



December 21, 2020

Honourable Sylvia Jones, Solicitor General
Ministry of the Solicitor General
18th Floor, 25 Grosvenor Street
Toronto, Ontario M7A 1Y6
sylvia.jones@ontario.ca

Honourable Deborah Richardson,
Deputy Solicitor General
Ministry of the Solicitor General
11th Floor, 25 Grosvenor Street
Toronto, Ontario M7A 1Y6
deborah.richardson2@ontario.ca

Donata Calitri-Bellus
Superintendent, Toronto South Detention Centre
160 Horner Ave
Toronto, Ontario M8Z 0C2
donata.calitribellus@ontario.ca

Dear Solicitor General Jones, Deputy Solicitor General Richardson and Superintendent Calitri-Bellus:

Re: COVID-19 outbreak at Toronto South Detention Centre

We are writing as a coalition comprising Aboriginal Legal Services, the HIV & AIDS Legal Clinic Ontario, the Canadian Civil Liberties Association, the Community Justice Collective and the Black Legal Action Centre to express our deep concern regarding the handling of the COVID-19 outbreak at Toronto South Detention Centre (“TSDC”).

We have three core areas of concern: the continued lack of transparent and accessible information related to COVID-19 cases at provincial institutions; multiple reports of inadequate infection controls at TSDC; and the widespread use of solitary confinement and lockdowns. We are urging TSDC and the Ministry of the Solicitor General to take immediate steps to further reduce the incarcerated population and safeguard the lives of those who remain inside.

Correctional facilities are congregate living environments, and the people incarcerated in Ontario’s provincial jails face a significantly heightened risk of contracting COVID-19.¹ This population is also at increased risk of suffering severe health complications due to COVID-19 because of the higher prevalence of underlying health conditions within the incarcerated population.² Many of the social determinants of health - precarious housing, income instability, childhood abuse, inter-generational trauma and discrimination, among others – also increase the likelihood of incarceration. Black and Indigenous people are over-represented in provincial corrections by staggering margins.³ Failures to protect incarcerated individuals in the context of this pandemic disproportionately impact some of the most vulnerable and marginalized individuals in our society.

1. Lack of transparency regarding COVID-19 infections at Ontario correctional institutions

On Friday December 11, 2020, the Toronto Star reported that there was a COVID-19 outbreak at TSDC. For many service providers, court stakeholders and friends and families of incarcerated persons, this was the first time they had heard of an outbreak in the institution. More must be done to proactively and transparently share vital health information with both those inside and outside the institution.

On July 7, 2020 a number of the signatories to this letter wrote to the Solicitor General and Deputy Solicitor General regarding the importance of full and transparent disclosure of information regarding COVID-19. Although some steps have been taken since that time, the information is still not sufficiently transparent and accessible.

The only public source for detailed provincial data regarding COVID-19 outbreaks in provincial correctional institutions is a raw data sheet hosted on the government’s Open Data portal. The information is not readily accessible, difficult to read, and is several days out of date. The government’s own online COVID-19 data portal continues to show that, between December 9 and December 17, 2020, a total of 14 new COVID-19 cases have occurred in an outbreak in a correctional setting. This number is significantly lower than the number of active “inmate” and “staff” cases reported by the institution itself on December 15, 2020 - 34 “inmate” cases and 8 “staff” cases.⁴ Toronto Public Health does not provide details on outbreaks in correctional

¹ See affidavit of Dr. Andrew Orkin, affirmed June 8, 2020, and affidavit of Dr. David Fisman, affirmed July 21, 2020, online: <https://ccla.org/cclanewsletter/wp-content/uploads/2020/07/T-539-20-Application-Record-Vol-2-of-5.pdf>.

² Ontario’s Expert Advisory Committee on Health Care Transformation in Corrections, *Transforming Health Care in our Provincial Prisons*, 2018.

³ In 2017/2018, Indigenous adult males constituted 11% of admissions to Ontario provincial facilities, while adult Indigenous females were 18%,³ while making up 4% of the population. In 2016/17, Black individuals, which account for 4.7% of Ontario’s population, represented 12.6% of those in custody. Statistics Canada, Canadian Centre for Justice Statistics, “Adult Correctional Services Survey, Integrated Correctional Services Survey and Canadian Correctional Services Survey, 2017/2018 (Table 5)” 85-002-X (2019) . Department of Justice, “JustFacts: Indigenous overrepresentation in the criminal justice system” (May 2019). Ontario’s Expert Advisory Committee on Health Care Transformation in Corrections, *Transforming Health Care in our Provincial Prisons*, 2018.

