

FEDERAL COURT

BETWEEN:

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
CANADIAN PRISON LAW ASSOCIATION,
HIV & AIDS LEGAL CLINIC ONTARIO,
HIV LEGAL NETWORK,
& SEAN JOHNSTON**

Applicants

– and –

THE ATTORNEY GENERAL OF CANADA

Respondent

**APPLICATION RECORD
VOLUME 1 OF 5**

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto, Ontario M5G 2C2

Tel: 416-977-6070
Fax: 416-591-7333

Jessica Orkin
(jorkin@goldblattpartners.com)

Adriel Weaver
(aweaver@goldblattpartners.com)

Dan Sheppard
(dsheppard@goldblattpartners.com)

Jody Brown
(jbrown@goldblattpartners.com)

Counsel for the Applicants

TO: **THE REGISTRAR**
Federal Court
180 Queen Street West, Suite 200
Toronto, Ontario
M5V 3L6

AND TO: **THE ATTORNEY GENERAL OF CANADA**
National Litigation Sector
Department of Justice Canada
120 Adelaide Street West Suite #400
Toronto, Ontario M5H 1T1
Tel.: 647-256-7510 / 647-256-1673
Fax: 416-952-4518

Kathryn Hucal
(kathryn.hucal@justice.gc.ca)

Diya Bouchédid
(diya.bouchédid@justice.gc.ca)

Counsel for the Respondent

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FEDERAL COURT

DOC 1
FILED: 12-MAY-2020
OFFICER: Y. GULIA

BETWEEN:

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
CANADIAN PRISON LAW ASSOCIATION
HIV & AIDS LEGAL CLINIC ONTARIO,
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& SEAN JOHNSTON**

Applicants

– and –

THE ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION
Pursuant to sections 18 and 18.1 of the *Federal Courts Act*

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants request that this application be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any document in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicants' solicitor or, if the applicants are self-represented, on the applicants WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4283) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU

May 12, 2020

Issued by:

YOGINDER GULIA

(Registry Officer)

Address of local office:

180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

TO: The Registrar
Federal Court

AND TO: The Attorney General of Canada
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

THE APPLICANTS MAKE APPLICATION FOR:

- (a) An order in the nature of *mandamus* that CSC comply with its statutory duties pursuant to sections 70, 86, and 87 of the *Corrections and Conditional Release Act*, SC 1992, c 20 (“CCRA”) by, *inter alia*:
- i. Immediately and as a first priority, taking proactive and systematic steps to reduce the population of prisoners in CSC institutions to the greatest extent possible consistent with public safety, with precedence given to those who are particularly vulnerable to COVID-19 due to age or underlying health conditions;
 - ii. Ensuring that prisoners who remain in CSC institutions are not detained in conditions equivalent or tantamount to segregation for indefinite or prolonged periods of time – that is, in excess of 15 days – for reasons related to COVID-19;
 - iii. Implementing adequate physical distancing for prisoners and staff within penitentiaries;
 - iv. Implementing comprehensive COVID-19 testing for prisoners and staff, and, for those who test positive, rigorous contact tracing and isolation consistent with public health standards and human rights norms;
 - v. Ensuring that prisoners and staff are adequately supplied with personal protective equipment (“PPE”) and trained in its use;
 - vi. Providing prisoners with an adequate supply of hand soap and hand sanitizer that is effective against the novel coronavirus that causes COVID-19 (“effective personal hygiene supplies”) and information concerning their effective use;
 - vii. Enhancing cleaning of common areas and any cells or other areas previously inhabited or occupied by anyone who tested positive for COVID-19. Enhanced cleaning must be more frequent, and carried out by persons who are paid, properly trained, and appropriately equipped with PPE and cleaning supplies that are effective against the novel coronavirus that causes COVID-19 (“effective cleaning supplies”);

- viii. Providing prisoners with effective cleaning supplies for use in common areas and their personal living areas, as well as training in the use of those supplies, in recognition that cleaning, particularly of shared surfaces, must be as continuous as possible;
 - ix. Ensuring that adequate staff and facilities are available to provide health care and treatment to all prisoners, including those who are or may be diagnosed with COVID-19, who may be particularly vulnerable to COVID-19, and/or who live with other health conditions;
- (b) A declaration that CSC's failure to take all reasonable steps to ensure a safe and healthful penitentiary environment, provide prisoners with essential health care in the context of COVID-19, and take each prisoner's health status and health care needs into consideration in all decisions affecting the prisoner breaches CSC's statutory duties pursuant to sections 70, 86 and 87 of the *CCRA*;
 - (c) A declaration that CSC's failure to take all reasonable steps to ensure a safe and healthful penitentiary environment, provide prisoners with essential health care in the context of COVID-19, and take each prisoner's health status and health care needs into consideration in all decisions affecting the prisoner violates the rights of prisoners as guaranteed by sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*");
 - (d) A declaration that CSC's use of lockdowns and confinement of prisoners in conditions equivalent or tantamount to segregation for indefinite and prolonged periods of time in response to COVID-19 violates the rights of prisoners as guaranteed by sections 7, 9, 12 and 15 of the *Charter*;
 - (e) Should *mandamus* not issue, an order pursuant to section 24(1) of the *Charter* requiring CSC to take the steps set out in paragraph (a) above;
 - (f) An order pursuant to section 24(1) of the *Charter* that CSC implement regular audits of its penitentiaries and penitentiary environments by federal public health officials, and regular reviews of the conditions of confinement of all prisoners whose residual liberty

has been infringed in relation to COVID-19 by persons appointed to be independent external decision-makers pursuant to section 37.6(1) of the *CCRA*;

- (g) An order pursuant to section 24(1) of the *Charter* that the Court retain jurisdiction to hear reports from CSC concerning its progress in complying with the terms of any order issued by the Court, including in relation to audits and reviews;
- (h) Such injunctive or interlocutory relief as may be sought by the Applicants and this Honourable Court deem just;
- (i) Such further and other relief as counsel may advise and this Honourable Court permit.

THE GROUNDS FOR THIS APPLICATION ARE:

A. Overview and Applicants

1. The world is in the grip of a global pandemic, with the number of COVID-19 infections and deaths continuing to rise. In the absence of COVID-specific treatment or vaccine, stringent steps must be taken to reduce transmission and slow the spread of the disease. Physical distancing is vital to those efforts.
2. Physical distancing cannot be achieved in correctional facilities without reducing the inmate population. In recognition of this fact, public authorities in various jurisdictions around the world and across Canada have taken action to release prisoners as an essential part of the response to COVID-19.
3. Federal prisoners are disproportionately at risk both of contracting COVID-19 due to the nature of the penitentiary environment, and of suffering severe adverse outcomes including death, due to the prevalence among the federal inmate population of pre-existing vulnerabilities. There have already been outbreaks of COVID-19 at several CSC facilities, and two federal prisoners have died.
4. CSC has a statutory duty to take all reasonable steps to provide a safe and healthful environment for prisoners. In the context of COVID-19, this duty necessarily includes taking immediate and proactive measures to depopulate its institutions to the greatest extent possible

consistent with public safety. Unlike other correctional authorities around the world and across Canada, however, CSC has taken few if any steps to release prisoners from its institutions.

5. In addition, CSC is statutorily obligated to provide essential health care to prisoners in accordance with professionally accepted standards, and to take each prisoner's health status and health care needs into consideration in all decisions affecting the prisoner – including decisions relating to placement, transfer, and confinement in a structured intervention unit – and in the preparation of the prisoner for release and the prisoner's supervision.

6. CSC's failure to take steps to release prisoners, and its failure to implement additional measures to more fully safeguard the health of those who remain, constitutes a breach of its statutory duties and a breach of the rights guaranteed to all prisoners under sections 7, 12 and 15 of the *Charter*.

7. CSC's use of lockdowns and indefinite and prolonged confinement of prisoners in conditions equivalent or tantamount to segregation in response to COVID-19 constitutes a breach of its statutory duties and a breach of the rights guaranteed to all prisoners under sections 7, 9, 12 and 15 of the *Charter*.

8. The applicants the Canadian Civil Liberties Association, the Canadian Prison Law Association, the HIV & AIDS Legal Clinic Ontario, and the HIV Legal Network are a coalition of organizations whose mandates include protecting and promoting the constitutional and human rights of prisoners, including those living with underlying health conditions that render them particularly vulnerable to COVID-19. In response to the COVID-19 pandemic, all of these applicants have written and/or been signatories to letters to the Minister of Public Safety and the Commissioner of the CSC calling on them to take immediate action to protect the health of prisoners through depopulation and other measures.

9. These applicants have public interest standing to seek relief from this Honourable Court on behalf of federal prisoners because there are no reasonable alternative means available to bring the systemic issues engaged on this application before the Court.

10. The applicant Sean Johnston is serving a life sentence and is currently in custody at Warkworth Penitentiary. Mr. Johnston has diabetes, heart problems, asthma, sleep apnea, and

experiences blood clots. He also has PTSD. Mr. Johnston uses a nebulizer for his asthma, and a CPAP machine for sleep apnea. Because these devices cause droplets to linger in the air for longer periods or be dispersed over greater distances, respectively, he has been told by health care staff at Warkworth that they will likely be taken away from him if anyone in the institution tests positive for COVID-19. Mr. Johnston is very worried about this possibility. He does not want to increase the risk of other prisoners becoming infected, but he needs these devices to effectively manage his conditions.

11. The Parole Board of Canada previously granted Mr. Johnston Unescorted Temporary Absences (“UTAs”) to be followed by day parole on successful completion. Mr. Johnston’s UTAs and day parole were suspended, however, after an iPod was found in his cell. Mr. Johnston has a hearing before the Parole Board scheduled for May 25, 2020, to determine whether his day parole should be revoked. Mr. Johnston has been assessed as posing a low risk if released on parole, and has a release plan including a private residence at which he can safely stay. While he awaits his hearing, he remains gravely concerned about the possibility of contracting COVID-19, particularly given his underlying health conditions.

B. The Global COVID-19 Pandemic and the Physical Distancing Imperative

12. On March 11, 2020, the World Health Organization (“WHO”) declared the novel coronavirus that causes COVID-19 to be a global pandemic. As of May 11, 2020, more than 4.2 million people worldwide have been diagnosed with COVID-19, and more than 285,000 have died as a result of contracting the virus. In Canada alone, there have been almost 70,000 confirmed cases and just under 5000 deaths. Older adults, those with compromised immunity, and those with various underlying health conditions (heart disease, hypertension, lung disease, diabetes, and cancer) are particularly at risk.

13. According to Health Canada, the number of cases continues to rise and has not yet peaked. COVID-19 is a “serious health threat”, and given the increasing number of cases, the health risk to Canadians is “high”. Every province and territory across Canada has declared a state of emergency in response to COVID-19.

14. There is currently no specific treatment for COVID-19, and no vaccine that protects against the coronavirus that causes it. Effectively combatting COVID-19 therefore depends on

measures that reduce transmission rates and slow the spread of the disease. These measures are essential to protecting individuals' health, and in particular the health of the elderly and those with underlying health conditions. They are also essential to ensuring that the health care system maintains sufficient resources and capacity to provide acute care to those who need it.

15. The virus that causes COVID-19 is spread primarily from person to person through small droplets from the nose or mouth, which are expelled when a person who is infected with the virus (even if asymptomatic or presymptomatic) coughs, sneezes, or speaks. Physical distancing – that is, maintaining at least two metres between individuals – is therefore the most effective means of reducing the spread of COVID-19.

16. Where physical distancing is not possible, the use of PPE such as masks and gloves can help reduce the risk of transmission. Proper hand hygiene practices – frequent and thorough washing with soap or the use of an alcohol-based sanitizer – and continuous disinfecting of shared surfaces can also aid in reducing the risk of infection from droplets that land on or are transferred to objects and surfaces.

17. The use of PPE, hand hygiene, and disinfecting of shared surfaces are, however, secondary interventions. From both a population and an individual health perspective, there is no substitute for appropriate physical distancing.

18. Physical distancing has been and remains the cornerstone of public health efforts to mitigate the impact of COVID-19. Public health authorities across the county have issued a variety of unprecedented orders to implement and enforce physical distancing measures, including cancelling schools, prohibiting gatherings of more than a small number of individuals, and closing all non-essential businesses. In many areas, the retail businesses that have been permitted to remain open to the public, such as grocery stores and pharmacies, have been required to establish physical distancing measures. Throughout the country, people have been asked to stay home as much as possible, and when outside of their home to avoid contact with or proximity to anyone who is not a member of their own household.

19. Although the number of cases continues to grow, stringent and prolonged physical distancing measures appear to have been successful in “flattening the curve” of COVID-19

infections in the general community. Significant and devastating outbreaks in various congregate living environments have, however, continued.

C. Depopulation is Essential to Mitigating the Risk of COVID-19 in Correctional Facilities

20. The risks associated with COVID-19 are substantially heightened in correctional facilities.

21. Like long-term care facilities and homeless shelters, correctional facilities are congregate living environments. Experience has tragically demonstrated how quickly COVID-19 outbreaks occur, and how difficult they are to contain, within such environments. This is particularly true of congregate living environments with a high concentration of individuals; close quarters; shared facilities for food preparation, eating, toileting and hygiene, recreation and telecommunications; and/or staff who move between living quarters and may unwittingly act as vectors of infection.

22. The effectiveness of secondary interventions, such as the use of PPE and enhanced hand hygiene and cleaning measures, may be overwhelmed when an outbreak takes hold within a high-density congregate environment. In other words, as the viral load in a given environment increases in the air, on surfaces, and in the proportion of individuals infected, secondary interventions that were previously sufficient to control the spread of disease will no longer be effective.

23. Physical distancing is thus essential to reduce both the risk and the extent of COVID-19 outbreaks in correctional facilities. Physical distancing cannot be achieved in correctional facilities, however, without reducing the inmate population.

24. The importance and urgency of prison depopulation are widely recognized. Through an Inter-Agency Standing Committee, the WHO and the Office of the United Nations High Commissioner for Human Rights have issued an interim guidance document calling for a number of preventative measures to protect persons deprived of their liberty from the spread of COVID-19. One of their primary recommendations is that public authorities take immediate measures to

reduce the population in prisons, with priority given to individuals with underlying health conditions, low risk profiles, or imminent release dates.

25. Various jurisdictions in over 40 countries around the world have reported depopulating correctional facilities by releasing individuals in response to COVID-19. Within Canada, provincial correctional authorities in British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, Prince Edward Island and Newfoundland have also taken proactive steps to release prisoners following the onset of the pandemic. In Ontario, for example, the Ministry of the Solicitor General has issued Temporary Access Passes to all intermittent prisoners, and proactively performed temporary absence reviews for prisoners with less than 30 days remaining on their sentences. Through these and other measures, Ontario reduced the number of prisoners across the province by nearly 30 percent between March 12, 2020 and April 15, 2020.

D. Addressing the Risk of COVID-19 Within CSC Facilities

26. COVID-19 poses an especially serious risk for federal prisoners not only because of the nature of the penitentiary environment but also the prevalence of pre-existing vulnerabilities among the federal prison population.

27. In general, the health status of prisoners is comparable to that of persons 10-15 years their senior who are not imprisoned. In other words, 50 years of age for prisoners roughly corresponds to 65 years of age for persons outside of prisons. Currently, 25 percent of federal prisoners are over the age of 50. There is also a higher prevalence of cardiovascular disease, asthma and other respiratory diseases, diabetes, HIV and hepatitis C virus infection among people in prison than among the population as a whole. Federal prisoners are thus at a higher risk both of contracting COVID-19, and of experiencing more severe outcomes, including death, as a result of infection.

28. There have already been significant outbreaks of COVID-19 at CSC institutions in Quebec (Federal Training Centre Multilevel and Joliette Institution) and British Columbia (Mission Medium Institution), and an additional eight cases at the Grand Valley Institution for Women in Ontario. Tragically, two federal prisoners have died as a result of these outbreaks. As of May 6, 2020, a total of 582 federal prisoners had tested positive for COVID-19, and there

were 130 active and 159 recovered cases across CSC institutions. The rate of infection within CSC institutions is significantly higher than in the population at large.

29. CSC's response to COVID-19 has included suspending all visits and all temporary absences other than as medically necessary. CSC has also implemented screening measures, although the utility of such measures is questionable given that COVID-19 can be spread by persons who are asymptomatic or presymptomatic. In addition, CSC has taken some steps to increase cleaning and the availability of cleaning supplies, and to provide staff and inmates with PPE. Many inmates still do not, however, have access to effective hand hygiene and cleaning supplies or PPE.

30. Physical distancing measures have been grossly inadequate. Inmates in some institutions remain double-bunked and therefore cannot achieve physical distancing even within their own cells. Others who may be able to physically distance while in their own cells or rooms cannot maintain physical distancing throughout the institution.

31. As a result of COVID-19, and in the absence of effective physical distancing measures and comprehensive and effective secondary interventions, some CSC institutions are reportedly on lockdown, with prisoners confined to their cells in conditions equivalent or tantamount to segregation. These conditions are indefinite, and given the current state of evidence with respect to COVID-19 can reasonably be expected to be quite prolonged unless alternative measures are implemented.

32. Notably, and in contrast to provincial correctional authorities across Canada and public authorities in numerous countries and jurisdictions around the world, CSC has not taken meaningful steps to depopulate its institutions.

33. Weekly population trends derived from CSC's own data show a decline of only 2.4 percent in the total population of federal inmates from its peak on March 1, 2020 to April 26, 2020. This limited decline in total population appears to have resulted from a significant drop in warrant of committal admissions and a smaller drop in revocations. Although day paroles increased over the two weeks ending on April 26, 2020, these increases were within CSC's normal range of fluctuations in the number of day paroles, and there was no increase in overall

releases. In other words, while there has been a decrease in the number of prisoners admitted to CSC institutions, the rate of release from federal penitentiaries has not accelerated or increased since the start of the COVID-19 pandemic.

E. CSC has Failed to Meet Its Statutory Duties in Relation to COVID-19

34. CSC has a public law duty to provide a safe and healthful environment for prisoners within its penitentiaries. Section 70 of the *CCRA* provides that CSC “shall 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.”

35. Within the context of the COVID-19 pandemic, CSC’s duty to take “all reasonable steps” to ensure that penitentiaries are safe and healthful necessarily and at a minimum includes the requirement to take immediate, proactive and systematic measures to reduce inmate populations to the greatest extent possible consistent with public safety.

36. That requirement is underscored by other provisions of the *CCRA*. The purpose of the federal correctional system, as set out in section 3 of the *CCRA*, is to contribute to the maintenance of a just, peaceful and safe society by, *inter alia*, carrying out sentences imposed by courts through the safe and humane custody and supervision of prisoners. Section 4 of the *CCRA* sets out a number of principles that guide CSC in achieving that purpose, including that the sentence is carried out having regard to all relevant available information; that CSC uses the least restrictive measures consistent with the protection of society, staff members and prisoners; and that CSC considers alternatives to custody in a penitentiary.

37. The *CCRA* provides for numerous alternatives to penitentiary custody, including:

- i. Unescorted temporary absences, which may be authorized for an unlimited period for medical reasons (sections 116); and
- ii. Parole by exception, which may be granted at any time to any prisoner not serving a life or indeterminate sentence, whose physical or mental health is likely to suffer serious damage if he or she continues to be held in confinement, or for whom continued confinement would constitute an excessive hardship that was not reasonably foreseeable at the time the offender was sentenced, among other grounds (section 121).

38. In addition, CSC has a public law duty pursuant to section 86 of the *CCRA* to provide prisoners with essential health care that conforms to professionally accepted standards.

39. As noted above, there is currently no COVID-specific treatment, and no vaccine to protect against the novel coronavirus that causes the disease. In relation to COVID-19, therefore, essential health care that conforms to professionally accepted standards necessarily includes – indeed, is largely limited to – measures that prevent its transmission.

40. Chief among those measures is physical distancing through depopulation. Depopulation safeguards and promotes the health not only of those prisoners who are released but also, and crucially, the health of those who for whatever reason must remain in CSC institutions – including those who are more vulnerable to COVID-19 due to personal characteristics or health status. Moreover, in addition to reducing the risk of infection for all prisoners who remain, depopulation helps to ensure that their access to essential health care for other conditions is not restricted or impaired as a result of COVID-19 outbreaks.

41. Section 87 of the *CCRA* requires that CSC take into consideration a prisoner's state of health and health care needs in (a) all decisions affecting the prisoner, including decisions relating to placement, transfer and confinement in a structured intervention unit, and (b) the preparation of the prisoner for release and the supervision of the prisoner. This duty applies to individual decisions concerning a prisoner's eligibility for release and conditions of confinement within the institution, as well as institutional decisions concerning the availability of various mechanisms of release and conditions of confinement more generally.

42. The failure of CSC to take prompt and proactive steps to systematically depopulate its institutions in response to COVID-19 constitutes a breach of its duties under sections 70, 86, and 87 of the *CCRA*.

43. The failure of CSC to take additional measures to protect inmate health and safety – including the provision of adequate PPE, effective cleaning and hand hygiene supplies – constitutes a further breach of its duties pursuant to sections 70 and 86 of the *CCRA* as well as section 83 of the Corrections and Conditional Release Act Regulations, which provides that CSC

shall “take all reasonable steps to ensure the safety of every inmate and that every inmate is ... provided with toilet articles and all other articles necessary for personal health and cleanliness”.

44. CSC’s use of lockdowns and confinement of prisoners in conditions equivalent or tantamount to segregation for indefinite and prolonged periods additionally breaches its duties under sections 70 and 87 of the *CCRA*.

45. The imposition of such conditions is incompatible with CSC’s obligation to provide a safe and healthful environment, particularly though not solely where it results from CSC’s failure to depopulate and to implement comprehensive and effective secondary interventions to prevent transmission. The indiscriminate imposition of such conditions is equally incompatible with CSC’s obligation take into consideration each prisoner’s health status and health care needs in all decisions affecting that prisoner.

46. The indefinite and/or prolonged imposition of lockdown conditions also violates section 69 of the *CCRA*, which provides that no person shall administer, instigate, consent to or acquiesce in any cruel, inhumane or degrading treatment or punishment of a prisoner.

E. CSC’s Failure to Fulfill its Statutory Duties Unjustifiably Breaches Prisoners’ Charter Rights

47. By failing to take proactive steps to depopulate its institutions, and by failing to implement effective secondary interventions to further limit the spread of COVID-19, CSC has breached prisoners’ rights under sections 7, 12, and 15 of the *Charter*.

48. CSC’s failure to fulfill its statutory obligations significantly increases the risk to prisoners’ security of the person and indeed their lives. The violation of these rights is not in accordance with the principles of fundamental justice as avoidable exposure to and the potential consequences of contracting COVID-19 would be both arbitrary and grossly disproportionate to the principles and purposes of custodial sentences.

49. Avoidable exposure to and the potential consequences of contracting COVID-19 also constitute cruel and unusual treatment or punishment, contrary to section 12 of the *Charter*. Further, sentences imposed by courts were not crafted in anticipation of the risks to health

associated with a global pandemic in correctional institutions, or the resultant, indefinite and prolonged cancellation of programming, visits, recreation, and spiritual, religious and cultural supports and services, and suspension of access to measures such as day parole and unescorted temporary absences where otherwise appropriate. The sentences currently being served by federally sentenced prisoners are accordingly significantly harsher than were intended by the courts and grossly disproportionate to the offences for which they were imposed.

50. The implementation of lockdowns and the confinement of prisoners in conditions amounting to segregation for prolonged and indefinite periods constitutes a further breach of prisoners' *Charter* rights, including the right not to be arbitrarily detained as guaranteed by section 9 of the *Charter* in addition to the rights guaranteed in sections 7 and 12.

51. CSC's failure to fulfill its statutory duties has a disproportionately adverse effect on prisoners who are pregnant, elderly, and/or experience physical or mental health disabilities, contrary to section 15 of the *Charter*.

52. These breaches cannot be demonstrably justified in a free and democratic society, particularly in light of the efforts taken by other Canadian authorities to facilitate the release of prisoners during this pandemic.

THE APPLICANTS RELY UPON:

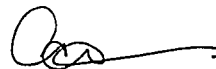
- (a) *Corrections and Conditional Release Act*, SC 1992, c 20, sections 3, 4, 5, 69, 70, 85, 86, and 87;
- (b) *Corrections and Conditional Release Regulations*, SOR/92-620, section 83;
- (c) *Canadian Charter of Rights and Freedoms*, sections 7, 9, 12, 15, and 24(1);
- (d) *Federal Courts Act*, RS 1985, c F-7, sections 18(1) and 18.1.

THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- (a) An affidavit from each of applicants or its representative, to be sworn;

(b) Such further and other evidence as counsel may advise and this Honourable Court permit.

Dated at Toronto this 12th day of May, 2020.



GOLDBLATT PARTNERS LLP

20 Dundas Street West, Suite 1039

Toronto, Ontario M5G 2C2

Tel: 416-977-6070

Fax: 416-591-7333

Jessica Orkin

(jorkin@goldblattpartners.com)

Adriel Weaver

(aweaver@goldblattpartners.com)

Dan Sheppard

(dsheppard@goldblattpartners.com)

Jody Brown

(jbrown@goldblattpartners.com)

Counsel for the Applicants

FEDERAL COURT**BETWEEN:**

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
CANADIAN PRISON LAW ASSOCIATION
HIV & AIDS LEGAL CLINIC ONTARIO,
HIV LEGAL NETWORK,
& SEAN JOHNSTON**

Applicants

– and –

THE ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION
Sections 18 and 18.1 of the *Federal Courts Act*

GOLDBLATT PARTNERS LLP

20 Dundas Street West, Suite 1039

Toronto, Ontario M5G 2C2

Tel: 416-977-6070

Fax: 416-591-7333

Jessica Orkin (jorkin@goldblattpartners.com)**Adriel Weaver** (aweaver@goldblattpartners.com)**Dan Sheppard** (dsheppard@goldblattpartners.com)**Jody Brown** (jbrown@goldblattpartners.com)**Counsel for the Applicants**

Court File Number: T-539-20

FEDERAL COURT

B E T W E E N:

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
CANADIAN PRISON LAW ASSOCIATION,
HIV & AIDS LEGAL CLINIC ONTARIO,
HIV LEGAL NETWORK,
& SEAN JOHNSTON**

Applicants

– and –

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF ABBY DESHMAN

I, Abby Deshman, of the City of Toronto, AFFIRM THAT:

1. I am the Criminal Justice Program Director at the Canadian Civil Liberties Association (the “CCLA”), and, as such, I have knowledge of the matters to which I hereinafter affirm, except where this knowledge is based on information and belief, in which case I verily believe it to be true.
2. The CCLA is an independent, non-partisan, non-profit organization. Since its creation in 1964, CCLA has been a leading national civil liberties organization, defending and promoting the rights and freedoms of people in Canada. Our organization has thousands of supporters and followers nationwide, and our membership represents a wide variety of persons, occupations and interests.

3. The CCLA continually seeks to defend, foster, and ensure fundamental rights and freedoms through advocacy inside and outside of courts. In its advocacy, the CCLA seeks to reconcile civil liberties and human rights with other public interests. The underlying purpose of our work is the maintenance of a free and democratic society in Canada.

4. The CCLA has a long-established history of promoting respect for and the observance of fundamental human rights and civil liberties, including a history of directly addressing issues of discrimination, correctional practices, and segregation.

5. Given its history fighting against rights violations in Canada, CCLA has significant experience advocating with respect to deprivations imposed on those who are already marginalized. The CCLA has dedicated many of its efforts to promoting the fair and equitable enforcement of laws, and to advocating for the life, security of the person, and equality rights of people who are marginalized on the basis of race, Indigeneity, mental and physical health, age, sexual orientation, gender identity and expression, incarcerated status, and other grounds.

Background Information about the CCLA

6. The CCLA is a national non-profit organization with a nation-wide membership. Since its founding, the CCLA has challenged legislation, intervened in courts across Canada, presented briefs to legislative committees, and delivered programs to promote fundamental rights and freedoms for persons in Canada. The CCLA's early activity spanned such issues as emergency orders, protests, and police accountability.

7. Currently the CCLA continues to be active in work that protects life, security of the

person, equality, and other fundamental rights, while reconciling these with other rights and interests. It has addressed issues as diverse as: welfare laws and privacy, a safe injection site, prohibitions in relation to sex work, racial profiling, police accountability, refugee rights, freedom of expression for people who solicit money, mental health, and conditions of confinement.

8. The CCLA's advocacy efforts on behalf of fundamental rights and marginalized individuals and groups across Canada have been effected before public bodies, including in the legislative sphere and before the courts.

9. Through the CCLA's work in the criminal justice sector, the CCLA has long worked to uphold the rights of prisoners particularly with respect to segregation, and the disproportionate representation of vulnerable groups in segregation including individuals with mental health issues, and Black and Indigenous Peoples.

10. The CCLA's Criminal Justice Program focuses on the intersection of *Charter* rights and the criminal justice system, including the rights of those who are incarcerated. The CCLA's Equality Program addresses a broad range of issues and concerns, focusing on systemic discrimination—including in relation to mental and physical health, gender, race, Indigeneity, sexual orientation, and gender identity—and its intersection with other fundamental rights such as the right to be free from arbitrary detention, privacy, life, liberty, and security of the person.

Advocacy before the Courts as Intervener and Party

11. The CCLA has been involved in the litigation of many important civil liberties issues arising both prior to and under the *Canadian Charter of Rights and Freedoms* (the "*Charter*"),

and has acted on multiple occasions as a public interest party or as an intervener in legal proceedings involving fundamental rights and freedoms that affect a diverse range of people in Canada.

12. The CCLA has been granted intervener status and participated in hundreds of cases before the courts (among them dozens before the Supreme Court of Canada). A list and description of many of the cases in which CCLA has been granted public interest party or intervenor status is attached as **Exhibit “A”** to this Affidavit.

13. Central recurring themes in the CCLA’s submissions to the courts and to government bodies include: the need to develop a principled approach that reconciles competing interests; the recognition of the intersection of and interplay between different *Charter* rights, the limits of the State’s power to incarcerate and segregate; conditions of incarceration in Canada; and the preservation of *Charter* rights for marginalized individuals within the prison and jail systems.

14. These themes appear in many of the cases in which CCLA was granted intervenor status, including:

- *R. v. Miller*, [1977] 2 S.C.R. 680, in which one of the issues was whether the death penalty under the *Criminal Code* constituted cruel and unusual punishment under the *Canadian Bill of Rights* (the CCLA intervened in the Supreme Court of Canada);
- *R. v. Saxell* (1980), 33 O.R. (2d) 78 (C.A.), in which one of the issues was whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated guarantees in the *Canadian Bill of Rights*, including the guarantee of due process and the protection against arbitrary detention and imprisonment (the CCLA intervened in the Ontario Court of Appeal);
- *R. v. Swain* (1986), 53 O.R. (2d) 609 (C.A.), in which some of the issues were whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated ss. 7, 9, 12 or 15(1) of the *Charter* (the CCLA intervened in the Court of Appeal);

- *R. v. Latimer*, [2001] 1 S.C.R. 3, in which one of the issues was whether the *Criminal Code* provision for a mandatory minimum sentence of life imprisonment for second degree murder constitutes cruel and unusual punishment under s. 12 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
- *Prime Minister of Canada, et al. v. Omar Ahmed Khadr*, 2010 SCC 3, concerning *Charter* obligations to Canadian citizens detained abroad and the appropriateness of *Charter* remedies in respect to matters affecting the conduct of foreign relations (the CCLA intervened in the Supreme Court of Canada);
- *Smith v. Mahoney* (U.S. Circuit Court of Appeals for the Ninth Circuit, Court File No. 94-99003) concerning the constitutionality of carrying out a death sentence on an inmate who has spent 27 years living under strict conditions of confinement on death row (the CCLA intervened in the U.S. Circuit Court of Appeals for the Ninth Circuit);
- *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, concerning the government's refusal to permit Canadians detained abroad to serve the remainder of their sentence in Canada and the application of s. 6 of the *Charter* (the CCLA also intervened at the Federal Court of Appeal, 2011 FCA 39);
- *Mission Institution v. Khela*, 2014 SCC 24, concerning the scope of habeas corpus, the disclosure obligations on a correctional institution when they conduct an involuntary transfer, and the remedies that are available pursuant to a habeas application;
- *PS v. Ontario*, 2014 ONCA 900, concerning detention under mental health law and the scope of *Charter* protection afforded to a person with a hearing impairment and linguistic needs, in a situation of compound rights violations;
- *Bowden Institution v. Khadr*, 2015 SCC 26, regarding the proper interpretation of the *International Transfer of Offenders Act* as applied to the sentence received by a Canadian citizen sentenced in the United States and whether the sentence should be served in a provincial correctional facility;
- *R. v Peers*, 2017 SCC 13, concerning whether the word punishment in s. 11(f) of the *Charter* is restricted to imprisonment or other punishments that engaged the accused's liberty interests;
- *Gregory Allen v. Her Majesty the Queen in right of Ontario as represented by the Minister of Community Safety and Correctional Services* (Ontario Human Rights Tribunal File No 2016- 25116-I) concerning the use of solitary confinement on persons with physical disabilities (this matter settled prior to hearing);
- *R v. Passera*, 2019 ONCA 527, considering whether it is cruel and unusual punishment to compel an offender who is detained prior to trial to spend more time in custody than other similarly situated offenders prior to becoming eligible for parole or early release.

15. In addition, the CCLA has acted directly as a party in a number of court cases and an inquest, raising civil liberties and Charter issues, including, for example:

- *Sanctuary Ministries of Toronto, et. al v. City of Toronto, et. al* (Ontario Superior Court of Justice), concerning the constitutionality of the Toronto Shelter Standards and 24-Hour Respite Site Standards, and of the conduct of the City in the operation of its shelters and failure to develop and implement a COVID-19 mitigation plan, on the basis that these do not comply with public health dictates regarding physical distancing during the COVID-19 pandemic;
- *Corporation of the Canadian Civil Liberties Association v. Attorney General (Canada)*, 2019 ONCA 243; and *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491, an application and appeal regarding the constitutionality of provisions of the *Corrections and Conditional Release Act* which authorize “administrative segregation” in Canadian correctional institutions (currently on cross-appeal at the Supreme Court of Canada, File No. 38574,);
- *Corporation of the Canadian Civil Liberties Association and Lester Brown v Toronto Waterfront Revitalization Corporation, et. al*, (Ontario Superior Court of Justice File No. 211/19), concerning whether Sidewalk Labs’ smart city project is ultra vires and whether-it violates ss. 2(c), 2(d), 7, and 8 of the Charter of Rights and Freedoms (application ongoing);
- *Becky McFarlane, in her personal capacity and as litigation guardian for LM, and The Corporation of the Canadian Civil Liberties Association v. Minister of Education (Ontario)*, 2019 ONSC 1308, concerning whether the removal of sections of Ontario’s health and physical education curriculum violates the equality rights of LGBTQ+ students and parents;
- *Corporation of the Canadian Civil Liberties Association and Christopher Parsons v. Attorney General (Canada)* (Ontario Superior Court File No. CV-14-504139), an application regarding the proper interpretation of certain provisions of the federal Personal Information Protection and Electronic Documents Act which have been used to facilitate warrantless access to internet subscriber information
- *National Council of Canadian Muslims et al. v. Attorney General of Québec et al.* (Quebec Superior Court File No. 500-17-100935-173); *National Council of Canadian Muslims (NCCM) c. Attorney General of Québec*, 2018 QCCS 2766, and *National Council of Canadian Muslims (NCCM) c. Attorney General of Québec*, 2017 QCCS 5459, an application to challenge the validity of a provision banning face coverings in giving or receiving public services and applications for an order staying the operation of this provision;

- Inquest into the Death of Ashley Smith (Office of the Chief Coroner) (Ontario), concerning the death of a young woman with mental health issues, who died by her own hand while in prison, under the watch of correctional officers; and
- *Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1990), 71 OR (2d) 341 (CA), reversing (1988), 64 OR (2d) 577 (Div Ct), concerning whether a program of mandatory religious education in public schools violated the Charter's guarantee of freedom of religion.
- *Ichrak Nourel Hak, National Council of Canadian Muslims (NCCM) and Corporation of the Canadian Civil Liberties Association v Attorney General of Quebec* (Quebec Superior Court File No. 500-17-108353-197); *Hak c. Procureure générale du Québec*, 2019 QCCA 2145, an application to challenge the validity of provisions banning religious symbols in certain professions in the public sector, and an application for an order staying the operation of these provisions.
- *Corporation of the Canadian Civil Liberties Association v. Ministry of Energy, Northern Development and Mines, et al.* (Ontario Superior Court of Justice File No.: CV-19- 006266850000), concerning the constitutionality of Ontario's *Federal Carbon Tax Transparency Act* which compels gas retailers to post an anti-carbon tax notice on all gas pumps or face fines (action ongoing).

The CCLA's Interest in and Ability to Pursue this Litigation

16. The CCLA's history of participating in litigation both as an intervener and as a party demonstrates that it has the legal resources and experience necessary to organize and advance *Charter* litigation of the nature raised by the present Application.

17. The CCLA has a direct public interest in the validity and constitutionality of the current conditions in Canadian prisons and the CSC's conduct during the Covid-19 pandemic towards prisoners, CSC staff, and local communities. Due to the large number of imprisoned people living with underlying health conditions, the incarcerated population is particularly vulnerable during this pandemic.

18. The CCLA has a direct public interest and a long history of holding governments to account, and advocating for the protection of individual rights and freedoms, in particular for

those who are most marginalized and vulnerable.

19. The CCLA also has a longstanding interest in solitary confinement and other practices within correctional facilities that may permit misuses and/or the deprivation of any inmate's fundamental human and *Charter* rights (especially vulnerable inmates, such as those who require human rights accommodations). This interest extends to the use of solitary confinement as a response to the Covid-19 pandemic.

20. The CCLA's work relating to civil liberties issues throughout Canada will enable it to bring a broader, national perspective to this litigation. The CCLA furthermore has the legal resources to produce a comprehensive evidentiary record that will assist this Court in making the findings of fact necessary to resolve the human rights and constitutional questions that lie at the heart of this case.

21. Moreover, the CCLA's past experience making submissions before the courts on questions of human rights, equality, life, liberty, and security of the person gives it the appropriate experience to deal with the issues raised by this litigation.

The CCLA's Advocacy Concerning Prisons and Jails in the Covid-19 Pandemic

22. On March 22, 2020, the CCLA wrote to the Attorney General of Canada. In this letter, the CCLA addressed three matters: emergency funding of provincial legal aid services; access to information and intergovernmental transparency of legal orders; and the administration of criminal justice during a pandemic. Specifically, the CCLA highlighted the fact that the criminal legal system was operating at cross-purposes with public health goals during the


pandemic. The CCLA urged the federal government to address the issue of over-crowding in prisons and gave specific recommendations as to how this could be accomplished. A copy of that letter is attached as **Exhibit "B"**.

23. On April 2, 2020, the CCLA also sent letters to provincial government ministers across the country to urge immediate action with respect to Canada's provincial and territorial jails. These letters similarly called for provincial and territorial governments to address over-crowding, and reduce jail populations to prevent unnecessary deaths due to Covid-19. A representative copy of one of those letters is attached as **Exhibit "C"**.

24. On Wednesday April 22, 2020, I on behalf of the CCLA wrote a letter to Anne Kelly, Commissioner of Correctional Services Canada ("Commissioner Kelly") to; again, urge the Federal Government to take significant steps to address the spread of Covid-19 in Canadian prisons. Specifically, the CCLA urged Commissioner Kelly to reduce the prison population in order to allow for better infection control measures and to permit vulnerable inmates to effectively self-isolate in the community so that they may access medical treatment not available within a penal institution. A copy of the letter is attached hereto as **Exhibit "D"**.

25. I make this affidavit in support of the within Application, and for no other or improper purpose.

AFFIRMED BEFORE ME, via video conference, at the City of Toronto, in the Province of Ontario on June 29, 2020


Commissioner for Taking Affidavits
(or as may be)

ADRIA WEAVER

LSO 54173 P


ABBY DESHMAN

This is **Exhibit "A"** referred to in the
Affidavit of Abby Deshman
affirmed before me this 29th day of June, 2020



A Commissioner, etc.

Exhibit A – CCLA Litigation

Cases in which the CCLA has been granted intervener status include those listed chronologically below:

1. *R. v. Morgentaler*, [1976] 1 S.C.R. 616, where the general issue was whether the necessity defence was applicable to a charge of procuring an unlawful abortion under the *Criminal Code* (the CCLA intervened in the Supreme Court of Canada);
2. *Nova Scotia (Board of Censors) v. McNeil*, [1976] 2 S.C.R. 265, in which the issue was whether a taxpayer has standing to challenge legislation concerning censorship of films (the CCLA intervened in the Supreme Court of Canada);
3. *R. v. Miller*, [1977] 2 S.C.R. 680, in which one of the issues was whether the death penalty under the *Criminal Code* constituted cruel and unusual punishment under the *Canadian Bill of Rights* (the CCLA intervened in the Supreme Court of Canada);
4. *Nova Scotia (Board of Censors) v. McNeil*, [1978] 2 S.C.R. 662, in which the issues were whether statutory provisions and regulations authorizing the Board of Censors to regulate and control the film industry in the province were *intra vires* the provincial legislature and whether they violated fundamental freedoms, including freedom of speech (the CCLA intervened in the Supreme Court of Canada);
5. *Reference re Legislative Privilege* (1978), 18 O.R. (2d) 529 (C.A.), in which the issue was whether a member of the legislature has a privilege allowing him or her to refuse to disclose the source or content of confidential communications by informants when testifying at a criminal trial (the CCLA intervened in the Ontario Court of Appeal);
6. *R. v. Saxell* (1980), 33 O.R. (2d) 78 (C.A.), in which one of the issues was whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated guarantees in the *Canadian Bill of Rights*, including the guarantee of due process and the protection against arbitrary detention and imprisonment (the CCLA intervened in the Ontario Court of Appeal);
7. *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 S.C.R. 175, in which the issue was whether a journalist is entitled to inspect search warrants and the information used to obtain them (the CCLA intervened in the Supreme Court of Canada);
8. *Re Fraser and Treasury Board (Department of National Revenue)* (1982), 5 L.A.C. (3d) 193 (P.S.S.R.B.), in which the issue was whether termination of a civil servant for publicly criticizing government policy violated freedom of expression (the CCLA intervened before the Public Service Staff Relations Board);
9. *R. v. Dowson*, [1983] 2 S.C.R. 144, and *R. v. Buchbinder*, [1983] 2 S.C.R. 159, in which the issue was whether the Attorney General could order a stay of proceedings under s. 508 of the *Criminal Code* after a private information has been received but

- before the Justice of the Peace has completed an inquiry (the CCLA intervened in *R. v. Dowson* before the Ontario Court of Appeal and the Supreme Court of Canada, and in *R. v. Buchbinder* before the Supreme Court of Canada);
10. *R. v. Oakes* (1983), 40 O.R. (2d) 660, in which the issue was whether the reverse onus clause in s. 8 of the *Narcotic Control Act* violated an accused's right to be presumed innocent under the *Charter* (the CCLA intervened in the Court of Appeal);
 11. *Re Ontario Film & Video Appreciation Society and Ontario Board of Censors* (1984), 45 O.R. (2d) 80 (C.A.), in which the issue was whether a provincial law permitting a board to censor films violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);
 12. *R. v. Rao* (1984), 46 O.R. (2d) 80 (C.A.), in which the issue was whether a provision under the *Narcotic Control Act* permitting warrantless searches violated the *Charter's* guarantee of protection against unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);
 13. *Re Klein and Law Society of Upper Canada; Re Dvorak and Law Society of Upper Canada* (1985), 16 D.L.R. (4th) 489 (Div. Ct.), in which the issue was whether the Law Society's prohibitions respecting fees advertising and communications with the media violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);
 14. *Canadian Newspapers Co. Ltd. v. Attorney-General of Canada* (1986), 55 O.R. (2d) 737 (H.C.), in which the issue was whether the provision in the *Criminal Code* limiting newspapers' rights to publish certain information respecting search warrants violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario High Court of Justice);
 15. *R. v. J.M.G.* (1986), 56 O.R. (2d) 705 (C.A.), in which the issue was whether a school principal's seizure of drugs from a student's sock violated the *Charter's* protection from unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);
 16. *Re Ontario Film & Video Appreciation Society and Ontario Film Review Board* (1986), 57 O.R. (2d) 339 (Div. Ct.), in which the issue was whether actions taken by a film censorship board violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);
 17. *R. v. Swain* (1986), 53 O.R. (2d) 609 (C.A.), in which some of the issues were whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated ss. 7, 9, 12 or 15(1) of the *Charter* (the CCLA intervened in the Court of Appeal);
 18. *Reference Re Bill 30, an Act to amend the Education Act (Ont.)*, [1987] 1 S.C.R. 1148, in which the issues were whether Bill 30, which provided for full funding for Roman

Catholic separate high schools, violated the *Charter's* guarantees of freedom of conscience and religion and equality rights (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);

19. *Zylberberg v. Sudbury Board of Education (Director)* (1988), 65 O.R. (2d) 641 (C.A.), in which the issue was whether an Ontario regulation which provided for religious exercises in public schools violated the *Charter's* guarantee of freedom of conscience and religion (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);
20. *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, in which the issue was whether a man who impregnated a woman could obtain an injunction prohibiting the woman from having an abortion (the CCLA intervened in the Supreme Court of Canada);
21. *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, in which one of the issues was whether a provision in the *Canada Human Rights Act* that prohibited telephone communication of hate messages offended the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
22. *R. v. Keegstra*, [1990] 3 S.C.R. 697, in which the issue was whether the *Criminal Code* provision which made it an offence to willfully promote hatred against an identifiable group constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
23. *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, in which the issues were whether the use for certain political purposes of union dues paid by nonmembers pursuant to an agency shop or Rand formula violated the *Charter* guarantees of freedom of expression and association (the CCLA intervened in the Supreme Court of Canada);
24. *R. v. Seaboyer*, [1991] 2 S.C.R. 577, in which one of the issues was whether the rape shield provisions of the *Criminal Code* violated the *Charter* guarantee of a fair trial (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada of Canada);
25. *R. v. Butler*, [1992] 1 S.C.R. 452, in which the issue was whether the obscenity provisions in s. 163 of the *Criminal Code* violate the *Charter* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
26. *J.H. v. Hastings (County)*, [1992] O.J. No. 1695 (Ont. Gen. Div.), in which the issue was whether disclosure to municipal councilors of a list of social assistance recipients violated the protection of privacy under the *Municipal Freedom of Information and Protection of Privacy Act* (the CCLA intervened in the Ontario Court – General Division);

27. *R. v. Zundel*, [1992] 2 S.C.R. 731, in which the issue was whether s. 177 of the *Criminal Code* prohibiting spreading false news violated the *Charter* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);”fundamen
28. *Ontario Human Rights Commission v. Four Star Variety* (October 22, 1993) (Ont. Bd. of Inquiry), in which the issues were whether convenience stores displaying and selling certain magazines discriminated against women on the basis of their sex contrary to the Ontario *Human Rights Code* and if the Board of Inquiry's dealing with the obscenity issue intruded on the *Charter* guarantee of freedom of expression (the CCLA intervened before the Board of Inquiry);
29. *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084, in which the issue was whether a municipal by-law banning posters on public property violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);
30. *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, in which the issues were: (1) whether the common law of defamation should be developed in a manner consistent with freedom of expression; (2) whether the common law test for determining liability for defamation disproportionately restricts freedom of expression; and (3) whether the current law respecting non-pecuniary and punitive damages disproportionately restricts freedom of expression and whether limits on jury discretion and damages should be imposed (the CCLA intervened in the Supreme Court of Canada);
31. *Ontario (Attorney General) v. Langer* (1995), 123 D.L.R. (4th) 289 (Ont. Gen. Div.), in which the issue was the constitutionality of ss. 163.1 and 164 of the *Criminal Code* relating to child pornography (the CCLA intervened in the Ontario General Division);
32. *Adler v. Ontario*, [1996] 3 S.C.R. 609, in which the issues were whether Ontario not funding of Jewish and certain Christian day schools violated the *Charter's* guarantees of freedom of conscience and religion and of equality without discrimination based on religion (the CCLA intervened in the Ontario General Division, the Ontario Court of Appeal, and the Supreme Court of Canada);
33. *Al Yamani v. Canada (Solicitor General) (TD.)*, [1996] 1 F.C. 174 (T.D.), in which some of the issues were whether the provision in the *Immigration Act* regarding the deportation of permanent residents on the basis of membership in a class of organizations violated principles of fundamental justice contrary to s. 7 of the *Charter* or the *Charter* guarantees of freedom of association and expression (the CCLA intervened in the Federal Court Trial Division);
34. *R. v. Gill* (1996), 29 O.R. (3d) 250 (Ont. Gen. Div.), in which the issue was whether s. 301 of the *Criminal Code*, which creates an offence of publishing a defamatory libel, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court – General Division);

35. *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, in which some of the issues were whether a teacher, who had been subject to discipline for making discriminatory anti-Semitic statements while off duty, could defend his conduct, at least in part, on freedom of religion (the CCLA intervened in the Supreme Court of Canada);
36. *R. v. Stillman*, [1997] 1 S.C.R. 607, in which the issue was the explication of the circumstances, including police conduct, that would bring the administration of justice into disrepute within the meaning of s. 24(2) of the *Charter* if unconstitutionally obtained evidence were to be admitted into a proceeding (the CCLA intervened in the Supreme Court of Canada);
37. *Winnipeg Child and Family Services (Northwest Area) v. D.F.G.*, [1997] 3 S.C.R. 925, in which the issue was whether the law should permit the state to interfere with the privacy, dignity, and liberty of a pregnant woman where her actions may expose the fetus to serious injury (the CCLA intervened in the Supreme Court of Canada);
38. *R. v. Lucas*, [1998] 1 S.C.R. 439, in which the issue was whether s. 300 of the *Criminal Code*, which creates the offence of publishing a defamatory libel, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
39. *Thomson Newspapers Co. (c.o.b. Globe and Mail) v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, in which the issue was whether s. 322.1 of the *Canada Elections Act*, which prohibits the publication of public opinion polls during the last 72 hours of a federal election campaign, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
40. *Daly v. Ontario (Attorney General)* (1999), 44 O.R. (3d) 349 (C.A.), in which the issue was the extent to which Ontario's constitutionally protected Catholic separate school boards must adhere to the restrictions on employment discrimination contained in the *Ontario Human Rights Code* (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);
41. *R. v. Mills*, [1999] 3 S.C.R. 668, in which the central issue was the appropriate balance to be struck between the rights of the accused and the rights of complainants and witnesses with respect to the production of medical and therapeutic records (the CCLA intervened in the Supreme Court of Canada);
42. *Moumdjian v. Canada (Security Intelligence Review Committee)*, [1999] 4 F.C. 624, in which one of the issues was the constitutionality of *Immigration Act* provisions which impacted on the freedom of association (the CCLA intervened in the Federal Court of Appeal);

43. *United Food and Commercial Workers, Local 1518 (U.F.C.W.) v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083, and *Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288 P.*, [1999] 2 S.C.R. 1136, in which the issue was whether leafleting by striking employees at non-struck workplaces is constitutionally protected expression (the CCLA intervened in the Supreme Court of Canada);
44. *R. v. Budreo* (2000), 46 O.R. (3d) 481 (C.A.), in which the issue was whether the provision in s. 810.1 of the *Criminal Code*, which permits a court to impose recognizance on a person likely to commit sexual offences against a child, violates s. 7 of the *Charter* (the CCLA intervened in the Ontario Court of Appeal);
45. *Martin Entrop and Imperial Oil Ltd* (2000), 50 O.R. (3d) 18 (C.A.), in which one of the issues was the legality of an employer testing employees' urine for drug use (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);
46. *Little Sisters Book and Art Emporium v. Canada (Attorney General)*, [2000] 2 S.C.R. 1120, in which one of the issues was whether certain provisions of Canada's customs legislation which permit customs officers to seize and detain allegedly obscene material at the border unreasonably infringe on the right to freedom of expression (the CCLA intervened in the Supreme Court of Canada);
47. *Toronto Police Association v. Toronto Police Services Board and David J. Boothby* (Ont. Div. Ct. Court, File No. 58/2000), in which the issue was the propriety of police fundraising and political activities, and the validity of a by-law and order issued by the Toronto Police Services Board and the Chief of Police, respectively, regarding police conduct (the matter settled prior to the hearing);
48. *R. v. Latimer*, [2001] 1 S.C.R. 3, in which one of the issues was whether the *Criminal Code* provision for a mandatory minimum sentence of life imprisonment for second degree murder constitutes cruel and unusual punishment under s. 12 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
49. *R. v. Banks* (2001), 55 O.R. (3d) 374 (O.C.J.) and 2007 ONCA 19 (docket no. C43259) in which one of the issues was whether provisions of the Ontario *Safe Streets Act* prohibiting certain forms of soliciting violate s. 2(b) of the *Charter* (the CCLA intervened before the Ontario Court of Justice, the Ontario Superior Court of Justice and the Ontario Court of Appeal);
50. *R. v. Golden*, [2001] 3 S.C.R. 679, in which one of the issues was whether a strip search of the accused conducted as an incident to arrest violated s. 8 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
51. *R. v. Sharpe*, [2001] 1 S.C.R. 45, in which the issue was whether the *Criminal Code* prohibition of the possession of child pornography is an unreasonable infringement on the right to freedom of expression under the *Charter* (the CCLA intervened in the Supreme Court of Canada);

52. *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S. C. R. 772, in which the CCLA supported a private university's claim to be accredited for certification of its graduates as teachers eligible to teach in the public school system, despite the fact that the university's religiously-based code of conduct likely excluded gays and lesbians (the CCLA intervened in the Supreme Court of Canada);
53. *Ross v. New Brunswick Teachers' Association* (2001), 201 D.L.R. (4th) 75 (N.B.C.A.), in which one of the issues was the extent to which the values underlying the common law tort of defamation must give way to the *Charter* values underlying freedom of expression, especially where a claimant who asserts the former at the expense of the latter freely enters the public arena (the CCLA intervened in the New Brunswick Court of Appeal);
54. *Ontario (Human Rights Commission) v. Brillinger*, [2002] O.J. No. 2375 (Div. Ct.), in which the issue concerned the balance to be struck between freedom of religion and the right to equality (the CCLA intervened in the Ontario Superior Court of Justice);
55. *Chamberlain v. The Board of Trustees of School District #36 (Surrey)*, [2002] 4 S.C.R. 710, which involved the balancing of freedom of religion and equality rights in the context of a public school board's approval of books for a school curriculum (the CCLA intervened in the Supreme Court of Canada);
56. *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.), in which the issues were the extent to which regulations made under the *Family Benefits Act* and the *General Welfare Assistance Act* amending the definition of "spouse" in relation to benefit entitlement (1) constituted discrimination under s. 15(1) of the *Charter*, and (2) set the stage for unwarranted government intrusion into the personal and private circumstances of affected recipients (the CCLA intervened before SARB, the Ontario Divisional Court, the Ontario Superior Court of Justice, and the Ontario Court of Appeal);
57. *Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156, in which the issue concerned the extent to which the common law regarding secondary picketing should be modified in light of *Charter* values (the CCLA intervened in the Supreme Court of Canada);
58. *Lafferty v. Parizeau* (SCC File No. 30103), [2003] S.C.C.A. No. 555 (leave granted but settled before hearing), which examined the application of *Charter* freedom of expression values to defamation and the defense of fair comment (the CCLA intervened in the Supreme Court of Canada, but the matter settled prior to hearing);
59. *R. v. Malmo-Levine, R. v. Clay, R. v. Caine*, [2003] S.C.J. No. 79, in which one of the issues was whether the criminal prohibition against the possession of marijuana violates s. 7 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);

