June 2, 2020

Hon. Sylvia Jones
Solicitor General
Ministry of the Solicitor General

cc: Hon. Christine Elliott
Minister of Health and Deputy Premier
Ministry of Health

Hon. Doug Downey
Attorney General of Ontario
Ministry of the Attorney General

BY EMAIL

Dear Minister Jones:

Re: Inquest in relation to the overdose deaths of F.D. and J.T. at Elgin-Middlesex Detention Centre

Earlier this year, an inquest was held in London, Ontario in relation to the overdose deaths of F.D. and J.T. at Elgin-Middlesex Detention Centre. Prisoners with HIV/AIDS Support Action Network (PASAN), HIV & AIDS Legal Clinic Ontario (HALCO) and Canadian HIV/AIDS Legal Network have a long history of advocating for the health and human rights of people in prison, and particularly those who use drugs and may be at greater risk of HIV, hepatitis C infection and overdose. This coalition of organizations was accordingly granted public interest standing in the inquest. The inquest verdict and recommendations were released on March 16, 2020. A copy is attached to this email.

The jury made 80 recommendations in total, many of which advance the health and human rights of people in prison. We are writing to draw to your attention to specific recommendations that we strongly support. We also wish to express our interest in participating in any consultation process relating to implementation of these recommendations, and in the cultural change task force recommended by the inquest jury. To that end, we would like to request a meeting this month to discuss the recommendations.

Equivalency
14. The Ministry should review all operational policies and procedures to ensure adherence to the principle of equivalency (entitling people in detention to have access to a standard of healthcare equivalent to that available outside prison and conforming to professionally accepted standards).

It is a well-established legal principle 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. Prisoners

are entitled to enjoy the highest attainable standard of health as guaranteed under international law, and prison health care should be equivalent to that available in the community. The recommendation to the Ministry to ensure adherence to the principle of equivalency is also a matter of ethical and legal obligation under human rights legislation, the *Canadian Charter of Rights and Freedoms* and international human rights guidance on health care in prison settings. Many of the recommendations highlighted below would enable the Ministry to uphold the principle of equivalence and better comply with its legal obligation to protect prisoners' health.

Admission

18. The Ministry should implement an enhanced admission screening form for individuals who disclose the use of street drugs during the admission process…. This is to be used together with other assessment tools to determine a health care plan for the patient including suitability for Suboxone, methadone, or slow release oral morphine.

Enhanced intake screening is critical to ensure appropriate health care for prisoners who use drugs, including options for opioid agonist therapy that should reflect a range of options that are also available in the community, such as oral morphine.

Opioid Agonist Therapy (OAT)

21.The Ministry should ensure that all people in detention who meet criteria for evidence-based OAT (including methadone, Suboxone, and slow release oral morphine) and who consent to receiving treatment are offered, and have access to, opioid agonist therapy without delay.

25. The Ministry should update its policies concerning Methadone Maintenance Treatment (MMT) and Suboxone to ensure conformity with best practices, including:

a) *to prefer initiation of Suboxone over methadone as a first-line therapy, where a patient meets clinical criteria for initiation of Suboxone;*
b) *include slow-release oral morphine as a third line therapy option;*
c) *to confirm that withdrawal management from opioids should never be offered as a first-line therapy;*
d) *to reflect recent regulatory changes that now allow all physicians to prescribe MMT without a federal exemption under the Controlled Drugs and Substances Act;*
e) *while identifying a community OAT prescriber to assume care of a patient upon release remains a priority, OAT initiation should not be contingent on first identifying a community OAT prescriber (in which cases it will be necessary to work to align the patient with community treatment program after OAT initiation); and*
f) *to confirm that patients are never to be disqualified from OAT for behavioural management or as a disciplinary tool, or for security reasons, and continually evaluate and update these policies in consideration of evolving realities, research and practices.*

26. The Ministry should update policy to allow and encourage incoming inmates who meet the clinical criteria to be initiated on Suboxone immediately (within 24 hours) of admission, and that treatment should not be delayed on the basis that a physician assessment is unavailable.

27. The Ministry should update policy and standing orders to encourage the introduction of Suboxone to persons in detention who have already gone through withdrawal (micro-dosing). Guidelines around this should be developed in consultation with experts who are currently using this approach.