⁴ Letter from Donata Calitri-Bellus, Superintendent, Toronto South Detention Centre, to the Ontario Court of Justice Central West Region and the Superior Court of Justice Central South Region, December 15, 2020.

facilities, and no updates on outbreaks are posted on the Ministry of the Solicitor General's website.

Incarcerated peoples' families report being informed by TSDC staff that information cannot be provided about people in prison. Inconsistent information is also being shared with service providers about how people who are incarcerated are able to consent to have their health information released. Some service providers report being informed that such information will only be released pursuant to a signed power of attorney, which is patently false as a signed consent form is adequate.

The lack of information surrounding outbreaks in provincial correctional institutions stands in stark contrast to the information provided to the public regarding other outbreaks. The province currently has easily accessible and up to date lists of outbreaks occurring in various congregate settings, including dedicated sites for long-term care homes,⁵ and schools and child care centres.⁶ In addition, details on outbreaks in long-term care homes, hospitals and retirement homes are included in Public Health Ontario's daily epidemiologic summaries.⁷

Finally, and most concerning, people incarcerated at TSDC report that correctional officers are sharing different information regarding outbreaks than that which is shared with the public. For example, at the outset of the outbreak some were told that there were closer to 100 positive cases, which is alarmingly higher than the publicly-reported figures at that time.

All Ontario correctional facilities, including TSDC, and the Ministry of the Solicitor General must take immediate steps to ensure that incarcerated people and their loved ones receive up-to-date, reliable information about COVID-19 cases. In particular:

- Institutions must proactively communicate with all people in custody, upon admission and thereafter, regarding the ability to consent to medical information being shared with others such as family members, service agencies, legal counsel, and external health care providers;
- Information should be posted on the Solicitor General's website directing families as to how they can forward a request that inmates provide consent to the release of medical information and status updates;
- Upon receiving consent from the person in prison, the institution must immediately notify others (e.g., family, support people, legal counsel) of a positive test result for COVID-19, or of the fact that the person has been exposed to others who have tested positive for COVID-19;
- The Ministry must publicly disseminate information related to the Ministry of the Solicitor General's response to the pandemic at all correctional institutions, including, but not limited to, immediate notification of outbreaks at any institutions, daily reports of

⁵ Government of Ontario, "Daily summary of cases in Ontario", online: <https://www.ontario.ca/page/how-ontario-is-responding-covid-19#section-0>.

⁶ Government of Ontario, "COVID-19 cases in schools and child care centres", online: <https://www.ontario.ca/page/covid-19-cases-schools-and-child-care-centres>.

⁷ Government of Ontario, "Daily epidemiologic summaries", online: <https://covid-19.ontario.ca/covid-19-epidemiologic-summaries-public-health-ontario#daily>.

positive cases, and regular reports on frequency of tests, personal protective equipment (“PPE”) availability, isolation practices inside, lockdowns, employee standards and deaths;

- Institutions must provide daily situation updates to people in prison in multiple accessible formats, and post the updates on the Solicitor General’s website; and
- Institutions and the Ministry must ensure access to free and accessible telecommunication to allow incarcerated people access to their loved ones and service providers.

2. Inadequate infection control measures

The evidence is clear that, in the absence of a widely available and effective vaccine, physical distancing is the single most effective measure to prevent COVID-19 infections.⁸ Despite initial reductions in the incarcerated population, over the last several months institutional counts have been rising again, and detailed breakdowns of release numbers have shown how few sentenced individuals have been released on temporary absences and parole.⁹ More must be done across all sectors of the justice system to ensure that as few people as possible enter and remain in Ontario’s correctional facilities.

For those that must remain in correctional facilities, adequate infection control measures are essential, including safe and rights-respecting medical isolation, access to appropriate PPE and measures to limit the potential for staff-spread infection. The information being received from people inside TSDC, however, is that the institution is failing on all three fronts.

People inside TSDC report that those who have not been tested for COVID-19 are being isolated in the same cell and same range as individuals who have tested positive. Reports further indicate that individuals are not being provided with masks unless they leave their units, and that self-made masks are being confiscated as contraband. To make matters worse, reports indicate that people are actually being punished for possessing their self-made masks. Distressingly, there are also reports that some correctional officers are not wearing masks or are wearing masks incorrectly, and that staff between shifts visit units they are not assigned to, thereby increasing the risk of infecting multiple units.

