Subject matter experts that spoke with the Independent Review Team identified three health care governance structures that could assume responsibility for directing correctional health care in Ontario:

1. Delegating governance of health care provision in individual correctional centres to Local Health Integration Networks (LHINs);
2. Centralizing governance within the MOHLTC; and
3. The creation of a provincial agency to guide correctional health care services across the province, in close coordination with the MOHLTC.

Local Health Integration Networks

Over the past decade, the MOHLTC has mapped out an approach to provincial health care that devolves much of health system planning, management and funding to numerous Local Health Integration Networks (LHINs).⁶⁰² The LHINs are not-for-profit Crown agencies that manage local health services in each of their designated regions of the province. For the most part the LHINs neither directly govern nor provide Ontario’s health services – that primarily is the role of the “health service providers” designated under the *Local Health System Integration Act* including

⁶⁰² Office of the Auditor General of Ontario, *2015 Annual Report*, (Government of Ontario, Queen’s Printer for Ontario, Fall 2015) at 318 (hereafter: “Auditor General: 2015 Annual Report”).

hospitals, long-term care homes, community mental health and addiction agencies, and community health centres.⁶⁰³ Rather, as originally created, the LHINs were given the authority to plan, fund and integrate health systems at the local level, under the responsibility of the MOHLTC.⁶⁰⁴

As of June 2017, the LHINs also became directly responsible for delivering and coordinating home and community care, which includes services such as home care, supported living services, in-school health services, and community clinics.⁶⁰⁵ They also gained the authority to establish “service accountability agreements” with funded health service providers and, once the legislative provisions are fully in force, will have the power to issue policy directives, investigate and supervise some health service providers.⁶⁰⁶ As currently structured, therefore, LHINs are both able to source local service delivery through a range of other health care providers, as well as directly provide service delivery.

Centralized Ministry of Health and Long-Term Care Governance

Despite MOHLTC’s focus on local health service coordination, there are a number of health care programs and services that remain centrally managed and planned by the ministry.⁶⁰⁷ The Provincial Programs Branch, for example, “develops and manages agreements with health service providers and organizations for the provision of selected retained provincial health care programs; leads the transition of programs to LHINs and other funding entities; and supports accountability requirements for both retained and transitioned programs.”⁶⁰⁸ This branch has

⁶⁰³ *Local Health System Integration Act*, 2006, SO 2006, c 4, s. 2(2) (hereafter, “LHSI Act”)

⁶⁰⁴ Auditor General: 2015 Annual Report, *supra* note 602 at 307, 309-310; *ibid* LHSI Act at s. 5. In carrying out their planning and coordination role, LHINs: define local health system needs; determine and prioritize existing gaps; allocate and transfer funds as they choose among and between health service providers and health sectors; and integrate local health systems, primarily through funding, facilitation and negotiation, and specific direction.

⁶⁰⁵ Home and Community Care, Central Local Health Integration Network, “Getting Care,” (Government of Ontario: Local Health Integration Network), Last Accessed: August 3, 2017 <http://healthcareathome.ca/central/en/Getting-care>.

⁶⁰⁶ LHSI Act, *supra* note 603 at ss. 20(1), 20.2, 21, 21.1, 21.2.

⁶⁰⁷ Auditor General: 2015 Annual Report, *supra* note 602 at 311.

⁶⁰⁸ Government of Ontario “Government of Ontario Employee and Organization Directory: Health and Long Term Care: Negotiations and Accountability Management Division: Provincial Programs Branch,” INFO-GO, Last Accessed: August 3, 2017. <http://www.infogo.gov.on.ca/infogo/home.html#orgProfile/4954/en>; Ministry of Health and Long-Term Care, “Provincial Programs Branch Handout” (Provincial Programs Branch. Government of Ontario, July 2017) at 1.

Textbox 30: LHIN Provision of Health Care to Inmates

A recent study in the *Journal of Correctional Health Care* confirmed that localized collaborative service provision amongst justice sector and health partners can result in individuals receiving improved quality of care while achieving cost savings.⁶⁰⁹ The study evaluated the combined efforts of the Toronto Police Services' (TPS) Court Services Division and Toronto Central LHIN to improve the continuity of care for diabetic individuals while at court.

TPS Court Services is responsible for transporting inmates from Toronto detention centres to provincial court. Individuals who experience a diabetic event while at the courthouse are typically transported to a local emergency department for care under police escort. In an attempt to improve the management and preventative care for diabetic individuals, the Toronto Central LHIN provided a community nurse to the College Park courthouse. Benefits from this new collaborative process included improved timeliness of health care services for diabetic individuals under police escort at court, the complete elimination of emergency department visits as a result of diabetic health complications, and significant cost savings.⁶¹⁰

The success of this partnership has been lauded by both police and health care authorities. As described by Susan Fitzpatrick, the Chief Executive of the Toronto Central LHIN:

This is a wonderful example of how effective a collaborative approach can be to finding solutions that improve care while creating savings for our health system. I know there are many other opportunities for us to engage with organizations across Toronto to do similar work.⁶¹¹

⁶⁰⁹ Tim Pauley, Joy Matienzo, Josie Barbita and Joseph Ventura, "Cost of an Integrated Care Program to Reduce ED Visits During Diabetic Prisoner Court Hearings," *Journal of Correctional Health Care* 23, no. 3 (July 2017).

⁶¹⁰ *Ibid.*

⁶¹¹ Toronto Central LHIN, "New Study Demonstrates Better Health Care for Prisoners, Reduced Costs." Last Updated: July 19, 2017

<http://www.torontocentrallhin.on.ca/newsandevents/pressreleases/Better%20Health%20Care.aspx>.

responsibility for various agencies, programs and initiatives that currently relate to four main program areas:

- Cancer-related programs including liaison with the board-governed agency, Cancer Care Ontario, which includes the Ontario Renal Network;
- Priority and acute hospital programs such as critical care services, sexual assault and domestic violence treatment centres, and maternal and child health programs;
- AIDS and Hepatitis C programs; and
- Blood/organ and tissue-related programs including liaison with the board-governed agency, Trillium Gift of Life Network; also, Canadian Blood Services and other specialized blood-related programs.

Some health programs under the Provincial Programs Branch already provide services in Ontario's correctional facilities. The AIDS & Hepatitis C programs unit, for example, funds multidisciplinary Hepatitis C teams, and a few such teams conduct outreach and deliver prevention and education services in some of the province's correctional facilities. In two urban centres in the province, designated community organizations provide dedicated support and case management for individuals with HIV/AIDS in correctional facilities.⁶¹² The Ontario Naloxone Program (ONP), established by MOHLTC in 2013, currently delivers naloxone free of charge through three programs, including the MCSCS Take Home Naloxone Program. The ONP works collaboratively with MCSCS on a naloxone distribution program in provincial correctional facilities, providing at-risk inmates with naloxone kits upon their release.⁶¹³

The provincial forensic mental health program is another example of a health care program that is managed centrally by MOHLTC. The forensic system is a uniquely criminal justice-focused health care program. At the order of the courts, the forensic system will provide forensic assessments and administer treatment to individuals who have been charged with a criminal offence. The goal of the assessments is usually to determine an individual's fitness to stand trial or whether they may be not criminally responsible due to mental illness;⁶¹⁴ treatment orders, which can only be carried out with the hospital's consent for admission, are carried out to make

⁶¹² The HIV/AIDS Regional Services operates in Kingston and the Prisoner's HIV/AIDS Support Action Network operates in Toronto.

