

Criminal

Corrections reform report draws cautious optimism from lawyers

By **Amanda Jerome**

(October 10, 2017, 9:31 AM EDT) -- The final report from Ontario's independent corrections adviser, released Oct. 3, includes 62 recommendations to improve the prison system with human rights being the primary theme.



Breese Davies, David Asper Centre for Constitutional Rights

"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," wrote Howard Sapers, the independent adviser, in his report.

Sapers' recommendations address issues he found in Ontario's prisons, which include: strip searches, the over- representation of Indigenous peoples in correctional facilities and a lack of mother-child programs for female inmates.

"I would like to thank Mr. Sapers for his comprehensive and considered report. Our government is committed to addressing all the recommendations and moving forward with the transformation of the province's correctional system. Our approach will use evidence-based practices to create a strong system that will enhance community safety through a focus on rehabilitation and reintegration," said Marie-France Lalonde, Ontario's minister of Community Safety and Correctional Services in a statement released on the day the report was made public.

For legal professionals who work in criminal law or human rights, these recommendations have been a long time coming and the government's response has encouraged cautious hope for actual reform.

"I'm pleased that the report highlights a number of problems that have been obvious to many of us who have worked in this area for a very long time. I'm hopeful that the government will in fact act on the recommendations and that we will see significant improvement in terms of ongoing oversight of the correctional system," said Breese Davies, a criminal lawyer and the Constitutional Litigator-in-Residence at the David Asper Centre for Constitutional Rights at the University of Toronto.

Davies said many items in Sapers' report are cause for concern, but the use of strip searches in particular is one she thinks should be highlighted.

"He has found that strip searches in Ontario jails have become a matter of routine where the

Supreme Court of Canada has been clear that they should be exceptional steps given that they are inherently humiliating and inherently intrusive. I think that the lack of compliance with the rule of law is something that lawyers should be particularly concerned about and something that criminal lawyers in particular ought to be bringing to the court's attention in terms of potential Charter remedies," she explained.



Michael Rosenberg, McCarthy Tétrault LLP

Davies said she is cautiously optimistic about Sapers' report leading to reform in Ontario's correctional services, but she has noted that the government has committed to "addressing all the recommendations," which is a far cry from committing to implementing them.

"The citizens of Ontario should be horrified by this report because the people who are in the provincial correctional institutions in Ontario, almost all of them, will be released back into society," she said. "Our institutions have to be about long-term public safety. They obviously have to operate in a milieu where the people in the institution, including all the staff, are safe and protected, I completely agree with that, but the long-term vision is every one of those people is going to be out and reintegrating into our society."

Davies said the goal of corrections should be to give people a chance at having a more productive life once they leave prison, essentially putting them in a position to be better off when they leave prison than when they entered the system. She added that the current system, which restricts family visits and infringes human rights, is the opposite of what corrections should be.

"One of the issues he [Sapers] talks about in the report is family visits," Davies said, explaining that Ontario's correctional system has no barrier-free family visits, no child friendly spaces and no mother-child programs.

"We are significantly disrupting family relationships at a time when we should be fostering them because those are the relationships and the support mechanisms people need when they come out. It avoids the potential intergenerational trauma that we have seen in so many contexts when you separate children from their parents," she added.

Michael Rosenberg, a partner at McCarthy Tétrault LLP in Toronto, said the report highlights how much work needs to be done to improve the province's correctional system.

"There appears to be a sincere commitment to tackling these difficult issues and one of the themes that is emphasized at several points in Mr. Sapers' report is that it will require resources. New resources rather than an allocation or redeployment of existing resources. So what I take from this report is that in order to keep prisoners in conditions that comply with Ontario's legal obligations it's going to cost more money," he said.

Rosenberg was one of the lawyers who represented the Canadian Civil Liberties Association in *Canadian Civil Liberties Association v. Canada (Attorney General)* 2017 ONSC 4191, a Charter challenge the association brought to Ontario's Superior Court this year regarding the use of solitary confinement in prison. He views Sapers' report through the lens of that experience and said there's much more that needs to be done in this area.

"I see Sapers' report as an attempt to force a much broader debate about the way that we manage corrections in this province and the kind of sea change that he's called for is, as I said, really one that does require more than a reallocation of resources in order to implement what he's called for. It would require a very significant commitment to this endeavour," he said.

Rosenberg said Sapers' report shows there's not a moment to lose.

"Some of these things can be done quite quickly. You look at the way in which the federal government implemented a new policy on Aug. 1, 2017, with respect to the inadmissibility of certain inmates [with serious mental impairments] to administrative segregation. ... Those folks are no longer going to be subject to administrative segregation. That's simply a matter of a policy change. And so it shows me that there is scope for meaningful reform for positive change without the kind of significant investments of resources and the time that it would take to reconfigure our correctional facilities," he said.

Davies said one of the things she found interesting about Sapers' final report, and which she hopes people don't lose sight of, is that it doesn't deal with segregation.

"People need to read this report, and the conclusions, and all the problems in the institutions, and remember that there's a second [Sapers] report detailing, in addition to all of these problems, the problems with the use of segregation. What this says to me is that we need a massive overhaul of our correctional system and we need ongoing accountability and ongoing oversight in a way that we haven't had in the past," she said.

Davies noted that Ontario does not have an Office of the Correctional Investigator such as one that exists at the federal level. This means no one in the province is tasked with monitoring and oversight of corrections, she explained.

"I think these two reports that Mr. Sapers has done [are] highlighting the result that you get when you don't monitor institutions that operate largely in secret behind closed doors," she said. "I think the reality is that this is yet another report highlighting the need for significant change to ensure our correctional system is maintaining the rule of law and operating in a way that respects and promotes human rights, which is their obligation," she added.

Since Sapers' interim report was released in May 2017, the government of Ontario has conducted consultations with stakeholders on drafting new legislation based on the recommendations for reform as well as starting a site selection process for new correctional centres in Thunder Bay and Ottawa.