



March 17, 2020

The Honourable Sylvia Jones
Solicitor General
Ministry of the Solicitor General
25 Grosvenor St
Toronto, Ontario M7A 1Y6

Dear Minister Jones:

Re: COVID-19 – Protecting Prisoner Health

We represent agencies serving the needs of and advocating with and for Ontarians living with HIV. The Canadian HIV/AIDS 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 & AIDS Legal Clinic Ontario (HALCO) provides legal services to persons living with HIV in Ontario that are relevant to their well-being and that enable them to participate fully in the communities in which they live. Prisoners with HIV/AIDS Support Action Network (PASAN) provides HIV, AIDS and hepatitis C prevention, education, and support services to prisoners, ex-prisoners and their families, including in provincial correctional facilities throughout Ontario.

We are writing today out of grave concern for our clients and communities in the face of the growing COVID-19 crisis. As our provincial and municipal governments implement unprecedented measures to protect the health of Ontarians and slow the spread of the pandemic, we must not forget that prisoners are part of our communities and that prison health is community health. We are therefore calling on the Ministry of the Solicitor General, in conjunction with the Ministry of Health, the Ministry of the Attorney General, and other government agencies, to immediately and consistently implement measures to protect both the physical and mental health of all prisoners in provincial 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 hepatitis C (HCV) are far more prevalent among prisoners than among the population as a whole. Prisoners are thus

disproportionately vulnerable to infection – and at the same time, unable to take the same precautions that other Ontarians are encouraged to adopt to protect themselves and reduce the rate and speed of transmission.

As a first priority, the government must take every possible step to prevent COVID-19 from entering provincial jails and detention centres. We applaud the announcement that intermittent inmates will be granted temporary absences from custody. Yet, as late as last Friday, we heard profoundly troubling reports that new admissions were not being held in isolation but rather introduced to the general population immediately upon arrival. This practice cannot continue. 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 the government 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 with HIV as well as other significant underlying health conditions – should be moved into the community immediately, whether on judicial interim release for those on remand, or using mechanisms such as temporary absences for those serving reformatory sentences. The government 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 the government to prioritize resources for the institutions that need them most.

Alternatively, and at an absolute minimum, the government 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 the province, which must also ensure that enhanced cleaning is carried out by staff who are properly trained, equipped, and protected.

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.

Finally, while we fully understand the need to suspend all non-professional visits, 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. We have long called for the cancellation of the exclusive contract with Bell Canada, which imposes needless restrictions on and charges extortionate fees for calls placed from provincial jails and detention centres. 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 facilities 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. 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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Cc The Honourable Christine Elliott, Minister of Health
The Honourable Doug Downey, Attorney General
Dr. David Williams, Chief Medical Officer of Health