⁶¹³ The three naloxone programs include the Ontario Naloxone Program, the MCSCS Take Home Naloxone Program and the Ontario Naloxone Program for Pharmacies.

⁶¹⁴ Centre for Addiction and Mental Health, "The Forensic Mental Health System in Ontario: An Information Guide," Last Accessed: August 3, 2017 http://www.camh.ca/en/hospital/health_information/the_forensic_mental_health_system_in_ontario/Pages/the_forensic_mental_health_system_in_ontario.aspx (hereafter: "CAMH: Forensic Mental Health"). Other special types of forensic assessment include pre-sentence assessments and dangerous or long-term offender assessments.

a person mentally fit for their trial.⁶¹⁵ If a person is found unfit to stand trial or not criminally responsible he or she may be detained in a hospital (under the authority of the court or the Ontario Review Board) with a forensic program to receive mental health services in a secure setting.⁶¹⁶ The forensic program also offers a broader “continuum of mental health services” including “integrated mental health programs and community services and supports” for individuals that are under supervision in the community.⁶¹⁷

The hospitals that house forensic units are specially designated and are not present in every LHIN region. Formerly part of the Provincial Programs Branch, the forensic mental health program is now housed within MOHLTC’s Mental Health and Addictions Branch.

Where programs are provincially managed, but service delivery occurs through a health service provider named as such under the *Local Health System Integration Act, 2006*, funding for the program will be determined by the ministry, but may nevertheless be funneled through the existing LHIN structure. Any such funding pathway, however, serves merely as a conduit. Neither the LHIN nor the receiving health service provider has the authority to redirect the funding amount as specifically designated by MOHLTC. In other words, the funding amount that MOHLTC determines is for use by a particular program is protected, and is not subject to reallocation to other health programs or services that either a LHIN or a health service provider may offer.

Provincial Agency

A final model for operationalizing correctional health care under MOHLTC is through the establishment of a Provincial Agency. To be designated a Provincial Agency an entity must have a long-term function – lasting three years or more – and it must carry a provincial interest in its function or service. Any such agency must be approved for establishment by the Treasury Board or the Management Board of Cabinet. These agencies are then formally established by a statute, regulation under an enabling statute or by an Order-in-Council.⁶¹⁸

⁶¹⁵ Chris Higgins, Sheri Weisberg and Oana Gug, “The Changing Landscape of the Forensic System in Ontario – HSJCC Conference” (Presentation, Ministry of Health and Long-Term Care: Forensic Mental Health Section, November 26, 2013).

⁶¹⁶ CAMH: Forensic Mental Health, *supra* note 614.

⁶¹⁷ The supervising body for individuals in the forensic system is the Ontario Review Board. Chris Higgins at al., 615 *supra* note.

⁶¹⁸ Ministry of Government Services, *Province of Ontario: List of Classified Provincial Agencies*, (Policy and Agency Coordination Branch, Government of Ontario, March 2014) at 4; Treasury Board Secretariat, *Province of Ontario: List of Classified Provincial Agencies*, (Agency Governance Branch, Government of Ontario, September 2016).

The LHINs are designated as provincial agencies. The Provincial Programs Branch also has two such agencies within its portfolio: Cancer Care Ontario and the Trillium Gift of Life Network.⁶¹⁹ All are board-governed agencies that MOHLTC considers to be providing an “operational service.”⁶²⁰ They are each governed by specific statutes that outline their objects, powers and board structures, as well as their accountabilities to MOHLTC, including annual reports that must be submitted to the Minister.⁶²¹ Each receives direct funding from the government to support their mandates.

Service Delivery Options

Once a governance structure is selected, there is a further question of which entity or entities will provide which services. Ontario’s health care system has a wide range of health service providers; the list includes Community Health Centres,⁶²² Aboriginal Health Access Centres,⁶²³

⁶¹⁹ Although not directly applicable to the issue of appropriate delivery of correctional health care, it is necessary to note that the Ontario Advisory Committee on HIV/AIDS is a third agency in the Provincial Programs Branch. However, this is an “advisory agency” to the Minister under the Agencies and Appointments Directive, 2017. Its mandate is to provide strategic policy advice to the health minister on all aspects of HIV-related policy.

⁶²⁰ Agencies that are considered “operational services” are those that deliver goods or services to the public usually with no fees, or minimal fees. See Ministry of Government Services, *supra* note 618 at 5

⁶²¹ See LHSI Act, *supra* note 603; *Cancer Act*, R.S.O. 1990, c. C. 1; *Trillium Gift of Life Network Act*, R.S.O. 1990, c. H. 20. See also Cancer Care Ontario “Governance Documents,” Last Accessed: August 17, 2017

https://www.cancercare.on.ca/about/who/governance_documents/; Trillium Gift of Life Network, “Who We Are,” Last Accessed: August 17, 2017

<https://www.giftoflife.on.ca/en/aboutus.htm>; Local Health Integration Networks, “Ontario’s LHINs” and associated links for further information, Last Accessed: August 17, 2017

<http://www.lhins.on.ca/>.

⁶²² Community Health Centres (CHCs) are community-governed entities that focus on serving individuals with “complex needs” by creating “community-based hubs where a range of services are integrated under one roof...” The province’s 74 CHCs “deliver primary care services in combination with health promotion and illness prevention services.” Association of Ontario Health Centres, “Community Health Centres,” Last Accessed: August 8, 2017

<https://www.aohc.org/community-health-centres>; Association of Ontario Health Centres, “CHC Fact Sheet,” Last Accessed: August 8, 2017 <https://www.aohc.org/chc-fact-sheet>.

⁶²³ “Aboriginal Health Access Centres are Aboriginal community-led, primary health care organizations. They provide a combination of traditional healing, primary care, cultural programs, health promotion programs, community development initiatives, and social support services to First Nations, Métis and Inuit communities. There are currently ten AHACs in Ontario, providing services both on and off-reserve, in urban, rural and northern locations.” Association of Ontario Health Centres, “Aboriginal Health Access Centres,” Last Accessed: August 8, 2017 <https://www.aohc.org/aboriginal-health-access-centres>.

Family Health Teams,⁶²⁴ hospitals,⁶²⁵ and nurse-practitioner led clinics.⁶²⁶ Other jurisdictions also use interesting models for correctional health service delivery: in the United States, for example, some correctional institutions rely on academic Departments of Family Medicine to provide care.⁶²⁷ It is likely that different correctional institutions would be best served by different service providers depending on their size, geographic location, patient profile and medical needs, and the broader medical service provision options in the surrounding community. There is also the possibility, however, that service provision could be standardized through correctional institutions' existing relationships with hospitals. Each correctional institution already has an affiliation with a local hospital, and there may be benefits to taking advantage of this existing arrangement.

Selecting a Governance and Service Delivery Model

These governance and service delivery models should be evaluated against their ability to provide a principled, health-focused approach to care in corrections with an enhanced

⁶²⁴ Family Health Teams are “primary health care organizations that include a team of family physicians, nurse practitioners, registered nurses, social workers, dietitians, and other professionals who work together to provide primary health care for their community. They ensure that people receive the care they need in their communities, as each team is set-up based on local health and community needs.” Family Health Teams can provide primary care services to “unique populations of patients with specialized health needs”: there are specialized FHTs that focus, for example, on homeless men residing in four particular shelter locations in Toronto; the Inuit population of Ottawa; and several that provide services to First Nations populations located on and off reserves. Ministry of Health and Long-Term Care, “Family Health Teams,” Government of Ontario, Last Updated: January 22, 2016 <http://www.health.gov.on.ca/en/pro/programs/fht/>.