60. *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, which examined the appropriate scope of both the tort of abuse of public office and the tort of negligent supervision of the police, and the appropriate legal principles to be applied when addressing the issues of costs orders against private individuals of modest means who are engaged in public interest litigation (the CCLA intervened in the Supreme Court of Canada);
61. *La Congrégation des témoins de Jéhovah de St-Jérôme Lafontaine, et al. v. Municipalité du village de Lafontaine, et al.*, [2004] 2 S.C.R. 650, which examined the constitutionality of a municipal zoning decision that limited the location of building places of religious worship (the CCLA intervened in the Supreme Court of Canada);
62. *R. v. Glad Day Bookshop Inc.*, [2004] O.J No. 1766 (Ont. Sup. Ct. Jus.), in which one of the issues was the constitutionality of the statutory regime requiring prior approval and allowing the prior restraint of films (the CCLA intervened in the Ontario Superior Court of Justice);
63. *In the matter of an application under § 83.28 of the Criminal Code*, [2004] 2 S.C.R. 248, which questioned *inter alia* the constitutionality of investigative hearings and the over breadth of certain provisions of the Anti-Terrorism Act (the CCLA intervened in the Supreme Court of Canada);
64. *In the Matter of a Reference by the Government in Council Concerning the Proposal for an Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes*, [2004] 3 S.C.R. 698, which examined the equality and religious freedom aspects of proposed changes to the marriage legislation (the CCLA intervened in the Supreme Court of Canada);
65. *R v. Mann*, [2004] 3 S.C.R. 59, which examined whether the police have the authority at common law to detain and search a person in the absence of either a warrant or reasonable and probable grounds to believe an offence has been committed (the CCLA intervened in the Supreme Court of Canada);
66. *R v. Tessling*, [2004] 3 S.C.R. 432, which examined the constitutionality of the police conducting warrantless searches of private dwelling houses using infrared technology during the course of criminal investigations (the CCLA intervened in the Supreme Court of Canada);
67. *Genex Communications Inc. v. Attorney General of Canada*, [2005] F.C.J. No. 1440 (F.C.A.), which examined the application of the *Charter's* guarantee of freedom of expression to a decision by the CRTC to refuse to renew a radio station license (the CCLA intervened in the Federal Court of Appeal);
68. *R. v. Hamilton*, [2005] S.C.J. No. 48, which examined the scope of the offence of counseling the commission of a crime (the CCLA intervened in the Supreme Court of Canada);

69. *R. v. Déry*, [2006] 2 S.C.R. 669, which examined whether the *Criminal Code* contains the offence of "attempted conspiracy" (the CCLA intervened in the Supreme Court of Canada);
70. *Montague v. Page* (2006), 79 O.R. (3d) 515 (Ont. S.C.J.), which concerned the application of the Charter's guarantee of freedom of expression to the question of whether municipalities are allowed to file defamation suits against residents (CCLA intervened in the Ontario Superior Court of Justice);
71. *Multani v. Commission Scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, which concerned whether the *Charter's* guarantee of freedom of religion allows a student to wear a kirpan in school (the CCLA intervened in the Supreme Court of Canada);
72. *O'Neill v. Attorney General of Canada*, [2006] O.J. No. 4189 (Ont. S.C.J.), which concerned the interaction of national security and *Charter* rights (the CCLA intervened in the Ontario Superior Court of Justice);
73. *Owens v. Saskatchewan Human Rights Commission* (2006), 267 D.L.R. (4th) 733 (Sask.C.A.), which concerned the application of the *Charter's* guarantees of freedom of religion and expression to a provincial statute banning hateful speech (the CCLA intervened in the Saskatchewan Court of Appeal);
74. *Charkaoui et al. v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, which examined, *inter alia*, the constitutionality of certain "security certificate" provisions of the *Immigration and Refugee Protection Act* (the CCLA intervened in the Supreme Court of Canada);
75. *R. v. Bryan*, [2007] 1 S.C.R. 527, which examined the constitutionality of provisions of the *Elections Act* which penalize dissemination of election results from eastern Canada before polls are closed in the West (the CCLA intervened in the Supreme Court of Canada);
76. *R. v. Clayton*, 2007 SCC 32, concerning the scope of the police power to establish a roadblock and to stop and search vehicles and passengers (the CCLA intervened in the Supreme Court of Canada);
77. *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, concerning the issue of whether police officers can be held liable in tort for a negligently conducted investigation (the CCLA intervened in the Supreme Court of Canada);
78. *Bruker v. Marcovitz*, 2007 SCC 54, which examined the extent to which civil courts can enforce a civil obligation to perform a religious divorce (the CCLA intervened in the Supreme Court of Canada);

79. *Lund v. Boissoin AND The Concerned Christian Coalition Inc.* (2006), CarswellAlta 2060 (AHRCC), which examined the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Human Rights and Citizen Commission);
80. *Whatcott v. Assn. Of Licensed Practical Nurses (Saskatchewan)*, 2008 SKCA 6, concerning the freedom of expression of an off-duty nurse who picketed a Planned Parenthood facility - whether he should be subject to disciplinary action by the professional association of nurses for this activity (the CCLA intervened in the Saskatchewan Court of Appeal);
81. *R. v. Kang-Brown*, 2008 SCC 18, and *R. v. A.M.*, 2008 SCC 19, concerning the constitutionality of using dogs to conduct random warrantless inspections of high school students (the CCLA intervened in the Supreme Court of Canada);
82. *Michael Esty Ferguson v. Her Majesty the Queen*, 2008 SCC 6, which concerned the constitutional challenge of a law requiring mandatory minimum sentences (the CCLA intervened in the Supreme Court of Canada);
83. *Elmasry and Habib v. Roger's Publishing and MacQueen* (No. 4), 2008 BCHRT 378, concerning the extent to which a British Columbia human rights law can limit the freedom of expression of a news magazine that had published offensive material about Muslims (the CCLA intervened before the British Columbia Human Rights Tribunal);
84. *Amnesty International Canada v. Canada (Minister of National Defence)*, 2008 FCA 401, concerning the extraterritorial application of the *Charter*, and specifically its application to Canadian Forces in Afghanistan and the transfer of detainees under Canadian control to Afghan authorities (the CCLA intervened in the Federal Court of Appeal);
85. *WIC Radio Ltd., et al. v. Kari Simpson*, 2008 SCC 40, concerning the appropriate balance to be struck in the law of defamation when one person's expression of opinion may have harmed the reputation of another (the CCLA intervened in the Supreme Court of Canada);
86. *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 regarding freedom of information and the extent to which the public's right to access electronic data requires that the institution render such data in retrievable form (the CCLA intervened in the Ontario Court of Appeal);
87. *R. v. Patrick*, 2009 SCC 17, concerning the constitutionality of police conducting warrantless searches of household garbage located on private property (the CCLA intervened in the Supreme Court of Canada);

88. *Robin Chatterjee v. Attorney General of Ontario*, 2009 SCC 19, concerning the constitutionality of the civil forfeiture powers contained in Ontario's *Civil Remedies Act, 2001* (the CCLA intervened in the Supreme Court of Canada);
89. *R. v. Suberu*, 2009 SCC 33, concerning the constitutional right to counsel in the context of investigative detentions (the CCLA intervened in the Supreme Court of Canada);
90. *R. v. Grant*, 2009 SCC 32, concerning the appropriate legal test for the exclusion of evidence under s. 24(2) of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
91. *R. v. Harrison*, 2009 SCC 34, concerning the appropriate application of s. 24(2) of the *Charter* in cases where police have engaged in "blatant" and "flagrant" *Charter* violations (the CCLA intervened in the Supreme Court of Canada);
92. *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, concerning whether a provincial law requiring that all driver's licenses include a photograph of the license holder violates the freedom of religion of persons seeking an exemption from being photographed for religious reasons (the CCLA intervened in the Supreme Court of Canada);
93. *R. v. Breeden*, 2009 BCCA 463, concerning whether the constitutional right to freedom of expression applies in certain public and publicly accessible spaces (the CCLA intervened before the British Columbia Court of Appeal);
94. *R. v. Chehil* [2009] N.S.J. No. 515, concerning the permissibility of warrantless searches of airline passenger information by police (the CCLA intervened at the Nova Scotia Court of Appeal);
95. *Matthew Miazga v. The Estate of Dennis Kvello, et al.*, 2009 SCC 51, concerning the appropriate legal test for the tort of malicious prosecution (the CCLA intervened at the Supreme Court of Canada);
96. *Johanne Desbiens, et al. v. Wal-Mart Canada Corporation*, 2009 SCC 55, and *Gaétan Plourde v. Wal-Mart Canada Corporation*, 2009 SCC 54, concerning the interpretation of the Quebec *Labour Code* and the impact of the freedom of association guarantees contained in the *Canadian Charter* and the *Quebec Charter* (the CCLA intervened in the Supreme Court of Canada);
97. *Stephen Boissoin and the Concerned Christian Coalition Inc. v. Darren Lund*, 2009 ABQB 592, which will examine the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Queen's Bench of Alberta);

98. *Quan v. Cusson*, 2009 SCC 62, raising the novel question of a public interest responsible journalism defence, as well as the traditional defence of qualified privilege, in the setting of defamation law and its relationship to freedom of the press (the CCLA intervened in the Supreme Court of Canada);
99. *Peter Grant v. Torstar Corp.*, 2009 SCC 61 concerning the creation and operation of a public interest responsible journalism defence (the CCLA intervened in the Supreme Court of Canada);
100. *Whitcombe and Wilson v. Manderson*, December 18 2009, Ontario Superior Court of Justice File No. 31/09, concerning a Rule 21 motion to dismiss a defamation lawsuit being funded by a municipality (the CCLA intervened in the Ontario Superior Court of Justice);
101. *Karas v. Canada (Minister of Justice)*, (SCC File No. 32500) concerning the appropriateness of extraditing a fugitive to face the possibility of a death penalty without assurances that the death penalty will not be applied (the CCLA was granted leave to intervene at the Supreme Court of Canada but the case was dismissed as moot prior to the hearing);
102. *Prime Minister of Canada, et al. v. Omar Ahmed Khadr*, 2010 SCC 3, concerning *Charter* obligations to Canadian citizens detained abroad and the appropriateness of *Charter* remedies in respect to matters affecting the conduct of foreign relations (the CCLA intervened in the Supreme Court of Canada);
103. *R. v. Nasogaluak*, 2010 SCC 6, concerning the availability of sentence reductions as a remedy for violations of constitutional rights (the CCLA intervened in the Supreme Court of Canada);
104. *Whatcott v. Saskatchewan (Human Rights Tribunal)*, 2010 SKCA 26, concerning the extent to which a Saskatchewan human rights law can limit the expression of a man distributing anti-homosexual flyers (the CCLA intervened in the Saskatchewan Court of Appeal);
105. *Leblanc et al. c. Rawdon (Municipalite de)* (Quebec Court of Appeal File No. 500-09-019915-099) concerning the ability of a municipality to sue for defamation, the proper test for an interlocutory injunction in a defamation case, and the impact of “anti-SLAPP” legislation (the CCLA intervened at the Quebec Court of Appeal);
106. *Warman v. Fournier et al.*, 2010 ONSC 2126, concerning the appropriate legal test when a litigant in a defamation action is attempting to identify previously-anonymous internet commentators (the CCLA intervened at the Ontario Superior Court of Justice);

107. *R. v. National Post*, 2010 SCC 16, concerning the relationship between journalist-source privilege, freedom of the press under s. 2b, and search warrant and assistance orders targeting the media (the CCLA intervened in the Supreme Court of Canada);
108. *Toronto Star Newspapers Ltd. v. Canada*, 2010 SCC 21, concerning the constitutionality of mandatory publication bans regarding bail hearing proceedings when requested by the accused (the CCLA intervened in the Supreme Court of Canada);
109. *Smith v. Mahoney* (U.S. Circuit Court of Appeals for the Ninth Circuit, Court File No. 94-99003) concerning the constitutionality of carrying out a death sentence on an inmate who has spent 27 years living under strict conditions of confinement on death row (the CCLA intervened in the U.S. Circuit Court of Appeals for the Ninth Circuit);
110. *R. v. Cornell*, 2010 SCC 31, concerning whether the manner in which police conduct a search, in particular an unannounced ‘hard entry’, constitutes a violation of s. 8 (the CCLA intervened in the Supreme Court of Canada);
111. *City of Vancouver, et al v. Alan Cameron Ward, et al.*, 2010 SCC 27, concerning whether an award of damages for the breach of a *Charter* right can be made in the absence of bad faith, an abuse of power or tortious conduct (the CCLA intervened in the Supreme Court of Canada);
112. *R. v. Sinclair*, 2010 SCC 35, *R. v. McCrimmon*, 2010 SCC 36, and *R. v. Willier*, 2010 SCC 37, concerning the scope of the constitutional right to counsel in the context of a custodial interrogation (the CCLA intervened in the Supreme Court of Canada);
113. *R. v. N.S. et al.*, 2010 ONCA 670, concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA intervened at the Ontario Court of Appeal);
114. *The Toronto Coalition to Stop the War et al. v. The Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration Canada*, 2010 FC 957, concerning the freedom of association and freedom of expression implications of a preliminary assessment by the government that a British Member of Parliament who was invited to speak in Canada was inadmissible because the government claimed he had engaged in terrorism and was a member of a terrorist organization (the CCLA intervened in the Federal Court);
115. *Globe and Mail, a division of CTVglobemedia Publishing Inc. v. Attorney General of Canada, et al*, 2010 SCC 41, concerning the disclosure of confidential journalistic sources in the civil litigation context, and the constitutionality of a publication ban (the CCLA intervened in the Supreme Court of Canada);

116. *R. v. Gomboc*, 2010 SCC 55, concerning the constitutionality of police conducting warrantless searches of private dwelling houses using real-time electricity meters (the CCLA intervened in the Supreme Court of Canada);
117. *Tiberiu Gavrilă v. Minister of Justice*, 2010 SCC 57, concerning the interaction between the Immigration and Refugee Protection Act and the Extradition Act and whether a refugee can be surrendered for extradition to a home country (the CCLA intervened in the Supreme Court of Canada);
118. *Reference re Marriage Commissioners Appointed Under the Marriage Act, 1995 S.S. 1995, c. M- 4.1*, 2011 SKCA 3, concerning the constitutionality of proposed amendments to the *Marriage Act* that would allow marriage commissioners to refuse to perform civil marriages where doing so would conflict with commissioners' religious beliefs (the CCLA intervened at the Court of Appeal for Saskatchewan);
119. *Canadian Broadcasting Corporation et al. v. The Attorney General of Quebec et al.*, 2011 SCC 2, and *Canadian Broadcasting Corporation v. Her Majesty the Queen and Stéphan Dufour*, 2011 SCC 3 concerning the constitutional protection of freedom of the press in courthouses and the constitutionality of certain rules and directives restricting the activities of the press and the broadcasting of court proceedings (the CCLA intervened in the Supreme Court of Canada);
120. *R. v. Caron*, 2011 SCC 5, concerning the availability of advance cost orders in criminal and quasi-criminal litigation that raises broad reaching public interest issues (the CCLA intervened in the Supreme Court of Canada);
121. *R. v. Ahmad*, 2011 SCC 6, concerning the constitutionality of ss. 38 to 38.16 of the Canada Evidence Act, R.S.C. 1985 (the CCLA intervened in the Supreme Court of Canada);
122. *Farès Bou Malhab v. Diffusion Métromédia CMR inc., et al.*, 2011 SCC 9, concerning statements made by a radio host, and examining the scope and nature of defamation under Quebec civil law in the context of the freedom of expression guarantees found in the Quebec and Canadian Charters (the CCLA intervened in the Supreme Court of Canada);
123. *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, concerning the exclusion of agricultural workers from Ontario's *Labour Relations Act* and whether the labour scheme put in place for these workers violated freedom of association under the *Canadian Charter* (the CCLA intervened in the Supreme Court of Canada);
124. *R. v. K.M.* 2011 ONCA 252, concerning the constitutionality of taking DNA samples from young offenders on a mandatory or reverse onus basis (the CCLA intervened in the Ontario Court of Appeal);

125. *Issassi v. Rosenzweig*, 2011 ONCA 302, concerning a 13 year old girl from Mexico who had been granted refugee status in Canada because of allegations that her mother had sexually abused her, and the subsequent return of that youth to her mother in Mexico, by a judge who did not conduct a risk assessment (the CCLA intervened at the Ontario Court of Appeal);
126. *Attorney General of Canada et al. v. Mavi et al.*, 2011 SCC 30, considering whether there is a need for procedural fairness in the federal immigration sponsorship regime (the CCLA intervened in the Supreme Court of Canada);
127. *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, cases concerning whether Minister's offices, including the Prime Minister's Office, are considered "government institutions" for the purposes of the federal *Access to Information Act* (the CCLA intervened in the Supreme Court of Canada);
128. *Toussaint v. Attorney General of Canada*, 2011 FCA 213, concerning whether a person living in Canada with precarious immigration status has the right to life-saving healthcare (the CCLA intervened in the Federal Court of Appeal);
129. *Phyllis Morris v. Richard Johnson, et al.*, 2011 ONSC 3996, concerning a motion for production and disclosure brought by a public official and plaintiff in a defamation action in order to get identifying information about anonymous bloggers (the CCLA intervened on the motion at the Ontario Superior Court of Justice);
130. *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, concerning a safe (drug) injection site, and the constitutionality of certain criminal provisions in relation to users and staff of the site (the CCLA intervened in the Supreme Court of Canada);
131. *Crookes v. Newton*, 2011 SCC 47, concerning whether a hyperlink constitutes "publication" for the purposes of the law of defamation (the CCLA intervened in the Supreme Court of Canada);
132. *R. v. Katigbak*, 2011 SCC 48, considering the scope of the statutory defences to possession of child pornography (the CCLA intervened in the Supreme Court of Canada);
133. *R. v. Barros*, 2011 SCC 51, considering the scope of the informer privilege and whether it extends to prohibit independent investigation by the defence which may unearth the identity of a police informer (the CCLA intervened in the Supreme Court of Canada);
134. *Batty v. City of Toronto*, 2011 ONSC 6862, concerning the constitutionality of municipal bylaws prohibiting the erection of structures and overnight presence in public parks as applied to a protest (the CCLA intervened at the Ontario Superior Court of Justice);

135. *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, concerning parents seeking to have their children exempt from participating in Quebec’s Ethics and Religious Culture curriculum on the basis of their freedom of religion concerns (the CCLA intervened before the Supreme Court of Canada);
136. *Doré v. Barreau du Québec*, 2012 SCC 12, concerning the jurisdiction of a provincial law society to discipline members for comments critical of the judiciary (the CCLA intervened before the Supreme Court of Canada);
137. *R. v. Ipeelee*, 2012 SCC 13, concerning the application of s. 718.2(e) of the *Criminal Code* and *Gladue* principles when sentencing an Aboriginal offender of a breach of long-term supervision orders (the CCLA intervened before the Supreme Court of Canada);
138. *Canada (Attorney General) v. Bedford*, 2012 ONCA 186, concerning the constitutionality of certain prostitution-related offences (the CCLA intervened at the Ontario Court of Appeal);
139. *R. v. Tse*, 2012 SCC 16, concerning the constitutionality of the Criminal Code’s “warrantless wiretap” provisions (the CCLA intervened before the Supreme Court of Canada);
140. *Éditions Écosociété Inc. v. Banro Corp.*, 2012 SCC 18, concerning the appropriate test for jurisdiction and *forum non conveniens* in a multi-jurisdictional defamation lawsuit and the implications of these jurisdictional issues on freedom of expression (the CCLA intervened before the Supreme Court of Canada);
141. *Peel (Police) v. Ontario (Special Investigations Unit)*, 2012 ONCA 292, concerning the jurisdiction of Ontario’s Special Investigations Unit to investigate potentially criminal conduct committed by a police officer who has retired since the time of the incident (the CCLA intervened before the Ontario Superior Court of Justice and the Ontario Court of Appeal; *Pridgen v. University of Calgary*, 2012 ABCA 139, which considers whether a university can discipline students for online speech and whether the *Canadian Charter of Rights and Freedoms* applies to disciplinary proceedings at a university (the CCLA intervened before the Alberta Court of Appeal);
142. *Pridgen v. University of Calgary*, 2012 ABCA 139, which considers whether a university can discipline students for online speech and whether the *Canadian Charter of Rights and Freedoms* applies to disciplinary proceedings at a university (the CCLA intervened before the Alberta Court of Appeal);
143. *J.N. v. Durham Regional Police Service*, 2012 ONCA 428, concerning the retention of non-conviction disposition records by police services (the CCLA intervened in the Ontario Court of Appeal; CCLA also intervened before the Ontario Superior Court of Justice, *J.N. v. Durham Regional Police Service*, 2011 ONSC 2892);

144. *Opitz v. Wrzesnewskyj*, 2012 SCC 55, concerning the proper interpretation of the *Canada Elections Act* in the context of elections contested based on “irregularities,” and in light of s. 3 of the Charter (CCLA intervened before the Supreme Court of Canada);
145. *Canada (Human Rights Commission) v. Warman*, 2012 FC 1162, concerning the constitutionality of the hate speech prohibitions in the *Canadian Human Rights Act* (the CCLA intervened in the Federal Court of Canada);
146. *R. v. Cuttell*, 2012 ONCA 661 and *R. v. Ward*, 2012 ONCA 660, concerning the permissibility of warrantless searches of internet users’ identifying customer information (the CCLA intervened at the Ontario Court of Appeal);
147. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, concerning the issue of the appropriate test for granting standing in a public interest case (CCLA intervened before the Supreme Court of Canada);
148. *R. v. Cole*, 2012 SCC 53, examining an employee’s reasonable expectation of privacy in employer-issued computers and the application of s. 8 to police investigations at an individual’s workplace (CCLA intervened before the Supreme Court of Canada);
149. *R. v. Prokofiew*, 2012 SCC 49, concerning the inferences that could be made from accused person’s decision not to testify (CCLA intervened before the Supreme Court of Canada);
150. *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, concerning the proper balance between the transparency of court proceedings and the privacy of complainants (CCLA intervened before the Supreme Court of Canada);
151. *Lund v. Boissain*, 2012 ABCA 300, which considers the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Court of Appeal);
152. *R. v. Khawaja*, 2012 SCC 69 and *Sriskandarajah v. United States of America*, 2012 SCC 70 which together considered whether the definition of “terrorist activity” introduced by the Anti- Terrorism Act 2001, amending the Criminal Code, infringe the Charter (CCLA intervened before the Supreme Court of Canada);
153. *R. v. NS*, 2012 SCC 72, concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA intervened before the Supreme Court of Canada);

154. *R. v. Davey*, 2012 SCC 75, *R. v. Emms*, 2012 SCC 74 and *R. v. Yumnu*, 2012 SCC 73, concerning the Crown's vetting of prospective jurors prior to jury selection and the failure to disclose information to defence counsel (CCLA intervened before the Supreme Court of Canada);
155. *R. v. Manning*, 2013 SCC 1, concerning the proper interpretation of a criminal forfeiture provision, and whether courts may consider the impact of such forfeiture on offenders, their dependents, and affected others (CCLA intervened before the Supreme Court of Canada);
156. *Saskatchewan Human Rights Commission v. William Whatcott*, 2013 SCC 11, concerning the constitutionality and interpretation of the hate speech provisions of the Saskatchewan Human Rights Code and the extent to which that law can limit the expression of a man distributing anti-homosexual flyers (CCLA intervened before the Supreme Court of Canada);
157. *R. v. Mernagh*, 2013 ONCA 67, concerning the constitutionality of medical marijuana regulations (CCLA intervened before the Ontario Court of Appeal);
158. *Tigchelaar Berry Farms v. Espinoza*, 2013 ONSC 1506, concerning temporary migrant workers who, following their termination, were immediately removed from Canada by their employers pursuant to a government-mandated employment contract (CCLA intervened before the Ontario Superior Court);
159. *R. v. TELUS Communications Co.*, 2013 SCC 16, concerning the interpretation of the interception provisions of the *Criminal Code* and whether the authorizations in a General Warrant and Assistance Order are sufficient to require a cell phone company to forward copies of all incoming and outgoing text messages to the police;
160. *R. v. Pham*, 2013 SCC 15, concerning whether the demands of proportionality in sentencing require that the individual accused's circumstances be taken into account to include a collateral consequence, such as deportation;
161. *Canadian Human Rights Commission v. Canada (Attorney General)*, 2013 FCA 75, in which the court considered whether an allegation that the Government of Canada has engaged in prohibited discrimination by under-funding child welfare services for on-reserve First Nations children, in order to succeed, requires a comparison to a similarly situated group;
162. *Penner v. Niagara (Regional Police Service Board)*, 2013 SCC 19, concerning the use of issue estoppel in the context of civil claims against the police;
163. *R. v. Saskatchewan Federation of Labour*, 2013 SKCA 43, concerning essential services legislation and the freedom to strike;

164. *R. v. Welsh*, 2013 ONCA 190, concerning the constitutionality of an undercover police officer posing as a religious or spiritual figure in order to elicit information from a suspect;
165. *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, concerning employee privacy and the reasonableness of randomized alcohol testing in the workplace;
166. *RC v. District School Board of Niagara*, 2013 HRTO 1382, concerning the policy and practice of distribution of non-instructional religious material within the school board system and whether it is discriminatory on the basis of creed;
167. *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, concerning the government's refusal to permit Canadians detained abroad to serve the remainder of their sentence in Canada and the application of s. 6 of the Charter (the CCLA also intervened at the Federal Court of Appeal, 2011 FCA 39);
168. *R. v. Chehil*, 2013 SCC 49, and *R. v. Mackenzie*, 2013 SCC 50, concerning the "reasonable suspicion" standard and the right to be free from unreasonable search and seizure;
169. *Ezokola v. Minister of Immigration and Citizenship*, 2013 SCC 40, concerning application of the exclusion clause 1(F)(a) of the 1951 UN Refugee Convention, as incorporated in the IRPA, and the proper test for complicity in war crimes and crimes against humanity. The case considers an individual who has been denied refugee status because he was employed by the government of the Democratic Republic of Congo at a time that international crimes were committed by the State;
170. *Reva Landau v. Ontario (Attorney General)*, 2013 ONSC 6152, concerning the constitutionality of the current funding of Ontario's Catholic schools;
171. *R. v. Vu*, 2013 SCC 60, concerning the scope of police authority to search computers and other personal electronic devices found within a place for which a warrant to search has been issued;
172. *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62, concerning the constitutionality of Alberta's *Personal Information Protection Act* in light of its impact on a union's freedom of expression in respect of activities on a picket line;
173. *Faysal v. General Dynamics Land Systems Canada* (Ontario Human Rights Tribunal File No. 2009-03006-I), concerning the application by a Canadian employer of the US *International Traffic in Arms Regulations*, and whether such application constitutes discrimination, contrary to the Ontario *Human Rights Code*, the *Charter of Rights and Freedoms*, and Canadian legal obligations pursuant to international human rights law (matter settled before a hearing);

174. *Wood v. Schaeffer*, 2013 SCC 71, concerning the scope of public interest standing and the interpretation of certain Regulations governing investigations conducted by Ontario's Special Investigations Unit (the CCLA also intervened at the Ontario Court of Appeal, 2011 ONCA 716);
175. *Bernard v. Canada (Attorney General)*, 2014 SCC 13, concerning an employer sharing the contact information of a Rand employee with a union and whether this violates rights to privacy and the freedom not to associate;
176. *John Doe v. Ontario (Finance)*, 2014 SCC 36, concerning an exception in Ontario's *Freedom of Information and Protection of Privacy Act* for advice and recommendations to a Minister;
177. *Mission Institution v. Khela*, 2014 SCC 24, concerning the scope of habeas corpus, the disclosure obligations on a correctional institution when they conduct an involuntary transfer, and the remedies that are available pursuant to a habeas application;
178. *R. v. Summers*, 2014 SCC 26, concerning the presumption of innocence and the interpretation of "circumstance[s]" that may justify granting enhanced credit for pre-trial custody under s. 719(3.1) of the *Criminal Code*;
179. *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, concerning the constitutionality of Canada's "security certificate" regime, particularly the restrictions on communications between a Named Person and the Special Advocate;
180. *France v. Diab*, 2014 ONCA 374, regarding whether an extradition judge must engage in a limited weighing of evidence to assess the sufficiency of evidence for committal to extradition and whether a failure to do so would violate s. 7 of the *Charter*;
181. *R. v. Spencer*, 2014 SCC 43, concerning the permissibility of warrantless searches of internet users' identifying customer information;
182. *R. v. Taylor*, 2014 SCC 50, concerning the right to counsel and whether intentional police reliance on medical procedures to gather evidence without implementing the right to counsel violates s. 8 of the *Charter*;
183. *R. v. Hart*, 2014 SCC 52, concerning the constitutionality and admissibility of a confession obtained through a "Mr. Big" police operation;
184. *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68, concerning whether a court must consider an individual's rehabilitation when seeking to exclude a refugee from Canada for "serious prior criminality";

185. *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, concerning the application of the *Charter* to the *State Immunity Act* and whether it denies state immunity for acts committed by foreign governments when such acts result in violations of international law prohibitions against torture (the CCLA also intervened at the Quebec Court of Appeal, 2012 QCCA 1449);
186. *Wakeling v. United States of America*, 2014 SCC 72, regarding the constitutionality of sections of the *Criminal Code* and the *Privacy Act* that allow for the substance of wiretaps to be disclosed to foreign law enforcement actors;
187. *R. v. Fearon*, 2014 SCC 77, concerning the scope of the police power to search incident to arrest and whether it extends to a warrantless search of personal electronic devices (the CCLA also intervened at the Ontario Court of Appeal, 2013 ONCA 106);
188. *PS v. Ontario*, 2014 ONCA 900, concerning detention under mental health law and the scope of *Charter* protection afforded to a person with a hearing impairment and linguistic needs, in a situation of compound rights violations;
189. *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, concerning the constitutionality of the labour relations regime for members of the Royal Canadian Mounted Police;
190. *Carter v. Canada (Attorney General)*, 2015 SCC 5, concerning the constitutionality of the *Criminal Code* prohibition on assisted suicide in light of the rights protected under ss. 7 and 15 of the *Charter*;
191. *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, concerning the impact of provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and associated regulations, on solicitor-client privilege and whether these provisions unjustifiably violate s. 7 of the *Charter*;
192. *Baglow v. Smith*, 2015 ONSC 1175, concerning the fair comment defence and the approach to defamation cases where the allegedly defamatory publication takes place within the “blogosphere”;
193. *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, concerning whether a private religious high school should be exempted from the requirement to teach Quebec’s Ethics and Religious Culture curriculum and whether the failure to grant an exemption violates the institution’s freedom of religion;
194. *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208, regarding whether a roving police “stop and search” checkpoint targeting apparent protesters during the G20 Summit violated ss. 2 and 7 of the *Charter*;

195. *R. v. Nur*, 2015 SCC 15, concerning the constitutionality of various provisions of the *Criminal Code* which impose mandatory minimum sentences for the possession of a prohibited firearm (the CCLA also intervened at the Ontario Court of Appeal, 2013 ONCA 677, and at the Ontario Superior Court of Justice, 2011 ONSC 4874);
196. *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, concerning whether the rights to equality or to freedom of religion as protected under the Quebec *Charter of human rights and freedoms* are violated when a prayer is recited at the outset of a municipal council meeting;
197. *Henry v. British Columbia (Attorney General)*, 2015 SCC 24, regarding the availability of *Charter* remedies for non-disclosure of evidence at trial and whether claimants should be required to prove prosecutorial malice in the *Charter* claim;
198. *Bowden Institution v. Khadr*, 2015 SCC 26, regarding the proper interpretation of the *International Transfer of Offenders Act* as applied to the sentence received by a Canadian citizen sentenced in the United States and whether the sentence should be served in a provincial correctional facility;
199. *R. v. St-Cloud*, 2015 SCC 27, regarding the interpretation of the power to deny bail because detention is necessary to maintain confidence in the administration of justice;
200. *R. v. Barabash*, 2015 SCC 29, considering the scope of the private use exception to making and possessing child pornography;
201. *R. v. Smith*, 2015 SCC 34, concerning the constitutionality of the *Marijuana Medical Access Regulations* and whether the limitation in the *Regulations* restricting legal possession to only dried marijuana unreasonably infringes s. 7 *Charter* rights;
202. *Equustek Solutions Inc. v. Google Inc.*, 2015 BCCA 265, concerning the validity of an order of the BC Supreme Court that requires a global internet search service to delete certain websites from its search results worldwide;
203. *Taylor-Baptiste v. Ontario Public Service Employees Union*, 2015 ONCA 495, concerning the role of the *Charter of Rights and Freedoms* in the interpretation of the Ontario *Human Rights Code* by the Human Rights Tribunal of Ontario, and in particular how the *Charter* protection of freedom of expression impacts on the Code's protections (the CCLA also intervened before the Ontario Superior Court of Justice, 2014 ONSC 2169);
204. *Frank v. Canada (Attorney General)*, 2015 ONCA 536, concerning the constitutionality of provisions of the *Canada Elections Act* that preclude Canadian citizens who have resided outside of the country for more than five years from voting in federal elections;

205. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, concerning the application of the Quebec *Charter* to a Canadian company's refusal to train a Pakistan-born Canadian pilot because he was refused clearance under a US program requiring security checks for foreigners;
206. *Disciplinary Hearings of Superintendent David Mark Fenton*, Toronto Police Service Disciplinary Tribunal decision dated 25 August 2015, regarding whether the mass arrest of hundreds of individuals at two locations during the G20 Summit constituted a violation of ss. 2 and 9 of the *Charter* and whether the officer's conduct amounted to misconduct under the *Police Services Act*;
207. *R. v. Appulonappa*, 2015 SCC 59, and *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, concerning the constitutionality of criminal and immigration sanctions imposed on those who provide assistance to refugee claimants as "human smugglers" (CCLA also intervened in *R. v. Appulonappa* before the BC Court of Appeal, 2014 BCCA 163);
208. *Schmidt v. Attorney General of Canada*, 2016 FC 269, concerning the proper interpretation of statutory provisions requiring the Minister of Justice to report to Parliament on the constitutionality of proposed legislation;
209. *Good v. Toronto (Police Services Board)*, 2016 ONCA 250, regarding the certification of a class action arising from alleged police misconduct during the 2010 G20 Summit;
210. *Villeneuve c. Montréal (Ville de)*, 2016 QCCS 2888, concerning the constitutionality of a City of Montreal by-law that prohibits the holding of gatherings and marches without informing the police of the itinerary and location and prohibiting individuals participating in such gatherings from covering their faces without valid justification;
211. *Trinity Western University v. Law Society of Upper Canada*, 2016 ONCA 518, considering the Law Society of Upper Canada's decision not to accredit the proposed law school at Trinity Western University, and whether the decision strikes an appropriate balance between freedom of religion and equality;
212. *Thompson v. Ontario (AG)*, 2016 ONCA 676, concerning a constitutional challenge to schemes in Ontario's *Mental Health Act* that permit involuntary detention and coerced medical treatment for individuals who are not a danger to themselves or others;
213. *R. v. Donnelly* and *R. v. Gowdy*, 2016 ONCA 988 and 2016 ONCA 989, concerning the availability of a sentence reduction remedy under s. 24(1) of the *Charter* and whether such a remedy allows courts to reduce an offender's sentence below the statutory mandatory minimum;

214. *Jean-François Morasse v. Gabriel Nadeau-Dubois*, 2016 SCC 44, concerning an appeal of a contempt conviction in respect of an individual who made public statements about the legitimacy of certain protest activities (CCLA also intervened before the Quebec Court of Appeal, 2015 QCCA 78);
215. *Ernst v. Energy Resources Conservation Board*, 2017 SCC 1, concerning the availability of a Charter remedy where a statute has a general immunity clause;
216. *BC Freedom of Information and Privacy Association v. Attorney General of British Columbia*, 2017 SCC 6, concerning the constitutionality of provisions of the British Columbia *Election Act* requiring registration of third party advertisers without a threshold spending limit;
217. *R. v. Saikaley*, 2017 ONCA 374, concerning the proper interpretation of the *Customs Act* in relation to the warrantless search of cell phones (or other electronic devices) of anyone entering Canada;
218. *Bingley v. Her Majesty the Queen*, 2017 SCC 12, regarding whether a *Mohan voir dire* is required to determine the admissibility of testimony from a Drug Recognition Expert;
219. *R. v Peers*, 2017 SCC 13, concerning whether the word punishment in s. 11(f) of the *Charter* is restricted to imprisonment or other punishments that engaged the accused's liberty interests;
220. *R. v Tinker*, 2017 ONCA 552, concerning whether a mandatory victim surcharge violates ss. 7 and 12 of the Charter;
221. *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26, concerning the imposition of personal costs against a criminal lawyer on the basis of his conduct in the representation of his clients;
222. *R. v Antic*, 2017 SCC 27, concerning the *Criminal Code* restriction on cash bails and the right of an accused to the least restrictive form of bail;
223. *Deborah Louise Douez v. Facebook, Inc.*, 2017 SCC 33, regarding the need to modify the "strong cause" test in forum selection cases where constitutional or quasi-constitutional rights are engaged in contracts of adhesion;
224. *Google Inc. v. Equustek Solutions Inc., et al.*, 2017 SCC 33, concerning the validity of an order of the BC Supreme Court that requires a global internet search service to delete certain websites from its search results worldwide (the CCLA also intervened before the British Columbia Court of Appeal, 2015 BCCA 265);

225. *Nour Marakah v. Her Majesty the Queen*, 2017 SCC 59, regarding whether the sender of a text message has a reasonable expectation of privacy in the message once it is accessible on a recipient's cell phone;
226. *Tristin Jones v. Her Majesty*, 2017 SCC 60, companion case to Marakah, regarding whether the standing test in an informational privacy case should be clarified in the context of evolving technologies;
227. *Schmidt v. Attorney General of Canada*, 2018 FCA 55, concerning the proper interpretation of statutory provisions requiring the Minister of Justice to report to Parliament on the constitutionality of proposed legislation (the CCLA also intervened before the Federal Court, 2016 FC 269);
228. *Cooperstock v. United Airlines* (Federal Court of Appeal File No. A-262-17), concerning whether an attempted parody website critical of a corporation constitutes a copyright or trademark violation (CCLA was granted leave to intervene but the matter settled prior to a hearing);
229. *R v. Wong*, 2018 SCC 25, concerning an accused's request to withdraw a guilty plea after finding the applicant was uninformed of significant collateral consequences of the plea;
230. *Groia v. Law Society of Upper Canada*, 2018 SCC 27, concerning a finding of professional misconduct made against a lawyer on the basis of incivility and the question of when such a finding impacts freedom of expression (the CCLA also intervened before the Law Society Appeal Panel, 2013 ONLSAP 41, the Divisional Court, 2015 ONSC 686, and the Court of Appeal, 2016 ONCA 471);
231. *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, considering the Law Society of Upper Canada's decision not to accredit the proposed law school at Trinity Western University, and whether the decision strikes an appropriate balance between freedom of religion and equality (the CCLA also intervened before the Ontario Court of Appeal, 2016 ONCA 518);
232. *Stewart v. Toronto Police Services Board*, 2018 ONSC 2785, concerning the constitutionality of establishing a police perimeter around a public park and requiring a search of bags and belongings as a condition of entry.
233. *Re: Interim Prohibitory Orders issued against Leroy St. Germaine, Lawrence Victor St. Germaine and James Sears dated May 26, 2016*, Board of Review proceedings under the *Canada Post Corporation Act*, considering the constitutionality of a Ministerial decision to prohibit access to Canada Post for individuals alleged to be committing an offence;

234. *Abdi v Canada*, 2018 FC 733 concerning whether *Charter* rights and values may be considered in admissibility proceedings against a non-citizen who had been a Crown ward;
235. *R v Boudreault*, 2018 SCC 58, concerning whether a mandatory victim surcharge violates s. 12 of the *Charter*;
236. *R v Vice Media Canada Inc*, 2018 SCC 53, considering when a journalist can be compelled to reveal communications with a source for the purpose of assisting a police investigation and whether the police record underlying the production order should be subject to a sealing order or a publication ban (The CCLA also intervened before the Ontario Court of Appeal, 2017 ONCA 231);
237. *Frank v. Canada (Attorney General)*, 2019 SCC 1 concerning the constitutionality of provisions of the *Canada Elections Act* that preclude Canadian citizens who have resided outside of the country for more than five years from voting in federal elections;
238. *Spencer Dean Bird v. Her Majesty the Queen*, 2019 SCC 7, concerning the role of *Charter* considerations when applying the doctrine of collateral attack;
239. *R v. Jarvis*, 2019 SCC 10, concerning whether surreptitious visual recordings of students were made in circumstances that give rise to a reasonable expectation of privacy;
240. *R v. Corey Lee James Myers*, 2019 SCC 18, concerning the proper approach to be taken in respect of a 90 day bail review;
241. *G v. Attorney General for Ontario et al.*, 2019 ONCA 264, concerning whether inclusion on sex offender registries is contrary to ss. 7 and 15 of the *Charter* for persons found not criminally responsible by reason of mental disorder and absolutely discharged by a Review Board
242. *Mills v. Her Majesty the Queen*, 2019 SCC 22, concerning whether an accused had a reasonable expectation of privacy in electronic communications to an undercover police officer;
243. *Minister of Public Safety and Emergency Preparedness, et al. v. Tusif Ur Rehman Chhina*, 2019 SCC 29, concerning whether a *habeas corpus* proceeding should be available to individuals held in immigration detention;
244. *Gregory Allen v. Her Majesty the Queen in right of Ontario as represented by the Minister of Community Safety and Correctional Services* (Ontario Human Rights Tribunal File No 2016- 25116-I) concerning the use of solitary confinement on persons with physical disabilities (this matter settled prior to hearing);

245. *Mitchell v. Jackman* (Supreme Court of Newfoundland and Labrador, Court of Appeal File No. 2017 01H 0089), concerning the constitutionality of provisions of the Newfoundland *Elections Act* which allow for special ballot voting prior to an election writ being dropped (CCLA also intervened in the Newfoundland and Labrador Trial Division (General) 2017 NLTD(G) 150; the Court of Appeal dismissed the appeal as moot);
246. *R. v. Culotta*, 2018 SCC 57, concerning whether the right to counsel requires immediate access to a phone and the internet, and whether blood samples should be excluded under s. 24(2) of the *Charter* when the samples are taken for strictly medical purposes rather than police purposes;
247. *R. v. Le*, 2019 SCC 34, concerning whether a detention and search in a private backyard of a racialized individual violated an accused's ss. 8 and 9 rights;
248. *R. v. Penunsi*, 2019 SCC 39, concerning whether the judicial interim release provisions contained in s. 515 of the Criminal Code apply to s. 810 peace bond proceedings, and whether s. 810.2(2) of the *Criminal Code* empowers a judge to issue an arrest warrant in order to cause a defendant to a s. 810.2 information to appear.
249. *Christian Medical and Dental Society et al. v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393, concerning the constitutionality of policies requiring physicians who conscientiously object to a medical practice to nevertheless provide an effective referral and urgent care to patients seeking care (CCLA also intervened in the Superior Court, 2018 ONSC 579);
250. *R v. Passera*, 2019 ONCA 527, considering whether it is cruel and unusual punishment to compel an offender who is detained prior to trial to spend more time in custody than other similarly situated offenders prior to becoming eligible for parole or early release;
251. *Marie-Maude Denis v. Marc-Yvan Coté*, 2019 SCC 44, concerning the interpretation and application of the *Journalistic Sources Protection Act* and the changes it made to the *Canada Evidence Act* concerning the treatment of journalistic sources in court proceedings;
252. *Fleming v. Ontario*, 2019 SCC 45, concerning the ancillary common law powers of police officers in the context of an arrest for an apprehended breach of the peace, and the impact of the exercise of that power on the right to peaceful protest;
253. *R. v. Rafilovich*, 2019 SCC 51, concerning whether a fine in lieu of forfeiture should be imposed in respect of proceeds of crime seized by the police but returned by order of the court to the accused to pay for defence counsel;

254. *Kosoian v. Société de transport de Montréal, et al.*, 2019 SCC 59, concerning whether a pictogram can create an infraction and the circumstances in which an individual must identify themselves to police;
255. *Ontario (Attorney General) v. Bogaerts*, 2019 ONCA 876, concerning private organizations with delegated law enforcement powers that engage s. 8 of the *Charter*, and the importance of transparency and accountability as fundamental legal principles under s. 7;
256. *C.M. v York Regional Police*, 2019 ONSC 7220, concerning the procedural fairness of the police vulnerable sector check process;
257. *Stewart v. Toronto Police Services Board*, 2020 ONCA 255, concerning the constitutionality of establishing a police perimeter around a public park and requiring a search of bags and belongings as a condition of entry; and
258. *R. v. Zora*, 2020 SCC 14, concerning the mens rea for the offence of failing to comply with a condition of undertaking or recognizance.

CCLA Interventions – Hearing or Decision Pending

259. *British Columbia v. Provincial Court Judges' Association of B.C.* (Supreme Court of Canada File No. 38381), and *Nova Scotia v. Nova Scotia Provincial Court Judges' Association* (Supreme Court of Canada File No. 38459), considering whether Cabinet documents should be protected from disclosure in the judicial review of judicial compensation or whether they should be exempted on the basis of public interest immunity ; and
260. *Attorney General of Quebec, et al. v. 9147-0732 Québec inc.* (Supreme Court of Canada File No. 38613), considering whether corporations should (or should not) have a right to be free from cruel and unusual treatment under s. 12 of the *Charter*.

The CCLA has also litigated significant civil liberties issues as a party in the following cases and inquests:

261. *Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1990), 71 OR (2d) 341 (CA), reversing (1988), 64 OR (2d) 577 (Div Ct), concerning whether a program of mandatory religious education in public schools violated the *Charter's* guarantee of freedom of religion;
262. *Canada (Canadian Human Rights Commission) v. Toronto-Dominion Bank (re Canadian Civil Liberties Association)*, [1996] 112 FTR 127, affirmed [1998] 4 FC 205 (CA), concerning whether an employer's policy requiring employees to submit to a urine drug test was discriminatory under the *Canadian Human Rights Act*;

263. *Corporation of the Canadian Civil Liberties Association v. Ontario (Civilian Commission on Police Services)* (2002), 61 OR (3d) 649 (CA), concerning the proper evidentiary standard to be applied under the *Ontario Police Services Act* when the Civilian Commission on Police Services considers the issue of hearings into civilian complaints of police misconduct;
264. *Canadian Civil Liberties Association v. Toronto Police Service*, 2010 ONSC 3525 and 2010 ONSC 3698, concerning whether the use of Long Range Acoustic Devices (LRADs) by the Toronto Police Service and the Ontario Provincial Police during the G20 Summit in June 2010 violated Regulation 926 of the *Police Services Act* and ss. 2 and 7 of the *Charter*;
265. *Inquest into the Death of Ashley Smith* (Office of the Chief Coroner) (Ontario), concerning the death of a young woman with mental health issues, who died by her own hand while in prison, under the watch of correctional officers;
266. *Corporation of the Canadian Civil Liberties Association and Christopher Parsons v. Attorney General (Canada)* (Ontario Superior Court File No. CV-14-504139), an application regarding the proper interpretation of certain provisions of the federal *Personal Information Protection and Electronic Documents Act* which have been used to facilitate warrantless access to internet subscriber information (application ongoing);
267. *Corporation of the Canadian Civil Liberties Association v. Attorney General (Canada)*, 2019 ONCA 243; and *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491, an application and appeal regarding the constitutionality of provisions of the *Corrections and Conditional Release Act* which authorize “administrative segregation” in Canadian correctional institutions (currently on cross-appeal at the Supreme Court of Canada, File No. 38574,);
268. *Corporation of the Canadian Civil Liberties Association, et al. v. Attorney General (Canada)* (Ontario Superior Court File No. CV-15-532810), an application concerning the constitutionality of provisions of various pieces of legislation as a result of the *Anti-Terrorism Act, 2015* (application ongoing);
269. *National Council of Canadian Muslims (NCCM), Marie-Michelle Lacoste and Corporation of the Canadian Civil Liberties Association c Attorney General of Quebec* (Quebec Superior Court File No. 500-17-100935-173); *National Council of Canadian Muslims (NCCM) c. Attorney General of Québec*, 2018 QCCS 2766, and *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, 2017 QCCS 5459, an application to challenge the validity of a provision banning face coverings in giving or receiving public services and applications for an order staying the operation of this provision;

270. *Becky McFarlane, in her personal capacity and as litigation guardian for LM, and The Corporation of the Canadian Civil Liberties Association v. Minister of Education (Ontario)*, 2019 ONSC 1308, concerning whether the removal of sections of Ontario's health and physical education curriculum violates the equality rights of LGBTQ+ students and parents;
271. *Ichrak Nourel Hak, National Council of Canadian Muslims (NCCM) and Corporation of the Canadian Civil Liberties Association v Attorney General of Quebec* (Quebec Superior Court File No. 500-17-108353-197); *Hak c. Procureure générale du Québec*, 2019 QCCA 2145, an application to challenge the validity of provisions banning religious symbols in certain professions in the public sector, and an application for an order staying the operation of these provisions.
272. *Corporation of the Canadian Civil Liberties Association and Lester Brown v Toronto Waterfront Revitalization Corporation, et. al.* (Ontario Superior Court of Justice File No. 211/19), concerning whether Sidewalk Labs' smart city project is *ultra vires* and whether it violates ss. 2(c), 2(d), 7, and 8 of the *Charter of Rights and Freedoms* (application ongoing);
273. *Corporation of the Canadian Civil Liberties Association v. Ministry of Energy, Northern Development and Mines, et al.* (Ontario Superior Court of Justice File No.: CV-19-006266850000), concerning the constitutionality of Ontario's *Federal Carbon Tax Transparency Act* which compels gas retailers to post an anti-carbon tax notice on all gas pumps or face fines (action ongoing);
274. *Corporation of the Canadian Civil Liberties Association v. Ministry of Energy, Northern Development and Mines, et al.* (Ontario Superior Court of Justice File No.: CV-19- 006266850000), concerning the constitutionality of Ontario's *Federal Carbon Tax Transparency Act* which compels gas retailers to post an anti-carbon tax notice on all gas pumps or face fines (action ongoing); and
275. *Sanctuary Ministries of Toronto, et. al v. City of Toronto, et. al* (Ontario Superior Court of Justice), concerning the constitutionality of the Toronto Shelter Standards and 24-Hour Respite Site Standards, and of the conduct of the City in the operation of its shelters and failure to develop and implement a COVID-19 mitigation plan, on the basis that these do not comply with public health dictates regarding physical distancing during the COVID-19 pandemic.

This is **Exhibit "B"** referred to in the
Affidavit of Abby Deshman
affirmed before me this 29th day of June, 2020

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a long horizontal stroke ending in a small arrowhead.

A Commissioner, etc.



Sunday, March 22, 2020

The Honourable David Lametti
Attorney General of Canada
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Attorney,

I am writing you about Canadian justice ministries' responses to coronavirus, and your own. Thank you for responding to my February 6th 2020 letter, and for your Ministry's willingness to reach out to a variety of stakeholders and voices on the subject these past few days and weeks.

In particular, I am writing about three matters: emergency funding of provincial legal aid services; access to information and intergovernmental transparency of legal orders; and, the administration of criminal justice during a pandemic.

Regarding access to justice, countless lawyers from across Canada have stepped up to serve the public interest during the coronavirus outbreak. In turn, provincial legal aid systems have had to rise to the occasion. Legal Aid Ontario ("Legal Aid Ontario"), for example, dispatched duty counsel and funded defence counsel to assist with the disposition of charges and judicial interim releases this past week in Ontario, thereby permitting the release of over 1000 in custody, in but one week. The compensation to defence counsel was meagre as ever, but LAO exceeded the highest of expectations in their actions during the crisis, to accommodate the heroic efforts of counsel. The corollary to this is that no doubt provincial Crown attorneys and courts also have unexpected costs to administer the federal Criminal Code and related laws at this time. Credit is due to the bar, bench and their supporting institutions for this debt they incurred for the public good.

Just as the federal government will aid provincial health ministries with relief and emergency funding in the coming days and weeks, provincial justice ministries are going to require financial aid to compensate for the past and future costs of responding to the crisis. The sooner this is

confirmed by the Government of Canada, the better. The (unfair) fiscal federalist division of prosecution and legal aid costs is a long-standing issue not to be resolved today, but it ought not interfere with the special costs arising from the coronavirus response.

Regarding access to information, during the coronavirus response, at least, the Executive branch must better align itself with the Legislative and Judicial branches of the state. A judicial decision is made public immediately upon being rendered. The same is true of legislative action. The same is not true of Cabinet orders. While political communication of an Executive decision receives great attention before and after it's made, the same cannot be said for the disclosure of legal orders. Besides the delayed transparency, there appears to be zero inter-governmental coordination.

There have been intergovernmental efforts to coordinate access to information about public health care, but not with respect to the equally important rule of law. It is unclear at times whether a federal or provincial Minister of the Crown or a Mayor is merely advocating from their bully pulpit versus announcing an interim or other order or legal directive pursuant to legislation or regulation or Order in Council. Some provinces have succeeded in disclosing their Cabinet orders simultaneous with public announcements. Your Ministry has, I know, endeavoured to achieve increased federal transparency but there remains a lag time between announcement and disclosure of legal documents. Nor is there a central location for the public to find such orders, to my knowledge. If judicial review is to be ruled in or out by civil society, we need the government decision to be available once it has been made.

