



March 17, 2020

The Hon. Bill Blair Minister of Public Safety and Emergency Preparedness  
Public Safety Canada  
269 Laurier Avenue West  
Ottawa, Canada K1A 0P8

Anne Kelly  
Commissioner of the Correctional Service of Canada  
National Headquarters  
340 Laurier Avenue West  
Ottawa, Ontario K1A 0P9

Dear Minister Blair and Commissioner Kelly:

**Re: COVID-19 – Protecting Prisoner Health**

We are organizations serving the needs of and advocating with and for people living with and affected by HIV and hepatitis C (HCV), including people in federal prisons.

The Canadian HIV/AIDS Legal Network (“HIV Legal Network”) promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization. The HIV Legal Network has developed particular expertise on prison law and policy, especially as they relate to people who are at risk of HIV and HCV infection. The HIV & AIDS Legal Clinic Ontario (HALCO) is a community legal clinic serving the legal needs of low-income people in Ontario who are living with HIV. Since 2001, HALCO has responded to over 900 correctional law-related legal issues, including matters related to health care services and segregation. Prisoners with HIV/AIDS Support Action Network (PASAN) was formed in 1991 as a grassroots response to HIV in the Canadian prison system. It is the only community-based organization in Canada exclusively providing HIV and HCV prevention, education and support services and whole health and harm reduction education to prisoners, ex-prisoners and their families, including those in Ontario federal institutions.

We are writing today out of grave concern for our clients and communities in the face of the growing COVID-19 crisis. As our federal, provincial and municipal governments implement unprecedented measures to protect the health of people in Canada and slow the spread of the pandemic, we must not forget that prisoners are part of our communities. Prisoners come from the community, and the vast majority return to it: prison health is public health.

Moreover, it is a well-established legal principle, reflected in section 4(d) of the *Corrections and Conditional Release Act (CCRA)*, that prisoners do not surrender their rights upon incarceration, but instead retain all rights subject to the restrictions that are unavoidable in a prison environment including the right to the highest attainable standard of health as guaranteed under international law. Pursuant to section 80 of the *CCRA*, CSC has a duty to provide every inmate with essential health care in conformance with professionally accepted standards. As a matter of ethical and legal obligation under human rights legislation, the *Canadian Charter of Rights and Freedoms* (“Charter”) and international human rights guidance on health care in prison settings, prison health care should be equivalent to that available in the community. We are therefore calling on the Correctional Service of Canada (CSC) to immediately and consistently implement measures to protect both the physical and mental health of the roughly 14,000 prisoners in federal custody.

We are particularly concerned about the many prisoners who live with underlying health conditions that compromise their immunity and increase their risk of contracting COVID-19. As you are no doubt aware, both HIV and HCV are far more prevalent among prisoners than among the population as a whole; a significant number also report hypertension or respiratory illness. Close confinement, crowded conditions, poor ventilation, poor nutrition and sub-standard health care in prison also means prisoners are disproportionately vulnerable to infection, yet unable to take the same precautions that other people in Canada are encouraged to adopt to protect themselves and reduce the rate and speed of transmission.

As a first priority, CSC must take every possible step to **prevent COVID-19 from entering federal institutions**. Measures to maintain a minimum physical distance between people, as per public health recommendations, must be adopted for all new admissions.

We also call on CSC to **find alternatives to custody** for those who are at high risk of infection and of experiencing serious complications in the event that they do become infected. Immunocompromised prisoners – including those living with HIV as well as other significant underlying health conditions – should be moved into the community immediately, including through temporary absences. CSC should also consider alternatives to custody for the majority of prisoners incarcerated for non-violent offences. Fewer prisoners will decrease the risk of transmission for both prisoners and correctional staff, and allow CSC to prioritize resources for the institutions that need them most.

Alternatively, and at an absolute minimum, CSC must **ensure that sufficient medical staff and resources are available within institutions** both to care for those who may contract COVID-19 but not require hospitalization, and to provide uninterrupted treatment for those prisoners living with HIV, HCV and/or other underlying health conditions.

It is equally urgent to **reduce the risk of transmission among prisoners**. Prisoners should be provided with soap, sanitizer and cleaning supplies without cost or further delay. At the same time, responsibility for maintenance and sanitation continues to rest with CSC, which must also ensure that enhanced cleaning is carried out by staff who are properly trained, equipped, and protected. As you know, CSC has a duty, pursuant to section 70 of the *CCRA*, to “take *all reasonable steps* to ensure that penitentiaries, the penitentiary environment, the living and working conditions of inmates and the working conditions of staff members are safe, healthful and free of practices that undermine a person’s sense of personal dignity.” [emphasis added]

For those known to have been directly exposed to or who are exhibiting symptoms of the virus, **testing and protocols to prevent further transmission should be established in line with the expert guidance provided by public health officials**. It is essential that these measures be evidence-based and not unduly restrictive of prisoners' residual liberty. In particular, the use of prolonged or indefinite lockdowns and/or segregation must be avoided. As you know, the Court of Appeal for Ontario has held that segregation for more than 15 days violates section 12 of the *Charter* due to its demonstrated and often permanent effects on prisoners' health. Any use of restrictive measures must be a last resort – after community placements and other measures have been implemented – and must be as minimal as possible. The psychological and emotional well-being of prisoners – who are disproportionately likely to be living with mental health conditions – should not be jeopardized unnecessarily.

We also know that continued contact with family and friends is vital to prisoners' mental health and emotional well-being. With in-person visits suspended, it is especially important that prisoners have meaningful access to other means of communicating with their loved ones. In the face of this growing crisis and at a minimum, **phone calls for prisoners should be free until in-person visits can resume. The number of phones available must also be increased and access to videoconferencing facilities for prisoners' personal communications must be expanded**, particularly while all non-essential court proceedings are adjourned.

Prisoners are requesting assistance and providing up-to-the-minute, frontline reports on conditions in the institutions where they are housed. Prisoners know what steps are – and are not – being taken in each institution, and what they need to protect and care for themselves and each other and to avoid an uncontrollable outbreak. We would be very pleased to meet with you or members of your staff to relay that information and to discuss these and other measures that can and should be implemented, both immediately and over the days and weeks ahead.

Yours truly,



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Executive Director  
PASAN



Ryan Peck  
Executive Director  
HALCO



Sandra Ka Hon Chu  
Director of Research & Advocacy  
Canadian HIV/AIDS Legal Network

Cc The Honourable Patty Hajdu, Minister of Health