⁶²⁵ Ontario has three types of hospitals: public, private, and specialty psychiatric hospitals. Most hospitals are public entities. All hospitals are “independent corporations run by their own board of directors. The boards are responsible for day-to-day operational decisions on how to allocate the public funding they receive. They are accountable to their Local Health Integration Network (LHIN) and the government for the quality and efficacy of the care they provide.” Ministry of Health and Long-Term Care, “Hospitals,” Government of Ontario, Last Updated: July 11, 2014 <http://www.health.gov.on.ca/en/common/system/services/hosp/faq.aspx>.

⁶²⁶ Nurse-Practitioner-Led Clinics are “primary health care organizations that provide comprehensive, accessible, person centred and co-ordinated primary care services to people of all ages and stages in over twenty communities across Ontario.” Ministry of Health and Long-Term Care, “Nurse Practitioner-Led Clinics,” Government of Ontario, Last Updated: May 21, 2015 <http://www.health.gov.on.ca/en/common/system/services/npc/>.

⁶²⁷ Warren L. Ferguson, David Cloud and Anne C. Spaulding, “A Call to Action: A Blueprint for Academic Health Sciences in the Era of Mass Incarceration,” *Journal of Health Care for the Poor and Undeserved* 27 (May 2016).

accountability structure. This Section of the report has already identified several key principles against which any proposed model must be measured. These include:

1. A broad definition of health and health care

The governance and service delivery model must have the ability to pursue a broad approach to correctional health care that follows the whole-prison approach (see Textbox 26).

2. Ensuring equivalency, accessibility and continuity of care

Care must be equivalent to that provided in the community, recognizing the often significant and complex health needs of this particular population.⁶²⁸ Services must be available, physically and economically accessible, acceptable (i.e. culturally appropriate, respect medical ethics, confidentiality and improve health statuses) and scientifically and medically appropriate and of good quality.⁶²⁹ Clear service delivery standards need to be established⁶³⁰

⁶²⁸ Article 9 of the United Nations' Basic Principles for the Treatment of Prisoners, 1990, sets out the Principle of Equivalence, which provides that "prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation." UN General Assembly, *Basic Principles for the Treatment of Prisoners* (14 December 1990), A/RES/45/111. This principle is also reflected in Rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which states that prisoners "should enjoy the same standards of health care that are available in the community..." Mandela Rules, *supra* note 61, at rule 24. Because the incarcerated population tends to have poorer health status as compared to the general population, however, the application of this principle is not straight forward. Some have argued that, in light of increased health needs, inmates should receive more services as compared to the general population in order to bring their health to community levels. Rick Lines, "From Equivalence of Standards to Equivalence of Objectives: The Entitlement of Prisoners to Health Care Standards Higher than those Outside Prisons," *International Journal of Prisoner Health* 2, no. 44 (December 2006). See also Hanrahan, *supra* note 537 at Chapter 2.

⁶²⁹ WHO: Office on Drugs and Crime, *supra* note 541 at 3-4; Committee on Economic, Social and Cultural Rights, "General Comment No. 14, The Right to the Highest Attainable Standard of Health," U.N. Doc. E/C.12/2000/4 (2000).

⁶³⁰ Various international documents establish minimum standards applicable to health care in correctional settings. The United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955, for example, establishes baseline requirements for the presence of medical professionals in prisons, including: a physician with knowledge of psychiatry (Article 22.1), a medical officer responsible for the care of sick prisoners (Article 25(1), and staff comprised of psychiatry, psychologists, social workers, teachers, and trade instructors (Article 49(1). It also requires the provision of medical services to treat inmates with mental illnesses (Article 62). United Nations Human Rights Office of the High Commissioner, "Standard Minimum Rules for the Treatment of Prisoners," Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, (Geneva, 1955). The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988, articulated further standards, including the requirement that each inmate undergo a medical examination

and mechanisms put in place to monitor performance against these standards. The service provision model must pay particular attention to ensure that there is continuity of care, including facilitating seamless transitions between various providers and different institutions, as well as with care in the broader community.

3. Clinical independence

Any governance or service delivery model must ensure that health care professionals can operate and provide services independently within the public safety and security context of a correctional setting.

4. Integration with the provincial health care system

Health care within correctional institutions must be integrated into the broader health care system, including integration of training, research and provincial and local health priorities and initiatives.

5. Robust accountability mechanisms

Enhanced accountability is necessary to ensure that care in the correctional setting adheres to core principles and standards. This should include accreditation and quality control measures.

6. A stable, health-focused employment environment

Employees providing health care services within corrections must have an adequate, health-focused and stable employment environment within which to provide treatment and services. Considerations include reporting relationships, professional development opportunities, recruitment and retention strategies and other terms and conditions of employment. The goal must be to develop a sustainable, experienced and dedicated work force that is properly equipped to assist a population with complex needs in a unique and challenging setting.

My preliminary review of the models outlined above suggests that some level of centralized governance through MOHLTC will be necessary. Providing health care in a correctional

upon admission (Principle 24). UN General Assembly, *Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment*, (December 9, 1988), 43/173. Most recently, the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) established a series of standards applicable to health care services within prisons (Rules 24-35). There are also Rules related to conditions of confinement which should be properly viewed as part of health care, including provisions on accommodation (Rules 12-17) personal hygiene (Rule 18), clothing and bedding (Rules 19-21), food (Rule 22), exercise and sport (Rule 23). There are also rules related specifically to the treatment of prisoners with mental disabilities and/or health conditions (Rules 109 – 110). Mandela Rules, *supra* note 61. Finally, the World Health Organization has written extensively on the provision of care in correctional settings; see for example, WHO: Prisons and Health, *supra* note 567.

environment raises challenging issues of ethics, management and securitized service provision. Taking a public health approach within a correctional environment needs focused guidance and care. Lessons and initiatives from one institution can be usefully deployed in other settings. MOHLTC already has a centralized body – the forensic system – that is dedicated to caring for some inmates with highly complex health needs, which suggests that the expertise and structure of this model could be usefully leveraged to provide broader care to the inmate population.

The governance and service delivery must be flexible enough to take advantage of localized innovative service provision solutions. MOHLTC is not, generally, equipped to be a direct service provider. Even with a governance model that retains significant coordination and standard-setting for MOHLTC, the local LHINs should still play a role in ensuring that service provision within the correctional setting takes advantage of and integrates fully with a range of local health service providers.

Ultimately this is a decision that will necessitate broader and more in-depth consultation, study and research. Notwithstanding, the transfer should not be unduly delayed. While full implementation of a new model may be years away, it is imperative to capitalize on the current momentum and willingness to entertain change.