Transparency and the rule of law should require that any order made be immediately disclosed to the public. The other branches of the state already operate in this fashion. Moreover, unlike most government orders in ordinary circumstances, the coordination, collaboration and centralization of information about Canadian emergency management laws must be brought together as soon as possible. In our view, the responsibility for executing that centralization of access to information ought to be undertaken by the Attorney General of Canada, as the superintendent of the rule of law among the executive branches.

I'm sure we agree that everything done by public officials must be authorized by law. It follows that we need access to information when seldom-used laws that provide for exceptional powers are invoked. Canadians need your help in getting that legal information.

Regarding the administration of justice during a pandemic, CCLA and others have already made public our concerns regarding corrections (<https://ccla.org/coronavirus-update-the-jailed/>). But the larger issue remains that the criminal legal system is necessarily operating at cross-

purposes with public health goals. Whereas the latter is about social distancing, the former is too often about social warehousing. The Ontario Superior Court has made a similar point this week on a bail review: *R. v. J.S.*, 2020 ONSC 1710

Leaving aside CCLA's common refrain about over-criminalization, there remains the particular conundrum of how the criminal justice system is administered, across Canada, consistent with public health officials contrary directions. Division of justice powers and jurisdictional federalism has also contributed to difficulties in coordinating a public health response to, for instance, overcrowding in prisons and immigration detention centres.

Even if a government agreed, to reduce overcrowding in prisons requires action by Crown attorneys (provincial and federal) and courts (provincial and federal) plus the actions of police, of every jurisdiction, not to mention the administration of provincial offence statutes. The only way to effectively pursue public health goals within Canada's multifaceted justice system is through the Federal-Provincial-Territorial ("FPT") Justice Ministers coordination.

We have no view as to whether an FPT Justice meeting online or otherwise is a solution. Moreover, we acknowledge that some Provinces or Territories may diverge on the appropriate approach. Nevertheless, greater coordination and enhanced quasi-judicial discretion from the Attorney General of Canada would help achieve common goals, no doubt.

In a nutshell, a public health approach would necessitate that the releasable be released; that detention be a measure of last resort; and that public health exigencies be imported into the "public interest" component of quasi-judicial discretion exercised by Crowns, at least:

- For the presumed innocent, pre-trial, quasi-judicial discretion ought to be exercised so as to drop charges where it is in the public interest, which includes the public health issues raised by this pandemic (i.e., the "public interest" can be invoked to justify the liberation of a defendant, but not to justify the laying of a charge or continuation of a prosecution, absent a reasonable prospect of conviction).
- Respectful of their quasi-judicial roles, all police and prosecutors should be encouraged, with support from respective governments, to take into account public health goals, and exercise their discretionary authority as follows:
 - Release those charged at the scene, buttressing the principle of restraint entrenched in Part XVI of Criminal Code; viz., release everyone at the scene absent a severe, evidence-driven risk of flight for very serious charges; and,
 - Consent to judicial interim releases on the same grounds of extra restraint, consistent with *R. v. J.S.*, 2020 ONSC 1710.
 - Facilitate timely, fair hearings using available technology, even telephones, for the purpose of granting releases with minimal and flexible conditions, parole, probation, and other forms of release into the community; and

- Ensure that conditions of confinement adhere to humane standards, including providing for virtual visits, and adequate programming to the extent possible. In particular, isolation and lockdowns cannot replace releases where the latter is possible to ensure the health of inmates, correctional staff, or their families.
- Maintain accurate, disaggregated data about lockdowns, isolation, and other measures, to ensure transparency and accountability.
- Facilitate the relaxing of unnecessarily strict application of evidence and procedural bars to facilitating a release.

For those convicted, existing legal tools could be accessed to reduce the prison population (and immigration detention) through conditional releases, compassionate releases, and other discretionary measures. Every release from confinement will alleviate over-crowding, avoid the spread of infection when the virus reaches penal institutions, and protect inmates, correctional officers, and the innocent families and communities to which detainees and inmates will return.

The Attorney General of Canada, therefore, may effectively advance public health goals throughout the justice sector, in a variety of ways, within the current laws, with particular focus on those easily becoming an afterthought during a pandemic.

Thank you for considering the foregoing.

Sincerely,

Michael Bryant
Executive Director & General Counsel
Canadian Civil Liberties Association

This is **Exhibit “C”** referred to in the
Affidavit of Abby Deshman
affirmed before me this 29th day of June, 2020

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a horizontal line that ends in a small hook.

A Commissioner, etc.



Thursday, March 26, 2020

Hon. Doug Downey
Attorney General
11th Floor 720 Bay St.
Toronto, ON M7A 2S9
attorneygeneral@ontario.ca; doug.downey@pc.ola.org

Hon. Sylvia Jones
Solicitor General
18th Floor 25 Grosvenor St.
Toronto, ON M7A 1Y6
sylvia.jones@pc.ola.org

Dear Attorney General Downey and Solicitor General Jones,

I am writing to urge you to take further immediate actions to mitigate the spread of COVID-19 through Ontario's jails and detention centres.

We recognize the steps your government has taken to date, notably expanding temporary absences to all those serving intermittent sentences, extending the length of temporary absences, allowing for the extended early release of inmates near the end of their sentences, and amending Regulation 778 to allow the Ontario Parole Board to forgo in-person hearings.

More needs to and can be done, however, to decrease the remand population.

A public health approach requires that the releasable be released and detention be a measure of last resort. Ontario needs to take immediate measures to reduce the currently incarcerated population, with a particular focus on the remand population, and also to divert newly arrested individuals from entering these institutions.

Other jurisdictions are already taking action. On Sunday New Jersey's chief justice signed an order authorizing the release of as many as 1000 sentenced offenders from its jails, including low-level offenders, those jailed for probation violations and those convicted in municipal

courts.¹ In California judges and sheriffs are proactively ordering the release of hundreds of inmates, including by releasing those most at risk to health complications, speeding up the release those with less than 30 days of jail time remaining, choosing to issue citations instead of arrests, and reducing bail requirements for nonviolent pretrial inmates.² In the Bay area those released with no place to go are being offered rooms in local hotels.³

Despite the steps being taken by various Canadian governments to date, on the whole our criminal justice system is still operating at cross-purposes with public health goals. The incarcerated population is particularly vulnerable due to the crowded conditions and the large number of people with underlying health conditions. Providing adequate health care and controlling infection in provincial institutions is very difficult at the best of times. Our correctional institutions are simply not equipped to handle the magnitude of this public health crisis without immediate and significant actions. Most individuals in Ontario's jails are waiting for release on bail or serving short sentences for non-violent offences. Failing to act now risks turning a short stay behind bars into a death sentence.

Isolation measures in jails and correctional centres *is* part of the answer. Simply locking the cell doors, however, will not bring this infection under control. Most people cycle in and out of detention centres within a matter of days or weeks. Being locked up means overcrowded conditions, little to no healthcare, and the near impossibility of socially distancing. This health crisis appears set to last for months, at a minimum. Lockdowns under these conditions are both inhumane and ineffective. This is exactly when our Constitution requires governments to step up to treat everyone humanely.

The Ontario Superior Court made a similar point this week on a bail review: *R. v. J.S.*, 2020 ONSC 1710. Our criminal justice and correctional systems must come to terms with the magnitude of this crisis.

At a minimum, the following specific actions must be taken immediately:

Generally:

- Provincial governments should publish emergency updates to crown policy manuals, probation and parole policy, and guidance documents for police services to ensure that public health exigencies are imported into the “public interest” component of all decision-making processes in the criminal justice system, including police arrest,

¹ <https://www.nytimes.com/2020/03/23/nyregion/coronavirus-nj-inmates-release.html>; https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf.

² <https://www.latimes.com/california/story/2020-03-20/california-releases-more-jail-inmates-amid-coronavirus-crisis>

³ https://www.themarshallproject.org/2020/03/21/coronavirus-transforming-jails-across-the-country?utm_source=The+Marshall+Project+Newsletter&utm_campaign=6c39ce8958-EMAIL_CAMPAIGN_2020_03_20_08_37&utm_medium=email&utm_term=0_5e02cdad9d-6c39ce8958-174501337

charging and detention decisions; parole and probation officer monitoring and breaching decisions; and the quasi-judicial discretion exercised by Crowns.

- Justice system actors should facilitate timely, fair hearings using available technology, including telephones, for the purpose of granting releases with minimal and flexible conditions, parole, probation, and other forms of release into the community. Unnecessarily strict application of evidence and procedural bars must be eliminated to facilitating release.

For those facing possible arrest or charges:

- Police should be encouraged to exercise their discretionary authority to release those charged at the scene, buttressing the principle of restraint entrenched in Part XVI of Criminal Code. Specifically, arrest and detention should be reserved for those presenting a serious, evidence-driven risk of flight for serious violent charges. Those who are arrested should be released on police-imposed conditions rather than held for a bail hearing.

For those in pretrial detention:

- Prosecutors should review all cases of pre-trial inmates to determine whether, taking into account the public health crisis, it is in the public interest to proceed with the charges.⁴ Serious consideration should be given to withdrawing all non-violent charges.
- The attorney general should pursue a blanket judicial order allowing all pre-trial detainees facing non-violent charges to be released forthwith.
- At a minimum, prosecutors should review all cases of pre-trial detainees waiting for a bail decision and consent to judicial interim releases on the same grounds of extra restraint, consistent with *R. v. J.S.*, 2020 ONSC 1710.
- Prosecutors should also be proactively reviewing all cases of individuals detained after a bail hearing to determine whether, given the public health issues, a consent release is now possible.

For those on probation and parole:

- The terms and conditions of all individuals on probation and parole should be reviewed to eliminate in-person check ins and replace them with telephone or internet monitoring where necessary.
- Probation and parole policy manuals should be updated to take into account the public health crisis and direct PPOs to use their discretion when deciding whether to reincarcerate individuals who breach conditions.

⁴ The “public interest” can be invoked to justify the liberation of a defendant, but not to justify the laying of a charge or continuation of a prosecution, absent a reasonable prospect of conviction.

For immigration detainees:

- Any immigration detainees being held in Provincial facilities must be immediately released through the temporary or permanent suspension of immigration holding agreements with the Federal government.

For sentenced inmates:

- Consider any and all legal mechanisms to facilitate the mass early release of those facing short sentences for non-violent offences, including replicating the recent New Jersey consent order.⁵ At a minimum, all existing legal tools must be proactively accessed to immediately reduce the prison population including temporary absences, parole, and other discretionary measures.
- Correctional officials must ensure that conditions of confinement adhere to humane standards, including providing for virtual visits, and adequate programming to the extent possible. In particular, isolation and lockdowns cannot replace releases where the latter is possible to ensure the health of inmates, correctional staff, or their families.
- Correctional institutions must maintain accurate, disaggregated data about lockdowns, isolation, and other measures, to ensure transparency and accountability.

Every release from confinement will alleviate over-crowding, avoid the spread of infection when the virus reaches penal institutions, and protect inmates, correctional officers, and the innocent families and communities to which detainees and inmates will return.

Ontario must effectively advance public health goals throughout the criminal justice system, in a variety of ways, with particular focus on those easily becoming an afterthought during a pandemic.

Thank you for considering the foregoing.

Sincerely,

Michael Bryant
Executive Director & General Counsel
Canadian Civil Liberties Association

⁵ See https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf.

This is **Exhibit "D"** referred to in the
Affidavit of Abby Deshman
affirmed before me this 29th day of June, 2020



A Commissioner, etc.



Wednesday April 22, 2020

Commissioner Anne Kelly 340 Laurier Avenue West Ottawa, Ontario K1A 0P9 Canada
anne.kelly@csc-scc.gc.ca Dear Commissioner Kelly,

I am writing on behalf of the Canadian Civil Liberties Association to express our deep concern regarding the health and well-being of the inmates and staff in Canada's federal correctional institutions.

It is our understanding that, despite the fact that inmates are particularly vulnerable to COVID-19, almost no federal prisoners have been released in response to the COVID-19 pandemic.¹ Other jurisdictions across Canada and the world have taken significant steps to reduce their prison populations in order to allow for better infection control measures within institutions and to permit vulnerable inmates to effectively self-isolate in the community and access medical treatment that is not available within a penal institution. The failure of Correctional Service Canada (CSC) to decarcerate is directly endangering the health and lives of CSC staff, inmates, and local communities.

Over the past weeks disturbing accounts have emerged from both staff and inmates regarding the lack of infection control measures within federal institutions.² There are currently active outbreaks at multiple prisons. Hundreds of staff and inmates are infected; thousands more are at risk. The incarcerated population is particularly vulnerable during this pandemic due to the large number of people with underlying health conditions.

In our view, the continued incarceration of medically-vulnerable inmates who could be safely and conditionally released to effectively self-isolate in the community is a violation of CSC's statutory and *Charter* obligations.

¹ <https://www.cbc.ca/news/politics/prison-covid19-blair-zinger-1.5540304>.

² <https://bc.ctvnews.ca/prevention-measures-lagged-for-weeks-at-b-c-prison-with-worst-covid-19-outbreak-in-canada-unions-1.4901683>;
<https://www.thestar.com/news/canada/2020/04/21/quebec-federal-inmate-files-application-for-covid-19-class-action.html>.

CSC has the ability to grant indefinite Unescorted Temporary Absences (UTAs) for medical purposes under s. 116(1)(a) of the *Corrections and Conditional Release Act*. To our knowledge only one vulnerable inmate has been released on a UTA, a measure that was only secured after significant efforts from his lawyer and on the eve of a federal court hearing alleging *Charter* violations. It is not reasonable or realistic to expect all medically-vulnerable inmates to repeat this process, particularly in the face of lockdowns and a rapidly-evolving pandemic. CSC's obligations to provide health care and ensure a safe and healthful institution requires that CSC take proactive steps to identify and provide the recommended preventative medical treatment – effective self-isolation – for those most at risk in this pandemic.

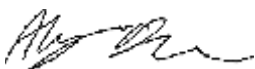
CCLA therefore endorses the call for an urgent and public directive to all institutional heads, health care staff, and case management staff, directing that the authority of the Commissioner and Institutional Heads to grant UTAs for medical reasons under s. 116(2) of the *Corrections and Conditional Release Act* should be urgently used to facilitate the release of medically vulnerable prisoners to locations in the community, where they can protect themselves against exposure to the novel coronavirus.

We also echo the recommendations of the Canadian Prison Law Association to:

- reduce prison populations through conditional pardons, parole, and expanded temporary absences;
- release of youth and immigration detainees;
- incorporate consideration of COVID-19 into all parole and correctional decisions;
- provide appropriate sanitation and hygiene supplies to prisoners, free of charge;
- ensure solitary confinement is not used to implement social distancing measures;
- implement appropriate measures to maintain contact with the community, counsel and treatment providers; and
- continue programs, in alternate delivery forms if necessary.

Thank you very much for your attention to this matter, we look forward to your timely response.

Sincerely,



Abby Deshman

Director, Criminal Justice Program Canadian Civil Liberties Association

FEDERAL COURT**BETWEEN:**

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
CANADIAN PRISON LAW ASSOCIATION
HIV & AIDS LEGAL CLINIC ONTARIO,
HIV LEGAL NETWORK,
& SEAN JOHNSTON**

Applicants

– and –

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF THOMAS ENGEL

I, THOMAS ENGEL, of the City of Edmonton, in the Province of Alberta **AFFIRM**:

1. I am a lawyer and a member in good standing of the Law Society of Alberta. I currently serve as the President of the Canadian Prison Law Association (“CPLA”), and as such I have personal knowledge of the matters to which I hereinafter affirm, except where this knowledge is stated to be on information and belief in which case I believe it to be true.
2. As set out in its mission statement, the CPLA is

an organization of lawyers who work on behalf of prisoners, and who seek to protect and promote the constitutional rights, interests and privileges of prisoners by advocating on their behalf within the community and in their dealings with prison and release authorities, by generating and sharing legal information, and by promoting adherence to the rule of law within the prison law environment in

accordance with the highest standards of justice and fairness as required by and consistent with the Canadian Constitution and in particular the *Canadian Charter of Rights and Freedoms*.

3. The CPLA's objectives include acting as a vehicle through which its members can, on matters of common concern, communicate with government bodies and others; protecting the Constitutional rights of prisoners as determined under the *Canadian Charter of Rights and Freedoms*, to ensure that the Rule of Law is applied behind prison walls and to ensure compliance with it, ameliorate the plight of prisoners, and to facilitate improvements to the provision of legal services to them; and facilitating the enlightened discussion of prison law issues including between CPLA members and correctional and release authorities.

4. The CPLA and its members are gravely concerned about the rights and safety of prisoners during the COVID-19 pandemic. Since mid-March 2020, the CPLA has repeatedly written to correctional and public health authorities, advocating that urgent and specific actions be taken to protect the health and rights of Canada's prisoners in the COVID-19 pandemic. **Exhibit "A"** is a letter from the CPLA to Federal, Provincial and Territorial Ministers dated March 16, 2020. **Exhibit "B"** is a letter from the CPLA to Minister of Public Safety Bill Blair and Correctional Service of Canada ("CSC") Commissioner Anne Kelly dated March 24, 2020. **Exhibit "C"** is a letter from the CPLA to Federal, Provincial, and Territorial Ministers and the CSC Commissioner, dated March 26, 2020. **Exhibit "D"** is a letter from the CPLA to Federal, Provincial and Territorial chief medical and public health officers, dated April 2, 2020. **Exhibit "E"** is an email from the CPLA to medical and public health officers, dated April 3, 2020. **Exhibit "F"** is an email from the CPLA to Commissioner Kelly, dated April 3, 2020. **Exhibit "G"** is a

letter from the CPLA to Commissioner Kelly dated April 9, 2020. **Exhibit “H”** is a letter from the Coalition for Justice and Human Rights to Drs. Deena Hinshaw and Theresa Tam, dated April 14, 2020, to which the CPLA was a signatory. **Exhibit “I”** is a letter from Amnesty International to the Prime Minister and Premiers, dated April 14, 2020, which the CPLA endorsed. **Exhibit “J”** is a letter from the CPLA to Federal Provincial and Territorial Ministers of Justice and Correctional Services and medical and public officers of health, dated April 17, 2020. **Exhibit “L”** is a letter from the CPLA to Minister Blair, dated April 22, 2020. **Exhibit “M”** is an email from the CPLA to Federal, Provincial and Territorial Ministers of Justice and Correctional Services and medical officers of health.

5. The CPLA has received replies to some of this correspondence. **Exhibit “K”** is a letter from CSC in response to the CPLA’s correspondence of March 24, 2020. In that letter, Commissioner Kelly states:

CSC has worked collaboratively with the Parole Board of Canada (PBC) to streamline the case management process and is actively reviewing cases of inmates whose risk can be safely managed in the community for presentation to the PBC. As noted by the PBC on their website, they will consider the offender's health or health risk posed by the COVID-19 pandemic, if relevant as part of the risk assessment, along with all other information on file.

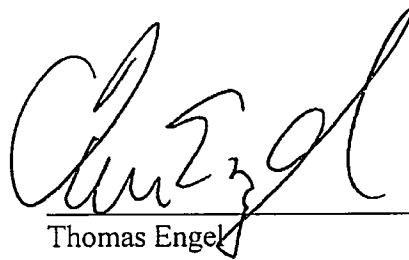
6. **Exhibit “N”** is an email from CSC dated May 1, 2020, in response to the CPLA’s email of April 3, 2020. This email advises of the steps CSC has taken to facilitate continued access by prisoners to counsel and families. These steps do not include waiving the cost of phone calls as sought by the CPLA.
7. **Exhibit “O”** is a letter from the Public Health Agency of Canada (“PHAC”) dated May 12, 2020, sent in response to the letter sent by the Coalition for Justice and Human Rights on April 14, 2020. The letter reports that PHAC has been working with CSC to implement a variety of measures to combat COVID-19 in federal correctional

institutions, including strengthening environmental cleaning and disinfection practices; increasing access to hand washing stations and hand sanitizer; and providing inmates with masks to be used whenever they are unable to maintain a two metre distance from other individuals.

8. I make this affidavit in support of this Application and for no other or improper purpose.

AFFIRMED before me by videoconference from
the City of Edmonton, in the Province of Alberta
to the City of Toronto, in the Province of Ontario,
this 22nd day of June, 2020

)
)
)
)
)



Thomas Engel



A Commissioner, etc.

ADRIEL WEAVER
LSO 5417PP

This is **Exhibit "A"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large initial 'C' followed by a series of loops and a long horizontal stroke extending to the right.

A Commissioner, etc.



Canadian Prison Law Association

March 16, 2020

#200, 10209-97 Street
Edmonton, AB T5J 0L6
Tele: 780 448-3639
Fax: 780 448-4924
Email: tomengel@engellaw.ca

Federal, Provincial and Territorial
Ministers of Justice and Correctional Services
Ottawa, Canada
K1A 0A6

Dear Ministers,

Re: Governmental Response to COVID-19 pandemic - Prisons and the Criminal Justice System

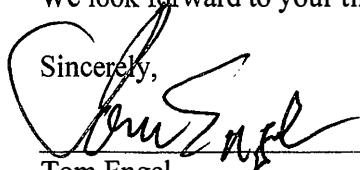
I write to you as the President of the Canadian Prison Law Association. The CPLA is an organization of lawyers who work on behalf of prisoners and who seek to protect and promote the constitutional rights, interests and privileges of prisoners by advocating on their behalf within the community and in their dealings with prison and release authorities. We promote adherence to the Rule of Law within the prison law environment in accordance with the highest standards of justice and fairness as required by and consistent with the *Charter of Rights and Freedoms*. We act as a vehicle through which members of the CPLA can, on matters of common concern, communicate with government bodies. Our membership is composed of lawyers who practice in the area of prison law. We have about 65 members across Canada.

It is in this capacity that I am writing to you about the treatment of prisoners as it relates to the COVID-19 pandemic.

A number of our members work in Nova Scotia. The East Coast Prison Justice Society, in letters dated March 15, 2020 and March 16, 2020 wrote to the Nova Scotia Minister of Justice and to other government officials about the COVID-19 crisis, calling on the Nova Scotia government to take action. I attach copies of those letters. The CPLA entirely adopts those submissions which are equally applicable nationally, provincially and territorially in the whole of Canada.

We look forward to your timely response.

Sincerely,



Tom Engel

President, Canadian Prison Law Association

East Coast Prison Justice Society
6061 University Avenue
PO Box 15000
Halifax, Nova Scotia B3H 4R2
eastcoastprisonjustice@gmail.com
(in association with Elizabeth Fry Societies (NS Mainland and Cape Breton), NS
Prisoners' Health Coalition, and Women's Wellness Within)

March 15, 2020

Minister of Justice Mark Furey
Nova Scotia Department of Justice
markfurey.mla@eastlink.ca

Minister of Health and Wellness Randy Delorey
Nova Scotia Department of Health and Wellness
Health.Minister@novascotia.ca

Mr. John Scoville
Executive Director, Corrections
John.Scoville@novascotia.ca

Mr. Colin Stevenson
NSHA Vice-President - Health Services, Quality and System Performance
Colin.Stevenson@nshealth.ca

Ms. Samantha Hodder
NSHA Director – Mental Health and Addictions
Samantha.Hodder@nshealth.ca

Dear Ministers Furey and Delorey, Mr. Scoville, Mr. Stevenson & Ms. Hodder:

**RE: Actions urgently required to ensure health, safety and human rights of
incarcerated populations as well as public safety during COVID-19 crisis**

We (East Coast Prison Justice Society, Elizabeth Fry Societies - Halifax Mainland and
Cape Breton, NS Prisoners' Health Coalition, and Women's Wellness Within) are writing
on an urgent basis.

Provincial corrections and the NSHA -- responsible, respectively, for the safety and
health of prisoners as well as public safety -- are well aware of the escalating crisis of
COVID-19 and the importance of immediate measures to protect imprisoned populations
(as well as staff working in provincial jails).

We concur with the recent statement of Nicole Austin-Hillery of Human Rights Watch:

"All governments . . . have an obligation to protect the rights of people deprived of their liberty, including the right to health, especially when custody heightens the risks they face. . . Officials . . . **should take immediate steps to prevent transmission of the coronavirus and consider finding alternatives to custody for those who are at high risk should they become infected.**"¹

Second, we endorse recent statements of the Ontario Human Rights Commission, on ensuring that actions aimed at mitigating risk of COVID-19 spread do not disproportionately burden vulnerable populations in an arbitrary and discriminatory manner. As provincial jails disproportionately house "individuals protected from discrimination under the *Code*, including Indigenous and racialized people, people with disabilities and addictions . . . and other vulnerable groups," it is essential that government's mitigation plans "adopt a Public Health and human rights-focused approach to addressing evidence-based risks associated with COVID-19 in government-run facilities." As the Ontario HRC further points out:

"Individuals in these facilities also have the right to be free from discrimination including harassment related to COVID-19 in the provision of services on grounds under the *Code*. Under the *Charter*, these individuals have a right to privacy, liberty and security of the person and the right to protection against discrimination, arbitrary detention, and cruel and inhuman treatment, subject to reasonable limits."²

Given the importance of ensuring that rights-respecting measures are adopted to protect those in state custody at this time, **we ask that you publicly indicate within a 48 hour period how you will exercise your joint responsibilities to respect human rights while assuring prisoner health and safety.** Specifically, we seek responses on whether Nova Scotia will commit to the following calls for action (and if so, the timelines for action):

1 - As Ontario has done, grant all intermittent inmates temporary absence from custody until this public health response is no longer required;³

2 – Using mechanisms such as temporary absences, move persons at heightened risk of complications from COVID-19 out of facilities into appropriate community settings immediately. Elizabeth Fry Societies Mainland and Cape Breton have increased capacity for this purpose; alternative forms of community release and supervision may be required in some cases, including release to private homes, to ensure the life and health of the most vulnerable prisoners is protected. **This includes all persons over age 55 (arguably, the comparable age to 65 in prisoner populations is 50⁴), those with**

¹ <https://www.hrw.org/news/2020/03/12/us-covid-19-threatens-people-behind-bars>

² www.ohrc.on.ca/en/news_centre/ohrc-policy-statement-covid-19-pandemic

³ <https://news.ontario.ca/mcscs/en/2020/03/statement-from-minister-elliott-and-solicitor-general-jones-regarding-ontarios-adult-correctional-fac.html>

⁴ See sources cited in Adelina Iftene, *Punished for Aging: Vulnerability, Rights, and Access to Justice in Canadian Penitentiaries* (Toronto: University of Toronto Press, 2019) at 24.

compromised immunity, those with respiratory conditions and other chronic health conditions rendering them more vulnerable to complications from COVID-19, and pregnant people (who are likely to be immune-compromised);

3 – Using mechanisms such as temporary absences, release from custody mothers and other primary support parents. This is required in order to ease the serious psychological stress of separation during a pandemic crisis, and to ensure safe supervision of dependent children who without a primary support parent may be in precarious living situations;

4 - Ensure that health segregation is not used as an alternative to community placement per #1-2, and that no one is placed for any duration in the most oppressive of health segregation cells – in CNSCF, the windowless pressurized cell apparently intended for immunosuppressed or contagious prisoners;

5 – Ensure that risk mitigation strategies are evidence-based and do not unduly restrict prisoners’ liberties – this means avoiding reliance on prolonged or indeterminate lockdowns / solitary confinement. Isolation / solitary confinement for any duration has been recognized to have profound, potentially permanent effects on the psychological and social functioning of persons with pre-existing mental health conditions. For other prisoners, prolonged and indeterminate isolation has been shown to have grievous effects on psychological and physical health and is recognized by Canadian appellate courts as contrary to the Charter;

6 – Ensure that prisoners have regular access to phone communications with lawyers and family – e.g., through cost-free use of additional cordless phones. The recent statement of correctional responses to COVID-19, permitting two free phone calls per week, is a start,⁵ but two calls are inadequate during a time of public health crisis, during which concerns of and about family members are likely to be intensified, as is the pressure to use phones for communications with lawyers;

7 – Ensure that prisoners have regular access to programming and other activities, modified as required by evidence-based public health considerations. We are concerned about the recent statement of correctional responses to COVID-19, placing a bar on visits from volunteer organizations.⁶ The role of organizations such as Elizabeth Fry Societies, Women’s Wellness Within, John Howard and others includes maintaining routine and enabling prisoners to focus on positive goals and relationships. This is critically important at this time of heightened stress. Justice and Corrections should work to identify ways of mitigating risk while maintaining volunteer access and programming (albeit potentially in altered forms) as far as possible.

8 – More generally, identify and implement best practices to ensure that the highest public health standards are met in a manner that is least restrictive of residual

⁵ <https://www.halifaxtoday.ca/local-news/changes-to-visits-at-correctional-facilities-implemented-due-to-covid-19-2166116>

⁶ Ibid.

liberties. This must include, at a minimum, increased rigour and frequency of sanitation measures. These responsibilities should not be delegated to prisoners but instead should be carried out by trained and adequately protected staff. At the same time, prisoners must have access to effective hygiene and sanitation products without cost;

9 – Finally, make detailed action plans for prevention and treatment of COVID-19 among incarcerated populations available to the public in a transparent and accessible manner.

We realize that a request for a response to these action items within 48 hours, on matters requiring coordination among multiple branches of government at the highest levels, would in ordinary circumstances be unreasonable. In the present context, it is the only alternative consistent with our organizations' mandates to work with and for imprisoned populations to ensure their rights and safety are protected.

If we do not hear from you within the time period noted, we will intensify our joint efforts to spur further public attention to these matters. However, as you know, with each day the challenge of taking an appropriate response escalates as do the consequences for the most vulnerable.

We will be issuing a separate statement calling on the Minister of Justice, police, courts, Public Prosecution Service and other relevant justice system actors to coordinate efforts to expedite bail hearings and revisit court-ordered pre-trial custody, and otherwise make urgent efforts to prevent new admissions to jail and reduce the numbers of people currently incarcerated. This is required in light of the pressures facing provincial jails and the heightened individual and public health consequences of incarceration at this time.

Again, we appreciate that these are trying times. As you know, it is in such times that our elected leaders and civil servants must do their utmost to safeguard human rights and protect the well being of those most vulnerable to discrimination and attendant disproportionate burdening.

We look forward to your timely response.

Yours,



Sheila Wildeman, Co-Vice Chair, East Coast Prison Justice Society
for the Boards of East Coast Prison Justice Society, Elizabeth Fry Societies (NS Mainland and Cape Breton), NS Prisoners' Health Coalition, Women's Wellness Within

cc.: Deputy Minister of Justice, Karen Hudson; Deputy Minister of Health and Wellness, Dr. Kevin Orrell; Chief Medical Officer of Health, Dr. Robert Strang; Director, Nova Scotia Correctional Services, Mr. Chris Collette; Superintendent, Central Nova Scotia Correctional Facility, Mr. Adam Smith; Superintendent, CNSCF East Unit, Eileen Collette

East Coast Prison Justice Society
 6061 University Avenue
 PO Box 15000 Halifax, Nova Scotia B3H 4R2
 eastcoastprisonjustice@gmail.com
 (with Elizabeth Fry Societies - NS Mainland and Cape Breton - NS Prisoners' Health
 Coalition, NS Criminal Lawyers' Association, Women's Wellness Within)

March 16, 2020

Chief Medical Officer of Health, Dr. Robert Strang
 Chief Justice of Nova Scotia, Michael Wood
 Chief Justice of the Nova Scotia Supreme Court, Deborah Smith
 Chief Justice of the Nova Scotia Provincial Court, Pamela Williams
 Minister of Justice Mark Furey
 Deputy Minister of Justice Karen Hudson
 Minister of Community Services, Kelly Regan
 Deputy Minister of Community Services, Tracey Taweel
 Director, Correctional Services, John Scoville
 Executive Director, Correctional Services, Chris Collett
 Director of Public Prosecutions, Martin E. Herschorn
 Chair, Halifax Board of Police Commissioners, Natalie Gordon
 Vice-President - Health Services, Quality and System Performance, Nova Scotia Health
 Authority [NSHA], Mr. Colin Stevenson
 Director – Mental Health and Addictions, NSHA, Ms. Samantha Hodder
 Former Justice Suzanne Hood, Chair, NS Criminal Code Review Board
 President, Nova Scotia Chiefs of Police Association, Julia Checchetto
 Executive Director, Nova Scotia Legal Aid, Megan Longley

Dear Dr. Strang, Chief Justices Wood, Smith, and Williams, Minister Furey, Deputy
 Minister Hudson, Minister Regan, Deputy Minister Taweel, Mr. Scoville, Mr. Collett, Mr.
 Herschorn, Ms Gordon, Mr. Stevenson, Ms. Hodder, Ms. Hood, Ms. Cecchetto, Ms.
 Longley:

**RE: Immediate measures to ensure that ministerial, police, prosecutorial and
 judicial discretion is informed by the urgency of reducing incarceration during
 COVID-19 pandemic**

We (East Coast Prison Justice Society, Elizabeth Fry Societies - NS Mainland and Cape
 Breton, NS Prisoners' Health Coalition, NS Criminal Lawyers' Association and Women's
 Wellness Within) are writing on an urgent basis. We recognize that these are highly
 pressured times and that you are committed to best efforts to contain the COVID-19
 virus.

We propose below a set of initiatives through which justice system actors should
 immediately begin to coordinate actions to prevent the spread of COVID-19 among
 provincially incarcerated persons. The recommendations we make are oriented to

protecting the health of prisoners while respecting their human rights, and moreover preventing prisoners from becoming unwilling “vectors” of contagion threatening the health of their communities on reentry.

Yesterday we issued an open letter¹ calling for a public statement from the Minister of Justice, Director of Corrections, and Nova Scotia Health Authority concerning the measures to be taken by Justice, Corrections and Health Authority officials to avert the emergence of COVID-19 inside provincial jails. We await your response.

However, we are of the further firm view that at this time the only adequate defence to the spread of COVID-19 inside our jails, and consequent preventable deaths, is strategic decarceration -- i.e., ensuring that admissions and numbers of prisoners held in facilities are as low as possible, consistent with public safety.

If the province acts now, prevention or containment of risk is more likely. We therefore propose a set of mechanisms of preventive decarceration for your urgent consideration. These include: 1) temporary absences, 2) expedited bail hearings and review of remand orders, and 3) policies to inform the discretion of Crown counsel and police.

Preventive decarceration - background

As you know, about 60% of persons in Nova Scotia jails are in pre-trial detention (about 65% of the total count of provincial prisoners in 2017-18²). A significant majority of remanded prisoners are in custody for under a month, while the average sentence is about 70 days.³ At the same time, many patients at the East Coast Forensic Hospital who have received conditional discharges from the CCRB are still awaiting community placements many months or even years on.⁴

As COVID-19 hits, incarcerated persons are particularly vulnerable. They cannot practice social isolation in the same ways that people outside of prisons can. In provincial facilities in particular, people tend to pass in and out, placing those inside and those passing through at increased risk of infection. The risk is compounded by challenges accessing health care and preventative hygiene and health measures while inside. These problems are further exacerbated by the fact that many of the outside contacts that corrections may begin to exclude as intolerable risks are nonetheless critical to prisoners' legal rights and psychological well being. The longer this situation continues, the more intolerable it gets, as prisoners' health and human rights are paradoxically constructed as mutually inconsistent.

Compounding the heightened likelihood of infection is the fact that prisoners are disproportionately affected by chronic health conditions rendering them susceptible to the

¹ <https://nsadvocate.org/2020/03/15/urgent-open-letter-re-health-safety-and-human-rights-of-people-in-prison-during-covid-19-crisis/>

² <https://data.novascotia.ca/Crime-and-Justice/Average-Daily-Counts-at-Adult-and-Youth-Correction/xbcp-7w2t>

³ Corrections in Nova Scotia: Key Indicators (April 2019) (average length of stay- sentenced), p.7; Remand in Nova Scotia 2005-2016.

⁴ <https://globalnews.ca/news/4254538/patients-stuck-at-forensic-hospital/>

worst of COVID-19 complications, including death. High rates of chronic conditions including respiratory problems and conditions compromising one's immune system are well documented in this population.⁵

At the same time, incarcerated people are overwhelmingly representative of marginalized populations, including Indigenous and racialized persons, and the poor. These are groups already at greater risk of virus transmission in the community, given challenges to social distancing presented to those with housing and income instability. They are, at the same time, highly vulnerable to discrimination, vilification, and exclusion.

The threat of virus spread in prisons and jails reaches beyond the critically important context of incarcerated persons who are at the mercy of the state. It also threatens to undermine efforts at public health management in the wider community. Jails are porous institutions with a constant flow of admission and release. In passing in and out of jail, prisoners become vectors for virus transmission, potentially prolonging the life of the epidemic and further corroding the health of the most marginalized and embattled communities, and the public as a whole.

Correctional responses to COVID-19 are likely to involve efforts to isolate and separate prisoners, for instance through increased time in lockdown (already a dangerously overused mechanism in facilities such as CNSCF); designation of certain dayrooms for those most susceptible; and isolation of suspected carriers. All of these options raise significant human rights, health and safety concerns.

For instance, it is broadly recognized that conditions of segregation comparable to lockdown are corrosive to mental and physical health, particularly for those with pre-existing mental health conditions. Where these measures are prolonged and indeterminate, they can have permanent significant impact on prisoners with or without a prior diagnosis. These dire effects have been recognized by Canadian appellate courts in cases deeming solitary confinement an infringement of human rights.

In pandemic conditions, government must balance a set of safety and health concerns. In particular, in the likely event of an outbreak of COVID-19 in one or more of the province's correctional facilities, correctional and health authorities are likely to face difficult questions about whether or when those suspected of or diagnosed with the virus will be transferred to hospital – and whether or when hospitals will accept those patients.

The prospect that prisoners may first be infected as a result of government reliance on incarceration despite clear threats presented by the pandemic to life and health, and then may be forced to endure solitary confinement in combination with other second-tier standards of care, inferior to those accessible in the wider community – and with this, the prospect that prisoners will die preventable deaths -- is something we urge you to take all measures to avert before it is too late.

⁵ Fiona Kouyoumdjian et al, "Health status of prisoners in Canada" (2016) 62(3)Can Fam Physician 215-222 [[Health status of prisoners in Canada: Narrative review](#)]

RECOMMENDATIONS

Sentenced prisoners

Yesterday, we wrote to Justice and Correctional Services officials on the importance of identifying provincial prisoners at high risk of complications from COVID-19, and immediately moving them to appropriate community placements, for instance by way of conditional release.⁶ Conditional release may be granted on the basis of “medical reasons,” “humanitarian reasons” or reasons of “reintegration or rehabilitation.” Our understanding is that this mechanism is available only to those under sentence.

We urge you to immediately devise a system for approving conditional release of sentenced provincial prisoners, including all prisoners currently serving intermittent sentences, and all those who are at elevated vulnerability to complications from COVID-19. While these two groups are the most obvious starting point, we emphasize the importance of including all sentenced prisoners in these measures given the immediate need to reduce the jail population to protect against the unprecedented COVID-19 threat.

We class within the category of non-intermittent prisoners who should be immediately granted conditional release (whether to private homes or other approved community-based spaces) given their heightened susceptibility in jail to complications of the illness, intensive liberty restrictions oriented to risk mitigation, or both:

- Persons aged 50+, who are at the highest risk of serious illness and death should they contract COVID-19,⁷
 - Persons with compromised immunity, respiratory conditions and other chronic health conditions rendering them more vulnerable to complications from COVID-19,
- and
- Persons who are pregnant (who are also likely to be immune-compromised).

We also take the position that

- Mothers and others who are primary support parents should be granted conditional release in light of the serious psychological stress of separation during a pandemic crisis, and to ensure safe supervision of dependent children who without a primary support parent may be in precarious living situations.

Remanded prisoners

⁶ Correctional Services Act, 2005, c. 37, s. 1, s.79

⁷ While Public Health locates the age of increased concern as 65, the health of prisoners is recognized to be equivalent to that of persons in the general population whose chronological age is 10-15 years younger. See Adelina Iftene, *Punished for Aging: Vulnerability, Rights, and Access to Justice* in Canadian Penitentiaries (Toronto: University of Toronto Press, 2019) at 24. And see Office of the Correctional Investigator, *Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody* (Feb 2019). <https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20190228-eng.aspx>

Second, we urge authorities to explore informal mechanisms for granting temporary absences to remanded prisoners. Otherwise, timely decarceration of remanded prisoners -- as a further critical defence against the COVID-19 threat -- will require coordinating expedited court hearings for those awaiting bail as well as expedited review of pre-trial detention orders.

The high remand rates in the province signal that prosecution and judicial decision-making practices are likely already inconsistent with the clear requirement in *R. v. Antic*, 2017 SCC 27 that pre-trial custody (or even placing conditions on interim release) should in all but the most serious cases be a last-resort measure, only justified where the Crown demonstrates these measures to be necessary. Reasonable bail is a constitutional right.

The need to mitigate against the spread of COVID-19 means it is even more imperative that all justice system actors remain mindful of the need to identify alternatives to incarceration at all stages of the criminal justice process. The special relevance of Gladue and s.718.2 of the Criminal Code must be central to the analysis.

Justice system authorities, including the Minister of Justice and Director of Public Prosecutions, must therefore act on an urgent basis to craft and implement policies to ensure that justice system actors are mindful of the impact of COVID-19 when exercising discretion relating to incarceration. To condemn people to await trial in an environment highly susceptible to rapid spread of a potentially life-threatening illness – and to expose their families and wider communities to enhanced risk on their return home – constitutes a grossly disproportionate intrusion on personal security, a discriminatory disproportionate burdening of the most marginalized communities, and a threat to public health.

Prisoners at East Coast Forensic Hospital

While not provincially incarcerated persons as such, patients at East Coast Forensic Hospital (which shares staff and infrastructure with CNSCF) are also subject to deprivation of liberty in conditions in which spread of COVID-19 is difficult to control. We urge NSHA officials, in cooperation with provincial community services authorities, to implement community release plans on an urgent basis. In particular, we urge Community Services authorities to ensure that ECFH patients who have received conditional discharges from the Criminal Code Review Board are provided the necessary supports and services to move into the community without delay, to protect their health and human rights, and to assist in reducing crowding and thereby relieving pressure on the correctional health care system during the pandemic.

Comprehensive Recommendations – Preventive Decarceration

Reflecting and building on the foregoing, we recommend the following urgent actions and ask that you publicly release your action plans, optimally within 48 hours:

1 – The Minister of Justice, acting in coordination with the appropriate correctional officials, should (as Ontario has done) immediately grant all prisoners given intermittent sentences conditional release / temporary absence from custody;

2 – For those sentenced to continuous custody, correctional authorities, acting in coordination with the Department of Justice, should use the power to grant conditional release (per s.79 of the Correctional Services Act) for medical and/or humanitarian reasons. A priority should be placed on identifying community-based options for those most vulnerable to COVID-19 including those of advanced age (in prison populations given comparative ill-health, 50+); those with chronic health conditions making them vulnerable to COVID's most serious effects; and those who are pregnant. We would add those with significant mental health conditions, likely to be exacerbated by subjection to near-permanent lockdown conditions anticipated as the COVID-19 epidemic plays out;

3 - Similarly, correctional authorities should use their powers under s.79 of the Correctional Services Act to grant conditional release on health and/or humanitarian grounds to mothers and others who are primary support parents, who may suffer serious psychological stress when separated from children during the pandemic and whose children may be subject to heightened anxiety and other forms of instability in the absence of parental guidance;

4 - While prisoners may potentially be released to private homes with or without supervisory conditions, government (Justice, Community Services, or both) should provide resources to non-profits in the supported housing sector on an emergency basis to increase capacity to accommodate prisoners moving out of the jails (as Elizabeth Fry NS Mainland and Cape Breton are doing);

5 – The provincial government (Ministry of Community Services), in coordination with the NSHA and East Coast Forensic Hospital, must implement community release plans on an urgent basis, to provide ECFH patients who have received conditional discharges from the Criminal Code Review Board or who have been granted temporary absences the necessary supports and services to move into the community without delay, consistent with their human rights and the urgency of reducing hospital crowding and relieving pressures on the correctional health care system during the pandemic;

6 - Court officials, including the Chief Justices of the Provincial and Superior Courts, together with the Public Prosecution Service / Crowns and defense counsel / legal aid, should coordinate efforts to expedite bail hearings as well as review of orders denying interim release – this, in recognition that maintaining incarceration in the changed conditions of the COVID-19 epidemic threatens to erode public confidence in the administration of justice;

7 - The Director of Public Prosecutions should instruct Crowns not to oppose bail or seek onerous conditions in new matters coming before the court, or to do so only in cases raising the most serious public safety concerns. The special threat posed by the COVID-19 epidemic to incarcerated populations and the public provides a further strong counterweight to pre-trial custody;

8 – Finally, public authorities with oversight of policing, including chiefs of police and boards of police commissioners, should instruct officers to give serious weight to the individual and the public health risks presented by placing an arrested person in lockup post-arrest, rather than the default liberty-respecting option of releasing them on recognizance or a promise to appear in court.

We add to this list a reminder of two core imperatives raised in our letter of March 15, 2020, directed specifically to **practices inside jails** to guard against the threat of COVID-19 spread:

-- Justice, Corrections and NSHA officials should release to the public their action plans for monitoring, preventing and treating COVID-19 inside correctional facilities;

– Justice, Corrections and NSHA officials must ensure that measures taken to mitigate risk and promote public health inside provincial jails are evidence-based and least restrictive of liberty, and do not subject prisoners to an inferior standard of care. Any measures taken must reflect concern for the mental and physical health effects of prolonged and indeterminate lockdowns in shared cells, as well as isolation in "health segregation" -- conditions corrosive to psychological and physical health and contrary to fundamental rights under the Charter.

We look forward to your timely response.

Yours,



Sheila Wildeman, Co-Vice Chair, East Coast Prison Justice Society
sheila.wildeman@dal.ca

for East Coast Prison Justice Society, Elizabeth Fry Societies - NS Mainland and Cape Breton, NS Prisoners' Health Coalition, Women's Wellness Within, Nova Scotia Criminal Lawyers' Association

This is **Exhibit "B"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a horizontal line that ends in a small flourish.

A Commissioner, etc.



Canadian Prison Law Association

March 24, 2020

The Honourable Bill Blair
Minister of Public Safety
House of Commons
Ottawa, Canada
K1A 0A6

Commissioner Anne Kelly
Correctional Service Canada
340 Laurier Avenue West
Ottawa, ON
K1P 0P9

Re: Call to reduce incarceration during the COVID-19 pandemic

I am writing on behalf of the Canadian Prison Law Association (“CPLA”). The CPLA is an organization of lawyers who work on behalf of prisoners, and who seek to protect and promote the constitutional rights, interests and privileges of prisoners.

The COVID-19 pandemic is an unprecedented public health crisis with potentially catastrophic consequences for prisoners across the country. The CPLA is concerned for the safety and wellbeing of the prison population, and we call upon you to reduce incarceration during the COVID-19 outbreak to help reduce the transmission of the disease.

There is an increased risk of severe outcomes for those who are aged 65 and over, with compromised immune systems, and with underlying medical

conditions. Such individuals are discouraged from large gatherings and even smaller events in crowded or enclosed settings.¹

Prisoners are particularly vulnerable. Within prisons, space is limited, maintaining an appropriate level of sanitation can be challenging, and healthcare can be limited and difficult to access. Many prisoners are also in a high-risk category. Individuals aged 50 or more account for 25% of the federal prison population.² Compared to the general population, prisoners in federal prisons experience a higher prevalence of mental health and physical health concerns (including diabetes, cardiovascular conditions, HIV/AIDs, and Hepatitis C).³

The CPLA recognizes and commends the efforts that have been made to find solutions to reduce incarceration during this pandemic, for example in Ontario where Temporary Absence Permits are being used more broadly and flexibly.⁴ However, we call upon you to ensure that everyone across the country responsible for prisoners explores all available means of reducing the number of people in custody.

Recommendations from public health officials can be difficult, if not impossible to implement in prison. Effective social distancing is not possible in close quarters, and the CPLA emphasizes that solitary confinement is not a viable and Constitutional alternative. Moreover, there are supply shortages and certain recommended supplies may not be available to prisoners, including hand sanitizers with high alcohol content.

As such, the CPLA submits that it is necessary to consider means of reducing incarceration and, where incarceration is necessary, to ensure that the health and rights of prisoners are protected.

The CPLA makes the following recommendations:

- 1. Reduce the number of people incarcerated, especially non-violent offenders**

¹ “Coronavirus disease (COVID-19): Prevention and risks” (2020), <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks.html?topic=ex-col-faq#r>

² Office of the Correctional Investigator (2019), “Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody”, <https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20190228-eng.aspx>.

³ See “Evaluation of CSC’s Health Services” (March 2017), https://www.csc-scc.gc.ca/publications/005007-2017-eng.shtml#_edn5.

⁴ <https://news.ontario.ca/mcscs/en/2020/03/ontario-stepping-up-measures-to-limit-the-spread-of-covid-19-in-correctional-system.html>

Conditional pardons

Under section 748 of the *Criminal Code*, the Governor in Council can grant a conditional pardon. The CPLA submits that in the unique circumstances of COVID-19, this power should be exercised to conditionally pardon prisoners who present a low risk to public safety and especially those who are highly susceptible to severe COVID-19 outcomes.

Parole

It is essential that the parole process not be compromised or delayed. We understand that lawyers may now appear by video-link, which is good.

It must also be recognized that parole officers are essential workers, because of the key role they play in getting applications processed and cases prepared for hearing.

Parole by exception

The CPLA requests that Correctional Service Canada and the Parole Board of Canada expedite the process for parole by exception and recognize COVID-19 as a valid basis for claiming parole by exception.

Under section 121(1) of the *Corrections and Conditional Release Act*, SC 1992, c 20, the Board can grant parole early in certain circumstances. The CPLA submits that the detention of prisoners, especially those who are highly susceptible to severe COVID-19 outcomes, during this pandemic could cause serious damage to physical and/or mental health, or amount to excessive hardship not reasonably foreseeable at the time of sentencing.

Temporary absences

The CPLA calls on the federal government to follow the lead of Ontario's Ministry of the Solicitor General and expand the role of temporary absences. Instead of suspending Escorted Temporary Absences and Unescorted Temporary Absences to contain the outbreak, we ask that the framework be broadened to allow federal prisoners to receive extended Unescorted Temporary Absences to self-isolate in their communities. Furthermore, we request that applications for Unescorted Temporary Absences be processed and reviewed on an expedited basis.

The CPLA also calls upon the provincial governments to follow the lead of the Ministry of the Solicitor General in Ontario and grant Temporary Absence Permits to those on intermittent sentences to minimize the spread of COVID-19. This should also apply to fine defaulters.

2. Release youth in custody

The CPLA calls for the release of youth in custody under section 91(1)(a) of the *Youth Criminal Justice Act*, SC 2002, c 1.

3. Release immigrants and refugees

The CPLA also calls on the provincial and federal government to release all immigrants and refugees being held in provincial prisons and in immigration detention.

4. Consider COVID-19 in all parole and correctional decisions

The protection of society is the paramount consideration for Correctional Service Canada⁵, as well as the Parole Board of Canada and provincial parole boards.⁶

As such, the CPLA submits that the COVID-19 must be factored into correctional and parole decision-making as it is relevant to public safety. Decisions to continue to confine individuals or about the conditions of detention can impact public health and safety.

In *R v J.S.*, 2020 ONSC 1710, at para 19, Copeland J recognized that COVID-19 is a valid consideration in considering a bail review:

...I take notice of the fact, based on current events around the world, and in this province, that the risks to health from this virus in a confined space with many people, like a jail, are significantly greater than if a defendant is able to self-isolate at home. The virus is clearly easily transmitted, absent strong social distancing or self-isolation, and it is clearly deadly to a significant number of people who it infects. The practical reality is that the ability to practice social distancing and self-isolation is limited, if not impossible, in an institution where inmates do not have single cells. I note that this factor concerns not only Mr. S's own health, but also the preservation of scarce hospital resources to treat patients. If more people are infected, those resources will be more strained.

While this comment was made in the context of a bail review, the CPLA submits that all correctional and parole decision-makers should consider how confinement may negatively impact public health and safety.

⁵ *CCRA*, s 3.1.

⁶ *CCRA*, s 100.1.

5. Provide appropriate sanitation and hygiene supplies to prisoners, free of charge

At minimum, prisoners should be provided, free of charge and in appropriate quantities:

- Hand sanitizer
- Soap and paper towels
- Cleaning supplies
- Masks (where appropriate)

Common areas and phones should be cleaned and sanitized regularly, and prisoners should be provided appropriate time to clean and sanitize their cells.

6. Ensure solitary confinement is not used to implement social distancing measures, and that isolated and quarantined prisoners have reasonable time outside of their cells

The CPLA emphasizes that the federal correctional system’s purpose “is to contribute to the maintenance of a just, peaceful and safe society”, and it is to carry out sentences “through the safe and humane custody and supervision of offenders”.⁷ The Service is also required to use the least restrictive measures required to protect society, staff, and offenders.⁸

Solitary confinement can have profound consequences for the mental and physical health of prisoners. The CPLA submits that it is neither necessary nor appropriate to use widespread solitary confinement to avoid transmission, instead the focus should be on reducing the number of people incarcerated and isolating only those who are suspected or known to be positive for COVID-19.

As such, mass solitary confinement should not be used to implement social distancing, and efforts must be made to ensure that all prisoners continue to have reasonable access to outdoor time, phones, health care, programming, education, etc.

7. Appropriate measures be implemented to ensure contact with the community, counsel, and treatment providers

As long as visits are suspended, the CPLA calls for free access to phones to allow prisoners contact with the community and access to counsel. In addition, steps must be taken to facilitate communications with counsel where

⁷ CCRA, s 3.

⁸ CCRA, s 4(c).

documents must be provided to clients and counsel, including being signed by clients by email and fax.

Isolated and quarantined prisoners should also be provided mental health counselling.

8. Programming continuation

The CPLA emphasizes that the provision of programs is integral to assisting in the rehabilitation of offenders and that the Service is to ensure the effective delivery of programs.⁹ Programming is generally crucial to lowering prisoners' risk factors and satisfying the criteria to be granted conditional release.

Given that the duration of this outbreak is unknown, the CPLA calls for the Service to devise alternative means of delivering programs to allow all prisoners, including those in isolation or quarantine, to participate in and complete programming in a timely manner.

Conclusion

Action must be taken immediately to protect prisoners during this pandemic. Prisoners are one of the most vulnerable populations in Canada, and outbreaks within the prison population will have significant implications for affected individuals, public health and our healthcare system generally.

Reducing the transmission of COVID-19 requires cooperation and swift action at all levels, and we urge you to implement the recommendations outlined above to help protect our prison population, the public and the public health care system.

We look forward to your early reply.