As you know, opioid agonist therapy (OAT) has proven effective in reducing the frequency of injection drug use and associated sharing of injecting equipment while reducing "drug-seeking behaviour." Recent studies have also found that providing prisoners with OAT during incarceration is associated with a

reduced risk of death after release from prison. Recognizing how persistent delays in accessing OAT and OAT terminations for non-clinical reasons increase the risk of overdose, the recommendations above to ensure access to OAT without delay are vital to prevent prisoners under the Ministry's care from consuming opioids from a potentially tainted supply, as is the recommendation to ensure that a patient's access to OAT is never terminated as a disciplinary tool or for security reasons.

Moreover, the recommendations calling for access to oral morphine as a third line therapy option and immediate Suboxone introduction for suitable patients are reflective of community practice and should be implemented to ensure adherence to the principle of equivalence and to best protect incarcerated patients' health.

Naloxone

29. The Ministry should take steps to ensure that Naloxone is available within 30 seconds to inmates while they are locked in their cells or in common areas, for instance by putting kits in common areas.

30. The Ministry should ensure that all staff who directly interact with inmates are equipped with Naloxone spray while on duty, including corrections officers while conducting rounds.

31. The Ministry should require corrections officers to immediately administer Naloxone to any person who is suspected of an opioid overdose, in addition to taking other appropriate emergency response measures.

We advocated for prisoners' direct access to Naloxone to ensure the greatest possible access to the medication in the event of an overdose. The recommendation above affirms that this life-saving medication should be available within 30 seconds, including through the provision of Naloxone in common areas where prisoners have direct access.

Naloxone is an exceedingly safe and risk-free medication, and we continue to urge the Ministry to make Naloxone immediately accessible to prisoners, including in their cells in the event their cellmates suffer an opioid overdose. Correctional staff will not always be immediately available in overdose situations, yet the time taken to respond to an opioid overdose could mean the difference between life and death.

Harm Reduction Strategies

32. The Ministry should study whether harm reduction strategies similar to those used at supervised consumption sites can be incorporated within the EMDC. This includes strategies such as making fentanyl testing kits and sterile consumption equipment available in the health care unit.

This recommendation again underscores the need for equivalence of health care, given the increasing availability of drug checking services and supervised consumption services in the community (and in at least one federal prison), as well as the longstanding availability of community-based needle and syringe programs and increasing availability of needle and syringe programs in federal prisons to ensure people who use drugs are not re-using or sharing drug consumption equipment. These harm reduction measures have been proven to save lives and protect the health of people who use drugs; there are no security reasons why these could not also be implemented in the prison setting.

In order to ensure these measures are accessible and their health benefits are realized, we urge the Ministry to consult with current and former prisoners and community-based harm reduction organizations while developing the policies and protocols for these programs.

Good Samaritan Rules

33. The Ministry should adopt "Good Samaritan" principles in operational policies and practices, such that inmates who call for help or try to help another person suspected of being in medical distress, or who come forward with information about drugs within the institution, will not be subjected to any investigation or misconduct for possession or use of contraband.

This principle ought to be incorporated into Ministry policy and institutional standing orders. Research has shown that the threat of criminal prosecution and other penalties is a major impediment to bystanders seeking emergency medical assistance in the event of an overdose; this was the impetus for the passage of the *Good Samaritan Drug Overdose Act* in 2017. These principles should apply in prisons, which have not been immune to the increasing risk of overdose, the consequent need for immediate medical assistance, and the deterrent effect of the threat of penalties for contravening prohibitions on prison contraband in seeking medical help.

Opioid Training and Information and Support for Inmates

38. The Ministry should provide information to incoming inmates (by a health care practitioner), during the admission process and during subsequent consults, regarding: recognizing signs of drug overdose and what to do in the event of a suspected overdose or other medical distress situation; the Good Samaritan rule; information about OAT availability and options; harm reduction information for people who may access and use drugs; and information about rights to health care, health care privacy and consent.

39. The Ministry should ensure that all staff and all inmates receive education on substances that may be in use at EMDC. Methods of education can be in group or one-on-one settings. Education should be completed on an on-going basis and should include updates on new substances. This education should be supplemented through printed material, video or multimedia, and should include information about the risks of: a. ongoing use of toxic opioids which exist throughout the drug supply, including risks, potency, effects, and other information b. what is loss of tolerance and what are the impacts of lost tolerance c. safe drug use practices, including the need to never inject/smoke or ingest substances or drugs alone d. the risk of simultaneously using other illicit drugs such as benzodiazepines and how to prevent complications e. recognizing signs of overdose and what to do in the event of a suspected overdose or other medical distress situation

41. The Ministry should authorize and support peer health and support services for inmates who use drugs, including from community-based prison health organizations.