Key Findings and Recommendations

- Despite best efforts, Ontario struggles to meet the complex health needs of the incarcerated population.
- Inmate health care is governed and delivered by the Ministry of Community Safety and Correctional Services (MCSCS), not the Ministry of Health and Long-Term Care (MOHLTC). Although sporadic collaborations do occur, there is no general requirement for MCSCS to align its correctional health care services with MOHLTC services and objectives.
- There is an international and scholarly consensus that the responsibility for health care in correctional facilities should rest with the government authority in charge of health. Research finds that the health of those who have been incarcerated in Ontario tends to be poorer than that of the general population. Providing health care to this segment of the population is complex.
- It is encouraging that the Government of Ontario has pledged to work to transform health care services in correctional facilities and explore options to transfer health care oversight and service provision to the MOHLTC.
- Key principles for any proposed model of correctional health services must include:
 1. A broad definition of health and health care;
 2. Ensuring equivalency, accessibility and continuity of care;
 3. Clinical independence;

4. Integration with the provincial health care system;
 5. Robust accountability mechanisms; and
 6. A stable, health-focused employment environment for health care service providers within corrections.
- The Independent Review's preliminary review of the models identified to date suggests that some level of centralized governance through the MOHLTC will be necessary.

Recommendation 5.1: I recommend 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, establish a common understanding of what services are to be transferred, and develop a timeline for the transfer. This initial work is to be completed within six months.

Recommendation 5.2: I recommend that the Corrections Act for Ontario and associated regulations establish the following principles and standards to guide the provision of health services within Ontario correctional institutions:

- Multi-disciplinary and gender-informed health care is available to all inmates;
- A definition of health care that encompasses the treatment of disease or injury, vision care, dental care, hearing loss, and other preventive and allied services and treatment;
- Professionally acceptable standards of medical care be provided that must conform to provincially-defined regulations, and that all health services are to be accredited;
- Examinations and treatments are conducted in a manner that respects privacy and dignity of the inmate;
- Inmate requests for medical care from a health care professional of a specific gender must be accommodated subject only to emergency situations; and
- The ministry takes into consideration an inmate's state of health and health care needs in all decisions impacting the inmate as well as when preparing an inmate for release or community supervision.

Recommendation 5.3: I recommend that ministry health care and institutional policy be amended as follows:

- Clinical decisions are made by health care professionals and may not be varied by non-medical staff;
- Security staff may not attend during any medical examination or treatment unless requested by the health care professional or the inmate;
- Where a female inmate is attended to by a male health care professional, a female health care professional must also be in attendance;
- The maintenance and privacy of health care records conform to professionally accepted standards; and

- Setting out the requirement for inmates’ informed consent and the right to refuse or withdraw from treatment.

Recommendation 5.4: I recommend that MCSCS and MOHLTC immediately put in place a formal multi-level, inter-ministerial framework to move forward with the transition of correctional health care, including:

- Defined governance roles at the Deputy Minister, Assistant Deputy Minister and director levels;
- An overarching technical advisory committee to provide external subject-matter expertise;
- The inclusion of front line staff and other service providers with expertise and experience providing health care in a correctional setting in any discussions regarding service delivery and clinical management structures; and
- A strategy to engage with a broader range of ministries including Indigenous Relations and Reconciliation, the Attorney General, Community and Social Services, Children and Youth Services, Municipal Affairs and Housing, Education, Labour, and Advanced Education and Skills Development.

Recommendation 5.5: I recommend that the relevant ministries complete, within the next six months, the following foundational work:

- Agree on a definition of “health” and establish a clear vision of what the end state of institutional healthcare will look like;
- A census of MCSCS’ current health care infrastructure and service provision within institutions, including their cost and service volume;
- Mapping of the ministry’s existing linkages to community health providers and services; and
- A national and international survey of other jurisdictions’ experiences with the transfer of correctional health care.

Recommendation 5.6: I recommend that service and delivery models under consideration for correctional health care be evaluated against their ability to fulfill the following criteria:

- Implementation of a broad definition of health and health care
- Ensuring equivalency, accessibility and continuity of care
- Clinical independence
- Integration with the provincial health care system
- Robust accountability mechanism
- A stable, health-focused employment environment

VIII. MOVING FORWARD

The *Segregation in Ontario* report concluded with a short chapter on change management. It noted the importance of stakeholder engagement, constant communication and the clear articulation of both the reasons for change and a vision of the desired end state. I made four recommendations to support the change process, including the need for the development of a strategic approach to change, dedicated internal capacity to lead and monitor the process, obtaining external advice and support and the implementation of a multi-faceted communications campaign.

I am pleased that the ministry has responded to my recommendations by creating a new modernization division whose mandate includes responding to the Independent Review's work. This division is not yet fully operational and is facing the usual start up challenges typically found in the public sector. There is always competition for financial and human resources, office space and the ear of key decision makers. New relationships need to be forged and some old patterns of "how things are done" will necessarily be altered. It would be a shame if these expected challenges become barriers to achieving the goal of the timely and effective modernization of corrections in Ontario. In the current report, I have called for the creation of an Indigenous Policy and Programs Division (IPPD) within correctional services. I expect that the work to create this division will face similar hurdles.

I encourage the ministry to work with its central agency partners to find ways to streamline and accelerate the process of building new, lean and nimble administrative and policy structures. Goodwill and momentum have been created and expectations for change are high. A sense of urgency has been linked to successful change initiatives. In recognition of this, perhaps the establishment of the modernization division and the IPPD can be supported by the development of a pilot project that will test ways to cut red tape, reduce burdensome paperwork, and facilitate faster staffing, procurement and financial transactions. Such a pilot could help inform the effective implementation of other Government of Ontario change undertakings.

Moving forward requires planning for the future. As the ministry sharpens its recruitment, retention and professional development strategies, I encourage more attention be paid to leadership and career development. The ministry is aware of these challenges and is testing an initiative designed to build internal leadership capacity and aid succession planning. The Leadership Excellence and Accelerated Performance program is a leadership and career development pilot project aimed at identifying, assessing, and developing participants for future deployment to the superintendent role. The program launched in February 2017 and the first round of participants is expected to complete the training and mentorship by mid-2018. This initiative is a good start and I hope it is replicated throughout the ministry.

The Government of Ontario has accepted the challenge of an ambitious change agenda to reform the province's correctional system. The contemplated change requires new investment and will not be either easy or quick. Notwithstanding, the outcome will be worth the effort. The goal of contributing to increased public safety through the provision of modern and rights respecting correctional operations and services is not only achievable; it is an essential component of a healthy and safe Ontario.

APPENDIX: CONSOLIDATED KEY FINDINGS AND RECOMMENDATIONS

1. Correctional Operations: An Exercise in Human Rights

- Corrections is a human rights enterprise that must be evidence-based, principle driven, and embrace oversight and accountability; operational decisions must be infused with the values of respect, dignity, and legality.

Recommendation 1.1: I recommend that the Corrections Act for Ontario be structured around recognition of individual dignity and human rights, and that it incorporate the following guiding principles:

- That inmates retain the rights and privileges of all members of society except those that are necessarily removed or restricted as a consequence of confinement or sentence;
- That Ontario's Correctional Services use the least restrictive measures consistent with the protection of society, staff members, and inmates that are limited to only what is necessary and proportionate, with particular attention to the circumstances of Indigenous inmates; and
- That all correctional decisions, laws, policies, rules, programs, and practices are made or applied without discrimination and are responsive to the special and specific social reintegration needs of women, individuals with caretaking responsibilities, Indigenous peoples, persons requiring mental health care and other particular groups protected by the Ontario *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*.

Recommendation 1.2: I recommend that ongoing training and an online evergreen resource be developed highlighting significant judicial and tribunal decisions regarding human, legal and constitutional rights in corrections.