Sincerely,

Tom Engel
President, Canadian Prison Law Association

⁹ *CCRA*, ss 3(b), 4(c.2).

This is **Exhibit "C"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large initial 'C' followed by a series of loops and a long horizontal stroke.

A Commissioner, etc.



CANADIAN PRISON LAW ASSOCIATION

March 26, 2020

#200, 10209-97 Street
Edmonton, AB T5J 0L6
Tele: 780 448-3639
Cell: 780 908-5130
Fax: 780 448-4924
Email: tomengel@engellaw.ca

Federal, Provincial and Territorial
Ministers of Justice and Correctional Services
and CSC Commissioner

Dear Ministers,

Re: Release of Indigenous Prisoners in Response to Covid19 Pandemic

I write to you as the President of the Canadian Prison Law Association. The CPLA is an organization of lawyers who work on behalf of prisoners and who seek to protect and promote the constitutional rights, interests and privileges of prisoners by advocating on their behalf within the community and in their dealings with prison and release authorities. We promote adherence to the Rule of Law within the prison law environment in accordance with the highest standards of justice and fairness as required by and consistent with the *Charter of Rights and Freedoms*. We act as a vehicle through which members of the CPLA can, on matters of common concern, communicate with government bodies. Our membership is composed of lawyers who practice in the area of prison law. We have about many members across Canada.

We wrote to you on March 16, 2020 and then to Federal Minister of Public Safety Bill Blair and CSC Commissioner Anne Kelly on March 24, 2020 about the release of prisoners in general and we have received no response. Our attention now turns to the plight of Canada's Indigenous prisoners.

I have read the March 23, 2020 APTN publication of Pamela Palmater, whose opinions we respect. As the article states, she is a Mi'kmaw citizen and member of the Eel River Bar First Nation in northern New Brunswick. She has been a practicing lawyer for 20 years and currently holds the position of Professor and Chair in Indigenous Governance at Ryerson University. It is found here:

<https://aptnnews.ca/2020/03/23/covid-19-pandemic-plan-needed-for-canadas-jails-and-prisons/>.

We can do no better than to adopt her submissions in their entirety. We emphasize the following:

Many jails in Canada are notorious for over-crowding, lack of cleanliness and a critical lack of access to healthcare and mental health services meaning they are some of the worst places to be during the COVID-19 pandemic.

We know from the statistics that Indigenous peoples are incarcerated at crisis-level rates that continue to increase every year. The alarm has been raised by the John Howard Society representing male prisoners; the Canadian Association of Elizabeth Fry Societies representing female prisoners; human rights organizations, like Amnesty International; and Indigenous advocacy organizations.

Every successive federal and provincial government has failed to take substantive legislative and policy measures that would address the crisis. Now, their collective failures to act may well exacerbate the new crisis facing the country: the coronavirus pandemic.

We know from past pandemics that First Nations suffer higher infection and death rates. During H1N1, Indigenous peoples made up 28 per cent of hospital admissions during the first wave and 18 per cent of deaths despite only being 4 per cent of the population in 2009 – the majority being First Nations. In Winnipeg, Manitoba, 55 per cent of admissions to the Children's Hospital were Indigenous people.

Multiple generations of assimilation, oppression, and dispossession have resulted in severe socio-economic conditions higher rates of infectious and chronic diseases in Indigenous peoples. These poor health outcomes compromise Indigenous health and make them more vulnerable to disease. Tuberculosis is a highly infectious disease that has relatively low rates among the Canadian population, but First Nations suffer rates 40 times and Inuit 290 times that of southerners. These health conditions are all exacerbated in prisons where access to healthcare is lacking and where the virus has taken root.

A guard at Toronto South Detention Centre, one of the largest urban jails in Canada, has reportedly tested positive for the virus. An outbreak of the virus in Canadian jails or prisons puts the lives of prisoners at significant risk – especially Indigenous peoples.

There have already been calls by others for urgent decarceration strategies to prevent an outbreak in prisons. The union representing legal aid workers and staff in Saskatchewan has already asked governments to release low-risk, non-violent prisoners on the grounds that an outbreak would threaten the health and safety of prisoners, staff and local hospitals. Similarly, the League of Rights and Freedoms also called on Quebec government to reduce the prison population to avoid the virus spreading like “wildfire”.

In Ontario, some low-risk prisoners are being released early to help stem the spread of the virus in the province's jails.

Newfoundland and Labrador's justice minister has also indicated that the province is considering temporary absences for prisoners during the pandemic, arguing that jails are "petri dishes for the spread of the virus" and that it could spread like a "crashing avalanche" if the government doesn't act now. Even the United States, the country with the highest incarceration rate in the world, has begun to release prisoners to stem the spread of COVID-19.

This would be in line with recommendations from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, who recommends alternatives to prison, including commuting sentences, early releases, probation and release into community care.

In response to Indigenous concerns about the pandemic, Indigenous Services Minister Marc Miller promised that no Indigenous community would be left behind and that the federal government would "address vulnerabilities" explaining that, "there is a need for special support and special care for Indigenous communities and Indigenous Canadians right across the country." Yet, for all these promises, we have yet to see a plan to decarcerate Indigenous men, women and youth – especially those sitting in remand. An Indigenous decarceration plan should have been developed as part of a federal-provincial-territorial-Indigenous government pandemic measure.

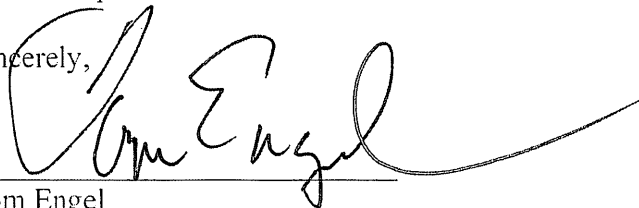
Decarceration is not about opening prison doors in the middle of a pandemic. It needs to be a planned approach that considers public health and safety, while not perpetuating systemic racism in the justice system or increasing health risks to Indigenous prisoners.

Given that Indigenous prisoners are more likely to be classified at higher risk levels due to systemic racism, any assessment of the risk level of prisoners to be released would have to be done in partnership with independent prison justice experts and Indigenous governments. Further, while some Indigenous prisoners have homes to return to, many will require social supports for themselves, their families and communities, on and off reserve.

Days matter in this pandemic. Urgent action is required right now. Will federal and provincial governments come together with Indigenous governments and develop a plan or will Indigenous men, women and youth in prisons be the community that is left behind during the pandemic? [Emphasis added]

Please respond.

Sincerely,

A handwritten signature in black ink that reads "Tom Engel". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Tom Engel
President, Canadian Prison Law Association

C. Media

This is **Exhibit "D"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a long horizontal stroke extending to the right.

A Commissioner, etc.



Canadian Prison Law Association

April 2, 2020

#200, 10209-97 Street
 Edmonton, AB, T5J 0L6
 Tele: 780 448-3639
 Cell: 780 908-5130
 Fax: 780 448-4924
 Email: tomengel@engellaw.ca
<https://canadianprisonlaw.ca/>

Dear Doctors and Federal, Provincial and Territorial chief medical and public health officers,

Re: Covid-19 in the Prison Context - Public Health and Medical Officers

It is with urgency I write to you as the President of the Canadian Prison Law Association. The CPLA is an organization of lawyers across Canada who work on behalf of prisoners and who seek to protect and promote the constitutional rights, interests and privileges of prisoners by advocating on their behalf within the community and in their dealings with prison and release authorities. We promote adherence to the Rule of Law within the prison law environment in accordance with the highest standards of justice and fairness as required by and consistent with the *Charter of Rights and Freedoms*. We act as a vehicle through which members of the CPLA can, on matters of common concern, communicate with government bodies.

The CPLA has advocated with Federal, Provincial and Territorial Ministers and authorities in charge of prisons, pleading that they take seriously the grave health risks to prisoners, prison staff and surrounding communities and take immediate action to depopulate prisons. We have pointed out the legal mechanisms to effect that. There has been no significant action on their part.

On March 31, 2020 the office of the Minister of Public Safety, Bill Blair, made an announcement about this. It appears to us it is no coincidence it was on the same day Canada's Chief Public Health Officer sounded the alarm. This was reported here: <https://www.cbc.ca/news/politics/prison-covid19-csc-release-1.5516065>.

Even then, the Minister's office indicated he was going to seek advice about how to depopulate, advice he had already received from us and other organizations and advocates:

Blair's spokesperson Mary-Liz Power said the government understands the "unique risks" inherent to prisons. Minister Blair has asked both the Commissioner of the Correctional Service of Canada and the Chair of the Parole Board of Canada to determine whether there are measures that could be taken to facilitate early release for certain offenders.

It is important to pay close attention to what the CPHO said:

*In a briefing in Ottawa Tuesday, Chief Public Health Officer Dr. Theresa Tam said infections in **correctional facilities**, nursing homes and Indigenous communities are "very concerning" because of their potential to spread fast, with "grave consequences" for those vulnerable populations.*

So far as we know, no similar statement has been made by the rest of you. We struggle to understand why. It seems self-evident to those who are paying attention to the literature on Covid19. We request that Dr Tam's opinion be publicly echoed by her provincial and territorial counterparts and that all of you direct effective action be taken immediately by those responsible for the welfare of prisoners and prison staff and you rigorously supervise such actions.

We look forward to your timely response.

Sincerely,

A handwritten signature in black ink, reading "Tom Engel". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Tom Engel
President, Canadian Prison Law Association

c. Media

This is **Exhibit "E"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a long horizontal stroke ending in a small hook.

A Commissioner, etc.

Tom Engel

From: canadianpla@googlegroups.com on behalf of Tom Engel <tomengel@engellaw.ca>
Sent: April 3, 2020 1:53 PM
To: drtheresa.tam@canada.ca; Horacio.arruda@msss.gouv.qc.ca; janicefitzgerald@gov.nl.ca; Robert.Strang@novascotia.ca; hgmorrison@gov.pe.ca; jennifer.russell@gnb.ca; dr.david.williams@ontario.ca; Brent.Roussin@gov.mb.ca; Deena.Hinshaw@gov.ab.ca; bonnie.henry@gov.bc.ca; Brendan.Hanley@gov.yk.ca; kami_kandola@gov.nt.ca; MPatterson@gov.nu.ca
Cc: canadianpla@googlegroups.com; ' 630 Ched'; ' APTN'; ' Bob Weber CP'; ' Canadian Press Edmonton'; ' CHARLES RUSNELL'; ' Chris Purdy'; ' City TV #2'; ' CTV'; ' David Ewasuk'; ' Edmonton Sun'; ' Edmonton Sun City Editor'; ' Globe and Mail'; ' Janice Johnston'; ' Jesse McLean'; ' John Cotter CP'; ' Kelsey Dyer'; ' Pamela Roth'; APTN ; Bill Kaufmann; Chelan Skulski; claire.theobald@metronews.ca; Emma McIntosh; JENNIE.RUSSELL@CBC.CA; John Murray; 'Journal Cop Desk'; Justin Ling; Kathy Le; Krugel, Lauren; Lost Time Media (info@losttimemedia.com); Meghan Grant; 'Paul McLeod; Scott Fralick; SFine@globeandmail.com; Tara Bradbury; Wakefield, Jonny
Subject: RE: Urgent Letter from Canadian Prison Law Association - Covid19 Pandemic - Prisons

Doctors,

Although this information pertains to Quebec jails, I think all of you should be informed. This came from members of the CPLA:

La Macaza

If I may add to this, the situation at La Macaza medium security institution is not better and the level of stress and tension is increasing at an alarming speed.

- *The way officers implement the new guidelines seems to aim at protecting the officers from the prisoners and not vice versa*
- *There are 3 blocks and they have been separated. Within the Block, people go out of their cells according to the range they belong to*
- *They are about 40-50 people out at the same time for one hour at a time .*
- *The areas where they can go are very restricted which increases the density of people in confined environments, making social distancing impossible*
- *Phone calls are difficult because everyone rushes on the phone during this one hour period allowed out of the cell*
- *Officers don't seem to care about the rules put in place, they sit in the control as if nothing, they don't respect social distancing measures among themselves, don't wear gloves or masks and abuse of their powers (one of my client told me there has been up to 2 hours delays in the opening of the cell doors)*
- *One of my clients reports officers making comments such : Now they will know what it means to be in prison*
- *There are no services available, including health care services and redress system (grievances are not being processed which promotes a sense of impunity)*
- *The current conditions exacerbate existing mental health issues*
- *Apparently the Union wants stricter measures to be put in place*

Port Cartier

On Fri, Apr 3, 2020 at 11:33 AM Jeffrey Hartman <jeff@hartmanlaw.ca> wrote:
I received a further update from my client this morning:

1. No medication is coming in and inmates are becoming very unstable. The inmate in N205 had a breakdown, cut himself and smeared feces everywhere. CSC hasn't cleaned the cell and the scent is very bad and spreading through HVAC for 3 days.
2. "Protocol" is changing several times per day. This is very frustrating due to complete instability and unpredictability in the prison day.
3. The geographical area has 41 infections and 17 are connected to the jail (2 inmates, 12 staff, 3 family of staff, 6 pending). During early stages, CSC wasn't requiring staff to go into isolation after returning from abroad
4. Staff refuse to give updates to the inmates, saying it's "none of your business"
5. Guards aren't wearing gloves, masks, etc and continue to be very hands on with inmates.

1. The guards who are working 14 on/off are not staying at the jail but a nearby motel (I don't know how xx knows this)
2. Mental health has become a big problem in the lockdown. There is lots of self harm. Guards have told at least one inmate, who threatened suicide, to go ahead. Inmates are apparently setting small fires as well.

1. There are 14 guards, 3, inmates, and 3 miscellaneous staff who have Covid.
2. The warden is off work awaiting test results
3. The jail is on lockdown.
4. The mayor of Sept Ills (where most guards live - 45 min away) is furious with CSC because, until recently, it had no strategy to contain covid and the mayor fears it spreading. Apparently there is a youtube video or article somewhere about the mayor's reaction.
5. Meal portions are shrinking
6. Because of the lockdown, the jail is now using confiscation (TVs, etc) for discipline. CSC wanted to take my client's mattress although that hasn't happened.

7. Only recently did guards start working 14 days on, 14 off, 12 hour shifts. That means that for days/weeks after terminating visits, guards were still coming and going and thus acting as covid vectors.

8. There is a real sense of injustice that the particular guard who introduced covid to the facility is at home presumably with internet, tv, and other luxuries we take for granted while the inmates are locked in cells with diminishing possessions, shrinking meals, and no mental health care.

9. CSC is saying it's put money on inmates' phone cards but they're in lockdown and guards are not letting them out to use the phone. xxx has to bug guards for about 6 hours per day to get a ten minute phone call. xx says most inmates have given up and that this money is meaningless.

10. CSC has also said inmates have access to video chat but this didn't work at xx's institution before covid and is impossible now because of the lockdown.

11. It took CSC about 3 days to arrange proper sanitation of the jail following the first positive test.

Tom Engel

Engel Law Office
 #200, 10209-97 Street
 Edmonton, AB T5J 0L6
 Tele: 780 448-3639
 Fax: 780 448-4924
 Website: www.engellaw.ca

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." - Nelson Mandela

From: Tom Engel

Sent: April 2, 2020 11:38 AM

To: drtheresa.tam@canada.ca; Horacio.arruda@msss.gouv.qc.ca; janicefitzgerald@gov.nl.ca; Robert.Strang@novascotia.ca; hgmorrison@gov.pe.ca; jennifer.russell@gnb.ca; dr.david.williams@ontario.ca; Brent.Roussin@gov.mb.ca; Saqib.Shahab@gov.sk.ca; Deena.Hinshaw@gov.ab.ca; bonnie.henry@gov.bc.ca; Brendan.Hanley@gov.yk.ca; kami_kandola@gov.nt.ca; MPatterson@gov.nu.ca

Cc: canadianpla@googlegroups.com; '630 Ched' <chednews@630ched.com>; 'APTN' <news@aptn.ca>; 'Bob Weber CP' <Bob.Weber@TheCanadianPress.com>; 'Canadian Press Edmonton' <edmonton@thecanadianpress.com>; 'CHARLES RUSNELL' <CHARLES.RUSNELL@cbc.ca>; 'Chris Purdy' <chris.purdy@thecanadianpress.com>; 'City TV #2' <newsdesk@citytv.com>; 'CTV' <cfrnnewsassignment@ctv.ca>; 'David Ewasuk' <David.Ewasuk@ctv.ca>; 'Edmonton Sun' <edm-citydesk@sunmedia.ca>; 'Edmonton Sun City Editor' <nicole.bergot@sunmedia.ca>; 'Globe and Mail' <sstewart@globeandmail.com>; 'Janice Johnston' <Janice.Johnston@CBC.CA>; 'Jesse McLean' <jmclean@thestar.ca>; 'John Cotter CP' <john.cotter@thecanadianpress.com>; 'Kelsey Dyer' <Kelsey.Dyer@ctv.ca>; 'Pamela Roth' <pamela.roth@sunmedia.ca>; APTN <info@aptn.ca>; Bill Kaufmann <BKaufmann@postmedia.com>; Chelan Skulski <Chelan.Skulski@bellmedia.ca>; claire.theobald@metronews.ca; Emma McIntosh <emma@observermediagroup.com>; JENNIE.RUSSELL@CBC.CA; John Murray <jmurray@aptn.ca>; 'Journal Cop Desk' <copdesk@edmontonjournal.com>; Justin Ling <justinrling@gmail.com>; Kathy Le <kathy.le@bellmedia.ca>; Krugel, Lauren

<Lauren.Krugel@thecanadianpress.com>; Lost Time Media (info@losttimemedia.com) <info@losttimemedia.com>; Meghan Grant <meghan.grant@cbc.ca>; Paul McLeod <paul.mcleod@buzzfeed.com>; Scott Fralick <scott.fralick@citytv.rogers.com>; SFine@globeandmail.com; Tara Bradbury <tara.bradbury@thetelegram.com>; Wakefield, Jonny <jwakefield@postmedia.com>

Subject: Urgent Letter from Canadian Prison Law Association - Covid19 Pandemic - Prisons

Dear Doctors,

Please find attached the CPLA's letter to you.

Please treat this urgently and reply.

Tom Engel

President, CPLA

C/O Engel Law Office
#200, 10209-97 Street
Edmonton, AB T5J 0L6
Tele: 780 448-3639
Fax: 780 448-4924
Website: www.engellaw.ca

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." - Nelson Mandela

--

You received this message because you are subscribed to the Google Groups "Canadian Prison Law Association" group.

To unsubscribe from this group and stop receiving emails from it, send an email to

CanadianPLA+unsubscribe@googlegroups.com.

To view this discussion on the web visit

<https://groups.google.com/d/msgid/CanadianPLA/YT1PR01MB3980BEF8ABF2F0DC0EBEC14CDAC70%40YT1PR01MB3980.CANPRD01.PROD.OUTLOOK.COM>.

This is **Exhibit "F"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a long, horizontal flourish.

A Commissioner, etc.

Tom Engel

From: Tom Engel
Sent: April 3, 2020 4:40 PM
To: Kelly Anne (NHQ-AC)
Cc: Snedden Kevin (NHQ-AC); Arseneault Bev (NHQ-AC); canadianpla@googlegroups.com
Subject: RE: Letter from the Canadian Prison Law Association - COVID19

Importance: High

Anne,

The Canadian Prison Law Association appreciates your efforts to ensure prisoners retain their right to legal counsel during this pandemic, including efforts to ensure call-forwarding services are accommodated. However, after review, we have some concerns that remain unaddressed by today's memorandum distributed to CSC staff.

Prisoners are charged \$1/hour to contact private counsel by phone, representing approximately 20% of their daily wage. We ask that CSC ensure all calls to counsel are provided in private and free of charge, and that phones are cleaned between users to ensure all prisoners are afforded the right to counsel in a safe manner.

We have concerns about CSC's plan to ensure that lawyers are able to receive the documents necessary for effective legal representation. Mail is slow, expensive and an unsafe method of exchanging documents. COVID-19 can remain on paper surfaces for up to 24 hours. Delivery requires mail to exchange multiple hands within this time period. Furthermore, prisoners often do not have the documents required by counsel to represent them.

We understand that prisoners are charged \$2.50 to send a fax, which may represent half of their daily income. We ask that CSC facilitate access to counsel by bearing the cost of faxing necessary documents to counsel.

Email is the most inexpensive and convenient way to share documents, and can be done securely using Canada Post's service (<https://www.canadapost.ca/cpc/en/business/postal-services/digital-mail/epost-connect.page>). We ask that you provide direction to staff to use this method which will ensure counsel are able to provide services during the pandemic. For many prisoners who are vulnerable to the virus, legal help with conditional release could become a matter of life or death.

Please respond as soon as possible.

Tom Engel

Engel Law Office
#200, 10209-97 Street
Edmonton, AB T5J 0L6
Tele: 780 448-3639
Fax: 780 448-4924
Website: www.engellaw.ca

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." - Nelson Mandela

From: Tom Engel
Sent: April 3, 2020 2:04 PM
To: Kelly Anne (NHQ-AC) <Anne.Kelly@CSC-SCC.GC.CA>
Cc: Snedden Kevin (NHQ-AC) <Kevin.Snedden@csc-scc.gc.ca>; Arseneault Bev (NHQ-AC) <Bev.Arseneault@CSC-SCC.GC.CA>
Subject: RE: Letter from the Canadian Prison Law Association - COVID19

Anne,

Thanks. I will circulate this to my colleagues.

Tom Engel

Engel Law Office
 #200, 10209-97 Street
 Edmonton, AB T5J 0L6
 Tele: 780 448-3639
 Fax: 780 448-4924
 Website: www.engellaw.ca

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." - Nelson Mandela

From: Kelly Anne (NHQ-AC) <Anne.Kelly@CSC-SCC.GC.CA>
Sent: April 3, 2020 1:39 PM
To: Tom Engel <tomengel@engellaw.ca>
Cc: Snedden Kevin (NHQ-AC) <Kevin.Snedden@csc-scc.gc.ca>; Arseneault Bev (NHQ-AC) <Bev.Arseneault@CSC-SCC.GC.CA>
Subject: RE: Letter from the Canadian Prison Law Association - COVID19

Hello Mr. Engel,

This is in response to your letter dated March 16, 2020.

The Correctional Service of Canada (CSC) recognizes the operational challenges associated with COVID-19, not only for CSC, but also for many law firms and advocacy groups across the country. To that end, please find attached a memorandum, which was sent to all CSC Regional Deputy Commissioners, and details solutions available to offenders to ensure they continue to have reasonable access to legal counsel during the COVID-19 pandemic, as well as other methods that remain available during this time. CSC continues to assess alternative solutions during this challenging time.

If you have any questions, please contact Kevin Snedden, Assistant Commissioner, Correctional Operations and Programs at Kevin.Snedden@csc-scc.gc.ca.

Hoping you are staying safe and healthy.

Anne

Anne Kelly
 Commissioner / Commissaire
 Correctional Service Canada / Service correctionnel du Canada
 340 Laurier Ave. West
 Ottawa, ON
 K1A 0P9
 Office / Bureau: 613-995-5781
 Email / Courriel : Anne.Kelly@csc-scc.gc.ca Government of Canada / Gouvernement du Canada

“Every job is a self-portrait of the person who does it. Autograph your work with excellence.”

“Toute tâche est le reflet de la personne qui l’accomplit. Marquez votre travail du sceau de l’excellence.”

From: Tom Engel <tomengel@engellaw.ca>
Sent: March 16, 2020 4:01 PM
To: Kelly Anne (NHQ-AC) <Anne.Kelly@CSC-SCC.GC.CA>
Subject: FW: Letter from the Canadian Prison Law Association - COVID19
Importance: High

Ms Kelly,

I had the wrong email address on first try.

Tom Engel

From: Tom Engel
Sent: March 16, 2020 1:58 PM
To: David.Lametti@parl.gc.ca; commisioner@csc-scc.gc.ca
Cc: canadianpla@googlegroups.com
Subject: Letter from the Canadian Prison Law Association - COVID19
Importance: High

Dear Minister Lametti and Commissioner Kelly,

Please find attached a letter from the Canadian Prison Law Association.

We look forward to your response.

Tom Engel
 President, CPLA

C/O Engel Law Office
 #200, 10209-97 Street
 Edmonton, AB T5J 0L6
 Tele: 780 448-3639
 Fax: 780 448-4924

Website: www.engellaw.ca

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." - Nelson Mandela

This is **Exhibit "G"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large initial 'C' followed by a series of loops and a long horizontal stroke ending in a small arrowhead.

A Commissioner, etc.



Canadian Prison Law Association

#200, 10209-97 Street
Edmonton, AB T5J 0L6
Tele: 780 448-3639
Cell: 780 908-5130
Fax: 780 448-4924
Email: tomengel@engellaw.ca
<https://canadianprisonlaw.ca/>

Anne Kelly, Commissioner
Correctional Service Canada
340 Laurier Avenue West
Ottawa, ON K1A 0P9
Anne.Kelly@CSC-SCC.GC.CA

April 9, 2020

Dear Ms. Kelly,

RE: Request to the Commissioner for Urgent Directive re Medical UTAs

The Correctional Service of Canada and Parole Board of Canada have been directed to consider options for safely releasing federal inmates to the community as a public health measure during the COVID-19 pandemic. One effective tool available to the CSC Commissioner that would allow for the efficient and safe release of medically vulnerable prisoners on conditions during the pandemic is the authorization of indefinite Unescorted Temporary Absences (UTAs) for medical purposes under s. 116(2) of the *Corrections and Conditional Release Act*.

The urgency of stopping the spread of COVID-19 inside penitentiaries cannot be overstated. According to public health and preventative medicine expert Dr. Aaron Orkin, prisoners have higher rates of chronic disease and a higher chance of intensive-care admission or death when they contract this virus. He notes the most important public health measure to flatten the curve of COVID-19 is social distancing, and that other recommended measures are much less effective. He stresses that preventing outbreaks in environments like prisons is a top public health priority because they happen extremely quickly and may be impossible to control once they occur. He warns that staff who work in these environments will then spread the virus into the broader

community. He says the “only available method to substantially reduce the resulting infections and deaths is therefore to reduce the population in those settings.”¹

Medical UTAs could allow many medically vulnerable prisoners to socially distance themselves in their private homes in a manner that is not possible in a congregate living facility such as a federal penitentiary. CSC is the UTA-granting authority for most inmates, and UTAs for medical purposes can be authorized for an indefinite period until the danger to public safety posed by the COVID-19 pandemic has passed.

We accordingly urge the Commissioner to issue an urgent and public directive to all institutional heads, health care staff, and case management staff, directing that the authority of the Commissioner and Institutional Heads to grant UTAs for medical reasons under s. 116(2) of the *Corrections and Conditional Release Act* should be urgently used to facilitate the release of medically vulnerable prisoners to locations in the community, where they can protect themselves against exposure to the novel coronavirus.

We specifically ask that this directive include the following:

- A direction that all Institutional Heads, health care staff, and case management staff, are to coordinate and move urgently to identify and release suitable prisoners by recommending and authorizing medical UTAs in every case where it is consistent with public safety.
- A direction that the criteria of medical desirability in para. 116(1)(b) of the *CCRA* and para. 155(a) of the *Regulations* is considered to be met in any case where an inmate’s age (over 50) or any underlying comorbidities (existing medical conditions) make them more prone to serious adverse outcomes from COVID-19. The direction will include a non-exhaustive list of conditions for which evidence of a diagnosis will be satisfactory to establish elevated risk of adverse COVID-19 outcomes.
- A direction that every risk assessment under s. 116(1)(a) and (c) of the *CCRA* (as to whether an inmate’s risk to public safety is undue on a medical UTA, and/or whether an inmate’s behaviour under sentence precludes a medical UTA) must take in to consideration the risks posed to public safety by failing to release the prisoner, including the following:
 1. That outbreaks in congregate living facilities such prisons are known to happen extremely quickly and, despite CSC’s commitment to take every precaution, may be impossible to effectively control once they occur.
 2. That federal prisoners, on average, tend to much higher rates of underlying comorbidities than the general population that make them more prone to serious adverse outcomes (ICU admission or death) from COVID-19.

¹ <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Aa9ecea53-cd4c-4ccb-9f00-d8899fbd35f2>.

3. That outbreaks in prisons pose a serious danger of overwhelming both CSC and community health care systems, meaning that scarce resources may be consumed by outbreaks in prisons before the epidemic takes hold in the general population.
 4. That outbreaks in prisons can be expected to lead to or worsen generalized outbreaks in the community (as staff must come and go from the prison even after the outbreak).
- A direction that every risk assessment under s. 116(1)(a) and (c) of the *CCRA* must take into consideration the unique social conditions of the pandemic, such as the more limited opportunity for social interactions, and the fact that such medical releases can include house-arrest-type conditions.
 - A direction that certain procedural requirements (including the requirement for a Community Assessment or Community Strategy) and timeframes in CD 710-3 may be abridged for urgent medical UTAs during the pandemic in order to ensure that a sufficiently urgent response is possible at existing staffing levels.
 - A direction that case management staff in the institutions and the community urgently coordinate to develop simple structured release plans for each inmate who otherwise meets the criteria for release (this would include promptly reaching out to family members and known community supports, as well as community organizations that may be in a position to assist in developing community release placements for prisoners).
 - That medically vulnerable prisoners who cannot be safely released be provided greater opportunities for social distancing in humane conditions (such as the option of residing in a private family visit trailer, etc.).

Thank you for your prompt action.

Yours truly,

Tom Engel

A handwritten signature in black ink, appearing to read "Tom Engel", with a long horizontal flourish extending to the right.

President, Canadian Prison Law Association

This is **Exhibit “H”** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a long horizontal stroke extending to the right.

A Commissioner, etc.

Coalition for
Justice

and
Human Rights

14 April 2020

Dear Dr Deena Hinshaw
Chief Medical Officer of Health
Office of the Chief Medical Officer of Health
24th fl ATB Place, 10025 Jasper Avenue
Edmonton AB T5J 1S6
deena.hinshaw@gov.ab.ca

Dr. Theresa Tam
Chief Public Health Officer
Public Health Agency of Canada
130 Colonnade Road
Ottawa, ON
K1A 0K9
drtheresa.tam@canada.ca

Dear Dr. Hinshaw and Dr. Tam;

On behalf of a collective of justice systems stakeholders and non-profit organizations, we draw your attention to the emergent need for prison health to be addressed as a public health concern.

On the 15th of March 2020, the World Health Organization released standards and guidelines for *Preparedness, prevention and control of COVID-19 in prisons and other places of detention Interim guidance*. This document points out:

“People deprived of their liberty, such as people in prisons and other places of detention, are likely to be more vulnerable to the coronavirus disease (COVID-19) outbreak than the general population because of the confined conditions in which they live together for prolonged periods of time. Moreover, experience shows that prisons, jails and similar settings where people are gathered in close proximity may act as a source of infection, amplification and spread of infectious diseases within and beyond prisons. **Prison health is therefore widely considered as public health.** The response to COVID-19 in

111, 4635 199 Street NW Edmonton, Alberta Canada T6M 0V1
www.coalition4jhr.org
@coalition4jhr

Coalition for Justice

and Human Rights

prisons and other places of detention is particularly challenging, requiring a whole-of-government and whole-of-society approach.”

The WHO further reports that “the global effort to tackle the spread of disease may fail without proper attention to infection control measures within prisons.”

We are writing as a collective of concerned individuals and organizations who are calling for immediate and concentrated efforts to respond to COVID19 within prisons in Alberta, and across the country.

Recognizing that people in prisons and other places of detention are not only likely to be more vulnerable to infection with COVID-19, they are also especially vulnerable to human rights violations.

In order to ensure that the length of this pandemic is not extended by our lack of response in prisons and in line with calls from the WHO, we are calling for:

- An immediate recognition of prison health as a public health concern;
- Immediate mobilization of provincial health services to respond in prisons;
- Non-discrimination in the response to the pandemic;
- Priority to non-custodial measures at all stages of the criminal justice system, taking into account personal circumstances, including health vulnerability;...and,
- The human rights of those in custody are respected, that people are not cut off from the outside world, and have access to information, adequate healthcare provision and free connection to family.

We humbly ask for your mobilization on this critical issue and offer our assistance and support as we respond collectively to this crisis.

Respectfully,

Renée Vaugeois, Executive Director of John Humphrey Centre for Peace and Human Rights

Toni Sinclair, Executive Director of Elizabeth Fry Society of Edmonton

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and
Human Rights

Mark Cherrington, Vice President of Coalition for Justice and Human Rights

Chad Haggerty, student-at-law

Anthony Oliver, lawyer, Vice President of Alberta Criminal Justice Association

Heather Cardinal, community advocate

Tom Engel, lawyer, President of Canadian Prison Law Association

Miranda Hlady, lawyer

Amanda Hart-Dowhun, lawyer, President of Alberta Prison Justice Society

Cc:

- Tyler Shandro, Minister of Health, Government of Alberta
health.minister@gov.ab.ca
- Doug Schweitzer, Minister of Justice and Solicitor General
ministryofjustice@gov.ab.ca
- Bill Blair, Minister of Public Safety and Emergency Preparedness
ps.ministerofpublicsafety-ministredelasecuritepublique.sp@canada.ca
- Anne Kelly, Commissioner for Correctional Service Canada
anne.kelly@csc-scc.gc.ca
- Dr. Horacio Arruda, Directeur national de la santé publique, Quebec
Horacio.arruda@msss.gouv.qc.ca
- Dr. Janice Fitzgerald, Newfoundland Chief Medical Officer
janicefitzgerald@gov.nl.ca
- Dr. Robert Strang, Nova Scotia Chief Medical Officer
Robert.Strang@novascotia.ca
- Dr. Heather Morrison, Prince Edward Island Chief Medical Officer
hgmorrison@gov.pe.ca
- Dr. Jennifer Wylie-Russell, New Brunswick Chief Medical Officer
jennifer.russell@gnb.ca
- Dr. David Williams, Ontario Chief Medical Officer dr.david.williams@ontario.ca

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and Human Rights

- Dr. Brent Roussin, Manitoba Chief Medical Officer Brent.Roussin@gov.mb.ca
- Dr. Saqib Shahab, Saskatchewan Chief Medical Officer
COVID19@health.gov.sk.ca
- Dr. Bonnie Henry, British Columbia Chief Medical Officer
bonnie.henry@gov.bc.ca
- Dr. Brendan Hanley, Yukon Chief Medical Officer Brendan.Hanley@gov.yk.ca
- Dr. Kami Kandola, Northwest Territories Chief Medical Officer
kami_kandola@gov.nt.ca
- Dr. Michael Patterson, Nunavut Chief Medical Officer MPatterson@gov.nu.ca
- Janice Johnston, Canadian Broadcasting Corporation janice.johnston@cbc.ca

111, 4635 199 Street NW Edmonton, Alberta Canada T6M 0V1

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This is **Exhibit "I"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large initial 'C' followed by a series of loops and a long horizontal stroke ending in a small arrowhead.

A Commissioner, etc.



Prime Minister Justin Trudeau
Premier Dwight Ball
Premier Caroline Cochrane
Premier Doug Ford
Premier Blaine Higgs

Premier John Horgan
Premier Jason Kenney
Premier Dennis King
Premier François Legault
Premier Stephen McNeil

Premier Scott Moe
Premier Brian Pallister
Premier Joe Savikataaq
Premier Sandy Silver

April 14, 2020

Dear Prime Minister, Premiers and Mayors,

Human Rights Oversight of COVID-19 Responses

In these unprecedented times of a grave national and global public health emergency and the associated spiralling economic crisis, we recognize the staggering challenges faced by your governments and appreciate the tremendous efforts that have been made, first and foremost to treat and prevent spread of the COVID-19 virus and also to provide relief and assistance to people and communities across the country who are feeling the health-related and economic impacts.

At a time such as this, human rights principles and frameworks provide essential guidance regarding the measures governments must pursue and the limitations they must respect. In particular, human rights provide the framework for ensuring that individuals and communities who are marginalized and most at-risk, are not left behind.

To that end, 157 organizations and 144 individual experts from across the country have endorsed the attached statement calling on your governments to bring human rights to the heart of your COVID-19 responses by strengthening and instituting human rights oversight of those responses.

You will note that the call is broadly supported: by human rights, Indigenous, environmental, disability rights, women's human rights and gender equality, religious, labour, civil liberties, refugee and immigration, prisoner rights, international development, anti-poverty, anti-racism, children's rights, sex worker and many other organizations; as well as law professors, other academics, religious leaders, former politicians and other prominent individual Canadians.

We would appreciate meeting with any of you or your officials to discuss this proposal further.

Sincerely,

Alex Neve
Secretary General
Amnesty International Canada
(English branch)

France-Isabelle Langlois
Directrice générale
Amnistie internationale Canada francophone

- cc. Honourable Chrystia Freeland, Deputy Prime Minister (Chair, Cabinet Committee on COVID-19)
Honourable Jean-Yves Duclos, President of the Treasury Board (Vice-Chair, Cabinet Committee on COVID-19)
Honourable David Lametti, Minister of Justice and Attorney General
Leaders of the federal opposition parties
Provincial and Territorial Premiers
Mayors

A call for human rights oversight of government responses to the COVID-19 pandemic

Respect for human rights is essential in times of crisis. Human rights principles provide a valuable framework for government action and establish crucial safeguards against abuses. Yet respect for human rights is particularly vulnerable – tenuous at best – in times of crisis. That holds true whether the crisis is related to national security, natural disasters or a public health emergency such as the COVID-19 pandemic. **It is, therefore, a vital time to ensure robust human rights oversight: to encourage strong human rights measures are adopted by governments, and to guard against intentional or unintended human rights violations.**

Human rights obligations enshrined in international law, the Charter, treaties, legislation and other instruments make it clear what action governments must take to protect human rights – such as the rights to life, health, adequate housing and livelihoods – that are at risk due to the COVID-19 crisis. They establish clear requirements with respect to gender equality, non-discrimination and language rights, and highlight the necessity of deliberate action to protect fully the rights of marginalized individuals and communities. And they lay out the permissible limits on restricting other rights, to the extent that is necessary to address the crisis.

The fact that the human rights obligations are clear, however, is *not* an assurance they will be upheld. That is of particular concern with many of the key human rights obligations that are at stake in the COVID-19 pandemic, including with respect to health, housing, food, safe water and other basic needs. Governments across Canada have long asserted that those and other economic, social and cultural rights are not amenable to the same enforcement as other rights, leaving their protection to the more uncertain and arbitrary political realm. However, international human rights standards require that economic, social and cultural rights be equally subject to effective oversight and enforcement as other human rights. This is particularly important during the current crisis.

Too often, in times of crisis, human rights are dismissed by governments as being irrelevant and unnecessary at best, or unhelpful barriers to an effective response at worst. That is certainly so with the current COVID crisis. Governments face enormous challenges and need to make decisions rapidly. The public health risk is dramatic and the economic fall-out is spiralling exponentially. Understandably fearful and facing an information overload, people are less likely to second-guess government action and are inclined to give greater latitude to measures that significantly restrict their rights.

Often overlooked is the greater or differential impact of the pandemic itself on First Nations, Métis and Inuit communities, Black and other racialized communities (especially individuals of Asian origin), the elderly, people living with disabilities, women and children at risk of violence in the home, refugees and migrants, people marginalized because of gender identity or sexual orientation, minority official language communities, prisoners, sex workers, people who are homeless or living in inadequate housing, people who use drugs, precariously-employed workers, and other at-risk communities. Governments have, importantly, taken action to respond to the needs of many of these communities, but more is needed, and oversight is a vital safeguard.

At the same time, bodies and institutions that traditionally play a central role in protecting human rights – including courts, and human rights commissions and tribunals – are facing considerable constraints and limitations. While some urgent matters are still being heard by way of video and telephone conferencing, many proceedings have been indefinitely adjourned and most new cases are not being scheduled. Moreover, due to the specific nature of the pandemic and the shutdown of democratic processes and civic space, public forums, such as parliamentary committee hearings and public community meetings, that serve as human rights accountability and transparency mechanisms of a sort, are now also unavailable.

We are therefore calling on governments at all levels – federal, provincial, territorial and municipal – to **take urgent steps to enhance and strengthen human rights oversight** of their responses to the COVID-19 pandemic, including by:

- Ensuring that Indigenous knowledge-keepers, representatives of federal, provincial and territorial human rights commissions, representatives of relevant municipal human rights offices and language commissioners have or strengthen their **official advisory role** to special committees, emergency task forces, crisis response working groups and other bodies established by governments to coordinate their response to the COVID-19 pandemic.
- Immediately establishing or identifying **independent human rights oversight committees** made up of First Nations, Métis and Inuit representatives from both rural and remote Indigenous communities and urban centres, impacted communities, frontline service providers, human rights advocates, labour representatives, academics and other experts, with mandates to:
 - o Identify measures needed to strengthen human rights protection in COVID response strategies;
 - o Track human rights violations associated with COVID response measures, including through police enforcement;
 - o Highlight information and statistics, disaggregated by sex, gender, Indigenous identity, race, disability and other identities, that are needed to improve human rights protection;
 - o Ensure that governments apply intersectional gender-based analysis plus (GBA+) to all dimensions of their responses to the COVID crisis incorporating, *inter alia*, anti-racist, anti-ableist and anti-oppression frameworks;
 - o Encourage and draw upon community-based human rights monitoring and reporting of human rights violations associated with COVID-19;
 - o Make regular recommendations to governments; and
 - o Report publicly on a regular basis, through mechanisms to be determined by the Committee, once established.

Un appel pour une surveillance des droits humains dans les réponses gouvernementales à la pandémie de COVID-19

Le respect des droits humains demeure primordial en temps de crise. Les principes qui les sous-tendent apportent un cadre précieux pour guider les actions des gouvernements et fournissent les balises nécessaires pour empêcher d'éventuels abus. En temps de crise, le respect des droits humains devient particulièrement fragile – pour le moins ténu. Il en est ainsi peu importe la nature de la crise, que celle-ci soit due à des enjeux de sécurité nationale, à des catastrophes naturelles ou à une urgence de santé publique telle que la pandémie de COVID-19. Il s'agit donc d'un moment critique demandant une surveillance rigoureuse du respect des droits humains : afin d'encourager les divers paliers de gouvernements à adopter des mesures fortes destinées à renforcer l'exercice des droits humains et à se prémunir contre de possibles violations intentionnelles ou involontaires de ceux-ci.

Le droit international indique clairement quelles mesures les gouvernements doivent prendre pour assurer la protection des droits humains – qu'il s'agisse du droit à la vie, du droit à la santé, du droit à un logement convenable ou à des moyens de subsistance menacés en raison de la crise due à la COVID-19. Ils établissent des exigences claires en matière d'égalité entre les genres, de non-discrimination et de droits linguistiques, mettant en évidence la nécessité d'une action délibérée des gouvernements afin de protéger pleinement les droits des individus et des communautés marginalisées. Il permet de fixer les limites que les États ne peuvent franchir lorsqu'ils estiment nécessaire de restreindre certains droits pour faire face à la crise.

Cependant, le fait que les obligations imposées aux États en matière de droits humains soient claires ne garantit pas pour autant qu'elles seront respectées. Le risque de voir les gouvernements outrepasser leurs obligations est particulièrement préoccupant en ce qui concerne bon nombre de droits directement touchés par la pandémie de COVID-19, notamment ceux relatifs à la santé, au logement, à la nourriture et à l'eau potable. Malgré la reconnaissance internationale du principe d'interdépendance et d'indissociabilité des droits humains, il arrive que les différents paliers de gouvernement du Canada affirment que ces droits, tout comme les autres droits économiques, sociaux et culturels, ne devraient pas être soumis aux mêmes normes de mise en œuvre et de surveillance que les droits civils et politiques, laissant leur protection incertaine et entre les mains du politique.

Trop souvent, en temps de crise, les droits humains sont considérés par les gouvernements comme non pertinents voire inutiles, si ce n'est qu'ils soient carrément vus comme des obstacles à une réponse efficace. Et c'est ce qui se passe actuellement avec la crise sanitaire. Les gouvernements sont confrontés à d'énormes défis et doivent prendre des décisions rapidement. Les risques encourus pour la santé publique sont dramatiques et les retombées négatives sur l'économie se multiplient de façon exponentielle. Naturellement effrayés et confrontés à une surcharge d'information, la population est moins susceptible de questionner les gestes posés par les gouvernements et davantage encline à leur accorder une plus grande latitude, même lorsque les mesures mises de l'avant restreignent considérablement leurs droits.

Souvent sous-estimé est l'impact important et différent que ces mesures restrictives ont sur: les communautés des Premières Nations, des Métis et des Inuit, les personnes noires ou racisées (notamment dans ce cas-ci des personnes d'origine asiatique), les personnes âgées, les personnes handicapées, les femmes et les enfants vivant de la violence à la maison, les personnes réfugiées et migrantes, les personnes marginalisées en raison de leur sexe ou de leur identité ou orientation

sexuelles, les minorités linguistiques officielles, les personnes incarcérées, les travailleuses et travailleurs du sexe, les personnes sans-abri ou vivant dans des logements inadéquats, les personnes dépendantes aux drogues, les personnes dont l'emploi est précaire et toute autre personne ou communauté marginalisée.

En même temps, les mécanismes et les institutions existants jouant traditionnellement un rôle central dans la protection des droits humains - y compris les cours, les commissions et les tribunaux des droits de la personne - sont confrontés à des contraintes et à des limites importantes. Bien que certaines causes urgentes soient toujours entendues par vidéoconférence ou conférence téléphonique, de nombreuses procédures ont été ajournées indéfiniment et la plupart des nouveaux cas ne sont pas inscrits au calendrier. En outre, en raison de la nature spécifique de la pandémie et de l'arrêt des processus démocratiques, les espaces publics de délibération, tels que les comités parlementaires et les consultations publiques, servant habituellement de mécanismes assurant la responsabilité et la transparence en matière de droits humains, sont actuellement non fonctionnels.

Nous appelons donc les paliers de gouvernement - fédéral, provincial, territorial et municipal - **à prendre des mesures urgentes pour améliorer et renforcer la surveillance des droits humains** dans leurs réponses à la pandémie de COVID-19, notamment :

- En veillant à ce que les gardiens du savoir autochtones, les représentant.e.s des commissions fédérales, provinciales et territoriales des droits humains, les représentant.e.s des bureaux municipaux des droits humains concernés, et les commissaires aux langues officielles aient un **rôle consultatif officiel**, voire accru, auprès des comités spéciaux, des groupes de travail d'urgence, des groupes de travail d'intervention en cas de crise et d'autres instruments créés par les gouvernements afin de coordonner leur réponse à la pandémie de COVID-19.
- Établir ou identifier immédiatement des **comités indépendants de surveillance des droits humains** composés de représentant.e.s des Premières Nations, des Métis et des Inuit, des collectivités touchées, des fournisseurs de services de première ligne, des défenseur.e.s des droits humains, des travailleuses et des travailleurs, ainsi que des universitaires, avec pour mandat de :
 - o identifier les mesures nécessaires pour renforcer la protection des droits humains dans les stratégies de réponse à la pandémie ;
 - o surveiller les violations des droits humains associées aux mesures d'intervention prises pour contrer la COVID-19, y compris par le biais des forces de police ;
 - o rendre visible et disponible les informations et les statistiques, désagrégées par sexe et genre, selon l'identité autochtone, la race, le handicap s'il y a lieu ou toute autre caractéristique identitaire, nécessaires pour améliorer la protection des droits humains ;
 - o veiller à ce que les gouvernements appliquent une analyse comparative intersectionnelle entre les sexes à toutes les dimensions de leurs réponses à la crise de la COVID-19 intégrant, entre autres, des cadres antiracistes, anti-capacitisme et anti-oppression ;
 - o encourager et tirer parti d'une approche communautaire de veille des droits humains et du signalement des violations des droits associées à la COVID-19 ;
 - o faire des recommandations régulières aux gouvernements ;
 - o et faire rapport publiquement, sur une base régulière et par le biais de mécanismes à être déterminés par les Comités, une fois ceux-ci mis sur pied.

Endorsed by / Appuyé par :**ORGANIZATIONS**

Action Canada for Sexual Health and Rights

Alberta Prison Justice Society

Amnesty International Canada (English branch)

Amnistie internationale Canada francophone

Anglican Church of Canada

ARCH Disability Law Centre

Assemblée des Premières Nations Québec-Labrador (APNQL)

Association des juristes progressistes

Association pour la défense des droits du personnel domestique de maison et de ferme (ADDPD) /

Association for the Rights of Household Workers

Association québécoise des avocats et avocates en droit de l'immigration

Association québécoise des organismes de coopération internationale

Atira Women's Resource Society

Atlantic Human Rights Centre, St. Thomas University

Avocats sans frontières Canada

Black Legal Action Centre

British Columbia Civil Liberties Association

British Columbia Treaty Commission

Bureau international des droits des enfants / International Bureau for Children's Rights

Canada-Hong Kong Link

Canada Tibet Committee

Canada Without Poverty

Canadian Alliance for Sex Work Law Reform

Canadian Arab Federation

Canadian Association for Community Living

Canadian Association of Elizabeth Fry Societies

Canadian Association of Human Rights Institutes

Canadian Association of University Teachers
Canadian Centre for Victims of Torture
Canadian Civil Liberties Association
Canadian Coalition for the Rights of Children
Canadian Council for International Co-operation
Canadian Council for Refugees
Canadian Council of Muslim Women
Canadian Federation of Students - Fédération canadienne des étudiantes et étudiants
Canadian Feminist Alliance for International Action
Canadian Friends Service Committee (Quakers)
Canadian HIV/AIDS Legal Network (EN) - Réseau juridique canadien VIH/sida
Canadian Journalists for Free Expression
Canadian Muslim Lawyers Association
Canadian Office and Professional Employees' Union
Canadian Prison Law Association
Canadian Union of Public Employees
Canadian Voice of Women for Peace
Canadians for Justice and Peace in the Middle East
Centrale des syndicats du Québec
Centre for Free Expression, Ryerson University
Centre for Human Rights Research, University of Manitoba
Centre for Law and Democracy
Centre international de solidarité ouvrière
Centre Oblat – A Voice for Justice
Chinese and Southeast Asian Legal Clinic
Chinese Canadian National Council for Social Justice
Christian Peacemakers Teams - Canada
Citizens for Public Justice
Clinique de droit international pénal et humanitaire, Université Laval

Clinique internationale de défense des droits humains de l'UQAM, Université du Québec à Montréal
Colour of Poverty Colour of Change
Comité pour les droits humains en Amérique latine – Committee for Human Rights in Latin America
Community Legal Aid and Legal Assistance of Windsor
Conseil central du Montréal métropolitain-CSN
Conseil national des chômeurs et chômeuses
Council of Agencies Serving South Asians
Council of Canadians
Council of Canadians with Disabilities
Criminal Defence Advocacy Society
Dalhousie Legal Aid Service
David Suzuki Foundation - Fondation David Suzuki
Desmarais Desvignes Crespo s.e.n.c.r.l., étude légale
Disability Rights Coalition (Nova Scotia)
DisAbled Women's Network of Canada
East Coast Prison Justice Society
Egale Canada
The Equality Fund
Equitas
Evangelical Lutheran Church in Canada
Fédération autonome de l'enseignement
Fédération des femmes du Québec
Fédération interprofessionnelle de la santé du Québec
Federation of Black Canadians
Federation of Medical Women of Canada, WPS Committee
Federation of Sisters of St. Joseph of Canada
Femmes autochtones du Québec
First Nations Child and Family Caring Society
Friends of the Earth Canada

Front d'action populaire en réaménagement urbain
Gender and Women's Studies, Trent University
Grand Council of the Crees/Cree Nation Government
Greenpeace Canada
Human Rights Research and Education Centre, University of Ottawa
Indigenous Climate Action
Indigenous House of Bishops Leadership Circle of the Anglican Church of Canada
Indigenous Law Centre, University of Saskatchewan
Indigenous Ministries of the Anglican Church of Canada
Indigenous World Association
Institute for Canadian Citizenship
Interdisciplinary Research Laboratory on the Rights of the Child, University of Ottawa
International Civil Liberties Monitoring Group
Interagency Coalition on AIDS and Development
International Commission of Jurists, Canada
International Human Rights Program, University of Toronto
International Justice and Human Rights Clinic, Peter A. Allard School of Law, University of British Columbia
International Women's Rights Project
Inter Pares
Jack and Mae Nathanson Centre on Transnational Human Rights, Crime and Security, Osgoode Hall Law School, York University
Justice for Girls
KAIROS: Canadian Ecumenical Justice Initiatives
Landon Pearson Centre for the Study of Childhood and Children's Rights, Carleton University
Law, Disability & Social Change Project, University of Windsor
Lawyers' Rights Watch Canada
Ligue des droits et libertés
Ligue des droits et libertés – section Québec

Melançon Marceau Grenier et Sciortino, cabinet d'avocats en défense des conditions de travail des personnes salariées

Mennonite Central Committee Canada

Millennial Womxn in Policy

Montreal Institute for Genocide and Human Rights Studies, Concordia University

National Council of Canadian Muslims

Nobel Women's Initiative

Nonviolence International Canada

Ontario Council of Agencies Serving Immigrants

Oxfam Canada

Oxfam-Québec

Peace Brigades International – Canada

PEN Canada

Pivot Legal Society

Plan International Canada

Primate's World Relief and Development Fund

Prisoners' Legal Services

Project Ploughshares

Projet Accompagnement Québec-Guatemala

Public Service Alliance of Canada

Punjabi Community Health Services

Queen's Prison Law Clinic

Rainbow Faith and Freedom

Regroupement Naissances respectées

Rideau Institute

Sisters Trust Canada

Social Rights Advocacy Centre

South Asian Legal Clinic of Ontario

Table de concertation au service des personnes réfugiées et immigrantes

Tides Canada

Toronto Association for Democracy in China

UNICEF Canada

Unifor

Union of BC Indian Chiefs

United Nations Decade for People of African Descent Push Coalition

United Steelworkers Canada

Urban Alliance on Race Relations

Urban Native Youth Association

Uyghur Refugee Relief Fund

Uyghur Rights Advocacy Project

West Coast LEAF

WISH Drop-In Centre Society

Women's Wellness Within

World Federalist Movement – Canada

World Sikh Organization (Canada)

YWCA Canada

613/819 Black Hub

INDIVIDUALS

Laurie E. Adkin, Professor, Comparative Politics and Environmental Studies Program, Department of Political Science, University of Alberta

Melanie Adrian, Associate Professor of Law, Carleton University

Sharry Aiken, Associate Professor, Faculty of Law, Queens University

Payam Akhavan, Professor, Faculty of Law, McGill University

Kjell Anderson, Assistant Professor, Faculty of Law, University of Manitoba

Nora Angeles, Associate Professor, School of Community and Regional Planning, University of British Columbia

Kirsten Anker, Professor, Faculty of Law, McGill University

Honourable Lloyd Axworthy, Former Minister of Foreign Affairs, Chair of World Refugee Council

Reem Bahdi, Associate Professor, Faculty of Law, University of Windsor

Natasha Bakht, Full Professor, Faculty of Law, University of Ottawa

Fayyaz Baqir, Visiting Professor, School of International Development and Global Studies, University of Ottawa

Gerry Barr CM, Past President- CEO, Canadian Council for International Cooperation

Emmanuelle Bernheim, Professeure, Département des sciences juridiques, Université du Québec à Montréal

Faisal Bhabha, Associate Professor, Osgoode Hall Law School, York University

Adelle Blackett, Professor of Law & Canada Research Chair in Transnational Labour Law and Development, McGill University

Raphaëlle Blard, chargée de projets, éducation et médiation, Musée des maîtres et artisans du Québec

Peter Boothroyd, Professor Emeritus, School of Community & Regional Planning, University of British Columbia

Susan Breau, Dean, Faculty of Law, University of Victoria

Ed Broadbent, Former Leader of the New Democratic Party of Canada and Former President of Rights & Democracy

Bruce Broomhall, Professeur, Département des sciences juridiques, Université du Québec à Montréal

Ruth Buchanan, Professor, Osgoode Hall Law School, York University

Katherine Bullock, Lecturer, Department of Political Science, University of Toronto Mississauga

Karen Busby, Professor, Faculty of Law, University of Manitoba

Doris Buss, Professor of Law and Legal Studies, Carleton University

Michael Byers, Professor & Canada Research Chair in Global Politics and International Law, University of British Columbia

Vince Calderhead, Counsel, Pink Larkin

Camille Cameron, Dean and Weldon Professor of Law, Schulich School of Law, Dalhousie University

Katy Campbell, Dean Emeritus, Faculty of Extension, University of Alberta

Luisa Canuto, Instructor, Department of French, Hispanic, & Italian Studies, University of British Columbia

May Chazan, Canada Research Chair in Gender and Feminist Studies, Trent University

Sally Chivers, Professor, English and Gender & Women's Studies, Trent University

François Crépeau, Professor of International Law, McGill University

Robert J. Currie, Professor, Schulich School of Law, Dalhousie University

Alexandre Da Costa, Associate Professor, Department of Educational Policy Studies, University of Alberta

Amanda Dale, Human rights activist and scholar, Ottawa

Stéphanie Demers, Professeure, Département des sciences de l'éducation, Université du Québec en Outaouais

Nathalie Des Rosiers, Principal of Massey College at the University of Toronto, Former Dean of Law at University of Ottawa (Common law and Civil Law), Former General Counsel of the Canadian Civil Liberties Association, Former President of the Law Commission of Canada, Former MPP (Ottawa-Vanier) & Minister of Natural Resources and Forestry

Karen Drake, Associate Professor, Osgoode Hall Law School, York University

Bernard Duhaime, professeur expert en droits humains et sur le système des Nations unies, Université du Québec à Montréal

Pearl Eliadis, Adjunct Professor, Faculty of Law, McGill University

Mohamad Fakh, CEO & President, Paramount Fine Foods, Chairman of Fakh Foundation

Bernie M. Farber, Chair, Canadian Anti-Hate Network

Leilani Farha, United Nations Special Rapporteur on the Right to Adequate Housing

Karine Gentelet, Professeure agrégée et Directrice du CIERA-UQO, Université du Québec en Outaouais.

