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Canadian Prison Law Association



Media Statement

For immediate release

HUMAN RIGHTS GROUPS FILE LEGAL CHALLENGE CITING CANADA'S FAILURE TO PROTECT PRISONERS' HEALTH IN THE CONTEXT OF COVID-19 *Correctional Service Canada must take steps to reduce the prison population to the greatest extent possible*

May 12, 2020 — The Canadian Civil Liberties Association (CCLA), Canadian HIV/AIDS Legal Network, Canadian Prison Law Association (CPLA), HIV & AIDS Legal Clinic Ontario (HALCO), and current federal prisoner Sean Johnston today filed a constitutional and human rights challenge against the Government of Canada, to compel it to take proactive steps to ensure prisoners' safety in the context of COVID-19. This includes the timely release of federal prisoners, with precedence for those who are particularly vulnerable to COVID-19 due to age or underlying health conditions.

Correctional Service Canada (CSC) has a legal duty to take all reasonable steps to provide a safe environment for prisoners. While public health authorities in Canada direct physical distancing to reduce the spread of the virus, physical distancing cannot be achieved in prisons without reducing the prison population.

Like long-term care facilities and homeless shelters, correctional facilities are congregate living environments. Recent experience has tragically demonstrated how quickly COVID-19 outbreaks occur within these environments, and how difficult they are to contain. As of May 6, 2020, 582 federal prisoners were tested of whom approximately 300 tested positive, and two federal prisoners have already died as a result of these outbreaks. The rate of infection within federal prisons is significantly higher than in the population at large.

Sean Johnston, who is serving a life sentence at Warkworth Penitentiary and has numerous health conditions, has applied for parole, been assessed as posing a low risk if released, and has a release plan including a private residence. In his words, “Physical distancing measures in prison have been grossly inadequate. Some of us remain double-bunked and cannot achieve physical distancing within our own cells, let alone throughout the institution. While I await my hearing, I am gravely concerned about the possibility of contracting COVID-19, particularly given my underlying health conditions.”

The applicants are citing a breach of the Government of Canada’s statutory duty and breaches of prisoners’ *Charter* rights. “CSC’s failure to take steps to release prisoners and to implement other measures to safeguard the health of those who remain, is not only a tragedy in the making but also illegal. Where prisoners cannot be released, CSC must ensure more comprehensive COVID-19 testing and an adequate supply of personal protective equipment; provide prisoners with hand soap, hand sanitizer, and cleaning supplies; and enhance cleaning of common areas,” said Abby Deshman, Director of the Criminal Justice Program at the CCLA.

Federal prisoners are at greater risk of contracting COVID-19, and also at greater risk of suffering severe adverse outcomes if they are infected. “The prevalence of pre-existing vulnerabilities such as cardiovascular disease, respiratory diseases, diabetes, and HIV and hepatitis C virus infection is higher amongst our prison population,” said Sandra Ka Hon Chu, Director of Research and Advocacy at the Canadian HIV/AIDS Legal Network. “By ignoring basic public health recommendations, CSC is effectively sentencing some prisoners to death.”

“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,” said Ryan Peck, HALCO’s Executive Director. “In contrast, CSC has taken few if any steps to release federal prisoners from its institutions.”

As Tom Engel, President of the Canadian Prison Law Association emphasized, “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 prison. 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.”

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The [Canadian Civil Liberties Association](#) (CCLA) is a national non-partisan, non-profit organization that works to protect the rights and freedoms of all people in Canada.

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.

The [Canadian Prison Law Association](#) (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.

The [HIV & AIDS Legal Clinic Ontario](#) (HALCO) is a community-based legal clinic that provides free legal services for people living with HIV or AIDS in Ontario, Canada.