Searches

- Ontario law provides little guidance or limits on the wide range of searches that take place within its provincial correctional institutions.
- Ministry policy authorizes the random interception and search of generic inmate correspondence, regardless of whether there is any reasonable belief that the communication conveys evidence of a crime or a security threat. Superintendents are also granted broad authority to delete or refuse to send certain correspondence.
- Due to their invasive nature, the Charter tightly circumscribes the government's authority to conduct strip searches. Ontario law, however, provides no explicit limits on strip searches and ministry policy requires Ontario's correctional institutions to carry out regular, routine strip searches of inmates in circumstances that are specifically prohibited by laws in other jurisdictions.

Recommendation 1.3: I recommend that the Corrections Act for Ontario include a constitutionally compliant framework governing searches that is based upon recognition of Charter rights.

Recommendation 1.4: I recommend that regulations pursuant to the Corrections Act for Ontario include a constitutionally compliant framework governing the interception and handling of inmate correspondence.

Inmate Complaints Processes

- The internal ministry policy for handling inmate complaints is unclear and contradictory, and it does not align with the explanation of the complaints process in the handbook provided to inmates.
- Most institutions do not have dedicated complaint forms, and 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.
- Despite the fact that policy specifically directs that verbal complaints must be logged in writing, this rarely occurs.
- The vast majority of inmate complaints are not centrally collected, tracked, or handled either at the institutional or corporate levels. At the institutional level, the entire system depends on individual slips of paper being handed to individual correctional officers who must pass on these pieces of paper to the appropriate individual manager. Neither institutions nor the ministry as a whole conducts any type of trend analysis or uses the information to identify areas of systemic concern.

Recommendation 1.5: I recommend that the Corrections Act for Ontario include provisions establishing a fair and expeditious inmate complaints process, including:

- A requirement to establish a procedure for fairly and expeditiously resolving inmates' complaints on matters within the jurisdiction of the superintendent;
- A provision stating that every inmate shall have complete and timely access to the complaints procedure without negative consequences;
- A requirement to display and provide upon admission written information regarding the complaints procedure as well as any other information necessary to enable an inmate to adapt to the operation of the institution;
- A requirement that complaints be resolved in a non-adversarial and non-escalating manner whenever possible; and
- A provision to deal with inmates who persistently submit complaints that are frivolous, vexatious or not made in good faith.

Recommendation 1.6: I recommend that the ministry develop policy to operationalize a fair and expeditious inmate complaints process that provides clear direction to staff and incorporates best practices regarding the handling of complaints.

Recommendation 1.7: I recommend that resolving complaints in accordance with law and policy form part of senior administrators' performance commitments.

Visits and Family Support

- By law, sentenced inmates have the right to receive at least one visit a week, and remanded inmates can have at least two weekly visits. The minimum number of visits set out in law has, in many institutions, become a *de facto* maximum. Ontario's correctional facilities have limited areas for open visits, no apparatus to facilitate outdoor play for children, and no private family visiting houses.
- In many institutions, the visit areas are cramped and offer only closely spaced side by side fixed stools for both the inmate and the visitor. This makes it difficult and uncomfortable for children, the elderly, or those with mobility issues to visit and provides absolutely no privacy.
- Various jurisdictions in Canada have put in place specific programs to mitigate the impacts of incarceration on children and parents, including mother-child programs. Ontario does not have a mother-child program. 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. There is no dedicated policy or program to facilitate postnatal contact between a mother and baby and most institutions housing women do not allow contact visits.

Recommendation 1.8: I recommend that the Corrections Act for Ontario:

- Contain a statement of purpose for visits;
- Establish a general right to visitation, including a right to a minimum of two visits per week and a presumptive right to open visits; and
- Allow for regulations to establish and provide for parent-child and mother-baby programs.

Recommendation 1.9: I recommend that ministry policy:

- Establish minimum visit durations;
- Reflect the legislative presumption of open visits and provide guidance on the circumstances in which closed visits may be justifiable;
- Provide guidelines for visits involving multiple minor children; and
- Expanded use of remote access video visit technology to complement, not replace, in-person visitation rights.

Recommendation 1.10: I recommend that the ministry systematically track data on pregnant women, births in custody, and inmates with significant caregiver obligations.

Recommendation 1.11: I recommend that the Ministry of Community Safety and Correctional Services work with the Ministry of the Attorney General and community organizations to provide community alternatives to pre-trial incarceration for caregivers with dependent children and for pregnant women.

Recommendation 1.12: I recommend that the ministry promptly revise policy to put in place child-friendly practices to support parent-child visitation and require a consideration of the best interests of the child in all relevant decisions regarding an inmate who is a parent or caregiver.

Recommendation 1.13: I recommend that in all new builds and retro-fit projects, priority be given to visiting space that allows for family contact, a degree of privacy, and a suitable environment for children.

Recommendation 1.14: I recommend that the ministry establish a parent-child and mother-baby program and that policy provide guidance on open contact visits for minor children, breastfeeding and postpartum care.

Inmate Trust Accounts

- While the ministry has leveraged technology to improve its ability to manage inmates' funds, there is no way for family members or loved ones to remotely send money to inmate trust accounts: deposits to inmate accounts are still required to be made in person or by mail. Numerous other provinces have established systems whereby individuals can deposit money into inmates' accounts remotely over the internet or through community-based kiosks.

Recommendation 1.15: I recommend that the ministry explore options that would facilitate the electronic and secure transfer of money to an inmate's account. Any cost savings gained by modernization must be used to offset potential user fees for those in custody or their family and friends in the community.

Recommendation 1.16: I recommend that the ministry establish a pilot project at a minimum of one site to test technology and applications that facilitate staff documentation and reports, inmate access to resources (including canteen goods, legal and recreational reading material), inmate access to legal disclosure and research materials, and contact with the outside world.

Deaths in Custody

- Over 150 people have died in Ontario's correctional institutions over the past decade.
- The majority of deaths in custody in Ontario are not subject to a thorough, fully arms-length and independent review. In 2009, the *Coroners Act* was amended to remove the requirement for a mandatory inquest in cases of in custody natural deaths. This has left a significant gap in the oversight of inmate deaths within Ontario's correctional institutions.
- Jury recommendations from coroner inquests are often repetitive. This repetition suggests that either the ministry is not treating recommendations as issues of systemic concern, or it is not effectively implementing the recommended changes. Currently there is no tracking or oversight of the ministry's responses, commitments, or follow through.
- The Independent Review Team was unable to find definitive figures on the number of individuals who have died while in custody in Ontario. The legislative definitions of a death in custody are narrow, and there are a variety of circumstances where the ministry and the Office of the Chief Coroner consider that an inmate death is not a death in custody.
- There is no detailed ministry policy regarding the provision of information to and supports for the family members of the deceased person. There are also no ministry directions, resources, or policies regarding a number of other relevant issues, including funeral, burial, or cremation costs.

Recommendation 1.17: I recommend that the Corrections Act for Ontario and the *Coroners Act* include a broader definition of death in custody that captures inmates who die after being transferred to a community health care setting regardless of whether they were under direct ministry supervision at the time of their death.

Recommendation 1.18: I recommend that the ministry amend the *Coroners Act* to require a mandatory inquest or an alternate coroner-led review process for all in-custody natural deaths.