Christine Gervais, Associate Professor, Department of Criminology, University of Ottawa

Sara Ghebremusse, Assistant Professor, Peter A. Allard School of Law, University of British Columbia

Philip Girard, Professor, Osgoode Hall Law School, York University

Cynthia Glidden-Tracey, Instructor, Faculty of Education, University of British Columbia

Kasari Govender, British Columbia's Human Rights Commissioner

Vanessa Gruben, Associate Professor, Faculty of Law, University of Ottawa

Lucie Guibault, Associate Dean, Schulich School of Law, Dalhousie University.

Dipti Gupta, Professor, Department of Cinema-Communications, Dawson College

Penny Gurstein, Professor, School of Community & Regional Planning, University of British Columbia

Jaswant Guzder, Professor, Department of Psychiatry, McGill University

Tanya Handa, Professeure, Département des sciences biologique, Université du Québec à Montréal

Lorian Hardcastle, Assistant Professor, Faculty of Law and Cumming School of Medicine, University of Calgary

Tom Hutton, Professor, The Centre for Human Settlements and School of Community & Regional Planning, University of British Columbia

Adelina Iftene, Assistant Professor, Schulich School of Law, Dalhousie University

Beverly Jacobs, Associate Professor, Faculty of Law, University of Windsor

Laverne Jacobs, Associate Professor, Faculty of Law, University of Windsor

Sébastien Jodoin, Assistant Professor, Canada Research Chair in Human Rights and the Environment, Faculty of Law, McGill University

Am Johal, Director, Office of Community Engagement, Simon Fraser University

Rev. Susan C. Johnson, National Bishop, Evangelical Lutheran Church in Canada

Ellen R. Judd, Distinguished Professor and Professor of Anthropology, University of Manitoba

Jasminka Kalajdzic, Associate Professor, Faculty of Law, University of Windsor

Asha Kaushal, Assistant Professor, Peter A. Allard School of Law, University of British Columbia

F. Tim Knight, Associate Librarian, Osgoode Hall Law School, York University

Jennifer Koshan, Professor, Faculty of Law, University of Calgary

Faisal Kutty, Adjunct Professor, Osgoode Hall Law School, York University, and Assistant Professor of Law, Barry University School of Law

Fannie Lafontaine, Professeure, Faculté de droit, Université Laval, titulaire de la Chaire de recherche du Canada sur la justice internationale pénale et les droits fondamentaux

Louis-Philippe Lampron, Professeur titulaire, Faculté de droit, Université Laval

François Larocque, Professor and Canadian Francophonie Research Chair in Language Rights, Faculty of Law, University of Ottawa

Jodi Lazare, Assistant Professor, Schulich School of Law, Dalhousie University

Anne Levesque, Professeure adjointe, Programme de common law en français, Faculté de droit, Section de common law, Université d'Ottawa

Sheryl Lightfoot, Canada Research Chair of Global Indigenous Rights and Politics, University of British Columbia

Josh Liswood, Chair of the International Board, Plan International

Michael Lynk, Associate Professor, Faculty of Law, Western University

Mark MacDonald, National Indigenous Anglican Archbishop

Julie Macfarlane CM, Distinguished University Professor and Professor of Law, Faculty of Law, University of Windsor

Constance MacIntosh, Viscount Bennett Professor of Law, Associate Professor, Schulich School of Law
Dalhousie University

Wayne MacKay, Professor Emeritus of Law, Schulich School of Law, Dalhousie University

Audrey Macklin, Professor and Chair in Human Rights Law, Faculty of Law, University of Toronto

Kelly McGuire, Associate Professor and Chair, Gender & Women's Studies, Trent University

Heidi Matthews, Assistant Professor, Osgoode Hall Law School, York University

Ingrid Mattson, London and Windsor Community Chair in Islamic Studies, Huron UC at Western
University

Karel Mayrand, Directeur général - Québec et Atlantique, Fondation David Suzuki

Tim McDaniels, Professor Emeritus, School of Community and Regional Planning, University of British
Columbia

Frédéric Mégret, Professor, Faculty of Law, McGill University

Errol Mendes, Professor, Faculty of Law, University of Ottawa

Naiomi W. Metallic, Chancellor's Chair in Aboriginal Law and Policy, Assistant Professor, Schulich School
of Law, Dalhousie University

Karen R. Mock, C.M., President, JSpaceCanada

Sarah Morales, Associate Professor, Faculty of Law University of Victoria

Janet Mosher, Associate Professor, Osgoode Hall Law School, York University

Roxanne Mykitiuk, Professor, Director of Disability Law Intensive Program, Osgoode Hall Law School,
York University

Baljit Nagra, Assistant Professor, Department of Criminology, University of Ottawa

Shaheen Nanji, Director, Global Engagement, SFU International, Simon Fraser University

Jennifer Nedelsky, Professor of Law, Osgoode Hall Law School, York University

The Most Rev. Linda Nicholls, Archbishop and Primate, Anglican Church of Canada

Ken Norman, Emeritus Professor of Law, Faculty of Law, University of Saskatchewan

Obiora Okafor, Professor of Law, Osgoode Hall Law School, York University

John Packer, Associate Professor, Faculty of Law, University of Ottawa

Pamela Palmater, Professor and Chair in Indigenous Governance, Ryerson University

Mona Paré, Professeure agrégée, Faculté de droit, Section de droit civil, Université d'Ottawa

Debra Parkes, Professor and Chair in Feminist Legal Studies, Peter A. Allard School of Law, University of British Columbia

Imam Dr. Abdul Hai Patel, Former Ontario Human Rights Commissioner

Carla L. Peck, Professor, Department of Elementary Education, University of Alberta

Danielle Peers, Assistant Professor, Faculty of Kinesiology, Sport and Recreation, University of Alberta

David Petrusek, Associate Professor, Graduate School of Public and International Affairs, University of Ottawa

Sukanya Pillay, Visiting Professor and Law Foundation of Ontario Scholar, Faculty of Law, University of Windsor

Paula Pryce, Postdoctoral Fellow, Department of Anthropology, University of British Columbia

Nandini Ramanujam, Associate Professor Faculty of Law, McGill University

Bill Rees, Professor Emeritus, School of Community and Regional Planning, University of British Columbia

Sean Rehaag, Director, Centre for Refugee Studies and Associate Professor, Osgoode Hall Law School, York University

Graham Reynolds, Associate Professor, Peter A. Allard School of Law, University of British Columbia

Honourable Allan Rock, former Minister of Justice, Minister of Health, Ambassador to the United Nations and President Emeritus, University of Ottawa

Jillian Rogin, Assistant Professor, Windsor Law, University of Windsor

Sophie Rondeau, avocate, doctorante, Université Laval / Université de Genève

Audrey Rousseau, Professeure de sociologie, Département des sciences, Université du Québec en Outaouais

Robert Russo, Peter A. Allard School of Law, University of British Columbia

Carolyn Sale, Associate Professor, Department of English & Film Studies, University of Alberta

François Xavier Saluden, Chargé de cours, droits de la personne, droit international, droit de l'eau, Université de Montréal, Université du Québec à Montréal, Université Laval

Craig Scott, Professor of Law, Osgoode Hall Law School, York University

Sara Seck, Associate Professor, Schulich School of Law, Dalhousie University

Maged Senbel, Associate Professor, School of Community and Regional Planning, University of British Columbia

Léa Serier, Collaboratrice Groupe de travail sur les disparitions forcées ou involontaires, ONU, Auxiliaire de recherche au sein du laboratoire S'Ouvrir Aux Amériques (SOAA) pour mieux défendre les droits humains, Université du Québec à Montréal

Tess Sheldon, Assistant Professor, Faculty of Law, University of Windsor

Penelope Simons, Associate Professor, Faculty of Law, University of Ottawa

Anneke Smit, Associate Professor, Faculty of Law, University of Windsor

Makere Stewart-Harawira, Professor, Faculty of Education, University of Alberta

Christina Szurlej, Associate Professor, Department of Human Rights, St. Thomas University

François Tanguay-Renaud, Professor, Osgoode Hall Law School, York University

Andrew S. Thompson, Centre for International Governance Innovation Senior Fellow and Adjunct Assistant Professor, Political Science, University of Waterloo

The Ven. Michael Thompson, General Secretary of the Anglican Church of Canada

Mirja Trilsch, Professeure, Département des sciences juridiques, Faculté de science politique et de droit, Université du Québec à Montréal

Eric Tucker, Professor, Osgoode Hall Law School, York University

Daniel Turp, professeur titulaire à la Faculté de droit de l'Université de Montréal

Alain Vallières, Membre de l'Institut international des droits de l'homme (Strasbourg), et membre du comité sur l'Immigration du Barreau du Québec

Mark Vardy, Postdoctoral Fellow, Faculty of Environment, Simon Fraser University

Mark Vessey, Professor of English Literature and Principal of Green College, University of British Columbia

Christine Vézina, Professeure agrégée, Faculté de droit, Université Laval

June Webber, Former Vice President, St Francis Xavier University and Director of the Coady International Institute

Sheila Wildeman, Associate Professor, Schulich School of Law, Dalhousie University

Stepan Wood, Professor and Canada Research Chair, Peter A. Allard School of Law, University of British Columbia

Margot Young, Professor, Peter A. Allard School of Law, University of British Columbia

This is **Exhibit "J"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large initial 'C' followed by a series of loops and a long horizontal stroke extending to the right.

A Commissioner, etc.



Canadian Prison Law Association

April 17, 2020

#200, 10209-97 Street
Edmonton, AB T5J 0L6
Tele: 780 448-3639
Fax: 780 448-4924
Email: tomengel@engellaw.ca

Federal, Provincial and Territorial
Ministers of Justice and Correctional Services
and
Federal, Provincial and Territorial chief medical and public health officers

Dear Ministers and Doctors,

RE: Immediate Measures to Reduce the Detention of Persons with Disabilities during COVID-19 Pandemic

It is with urgency that I write to you as the President of the Canadian Prison Law Association (CPLA). The CPLA is an organization of lawyers across Canada, both practicing and academic, who work to protect and promote the rights, interests and privileges of prisoners. We advocate on behalf of prisoners within the community and in their dealings with prison and release authorities, and by making representations to legislative and other government bodies.

The CLPA is deeply concerned about the disproportionate effect that COVID-19 has had and will continue to have on excluded and marginalized communities, including prisoners with mental health disabilities or intellectual disabilities, as well as institutionalized persons with mental health or intellectual disabilities.

Thus far our advocacy has been focused on the urgent objective of depopulating federal and provincial correctional facilities as a means of mitigating the COVID-19 threat. As acknowledged by infectious disease specialists and a growing array of government and non-government actors, prisons and jails are highly susceptible to COVID-19 spread, given the impossibility of social distancing and the difficulty of ensuring public health standards of cleanliness and hygiene. This jeopardizes the lives and health of prisoners while undermining public health efforts to reduce the impact and duration of the epidemic.

We continue to urge federal and provincial/territorial authorities to immediately adopt measures of preventive decarceration, and otherwise to do all that is in their power to mitigate the risks of contagion already manifesting in a growing list of Canada's prisons and jails.

We are writing now to express our concern for other incarcerated populations in Canada; specifically, persons with disabilities, including intellectual and mental health disabilities, who are forced to live in crowded, confined spaces where social distancing is similarly impossible and access to healthcare is often poor. Detention of persons with mental health, intellectual or other

disabilities during the pandemic magnifies pre-existing concerns about government's failure to support community inclusion of persons with disabilities, while posing unacceptable risks to their lives and health.

The correctional response to COVID in prisons is likely to be to place infected prisoners in solitary confinement, where prisoners with mental health disabilities are already over-represented. Moreover, preventative measures in the wider prison population are likely to include prolonged, indeterminate in-cell lockdown, arguably comparable to solitary confinement. Such measures pose disproportionate risks to prisoners with mental health disabilities, who are most vulnerable to experiencing profound, potentially permanent physical and psychological damage from any time in solitary confinement. For these reasons, prisoners with mental health disabilities must be among those who are prioritized for preventative decarceration.

Further, persons with mental health disabilities who are incarcerated in forensic hospitals or in civil psychiatric detention, and those living in long-term congregate residential facilities, are similarly vulnerable. Beyond the structural challenges of generalized social distancing, such institutions present residents with the threat of extraordinary forms of isolation such as in-room or seclusion-room lockdown. Moreover, persons detained in psychiatric facilities or institutionalized as a response to intellectual or other disabilities are disproportionately likely to have underlying health conditions that make them vulnerable to the worst effects of COVID-19.

The CLPA calls on all levels of government to develop a coordinated and equitable plan to support the health and human rights of persons with mental health disabilities institutionalized in correctional facilities, forensic hospitals and in civil psychiatric detention, as well as persons with intellectual and other disabilities forced to live in congregate living settings that heighten their risk of exposure to COVID-19. We urge government to adopt a public health response to the special circumstances of institutionalized populations during the COVID-19 crisis, rather than a security-driven approach.

The CPLA has argued that a range of existing legal tools be employed to enable prisoners to move back into their communities, including expedited bail hearings and conditional release in the provincial context, and parole by exception and other means of expediting parole in the federal context. Similarly, a range of legal mechanisms may be employed to mitigate the disproportionate impact of COVID-19 on persons with mental health disabilities or intellectual disabilities detained in other custodial sites, including the civil and forensic psychiatric systems.

All provinces and territories permit involuntary psychiatric detention if a person is determined to have a mental disorder that would likely result in serious bodily harm to another person or to themselves, or serious physical impairment of the person. In some provinces, a person can be detained in additional circumstances, including where the person is found incapable in respect of psychiatric treatment and "is likely to suffer substantial mental or physical deterioration or serious physical impairment" unless held involuntarily in hospital. The risks presented by COVID-19 are likely to reset the balance of considerations weighing for and against preventive detention in many cases. The CLPA therefore calls on governments to expedite and hold by video-link, review of involuntary detentions, while ensuring that privacy and procedural protections are accorded.

Separately, forensic psychiatric detention of persons found "not criminally responsible on account of mental disorder" ("NCR") under Part XX.1 of the Criminal Code should require a reappraisal of risk factors in the time of COVID-19. At a disposition hearing, a person deemed NCR is given

one of three orders: absolute discharge, conditional discharge or a detention order. In selecting among these orders, a Review Board may consider the dangers posed to individual and public health and safety by the congregate living conditions of forensic hospital settings. Moreover, even where a detention order is made, this can include permission to live in the community in accommodations and on conditions approved by hospital authorities.

The CLPA urges provincial and territorial Criminal Code Review Boards, obliged to advance public safety in a manner that respects the community reintegration and other needs of the accused, as well as provincial and territorial health authorities responsible for facilitating individual recovery and community reintegration, to do all that is in their power to facilitate suitable community placements where NCR individuals will be less vulnerable to contracting and spreading the virus. We note that some forensic mental health patients continue to be detained in psychiatric facilities despite having been granted conditional release, simply because provincial and territorial governments have failed to identify or fund suitable community placements. Some have been detained in this situation for years. This ongoing insult to liberty rights is now additionally a failure on government's part to protect those detained from contracting and becoming unwilling vectors of COVID-19.

The CLPA calls on Canada's Chief Public Health Officer and her provincial and territorial counterparts to undertake a dedicated review of access to housing and other community services and supports for consumers & survivors of the psychiatric system, in what promises to be a prolonged period of emergency COVID-19 risk mitigation. Moreover, we urge all levels of government to fund, on an emergency basis, supportive housing for psychiatric detainees and institutionalized persons who lack safe homes to return to in community. This may include provincial and municipal action to repurpose hotels, schools and other spaces otherwise standing empty.

Dedicated funding must also support municipalities and social service providers such as shelters, food banks, emergency services, charities and non-profits to continue to deliver their critical services, hire additional, experienced staff, and find ways to promote social distancing and self-isolation to keep clients safe and healthy. Finally, the CLPA echoes calls to expand access to safer opioid prescribing programs, overdose prevention sites, and making witnessed injection and harm reduction support available at quarantine facilities.

In sum, CLPA urges all levels of government to adopt public health responses to the COVID-19 crisis rather than a correctional or security-driven approach. In particular, we call on you to ensure that persons with mental health and intellectual disabilities are not disproportionately exposed to the worst effects of this epidemic through rigid policies of incarceration and institutionalization. We suggest that COVID magnifies concerns which pre-existed the pandemic: those who are most vulnerable to social and economic marginalization and the ill-health that follows need support, not confinement.

We look forward to your timely response.

Sincerely,

A handwritten signature in black ink that reads "Tom Engel". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

Tom Engel
President, Canadian Prison Law Association

This is **Exhibit "K"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a long horizontal stroke extending to the right.

A Commissioner, etc.

April 17, 2020

Dear Mr. Engel,

Thank you for your correspondence of March 24, 2020.

The Correctional Service of Canada (CSC) is committed to protecting the safety and health of staff, inmates, and the public during these unprecedented times. CSC employees, especially those who are working in our institutions, on the frontline, and in communities supervising offenders are working tirelessly day in and day out to keep our operations going under exceptional circumstances.

To prevent the spread of COVID-19 in our institutions, CSC has suspended visits from the public and volunteers, as well as all temporary absences, unless medically necessary, work releases, and non-emergency transfers of inmates.

Understanding the impact these measures have on the inmate population, CSC has temporarily waived the food, accommodation and telephone deductions, and maintained the inmates' level of pay. We recognize that family contact is essential, especially in these challenging times. As such, we have added additional minutes to the inmates' phone card and have seen an increase in the number of telephone calls and video-visitation. We will continue to monitor these measures as the situation unfolds.

To protect our employees, CSC ensures ongoing prevention education and awareness and active screening of all critical staff entering the institutions. Staff must adhere to all health and safety directions provided, including but not limited to active screening, hand washing before entering the site, physical distancing, cleaning of common areas and equipment, and following public health's advice when off-duty. In addition, institutional routines and rosters have been modified to prevent and minimize the spread of the virus within the institution.

CSC has also equipped its correctional staff with the required Personal Protective Equipment, including masks. CSC has enhanced its cleaning protocols, including disinfecting common areas of contact. When an employee tests positive, CSC works with the local public health authorities to implement a number of measures, such as contact tracing, ensuring self-isolation, testing others as needed, and disinfecting the site. Finally, CSC has implemented its own tracing capability and is working collaboratively with the Public Health Agency of Canada.

To protect inmates, CSC is self-isolating inmates being transferred to federal custody from the province for 14 days, providing them with soap and hand sanitizer, keeping them informed through regular communiques, and working with inmates to review existing treatment plans with a focus on older offenders and those with serious underlying health conditions. CSC has protocols in place when an inmate tests positive for COVID-19, such as placement in medical isolation in his or her cell or room. Where required, CSC is providing masks to inmates. Finally, CSC is also equipped with low oxygen flow equipment to treat milder cases and has established clear protocols and procedures with local hospitals should inmates need to be transferred to those facilities for treatment.

As we move forward, CSC is continuing to actively monitor, plan and engage with health authorities on further precautions we can take to prevent the spread of COVID-19 in our institutions and communities

to minimize the risks for the public, employees and inmates. We remain in contact with local public health departments across the country so we can stay up-to-date on issues, solutions and best practices. CSC staff and inmates are identified as priority one for testing, and like all other Canadians, we are tested by local public health authorities.

In regards to the release of offenders, the *Criminal Code of Canada* and the *Corrections and Conditional Release Act* (CCRA) are the legislative frameworks that govern both the eligibility dates of federally sentenced inmates and the requirements for release consideration. CSC has worked collaboratively with the Parole Board of Canada (PBC) to streamline the case management process and is actively reviewing cases of inmates whose risk can be safely managed in the community for presentation to the PBC. As noted by the PBC on their [website](#), they will consider the offender's health or health risk posed by the COVID-19 pandemic, if relevant as part of the risk assessment, along with all other information on file.

In addition, CSC is in regular contact with its community partners, including Community Residential Facilities (CRF), to ensure we work together to address any challenges presented by the current situation. Community Residential Facilities continue to follow public health guidance and we are working to ensure they have the proper supports and resources during this time. CSC is also looking at all options in order to ensure that we are not creating undue accommodation pressures on our CRF partners. CSC is working with the PBC to ease the pressure on the CRFs during the pandemic, by recommending a change to the residency requirement from a CRF to a home or family environment, where such a placement is risk appropriate.

Please rest assured that CSC takes its mandate very seriously and understands that there is no greater responsibility than having the care and custody of other human beings.

Finally, please note that updates on CSC's response to COVID-19 are posted on our [website](#).

Hoping you are staying safe and healthy.

Anne

Anne Kelly
Commissioner / Commissaire
Correctional Service Canada / Service correctionnel du Canada
340 Laurier Ave. West
Ottawa, ON
K1A 0P9
Email / Courriel : AnneKellyCommissioner@csc-scc.gc.ca
Government of Canada / Gouvernement du Canada

This is **Exhibit "L"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

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A Commissioner, etc.



Canadian Prison Law Association

April 22, 2020

#200, 10209-97 Street
Edmonton, AB T5J 0L6
Tele: 780 448-3639
Fax: 780 448-4924
Email: tomengel@engellaw.ca

The Honourable Bill Blair
Minister of Public Safety
House of Commons
Ottawa, Canada
K1A 0A6
Bill.Blair@parl.gc.ca

Dear Mr Blair,

Re: COVID-19 CSC and Ministerial Transparency and Reliability and Prisoner Freedom of Speech

I am writing on behalf of the Canadian Prison Law Association on these very important related issues.

On April 18, 2020 you participated in a Zoom sort of town hall hosted by a Liberal MP (<https://gofile.io/?c=JhoSzN>) which we understand was posted on the MP's Facebook page. We have the following questions, requests and comments about some of what you said regarding Covid-19 measures being taken in Federal prisons which were in response to this question from a participant: "There are some reports of Covid-19 in some federal prisons. One prisoner has been reported to have died. What is our plan to ensure the safety of staff and prisoners?":

1. "It is very easy for the provinces to reduce prison populations and we've been working really closely with them to do that."

We have not previously heard about this. Please inform us about this work.

2. "CSC total population is about 14,000 prisoners. More than 1/2 can't be released because they have committed various serious violent offences. Almost one-third are serving life sentences. In the last month 600 prisoners have been released because they were identified as being eligible for release."

In the context of the question, the meaning of this is the release of all 600 prisoners was due to Covid-19 factors. That is not true. The truth is that every month about 600 are admitted or readmitted in penitentiaries, and about 600 are released. The 600 are within the normal flow of releases - not above normal releases. CSC cannot give any actual number of Covid-19 specific releases. Only a handful of cases thus far were releases related to Covid-19. The inmate population is still stable at about 14,000.

Since the Zoom interview you and your office have provided different answers on this issue, as reported here: <https://www.cbc.ca/news/politics/prison-covid19-blair-zinger-1.5540304>.

We ask that you immediately respond to the following requests:

- a) Advise whether the meaning of your response was as you intended.*
 - b) If it was, retract the statement and explain why it was made.*
 - c) If it was not, clarify the statement so that it means what you intended.*
 - d) Provide Canadians with the truth on the issue of the number of Covid-19 specific releases.*
 - e) What about the other six thousand or so prisoners? What is being done about releasing them?*
3. "Every single prisoner is being issued with PPE."

Does this mean that has happened or will happen? If you mean it has already happened, that is contrary to reports we are receiving, so please explain the source of your information.

4. "Unfortunately, there have been outbreaks in two or three of their [CSC] institutions, but we are able to socially isolate those prisoners and they are given medical support and PPEs are available to them."

How are they socially isolated, what medical supports are they getting and what kind of PPEs are they getting?

We are also concerned that you would agree to be interviewed in that forum but, according to our information, you are generally unavailable to the media on this issue. It was only because a journalist became aware of this Zoom interview posted on Facebook that the public and the CPLA became aware. Will you make yourself available to be questioned by the media?

A related issue is that prisoners are being denied their *Charter* s. 2(b) and (d) rights to freedom of speech and association by an unconstitutional Commissioner's Directive (<https://www.csc-scc.gc.ca/politiques-et-lois/022-cd-eng.shtml>). I refer to these CBC publications: <https://www.cbc.ca/news/canada/edmonton/edmonton-institution-inmate-punished-for-speaking-to-media-about-covid-19-lawyer-says-1.5522166> and

<https://www.cbc.ca/news/canada/edmonton/punishment-reversed-for-edmonton-institution-inmate-who-spoke-to-media-1.5533459>. We ask that you direct the Commissioner to immediately repeal this CD. So far as we are aware, no other jurisdiction in Canada restricts prisoners' rights in this way. We remind you that prisoners only give up those civil rights that are necessary due to imprisonment. This is not one of them.

Please respond by April 24, 2020.

Sincerely,

A handwritten signature in black ink that reads "Tom Engel". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tom Engel
President, Canadian Prison Law Association

c. CSC Commissioner Anne Kelly
Media

This is **Exhibit “M”** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large initial 'C' followed by a series of loops and a long horizontal stroke ending in a small arrowhead.

A Commissioner, etc.

From: Tom Engel

Sent: April 23, 2020 12:34 PM

To: 'drtheresa.tam@canada.ca' <drtheresa.tam@canada.ca>; 'Horacio.arruda@msss.gouv.qc.ca' <Horacio.arruda@msss.gouv.qc.ca>; 'janicefitzgerald@gov.nl.ca' <janicefitzgerald@gov.nl.ca>; 'Robert.Strang@novascotia.ca' <Robert.Strang@novascotia.ca>; 'hgmorrison@gov.pe.ca' <hgmorrison@gov.pe.ca>; 'jennifer.russell@gnb.ca' <jennifer.russell@gnb.ca>; 'dr.david.williams@ontario.ca' <dr.david.williams@ontario.ca>; 'Brent.Roussin@gov.mb.ca' <Brent.Roussin@gov.mb.ca>; 'COVID19@health.gov.sk.ca' <COVID19@health.gov.sk.ca>; 'Deena.Hinshaw@gov.ab.ca' <Deena.Hinshaw@gov.ab.ca>; 'bonnie.henry@gov.bc.ca' <bonnie.henry@gov.bc.ca>; 'Brendan.Hanley@gov.yk.ca' <Brendan.Hanley@gov.yk.ca>; 'kami_kandola@gov.nt.ca' <kami_kandola@gov.nt.ca>; 'MPatterson@gov.nu.ca' <MPatterson@gov.nu.ca>; 'David.Lametti@parl.gc.ca' <David.Lametti@parl.gc.ca>; 'Bill.Blair@parl.gc.ca' <Bill.Blair@parl.gc.ca>; 'justice@gov.nl.ca' <justice@gov.nl.ca>; 'DeptJPS@gov.pe.ca' <DeptJPS@gov.pe.ca>; 'Carl.Urquhart@gnb.ca' <Carl.Urquhart@gnb.ca>; 'markfurey.mla@eastlink.ca' <markfurey.mla@eastlink.ca>; 'Genevieve.Guilbault.LOHE@assnat.qc.ca' <Genevieve.Guilbault.LOHE@assnat.qc.ca>; 'Sonia.LeBel.CHMP@assnat.qc.ca' <Sonia.LeBel.CHMP@assnat.qc.ca>; 'doug.downey@pc.ola.org' <doug.downey@pc.ola.org>; 'sylvia.jones@pc.ola.org' <sylvia.jones@pc.ola.org>; 'minjus@leg.gov.mb.ca' <minjus@leg.gov.mb.ca>; 'christine.tell@gov.sk.ca' <christine.tell@gov.sk.ca>; 'jus.minister@gov.sk.ca' <jus.minister@gov.sk.ca>; 'Calgary.Elbow@assembly.ab.ca' <Calgary.Elbow@assembly.ab.ca>; 'AG.Minister@gov.bc.ca' <AG.Minister@gov.bc.ca>; 'PSSG.Minister@gov.bc.ca' <PSSG.Minister@gov.bc.ca>; 'Tracy.McPhee@gov.yk.ca' <Tracy.McPhee@gov.yk.ca>; 'Caroline_wawzonek@gov.nt.ca' <Caroline_wawzonek@gov.nt.ca>; 'jehaloak@gov.nu.ca' <jehaloak@gov.nu.ca>

Cc: canadianpla@googlegroups.com; '630 Ched' <chednews@630ched.com>; 'APTN' <news@aptn.ca>; 'Bob Weber CP' <Bob.Weber@TheCanadianPress.com>; 'Canadian Press Edmonton' <edmonton@thecanadianpress.com>; 'CHARLES RUSNELL' <CHARLES.RUSNELL@cbc.ca>; 'Chris Purdy' <chris.purdy@thecanadianpress.com>; 'City TV #2' <newsdesk@citytv.com>; 'CTV' <cfrnnewsassignment@ctv.ca>; 'David Ewasuk' <David.Ewasuk@ctv.ca>; 'Edmonton Sun' <edm-citydesk@sunmedia.ca>; 'Edmonton Sun City Editor' <nicole.bergot@sunmedia.ca>; 'Globe and Mail' <sstewart@globeandmail.com>; 'Janice Johnston' <Janice.Johnston@CBC.CA>; 'Jesse McLean' <jmclean@thestar.ca>; 'John Cotter CP' <john.cotter@thecanadianpress.com>; 'Kelsey Dyer' <Kelsey.Dyer@ctv.ca>; 'Pamela Roth' <pamela.roth@sunmedia.ca>; 'APTN' <info@aptn.ca>; 'Bill Kaufmann' <BKaufmann@postmedia.com>; 'Chelan Skulski' <Chelan.Skulski@bellmedia.ca>; 'claire.theobald@metronews.ca' <claire.theobald@metronews.ca>; 'Emma McIntosh' <emma@observermediagroup.com>; 'JENNIE.RUSSELL@CBC.CA' <JENNIE.RUSSELL@CBC.CA>; 'John Murray' <jmurray@aptn.ca>; 'Justin Ling' <justinrling@gmail.com>; 'Kathy Le' <kathy.le@bellmedia.ca>; 'Krugel, Lauren' <Lauren.Krugel@thecanadianpress.com>; 'Lost Time Media (info@losttimemedia.com)' <info@losttimemedia.com>; 'Meghan Grant' <meghan.grant@cbc.ca>; 'Paul McLeod' <paul.mcleod@buzzfeed.com>; 'Rachel Ward' <rachel.ward@cbc.ca>; 'Scott Fralick' <scott.fralick@citytv.rogers.com>; 'SFine@globeandmail.com' <SFine@globeandmail.com>; 'Tara Bradbury' <tara.bradbury@thetelegram.com>; 'Wakefield, Jonny' <jwakefield@postmedia.com>; 'appel.jeremy@gmail.com' <appel.jeremy@gmail.com>

Subject: April 2 and 17 2020 Letters from Canadian Prison Law Association - Prisons and COVID-19 Pandemic

Importance: High

Dear Doctors and Ministers,

The CPLA wrote to you on April 2 and 17, 2020 and we have yet to receive any meaningful reply.

I am situated in Alberta and these are the auto-replies we got from the Alberta CMOH, Dr Hinshaw:

From: Deena Hinshaw <Deena.Hinshaw@gov.ab.ca>
Sent: April 2, 2020 11:39 AM
To: Tom Engel <tomengel@engellaw.ca>
Subject: Automatic reply: Urgent Letter from Canadian Prison Law Association - Covid19 Pandemic - Prisons

Thank you for your email regarding novel coronavirus (COVID-19). Alberta's public health experts are working tirelessly to monitor the outbreak and ensure that we are doing everything possible to protect the health of Albertans.

We are receiving a high volume of correspondence. As such, you may not receive a personal response to your email. Please be assured that the team at Alberta Health is reading all incoming emails and will seek to address issues and concerns on our dedicated website at www.alberta.ca/COVID. You are encouraged to visit this site regularly for the most up to date information.

Public health measures are in place to identify potential cases of COVID-19 and prevent the infection from spreading. The situation with COVID-19 is rapidly evolving. We are updating orders, guidance and recommendations frequently based on evidence and the expert advice of our public health officials, including Dr. Deena Hinshaw, Chief Medical Officer of Health.

It is important to remember the same practices we recommend for protecting against all respiratory illnesses apply to COVID-19, including frequent handwashing, covering coughs and sneezes, and, most importantly, practicing physical distancing and staying home and away from others if you are feeling ill. Guidance related to preventing the spread, orders related to mandatory isolation, information about income support for Albertans impacted by COVID-19 and much more is available at www.alberta.ca/COVID.

Albertans who have specific questions or concerns about their health, and the possibility that they may have been exposed to COVID-19, are asked to visit ahs.ca/COVID to complete a self-assessment to help determine whether they should be tested for COVID-19. Depending upon the outcome of the self-assessment, you may be prompted to contact HealthLink at 811 for health advice and further assessment.

Thank you again for your email.

Emergency Operations Centre
On behalf of Dr. Deena Hinshaw, Chief Medical Officer of Health

From: Deena Hinshaw <Deena.Hinshaw@gov.ab.ca>
Sent: April 17, 2020 3:19 PM

To: Tom Engel <tomengel@engellaw.ca>

Subject: Automatic reply: Urgent Letter from Canadian Prison Law Association - Immediate Measures to Reduce the Detention of Persons with Disabilities during COVID-19 Pandemics

Thank you for your email regarding novel coronavirus (COVID-19). Alberta's public health experts are working tirelessly to monitor the outbreak and ensure that we are doing everything possible to protect the health of Albertans.

We are receiving a high volume of correspondence. As such, you may not receive a personal response to your email. Please be assured that the team at Alberta Health is reading all incoming emails and will seek to address issues and concerns on our dedicated website at www.alberta.ca/COVID. You are encouraged to visit this site regularly for the most up to date information.

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Thank you again for your email.

Emergency Operations Centre

On behalf of Dr. Deena Hinshaw, Chief Medical Officer of Health

Today, as suggested in the auto-reply, I checked the AHS website www.alberta.ca/COVID and clicked on the link for congregate facilities. Although jails are such facilities, I found nothing dealing with them. This is especially odd because Dr Hinshaw works for AHS which is responsible for healthcare in Alberta Correctional Centres.

For your ease of reference, the above referenced letters can be accessed here:

April 2/20 letter "Urgent Letter from Canadian Prison Law Association - Covid19 Pandemic – Prisons" - attached

April 17/20 letter "Urgent Letter from Canadian Prison Law Association - Immediate Measures to Reduce the Detention of Persons with Disabilities during COVID-19 Pandemics" - <https://documentcloud.adobe.com/link/review?uri=urn%3Aaaid%3Aascds%3AUS%3A5102189f-0539-412e-857a-d7ac42505591>

I also sent you an email on April 3/20 which included the following:

Doctors,

Although this information pertains to Quebec jails, I think all of you should be informed. This came from members of the CPLA:

La Macaza

- *The way officers implement the new guidelines seems to aim at protecting the officers from the prisoners and not vice versa*
- *They are about 40-50 people out at the same time for one hour at a time .*
- *The areas where they can go are very restricted which increases the density of people in confined environments, making social distancing impossible*
- *Phone calls are difficult because everyone rushes on the phone during this one hour period allowed out of the cell*
- *Officers don't seem to care about the rules put in place, they sit in the control as if nothing, they don't respect social distancing measures among themselves, don't wear gloves or masks and abuse of their powers (one of my client told me there has been up to 2 hours delays in the opening of the cell doors)*
- *One of my clients reports officers making comments such : Now they will know what it means to be in prison*
- *There are no services available, including health care services and redress system (grievances are not being processed which promotes a sense of impunity)*
- *The current conditions exacerbate existing mental health issues*

Port Cartier

1. *No medication is coming in and inmates are becoming very unstable. The inmate in N205 had a breakdown, cut himself and smeared feces everywhere. CSC hasn't cleaned the cell and the scent is very bad and spreading through HVAC for 3 days.*
3. *The geographical area has 41 infections and 17 are connected to the jail (2 inmates, 12 staff, 3 family of staff, 6 pending). During early stages, CSC wasn't requiring staff to go into isolation after returning from abroad*
4. *Staff refuse to give updates to the inmates, saying it's "none of your business"*
5. *Guards aren't wearing gloves, masks, etc and continue to be very hands on with inmates.*

11. It took CSC about 3 days to arrange proper sanitation of the jail following the first positive test.

Our members are still getting reports from prisoners that conflict with claims that the proper steps to deal with Covid-19 in prisons are being taken. We have now seen outbreaks in several jails in Canada. One prisoner has died, so far. It is your responsibility to ensure that proper steps are being taken, to determine if they are not and to inform the public about all of this. You have not been transparent or responsive about this and only you know why.

In our April 2/20 letter we made the following request:

We request that Dr Tam's opinion be publicly echoed by her provincial and territorial counterparts and that all of you direct effective action be taken immediately by those responsible for the welfare of prisoners and prison staff and you rigorously supervise such actions.

By April 24, please address the following straightforward questions:

1. Have you issued orders to the prison authorities in your jurisdiction about this? If so, will you make them public?
2. Have any of you or your staff visited any jails in your jurisdiction to conduct an audit? If so, will you make the results public?

We look forward to your responses.

Tom Engel

President CPLA

c/o Engel Law Office

#200, 10209-97 Street

Edmonton, AB T5J 0L6

Tele: 780 448-3639

Fax: 780 448-4924

Website: www.engellaw.ca

This is **Exhibit “N”** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large initial 'C' followed by a series of loops and a long horizontal stroke extending to the right.

A Commissioner, etc.

From: Bénicy Ariane (NHQ-AC) <Ariane.Benicy@CSC-SCC.gc.ca> **On Behalf Of** Snedden Kevin (NHQ-AC)
Sent: May 1, 2020 2:28 PM
To: Tom Engel <tomengel@engellaw.ca>
Cc: Snedden Kevin (NHQ-AC) <Kevin.Snedden@csc-scc.gc.ca>; Arseneault Bev (NHQ-AC) <Bev.Arseneault@CSC-SCC.GC.CA>; canadianpla@googlegroups.com; Kelly Anne (NHQ-AC) <Anne.Kelly@CSC-SCC.GC.CA>; 100-ACCOP Office Administration <100-ACCOPOfficeAdministration@CSC-SCC.GC.CA>; Coons Warren (NHQ-AC) <Warren.Coons@CSC-SCC.GC.CA>; Lane Stephanie (NHQ-AC) <stephanie.lane@csc-scc.gc.ca>
Subject: RE: Letter from the Canadian Prison Law Association - COVID19

Hello Mr. Engel,

Thank you for your email.

As stated in previous correspondence, CSC recognizes the challenges associated with COVID-19, and we are working diligently to assess operational issues that arise related to this pandemic, and where practicable, are implementing temporary strategies to resolve these issues.

We understand the impact that this situation has on the inmate population, which is why CSC has waived telephone, accommodation and food deductions for inmates, and has provided additional minutes on their phone accounts. This will help them to continue connecting with family, friends, and support networks. Inmates will continue to receive pay during this time, even if their ability to report to their work and/or program assignment is affected.

We continue to communicate with the offender population, in order to keep them informed of the latest developments and the impacts it may have on them.

To that end, a communiqué was issued to our offender population regarding their access to legal counsel during COVID-19. Additionally, we will be sharing information on our external website, which will address the items that you and your colleagues have brought to CSC's attention over the last month. This webpage will serve as CSC's platform to provide any updates, as we assess issues that may arise, and where applicable, implement strategies to resolve them.

In the meantime, I would like to take this opportunity to inform you that effective immediately, CSC will temporarily waive the cost of all outgoing facsimiles, from inmates to their counsel during the COVID-19 pandemic. Additionally, each institution will be implementing a streamlined approval process to allow inmates to send these faxes as quickly as possible under the current circumstances.

We appreciate your flexibility and collaboration as we continue to address the challenges associated with COVID-19.

Hoping you are staying safe and healthy.

Ariane Bénicy on behalf of | de la part de

Kevin Snedden
Assistant Commissioner | Commissaire adjoint

Correctional Operations and Programs | Opérations et programmes correctionnels

Please do not hesitate to reply in the official language of your choice / N'hésitez pas à répondre dans la langue officielle de votre choix

From: Tom Engel <tomengel@engellaw.ca>
Sent: April 3, 2020 6:40 PM
To: Kelly Anne (NHQ-AC) <Anne.Kelly@CSC-SCC.GC.CA>
Cc: Snedden Kevin (NHQ-AC) <Kevin.Snedden@csc-scc.gc.ca>; Arseneault Bev (NHQ-AC) <Bev.Arseneault@CSC-SCC.GC.CA>; canadianpla@googlegroups.com
Subject: RE: Letter from the Canadian Prison Law Association - COVID19
Importance: High

Anne,

The Canadian Prison Law Association appreciates your efforts to ensure prisoners retain their right to legal counsel during this pandemic, including efforts to ensure call-forwarding services are accommodated. However, after review, we have some concerns that remain unaddressed by today's memorandum distributed to CSC staff.

Prisoners are charged \$1/hour to contact private counsel by phone, representing approximately 20% of their daily wage. We ask that CSC ensure all calls to counsel are provided in private and free of charge, and that phones are cleaned between users to ensure all prisoners are afforded the right to counsel in a safe manner.

We have concerns about CSC's plan to ensure that lawyers are able to receive the documents necessary for effective legal representation. Mail is slow, expensive and an unsafe method of exchanging documents. COVID-19 can remain on paper surfaces for up to 24 hours. Delivery requires mail to exchange multiple hands within this time period. Furthermore, prisoners often do not have the documents required by counsel to represent them.

We understand that prisoners are charged \$2.50 to send a fax, which may represent half of their daily income. We ask that CSC facilitate access to counsel by bearing the cost of faxing necessary documents to counsel.

Email is the most inexpensive and convenient way to share documents, and can be done securely using Canada Post's service (<https://www.canadapost.ca/cpc/en/business/postal-services/digital-mail/epost-connect.page>). We ask that you provide direction to staff to use this method which will ensure counsel are able to provide services during the pandemic. For many prisoners who are vulnerable to the virus, legal help with conditional release could become a matter of life or death.

Please respond as soon as possible.

Tom Engel
Engel Law Office

#200, 10209-97 Street
Edmonton, AB T5J 0L6
Tele: 780 448-3639
Fax: 780 448-4924
Website: www.engellaw.ca

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." - Nelson Mandela

From: Tom Engel
Sent: April 3, 2020 2:04 PM
To: Kelly Anne (NHQ-AC)
Cc: Snedden Kevin (NHQ-AC) ; Arseneault Bev (NHQ-AC)
Subject: RE: Letter from the Canadian Prison Law Association - COVID19

Anne,

Thanks. I will circulate this to my colleagues.

Tom Engel

Engel Law Office
#200, 10209-97 Street
Edmonton, AB T5J 0L6
Tele: 780 448-3639
Fax: 780 448-4924
Website: www.engellaw.ca

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." - Nelson Mandela

From: Kelly Anne (NHQ-AC) <Anne.Kelly@CSC-SCC.GC.CA>
Sent: April 3, 2020 1:39 PM
To: Tom Engel <tomengel@engellaw.ca>
Cc: Snedden Kevin (NHQ-AC) <Kevin.Snedden@csc-scc.gc.ca>; Arseneault Bev (NHQ-AC) <Bev.Arseneault@CSC-SCC.GC.CA>
Subject: RE: Letter from the Canadian Prison Law Association - COVID19

Hello Mr. Engel,

This is in response to your letter dated March 16, 2020.

The Correctional Service of Canada (CSC) recognizes the operational challenges associated with COVID-19, not only for CSC, but also for many law firms and advocacy groups across the country. To that end, please find attached a memorandum, which was sent to all CSC Regional Deputy Commissioners, and details solutions available to offenders to ensure they continue to have reasonable access to legal counsel during the COVID-19 pandemic, as well as other methods that remain available during this time. CSC continues to assess alternative solutions during this challenging time.

If you have any questions, please contact Kevin Snedden, Assistant Commissioner, Correctional Operations and Programs at Kevin.Snedden@csc-scc.gc.ca.

Hoping you are staying safe and healthy.

Anne

Anne Kelly
 Commissioner / Commissaire
 Correctional Service Canada / Service correctionnel du Canada
 340 Laurier Ave. West
 Ottawa, ON
 K1A 0P9
 Office / Bureau: 613-995-5781
 Email / Courriel : Anne.Kelly@csc-scc.gc.ca Government of Canada / Gouvernement du Canada

“Every job is a self-portrait of the person who does it. Autograph your work with excellence.”

“Toute tâche est le reflet de la personne qui l’accomplit. Marquez votre travail du sceau de l’excellence.”

From: Tom Engel <tomengel@engellaw.ca>
Sent: March 16, 2020 4:01 PM
To: Kelly Anne (NHQ-AC) <Anne.Kelly@CSC-SCC.GC.CA>
Subject: FW: Letter from the Canadian Prison Law Association - COVID19
Importance: High

Ms Kelly,

I had the wrong email address on first try.

Tom Engel

From: Tom Engel
Sent: March 16, 2020 1:58 PM
To: David.Lametti@parl.gc.ca; commisioner@csc-scc.gc.ca
Cc: canadianpla@googlegroups.com
Subject: Letter from the Canadian Prison Law Association - COVID19
Importance: High

Dear Minister Lametti and Commissioner Kelly,

Please find attached a letter from the Canadian Prison Law Association.

We look forward to your response.

Tom Engel
President, CPLA

C/O Engel Law Office
#200, 10209-97 Street
Edmonton, AB T5J 0L6
Tele: 780 448-3639
Fax: 780 448-4924
Website: www.engellaw.ca

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." - Nelson Mandela

This is **Exhibit "O"** to the
Affidavit of Thomas Engel
affirmed before me this 22nd day of June, 2020

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a horizontal line that ends in a small hook.

A Commissioner, etc.



Public Health
Agency of Canada

Agence de la santé
publique du Canada

Chief Public
Health Officer

Administratrice en chef
de la santé publique

Ottawa, Canada
K1A 0K9

MAY 12 2020

Coalition for Justice and Human Rights
111 - 4635 199 Street
Edmonton, Alberta
T6M0V1

Dear Ms. Vaugeois and Ms. Sinclair:

Thank you for the recent communication you sent on behalf of the Coalition for Justice and Human Rights regarding prison health in the context of COVID-19.

The Public Health Agency of Canada (PHAC) takes the health needs of inmates very seriously. We have been working closely with officials at Correctional Services Canada (CSC) to ensure that a broad range of measures to prevent introduction and transmission of COVID-19 are implemented in federal correctional institutions across Canada. PHAC is also collaborating with provincial/territorial Chief Medical Officers of Health and local public health authorities to ensure capacity to rapidly identify and contain any outbreaks that may occur, and that federal inmates have access to appropriate COVID-19 testing and health care, both within the facility or in community hospitals if required.

Measures taken to date include expanded health care capacity, daily health checks at outbreak sites, reinforcement of infection prevention and control practices, including workplace health and safety measures, and education and training on use of appropriate personal protective equipment (PPE). Additionally, environmental cleaning and disinfection practices have been strengthened, and increased access to hand washing stations and hand sanitizer has been provided. In addition to the appropriate use of PPE by CSC personnel, inmates are also provided with masks to be worn whenever they are unable to maintain a two metre distance from other individuals.

.../2

-2-

In addition, CSC has implemented further measures at the federal level to respond to the COVID-19 pandemic to date, including:

- Active screening of all staff, contractors and inmates on arrival at any institution;
- The use of medical isolation in institutions to contain or prevent the spread of COVID-19 for people newly arriving at a CSC institution (i.e., new Warrant of Commitals) and for those with COVID-19 symptoms or a positive test;
- Temporarily suspended in-person visits for inmates, while simultaneously encouraging alternative methods for inmates to stay in touch with their families and friends; and
- Reducing its workforce to ensure only critical staff are present.

PHAC has mobilized epidemiological, infection prevention and control, and environmental health experts to review practices, make recommendations and support CSC's outbreak response in federal correctional facilities.

We also want to reassure you that all public health measures in federal institutions take into consideration standards and guidelines, as well as other relevant evidence-based information available, respecting the human rights of those in custody.

PHAC will continue to closely monitor the evolution of the situation in all correctional facilities in collaboration with provincial and territorial counterparts and will reassess the need with CSC to implement or modify public health measures as necessary to ensure the continued health, safety and well-being of all employees and inmates.

We would like to thank you for your time and dedication to this important issue.

Sincerely,



Dr. Theresa Tam

Court File No. T-539-20

FEDERAL COURT

B E T W E E N :

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
 CANADIAN PRISON LAW ASSOCIATION
 HIV & AIDS LEGAL CLINIC OF ONTARIO,
 HIV LEGAL NETWORK
 & SEAN JOHNSTON**

Applicants

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF EDWARD CARROLL

I, Edward Carroll, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Staff Lawyer at the HIV & AIDS Legal Clinic Ontario (“**HALCO**”). Before joining HALCO as a Staff Lawyer in May 2019, I worked at HALCO as an Articling Student. As such, I have knowledge of the matters to which I hereinafter depose.

The HIV & AIDS Legal Clinic of Ontario

2. HALCO is a not-for-profit charitable organization founded in 1994 and incorporated under the laws of Ontario. A majority of the members of HALCO’s board of directors are persons living with HIV.

3. HALCO is a community legal clinic that provides legal services to persons living with HIV in Ontario. It is the only such legal clinic in Canada. Its mission and vision are as follows:

Mission

The mission of the HIV & AIDS Legal Clinic Ontario is to provide legal services to persons living with HIV/AIDS in Ontario that are relevant to their well-being and that enable them to participate fully in the communities in which they live.

Vision

HALCO's vision is a society where laws and the legal system help reduce discrimination, stigma, poverty and injustice faced by people living with HIV/AIDS.

4. HALCO provides its services in four ways: (i) summary advice, brief services, and referrals; (ii) representation; (iii) public legal education; and (iv) law reform and community development.
5. HALCO is often consulted by government and non-government organizations on issues affecting people living with HIV because of its expertise. HALCO has been active for many years on the Ontario Advisory Committee on HIV/AIDS ("OACHA"), which provides social and health policy advice to Ontario's Minister of Health and Long-Term Care on all aspects of HIV/AIDS.
6. HALCO is often consulted by government and non-government organizations on issues affecting people living with HIV. For example, HALCO was involved in the following legislative consultations: proposed changes to Ontario's *Regulated Health Professions Act, 1991*, and Ontario's *Health Promotion and Protection Act, 1990*; the creation of the *Mandatory Blood Testing Act, 2006*; and the development of Health Canada's medical marijuana access program.
7. HALCO engages in law reform activities to advance the interests of people living with and affected by HIV, including various health law issues of concern to members of the HIV community. For example, HALCO's advocacy contributed to stronger privacy protections under Ontario's *Personal Health Information Protection Act, 2004*, particularly in relation to health records. HALCO was actively involved in human rights reform in Ontario that ultimately resulted in Bill 107, an *Act to Amend the Human Rights Code, 2006*.

8. HALCO also engages in public legal education initiatives. HALCO has delivered hundreds of oral presentations on a wide variety of legal topics to audiences including people living with HIV, health care professionals, legal professionals, and governmental and non-governmental organizations.

9. As part of its public legal education initiatives, HALCO has produced numerous written public legal education materials, including the following: *HIV & the Law Advocate's Manual* (2004); *HIV disclosure: a legal guide for gay men in Ontario* (2008); and *Planning for illness: legal information for people living with HIV in Ontario* (2012).

10. HALCO has participated in a training session for judges. In March 2010, HALCO and the Legal Network, in collaboration with the National Judicial Institute, organized a half-day, bilingual training session on the criminalization of HIV non-disclosure for dozens of judges from across the country. This was the first such session of its kind in Canada. Numerous presenters – including medical experts, social scientists, people living with HIV, and service-providers – participated in the session.