The Ontario government take immediate steps to significantly reduce the population in correctional facilities, including by:

- Renewing efforts to proactively review the cases of people currently incarcerated to examine whether early parole, release, or temporary absences can be issued, particularly for those who are near the end of their sentence, or have underlying conditions or traits that heighten the health risks of contracting COVID-19 or prolonged medical isolation; and

⁸ See affidavit of Dr. Andrew Orkin, affirmed June 8, 2020, and affidavit of Dr. David Fisman, affirmed July 21, 2020, online: <https://ccla.org/cclanewsletter/wp-content/uploads/2020/07/T-539-20-Application-Record-Vol-2-of-5.pdf>

⁹ Alyshah Hasham, “Legal groups say Ontario misled public with claim it reduced inmate population by 30 per cent early in pandemic”, *The Toronto Star*, December 17, 2020, online: <https://www.thestar.com/news/gta/2020/12/17/legal-groups-say-ontario-misled-public-with-claim-it-reduced-inmate-population-by-30-per-cent-early-in-pandemic.html>.

- Ensuring early release and meaningful release planning that centres the safety, needs and preferences of people in prison, including the need for housing and other essential services. Emergency isolation centres and health support services should be available to assist when necessary.

The Ministry of the Solicitor General must comply with international best practices and the government’s own guidance for preventing the spread of COVID-19 in congregate settings and correctional facilities, including:

- Immediately ensuring that all people in prison are provided with an ongoing supply of PPE, personal hygiene products, and cleaning supplies at no cost;
- Publicly assuring people in prison that if they make their own masks they will not be punished or have the masks confiscated;
- Immediately offering COVID-19 tests for all people in prison and staff, and enhancing linguistic and culturally-appropriate supports for health care staff so incarcerated individuals are able to provide fully informed consent for COVID-19 tests;
- Ensuring daily cleaning and disinfecting of all ranges;
- Guaranteeing immediate and equitable health care for people in prison who test positive for COVID-19 or who have any other health care needs; and
- Ensuring daily showers for all people in prison, including for those subject to medical isolation.

Ensure that correctional officers are taking all necessary precautions to prevent the spread of COVID-19, and discipline those found to be violating safety policies. Specifically, action must be taken in the following areas:

- Implementation of protocols to ensure that all correctional facility staff use PPE at all times;
- Issuance of reminders to staff of masking requirements, and imposition of disciplinary consequences for staff found to be disobeying infection control measures;
- Limiting correctional facility staff to working in one unit and clearly prohibiting staff from being physically present in areas of the institution that they are not actively working in; and
- Suspension of cell inspections for the duration of the pandemic unless there are reasonable grounds to believe a search is necessary to mitigate an immediate risk to health and safety.

Finally, to ensure compliance and increase public confidence, the Ministry of the Solicitor General must conduct regular external audits of compliance with infection control measures and release results of audits widely and publicly, including to people in prison.

3. Unconstitutional and counter-productive use of solitary confinement

Reports indicate that solitary confinement and extended lockdowns are being used extensively within the institution. Individuals in prison report that those who test positive for COVID-19 are being placed in solitary confinement, rather than in non-punitive quarantine spaces. Reports

further indicate that mass and multi-day lockdowns are being used to keep people physically distanced, resulting in denials of access to day rooms or yard time, showers (for multiple days at a time), and legal counsel. Fearing solitary confinement, many report that they are refusing to be tested for COVID-19, thereby significantly undermining the institution's ability to control the outbreak.

Prolonged indefinite solitary confinement is discriminatory and constitutes cruel and unusual punishment. It also undermines an effective public health response. We call on the Ministry of the Solicitor General to immediately end the use of inhumane solitary confinement of people in prison who test positive for COVID-19, and the use of prolonged lockdowns.

Action on these items is urgently needed. People are getting sick in increasing numbers, and it is only a matter of time before deaths occur. Those who are incarcerated and their loved ones are depending on the Ministry of the Solicitor General and TSDC to take immediate measures to save lives.

Sincerely,



Emily Hill
Senior Staff Lawyer, Aboriginal Legal Services



Abby Deshman
Program Director, Canadian Civil Liberties Association



Ryan Peck
Executive Director, HIV & AIDS Legal Clinic Ontario



Lesa Francis
Executive Director, Black Legal Action Centre



Aliah El-houni
Community Justice Collective



Leora Smith
Community Justice Collective



Sima Atri
Community Justice Collective