Recommendation 1.19: I recommend that the Corrections Act for Ontario include provisions that:

- Require the body of a deceased inmate to be treated with respect and dignity, and require that the body be returned to next of kin or other contacts as soon as legally and reasonably possible, in a respectful manner;
- Require that the ministry facilitate the respectful and appropriate disposition of remains in accordance with applicable laws, if there is no other party willing or able to do so; and

- Require that reports related to deaths in custody be proactively shared with the Office of the Chief Coroner, next of kin and other contacts of the deceased, and any other relevant oversight bodies as early as possible.

Recommendation 1.20: I recommend that the ministry establish policy regarding deaths in custody that provides for:

- Defined procedures and protocols to inform and facilitate access by next of kin when an inmate is taken to a community hospital due to a medical emergency;
- Establishing a family liaison position in each region to coordinate with institutions and ministry leadership in order to provide information to the next of kin from the point of notification until the completion of all investigative processes; and
- An immediate letter of condolence to be sent to the next of kin.

Recommendation 1.21: I recommend that staff and management responsible for speaking with family members after a death in custody receive the necessary training and support.

Recommendation 1.22: I recommend that the ministry develop a guide for families on Ontario's Correctional Services policy, responsibilities and investigative process following a death in custody.

Recommendation 1.23: I recommend that the ministry centralize data collection of deaths in custody and publicly post all inquest verdicts, verdict explanations, and ministry responses to allow for appropriate trend analysis and follow up regarding the implementation of coroner's inquest jury and other relevant recommendations.

Recommendation 1.24: I recommend that a coroner-based Deaths Review Panel be established and the Memorandum of Understanding between the coroner and corrections be updated to enhance and better structure information sharing.

Recommendation 1.25: I recommend that Ontario champion the establishment of a national Canadian roundtable on the prevention of deaths in custody.

2. Corrections and the Presumption of Innocence

- There are many people who are being unnecessarily detained in Ontario's correctional institutions prior to their trial. In 2015/16, on any given day, 66% of all people incarcerated within Ontario were on remand. Nearly a third of the individuals held in pre-trial detention will eventually have all their charges stayed, withdrawn, or dismissed.
- Almost all remand inmates and immigration detainees are presumptively classified as maximum security and held under maximum security conditions.
- Under current Ontario policy, remand inmates are presumptively excluded from participating in institutional work and rehabilitative programs.
- Despite clear legislative authority for superintendents and/or the Ontario Parole Board to grant any inmate permission to temporarily leave an institution for medical, humanitarian, or rehabilitation purposes, ministry policy significantly restricts remand inmates' access to temporary absences.
- Discharge planning services are not provided to the vast majority of the pre-trial population.

Recommendation 2.1: I recommend that the Corrections Act for Ontario:

- Include the principle that remand inmates are presumed to be innocent and must be treated as such; and
- Allow for remand inmates' optional participation in programming, work, education and discharge planning.

Recommendation 2.2: I recommend that the Ministry of Community Safety and Correctional Services work with Justice Sector partners to expand temporary absence eligibility to remand inmates.

Recommendation 2.3: I recommend that the ministry align policy and operational practices with the principles of presumption of innocence and least restrictive measures in the following ways:

- Explore non-institutional forms of pre-trial detention, including alternatives to incarceration used in other jurisdictions;
- Institute an institutional security risk assessment, completed during intake, to appropriately place and supervise remand inmates and establish policies and procedures for institutional placement of remand inmates that operationalize a clear presumption that this population will be held in minimum security unless the risk assessment confirms additional security measures are required; and
- Establish dedicated minimum, medium and maximum security housing for the remand population.

3. Evidence-Based Correctional Practice

Initial Intake to Institutions and Community Supervision

- Ontario does not currently routinely employ an institutional security risk assessment tool. In the absence of an institutional security risk assessment tool, almost all inmates are placed in maximum security by default.
- Twenty-five out of Ontario's 26 correctional institutions are maximum security. The Ontario Correctional Institute, a specialized treatment facility, is the province's only medium-security institution. For the majority of individuals, Ontario's institutional intake and admissions process captures only the most basic personal information.
- The vast majority of inmates in Ontario do not have access to effective discharge planning. There are insufficient linkages between institutional activities and programming and community services and organizations. A wide variety of community services and organizations could be engaged to assist with a smooth transition back into the community.
- While the intake process for those supervised in the community is better, there are instances where policy or law applies mandatory conditions or supervision requirements. Conditions and levels of supervision should be responsive to individualized risk assessments, not blanket policy prescriptions.

Recommendation 3.1: I recommend that the Corrections Act for Ontario reflect the principle of least restrictive measures by:

- Including the principle of least restrictive measures as a guiding principle;
- Requiring the ministry establish maximum, medium and minimum security institutions or units and providing definitions of these types of custody;
- Requiring an evidence-based institutional security risk assessment that is validated for gender identity, Indigenous and non-Indigenous persons be conducted for all inmates upon intake;
- Requiring that where a person is, or is to be, confined in an institution, the ministry takes all reasonable steps to ensure that the institution is one which provides the least restrictive environment for that person, taking into account individualized circumstances and needs;
- Requiring that reclassification occur at least once every six months and be conducted in accordance with applicable regulations; and
- Requiring that inmates be given written reasons for the initial security classification and any subsequent reclassification.

Recommendation 3.2: I recommend that the ministry align policy, institutional placement processes and conditions of confinement with the principle of least restrictive measures; this must include:

- Policy clearly establishing the definitions of, conditions of confinement and operational procedures in minimum, medium and maximum-security units and facilities;
- Development and deployment of an evidence-based institutional security risk assessment tool that is administered to all inmates at intake; and
- Policy directing that individuals are to be placed in the least restrictive level of supervision and physical control necessary.

Recommendation 3.3: I recommend that mandatory conditions and supervision levels that are not linked to an individual's risk/needs assessment be eliminated from law and policy.

Recommendation 3.4: I recommend that the Corrections Act for Ontario provide for appropriate in-custody service and discharge planning by:

- Including as a guiding principle that inmates will be individually assessed at intake to inform the development of a custodial and release plan;
- Requiring that, upon admission to a correctional institution, the ministry take all reasonable steps to obtain, as soon as is practicable, relevant information about an inmate's charge or offence, personal, social, economic and criminal history, any judicial reasons, transcript, recommendations or court reports related to the individual's detention and sentencing, and any other information relevant to administering the detention or sentence including existing information from the victim;
- Requiring the ministry to, where necessary, provide an inmate with clothing suitable to the season, travelling expenses to the destination, and sufficient medically-prescribed medication upon their release from a court or correctional institution; and
- Allowing for regulation to stipulate that inmates whose scheduled release date falls on a weekend or holiday must be released on the prior weekday unless a risk assessment concludes that such release is contrary to public safety.

Recommendation 3.5: I recommend that ministry policy provide for appropriate in-custody service and discharge planning, including by:

- Requiring that, upon admission, each inmate be assigned a case manager who will be named on discharge planning documents and will be responsible for ensuring that the inmate's identified and evolving needs are met during custody and upon release; and
- Requiring that upon discharge from an institution or a court an individual will be provided with the necessary assistance to address identified needs, including but not limited to clothing, medication, transportation, facilitation of property return from the institution, and referrals to community supports and services.