HALCO's Experience related to Corrections & Prison Issues

11. Since 1995, HALCO has responded to over 65,000 legal inquiries in various areas of law, including prison issues, health law, privacy, human rights, immigration, housing, social assistance, insurance, and employment. Since 2001, HALCO has responded to over 830 correctional law-related legal issues, including matters related to health care services.

12. In addition to direct client-service, HALCO engages in a wide range of activities related to prisons and prisoner health issues. This includes:

- a. Participating in inquests related to deaths in Ontario prisons, four times as a party, and once as an intervener;

- b. Over many years, participating in prison-related working groups at both the federal and provincial levels. This includes the Correctional Service of Canada's Community Consultation Committee on Public Health and the former Canadian Prison Advocacy and Outreach Coalition;
- c. Providing input to the Ontario Ministry of Health and Long-Term Care's AIDS Bureau on HIV testing pilot projects in provincial prisons;
- d. Participating in health fairs inside institutions across Ontario; and
- e. Participating in a working group convened to press the Correctional Service of Canada to implement prison-based needle and syringe programs in federal prisons.

13. HALCO's publications also address prison health issues. It's 2004 *HIV & the Law Advocate's Manual* contains a chapter on prisons and HIV.

HALCO's Experience Before the Courts

14. HALCO has extensive experience in intervening before courts in jurisdiction across Canada. HALCO has intervened in more than 30 cases before the Supreme Court of Canada, Courts of Appeal across the country, the Ontario Divisional Court, and the Human Rights Tribunal of Ontario. A complete list of cases in which HALCO has intervened is attached to this affidavit as **Exhibit A**. These cases include matters related to prison conditions. For example, HALCO intervened before the Human Rights Tribunal of Ontario – jointly with the HIV Legal Network and Prisoners with HIV/AIDS Support Action Network – in *Simpson v Ontario (Community Safety and Correctional Services)*, a case related to discriminatory segregation of a prisoner in a provincial correctional facility.

15. HALCO has also brought forward public interest cases as a party, including with respect to matters related to health and safety of persons in congregate settings during the COVID-19 pandemic. In April 2020, HALCO partnered with Sanctuary Ministries of Toronto, Aboriginal Legal Services, the Advocacy Centre for Tenants Ontario, the Black Legal Action Centre and the Canadian Civil Liberties Association in order to commence an application in the Ontario Superior Court of Justice. The coalition challenged the Toronto's Shelter Standards and practices in managing shelters as being inadequate to protect homeless persons against the impacts of COVID-19.

16. In May 2020, the City of Toronto entered into an agreement with HALCO and its co-Applicants to partially settle the litigation by taking steps to enhance measures to reduce the risk of the spread of COVID-19 inside the shelter system.

HALCO's Advocacy in Response to COVID-19

17. HALCO has taken an active role in advocating for the rights of vulnerable people, including prisoners, during the COVID-19 pandemic.

18. On March 17, 2020, HALCO, along with PASAN and the HIV Legal Network wrote to the Minister of Public Safety and Emergency Preparedness and the Commissioner of the Correctional Service of Canada (CSC), urging them to take immediate steps to protect prisoner health within federal penitentiaries. Noting the obligation on the CSC under s. 86 of the *Corrections and Conditional Release Act* to provide every prisoner with essential healthcare in conformance with professionally accepted standards, we put forward six priorities for immediate action:

- a. Preventing COVID-19 from entering prisons, including measures to maintain minimum physical distancing for all new admissions;

- b. Finding alternatives to custody for those at high risk of experiencing serious complications if they were infected, as well as those incarcerated for non-violent offences;
 - c. Ensuring sufficient medical staff and resources were available within prisons for those who became infected but did not require hospitalization, as well as to ensure uninterrupted care for prisoners with other medical conditions;
 - d. Reducing the risk of transmission between prisoners, including by providing them with soap, hand sanitizer and cleaning supplies and by enhanced cleaning carried out by properly trained, equipped and protected staff;
 - e. Providing testing and implementing protocols to prevent further transmission for prisoners who were exposed to, or experiencing symptoms of, the virus; and
 - f. Supporting mental health for prisoners by ensuring free phone calls and expanded use of video calling to families and loved ones until in-person visits could be re-instituted.
19. A copy of this March 17, 2020 letter is attached as **Exhibit B**.
20. HALCO, along with PASAN and the HIV Legal Network, followed up with a second letter to Minister Blair and Commissioner Kelly on April 13, 2020. We noted that the situation within federal prisons had only gotten worse since our last letter, with instances of both staff and prisoners contracting COVID-19. Noting that physical distancing was impossible within prisons given their current populations, we called upon the CSC to take urgent actions to de-populate penitentiaries through the use of Unescorted Temporary Absences (UTAs) for medical reasons. To implement this, we asked the Commissioner to issue a Directive to all Institutional Heads,

health care staff, and case management staff to identify and release suitable prisoners by recommending and authorizing medical UTAs in every case where it is consistent with public safety. For prisoners who are medically vulnerable, but cannot safely be released, we called for greater opportunities for physical distancing in humane conditions, such as residing in private family visit trailers. A copy of the April 13th letter is attached as **Exhibit C**.

21. On April 30th, we received a response from CSC Commissioner Anne Kelly to our initial March 17th letter. In her response, the Commissioner described measures that CSC had adopted to address COVID-19 in federal prisons, including the suspension of visits, temporary absences, work releases and non-emergency transfers of prisoners; the waiver of food, accommodation and telephone deductions; the addition of minutes to prisoners' phone cards; the provision of "prevention education and awareness" and screening of all "critical staff" entering the institutions; the modification of institutional routines; the provision of Personal Protective Equipment (PPE) for correctional staff; enhanced cleaning protocols; isolation of prisoners being transferred to federal custody for 14 days; and when prisoners test positive, placing them in medical isolation in their cell or room. With regards to the release of prisoners, the Commissioner indicated that it had "worked collaboratively with the Parole Board of Canada (PBC) to streamline the case management process and is actively reviewing cases of inmates whose risk can be safely managed in the community for presentation to the PBC." A copy of the letter is attached as **Exhibit D**.

22. HALCO has not received a response to the April 13th letter.

23. On March 17, 2020, the HIV Legal Network, again with HALCO and PASAN, wrote Ontario's Solicitor General, Attorney General and Minister of Health urging them to take every

possible step to prevent COVID-19 from entering provincial jails and detention centres. In particular, we urged the government to:

- a. Ensure detainees are able to maintain a minimum physical distance between people;
 - b. Find alternatives to custody for those at high risk of experiencing serious complications if infected, as well as for the majority of detainees incarcerated for non-violent offences;
 - c. Ensure that sufficient medical staff and resources are available within institutions to care for those who contract COVID-19, and to provide uninterrupted treatment for those prisoners living with HIV, HCV and/or other underlying health conditions;
 - d. Provide detainees with soap, sanitizer and cleaning supplies without cost or further delay;
 - e. Ensure that enhanced cleaning is carried out by staff who are properly trained, equipped, and protected;
 - f. Establish evidence-based COVID-19 testing and protocols to prevent further transmission that are not unduly restrictive of prisoners' residual liberty; and
 - g. Provide free phone calls for prisoners, increase the number of phones available, and expand access to videoconferencing facilities for prisoners' personal communications.
24. A copy of this March 17th letter is attached as **Exhibit E**. HALCO has not received a response to this letter.
25. On April 23, 2020, the HALCO joined with numerous other prisoner rights, AIDS

Service Organizations, and other NGOs in writing to Ontario's Solicitor General, Attorney General and Minister of Health calling for immediate steps to be taken to protect prisoner health in provincial jails. In particular we urged:

- a. Law enforcement be directed to engage in restraint in laying charges in order to reduce the number of individuals entering prisons;
- b. Non-custodial options be sought for anyone at risk of experiencing serious complications from the virus;
- c. The release of all prisoners who had served at least half of their sentence or who were not a risk to public safety in order to further de-populate institutions;
- d. Measures to allow for greater physical distancing for prisoners who remained incarcerated, such as staggered mealtimes, or single-bunking;
- e. That all prisoners receive adequate personal protective equipment, including masks, soap, sanitizer (with adequate alcohol content), bleach, and cleaning supplies, as well as plain language information about COVID-19 and measures prisoners could take to protect themselves;
- f. That staff conduct enhanced cleaning with adequate supplies, training and equipment;
- g. Testing protocols be developed in line with expert guidance provided by public health officials; and
- h. That sufficient medical staff and resources were available within institutions, both in order to treat prisoners who become infected, as well as to ensure continuity of care for prisoners dealing with other health issues

26. A copy of this April 23rd letter is attached as **Exhibit F**.
27. On April 24, 2020, HALCO, along with the Canadian Civil Liberties Association, the Black Legal Action Centre, and Aboriginal Legal Services, wrote to Ontario's Solicitor General raising serious concerns about the government's decision to grant a range of first responders, including police, with the names, addresses and dates of birth of individuals who had tested positive for COVID-19. Noting the significant invasion of privacy this would entail, the letter went on to question the efficacy of such a measure and noted that it did not appear to be justified. Attached as **Exhibit G** is a copy of this letter.
28. On April 28, 2020, HALCO was one of approximately 40 organizations that called upon the Chief Coroner of British Columbia and the Solicitor General of British Columbia to hold an inquest into the death of a prisoner at Mission Institution, a federal penitentiary operated by the Correctional Service of Canada. The letter raised concerns respecting a range of practices within the prison, including requiring prisoners to eat meals in a crowded cafeteria, not procuring adequate masks, requiring staff to continue working notwithstanding public advice to self-isolate following exposure; and failing to provide prisoners with access to showers, hand sanitizer and other hygiene products and practices. Attached as **Exhibit H** is a copy of this letter.
29. On May 13, 2020, HALCO signed on to an open letter to Canada's Ministers of Health, Public Safety and Emergency Preparedness, and Attorney General calling for measures to be taken under the *Controlled Drugs and Substances Act* to decriminalize simple possession of controlled substances. The purpose of this letter, signed by 50 health, human rights and civil society organizations, was to address the dual public health emergencies of the opioid epidemic and the COVID-19 pandemic. In particular, the letter noted that decriminalization of simple possession would assist in reducing prison populations, which in turn was a critical tool to

combat the spread of COVID-19. A copy of the May 13th letter is attached as **Exhibit I** is a copy of this letter.

30. I make this affidavit in support of the herein Application, and for no improper purpose.

SWORN before me at the City of Toronto, in the Province of Ontario, this 16th day of June, 2020



A Commissioner, &c.

D. Sheppard LSO 59074H



Edward Carroll

This is Exhibit A to the
Affidavit of Edward Carroll,
Sworn June 16th, 2020



A Commissioner, &c.
D. Sheppard Lso 59074H

Exhibit “A” – List of HALCO Interventions**Supreme Court of Canada**

1. *Sherman Estate v Donovan*, SCC docket number 38695, hearing pending
2. *SA v Metro Vancouver Housing Authority*, 2019 SCC 4
3. *Canada (Canadian Human Rights Commission) v Canada (Attorney General)* 2018 SCC 31
4. *R v Lloyd*, 2016 SCC 13
5. *R v Smith*, 2015 SCC 34
6. *Carter v Canada (Attorney General)*, [2015] 1 SCR 331
7. *R v Wilcox*, 2014 SCC 75
8. *R v Hutchinson*, 2014 SCC 19
9. *Canada (Attorney General) v Bedford*, 2013 SCC 72
10. *R v Mabior*, 2012 SCC 47 and *R v DC*, 2012 SCC 48
11. *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, [2012] 2 SCR 524
12. *Canada (Attorney General) v PHS Community Services Society*, [2011] 3 SCR 134
13. *R. v. Cuerrier*, [1998] 2 SCR 371

Other Courts

14. *R v Sharma*, ONCA File No. C66390
15. *R v Ndhlovu*, ABCA File No. 1803-0111A
16. *R v NG*, ONCA File No. C66296
17. *R v Aziga*, ONCA File No. C50421
18. *AB v Canada (Minister of Citizenship and Immigration)*, 2020 FC 19
19. *ETFO et al v Her Majesty the Queen*, 2019 ONSC 1308 (Div Ct)
20. *Christian Medical and Dental Society of Canada et al v College of Physicians and Surgeons of Ontario*, 2019 ONCA 393

21. *R v Boone*, 2019 ONCA 652
22. *Toronto Star v AG Ontario*, 2018 ONSC 2586
23. *R v Thompson*, 2018 NSCA 13
24. *Christian Medical and Dental Society of Canada et al v College of Physicians and Surgeons of Ontario*, 2018 ONSC 579 (Div Ct)
25. *A.B. v Minister of Citizenship and Immigration*, 2017 FC 1170
26. *R v Gowdy*, 2016 ONCA 989
27. *Ontario (Community Safety and Correctional Services) v De Lottenville*, 2015 ONSC 3085 (Div Ct)
28. *Duncan v Toronto Community Housing Corp.*, 2015 ONSC 4278 (Div Ct)
29. *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852
30. *R v Felix*, 2013 ONCA 415
31. *R v Mekonnen*, 2013 ONCA 414
32. *R v Mernagh*, 2013 ONCA 67
33. *Canada (Attorney General) v Bedford*, 2012 ONCA 186
34. *R v Mabior*, 2010 MBCA 93
35. *R v DC*, 2010 QCCA 2289
36. *Companiononi v Minister of Citizenship and Immigration*, 2009 FC 1315
37. *R v Wright*, 2009 BCCA 514
38. *R v JT*, 2008 BCCA 463

Tribunals

39. *Reilly v Ford Motor Company of Canada*, 2019 HRTO 101
40. *Simpson v Ontario (Community Safety and Correctional Services)*, HRTO File Number 2015-19800-I

This is Exhibit B to the
Affidavit of Edward Carroll,
Sworn June 16th, 2020



A Commissioner, &c
D. Shippard LSO 59074H



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,



Janet Rowe
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

This is Exhibit C to the
Affidavit of Edward Carroll,
Sworn June 16th, 2020



A Commissioner, &c
D. Sheppard LSO 59074H



April 13, 2020

DELIVERED BY EMAIL

The Hon. Bill Blair
Minister of Public Safety and Emergency Preparedness

Anne Kelly
Commissioner of the Correctional Service of Canada

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.

We last wrote to you on March 17, 2020, at which point we expressed grave concern for our clients and communities in the face of the COVID-19 crisis. Over the weeks since, that crisis has only deepened, including in corrections. When we last wrote, we urged that every possible step be taken to prevent the novel coronavirus from entering federal institutions. It is now clear that those efforts have failed. Both inmates and correctional officers in multiple institutions have been diagnosed with COVID-19, and the number grows every day. As you know, prisoners are disproportionately likely to be living with HIV, HCV, respiratory illness, hypertension and other underlying health conditions that compromise their immunity and increase their vulnerability to COVID-19. There is every reason to expect that, once present, the novel coronavirus will spread rapidly throughout institutions, with devastating effects. The window for prevention is rapidly closing. Decisive action must be taken now.

The evidence from epidemiologists and public health officials is clear: physical distancing is the most effective way to avoid transmission. **Physical distancing is also effectively impossible in prisons as**

currently administered and populated. The only way to achieve that goal is to reduce the number of prisoners in custody.

We are therefore writing to you again today to add our voices to the call to **release medically vulnerable prisoners to the community by authorizing indefinite Unescorted Temporary Absences (UTAs) for medical purposes**. More specifically, **we call on the Commissioner to issue an urgent and public directive to all institutional heads, health care staff, and case management staff, directing that the authority of the Commissioner and Institutional Heads to grant UTAs for medical reasons under section 116(2) of the *Corrections and Conditional Release Act (CCRA)* should be used to facilitate the release of medically vulnerable prisoners to locations in the community, where they can protect themselves against exposure to the novel coronavirus.**

In particular, we ask that this directive include the following:

- A direction that all Institutional Heads, health care staff, and case management staff, are to coordinate and move urgently to identify and release suitable prisoners by recommending and authorizing medical UTAs in *every* case where it is consistent with public safety.
- A direction that the criteria of medical desirability in para. 116(1)(b) of the *CCRA* and para. 155(a) of the *Regulations* is considered to be met in any case where an inmate's age (over 50) or any underlying comorbidities (existing medical conditions) make them more prone to serious adverse outcomes from COVID-19. The direction will include a non-exhaustive list of conditions for which evidence of a diagnosis will be satisfactory to establish elevated risk of adverse COVID-19 outcomes.
- A direction that every risk assessment under s. 116(1)(a) and (c) of the *CCRA* (as to whether an inmate's risk to public safety is undue on a medical UTA, and/or whether an inmate's behaviour under sentence precludes a medical UTA) must take in to consideration the risks posed to public safety by *failing to release* the prisoner, including the following:
 1. That outbreaks in congregate living facilities such as prisons are known to happen extremely quickly and, despite CSC's commitment to take every precaution, may be impossible to effectively control once they occur.
 2. That federal prisoners, on average, tend to have much higher rates of underlying comorbidities than the general population that make them more prone to serious adverse outcomes (e.g., ICU admission or death) from COVID-19.
 3. That outbreaks in prisons pose a serious danger of overwhelming both CSC and community health care systems, meaning that scarce resources may be consumed by outbreaks in prisons before the epidemic takes hold in the general population.

4. That outbreaks in prisons can be expected to lead to or worsen generalized outbreaks in the community (as staff must come and go from the prison even after the outbreak).
- A direction that every risk assessment under sections 116(1)(a) and (c) of the *CCRA* must take into consideration the unique social conditions of the pandemic, such as the more limited opportunity for social interactions, and the fact that such medical releases can include house-arrest-type conditions.
 - A direction that certain procedural requirements (including the requirement for a Community Assessment or Community Strategy) and timeframes in Commissioner's Directive 710-3 may be abridged for urgent medical UTAs during the pandemic in order to ensure that a sufficiently urgent response is possible at existing staffing levels.
 - A direction that case management staff in the institutions and the community urgently coordinate to develop simple structured release plans for each inmate who otherwise meets the criteria for release (this would include promptly reaching out to family members and known community supports, as well as community organizations that may be in a position to assist in developing community release placements for prisoners).
 - That medically vulnerable prisoners who cannot be safely released be provided greater opportunities for physical distancing in humane conditions (such as the option of residing in a private family visit trailer, etc.)

Yours truly,



Janet Rowe
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

This is Exhibit D to the
Affidavit of Edward Carroll,
Sworn June 16th, 2020



A Commissioner, &c.
D. Sheppard LSO 59074H

RE: COVID-19 – Protecting Prisoner Health

Anne Kelly, Commissioner/Commissaire <AnneKellyCommissioner@csc-scc.gc.ca>

Thu 4/30/2020 8:55 AM

To: Sandra Ka Hon Chu <SChu@aidslaw.ca>; 'janet@pasan.org' <janet@pasan.org>; Ryan Peck <peckr@lao.on.ca>;

 1 attachment

Protecting Prisoner Health_CSC COVID-19.pdf;

Dear Ms. Rowe, Mr. Peck and Ms. Ka Hon Chu,

Thank you for your correspondence of March 17, 2020.

The Correctional Service of Canada (CSC) is committed to protecting the safety and health of staff, inmates, and the public during these unprecedented times. CSC employees, especially those who are working in our institutions, on the frontline, and in communities supervising offenders are working tirelessly day in and day out to keep our operations going under exceptional circumstances.

To prevent the spread of COVID-19 in our institutions, CSC has suspended visits from the public and volunteers, as well as all temporary absences, unless medically necessary, work releases, and non-emergency transfers of inmates.

Understanding the impact these measures have on the inmate population, CSC has temporarily waived the food, accommodation and telephone deductions, and maintained the inmates' level of pay. We recognize that family contact is essential, especially in these challenging times. As such, we have added additional minutes to the inmates' phone card and have seen an increase in the number of telephone calls and video-visitation. We will continue to monitor these measures as the situation unfolds.

To protect our employees, CSC ensures ongoing prevention education and awareness and active screening of all critical staff entering the institutions. Staff must adhere to all health and safety directions provided, including but not limited to active screening, hand washing before entering the site, physical distancing, cleaning of common areas and equipment, and following public health's advice when off-duty. In addition, institutional routines and rosters have been modified to prevent and minimize the spread of the virus within the institution.

CSC has also equipped its correctional staff with the required Personal Protective Equipment, including masks. CSC has enhanced its cleaning protocols, including disinfecting common areas of contact. When an employee tests positive, CSC works with the local public health authorities to implement a number of measures, such as contact tracing, ensuring self-isolation, testing others as needed, and disinfecting the site. Finally, CSC has implemented its own tracing capability and is working collaboratively with the Public Health Agency of Canada.

To protect inmates, CSC is self-isolating inmates being transferred to federal custody from the province for 14 days, providing them with soap and hand sanitizer, keeping them informed through regular communiques, and working with inmates to review existing treatment plans with a focus on older offenders and those with serious underlying health conditions. CSC has protocols in place when an inmate tests positive for COVID-19, such as placement in medical isolation in his or her cell or room. Where required, CSC is providing masks to inmates. Finally, CSC is also equipped with low oxygen flow equipment to treat milder cases and has established clear protocols and procedures with local hospitals should inmates need to be transferred to those facilities for treatment.

As we move forward, CSC is continuing to actively monitor, plan and engage with health authorities on further precautions we can take to prevent the spread of COVID-19 in our institutions and communities to minimize the risks for the public, employees and inmates. We remain in contact with local public health departments across the country so we can stay up-to-date on issues, solutions and best practices. CSC staff and inmates are identified as priority one for testing, and like all other Canadians, we are tested by local public health authorities.

In regards to the release of offenders, the *Criminal Code of Canada* and the *Corrections and Conditional Release Act* (CCRA) are the legislative frameworks that govern both the eligibility dates of federally sentenced inmates and the requirements for release consideration. CSC has worked collaboratively with the Parole Board of Canada (PBC) to streamline the case management process and is actively reviewing cases of inmates whose risk can be safely managed in the community for presentation to the PBC. As noted by the PBC on their [website](#), they will consider the offender's health or health risk posed by the COVID-19 pandemic, if relevant as part of the risk assessment, along with all other information on file.

In addition, CSC is in regular contact with its community partners, including Community Residential Facilities (CRF), to ensure we work together to address any challenges presented by the current situation. Community Residential Facilities continue to follow public health guidance and we are working to ensure they have the proper supports and resources during this time. CSC is also looking at all options in order to ensure that we are not creating undue accommodation pressures on our CRF partners. CSC is working with the PBC to ease the pressure on the CRFs during the pandemic, by recommending a change to the residency requirement from a CRF to a home or family environment, where such a placement is risk appropriate.

Please rest assured that CSC takes its mandate very seriously and understands that there is no greater responsibility than having the care and custody of other human beings.

Finally, please note that updates on CSC's response to COVID-19 are posted on our [website](#).

Hoping you are staying safe and healthy.

Anne

Anne Kelly
Commissioner / Commissaire
Correctional Service Canada / Service correctionnel du Canada
340 Laurier Ave. West
Ottawa, ON
K1A 0P9
Email / Courriel : AnneKellyCommissioner@csc-scc.gc.ca
Government of Canada / Gouvernement du Canada

From: Sandra Ka Hon Chu <SChu@aidslaw.ca>
Sent: March 17, 2020 4:48 PM
To: Bill.Blair@parl.gc.ca; Kelly Anne (NHQ-AC) <Anne.Kelly@CSC-SCC.GC.CA>
Cc: Patty.Hajdu@parl.gc.ca; Janet Rowe <janet@pasan.org>; Adriel Weaver <adriel.weaver@gmail.com>; Ryan Peck <peckr@lao.on.ca>
Subject: COVID-19 – Protecting Prisoner Health

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

183
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 adopted¹⁹⁴ 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,

5/27/2020

RE: COVID-19 – Protecting Prisoner Health - Sandra Ka Hon Chu

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Janet Rowe¹⁹⁵
Executive Director
PASAN

Ryan Peck
Executive Director
HALCO

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

This is Exhibit E to the
Affidavit of Edward Carroll,
Sworn June 16th, 2020

A handwritten signature in black ink, appearing to read 'D. Sheppard', written over a horizontal line.

A Commissioner, &c.
D. Sheppard Lso 59074H



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,



Janet Rowe
Executive Director
PASAN



Ryan Peck
Executive Director
HALCO



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

Cc The Honourable Christine Elliott, Minister of Health
The Honourable Doug Downey, Attorney General
Dr. David Williams, Chief Medical Officer of Health

This is Exhibit F to the
Affidavit of Edward Carroll,
Sworn June 16th, 2020



A Commissioner, &c.
D. Sheppard LSO 59074H

April 23, 2020

Hon. Sylvia Jones
Solicitor General
Ministry of the Solicitor General

Hon. Christine Elliott
Minister of Health and Deputy Premier
Ministry of Health

Hon. Doug Downey
Attorney General of Ontario
Ministry of the Attorney General

Dear Ministers:

Re: COVID-19 – Protecting Prisoner Health

We are frontline workers and organizations deeply concerned about the impact of COVID-19 on people in provincial jails and detention centres in Ontario. As a growing number of prisoners and correctional staff at different facilities in Ontario test positive for the virus, we call 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 implement measures to protect the physical and mental health of all prisoners in provincial custody.

While some steps have been taken to address the pandemic in Ontario jails and detention centres, much more needs to be done. We are particularly concerned about the disproportionate number of prisoners who live with underlying health conditions that compromise their immunity and increase the severity of infection. At the same time, conditions in Ontario jails and detention centres (e.g. overcrowding, poor cleaning, poor hygiene, frequent contact with staff, sub-standard health care) mean that all prisoners are extremely vulnerable to infection because they are unable to take the same precautions that other people in Ontario are encouraged to adopt.

Prevention

As a first priority, we urge the government to take every possible step to prevent *more* cases of COVID-19 from entering provincial jails and detention centres. In particular, **non-custodial options should be sought for everyone at risk of experiencing serious complications from the virus**, including anyone who is over 50 years old, immunocompromised, pregnant, or sick. A provincial sentence must not be a death sentence. **Explicit instructions should also be provided to law enforcement to exercise restraint when choosing to lay charges** during this period so that provincial institutions are not further congested.

All prisoners who have served more than half their sentence should be released, and alternatives to custody should be considered for those incarcerated for non-violent offences, as well as for those who have been convicted of serious offences but pose no public safety risk. Fewer people in correctional facilities will decrease the risk of transmission for both prisoners and staff, and will allow the government to prioritize allocating resources for the health care institutions and essential service industries that need them most.

In prison, **measures to maintain a minimum physical distance between people, as per public health recommendations, must be adopted.** This may involve staggered mealtimes, staggered

recreational times, and at an absolute minimum, single-bunking. Where possible, prisoners must be housed in every other cell. **All prisoners should be provided with plain-language information about COVID-19, personal protective equipment (PPE) including masks, as well as sanitary supplies including soap, sanitizer with sufficient alcohol content, water, bleach, and cleaning supplies** without cost to them or further delay. **Enhanced cleaning should also be carried out by staff** who are properly trained, equipped, and protected.

Treatment

For those known to have been directly exposed to the virus or who are exhibiting symptoms, **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 minimally restrictive 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 while protective measures and protocol are being implemented.

Further, we urge the government to **ensure that sufficient medical staff and resources are available within institutions**, both to care for those who may contract COVID-19 but do not require hospitalization, and to provide uninterrupted treatment for those prisoners living with HIV, hepatitis C (HCV), and/or other underlying health conditions.

Mental health and other supports

Amid this pandemic, 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. At a minimum, **phone calls for prisoners should be free. The number of phones available must also be increased and access to videoconferencing facilities for prisoners' personal communications must be expanded.** For example, Ontario Telehealth Network (“OTN”), a secure video-conferencing system, is one resource already available at most correctional facilities in Ontario that may be an effective alternative to using the communal telephones.

Prisoners should also be provided with access to more mental health, public health, and legal supports via external agencies; this entails giving all prisoners a list of available agencies and government supports and their contacts.

Release planning

Finally, proper release planning is essential and all the more pressing when public health guidance recommends physical distancing. **People should be released with PPE and sanitary supplies as well as information about and links to resources that are available during the pandemic.** Moreover, your ministries must work with municipalities and agencies to **ensure people released from provincial custody have a place to safely isolate**, without exposing themselves or others to the risk of infection. As housing advocates have emphasized, physical distancing is not possible in congregate shelter settings. All people without secure shelter, including those released from provincial custody, must be moved into hotels or housing. Dedicated transitional housing for people released from provincial custody should be prioritized.

Transparency

More broadly, transparency is vital to ensuring the implementation of the most effective pandemic response, and we urge your government to **make data regarding the number of people in provincial custody tested and diagnosed with COVID-19 publicly available** and to disaggregate this data by institution, gender, and race. It is also imperative that the public and in particular the families of those who are in detention are **informed of the current COVID-19 testing and screening procedures** for new admissions and those being released.

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 public health.

Thank you for your attention to this matter.

Organizations:

ACT

AIDS Committee of Ottawa

Alliance For Healthier Communities

Alliance for South Asian AIDS Prevention

Asian Community AIDS Services (ACAS)

Banyan Tree Circles

Breakaway

Canadian HIV/AIDS Legal Network

Canadian Students for Sensible Drug Policy, Ryerson

Carceral Studies Research Collective

CATIE

Centre for Criminology & Sociological Studies, University of Toronto

Church of the Holy Trinity

CMHA Brant-Haldimand-Norfolk Branch

CMHA Champlain East Branch

CMHA Cochrane Timiskaming Branch

CMHA Durham Branch

CMHA Elgin-Middlesex Branch

CMHA Fort Frances Branch

CMHA Grey Bruce Branch

CMHA Haliburton, Kawartha, Pine Ridge Branch

CMHA Halton Region Branch

CMHA Hamilton Branch

CMHA Huron Perth Branch

CMHA Kenora Branch

CMHA Lambton-Kent Branch

CMHA Niagara Branch

CMHA Ontario Division

CMHA Ottawa Branch

CMHA Oxford County Branch

CMHA Peel Dufferin Branch

CMHA Sault Ste. Marie Branch

CMHA Simcoe County Branch

CMHA Sudbury/Manitoulin Branch

CMHA Thunder Bay Branch

CMHA Toronto Branch
CMHA Windsor-Essex County Branch
CMHA York and South Simcoe Branch
Committee for Accessible AIDS Treatment
Criminalization and Punishment Education Project
Elevate NWO
Elizabeth Fry Society of Northwestern Ontario
Elizabeth Fry Society Simcoe Muskoka
Elizabeth Fry Society Southern Ontario Region
Elizabeth Fry Toronto
HIV & AIDS Legal Clinic Ontario (HALCO)
HIV/AIDS Regional Services (HARS)
HIV/AIDS Resources and Community Health
Jail Accountability and Information Line
John Howard Society of Ontario
John Howard Society of Simcoe and Muskoka
Journal of Prisoners on Prisons
Legalish Foundation
MOSTANALYZED
Parkdale Queen West Community Health centre
PASAN
Peterborough AIDS Resource Network
Regional Support Associates
Street Health Community Nursing Foundation
Toronto People With AIDS Foundation
Toronto Prisoners' Rights Project
WellFort Community Health Services
Women and HIV/AIDS Initiative

This is Exhibit G to the
Affidavit of Edward Carroll,
Sworn June 16th, 2020



A Commissioner, &c.
D. Shuppard LSO 59074H



Solicitor General Sylvia Jones
 Ministry of the Solicitor General
 18th Floor, 25 Grosvenor Street
 Toronto ON M7A 1Y6
 BY EMAIL

Thursday April 23, 2020

Dear Solicitor General Jones,

We are writing on behalf of the Canadian Civil Liberties Association, the HIV & AIDS Legal Clinic Ontario, the Black Legal Action Centre and Aboriginal Legal Services to outline our concerns regarding the government's decision to provide a range of first responders, including police services, with the names, addresses and dates of birth of individuals who have tested positive for COVID-19.

We appreciate that first responders are on the front lines of a public health crisis. Protecting the health of communities and first responders is rightly a priority.

Providing personal health information directly to law enforcement, however, is an extraordinary invasion of privacy. Such a measure should only be taken when clearly authorized by law and absolutely necessary given the particular circumstances. It is our understanding that the Information and Privacy Commissioner of Ontario was opposed to the emergency order authorizing this disclosure because the government was not able to demonstrate that the order was necessary to enhance public safety. The regulation was passed despite their objections.

Based on the information provided to date we are also concerned about the legality of the decision to give all first responders access to COVID-19 health information.

The government's emergency regulation O. Reg. 120/20 authorizes the disclosure of COVID-19 status information only to the extent “necessary in order to prevent, respond to or alleviate the effects of the emergency.”¹ We have not found sufficient explanation of how providing this information to first responders, and police in particular, is useful, much less necessary, in responding to the present emergency.

First, any database listing individuals who have tested positive for COVID-19 in Ontario will be underinclusive. The government currently has restrictive testing criteria, and many individuals who have COVID-19 may not have received a COVID-19 test. Police officers, like all first responders, must operate under the assumption that everyone they come into contact with is a potential active carrier. Infection control measures targeting only individuals who have tested positive for COVID-19 will be ineffective at protecting frontline workers. Universal precautions are necessary, and it is not clear what – if any – additional protective measures police officers and other first responders could or would take based on Ontario’s incomplete COVID-19 testing information.

Second, according to the regulation and government statements the information that will be provided does not include the date that an individual tested positive.² This means that old, outdated test results could incorrectly identify people as having COVID-19 when they have already recovered and are no longer contagious.

It is difficult to understand how first responders will effectively use testing information that is both incomplete and out of date. Indeed, there is a real risk that using this database will create a false sense of security when first responders are interacting with individuals who have not been flagged, thus serving to create rather than mitigate danger.

We therefore ask for responses to the following questions:

- (i) What is the intended purpose or objective of providing first responders in general, and police and fire services in particular, with the COVID-19 diagnosis information?
- (ii) What information from any database used to store COVID-19 diagnosis information will be available to first responders, including police services?
- (iii) How will the COVID-19 diagnosis be used by first responders in the execution of their duties? In particular, what additional precautions is it anticipated that police and firefighters will take upon receipt of the information?

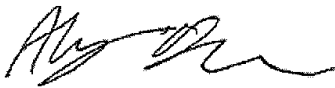
¹ <https://www.ontario.ca/laws/regulation/200120?search=emergency+management>.

² <https://news.ontario.ca/mcscs/en/2020/04/ontario-takes-additional-measures-to-protect-first-responders-during-the-covid-19-outbreak.html>.

- (iv) What measures will be taken to ensure that the intrusion upon the privacy of people diagnosed with COVID-19 will be as minimal and constrained as possible?
- (v) Will first responder access to this data be contingent upon local policies and procedures that adequately protect individual privacy? If so, please address the standards that local policies and procedures must meet, including:
 - a. Safeguards to ensure there are no secondary uses of personal medical information;
 - b. Limitations on who within police, fire and paramedic services will have access to this information;
 - c. The storage of health data, and the secondary recording of this data in other databases that first responders may maintain or have access to; and
 - d. Continued access to this database once the emergency measures are lifted and the deletion of any locally-recorded data.
- (vi) What oversight and complaint measures have been put in place? Specifically:
 - a. Is the province tracking use of this data, for example through a log kept each time a first responder accesses the data regarding COVID status, including when the information was requested, why and by whom?
 - b. Will there be an audit process at the conclusion of the emergency to ensure no data is inappropriately retained?
 - c. What recourse will individuals have if they believe their health status was inappropriately or illegally accessed, disclosed or used?

We appreciate your attention to this matter and look forward to your response.

Sincerely,



Abby Deshman
Director, Criminal Justice Program
Canadian Civil Liberties Association



Ryan Peck
Executive Director
HIV & AIDS Legal Clinic Ontario



Ruth Goba
Executive Director
Black Legal Action Centre



Christa Big Canoe
Legal Advocacy Director
Aboriginal Legal Services

Cc: Mario Di Tommaso, Deputy Solicitor General, Community Safety,
mario.ditommaso@ontario.ca

Stephen Warner, Solicitor General's Office, stephen.warner@ontario.ca

This is Exhibit H to the
Affidavit of Edward Carroll,
Sworn June 16th, 2020



A Commissioner, &c.
D. Shippard LSO 59074H



April 28, 2020

Sent via email:

BC Chief Coroner, Lisa Lapointe
 BC Minister of Public Safety and Solicitor General, Mike Farnworth

Re: Urgent Call for Public Inquest into COVID-19 Death at Mission Institution

We are a coalition of organizations calling for an immediate inquest into the tragic death of a person in Correctional Service of Canada's ("CSC") custody who was incarcerated at Mission Institution in BC. He died in Abbotsford Regional Hospital on April 15, 2020 from COVID-related complications. We ask you, as BC's Chief Coroner and BC's Solicitor General, to take immediate action and direct an inquest into his death as set out by the *Coroner's Act*.

Section 18(3) of the *Coroners Act* specifies that:

"The chief coroner may direct a coroner to hold an inquest if the chief coroner has reason to believe that

- (a) the public has an interest in being informed of the circumstances surrounding the death,
- or
- (b) the death resulted from a dangerous practice or circumstance, and similar deaths could be prevented if recommendations were made to the public or an authority."

The *Coroners Act* also stipulates that the Solicitor General may order an inquest if it is necessary or desirable in the public interest (s. 19(1)(a)).

We call on you to direct an inquest on the basis that there is significant public interest in the circumstances of this death, as indicated by the wide range of provincial and national organizational signatories to this letter who collectively represent thousands of people across the province and the country. There has also been substantial media and community interest in this issue, as indicated by sustained local, provincial, and national media coverage on this death in CSC custody and the unsafe and unsanitary conditions inside Mission Institution.

Further, we call on you to direct an inquest to investigate the degree to which this person's death resulted from the very real danger of prisons having inadequate health and safety measures to deal with the threat of COVID-19. It is imperative that no similar deaths occur and immediate steps are taken to prevent future deaths; incarcerated people should not be getting death sentences.

While the BC government has made significant efforts to flatten the curve for the general public since mid-March, those incarcerated in and/or working in prisons and jails have largely been ignored. As of April 4, 2020 Mission Institution had no reported cases of COVID-19 and, according to an officer at the prison, operations were being carried out normally.¹ This was despite wide-spread knowledge of how the virus is transmitted, the heightened risks associated with people forced into confined spaces, and the extreme vulnerability of a significant portion of the prison's population.²

Less than two weeks later, a person incarcerated at Mission Institution died due to COVID-19 related complications. The Mission Institution is now the site of the worst COVID-19 outbreak at a federal prison in the country and one of the largest outbreaks in the province, with conditions rapidly deteriorating. As of April 25, there are 106 positive cases among incarcerated persons, representing a staggering 30 percent of all those incarcerated at Mission Institution,³ and at least 12 positive cases among officers and staff.

An immediate public inquest is necessary to review the circumstances surrounding the first death at a federal prison and to ensure that the practices and conditions that contributed to this death are modified, and new measures are implemented to fully protect the health of people incarcerated in and/or working at Mission Institution.

The public needs to know what happened at Mission Institution and how the incarcerated person who died was treated; a confidential investigation would not suffice. The *Coroners Act* stipulates that the Chief Coroner may direct an inquest if the public has an interest in being informed (s. 18(3)(a)). At present, very limited information is available to the public about what measures Mission Institution has implemented to protect those incarcerated in and/or working in the prison. An inquest would fill a major gap in the public's access to information.

Only broad, general information is posted on the CSC website and the information presented differs significantly from accounts provided by prisoners, officers, and union staff representatives

¹ Patrick Penner, "Federal handling of COVID-19 outbreak at Mission Institution criticized by local MPs, advocates", *The Abbotsford News*, (April 17, 2020), online: <<https://www.abbynews.com/news/federal-handling-of-covid-19-outbreak-at-mission-institution-criticized-by-mission-abbotsford-mps/>>.

² According to Dr. John Farley, an infectious disease doctor working at Mission Institution, people over 50 account for 25% of the federal prison population, some with other serious health conditions like HIV and hepatitis C. See Angela Sterritt, "'It's horrifying': Physicians and lawyers say coronavirus outbreak at B.C. prison could have been prevented", *CBC News*, (April 9, 2020), online <<https://www.cbc.ca/news/canada/british-columbia/mission-institution-covid-19-coronavirus-outbreak-april-9-1.5527684>>.

³ Angela Jung, "'Worst case scenario': One-third of Mission Institution inmates infected with COVID-19," CTV News, (April 25, 2020), <<https://bc.ctvnews.ca/worst-case-scenario-one-third-of-mission-institution-inmates-infected-with-covid-19-1.4912229>>

in the media. These interviews largely indicate that CSC administrators have mismanaged the virus outbreak, including by:

- Failing to implement proven prevention measures,⁴
- Denying requests by prisoners to eat in their cells rather than in the crowded cafeteria,⁵
- Not procuring an adequate supply of masks,⁶
- Directing healthcare staff not to use personal protective equipment during intake process that places prisoners in medical isolation,⁷
- Requiring staff to continue working contrary to public health officer direction to self-isolate after exposure to the virus,⁸
- Failing to provide prisoners with access to showers, hand sanitizer, and necessary hygiene practices and supplies,⁹ and
- Lacking ventilator equipment for the treatment of prisoners suffering from COVID-19.¹⁰

It is unclear exactly what health measures, if any, Mission Institution implemented because federal prisons in BC are inconsistently applying public health guidelines. These failures disproportionately impact Indigenous people, who make up almost one-third of the federal prison population but only 5% of Canada's population.

A class action lawsuit was filed against the federal government on April 23rd for failing to protect the incarcerated men at Mission Institution, who the federal government and CSC have complete control over. In the statement of claim, an incarcerated man details how prison staff suggested he had allergies when he first developed COVID-19 symptoms.¹¹ The class action lawsuit claims

⁴ Kim Bolan, "Outside investigation demanded after COVID-19 races through prison in B.C.," *Vancouver Sun*, (April 17, 2020), online: <<https://vancouversun.com/news/outside-investigation-demanded-after-covid-19-races-through-prison-in-b-c/>>.

⁵ Justin Ling, "Inside the Canadian Prison Hardest Hit by the Coronavirus Pandemic," *Vice News*, (April 21, 2020), online: <https://www.vice.com/en_ca/article/4agjyq/inside-the-canadian-prison-hardest-hit-by-the-coronavirus-pandemic>.

⁶ Jen St. Denis, "COVID-19 cases continue to rise at B.C. prisons as advocates call for inquest," *CTV News*, (April 18, 2020), online: <<https://bc.ctvnews.ca/covid-19-cases-continue-to-rise-at-b-c-prisons-as-advocates-call-for-inquest-1.4902470>>.

⁷ Ling, *supra* at note 5.

⁸ Bolan, *supra* at note 4.

⁹ Ling, *supra* at note 5.

¹⁰ Sterritt, *supra* at note 2.

¹¹ Kim Bolan, "Inmate suit filed against federal government over Mission outbreak," *Vancouver Sun*, (April 23, 2020), <<https://vancouversun.com/news/crime/covid-19-inmate-suit-filed-against-federal-government-over-mission-outbreak/>>.

CSC failed to take “adequate measures to protect the plaintiff and class from COVID-19,” then failed to “provide appropriate medical care in a timely manner or at all.”¹²


The public needs to know how Mission Institution failed to protect the health of the deceased person in order to prevent future deaths in similar circumstances. There is strong reason to believe a clear and meaningful connection exists between Mission Institution’s failure to provide necessary care such as harm reduction supplies, hygiene necessities, adequate space to implement physical distancing measures, and extended healthcare to limit the spread of the virus, and the resulting death due to COVID-19-related complications.

Mission Institution and other prisons must implement transparent and substantive health practices in accordance with public health guidelines. By determining the cause of death of the person in custody, and shedding light on the factors leading up to his death, necessary information will come to light that will hold CSC accountable and prevent future deaths from institutional mismanagement and negligence.

To date, the government and CSC have taken an entirely passive approach, failing to adequately protect the health and well-being of people incarcerated in and/or working in prisons, allowing the virus to spread through Mission Institution and other provincial and federal prisons. Amidst a global pandemic, we cannot continue to sit back and watch people die in prison from the ticking time bomb of COVID-19 spreading through these institutions.

We strongly urge the BC Chief Coroner and BC government to act now and direct a public inquest. We look forward to hearing back from you promptly on this urgent and critical matter.

Sincerely,



Aisha Weaver
Policy Director, BCCLA



Harsha Walia
Executive Director, BCCLA

For Coalition of Co-signatories:

1. Abolition Coalition
2. Amnesty International-Canada
3. Atira Women’s Resource Society
4. BC Assembly of First Nations
5. BC Association of Aboriginal Friendship Centres
6. BC Civil Liberties Association

¹² Bolan, *supra* at note 11.

7. BC First Nations Justice Council
8. BC Health Coalition
9. BC Poverty Reduction Coalition
10. Canadian Association of Elizabeth Fry Societies
11. Canadian Centre for Policy Alternatives-BC
12. Canadian HIV/AIDS Legal Network
13. Centre for Justice Exchange
14. Community Legal Assistance Society
15. Criminalization and Punishment Education Project
16. First Nations Summit
17. Health Justice
18. HIV & AIDS Legal Clinic Ontario
19. Jail Accountability and Information Line
20. John Howard Society of Canada
21. Joint Effort
22. Journal of Prisoners on Prisons
23. Law Union of British Columbia
24. Law Union of Ontario
25. Ligue des Droits et Libertés
26. Migrant Workers Alliance for Change
27. No More Silence
28. Ottawa Sanctuary City Network
29. PACE Society
30. PASAN: Prisoners with HIV/AIDS Support Action Network
31. Pivot Legal Society
32. Prisoner Correspondence Project
33. Prisoners' Legal Services
34. Queen's Prison Law Clinic
35. Toronto Prisoner's Rights Project
36. Union of BC Indian Chiefs
37. Vancouver Prison Justice Day Committee
38. West Coast Legal Education and Action Fund

With copies emailed to: Minister of Public Safety and Emergency Preparedness, Bill Blair
 Commissioner of the Correctional Service of Canada, Anne Kelly
 Correctional Investigator of Canada, Ivan Zinger

This is Exhibit I to the
Affidavit of Edward Carroll,
Sworn June 16th, 2020



A Commissioner, &c.
D. Sheppard LSO 59074H

May 13, 2020

DELIVERED BY EMAIL

The Hon. Patty Hajdu
Minister of Health

The Hon. Bill Blair
Minister of Public Safety and Emergency Preparedness

The Hon. David Lametti
Minister of Justice and Attorney General of Canada

Dear Ministers:

We write with urgency in light of two unprecedented public health emergencies. As the COVID-19 pandemic and the overdose crisis sweep across Canada, there is a pressing need to adopt evidence-based measures that uphold the health and safety of people who use drugs, and we are asking that you use the tools at your disposal to decriminalize simple drug possession immediately.

As you know, more than 14,700 apparent opioid-related deaths were reported between January 2016 and September 2019;¹ the latest data related to the coronavirus outbreak indicate more than 70,000 confirmed cases of COVID-19 in Canada and more than 5,000 reported deaths.²

The COVID-19 pandemic has further exposed stark health inequities and the many structural factors that increase people's vulnerability to the virus. People who use drugs, and particularly those who are homeless or precariously housed, are more likely to have chronic health issues that will increase their risk of experiencing severe complications should they contract COVID-19. To minimize the risk of transmission and other drug-related health risks, public health officials have urged people who use drugs to continue using harm reduction services, including overdose prevention sites and supervised consumption sites.³

Unfortunately, COVID-19 has forced many harm reduction sites across the country to close or reduce the scope of their services, and people who use drugs are navigating new gaps not only in the drug supply chain but also in the resources and supports they rely on, increasing their risk of HIV and hepatitis C (HCV) infection, overdose, and other harms to their health.⁴ Moreover, it is well established that continued police enforcement of simple drug possession laws and the attendant fear of arrest pushes people who use drugs to do so in isolation and compromises their ability to take critical safety precautions. This includes by deterring access to harm reduction services, to which people who use drugs cannot legally travel while in possession of the substances they wish to use there.⁵ Heightened law enforcement surveillance in the context of the pandemic further hampers their access to vital health services and ability to use drugs safely, while also increasing their risk of arrest and detention. Not surprisingly, some cities are already seeing reports of increasing overdose deaths since the onset of the COVID-19 pandemic.⁶

As a matter of public health and of human rights, this cannot be ignored. As the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health recently stated, "in the current COVID-19 context, people who use drugs face unique needs and risks, due to criminalisation, stigma, discrimination, underlying health issues, social marginalisation and higher economic and social vulnerabilities"; therefore, to "prevent unnecessary intake of prisoners and unsafe drug consumption practices, **moratoria should be considered on enforcement of laws criminalising drug use and possession.**"⁷ [emphasis added] There are decisive steps you can take now to protect the health of people who use drugs in Canada, including by decriminalizing simple drug possession via exemption

powers contained under the *Controlled Drugs and Substances Act* (CDSA). There are currently several options for providing exemptions from CDSA application:

- **A proactive exemption issued by the Federal Minister of Health pursuant to section 56(1) of the CDSA**, on the basis that it is necessary for a *medical* or *scientific purpose* or is *otherwise in the public interest*;⁸ or
- **Regulations by Cabinet pursuant to sections 55(1)(z) or 55(2) of the CDSA.**⁹

Regardless of the option adopted, it is undoubtedly **in the public interest, particularly in light of the COVID-19 pandemic, in issuing a federal exemption to all people in Canada from section 4(1) of the CDSA, which prohibits personal possession of a controlled substance**. Penalties for contravening this section range from a fine to up to seven years imprisonment.

As you know, before the introduction of the *Respect for Communities Act* in 2015, the federal Minister of Health granted exemptions for supervised consumption services under section 56 of the CDSA. This provision was also used more recently to respond to the current overdose crisis by issuing class exemptions to provinces for temporary “overdose prevention sites” on the basis of it being “in the public interest.” In response to COVID-19, Health Canada also issued a section 56 exemption relaxing rules for pharmacists and prescribers in order to enable people who use drugs to adhere to public health guidance about physical distancing and self-isolation while accessing controlled substances.¹⁰

Correspondingly, section 55(1)(z) of the CDSA provides broad powers to the “Governor in Council” (i.e. the federal Cabinet) to “exemp[t], on any terms and conditions that are specified in the regulations, any person or class of persons [...] from the application of *all or any of the provisions of this Act* or the regulations” [emphasis added]. Under section 55(2) of the CDSA, the federal Cabinet also has the authority to adopt regulations pertaining to investigations and “other law enforcement activities,” giving Cabinet wide latitude to adopt regulations about law enforcement activities under the CDSA.

Criminalizing simple drug possession does not protect public health or public safety and has been ineffective in reducing the use and availability of illicit drugs.¹¹ Prohibition drives rampant stigma against people who use drugs and puts them at increased risk of harm, including by impeding their access to much-needed services and emergency care in the event of an overdose or, now, by increasing their risk of exposure to SARS-CoV-2, the virus that causes COVID-19. As the Canadian Centre on Substance Use and Addiction concluded in a 2018 report, a growing body of evidence supports decriminalization as an effective approach to mitigate harms associated with substance use, particularly those associated with criminal prosecution for simple possession.¹²

In Canada, there is strong support for the decriminalization of drug possession for personal use from organizations of people who use drugs and other community organizations, harm reduction and human rights advocates¹³ as well as public health associations and authorities including the Canadian Public Health Association,¹⁴ Canadian Mental Health Association,¹⁵ Canadian Nurses Association,¹⁶ Toronto Board of Health,¹⁷ Toronto’s Medical Officer of Health,¹⁸ Montreal Public Health,¹⁹ Winnipeg Regional Health Authority,²⁰ and Provincial Health Officer of British Columbia.²¹ In April 2018, the Liberal Party of Canada also adopted at its National Convention a policy resolution on “Addressing the Opioid Crisis Through a Public Health Approach (#2752)” calling on the Government of Canada to address problematic drug use as a health (and not criminal justice) issue by expanding harm reduction and treatment services and removing the criminal sanction for low-level drug possession.²² Other federal parties, including the New Democratic Party of Canada and the Green Party of Canada, have also indicated their support for decriminalizing simple drug possession.²³

Globally, decriminalizing simple drug possession has been recommended by numerous health and human rights bodies as a measure that both protects health and upholds human rights, including the World Health Organization (WHO), UNAIDS, UN Special Rapporteurs on the right to health,²⁴ the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment,²⁵ and most recently, the UN Chief Executives Board for Coordination — which has adopted a call for decriminalization of simple possession as the common position of the UN system (including the UN Office on Drugs and Crime, the lead technical agency on drug policy issues).²⁶ The *International Guidelines on Human Rights and Drug Policy*, endorsed already by the UN Development Program (UNDP), UNAIDS and WHO, also call on States to “decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption.”²⁷ And the Global Commission on Drug Policy, comprising former heads of state or government and other eminent political, economic, and cultural leaders, has highlighted the tremendous damage caused by the criminalization of people who use drugs and called for the removal of all punitive responses to drug possession and use.²⁸

Moreover, in a scan of more than 25 jurisdictions around the world that have decriminalized drugs, a number of positive health outcomes were identified, including reduced rates of HIV transmission and fewer drug-related deaths, improved education, housing, and employment opportunities for people who use drugs, and significant savings, with a negligible effect on levels of drug use.²⁹

Not only would a federal exemption from section 4(1) of the CDSA protect the health of people who use drugs, preserve police resources, and reduce unnecessary contact and police interactions, it would also mean fewer people in detention. This would decrease the risk of transmission of the COVID-19 virus in prisons, where a growing number of cases among prisoners and prison staff have already been reported.³⁰ Already, the Public Prosecution Service of Canada, which is responsible for prosecuting drug offences under the CDSA, has issued guidance to prosecutors to reduce “to the extent possible, in a principled manner,” the “detention population during the pandemic period.”³¹ As the UN High Commissioner for Human Rights recently affirmed, “[i]mprisonment should be a measure of last resort, particularly during the crisis.”³² Some courts have already followed suit, recognizing that incarceration is inherently at odds with current public health directions to self-isolate during the COVID-19 pandemic, and favouring release on the balance.³³

Decriminalization of simple possession is long overdue. Now more than ever, there is urgent need for bold policy action that meaningfully upholds the health and safety of people who use drugs. In 2016, Canada rightfully declared that drug use is a matter of public health rather than criminal justice, but that declaration is ineffective if drug possession continues to be criminalized. **Whether it takes the form of a ministerial exemption or a Cabinet regulation, all people in Canada should be exempted from the criminal prohibition on simple possession in section 4(1) of the CDSA.** We urge you to take the necessary steps, including via your ministerial powers outlined above, at this critical time. This should be accompanied by guidance to all police forces in Canada and a broader communications campaign so that law enforcement and others are aware of and respect the new law.