In addition to calling for substance-use related public education to be delivered to prisoners by health care staff and by various in-house media, the jury recognized the value of having community-based prison health organizations such as PASAN deliver peer health and support services, which many prisoners turn to and rely on for health-related information and supports. Community-based prison health organizations provide an essential service to prisoners and their access to provincial prisoners should be prioritized.

Monitoring and Evaluation

42. The Ministry should require correctional institutions to record, track and report annually to the Solicitor General: a. the number of suspected overdoses, and the general circumstances (including date, time, unit, and outcome) b. doses of Naloxone administered, including the date, time, location, and discipline who gave the drug c. other information relevant to tracking suspected overdoses, and results of interventions in response to overdoses

43. The Ministry should centralize data collection of deaths in custody and publicly post all inquest verdicts, verdict explanations, and Ministry responses to allow for appropriate trend analysis and follow up regarding the implementation of coroner's inquest jury and other relevant recommendations.

44. The Office of the Chief Coroner, in consultation with the Ministry of the Solicitor General and interested persons, should compile and regularly update a summary of recommendations and responses from jail inquests. This summary should be designed to inform Coroner's Counsel and the parties, and possibly to be admitted into evidence.

The above recommendations are crucial for accountability and evaluation purposes. Given the frequency with which people have fatally overdosed while in prisons in Ontario, a more structured tracking system is essential. These recommendations will also provide for such tracking and accountability mechanisms to be built into the coroner's inquest system.

Cultural Change

16.The Ministry should abandon zero-tolerance policy with respect to drug use, recognizing that such policies stigmatize and punish people for behaviours that stem from underlying medical issues.

17.The Ministry should take a non-punitive, harm reduction approach to the treatment of inmates who misuse substances. Stabilization and harm reduction opportunities for inmates who misuse substances should be the first approach in providing health care and rehabilitation. Substance misuse should be recognized as a chronic relapsing illness where relapse is common. Alternatives should be available to those who are not able to achieve abstinence.

45. The Ministry should institute a task force aimed at "transforming the culture of corrections," in consultation with community health organizations, present and former in-mates, and other stakeholders. This will be aimed at identifying how the health care needs of people in prison can be met, applying an evidence-based analysis to security policies and practices, and identifying whether certain non-evidence-based security policies or practices may cause more harm than good for the well-being of the prison population, and identifying strategies for cultural transformation. To help facilitate this cultural change, EMDC will adopt a policy to stop using words, such as parade, welfare cell, in-mates, and offenders.

The above recommendations set out some progressive and fundamental guiding principles that should underpin policymaking, training, and cultural transformation. Harm reduction has been accepted as a key pillar of Canada's *Drug and Substances Strategy* and this approach and proven harm reduction measures should be adopted in Ontario prisons. Security concerns must be grounded in evidence; blanket security concerns must not trump health care, which includes harm reduction measures for people who use drugs. A key step towards facilitating this "transformation" is consultations with present and former prisoners (as per recommendation 45), who can provide lived expertise of the concerns, vulnerabilities and barriers faced by people behind bars.

Other recommendations specific to EMDC

78. On an ongoing basis, the EMDC should consult with experts in order to keep current on recent developments with respect to new or evolving risks with the drug supply circulating in the community and about latest strategies to combat the associated health issues, including the opioid crisis. Rapid response strategies to quickly implement new or updated evidence-based harm-reduction strategies in prisons should be developed.

Although this recommendation refers to the EMDC, this recommendation would be good practice for all corrections institutions. The unregulated or illicit drug supply is constantly evolving, as are health care responses to the tainted supply. In order for corrections institutions to ensure the best available health care (equivalent to what is available in the community) is provided to prisoners under their care, it is vital for them to stay abreast of the latest developments in the drug supply and to nimbly respond with promising strategies, including in relation to the provision of a safe, alternative drug supply.

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While the Ministry has implemented some improved policies in relation to substance use in prison, such as modernized OAT policies and Naloxone availability to front-line staff, the deeply troubling reality is that people are continuing to die from drug overdoses in prisons. Currently, there are at least seven other inquests in Ontario that are pending into deaths in prisons in which drug toxicity may have been a factor; we implore you to consider and adopt these recommendations to avoid more tragic, preventable deaths.

As you know, your Ministry is to report back to the Coroner within one year on your response to the recommendations. As we indicate above, our organizations would be pleased to meet with you this month to discuss how these recommendations might be implemented, and would also be pleased to participate in the recommended task force aimed at "transforming the culture of corrections."

We look forward to hearing from you.

Sincerely,

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Executive Director
PASAN

Ryan Peck
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HALCO

Sandra Ka Hon Chu
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