Identifying and Meeting Programming Needs

- The majority of general programs in Ontario are run by community service providers, organizations, and volunteers who are usually required to supply the personnel, programming content, and any necessary supplies. Participation in these generalized programs is hampered by inconsistent availability and delivery.
- There is a general lack of programming space in institutions. Programming may be offered in hallways, chapels, “multi-purpose rooms,” converted cells, gymnasiums, or, most troubling, inside of wire mesh enclosures. Even when there is purpose built space, the space is subject to being “re-purposed” for pressing operational and administrative needs.
- Ministry policy is a barrier to program participation for remand inmates and immigration detainees – a group that collectively represents the majority of inmates. These populations are presumptively ineligible for custodial work opportunities and community programming.
- Rehabilitative programs should be reserved for those with identified criminogenic needs who are assessed as presenting a medium or high risk to reoffend.
- Although inmates with longer sentences are receiving an evidence-based risk/needs assessment within Ontario institutions, the vast majority of inmates are not being proactively provided with individualized information regarding which programs would be most appropriate for their participation.
- Individuals supervised within the community have personalized Offender Management Plans that identify programming needs which generally correspond to an individual’s risk/needs assessment.
- The ministry has recently taken steps to reinforce the effective application of the risk-needs-responsivity model in community corrections by initiating a Strategic Training Initiative in Community Supervision.

Recommendation 3.6: I recommend that the Ontario Corrections Act include provisions requiring the ministry to establish or contract for programs, program delivery and meaningful activities in which inmates may work, study, or participate and that, for rehabilitative programs, comply with needs identified in individual assessments.

Recommendation 3.7: I recommend that the ministry immediately conduct an audit of program space in each institution to determine the availability of adequate and appropriate space to meet program needs. The determination of the adequacy of the space must be based upon the unique population demographics of each institution and identified best practices in classroom and program delivery methods. Retrofits to address gaps identified through the audit must be addressed on a priority basis and all new builds must include program space based upon the identified best practices.

Recommendation 3.8: I recommend that the ministry implement comprehensive, centralized tracking of all programming availability and delivery. A program manual listing all programs offered and the frequency and locations of these programs should be produced, regularly updated, and made publicly available.

Recommendation 3.9: I recommend 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.

Recommendation 3.10: I recommend that all inmates sentenced to over 30 days be provided with an individual program plan that includes rehabilitative programming where appropriate. Rehabilitative programs must be targeted based on individualized risk/needs assessments.

Recommendation 3.11: I recommend that the ministry continue its work to implement the Strategic Training Initiative in Community Supervision and that the rollout be appropriately paced and resourced in order to maximize the effectiveness of the initiative. The ministry should review and, where required, revise existing policies, programming, procedures, and terminology related to community supervision to ensure alignment with evidence-based best practices.

Gradual Release and Community Integration

- Temporary absences can be powerful tools to decrease reliance on incarceration and facilitate an individual's successful reintegration back to 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.
- The process surrounding temporary absence applications and reviews represents a significant barrier. With the exception of medical temporary absences, the inmate normally bears the responsibility for initiating the temporary absence process and compiling the extensive documentation necessary to support the application.
- Although the law allows for the imposition of "appropriate" temporary absence conditions, the ministry has elaborated "standard" conditions that apply to all temporary absences regardless of individual circumstances.
- 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 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.
- Parole procedure creates obstacles to timely gradual release. There are questions regarding the procedural fairness of the parole process, the quality, timeliness, and completeness of information placed before the board, as well as the supports provided to inmates in the parole application process.
- Ontario stopped using Community Residential Centres in the mid-1990s. Despite numerous recommendations for their reintroduction, the ministry has not taken any concrete steps in this direction.
- The ministry has signed Community Residential Agreements (CRAs) with community agencies contracted to provide housing and residential treatment or programming for both inmates and community-supervised clients. Space at these facilities, however, is extremely limited and there are no CRAs that house men in either the central or eastern regions of Ontario.
- CRA spaces are used almost exclusively by clients who are already being supervised in the community.

Recommendation 3.12: I recommend that the Corrections Act for Ontario expand access to and use of temporary absences by:

- Providing superintendents exclusive authority to grant, deny or revoke all temporary absences; and
- Directing that all eligible inmates will be automatically considered for a temporary absence at one-sixth of their sentence in accordance with regulation.

Recommendation 3.13: I recommend that the Corrections Act for Ontario:

- Include a definition of the purpose of conditional release;
- Expand access to and use of parole by including provisions for review without a hearing and a requirement to release an individual on parole if the board is satisfied that there are no reasonable grounds to believe that the offender, if released, is likely to commit an offence involving violence before the expiration of the sentence; and
- Incorporate an obligation to comply with the principles of fundamental justice throughout the parole decision making process.

Recommendation 3.14: I recommend that the Corrections Act for Ontario include provisions requiring the Ontario Parole Board to publicly release annual performance reports on all areas of operation including, but not limited to, the measures taken to reduce the over-representation of Indigenous men and women held in Ontario correctional institutions.

Recommendation 3.15: I recommend that the Ministry of Community Safety and Correctional Services and the Ontario Parole Board immediately put in place policies and procedures, including the timely sharing of all required and requested information, to ensure that parole consideration for inmates is taking place within legislated time limits and that inmates sentenced to six months or more have their parole reviewed as required by law.

Recommendation 3.16: I recommend that the Ontario Parole Board conduct a full policy and procedures revision to ensure that Ontario's parole process is procedurally fair, transparent, effective and independent. This should include:

- The principle that decisions are made in a procedurally fair and understandable manner, including by providing inmates with relevant information, reasons for decisions and access to a meaningful review of decisions and an effective appeal procedure;
- The principle that decisions shall be written and communicated in a manner that is clear and understandable;
- Limiting the time between parole application and the rendering of a decision;
- Ensuring that parole board policies do not improperly fetter the discretion of board members;
- Ensuring the decision making criteria for granting or denying parole, including Gladue considerations, are clear to all board members and are being appropriately applied and documented in written decisions that are provided to the inmate; and
- Creating the capacity to operate and maintain a standalone case management administration and reporting tool.

Recommendation 3.17: I recommend the ministry provide or facilitate access to support and assistance for inmates who are completing applications for parole or temporary absences.

Recommendation 3.18: I recommend that the ministry explore best practices for linking to community supports and enhanced community housing and supervision options.

Recommendation 3.19: I recommend that regular meetings between the Ministry of Community Safety and Correctional Services, justice, and health sector partners be convened at a sub-regional level to explore ways to enhance access to community programming, discharge planning, temporary absences, parole and linkages between institutions and the community. As part of these efforts institutions should ensure that at least one senior manager regularly and actively participates in local Human Services and Justice Coordinating Committees.

4. Indigenous People and Ontario Corrections

- Indigenous people account for approximately 2% of the total population in Ontario and yet in 2016 represented 13% of the custodial population. The proportion of individuals entering probation in Ontario who are Indigenous has been increasing over the past 15 years.
- The over-representation of Indigenous peoples in Ontario's correctional system is just one symptom of centuries of colonialism and discriminatory treatment and cannot be addressed in isolation.
- The current organizational structure for addressing Indigenous issues within corrections has limitations. Recommendations that the ministry create a permanent, central Indigenous unit have not been implemented.
- In the Ontario government's response to the Truth and Reconciliation's Calls to Action, Correctional Services committed to improving service delivery for Indigenous inmates and those under community supervision.
- Despite clear legal decisions that have specified that Gladue principles apply whenever an Indigenous person's liberty is at stake, it is unclear how Gladue factors are actually taken into consideration in the Ontario correctional context.
- The majority of provincial institutions do not provide regular access to Elders.
- Native Inmate Liaison Officer (NILO) positions are not consistently staffed and NILO caseload varies considerably across institutions.
- The ministry contracts with individuals and First Nations communities to employ Community Corrections Workers (CCWs) to assist with community supervision in remote areas. There is no ministry policy outlining the role, responsibilities or functions of CCWs, and the terms and conditions of the individual CCW contracts vary significantly.