Sincerely,

Canadian HIV/AIDS Legal Network
Canadian Drug Policy Coalition
Pivot Legal Society

Action Canada for Sexual Health and Rights
AIDS Coalition of Nova Scotia
AIDS Committee of Newfoundland and Labrador
AIDS Saskatoon

AIDS Vancouver Island
 Alberta Addicts Who Educate and Advocate Responsibly (AAWEAR)
 Alberta Community Council on HIV (ACCH)
 Alliance for Healthier Communities
 Amnesty International
 Association des intervenants en dépendance du Québec (AIDQ)
 Association québécoise pour la promotion de la santé des personnes Utilisatrices de Drogues (AQPSUD)
 Association québécoise des centres d'intervention en dépendance (AQCID)
 Avenue B Harm Reduction
 BC Association of People on Methadone (BCAPOM)
 BC Centre for Excellence in HIV/AIDS
 BC Centre on Substance Use
 BC Civil Liberties Association
 Breakaway Addiction Services
 CACTUS Montréal
 Canadian AIDS Society
 Canadian Nurses Association
 Canadian Public Health Association
 Canadian Students for Sensible Drug Policy
 Canadian Association of People Who Use Drugs (CAPUD)
 CATIE
 Centre on Drug Policy Evaluation
 Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-SIDA)
 CRACKDOWN Podcast
 Criminal Lawyers' Association
 Direction 180
 Drug Users' Advocacy League
 Families for Addiction Recovery
 Harm Reduction Nurses Association
 HIV & AIDS Legal Clinic Ontario (HALCO)
 Manitoba Harm Reduction Network
 Moms Stop the Harm
 mumsDU - moms united and mandated to saving the lives of drug users
 Ontario AIDS Network
 Pacific AIDS Network
 PEERS Alliance
 Prisoners with HIV/AIDS Support Action Network (PASAN)
 SOLID
 South Island Community Overdose Response Network
 South Riverdale Community Health Centre
 Thunderbird Partnership Foundation
 Toronto Drug Users' Union
 Toronto Overdose Prevention Society
 Vancouver Area Network of Drug Users (VANDU)
 Western Aboriginal Harm Reduction Society (WAHRS)
 Women and HIV/AIDS Initiative

¹ Government of Canada, *Opioid-related harms in Canada*, March 2020, Available at <https://health-infobase.canada.ca/substance-related-harms/opioids/>.

² Government of Canada, *Coronavirus disease (COVID-19): Outbreak update*, last modified April 27, 2020. Available at www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html?topic=tilelink.

³ BC Centre for Disease Control, *COVID-19: Harm Reduction and Overdose Response* (information sheet), March 18, 2020. Available at www.bccdc.ca/Health-Info-Site/Documents/COVID19-harm-reduction.pdf

⁴ A. Nguyen, “Supervised Consumption Sites scrambling to handle two public health crises at once,” *Ricochet Media*, March 25, 2020. Available at <https://ricochet.media/en/3005/supervised-consumption-sites-scrambling-to-handle-two-public-health-crises-at-once>.

⁵ *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 10; A. B. Collins et al., “Policing space in the overdose crisis: A rapid ethnographic study of the impact of law enforcement practices on the effectiveness of overdose prevention sites,” *International Journal on Drug Policy* 73 (2019): pp. 199-207.

⁶ J. Azpiri, “Vancouver sees spike in overdose deaths amid COVID-19 crisis,” *Global News*, April 1, 2020.

⁷ UN Office of the High Commissioner, Statement by the UN expert on the right to health* on the protection of people who use drugs during the COVID-19 pandemic, April 16, 2020. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25797&LangID=E.

⁸ The full text of section 56(1) currently reads as follows:

56(1) The Minister may, on any terms and conditions that the Minister considers necessary, exempt from the application of all or any of the provisions of this Act or the regulations any person or class of persons or any controlled substance or precursor or any class of either of them if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest. See *Controlled Drugs and Substances Act*, SC 1996, c 19, s 56(1).

⁹ The full text of section 55(1)(z) currently reads as follows:

The Governor in Council may make regulations for carrying out the purposes and provisions of this Act, including the regulation of the medical, scientific and industrial applications and distribution of controlled substances and precursors and the enforcement of this Act, as well as the regulation of designated devices and, without restricting the generality of the foregoing, may make regulations ... exempting, on any terms and conditions that are specified in the regulations, any person or class of persons or any controlled substance, precursor, designated device or any class of controlled substances, precursors or designated devices from the application of all or any of the provisions of this Act or the regulations.

The relevant section of Section 55(2) currently reads: “The Governor in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, may make regulations that pertain to investigations and other law enforcement activities conducted under this Act by a member of a police force or of the military police and other persons acting under the direction and control of the member...”

¹⁰ Government of Canada, *Subsection 56(1) class exemption for patients, practitioners and pharmacists prescribing and providing controlled substances in Canada during the coronavirus pandemic*, (last modified April 9, 2020). Available at www.canada.ca/en/health-canada/services/health-concerns/controlled-substances-precursor-chemicals/policy-regulations/policy-documents/section-56-1-class-exemption-patients-pharmacists-practitioners-controlled-substances-covid-19-pandemic.html.

¹¹ E. Wood et al., “The war on drugs: a devastating public-policy disaster,” *The Lancet* 373:9668 (2009) pp. 989-990.

¹² Canadian Centre on Substance Use and Addiction, *Decriminalization: Options and Evidence*, 2018. Available at <https://www.ccsa.ca/sites/default/files/2019-04/CCSA-Decriminalization-Controlled-Substances-Policy-Brief-2018-en.pdf>.

¹³ Canadian HIV/AIDS Legal Network, “Canada must adopt a human-rights based approach to drug policy,” November 22, 2018. Available at www.aidslaw.ca/site/statement-canada-must-adopt-a-human-rights-based-approach-to-drug-policy/?lang=en. The statement was endorsed by Amnesty International Canada, Canadian Aboriginal AIDS Network, Canadian Association of People Who Use Drugs, Canadian Drug Policy Coalition, Canadian Nurses Association, Canadian Public Health Association, Criminal Lawyers’ Association, HIV & AIDS Legal Clinic Ontario (HALCO), Moms Stop The Harm, moms united and mandated to saving the lives of Drug Users (mumsDU) and Pivot Legal Society.

¹⁴ Canadian Public Health Association, *Decriminalization of personal use of psychoactive substances*, position statement, October 2017. Available at www.cpha.ca/sites/default/files/uploads/policy/positionstatements/decriminalization-positionstatement-e.pdf

¹⁵ Canadian Mental Health Association, *Care not Corrections: Relieving the Opioid Crisis in Canada*, April 2018. Available at https://cmha.ca/wp-content/uploads/2018/04/CMHA-Opioid-Policy-Full-Report_Final_EN.pdf

¹⁶ Canadian HIV/AIDS Legal Network, *supra* note 12.

¹⁷ N. Thompson, “Toronto board of health to urge federal government to decriminalize drug use,” *The Globe and Mail*, July 16, 2018.

¹⁸ E. Mathieu, “Chief medical officer calls for decriminalization of all drugs for personal use,” *The Toronto Star*, July 9, 2018.

¹⁹ Santé Montréal, “La directrice régionale de santé publique de Montréal salue les recommandations de Toronto” news release, July 27, 2018. Available at <https://santemontreal.qc.ca/population/actualites/nouvelle/decriminalisation-des-drogues-pour-usage-personnel/>.

²⁰ Winnipeg Regional Health Authority, *Position statement on harm reduction*, December 2016. Available at <https://serc.mb.ca/wp-content/uploads/2018/06/HarmReduction-wrha.pdf>

²¹ British Columbia Office of the Provincial Health Officer, *Stopping the Harm: Decriminalization of People who use Drugs in BC*, April 2019. Available at www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/special-reports/stopping-the-harm-report.pdf

²² T. Lupick, “Liberal party members overwhelmingly vote for decriminalizing drugs while Trudeau repeats opposition,” *Georgia Straight*, April 23, 2018.

²³ “Green Party would decriminalize all drug possession if elected,” *CBC News*, September 21, 2019.

²⁴ See, for example, Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN General Assembly, 65th Session, UN Doc A/65/255, August 6, 2010; Anand Grover, *Submission to the Committee against Torture regarding drug control laws*, October 19, 2012; Anand Grover, *Open letter by the Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, in the context of the preparations for the UN General Assembly Special Session on the Drug Problem (UNGASS)*, to UNODC Executive Director Yury Fedotov, December, 7 2015.

²⁵ Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly, 22nd Session, UN Doc A/HRC/22/53, February 1, 2013.

²⁶ United Nations Chief Executives Board, *Summary of Deliberations: Segment 2: common United Nations system position on drug policy*, UN System, 2nd regular session of 2018, UN Doc CEB/2018/2, January 18, 2019; United Nations Chief Executives Board, *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, UNCEB, 2nd Session, Annex 1, UN Doc CEB/2018/2, January 18, 2019.

²⁷ International Centre on Human Rights and Drug Policy, UNAIDS, UNDP, WHO, *International Guidelines on Human Rights and Drug Policy*, March 2019.

²⁸ Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalization*, November 2016.

²⁹ Release, *A Quiet Revolution: Drug Decriminalisation Across the Globe*, March 2016.

³⁰ See, for example, Office of the Correctional Investigator, *COVID-19 Status Update*, April 23, 2020; Tina Lovgreen, “All inmates and staff at Mission Institution being tested for COVID-19,” *CBC News*, April 22, 2020; and Liam Casey, “COVID-19 outbreak leads to Ontario jail being closed after 60 inmates, eight staff test positive,” *National Post*, April 20, 2020.

³¹ Public Prosecution Service of Canada, *Memorandum - COVID 19: Bail and Resolution Principles*, April 8, 2020.

³² UNHR, Office of the High Commissioner, “Urgent action needed to prevent COVID-19 ‘rampaging through places of detention’ – Bachelet,” news release, (news article) (25 March 25, 2020), online: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>.

³³ *R v Kandhai*, 2020 ONSC 1611 at para 7; *R v JS*, 2020 ONSC 1710 at paras 19-20.

Court File No. T-539-20

FEDERAL COURT

B E T W E E N :

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
CANADIAN PRISON LAW ASSOCIATION
HIV & AIDS LEGAL CLINIC OF ONTARIO,
HIV LEGAL NETWORK
& SEAN JOHNSTON**

Applicants

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF SANDRA KA HON CHU

I, Sandra Ka Hon Chu, of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY AS FOLLOWS:

1. I have personal knowledge of the matters set out below, except where stated otherwise. Where I rely on information provided to me by others, I do believe such information to be true.
2. I am the Director of Research and Advocacy at the HIV Legal Network (formerly known as the Canadian HIV/AIDS Legal Network). I began working at the HIV Legal Network in 2007 as a Senior Policy Analyst. I became Director of Research and Advocacy in 2013.
3. I have a Bachelors of Arts degree in Sociology from the University of British Columbia, an LL.B from the University of Toronto, and an LL.M from Osgoode Hall Law School. I was called to the Bar of British Columbia in 2003.

The HIV Legal Network

4. The HIV Legal Network is a non-governmental organization founded in 1992 and federally incorporated in 1993 as a not-for-profit organization with charitable registration. The HIV Legal Network is a non-governmental organization in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations, one of the few HIV organizations with such status.

5. The HIV Legal Network is the only national organization in Canada that works exclusively on legal and policy issues related to HIV and AIDS and is one of the world's leading expert organizations in this field. It's mission and vision are as follows:

Mission

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.

Vision

We envision a world in which the human rights and dignity of people living with HIV or AIDS and those affected by the disease are fully realized and in which laws and policies facilitate HIV prevention, care, treatment and support.

6. The board of directors of the HIV Legal Network consists of people living with HIV, service providers, researchers and legal professionals from across Canada and internationally. At all times, there must be at least one board member from each of the five regions of Canada, and two "international" seats are to be filled by persons with relevant expertise who live in, or have significant experience working in, a developing or transitional country context. At all times, a minimum of two directors must be people openly living with HIV, and this minimum is usually exceeded. The Board also includes members who identify as members of communities or populations particularly affected by HIV, such as LGBTQ people, sex workers, people who use or have used (criminalized) drugs and people who have experienced incarceration.

The HIV Legal Network's Experience in Litigation

7. Since 1998, the HIV Legal Network has intervened in numerous cases at the appellate level (in most cases, together with the HIV & AIDS Legal Clinic Ontario or “HALCO”), including multiple times before the Supreme Court of Canada in the following *Charter* cases concerning laws that negatively affect people living with or at risk of HIV (in reverse chronological order):

- a) *Sherman Estate v. Donovan*, SCC Docket No. 38695 (hearing pending);
- b) *R. v. Lloyd*, 2016 SCC 13;
- c) *R. v. Smith*, 2015 SCC 34;
- d) *Carter v. Canada*, 2015 SCC 5;
- e) *R. v. Wilcox*, 2014 SCC 751;
- f) *R. v. Hutchinson*, 2014 SCC 19;
- g) *Canada (Attorney General) v. Bedford*, 2013 SCC 72;
- h) *R. v. Mabior*, 2012 SCC 47 and *R. v. D.C.*, 2012 SCC 48;
- i) *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45;
- j) *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44; and
- k) *R. v. Cuerrier*, [1998] 2 SCR 371.

8. The HIV Legal Network has also been granted intervener status before the Courts of Appeal of British Columbia, Manitoba, Ontario, Nova Scotia and Quebec, as well as the Human Rights Tribunal of Ontario (the “HRTO”). A more complete list of the proceedings in which the HIV Legal Network has been granted leave to intervene is attached to this Affidavit as **Exhibit “A”**.

9. The HIV Legal Network also has experience as a public interest applicant in complex

constitutional proceedings, including in the area of prison health. Over an eight-year period, the HIV Legal Network, along with the Prisoners with HIV/AIDS Support Action Network (PASAN), the Canadian Aboriginal AIDS Network, CATIE and former prisoner Steven Simons, litigated *Simons v. Minister of Public Safety*, 2020 ONSC 1431, related to the need for prison-based needle and syringe programs. The HIV Legal Network played an instrumental role in developing an evidentiary record comprised of more than 12 leading experts from the fields of epidemiology, infectious disease medicine, prison health, addiction medicine and harm reduction programming, as well as evidence from current and former federal prisoners about their experiences with injection drug use and harm reduction programming in prison.

10. Through the course of the litigation, the Correctional Service of Canada implemented a prison-based needle and syringe program.

The HIV Legal Network's Work on Prison Health Generally

11. In addition to being an applicant in the *Simons* case, discussed above, the HIV Legal Network has for several decades engaged in research and advocacy with respect to prison health issues. The HIV Legal Network's work in this area, while focused on HIV and AIDS, has addressed a wide range of different health topics within the prison context.

12. In 1996 the HIV Legal Network produced its first substantial report on the subject of addressing HIV in Canada's prisons: *HIV/AIDS in Prisons: Final Report*.

13. In 2002, the Legal Network published a second report: *Action on HIV/AIDS in Prisons: Too Little, Too Late – A Report Card*. This report reviewed the action, or often lack thereof, taken by prison systems across Canada to implement the many recommendations that had been made over the years by various bodies — including government appointed committees — to

address HIV and AIDS in prisons.

14. In 2004, the HIV Legal Network published *Prison Needle Exchange: Lessons from a Comprehensive Review of International Evidence and Experience*, which was the first worldwide analysis of prison-based needle and syringe programs ever produced. The HIV Legal Network published a second edition in 2006.

15. In 2007, the HIV Legal Network and PASAN published *Hard Time: HIV and Hepatitis C Prevention Programming for Prisoners in Canada*. Supported by funding from the Public Health Agency of Canada, this report provided a wide-ranging overview of best policies and practices in place in various Canadian prisons to protect prisoners' right to the highest attainable standard of health by minimizing the risks of HIV and HCV infection, as well as other harms.

16. In 2009, the HIV Legal Network released *Clean Switch: The Case for Prison Needle and Syringe Programs in Canada*, a review of the evidence respecting HIV and HCV infection in Canadian prisons and of evaluations of prison needle and syringe programs worldwide.

17. In early 2010, the HIV Legal Network published a report entitled *Under the Skin: A People's Case for Prison Needle and Syringe Programs*. This report was prepared in order to bring forward the first-hand experiences and voices of those whose lives and health are at risk as a result of inadequate access to sterile injection equipment in prisons. The report compiled testimonies from 50 people interviewed by the HIV Legal Network during 2008 and 2009 in British Columbia, Alberta, Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia. All those interviewed were currently incarcerated or had previously served time in federal prison in order to learn more about their experiences with injection drug use in federal prisons. This report was cited by the Office of the Correctional Investigator in his 2009-2010 Annual Report.

18. Because of the HIV Legal Network's expertise on the intersecting issues concerning prisons, drug use, HIV and HCV, we were invited in 2009 and 2011 to make written and oral submissions to the House of Commons Standing Committee on Public Safety and National Security in relation to its studies on mental health and addiction in correctional facilities. In 2017, we also made a written submission to the Standing Senate Committee on Human Rights regarding its study on human rights of prisoners in the correctional system, and in 2018 we made submissions to the Standing Committee on the Status of Women in relation to its study on Indigenous women in the federal justice and correctional systems.

19. In 2012, the HIV Legal Network published an info sheet funded by the Public Health Agency of Canada on *Women in Prison, HIV and Hepatitis C*, providing an overview of relevant surveillance data and research studies and recommendations for law and policy reform to better protect the health of incarcerated women living with or at risk of HIV and hepatitis C.

20. In 2016, the HIV Legal Network published *On Point: Recommendations for Prison-Based Needle and Syringe Programs in Canada*. This report was the culmination of a multi-phase, multi-year undertaking that involved broad consultation and primary research to create recommendations for implementing prison-based needle and syringe programs. The HIV Legal Network's research programme involved three phases: stakeholder consultation; prison site visits in Switzerland; and a community-based research project. The report was cited in the Annual Report of the Office of the Correctional Investigator 2015-2016 in recommending that CSC enhance harm reduction initiatives in federal prisons, including the implementation of a needle and syringe program.

21. Also in 2016, the HIV Legal Network intervened, together with HALCO and PASAN, in *Simpson v. Ontario (Community Safety and Correctional Services)*, HRTO File Number 2015-

19800-I, a matter before the Human Rights Tribunal of Ontario involving the discriminatory segregation of a prisoner in a provincial correctional facility. The resolution of the matter required the Ontario Ministry of Community Safety and Correctional Services to implement several systemic deliverables, including the delivery of education and training for correctional staff.

22. In light of the disproportionate rates of HIV and hepatitis C infection among Indigenous prisoners and the disproportionate number of Indigenous people in prison in Canada, in 2017 the HIV Legal Network published, in collaboration with the Canadian Aboriginal AIDS Network, a resource for Indigenous prisoners in federal institutions entitled *Indigenous Communities and HIV and HCV in Federal Prisons: Questions and Answers*.

23. Since 2017, the HIV Legal Network has also been a member of the Correctional Reform Coalition, whose mandate is to highlight issues facing Ontario's incarcerated population, including provincial prisoners' access to health care. It was in this context that the HIV Legal Network made a submission in 2018, jointly with HALCO and PASAN, outlining key measures that the Ontario Ministry of Health and Long-Term Care and the Ministry of Community Safety and Correctional Services should adopt to uphold provincial prisoners' right to health.

24. Most recently, the HIV Legal Network published in May 2020 *Gendering the Scene: Women, Gender-Diverse People, and Harm Reduction in Canada*, highlighting the state of harm reduction services in Canada in the context of gender and reviewing the impacts on women and gender-diverse people. A section of the report is devoted to the health of women and gender-diverse people in prison settings, and law and policy reforms that could address gaps in their access to health care.

25. The HIV Legal Network's work on the health and human rights of prisoners living with

or affected by HIV has not been limited to Canada. A few select examples of the HIV Legal Network's international work on these issues include:

- a. The HIV Legal Network has routinely engaged with the human rights mechanisms of the United Nations, including: submissions to numerous human rights treaty bodies regarding various HIV-related human rights issues of concern to people in prison (e.g., to the Committee on Economic, Social and Cultural Rights; Committee on the Elimination of Racial Discrimination; Committee on the Elimination of Discrimination Against Women; Committee on the Rights of Persons with Disabilities); submissions to a number of special procedures (e.g., the UN Special Rapporteurs on Health, Torture, Freedom of Expression, Women's Rights, and Extrajudicial Executions; the Working Group on Arbitrary Detention); and the Universal Periodic Review process (UPR) undertaken by member states of the UN Human Rights Council.
- b. In 2007, the HIV Legal Network was granted leave, together with the Irish Penal Reform Trust, to intervene in proceedings before the European Court of Human Rights regarding a prisoner seeking a court order to implement sterile syringe programs in prisons. The HIV Legal Network was also invited to prepare a joint supplementary submission in reply to the U.K. government's observations.
- c. In 2011, the HIV Legal Network, jointly with the Regional Office for Central Asia of the UN Office on Drugs and Crime (UNODC), released an extensive report assessing the legislative and policy environment affecting the response to HIV in six countries in Central Asia. The report put forward recommendations for legislative and policy reform, including in the prison setting. The chapters on

prison covered topics such as HIV prevention and discrimination against prisoners based on HIV status.

- d. In 2011, the HIV Legal Network made official submissions to the Global Commission on HIV and the Law, convened by the UN Development Programme, including on topics concerning the right to health for prisoners living with HIV. The HIV Legal Network's Executive Director served as one of the members of the international Technical Advisory Group to the Commissioners, assisting in the production of the Commission's 2012 report *HIV and the Law: Risks, Rights & Health*.
- e. In 2014, the HIV Legal Network was invited to participate in the UNODC's Global Consultation on HIV Prevention and Care in Prison Settings, the purpose of which was to consult with experts worldwide in order to intensify efforts in addressing HIV in prisons and other closed settings. The HIV Legal Network was one of the four civil society organizations present at the consultation, the other seats being reserved for the heads of national prison systems and national AIDS programs from 27 key countries, representatives of the United Nations and representatives from the Global Fund to Fight AIDS, Tuberculosis and Malaria.

The HIV Legal Network's Advocacy in Response to COVID-19

26. Since the onset of the COVID-19 pandemic in Canada, the HIV Legal Network has been actively engaged in advocating for adequate government responses within the prison context.

27. On March 17, 2020, the Legal Network, along with HALCO and PASAN wrote to the Minister of Public Safety and Emergency Preparedness and the Commissioner of the

Correctional Service of Canada (CSC), urging them to take immediate steps to protect prisoner health within federal penitentiaries. Noting the obligation on the CSC under s. 86 of the *Corrections and Conditional Release Act* to provide every prisoner with essential healthcare in conformance with professionally accepted standards, the HIV Legal Network put forward six priorities for immediate action:

- a. Preventing COVID-19 from entering prisons, including measures to maintain minimum physical distancing for all new admissions;
 - b. Finding alternatives to custody;
 - c. Ensuring sufficient medical staff and resources were available within prisons for those who became infected but did not require hospitalization, as well as to ensure uninterrupted care for prisoners with other medical conditions;
 - d. Reducing the risk of transmission between prisoners, including by providing them with soap, hand sanitizer and cleaning supplies and by enhanced cleaning carried out by properly trained, equipped and protected staff;
 - e. Providing testing and implementing protocols to prevent further transmission for prisoners who were exposed to, or experiencing symptoms of, the virus; and
 - f. Supporting mental health for prisoners by ensuring free phone calls and expanded use of video calling to families and loved ones until in-person visits could be re-instituted.
28. A copy of the March 17th letter is attached as **Exhibit “B”**.
29. The HIV Legal Network, again writing with HALCO and PASAN, followed up with a second letter to Minister Blair and Commissioner Kelly on April 13, 2020. We noted that the

situation within federal prisons had only gotten worse since our last letter, with instances of both staff and prisoners contracting COVID-19. Noting that physical distancing was impossible within prisons given their current populations, we called upon the CSC to take urgent actions to de-populate penitentiaries through the use of Unescorted Temporary Absences (UTAs) for medical reasons. To implement this, we asked the Commissioner to issue a Directive to all Institutional Heads, health care staff, and case management staff to identify and release suitable prisoners by recommending and authorizing medical UTAs in every case where it is consistent with public safety. For prisoners who are medically vulnerable, but cannot safely be released, we called for greater opportunities for physical distancing in humane conditions, such as residing in private family visit trailers. A copy of the April 13th letter is attached as **Exhibit “C”**.

30. On April 30th, we received a response from CSC Commissioner Anne Kelly to our initial March 17th letter. In her response, the Commissioner described measures that CSC had adopted to address COVID-19 in federal prisons, including the suspension of visits, temporary absences, work releases and non-emergency transfers of prisoners; the waiver of food, accommodation and telephone deductions; the addition of minutes to prisoners’ phone cards; the provision of “prevention education and awareness” and screening of all “critical staff” entering the institutions; the modification of institutional routines; the provision of Personal Protective Equipment (PPE) for correctional staff; enhanced cleaning protocols; isolation of prisoners being transferred to federal custody for 14 days; and when prisoners test positive, placing them in medical isolation in their cell or room. With regards to the release of prisoners, the Commissioner indicated that it had “worked collaboratively with the Parole Board of Canada (PBC) to streamline the case management process and is actively reviewing cases of inmates whose risk can be safely managed in the community for presentation to the PBC.” A copy of the

letter is attached as **Exhibit “D”**.

31. We have yet to receive a response to our April 13th letter.

32. On March 17, 2020, the HIV Legal Network, again with HALCO and PASAN, wrote Ontario’s Solicitor General, Attorney General and Minister of Health urging them to take every possible step to prevent COVID-19 from entering provincial jails and detention centres. In particular, we urged the government to:

- a) Ensure detainees are able to maintain a minimum physical distance between people;
- b) Find alternatives to custody for those at high risk of experiencing serious complications if infected, as well as for the majority of detainees incarcerated for non-violent offences;
- c) Ensure that sufficient medical staff and resources are available within institutions to care for those who contract COVID-19, and to provide uninterrupted treatment for those prisoners living with HIV, HCV and/or other underlying health conditions;
- d) Provide detainees with soap, sanitizer and cleaning supplies without cost or further delay;
- e) Ensure that enhanced cleaning is carried out by staff who are properly trained, equipped, and protected;
- f) Establish evidence-based COVID-19 testing and protocols to prevent further transmission that are not unduly restrictive of prisoners’ residual liberty; and
- g) Provide free phone calls for prisoners, increase the number of phones available,

and expand access to videoconferencing facilities for prisoners' personal communications.

33. Attached as **Exhibit "E"** is a copy of our March 17th letter.
34. We have yet to receive a response to the above communication.
35. On April 23, 2020, the HIV Legal Network joined with numerous other prisoner rights, AIDS Service Organizations, and other NGOs in writing to Ontario's Solicitor General, Attorney General and Minister of Health calling for immediate steps to be taken to protect prisoner health in provincial jails. In particular we urged:
 - a. Law enforcement be directed to engage in restraint in laying charges in order to reduce the number of individuals entering prisons;
 - b. Non-custodial options be sought for anyone at risk of experiencing serious complications from the virus;
 - c. The release of all prisoners who had served at least half of their sentence or who were not a risk to public safety in order to further de-populate institutions;
 - d. Measures to allow for greater physical distancing for prisoners who remained incarcerated, such as staggered mealtimes, or single-bunking;
 - e. That all prisoners receive adequate personal protective equipment, including masks, soap, sanitizer (with adequate alcohol content), bleach, and cleaning supplies, as well as plain language information about COVID-19 and measures prisoners could take to protect themselves;
 - f. That staff conduct enhanced cleaning with adequate supplies, training and equipment;

- g. Testing protocols be developed in line with expert guidance provided by public health officials; and
- h. That sufficient medical staff and resources were available within institutions, both in order to treat prisoners who become infected, as well as to ensure continuity of care for prisoners dealing with other health issues.

36. A copy of the April 23rd letter is attached as **Exhibit “F”**.

37. On May 13, 2020, the HIV Legal Network, along with Pivot Legal Society and the Canadian Drug Policy Coalition, wrote an open letter to Canada’s Ministers of Health and Public Safety and Emergency Preparedness, and the Attorney General of Canada calling for measures to be taken under the *Controlled Drugs and Substances Act* to decriminalize simple possession of controlled substances. The purpose of this letter, to which 50 health, human rights and civil society organizations also signed on, was to address the dual public health emergencies of the opioid epidemic and the COVID-19 pandemic. In particular, the HIV Legal Network noted that decriminalization of simple possession would assist in reducing prison populations, which in turn was a critical tool to combat the spread of COVID-19. A copy of the May 13th letter is attached as **Exhibit “G”**.

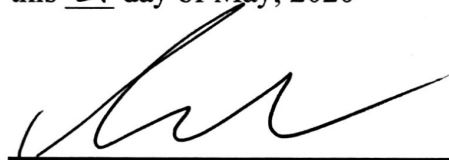
38. More generally, the HIV Legal Network has advocated for a human rights approach to responding to COVID-19. Attached as **Exhibit “H”** is a copy of *Flatten Inequality: Human Rights in the Age of COVID-19*. In this publication, the HIV Legal Network drew upon its experience with global responses to the HIV epidemic to outline the importance of placing respect for human rights at the forefront of government responses to COVID-19. The HIV Legal Network noted that maintaining human rights within an effective COVID-19 response transcended several areas, including criminal law; prisons and places of detention; shelter and

housing; income security; healthcare; and travel and border restrictions.

39. The HIV Legal Network also co-authored an April 2020 “Statement on COVID-19 and Criminalization” by the Canadian Coalition to Reform HIV Criminalization (a national coalition of people living with HIV, community organizations, lawyers and researchers, of which we are a co-founding member) calling on policy makers to ensure that any measures taken to respond to COVID-19, as well as their enforcement, must be proportionate, grounded in science, and in compliance with human rights. Attached as **Exhibit “I”** is a copy of this statement.

40. I make this affidavit in support of this application for judicial review, and for no improper purpose.

AFFIRMED before me at the City of Toronto,
this 27 day of May, 2020



A Commissioner, &c.

D. Sheppard LSO 59074H



Sandra Ka Hon Chu

This is **Exhibit "A"** to the
Affidavit of Sandra Ka Hon
Chu, Affirmed May 27, 2020



A Commissioner, &c.

D. Sheppard LS0 J9074H

Exhibit “A” to the Affidavit of Sandra Ka Hon Chu

List of Cases in which the HIV Legal Network was Granted Leave to Intervene

(in chronological order)

- *R. v. Cuerrier*, [1998] 2 SCR 371;
- *R. v. JT*, 2008 BCCA 463;
- *R. v. Wright*, 2009 BCCA 514;
- *R. v. Mabior*, 2010 MBCA 93;
- *R. v. DC*, 2010 QCCA 2289;
- *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44;
- *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45;
- *R. v. Mabior*, 2012 SCC 47 and *R. v. DC*, 2012 SCC 48;
- *R. v. Mernagh*, 2013 ONCA 67;
- *R. v. Mekonnen*, 2013 ONCA 414 and *R. v. Felix*, 2013 ONCA 415;
- *Canada (Attorney General) v. Bedford*, 2013 SCC 72 and 2012 ONCA 186;
- *R. v. Hutchinson*, 2014 SCC 19;
- *R. v. Wilcox*, 2014 SCC 75;
- *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852
- *Carter v. Canada (Attorney General)*, 2015 SCC 5;
- *R. v. Smith*, 2015 SCC 34;
- *Simpson v. Ontario (Community Safety and Correctional Services)*, HRTO File Number 2015-19800-I;
- *R v. Lloyd*, 2016 SCC 13;
- *R v. Gowdy*, 2016 ONCA 989;
- *A.B. v. Minister of Citizenship and Immigration*, 2017 FC 1170;
- *R. v. Thompson*, 2018 NSCA 13;
- *Christian Medical and Dental Society of Canada et al v. College of Physicians and Surgeons of Ontario*, 2018 ONSC 579 (Div Ct), 2019 ONCA 393;
- *R. v. Boone*, 2019 ONCA 652;

- *ETFO et al v. Her Majesty the Queen*, 2019 ONSC 1308;
- *R v. Ndhlovu*, ABCA File No. 1803-0111A (decision pending);
- *R v. Sharma*, ONCA File No. C66390 (decision pending),
- *R. v. NG*, ONCA File No. C66296 (decision pending).
- *R. v. Aziga*, ONCA File No. C50421 (hearing pending); and
- *Sherman Estate v. Donovan*, SCC Docket No. 38695 (hearing pending).

This is **Exhibit "B"** to the
Affidavit of Sandra Ka Hon
Chu, Affirmed May 27, 2020



A Commissioner, &c.

D. Sheppard LSO 59074H



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,



Janet Rowe
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

This is **Exhibit "C"** to the
Affidavit of Sandra Ka Hon
Chu, Affirmed May 27, 2020



A Commissioner, &c.

D. Sheppard LSO 59074H



April 13, 2020

DELIVERED BY EMAIL

The Hon. Bill Blair
Minister of Public Safety and Emergency Preparedness

Anne Kelly
Commissioner of the Correctional Service of Canada

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.

We last wrote to you on March 17, 2020, at which point we expressed grave concern for our clients and communities in the face of the COVID-19 crisis. Over the weeks since, that crisis has only deepened, including in corrections. When we last wrote, we urged that every possible step be taken to prevent the novel coronavirus from entering federal institutions. It is now clear that those efforts have failed. Both inmates and correctional officers in multiple institutions have been diagnosed with COVID-19, and the number grows every day. As you know, prisoners are disproportionately likely to be living with HIV, HCV, respiratory illness, hypertension and other underlying health conditions that compromise their immunity and increase their vulnerability to COVID-19. There is every reason to expect that, once present, the novel coronavirus will spread rapidly throughout institutions, with devastating effects. The window for prevention is rapidly closing. Decisive action must be taken now.

The evidence from epidemiologists and public health officials is clear: physical distancing is the most effective way to avoid transmission. **Physical distancing is also effectively impossible in prisons as**

currently administered and populated. The only way to achieve that goal is to reduce the number of prisoners in custody.

We are therefore writing to you again today to add our voices to the call to **release medically vulnerable prisoners to the community by authorizing indefinite Unescorted Temporary Absences (UTAs) for medical purposes**. More specifically, **we call on the Commissioner to issue an urgent and public directive to all institutional heads, health care staff, and case management staff, directing that the authority of the Commissioner and Institutional Heads to grant UTAs for medical reasons under section 116(2) of the *Corrections and Conditional Release Act (CCRA)* should be used to facilitate the release of medically vulnerable prisoners to locations in the community, where they can protect themselves against exposure to the novel coronavirus.**

In particular, we ask that this directive include the following:

- A direction that all Institutional Heads, health care staff, and case management staff, are to coordinate and move urgently to identify and release suitable prisoners by recommending and authorizing medical UTAs in *every* case where it is consistent with public safety.
- A direction that the criteria of medical desirability in para. 116(1)(b) of the *CCRA* and para. 155(a) of the *Regulations* is considered to be met in any case where an inmate's age (over 50) or any underlying comorbidities (existing medical conditions) make them more prone to serious adverse outcomes from COVID-19. The direction will include a non-exhaustive list of conditions for which evidence of a diagnosis will be satisfactory to establish elevated risk of adverse COVID-19 outcomes.
- A direction that every risk assessment under s. 116(1)(a) and (c) of the *CCRA* (as to whether an inmate's risk to public safety is undue on a medical UTA, and/or whether an inmate's behaviour under sentence precludes a medical UTA) must take in to consideration the risks posed to public safety by *failing to release* the prisoner, including the following:
 1. That outbreaks in congregate living facilities such as prisons are known to happen extremely quickly and, despite CSC's commitment to take every precaution, may be impossible to effectively control once they occur.
 2. That federal prisoners, on average, tend to have much higher rates of underlying comorbidities than the general population that make them more prone to serious adverse outcomes (e.g., ICU admission or death) from COVID-19.
 3. That outbreaks in prisons pose a serious danger of overwhelming both CSC and community health care systems, meaning that scarce resources may be consumed by outbreaks in prisons before the epidemic takes hold in the general population.

4. That outbreaks in prisons can be expected to lead to or worsen generalized outbreaks in the community (as staff must come and go from the prison even after the outbreak).
- A direction that every risk assessment under sections 116(1)(a) and (c) of the *CCRA* must take into consideration the unique social conditions of the pandemic, such as the more limited opportunity for social interactions, and the fact that such medical releases can include house-arrest-type conditions.
 - A direction that certain procedural requirements (including the requirement for a Community Assessment or Community Strategy) and timeframes in Commissioner's Directive 710-3 may be abridged for urgent medical UTAs during the pandemic in order to ensure that a sufficiently urgent response is possible at existing staffing levels.
 - A direction that case management staff in the institutions and the community urgently coordinate to develop simple structured release plans for each inmate who otherwise meets the criteria for release (this would include promptly reaching out to family members and known community supports, as well as community organizations that may be in a position to assist in developing community release placements for prisoners).
 - That medically vulnerable prisoners who cannot be safely released be provided greater opportunities for physical distancing in humane conditions (such as the option of residing in a private family visit trailer, etc.)

Yours truly,



Janet Rowe
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

This is **Exhibit "D"** to the
Affidavit of Sandra Ka Hon
Chu, Affirmed May 27, 2020



A Commissioner, &c.
D. Sheppard LSO 59024H

RE: COVID-19 – Protecting Prisoner Health

Anne Kelly, Commissioner/Commissaire <AnneKellyCommissioner@csc-scc.gc.ca>

Thu 4/30/2020 8:55 AM

To: Sandra Ka Hon Chu <SChu@aidslaw.ca>; 'janet@pasan.org' <janet@pasan.org>; Ryan Peck <peckr@lao.on.ca>;

 1 attachment

Protecting Prisoner Health_CSC COVID-19.pdf;

Dear Ms. Rowe, Mr. Peck and Ms. Ka Hon Chu,

Thank you for your correspondence of March 17, 2020.

The Correctional Service of Canada (CSC) is committed to protecting the safety and health of staff, inmates, and the public during these unprecedented times. CSC employees, especially those who are working in our institutions, on the frontline, and in communities supervising offenders are working tirelessly day in and day out to keep our operations going under exceptional circumstances.

To prevent the spread of COVID-19 in our institutions, CSC has suspended visits from the public and volunteers, as well as all temporary absences, unless medically necessary, work releases, and non-emergency transfers of inmates.

Understanding the impact these measures have on the inmate population, CSC has temporarily waived the food, accommodation and telephone deductions, and maintained the inmates' level of pay. We recognize that family contact is essential, especially in these challenging times. As such, we have added additional minutes to the inmates' phone card and have seen an increase in the number of telephone calls and video-visitation. We will continue to monitor these measures as the situation unfolds.

To protect our employees, CSC ensures ongoing prevention education and awareness and active screening of all critical staff entering the institutions. Staff must adhere to all health and safety directions provided, including but not limited to active screening, hand washing before entering the site, physical distancing, cleaning of common areas and equipment, and following public health's advice when off-duty. In addition, institutional routines and rosters have been modified to prevent and minimize the spread of the virus within the institution.

CSC has also equipped its correctional staff with the required Personal Protective Equipment, including masks. CSC has enhanced its cleaning protocols, including disinfecting common areas of contact. When an employee tests positive, CSC works with the local public health authorities to implement a number of measures, such as contact tracing, ensuring self-isolation, testing others as needed, and disinfecting the site. Finally, CSC has implemented its own tracing capability and is working collaboratively with the Public Health Agency of Canada.

To protect inmates, CSC is self-isolating inmates being transferred to federal custody from the province for 14 days, providing them with soap and hand sanitizer, keeping them informed through regular communiques, and working with inmates to review existing treatment plans with a focus on older offenders and those with serious underlying health conditions. CSC has protocols in place when an inmate tests positive for COVID-19, such as placement in medical isolation in his or her cell or room. Where required, CSC is providing masks to inmates. Finally, CSC is also equipped with low oxygen flow equipment to treat milder cases and has established clear protocols and procedures with local hospitals should inmates need to be transferred to those facilities for treatment.

As we move forward, CSC is continuing to actively monitor, plan and engage with health authorities on further precautions we can take to prevent the spread of COVID-19 in our institutions and communities to minimize the risks for the public, employees and inmates. We remain in contact with local public health departments across the country so we can stay up-to-date on issues, solutions and best practices. CSC staff and inmates are identified as priority one for testing, and like all other Canadians, we are tested by local public health authorities.

In regards to the release of offenders, the *Criminal Code of Canada* and the *Corrections and Conditional Release Act* (CCRA) are the legislative frameworks that govern both the eligibility dates of federally sentenced inmates and the requirements for release consideration. CSC has worked collaboratively with the Parole Board of Canada (PBC) to streamline the case management process and is actively reviewing cases of inmates whose risk can be safely managed in the community for presentation to the PBC. As noted by the PBC on their [website](#), they will consider the offender's health or health risk posed by the COVID-19 pandemic, if relevant as part of the risk assessment, along with all other information on file.

In addition, CSC is in regular contact with its community partners, including Community Residential Facilities (CRF), to ensure we work together to address any challenges presented by the current situation. Community Residential Facilities continue to follow public health guidance and we are working to ensure they have the proper supports and resources during this time. CSC is also looking at all options in order to ensure that we are not creating undue accommodation pressures on our CRF partners. CSC is working with the PBC to ease the pressure on the CRFs during the pandemic, by recommending a change to the residency requirement from a CRF to a home or family environment, where such a placement is risk appropriate.

Please rest assured that CSC takes its mandate very seriously and understands that there is no greater responsibility than having the care and custody of other human beings.

Finally, please note that updates on CSC's response to COVID-19 are posted on our [website](#).

Hoping you are staying safe and healthy.

Anne

Anne Kelly
Commissioner / Commissaire
Correctional Service Canada / Service correctionnel du Canada
340 Laurier Ave. West
Ottawa, ON
K1A 0P9
Email / Courriel : AnneKellyCommissioner@csc-scc.gc.ca
Government of Canada / Gouvernement du Canada

From: Sandra Ka Hon Chu <SChu@aidslaw.ca>

Sent: March 17, 2020 4:48 PM

To: Bill.Blair@parl.gc.ca; Kelly Anne (NHQ-AC) <Anne.Kelly@CSC-SCC.GC.CA>

Cc: Patty.Hajdu@parl.gc.ca; Janet Rowe <janet@pasan.org>; Adriel Weaver <adriel.weaver@gmail.com>; Ryan Peck <peckr@lao.on.ca>

Subject: COVID-19 – Protecting Prisoner Health

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 adopted²⁵³ 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,

5/27/2020

RE: COVID-19 – Protecting Prisoner Health - Sandra Ka Hon Chu

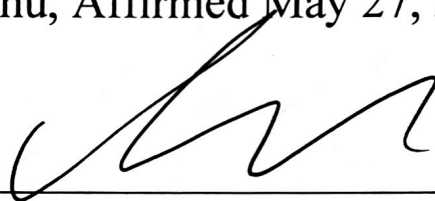
254

Janet Rowe²⁵⁴
Executive Director
PASAN

Ryan Peck
Executive Director
HALCO

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

This is **Exhibit "E"** to the
Affidavit of Sandra Ka Hon
Chu, Affirmed May 27, 2020



A Commissioner, &c.

D. Sheppard LS 59074H



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,



Janet Rowe
Executive Director
PASAN



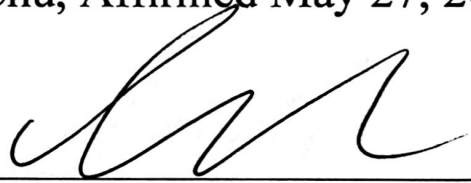
Ryan Peck
Executive Director
HALCO



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

Cc The Honourable Christine Elliott, Minister of Health
The Honourable Doug Downey, Attorney General
Dr. David Williams, Chief Medical Officer of Health

This is **Exhibit "F"** to the
Affidavit of Sandra Ka Hon
Chu, Affirmed May 27, 2020



A Commissioner, &c.

D. Shoppard LSO 57074H

April 23, 2020

Hon. Sylvia Jones
Solicitor General
Ministry of the Solicitor General

Hon. Christine Elliott
Minister of Health and Deputy Premier
Ministry of Health

Hon. Doug Downey
Attorney General of Ontario
Ministry of the Attorney General

Dear Ministers:

Re: COVID-19 – Protecting Prisoner Health

We are frontline workers and organizations deeply concerned about the impact of COVID-19 on people in provincial jails and detention centres in Ontario. As a growing number of prisoners and correctional staff at different facilities in Ontario test positive for the virus, we call 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 implement measures to protect the physical and mental health of all prisoners in provincial custody.

While some steps have been taken to address the pandemic in Ontario jails and detention centres, much more needs to be done. We are particularly concerned about the disproportionate number of prisoners who live with underlying health conditions that compromise their immunity and increase the severity of infection. At the same time, conditions in Ontario jails and detention centres (e.g. overcrowding, poor cleaning, poor hygiene, frequent contact with staff, sub-standard health care) mean that all prisoners are extremely vulnerable to infection because they are unable to take the same precautions that other people in Ontario are encouraged to adopt.

Prevention

As a first priority, we urge the government to take every possible step to prevent *more* cases of COVID-19 from entering provincial jails and detention centres. In particular, **non-custodial options should be sought for everyone at risk of experiencing serious complications from the virus**, including anyone who is over 50 years old, immunocompromised, pregnant, or sick. A provincial sentence must not be a death sentence. **Explicit instructions should also be provided to law enforcement to exercise restraint when choosing to lay charges** during this period so that provincial institutions are not further congested.

All prisoners who have served more than half their sentence should be released, and alternatives to custody should be considered for those incarcerated for non-violent offences, as well as for those who have been convicted of serious offences but pose no public safety risk. Fewer people in correctional facilities will decrease the risk of transmission for both prisoners and staff, and will allow the government to prioritize allocating resources for the health care institutions and essential service industries that need them most.

In prison, **measures to maintain a minimum physical distance between people, as per public health recommendations, must be adopted.** This may involve staggered mealtimes, staggered

recreational times, and at an absolute minimum, single-bunking. Where possible, prisoners must be housed in every other cell. **All prisoners should be provided with plain-language information about COVID-19, personal protective equipment (PPE) including masks, as well as sanitary supplies including soap, sanitizer with sufficient alcohol content, water, bleach, and cleaning supplies** without cost to them or further delay. **Enhanced cleaning should also be carried out by staff** who are properly trained, equipped, and protected.

Treatment

For those known to have been directly exposed to the virus or who are exhibiting symptoms, **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 minimally restrictive 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 while protective measures and protocol are being implemented.

Further, we urge the government to **ensure that sufficient medical staff and resources are available within institutions**, both to care for those who may contract COVID-19 but do not require hospitalization, and to provide uninterrupted treatment for those prisoners living with HIV, hepatitis C (HCV), and/or other underlying health conditions.

Mental health and other supports

Amid this pandemic, 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. At a minimum, **phone calls for prisoners should be free. The number of phones available must also be increased and access to videoconferencing facilities for prisoners' personal communications must be expanded.** For example, Ontario Telehealth Network ("OTN"), a secure video-conferencing system, is one resource already available at most correctional facilities in Ontario that may be an effective alternative to using the communal telephones.

Prisoners should also be provided with access to more mental health, public health, and legal supports via external agencies; this entails giving all prisoners a list of available agencies and government supports and their contacts.

Release planning

Finally, proper release planning is essential and all the more pressing when public health guidance recommends physical distancing. **People should be released with PPE and sanitary supplies as well as information about and links to resources that are available during the pandemic.** Moreover, your ministries must work with municipalities and agencies to **ensure people released from provincial custody have a place to safely isolate**, without exposing themselves or others to the risk of infection. As housing advocates have emphasized, physical distancing is not possible in congregate shelter settings. All people without secure shelter, including those released from provincial custody, must be moved into hotels or housing. Dedicated transitional housing for people released from provincial custody should be prioritized.

Transparency

More broadly, transparency is vital to ensuring the implementation of the most effective pandemic response, and we urge your government to **make data regarding the number of people in provincial custody tested and diagnosed with COVID-19 publicly available** and to disaggregate this data by institution, gender, and race. It is also imperative that the public and in particular the families of those who are in detention are **informed of the current COVID-19 testing and screening procedures** for new admissions and those being released.

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 public health.

Thank you for your attention to this matter.

Organizations:

ACT

AIDS Committee of Ottawa

Alliance For Healthier Communities

Alliance for South Asian AIDS Prevention

Asian Community AIDS Services (ACAS)

Banyan Tree Circles

Breakaway

Canadian HIV/AIDS Legal Network

Canadian Students for Sensible Drug Policy, Ryerson

Carceral Studies Research Collective

CATIE

Centre for Criminology & Sociological Studies, University of Toronto

Church of the Holy Trinity

CMHA Brant-Haldimand-Norfolk Branch

CMHA Champlain East Branch

CMHA Cochrane Timiskaming Branch

CMHA Durham Branch

CMHA Elgin-Middlesex Branch

CMHA Fort Frances Branch

CMHA Grey Bruce Branch

CMHA Haliburton, Kawartha, Pine Ridge Branch

CMHA Halton Region Branch

CMHA Hamilton Branch

CMHA Huron Perth Branch

CMHA Kenora Branch

CMHA Lambton-Kent Branch

CMHA Niagara Branch

CMHA Ontario Division

CMHA Ottawa Branch

CMHA Oxford County Branch

CMHA Peel Dufferin Branch

CMHA Sault Ste. Marie Branch

CMHA Simcoe County Branch

CMHA Sudbury/Manitoulin Branch

CMHA Thunder Bay Branch

CMHA Toronto Branch
CMHA Windsor-Essex County Branch
CMHA York and South Simcoe Branch
Committee for Accessible AIDS Treatment
Criminalization and Punishment Education Project
Elevate NWO
Elizabeth Fry Society of Northwestern Ontario
Elizabeth Fry Society Simcoe Muskoka
Elizabeth Fry Society Southern Ontario Region
Elizabeth Fry Toronto
HIV & AIDS Legal Clinic Ontario (HALCO)
HIV/AIDS Regional Services (HARS)
HIV/AIDS Resources and Community Health
Jail Accountability and Information Line
John Howard Society of Ontario
John Howard Society of Simcoe and Muskoka
Journal of Prisoners on Prisons
Legalish Foundation
MOSTANALYZED
Parkdale Queen West Community Health centre
PASAN
Peterborough AIDS Resource Network
Regional Support Associates
Street Health Community Nursing Foundation
Toronto People With AIDS Foundation
Toronto Prisoners' Rights Project
WellFort Community Health Services
Women and HIV/AIDS Initiative

This is **Exhibit "G"** to the
Affidavit of Sandra Ka Hon
Chu, Affirmed May 27, 2020



A Commissioner, &c.
D. Shuppard LSO 57074H

May 13, 2020

DELIVERED BY EMAIL

The Hon. Patty Hajdu
Minister of Health

The Hon. Bill Blair
Minister of Public Safety and Emergency Preparedness

The Hon. David Lametti
Minister of Justice and Attorney General of Canada

Dear Ministers:

We write with urgency in light of two unprecedented public health emergencies. As the COVID-19 pandemic and the overdose crisis sweep across Canada, there is a pressing need to adopt evidence-based measures that uphold the health and safety of people who use drugs, and we are asking that you use the tools at your disposal to decriminalize simple drug possession immediately.

As you know, more than 14,700 apparent opioid-related deaths were reported between January 2016 and September 2019;¹ the latest data related to the coronavirus outbreak indicate more than 70,000 confirmed cases of COVID-19 in Canada and more than 5,000 reported deaths.²

The COVID-19 pandemic has further exposed stark health inequities and the many structural factors that increase people's vulnerability to the virus. People who use drugs, and particularly those who are homeless or precariously housed, are more likely to have chronic health issues that will increase their risk of experiencing severe complications should they contract COVID-19. To minimize the risk of transmission and other drug-related health risks, public health officials have urged people who use drugs to continue using harm reduction services, including overdose prevention sites and supervised consumption sites.³

Unfortunately, COVID-19 has forced many harm reduction sites across the country to close or reduce the scope of their services, and people who use drugs are navigating new gaps not only in the drug supply chain but also in the resources and supports they rely on, increasing their risk of HIV and hepatitis C (HCV) infection, overdose, and other harms to their health.⁴ Moreover, it is well established that continued police enforcement of simple drug possession laws and the attendant fear of arrest pushes people who use drugs to do so in isolation and compromises their ability to take critical safety precautions. This includes by deterring access to harm reduction services, to which people who use drugs cannot legally travel while in possession of the substances they wish to use there.⁵ Heightened law enforcement surveillance in the context of the pandemic further hampers their access to vital health services and ability to use drugs safely, while also increasing their risk of arrest and detention. Not surprisingly, some cities are already seeing reports of increasing overdose deaths since the onset of the COVID-19 pandemic.⁶

As a matter of public health and of human rights, this cannot be ignored. As the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health recently stated, "in the current COVID-19 context, people who use drugs face unique needs and risks, due to criminalisation, stigma, discrimination, underlying health issues, social marginalisation and higher economic and social vulnerabilities"; therefore, to "prevent unnecessary intake of prisoners and unsafe drug consumption practices, **moratoria should be considered on enforcement of laws criminalising drug use and possession.**"⁷ [emphasis added] There are decisive steps you can take now to protect the health of people who use drugs in Canada, including by decriminalizing simple drug possession via exemption

powers contained under the *Controlled Drugs and Substances Act* (CDSA). There are currently several options for providing exemptions from CDSA application:

- **A proactive exemption issued by the Federal Minister of Health pursuant to section 56(1) of the CDSA**, on the basis that it is necessary for a *medical or scientific purpose* or is *otherwise in the public interest*;⁸ or
- **Regulations by Cabinet pursuant to sections 55(1)(z) or 55(2) of the CDSA.**⁹

Regardless of the option adopted, it is undoubtedly **in the public interest, particularly in light of the COVID-19 pandemic, in issuing a federal exemption to all people in Canada from section 4(1) of the CDSA, which prohibits personal possession of a controlled substance**. Penalties for contravening this section range from a fine to up to seven years imprisonment.

As you know, before the introduction of the *Respect for Communities Act* in 2015, the federal Minister of Health granted exemptions for supervised consumption services under section 56 of the CDSA. This provision was also used more recently to respond to the current overdose crisis by issuing class exemptions to provinces for temporary “overdose prevention sites” on the basis of it being “in the public interest.” In response to COVID-19, Health Canada also issued a section 56 exemption relaxing rules for pharmacists and prescribers in order to enable people who use drugs to adhere to public health guidance about physical distancing and self-isolation while accessing controlled substances.¹⁰

Correspondingly, section 55(1)(z) of the CDSA provides broad powers to the “Governor in Council” (i.e. the federal Cabinet) to “exemp[t], on any terms and conditions that are specified in the regulations, any person or class of persons [...] from the application of *all or any of the provisions of this Act* or the regulations” [emphasis added]. Under section 55(2) of the CDSA, the federal Cabinet also has the authority to adopt regulations pertaining to investigations and “other law enforcement activities,” giving Cabinet wide latitude to adopt regulations about law enforcement activities under the CDSA.