Recommendation 4.1: I recommend that within six months of this report's release, the ministry appoint an Assistant Deputy Minister responsible for a fully staffed, fully resourced Indigenous Policy and Programs Division within Correctional Services.

Recommendation 4.2: I recommend that the ministry broaden its response to the Truth and Reconciliation Commission's Calls to Action by critically examining all aspects of correctional practice, recognizing the impacts of systemic discrimination, and adopting measures to counteract these trends. Specific attention should be paid to the meaningful incorporation of Gladue factors into every decision impacting an Indigenous person's liberty.

Recommendation 4.3: I recommend that the ministry work with Indigenous communities to create and utilize Healing Lodges to enhance community supports and reduce recidivism.

Recommendation 4.4: I recommend that the ministry review its current Indigenous focused training for correctional employees; the recently developed four part Bimickaway, Indigenous Realities curriculum delivered by the Indigenous Justice Division, Ministry of the Attorney General should be used as a point of comparison.

Recommendation 4.5: I recommend that the Corrections Act for Ontario include:

- A guiding principle stating that correctional policies, programs, practices, and decisions are responsive to the special and specific social reintegration needs of Indigenous people;
- A requirement that the ministry establish an Indigenous Advisory Committee to provide advice on the provision of correctional services to Indigenous inmates;
- A requirement that the ministry take all reasonable steps to ensure the services of an Indigenous spiritual leader or Elder is available to all Indigenous inmates;
- A provision affirming that Indigenous spirituality and Indigenous spiritual leaders and Elders have the same status as other religions and other religious and spiritual leaders;
- A provision authorizing the Minister to enter into an agreement with an Indigenous community for the provision of correctional services to Indigenous people; and
- A provision allowing for the ministry to share information for the purposes of release planning with an Indigenous community where an inmate expresses an interest in being released to that community and provides his or her consent.

Recommendation 4.6: I recommend that the ministry update all policies and contracts to reflect appropriate terms and language as determined through consultations with Indigenous communities and organizations with a particular focus on developing consistent language regarding the Community Corrections Worker and Native Inmate Liaison Officer job descriptions, and roles and responsibilities.

Recommendation 4.7: I recommend that each institution provide inmates with regular access to Elders in an appropriate space and that standing orders be updated to reflect the need for designated space for ceremonies such as Smudging and Sweat Lodges.

Recommendation 4.8: I recommend that ministry policy provide for stable, multi-year funding arrangements with Indigenous individuals or Indigenous operated and staffed organizations to provide Community Corrections Workers, Native Inmate Liaison Officers, and related services.

Recommendation 4.9: I recommend that Indigenous Program Support Units be established within each correctional institution. These units must be properly resourced, including a sufficient budget to ensure continued service delivery throughout the year and at least one Native Inmate Liaison Officer, one Elder, and sufficient administrative support. Planning and operationalization of these units must occur under the leadership of the Indigenous Policy and Programs Division.

5. Health Care Service and Governance

- Despite best efforts, Ontario struggles to meet the complex health needs of the incarcerated population.
- Inmate health care is governed and delivered by the Ministry of Community Safety and Correctional Services (MCSCS), not the Ministry of Health and Long-Term Care (MOHLTC). Although sporadic collaborations do occur, there is no general requirement for MCSCS to align its correctional health care services with MOHLTC services and objectives.
- There is an international and scholarly consensus that the responsibility for health care in correctional facilities should rest with the government authority in charge of health. Research finds that the health of those who have been incarcerated in Ontario tends to be poorer than that of the general population. Providing health care to this segment of the population is complex.
- It is encouraging that the Government of Ontario has pledged to work to transform health care services in correctional facilities and explore options to transfer health care oversight and service provision to the MOHLTC.
- Key principles for any proposed model of correctional health services must include:
 1. A broad definition of health and health care;
 2. Ensuring equivalency, accessibility and continuity of care;
 3. Clinical independence;
 4. Integration with the provincial health care system;
 5. Robust accountability mechanisms; and
 6. A stable, health-focused employment environment for health care service providers within corrections.
- The Independent Review's preliminary review of the models identified to date suggests that some level of centralized governance through the MOHLTC will be necessary.

Recommendation 5.1: I recommend 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, establish a common understanding of what services are to be transferred, and develop a timeline for the transfer. This initial work is to be completed within six months.

Recommendation 5.2: I recommend that the Corrections Act for Ontario and associated regulations establish the following principles and standards to guide the provision of health services within Ontario correctional institutions:

- Multi-disciplinary and gender-informed health care is available to all inmates;

- A definition of health care that encompasses the treatment of disease or injury, vision care, dental care, hearing loss, and other preventive and allied services and treatment;
- Professionally acceptable standards of medical care be provided that must conform to provincially-defined regulations, and that all health services are to be accredited;
- Examinations and treatments are conducted in a manner that respects privacy and dignity of the inmate;
- Inmate requests for medical care from a health care professional of a specific gender must be accommodated subject only to emergency situations; and
- The ministry takes into consideration an inmate's state of health and health care needs in all decisions impacting the inmate as well as when preparing an inmate for release or community supervision.

Recommendation 5.3: I recommend that ministry health care and institutional policy be amended as follows:

- Clinical decisions are made by health care professionals and may not be varied by non-medical staff;
- Security staff may not attend during any medical examination or treatment unless requested by the health care professional or the inmate;
- Where a female inmate is attended to by a male health care professional, a female health care professional must also be in attendance;
- The maintenance and privacy of health care records conform to professionally accepted standards; and
- Setting out the requirement for inmates' informed consent and the right to refuse or withdraw from treatment.

Recommendation 5.4: I recommend that MCSCS and MOHLTC immediately put in place a formal multi-level, inter-ministerial framework to move forward with the transition of correctional health care, including:

- Defined governance roles at the Deputy Minister, Assistant Deputy Minister and director levels;
- An overarching technical advisory committee to provide external subject-matter expertise;
- The inclusion of front line staff and other service providers with expertise and experience providing health care in a correctional setting in any discussions regarding service delivery and clinical management structures; and
- A strategy to engage with a broader range of ministries including Indigenous Relations and Reconciliation, the Attorney General, Community and Social Services, Children and Youth Services, Municipal Affairs and Housing, Education, Labour, and Advanced Education and Skills Development.

Recommendation 5.5: I recommend that the relevant ministries complete, within the next six months, the following foundational work:

- Agree on a definition of “health” and establish a clear vision of what the end state of institutional healthcare will look like;
- A census of MCSCS’ current health care infrastructure and service provision within institutions, including their cost and service volume;
- Mapping of the ministry’s existing linkages to community health providers and services; and
- A national and international survey of other jurisdictions’ experiences with the transfer of correctional health care.

Recommendation 5.6: I recommend that service and delivery models under consideration for correctional health care be evaluated against their ability to fulfill the following criteria:

- a. Implementation of a broad definition of health and health care
- b. Ensuring equivalency, accessibility and continuity of care
- c. Clinical independence
- d. Integration with the provincial health care system
- e. Robust accountability mechanism
- f. A stable, health-focused employment environment