Criminalizing simple drug possession does not protect public health or public safety and has been ineffective in reducing the use and availability of illicit drugs.¹¹ Prohibition drives rampant stigma against people who use drugs and puts them at increased risk of harm, including by impeding their access to much-needed services and emergency care in the event of an overdose or, now, by increasing their risk of exposure to SARS-CoV-2, the virus that causes COVID-19. As the Canadian Centre on Substance Use and Addiction concluded in a 2018 report, a growing body of evidence supports decriminalization as an effective approach to mitigate harms associated with substance use, particularly those associated with criminal prosecution for simple possession.¹²

In Canada, there is strong support for the decriminalization of drug possession for personal use from organizations of people who use drugs and other community organizations, harm reduction and human rights advocates¹³ as well as public health associations and authorities including the Canadian Public Health Association,¹⁴ Canadian Mental Health Association,¹⁵ Canadian Nurses Association,¹⁶ Toronto Board of Health,¹⁷ Toronto’s Medical Officer of Health,¹⁸ Montreal Public Health,¹⁹ Winnipeg Regional Health Authority,²⁰ and Provincial Health Officer of British Columbia.²¹ In April 2018, the Liberal Party of Canada also adopted at its National Convention a policy resolution on “Addressing the Opioid Crisis Through a Public Health Approach (#2752)” calling on the Government of Canada to address problematic drug use as a health (and not criminal justice) issue by expanding harm reduction and treatment services and removing the criminal sanction for low-level drug possession.²² Other federal parties, including the New Democratic Party of Canada and the Green Party of Canada, have also indicated their support for decriminalizing simple drug possession.²³

Globally, decriminalizing simple drug possession has been recommended by numerous health and human rights bodies as a measure that both protects health and upholds human rights, including the World Health Organization (WHO), UNAIDS, UN Special Rapporteurs on the right to health,²⁴ the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment,²⁵ and most recently, the UN Chief Executives Board for Coordination — which has adopted a call for decriminalization of simple possession as the common position of the UN system (including the UN Office on Drugs and Crime, the lead technical agency on drug policy issues).²⁶ The *International Guidelines on Human Rights and Drug Policy*, endorsed already by the UN Development Program (UNDP), UNAIDS and WHO, also call on States to “decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption.”²⁷ And the Global Commission on Drug Policy, comprising former heads of state or government and other eminent political, economic, and cultural leaders, has highlighted the tremendous damage caused by the criminalization of people who use drugs and called for the removal of all punitive responses to drug possession and use.²⁸

Moreover, in a scan of more than 25 jurisdictions around the world that have decriminalized drugs, a number of positive health outcomes were identified, including reduced rates of HIV transmission and fewer drug-related deaths, improved education, housing, and employment opportunities for people who use drugs, and significant savings, with a negligible effect on levels of drug use.²⁹

Not only would a federal exemption from section 4(1) of the CDSA protect the health of people who use drugs, preserve police resources, and reduce unnecessary contact and police interactions, it would also mean fewer people in detention. This would decrease the risk of transmission of the COVID-19 virus in prisons, where a growing number of cases among prisoners and prison staff have already been reported.³⁰ Already, the Public Prosecution Service of Canada, which is responsible for prosecuting drug offences under the CDSA, has issued guidance to prosecutors to reduce “to the extent possible, in a principled manner,” the “detention population during the pandemic period.”³¹ As the UN High Commissioner for Human Rights recently affirmed, “[i]mprisonment should be a measure of last resort, particularly during the crisis.”³² Some courts have already followed suit, recognizing that incarceration is inherently at odds with current public health directions to self-isolate during the COVID-19 pandemic, and favouring release on the balance.³³

Decriminalization of simple possession is long overdue. Now more than ever, there is urgent need for bold policy action that meaningfully upholds the health and safety of people who use drugs. In 2016, Canada rightfully declared that drug use is a matter of public health rather than criminal justice, but that declaration is ineffective if drug possession continues to be criminalized. **Whether it takes the form of a ministerial exemption or a Cabinet regulation, all people in Canada should be exempted from the criminal prohibition on simple possession in section 4(1) of the CDSA.** We urge you to take the necessary steps, including via your ministerial powers outlined above, at this critical time. This should be accompanied by guidance to all police forces in Canada and a broader communications campaign so that law enforcement and others are aware of and respect the new law.

Sincerely,

Canadian HIV/AIDS Legal Network
Canadian Drug Policy Coalition
Pivot Legal Society

Action Canada for Sexual Health and Rights
AIDS Coalition of Nova Scotia
AIDS Committee of Newfoundland and Labrador
AIDS Saskatoon

AIDS Vancouver Island
 Alberta Addicts Who Educate and Advocate Responsibly (AAWEAR)
 Alberta Community Council on HIV (ACCH)
 Alliance for Healthier Communities
 Amnesty International
 Association des intervenants en dépendance du Québec (AIDQ)
 Association québécoise pour la promotion de la santé des personnes Utilisatrices de Drogues (AQPSUD)
 Association québécoise des centres d'intervention en dépendance (AQCID)
 Avenue B Harm Reduction
 BC Association of People on Methadone (BCAPOM)
 BC Centre for Excellence in HIV/AIDS
 BC Centre on Substance Use
 BC Civil Liberties Association
 Breakaway Addiction Services
 CACTUS Montréal
 Canadian AIDS Society
 Canadian Nurses Association
 Canadian Public Health Association
 Canadian Students for Sensible Drug Policy
 Canadian Association of People Who Use Drugs (CAPUD)
 CATIE
 Centre on Drug Policy Evaluation
 Coalition des organismes communautaires québécois de lutte contre le sida (COCQ-SIDA)
 CRACKDOWN Podcast
 Criminal Lawyers' Association
 Direction 180
 Drug Users' Advocacy League
 Families for Addiction Recovery
 Harm Reduction Nurses Association
 HIV & AIDS Legal Clinic Ontario (HALCO)
 Manitoba Harm Reduction Network
 Moms Stop the Harm
 mumsDU - moms united and mandated to saving the lives of drug users
 Ontario AIDS Network
 Pacific AIDS Network
 PEERS Alliance
 Prisoners with HIV/AIDS Support Action Network (PASAN)
 SOLID
 South Island Community Overdose Response Network
 South Riverdale Community Health Centre
 Thunderbird Partnership Foundation
 Toronto Drug Users' Union
 Toronto Overdose Prevention Society
 Vancouver Area Network of Drug Users (VANDU)
 Western Aboriginal Harm Reduction Society (WAHRS)
 Women and HIV/AIDS Initiative

¹ Government of Canada, *Opioid-related harms in Canada*, March 2020, Available at <https://health-infobase.canada.ca/substance-related-harms/opioids/>.

² Government of Canada, *Coronavirus disease (COVID-19): Outbreak update*, last modified April 27, 2020. Available at www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html?topic=tilelink.

³ BC Centre for Disease Control, *COVID-19: Harm Reduction and Overdose Response* (information sheet), March 18, 2020. Available at www.bccdc.ca/Health-Info-Site/Documents/COVID19-harm-reduction.pdf

⁴ A. Nguyen, “Supervised Consumption Sites scrambling to handle two public health crises at once,” *Ricochet Media*, March 25, 2020. Available at <https://ricochet.media/en/3005/supervised-consumption-sites-scrambling-to-handle-two-public-health-crises-at-once>.

⁵ *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 at para 10; A. B. Collins et al., “Policing space in the overdose crisis: A rapid ethnographic study of the impact of law enforcement practices on the effectiveness of overdose prevention sites,” *International Journal on Drug Policy* 73 (2019): pp. 199-207.

⁶ J. Azpiri, “Vancouver sees spike in overdose deaths amid COVID-19 crisis,” *Global News*, April 1, 2020.

⁷ UN Office of the High Commissioner, Statement by the UN expert on the right to health* on the protection of people who use drugs during the COVID-19 pandemic, April 16, 2020. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25797&LangID=E.

⁸ The full text of section 56(1) currently reads as follows:

56(1) The Minister may, on any terms and conditions that the Minister considers necessary, exempt from the application of all or any of the provisions of this Act or the regulations any person or class of persons or any controlled substance or precursor or any class of either of them if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest. See *Controlled Drugs and Substances Act*, SC 1996, c 19, s 56(1).

⁹ The full text of section 55(1)(z) currently reads as follows:

The Governor in Council may make regulations for carrying out the purposes and provisions of this Act, including the regulation of the medical, scientific and industrial applications and distribution of controlled substances and precursors and the enforcement of this Act, as well as the regulation of designated devices and, without restricting the generality of the foregoing, may make regulations ... exempting, on any terms and conditions that are specified in the regulations, any person or class of persons or any controlled substance, precursor, designated device or any class of controlled substances, precursors or designated devices from the application of all or any of the provisions of this Act or the regulations.

The relevant section of Section 55(2) currently reads: “The Governor in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, may make regulations that pertain to investigations and other law enforcement activities conducted under this Act by a member of a police force or of the military police and other persons acting under the direction and control of the member...”

¹⁰ Government of Canada, *Subsection 56(1) class exemption for patients, practitioners and pharmacists prescribing and providing controlled substances in Canada during the coronavirus pandemic*, (last modified April 9, 2020). Available at www.canada.ca/en/health-canada/services/health-concerns/controlled-substances-precursor-chemicals/policy-regulations/policy-documents/section-56-1-class-exemption-patients-pharmacists-practitioners-controlled-substances-covid-19-pandemic.html.

¹¹ E. Wood et al., “The war on drugs: a devastating public-policy disaster,” *The Lancet* 373:9668 (2009) pp. 989-990.

¹² Canadian Centre on Substance Use and Addiction, *Decriminalization: Options and Evidence*, 2018. Available at <https://www.ccsa.ca/sites/default/files/2019-04/CCSA-Decriminalization-Controlled-Substances-Policy-Brief-2018-en.pdf>.

¹³ Canadian HIV/AIDS Legal Network, “Canada must adopt a human-rights based approach to drug policy,” November 22, 2018. Available at www.aidslaw.ca/site/statement-canada-must-adopt-a-human-rights-based-approach-to-drug-policy/?lang=en. The statement was endorsed by Amnesty International Canada, Canadian Aboriginal AIDS Network, Canadian Association of People Who Use Drugs, Canadian Drug Policy Coalition, Canadian Nurses Association, Canadian Public Health Association, Criminal Lawyers’ Association, HIV & AIDS Legal Clinic Ontario (HALCO), Moms Stop The Harm, moms united and mandated to saving the lives of Drug Users (mumsDU) and Pivot Legal Society.

¹⁴ Canadian Public Health Association, *Decriminalization of personal use of psychoactive substances*, position statement, October 2017. Available at www.cpha.ca/sites/default/files/uploads/policy/positionstatements/decriminalization-positionstatement-e.pdf

¹⁵ Canadian Mental Health Association, *Care not Corrections: Relieving the Opioid Crisis in Canada*, April 2018. Available at https://cmha.ca/wp-content/uploads/2018/04/CMHA-Opioid-Policy-Full-Report_Final_EN.pdf

¹⁶ Canadian HIV/AIDS Legal Network, *supra* note 12.

¹⁷ N. Thompson, “Toronto board of health to urge federal government to decriminalize drug use,” *The Globe and Mail*, July 16, 2018.

¹⁸ E. Mathieu, “Chief medical officer calls for decriminalization of all drugs for personal use,” *The Toronto Star*, July 9, 2018.

¹⁹ Santé Montréal, “La directrice régionale de santé publique de Montréal salue les recommandations de Toronto” news release, July 27, 2018. Available at <https://santemontreal.qc.ca/population/actualites/nouvelle/decriminalisation-des-drogues-pour-usage-personnel/>.

²⁰ Winnipeg Regional Health Authority, *Position statement on harm reduction*, December 2016. Available at <https://serc.mb.ca/wp-content/uploads/2018/06/HarmReduction-wrha.pdf>

²¹ British Columbia Office of the Provincial Health Officer, *Stopping the Harm: Decriminalization of People who use Drugs in BC*, April 2019. Available at www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/special-reports/stopping-the-harm-report.pdf

²² T. Lupick, “Liberal party members overwhelmingly vote for decriminalizing drugs while Trudeau repeats opposition,” *Georgia Straight*, April 23, 2018.

²³ “Green Party would decriminalize all drug possession if elected,” *CBC News*, September 21, 2019.

²⁴ See, for example, Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN General Assembly, 65th Session, UN Doc A/65/255, August 6, 2010; Anand Grover, *Submission to the Committee against Torture regarding drug control laws*, October 19, 2012; Anand Grover, *Open letter by the Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, in the context of the preparations for the UN General Assembly Special Session on the Drug Problem (UNGASS)*, to UNODC Executive Director Yury Fedotov, December, 7 2015.

²⁵ Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly, 22nd Session, UN Doc A/HRC/22/53, February 1, 2013.

²⁶ United Nations Chief Executives Board, *Summary of Deliberations: Segment 2: common United Nations system position on drug policy*, UN System, 2nd regular session of 2018, UN Doc CEB/2018/2, January 18, 2019; United Nations Chief Executives Board, *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, UNCEB, 2nd Session, Annex 1, UN Doc CEB/2018/2, January 18, 2019.

²⁷ International Centre on Human Rights and Drug Policy, UNAIDS, UNDP, WHO, *International Guidelines on Human Rights and Drug Policy*, March 2019.

²⁸ Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalization*, November 2016.

²⁹ Release, *A Quiet Revolution: Drug Decriminalisation Across the Globe*, March 2016.

³⁰ See, for example, Office of the Correctional Investigator, *COVID-19 Status Update*, April 23, 2020; Tina Lovgreen, “All inmates and staff at Mission Institution being tested for COVID-19,” *CBC News*, April 22, 2020; and Liam Casey, “COVID-19 outbreak leads to Ontario jail being closed after 60 inmates, eight staff test positive,” *National Post*, April 20, 2020.

³¹ Public Prosecution Service of Canada, *Memorandum - COVID 19: Bail and Resolution Principles*, April 8, 2020.

³² UNHR, Office of the High Commissioner, “Urgent action needed to prevent COVID-19 ‘rampaging through places of detention’ – Bachelet,” news release, (news article) (25 March 25, 2020), online: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>.

³³ *R v Kandhai*, 2020 ONSC 1611 at para 7; *R v JS*, 2020 ONSC 1710 at paras 19-20.

This is **Exhibit "H"** to the
Affidavit of Sandra Ka Hon
Chu, Affirmed May 27, 2020



A Commissioner, &c.

D. Sheppard LSO 57074H

FLATTEN INEQUALITY:

Human rights in the age of COVID-19



At a Glance:

HIV and SARS-CoV-2: What history can teach us

At Issue: Criminalization and public health surveillance

At Issue: Prisons and other places of detention

At Issue: Universal access to shelter and housing, income and other supports, and health care

At Issue: Travel and border restrictions

Summing Up: Human rights are more important now than ever

Terminology Matters:

SARS-CoV-2 is the virus responsible for the disease we now commonly refer to as COVID-19 (coronavirus disease).

#FlattenInequality
#PolicingthePandemic

HIV and SARs-CoV-2: What history can teach us

In the face of the global COVID-19 pandemic, law- and policymakers around the world are already taking or seriously contemplating drastic measures in an attempt to minimize the spread of SARS-CoV-2. Some of these measures are eerily familiar to those adopted in response to HIV, such as imposing penalties on people for not abiding by public health recommendations or engaging in exceptional surveillance of individuals. Certain limitations on some human rights may be justified as necessary in the context of a pandemic of a casually communicable infection, but it is essential that any measures be appropriately narrow and comply with human rights standards. **Furthermore, those making and enforcing any laws or policies limiting rights must reflect carefully on the reality that hasty and broad resort to such punitive measures may perversely undermine public health objectives while also violating human rights — doing more harm than good on both fronts.**

At the same time, the history of both the HIV pandemic and the ongoing opioid overdose crisis has taught us that public health responses all too often neglect the most marginalized. Like HIV, COVID-19 exacerbates inequalities and exposes the many structural factors that lead to health inequities and other economic and social disparities, as well as vulnerability to the virus. For example, people who are homeless or inadequately housed, and dependent on various services for basic needs, will face greater vulnerability to the virus and will find it difficult or impossible to maintain the recommended physical distance or self-isolate. When Canada fails to provide Indigenous communities with access to clean water, proper sanitation, decent housing, and adequate health care, Indigenous Peoples are at greater risk of viral infection. When there is a dearth of shelter spaces for women or young people fleeing violence — particularly those who use drugs, are Indigenous, migrant, LGBTQ2+, or who live with a disability — they are more likely to experience domestic violence and other abuse especially if they are to stay at home.

But this need not be the case. **The right laws, policies, and programs can make a positive difference by creating an “enabling environment” that supports individuals and communities in protecting and promoting their health and respecting human rights.** This, in turn, supports public health more broadly.

Lessons learned from the HIV pandemic confirm that successful public health responses must place human rights front and centre to reduce suffering, save lives, and protect public health. Similarly, a successful response to COVID-19 must protect the health and human rights of all people. International human rights law guarantees everyone the right to the highest attainable standard of health and obligates governments to take steps to prevent threats to public health and to provide health care to those who need it, in ways that respond to the particular needs of certain vulnerable populations.

Any limitations on rights, including those imposed in the name of public health, must be necessary, proportionate, and in pursuit of a legitimate aim. They must always include safeguards against their abusive or illegal application, and be subject to review and challenge. When taken in response to an emergency, such as a public health emergency, they must be limited in time.

Now, more than ever, Canada must stand vigilant against laws and policies that are not grounded in sound evidence, public health principles, and human rights.

At Issue: Criminalization and public health surveillance

We are concerned by recent reports suggesting some instances of people being criminally charged in Canada for allegedly exposing others to COVID-19. We have also seen police being deployed to enforce public health measures. While public health measures are necessary to limit the spread of the virus, repressive measures can have a discriminatory and devastating impact on the most vulnerable in society as well as those who are already disproportionately surveilled, policed, and criminalized. These include people who are homeless, insecurely housed and/or living in poverty; Indigenous, Black, and other racialized people; people who use drugs, people who sell sex, and other individuals from marginalized, stigmatized, or criminalized communities — especially where no economic and social support is provided to allow people to protect themselves and others, including through physical distancing and self-isolation.

As highlighted in a [recent statement by HIV JUSTICE WORLDWIDE regarding the COVID-19 pandemic](#), experience with HIV criminalization demonstrates the harmful consequences of the criminalization of infections and diseases on both human rights and public health. **Criminalization is not an evidence-based response to public health issues.** In fact, the use of the criminal law and other punitive approaches most often undermines public health by creating barriers to prevention, testing, care, and treatment. For example, people may not disclose their symptoms or status, or seek testing or treatment, for fear of being criminalized, otherwise penalized, or put under extreme surveillance. It can also lead to ill-informed “trial” by social and news media, and to myriad human rights violations, from arbitrary arrests and detentions to unfair trials (or no trials at all under new emergency measures) and harsh prison sentences.

The federal government, prosecutors, and courts must resist the overly broad use of criminal laws to address perceived exposure or risk of exposure to COVID-19, and police and other law enforcement interventions in the context of COVID-19 must be strictly limited. Heavy-handed fines and arrests to enforce public health measures could lead to abuse, with a disproportionate impact on the most marginalized, particularly those who may be less able or equipped to comply with public health recommendations. **Voluntary measures are more likely to encourage cooperation, facilitate access to care, and protect public trust than coercive measures.**

The drastic use of surveillance, such as the use of telecommunications data to track compliance with pandemic measures, also intrudes on the right to privacy and should be rejected. Privacy laws continue to apply during a public health crisis, and there must be a clear legal framework as to how and why information is collected, how it may legally be used, and how long it will be retained. **Certainly, each and every limitation of rights must comply with the *Canadian Charter of Rights and Freedoms* (“*Charter*”), no matter the situation.**

Human Rights Standards in International and Canadian Law

The *Siracusa Principles* were set out in 1984 by international law experts and are a widely accepted international framework for criteria that must be met for any measures limiting human rights. In Canada, the *Canadian Charter of Rights and Freedoms* (“*Charter*”) largely reflects these principles, and delineates binding legal rules for assessing whether a government law or other action that limits Charter rights is constitutionally permitted.

When scrutinizing limitations on rights imposed in response to the COVID-19 pandemic, the key considerations reflected in the *Siracusa Principles* and the *Charter* can be summarized as follows:

- The limitation on rights must be provided for and carried out in accordance with a law of general application.
- The government always has the burden of showing that the limitation is “demonstrably justified in a free and democratic society.”
- This means that any limitation on rights must:
 - be in pursuit of a legitimate objective, i.e. addressing a pressing and substantial public or social need;
 - be rationally connected to achieving that objective, meaning that it must be based on sound evidence and not be arbitrary, unfair, or based on irrational considerations;
 - impair rights as minimally as possible, meaning there are no less intrusive and restrictive means of achieving the objective; and finally,
 - there must be proportionality between the harmful effect of the measure limiting rights and the greater public good in achieving the objective.

At Issue: Prisons and other places of detention

As law- and policymakers implement unprecedented measures to protect the health of people in Canada, they must continue to fulfill their responsibility to provide health care for people in prisons and other places of detention (e.g. immigration detention) and immediately and consistently implement measures to protect the physical and mental health of people in custody.

It is a well-established legal principle that prisoners do not surrender their rights upon incarceration. Instead, prisoners retain all rights, subject to those restrictions that are unavoidable in a prison environment, including the right to the highest attainable standard of health, as set out by the [UN Standard Minimum Rules for the Treatment of Prisoners](#) (also known as the Nelson Mandela Rules) and the federal *Corrections and Conditional Release Act*. As a matter not only of ethical obligations, but also of legal obligation under the *Charter* and international human rights standards on health care in prison settings, prison health care should be equivalent to that available in the community.

States also have an obligation to take steps to prevent foreseeable threats to public health and law- and policymakers must take evidence-based steps that respect human rights to prevent COVID-19 from entering and spreading in prisons. People in prisons and other places of detention are likely to be more vulnerable to infection with COVID-19 because of close confinement, overcrowding, poor hygiene, poor ventilation, poor nutrition, and sub-standard health care. But they are 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. Indeed, there are already a growing number of reports of infection among prison staff and prisoners in Canada.

Moreover, many prisoners — a disproportionate number of whom are Indigenous — live with underlying health conditions that compromise their immunity and increase their risk of contracting COVID-19. Both HIV and hepatitis C virus (HCV) are far more prevalent among prisoners than among the population as a whole; a significant number also report hypertension, diabetes, or respiratory illness.

Concrete measures should be considered to reduce the prison population and the number of those in immigration detention. Having fewer people in detention will decrease the risk of COVID-19 transmission for both prisoners and correctional staff, including by reducing overcrowding, and allow prison authorities to prioritize resources for the institutions that need them most. For example, **in the short term, Attorneys General should issue directives for prosecutors to dismiss pending criminal charges against all people arrested for simple drug possession or sex work-specific criminal offences, and police forces should adopt guidelines that instruct law enforcement not to arrest and/or charge people with those offences.** Decriminalizing drug possession for personal use and repealing sex work-specific criminal laws have been recommended by numerous health and human rights bodies, including the World Health Organization, UNAIDS, and the UN Special Rapporteur on the right to health, as measures that both protect health and uphold human rights.

At the same time, non-custodial measures at the pre-trial, trial, sentencing as well as post-sentencing stages must be

considered. In particular, alternatives to custody including release must be sought for those who are at high risk of infection and of experiencing serious complications in the event that they are infected, including persons aged 60+; people with compromised immunity, respiratory conditions, and other chronic health conditions; people who are pregnant (who are also likely to be immune-compromised); and primary support parents (in light of the psychological stress of separation during a pandemic and to ensure safe supervision of dependent children who may otherwise be in precarious living situations). Alternatives to custody for the majority of prisoners incarcerated for non-violent offences and for those nearing the end of their sentence should also be explored. If certain prisoners cannot be evacuated due to some risk to the general public, they should, at minimum, have their own cell to be able to practice physical distancing. **Immigration detainees, the vast majority of whom pose no safety risk, should be released from custody.**

It is equally urgent to reduce the risk of transmission among people in prison and other people in detention. People in prison and other people in detention should be provided with adequate supplies of soap, sanitizer, and cleaning supplies without cost or further delay and prison authorities must fulfill their legal responsibility to uphold maintenance and sanitation in prisons, including enhanced cleaning by staff who are properly trained, equipped, and protected. Measures must also be adopted to enable people in custody and staff to maintain a minimum physical distance between them, as per public health recommendations.

For those known to have been directly exposed to SARS-CoV-2 or who are exhibiting symptoms of COVID-19, 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 individual segregation must be avoided. Appellate courts in Canada have held that segregation can violate prisoners' *Charter* rights, given 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 and other detainees, who are disproportionately likely to be living with mental health conditions, should not be jeopardized unnecessarily.**

Prison authorities must also 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 also provide uninterrupted treatment for those prisoners living with HIV, HCV, and/or other underlying health conditions. They must also guarantee uninterrupted access to other essential health care including harm reduction services. **The suspension of essential health services such as the Correctional Service of Canada's Prison Needle Exchange Program in response to COVID-19 is unacceptable, as this creates additional risk to prisoners of harms such as HIV and HCV infection.** There is no public health justification for such a suspension.

At a time of a great uncertainty, continued contact with family and friends is more vital than ever to prisoners' and other detainees' mental health and emotional well-being. With in-person visits suspended in prisons, it is especially important that prisoners have meaningful access to other means of communicating with their loved ones. **At a minimum, phone calls for prisoners should**

be free. 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.

At Issue: Universal access to shelter and housing, income and other supports, and health care

Shelter and housing

As with HIV, numerous factors affect one's vulnerability to and experience of COVID-19, including access to shelter and housing, income and other supports, and health care. People who are homeless or living in precarious housing will have extremely limited ways to seek safety or isolation during the pandemic and are particularly vulnerable to its effects. A dangerous shortage of housing and shelter means actual shelters will continue to be overcrowded and people will not be able to practice physical distancing — thereby dramatically increasing the risk of COVID-19 transmission. People who are homeless must also travel (generally using public transit) to access services and meal programs, further increasing their risk of exposure. Simply being in public spaces also increases their risk of being policed.

Federal, provincial, and municipal governments must work together to ensure there are sufficient shelter spaces to allow for physical distancing, drop-in programs that offer bathrooms, showers, meals, and daytime shelter, and quarantine spaces. All governments must also ensure the safety of all workers serving homeless people by supporting access to necessary personal protective equipment and implementing measures to prevent the transmission of COVID-19 within the shelter system. More broadly, provincial governments should implement a moratorium on eviction orders for the duration of the pandemic.

Income and other supports

Governments' response to COVID-19 has also prevented many people labouring in low-wage, precarious, or informal labour from working because of movement restrictions and other disruptions to the economy and public life. Precarious workers, including migrants, are already excluded from labour rights and protections; many are now also experiencing loss of income with little or no safety net when they are unable to work, making it impossible to meet their basic needs or those of their family. Sex workers, for example, who have experienced drastic reductions in income as a result of the COVID-19 pandemic, are unable to access government relief efforts given the criminalized nature of their industry, and migrant sex workers face the additional threat of imprisonment and deportation when making contact with any government agency or authority. **Provincial and federal governments must work together to increase income supports and ensure that these are accessible to all.**

Restrictions cannot and should not prevent people from accessing the necessities of life, including food and other critical amenities. For those whose employment is deemed essential, including those working in low-wage jobs, childcare must be available or alternative arrangements proffered. Support must also be put in place to

prevent and respond to violence against women and children, for whom isolating at home during the COVID-19 pandemic could prove deadly as abuse is likely to escalate.

Health care

If individuals do not feel safe accessing health care or do not have access to health care that meets their needs, public health efforts will be hampered. **Governments have a responsibility to provide health care without stigma and discrimination of any kind, including on the grounds of immigration status.** To that end, federal, provincial, and municipal governments should ensure that the COVID-19 response is not linked to immigration enforcement in any way, and take steps to communicate to migrant communities that they do not risk reprisal or deportation if they access care, especially in the context of seeking testing or treatment for COVID-19.

Other criminalized and stigmatized communities must also be offered care without fear of reprisals. The impact of the COVID-19 pandemic is likely to be further intensified by an ongoing overdose crisis. People who use drugs and/or are homeless are more likely to have chronic health issues that will increase their risk of experiencing severe complications related to the virus. Additional barriers to accessing drugs and requiring people to use drugs in isolation also increases their risk of fatal overdose. If specific mitigation measures are not implemented, people who use drugs will be negatively affected by efforts meant to prevent viral exposure, such as the shuttering or limiting of services and supports. This will, in turn, increase social isolation and the risk of forced withdrawal, non-potable alcohol use, HIV and HCV infection, and fatal overdose.

For people who use drugs, access to vital harm reduction services, including supervised consumption services, must be maintained. [Calls for a safer drug supply](#) are also all the more urgent in the midst of the COVID-19 pandemic, as border restrictions limit the available supply of illicit opioids and other substances, increasing prices and forcing people with little to no income to take measures to access opioids that may expose them to greater risk of infection and overdose. Lack of access could also force people into involuntary withdrawal, thereby exposing them to the risk of harm at a time when the health system is ill equipped to accommodate them. **For people who have access to opioid agonist therapy, governments should [continue to encourage](#) prescribers to consider ways they could allow patients to take more doses home, reducing the risk involved in multiple daily trips to their clinic or pharmacy.**

At Issue: Travel and border restrictions

Travel bans have been used to address the risk of COVID-19 in Canada and abroad. Such measures can be effective only if they are guided by science, with appropriate protection of the rights of those affected. As outlined above, infringements on human rights, including the right to freedom of movement, need to be proportionate to the risk presented by those affected, scientifically sound, transparent to the public, the least restrictive means to protect public health, and regularly revisited to ensure that they are still needed as the pandemic evolves. The effectiveness of travel bans depends on many variables, and also decreases in the later stages of an outbreak, particularly if more local, community transmission is happening. **The federal government should continually review its current policies restricting travel, including entry to Canada, to ensure it meets these criteria.**

For citizens and permanent citizens who may have COVID-19

The federal government is currently denying entry to Canada (by air) of any citizen or permanent resident who “has symptoms consistent with COVID-19.” While Canada allows such people entry by land, rail, or marine transportation, in practice, for many citizens and permanent residents abroad, entry by air (arriving at one of four designated airports permitted to receive international flights) is the only practical means of entering Canada. A blanket prohibition on boarding a flight to Canada if presenting any symptoms effectively denies entry to Canada to citizens and residents who may have some other condition accounting for certain symptoms; recall that the symptoms of COVID-19 are similar to and largely indistinguishable from various other conditions. It also denies entry to people who may have COVID-19 and urgently need to return home for appropriate medical care, family reunification, or other reasons. **Rather than a blanket prohibition on entry by air that leaves sick people without support, Canada must facilitate their return — and treatment if necessary — in ways that minimize the potential for transmission to others.**

For asylum-seekers crossing US/Canada border irregularly

In addition, **Canada must immediately reverse its decision to shut the Canada-US border to people seeking asylum between official land ports of entry.** Turning back people seeking refuge is not in accordance with Canada’s international legal obligations and runs contrary to public health guidance. Simply put, it is ineffective, illegal, and ethically indefensible. Refugee claimants’ right to be protected from forced return is the cornerstone of international refugee protection, and migrants and asylum-seekers are no more of a threat for COVID-19 transmission than the rest of the population. [Legal guidance issued by the UN High Commissioner for Refugees \(UNHCR\) on asylum protections in the COVID-19 pandemic](#) makes clear that states may not implement measures that categorically deny people an effective opportunity to seek protection.

A ban on asylum-seekers entering Canada from a Canada-US land border, even implemented temporarily as part of the response to the COVID-19 pandemic, will not only endanger the lives of people seeking refuge, but will further jeopardize public health. By closing the border in this fashion, Canada will force migrants to take clandestine routes into Canada (or be stuck in the US in situations of even greater risk). Either way, on whichever side of the border, they will be less likely to be properly screened, referred for testing or to health care if necessary, or quarantined to reduce risk of onward transmission; if they are sick, they will be too afraid to seek medical attention, which not only undermines their own health but further exacerbates the risk of transmission.

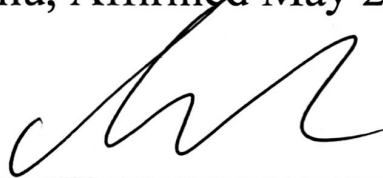
COVID-19 should not be used as a justification to evade international obligations towards refugees. **Canada must uphold domestic and international refugee laws and treaties and implement measures — with the guidance and involvement of public health, refugee assistance, and health professionals — to protect public health and the health of people seeking safety.** Outbreak response measures for all individuals should be based on data and known best practices in public health.

Summing Up: Human rights are more important now than ever

While the COVID-19 pandemic is forcing legal and policy decisions to be made quickly and within previously unimaginable timelines, now is not the time for Canada to abandon its human rights obligations, including to those most marginalized. **By engaging affected communities and removing barriers to people protecting their own health and that of their communities, policymakers can avoid indirect or unintended harms. Canada must decisively centre human rights in the fight against COVID-19.**



This is **Exhibit "I"** to the
Affidavit of Sandra Ka Hon
Chu, Affirmed May 27, 2020



A Commissioner, &c.

D. Sheppard LS759074H

Statement on COVID-19 and Criminalization

April 27, 2020

Faced with an unprecedented public health crisis, all levels of government in Canada have actively adopted measures and policies to respond to the COVID-19 pandemic. The Canadian Coalition to Reform HIV Criminalization (CCRHC), a national coalition of people living with HIV, community organizations, lawyers, researchers and others, understands and supports the need for sound public health measures to limit the spread of the virus, as well as the call for solidarity to protect ourselves and others. As we are still in the early stages of an unfolding and complicated pandemic, we remind policy makers that any measures taken to respond to COVID-19, as well as their enforcement, must be proportionate, grounded in science, and in compliance with human rights.

Public health approaches across the country to limit the spread of the virus have so far revolved around some seemingly simple instructions: regular handwashing, self-isolation and physical distancing. However, the capacity of individuals to comply with these measures is shaped by underlying inequalities. For numerous reasons such as poverty, job insecurity, unstable or poor housing, abusive relationships and mental health considerations, some people and communities will face barriers and obstacles complying with the measures, either mandated or recommended. This puts them at a greater risk of being exposed to the virus causing COVID-19, but also of being policed, fined and jailed for failure to comply with the mandated requirements. Fining or detaining people who have nowhere to self-isolate, cannot practice physical distancing, and/or do not have the means to pay the fines will not solve the problem.

Public health measures will not work unless governments take concrete steps to level social inequalities by addressing, among other things, poverty and lack of affordable housing. In addition, as [UNAIDS](#) recently highlighted, the HIV epidemic has taught us that key populations must be involved in all response measures in order to ensure suitability and effectiveness. In the context of COVID-19, an informed, community-centered response is essential for creating trust among affected communities, the government and public health officials, and avoids putting vulnerable people in harm's way, whether from the virus or over-policing.

Based on media reports, police press releases, and individual accounts from community organizations, as of April 13, 2020 more than 700 individuals in Canada have faced fines or sanctions for allegedly violating physical distancing or restrictions on gatherings. These sanctions are being enforced by both by police and municipal by-law officers, who have been given temporary enhanced powers to enforce public health and emergency legal orders. In Ontario, tickets for a violation have primarily been in the amount of \$880.00 (including the victim surcharge). In Quebec, authorities have mostly issued tickets in the amount of \$1546.00 (including fees). In Halifax, tickets issued have been in the amount of \$697.00. Groups of homeless people have been ticketed in Hamilton and Montreal for not following social distancing rules. Black men have been targeted by enforcement officers in Ottawa and Halifax. One Indigenous community is being heavily policed in northern Quebec. These reports were all in the media. We also know that a harm reduction worker was arrested and ticketed under the *Quebec Public Health Act* for doing her job. We also have reports that Montreal sex workers have faced increased harassment.

Source: A. McLelland; A. Luscombe. *Policing the Pandemic Enforcement Report*, April 2020, policingthepandemic.ca

As a national coalition against the criminalization of HIV, we are particularly concerned by recent reports of people being arrested, jailed or criminally charged for allegedly exposing others to the risk of getting COVID-19 or for violating public health orders. In Newfoundland, for example, a woman spent the night in jail for allegedly failing to self-isolate. Resorting to detention as a public health measure in the context of a pandemic is highly problematic, as people in prison are at a higher risk of being exposed to the virus and/or exposing others.

We must bear in mind that the police are not trained to deal with complex health issues and that increased policing, left unchecked, may lead to abuse and discrimination, especially against those who are already disproportionately surveilled, policed and criminalized. Instead of mobilizing police to impose public health measures through force, we should increase social and community support to respond to the needs of the most vulnerable, and provide emotional, financial and material resources to curb the epidemic. While physical distancing is needed, social solidarity is key in addressing the crisis.

In other cases, while no actual transmission was alleged, possible exposure to the virus causing COVID-19 has prompted charges against individuals who coughed, spat or uttered threats, usually during altercations with the police. We are especially concerned by the numerous references to HIV criminalization to justify the use of the criminal law in the current crisis. Canada's non-scientific and harshly punitive approach to criminalizing HIV has come under repeated criticism domestically and internationally, including from United Nations expert agencies, judges and scientists. Canada's current government has stated that they recognize the problem of "over-criminalization." Using HIV criminalization as an attempt to justify the criminalization of COVID-19 transmission, exposure or perceived exposure fails to consider the harmful consequences of criminalization.

The criminal law should not be used in the name of public health. While it might give a sense of security, protection and comfort to some, the criminalization of diseases and infections is ultimately bad public health policy. The experience of HIV criminalization also shows that resorting to the criminal law can lead to human rights violations, and have a disproportionate impact on the most marginalized, including people living in poverty, those who are homeless, sex workers, people who use drugs, people in abusive relationships, and Indigenous and racialized communities. As such, we are deeply concerned by some of the harsh and repressive measures that have been reported or that have been called for to address the COVID-19 pandemic.

While all provinces and territories have declared a state of emergency, use of these emergency powers should not exceed what is required to properly and effectively address the pandemic. Any limitation on rights, including those imposed in the name of public health, must be necessary and proportionate. These are basic, widely accepted standards under international human rights law. Based on our experience with HIV criminalization, we urge all levels of government to resist the overly broad and unjust use of the criminal law to respond to the COVID-19 pandemic. Instead of resorting to police and coercive powers that do more harm than good, we urge all levels of government to favour community-based and proportionate measures so that the least coercive and intrusive measures — dialogue, support and awareness to encourage adherence with public health guidance — are prioritized.

The Canadian Coalition to Reform HIV Criminalization (CCRHC)

is a national coalition of people living with HIV, community organizations, lawyers, researchers and others formed in October 2016 to progressively reform discriminatory and unjust criminal and public health laws and practices that criminalize and regulate people living with HIV in relation to HIV exposure, transmission and non-disclosure in Canada. The Coalition includes individuals with lived experience of HIV criminalization, advocates and organizations from across the country. It includes a steering committee on which a majority of members are people living with HIV. www.hivcriminalization.ca

Contact: Alex McClelland, ccrhc.ccrvc@gmail.com

FEDERAL COURT**BETWEEN:**

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
CANADIAN PRISON LAW ASSOCIATION
HIV & AIDS LEGAL CLINIC ONTARIO,
HIV LEGAL NETWORK,
& SEAN JOHNSTON**

Applicants

– and –

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF HELEN FALBO

I, HELEN FALBO, of the City of Toronto, in the Province of Ontario, **AFFIRM THAT:**

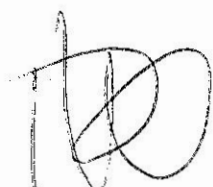
1. I am a legal assistant to Adriel Weaver at Goldblatt Partners LLP. I have personal knowledge of the matters herein and where information was provided to me by others, I have provided the source of that information and I verily believe it to be true.
2. I am advised by Ms. Weaver that she has spoken multiple times with Sean Johnston by telephone concerning his affidavit. She initially interviewed Mr. Johnston over several dates in early May 2020 to assist him in the preparation of his affidavit. On May 10, 2020, she reviewed the draft with him in detail. At that time, she also discussed with him the nature of an affidavit and the consequences of providing a false affidavit, which she ensured Mr. Johnston understood.

3. I am advised by Ms. Weaver that she and Mr. Johnston have spoken by telephone a number of times since and she has amended and added to his draft affidavit as he has provided updated and additional information.
4. I am advised by Ms. Weaver that, on July 9, 2020, she spoke with Sean Johnston on the telephone. At that time, he provided further updated information, which she added to his draft affidavit. She then reviewed his affidavit with him slowly, reading it sentence by sentence. She asked Mr. Johnston to indicate to her after each sentence whether it was accurate and truthful or required amendment, addition, or removal. Mr. Johnston did this diligently, and she made revisions to the draft affidavit in real time in accordance with his responses. Each time she made a change, she then read the revised wording out loud to him again and, again, asked whether it was accurate and truthful. Mr. Johnston orally confirmed his assent to every line of the final affidavit.
5. I am advised by Ms. Weaver that, although Mr. Johnston could not sign the affidavit to formally affirm it in her presence, and she is accordingly unable to commission it, she asked him if he solemnly affirmed and declared that he believed the affidavit as read to him was entirely true and accurate and he stated that he so affirmed. A copy of this same, unsigned Affidavit of Sean Delvyn Johnston, orally confirmed on July 9, 2020, is attached as **Exhibit "A"** to my affidavit.
6. I am advised by Ms. Weaver that she sent a copy of the unsigned Affidavit to Mr. Johnston by Xpresspost on July 10, 2020, so that he could make arrangements to have the Affidavit commissioned by a Commissioner of Oaths at Warkworth Institution.
7. I make this affidavit in good faith and for no improper purpose.

AFFIRMED before me by videoconference)
 in the City of Toronto)
 in the Province of Ontario,)
 this 17th day of July, 2020.)



 A Commissioner, etc.
Vanora Simpson



 Helen Falbo

This is **Exhibit “A”** to the
Affidavit of Helen Falbo,
affirmed before me by videoconference
July 17, 2020



A Commissioner, etc.

FEDERAL COURT**BETWEEN:**

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
CANADIAN PRISON LAW ASSOCIATION
HIV & AIDS LEGAL CLINIC ONTARIO,
HIV LEGAL NETWORK,
& SEAN JOHNSTON**

Applicants

– and –

THE ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF SEAN DELVYN JOHNSTON

I, SEAN DELVYN JOHNSTON, a prisoner at Warkworth Institution, in the Municipality of Trent Hills, in the Province of Ontario, **AFFIRM:**

A. Introduction

1. I am a prisoner at Warkworth Institution, a federal prison operated by the Correctional Service of Canada (“CSC”). I make this affidavit in support of my and others’ application to this Honourable Court seeking to require CSC to take various steps to protect prisoners’ health and safety in the context of the COVID-19 pandemic.
2. I have personal knowledge of the facts set out in this affidavit, except where I indicate that I am relying on information I received from other people, in which case I explain the source of that information and declare that I believe it to be true.

3. If I have the opportunity to do so, I will sign this affidavit in front of a Commissioner of Oaths. I am concerned that this may not be possible, however, before the application is heard. Due to the cancellation of visits during the COVID-19 pandemic, I cannot meet with counsel. I have also heard from staff that there are delays with the mail system.
4. Even if I am not able to hold this affidavit and affirm it in person due to these circumstances that are beyond my control, I still solemnly declare that it is true. I am also prepared to attest to the content of this affidavit personally by video or telephone to a judge of this Honourable Court, or other appropriate person, if CSC staff are able and willing to facilitate that in these difficult circumstances.

B. Background

5. I am serving a life sentence, currently at Warkworth Institution. I have been a federal prison for almost 28 years, since August 6, 1992. I have been held at several CSC institutions and have represented inmates on inmate committees.
6. I am 47 years old, and I live with a number of health conditions. I have PTSD and anxiety as a result of childhood abuse and trauma. I also have heart problems, asthma, sleep apnea, Type 2 diabetes and psoriasis. I was injured in a fall through a floor at Joyceville Institution, and as a result experience drug clots in my legs and significant mobility issues. For a while I used a wheelchair, but have slowly progressed to using a cane. I have poor circulation, and I currently weigh somewhere between 350 and 400 pounds. My general state of health is not good.
7. I take a number of medications to manage and treat my conditions. My daily medications include Cyclosporine for psoriasis, Metformin (twice) and Glyburide for diabetes, and blood thinners to prevent clots. I use a nitroglycerin spray as needed for angina. I have a Ventolin inhaler for asthma attacks and also use a nebulizer to help manage my symptoms. For sleep apnea I use a CPAP machine.
8. I understand that psoriasis is an autoimmune disease, and Cyclosporine works by suppressing the immune system. Because of this, my doctor has warned me that I am

more susceptible to all kinds of infections, including COVID-19, and that if I have even the slightest sniffle I should get to health care immediately.

9. I am very worried about contracting COVID-19. I understand that I am at greater risk of catching it because of my suppressed immune system, and I also understand that my health conditions make it more likely that I will suffer severe health effects and perhaps even die if I do come down with COVID-19.
10. I am also worried that even if I do not myself contract COVID-19, my health care will be affected if other prisoners test positive. Health care staff have told me that if there is any COVID-19 infection within the institution I will likely not be able to use my nebulizer or CPAP machine because they increase the risk of transmission. My understanding is that the nebulizer causes droplets to remain in the air for longer periods of time, and the CPAP machine can spread droplets over greater distances because it pressurizes the air. I am very worried about this possibility. I do not want to put other prisoners at risk, but at the same time I need these devices to manage my symptoms and help me breathe.
11. Already, I do not have the same level of access to health care that I used to. Due to my diabetes, I require specialized foot care. This is ordinarily provided by a nurse who is on contract and comes into the institution periodically. These visits have been suspended, however, and so at present I am not receiving diabetic foot care. I recently had to remove my own ingrown toenail because institutional nursing staff do not provide that form of care. This was a painful and, because I am on blood thinners, messy process.

C. Current Conditions at Warkworth Institution

12. I am in what is known as a medical single cell to accommodate my CPAP machine, but I know there are other prisoners who are still double-bunked. As of July 9, 2020, the cell next to me is double-bunked.
13. It is impossible for me to keep six feet away from others when I am outside of my cell. The hallway between the cells on my range is approximately six feet wide. If I am passing anyone in the hallway, therefore, there is approximately only two feet between us. Physical distancing is especially difficult at meal times and when using the phones.

We are supposed to go for meals range by range, but even with only one range out at a time that means that 17 prisoners all file out together through the hallway, down the stairs, to the methadone room where we all line up to receive our meals, and then return together to our cells. Sometimes two ranges are released for meals at once, which means 34 prisoners make this trip together. There is one phone for my range located at the entrance to the range. That means that while I am using the phone, everyone entering or leaving the range – both prisoners and staff – has to pass by me within approximately one-and-a-half to two feet.

14. Some guards are doing their best to achieve physical distancing, for example by asking everyone to stand to one side of the hallway when making their rounds. Other guards are not taking those precautions. Guards continue to move among units, especially at meal times.
15. Guards began wearing masks toward the end of April, although initially there were guards who did not seem to take this seriously. Some guards wore their masks on top of their head or on their arm, joking that they were technically complying with the requirement to wear a mask. Even today, masks are not worn consistently by guards. On July 9, 2020, I had to speak to guards and went to the doorway of the security “bubble”. There were at least three guards inside, none of whom was wearing a mask.
16. Prisoners are now provided with two cloth masks, which appear to have been made out of the same material as our bedsheets. I make sure to wear my mask any time that I interact with staff because I know that they are moving in and out of the institution and among ranges.
17. We are provided with one bar of soap per week, which in my experience is not enough for frequent and thorough handwashing. I have been purchasing additional soap through the canteen. The canteen also only has bar soap, not pump soap, available.
18. There is no hand sanitizer available. If I need to clean my hands I have to return to my cell to do so. This is difficult for me given my mobility issues.

19. For a while there was a “touch-point” cleaner to clean surfaces such as door knobs, hand rails and telephones more frequently, but I have not seen him on my range in for a number of weeks. There are no supplies available to prisoners to clean these surfaces on an ongoing basis.
20. Showers are cleaned approximately once per week.
21. Cleaning continues to be done by prisoners, and there does not appear to have been any change in the cleaning supplies they are provided. To the best of my knowledge there has been no custodial training for a long time and no additional training in relation to COVID-19.
22. I have custodial training and hold a number of certificates. I am aware that in order to effectively disinfect a surface you have to wait a number of seconds after applying disinfectant before removing it. Based on my observations, this is not occurring.
23. New prisoners continue to arrive, including one on July 9, 2020, who was placed in the cell next to mine.

D. Potential for Release

24. I became eligible for day parole on August 5, 2014, and for full parole on August 5, 2017. At that time I was at Joyceville Institution Minimum, where I had a good institutional record and served as Chair of the Inmate Committee.
25. In 2017, the Parole Board of Canada granted me three Unescorted Temporary Absences (“UTAs”), two of which I completed successfully and one of which was cancelled because of a finding of incompatibility with another prisoner who was already at the halfway house to which I would have been sent.
26. In 2019, I was granted two additional UTAs and day parole. In December 2019, while I was on the first UTA, guards at Joyceville found an iPod in my cell. I acknowledged using this to record conversations with staff and others who were giving me advice because I have issues with my memory and wanted to make sure I accurately understood

what had been said. When I made these recordings, I pulled the iPod out of my pocket in front of the other person and pressed record. I did not attempt to hide the iPod.

27. CSC had me arrested, transferred me to medium security, and suspended the UTA and the day parole I was about to begin. I was originally scheduled to have a hearing before the Parole Board on April 23, 2020, to decide whether my day parole should be cancelled. This was already almost four-and-a-half months after my arrest. I was told, however, that there was no way for my lawyer to participate in this hearing, and I did not want to proceed without counsel. My hearing was therefore adjourned to May 25, 2020, at which point, I was told, my lawyer could attend by telephone.
28. I asked whether it was possible to expedite the hearing because of my concerns about COVID-19. As far as I could tell, there was no effort to schedule an earlier date.
29. My hearing proceeded as scheduled on May 25, 2020. At the conclusion of the hearing, my parole was cancelled. The reason for the cancellation was that the Parole Board found my use of the iPod demonstrated deceptiveness, lack of transparency and disregard for the rules.
30. The Parole Board's decision does not include a single reference to my health or the current COVID-19 pandemic, although submissions on those issues were made at the hearing.
31. While the Parole Board ultimately decided to confirm the day parole cancellation, it invited me to reapply for UTAs and advised that they would be amenable to receiving an application for day parole prior to the requisite one-year waiting period so long as I demonstrated improvement in my behaviour and security rating and regained the trust of my Community Management Team.
32. According to the Correctional Plan Update ("CPU") prepared by my Institutional Parole Officer following the Parole Board's decision, there have been no concerns with my behaviour since my transfer to Warkworth Institution. The CPU indicates that my accountability is assessed to be high, including in relation to the use of the iPod, for

which I took responsibility, and that I have been polite and appropriate in my interactions with my parole officer.

33. Since the Parole Board decision, I have been reassessed as minimum security. The Assessment for Decision, dated June 29, 2020, states that it has been six months since the iPod incident and there have been no concerns with my behaviour since that time. It recommends that a voluntary transfer to Collins Bay Minimum be approved.
34. The Assessment for Decision also notes that I am on the list for wellness checks for individuals who vulnerable to COVID-19, and that a transfer to Collins Bay Minimum, with a significantly smaller population, would be an appropriate COVID-19 precaution. I have been told, however, that it is not clear when or even whether this transfer will go through while the pandemic continues because of COVID-related restrictions.
35. In addition, the Assessment for Decision notes that all ETAs, Work Releases, and UTAs have been suspended, and that I will not have access to the community even if I am transferred. Therefore, although the Parole Board specifically invited me to reapply for UTAs, to my understanding those applications are not being processed at this time.
36. I have completed my correctional plan, and have been assessed as a low risk to public safety and a low risk of flight if I am released on parole. I have a confirmed job offer if I am granted day parole, and my prospective employer has offered to let me stay at a residence he owns if I am released. I am Métis, and have a strong connection to the Aboriginal Friendship Centre. I am also very grateful to have the support of several community members with whom I am in regular contact and who I am confident would continue to support me if I were released.

E. Conclusion

37. I am scared and anxious all the time about becoming ill with COVID-19. I understand that my health conditions and medication make me more vulnerable to catching it, and if I catch it to becoming very ill and potentially even dying.

- 38. Given the current environment and conditions at Warkworth Institution, I am very limited in the steps I can take to protect myself. I cannot stay six feet away from others. I cannot clean my hands when I am outside of my cell, and I cannot clean surfaces – such as the phone handle and mouthpiece – before I touch them. I can and do wear my own mask whenever I have interactions with staff, but I cannot require anyone else to wear theirs.
- 39. I am very concerned that if anyone at Warkworth tests positive for COVID-19 my nebulizer and CPAP machine will be taken away. I am also concerned that if there is an outbreak my access to health care may be further limited due to increased demands on limited resources.
- 40. I have been assessed as low risk if released, and I have a release plan that includes community support and a place to stay where I can safely isolate and then physically distance myself.
- 41. I make this Affidavit in good faith and for no improper purpose.

AFFIRMED before me in)
 the Municipality of Trent Hills,)
 in the Province of Ontario,)
 this ___ day of July, 2020.)
)

 Sean Delvyn Johnston

 A Commissioner, etc.

FEDERAL COURT

BETWEEN:

**CANADIAN CIVIL LIBERTIES ASSOCIATION,
CANADIAN PRISON LAW ASSOCIATION,
HIV & AIDS LEGAL CLINIC ONTARIO,
HIV LEGAL NETWORK,
& SEAN JOHNSTON**

Applicants

– and –

THE ATTORNEY GENERAL OF CANADA

Respondent

**APPLICATION RECORD
VOLUME 1 OF 5**

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto, Ontario M5G 2C2
Tel: 416-977-6070
Fax: 416-591-7333

Jessica Orkin
(jorkin@goldblattpartners.com)

Adriel Weaver
(aweaver@goldblattpartners.com)

Dan Sheppard
(dsheppard@goldblattpartners.com)

Jody Brown
(jbrown@goldblattpartners.com)

Counsel for the Applicants