

The Honourable Bill Blair

Minister of Public Safety and Emergency Preparedness
House of Commons
Ottawa, Ontario
K1A 0A6
Via email

Commissioner Anne Kelly

Correction Service of Canada
340 Laurier Avenue West
Ottawa, Ontario
K1P 0P9
Via email

Chairperson Jennifer Oades

Parole Board of Canada
410 Laurier Avenue West
Ottawa, Ontario
K1A 0R1
Via email

January 20th 2021

Re: Open Letter: COVID-19 in Canadian Federal Prisons

Minister Blair, Commissioner Kelly, and Chairperson Oades,

Since December, we have seen more COVID-19 cases inside prisons than in the preceding eight months and infection rates for prisoners are staggeringly higher than the infection rate in Canada. It is evident that whatever actions that have been taken thus far to protect prisoners, staff, and surrounding communities have been insufficient.

As researchers, advocates, service providers, and legal professionals we call on you to:

(1) Launch an independent inquiry: We urge you to launch an independent inquiry into the (mis)management of the COVID-19 pandemic in the federal prison system, including the violation of prisoners' rights associated with all forms of prolonged solitary confinement. Failing that we urge you to ask the Correctional Investigator to use his statutory authority to conduct such a public hearing into these matters using his subpoena powers.

(2) Prioritize prisoners and front-line staff for vaccination: Section 86 (1) (a) of the *CCRA* requires the Correctional Service of Canada (CSC) to provide essential healthcare to federal prisoners. Appendix E of CSC's National Health Framework includes the "treatment and clinical

management of infectious and communicable disease” within this definition. Thus far, Canada has prioritized vaccinations for those who are most vulnerable to contracting COVID-19, and who would suffer the most adverse impacts if they did: older people, seniors, people with chronic health conditions, and those who are immunocompromised. These vulnerabilities are commonplace inside our prisons. People in congregate settings, like long-term care facilities and prisons, have also been flagged as being at greater risk of COVID-19 exposure:

Our prison population is aging. The federal prison population is the oldest it has ever been. Twenty-five percent of people in prison are over 50 years old.

A disproportionate number of people in prisons have underlying health conditions. Their health conditions are often connected to a lack of access to adequate health care in community, frequently a direct result of enforced poverty, racism, and colonialism.

Incarceration negatively impacts health. According to a recent report from the Office of the Correctional Investigator, the average age of people who die in prison from natural causes is far below the national life expectancy. A perennial concern of prisoners is a lack of access to adequate essential health care.

Prison is an enforced congregate setting with hundreds of people held in close contact with one another and hundreds of others who work there. This means that when COVID-19 gets into prison, its impact is widespread and severe. For example, the rate of infection at one of the institutions for women during their outbreak in the first wave was approximately 70%. Just as with long term care facilities, when COVID-19 outbreaks happen in the prisons, staff and the wider community are also put at risk.

In order to enable transparency and accountability, we call on you to provide concrete timelines for vaccination, clear criteria for how groups are being prioritized, and insight into how institutions and sub-populations are being chosen.

(3) Depopulate the prisons to enable social distancing: Rates of incarceration remain too high to enable effective physical distancing and, in some cases, prisoners are being transferred across the country due to overcrowding. We have been advocating for the de-population of prisons since the pandemic began and, while some provinces were quick to act at the beginning of the pandemic, we have seen population numbers start to rise again. At the federal level, significant releases did not materialize. Our calls for depopulation are supported by recommendations from the World Health Organization and several United Nations bodies; recommendations that have largely been ignored.

Community members and organizations have demonstrated an ongoing willingness to work with the government to facilitate releases and safe community supervision. Now, as we continue to ride the crest of the second wave of COVID-19, there are more outbreaks in the prison system every day, and more people have been put at risk due to inaction.

Depopulation continues to be an urgent need and will require swift action and creativity from the minister’s office, CSC, the parole board, and community partners. We call on you to use the tools that are at your disposal to depopulate now including: the extension of unaccompanied

temporary absences, the use of Section 81 and 84 of the *Corrections and Conditional Release Act* (CCRA), expedited hearings for suspension and revocation cases, and section 121(1.b) of the CCRA which states that “parole may be granted at any time to an offender [...] whose physical or mental health is likely to suffer serious damage if the offender continues to be held in confinement”. Given that the availability of programming is extremely limited during COVID-19, the Parole Board of Canada should give direction for leniency in requiring program completion.

Working towards depopulation can also occur at the sentencing stage. Courts must consider the impact of COVID-19 when determining a fit sentencing, including the likelihood that an individual will be subject to unduly harsh conditions of confinement and the elevated risk of severe illness and death. The government must also develop a proactive strategy to ensure just sentences by pursuing early release for those who were sentenced without taking into account the unprecedented conditions of confinement that have prevailed since the outset of the pandemic.

Depopulation should be accompanied by the necessary redistribution of resources away from CSC and to community groups.

Success cannot only be defined as limiting the number of prisoners who die. Success must also mean limiting the number of prisoners and staff who contract COVID-19. We are starting to understand the long-term impacts of contracting COVID-19 – physical and cognitive symptoms that are relapsing and remitting for an indeterminate amount of time – which will place even more strain on already under-resourced healthcare systems in the prisons, and in community.

(4) Implement effective and humane public health measures inside: Every time there is a suspected case of COVID-19 amongst prisoners or staff, the entire prison is impacted and thrown into indefinite lockdown. Sick people are also often isolated alone in segregation cells - punishment cells repurposed (in name only) for medical isolation – if they are being isolated at all. This treatment is neither humane, nor is it the least restrictive option available, as is required by law. The detrimental impacts that these conditions have had on the mental wellbeing of prisoners and their loved ones cannot be overstated.

We call on you to ensure that those prisoners infected with COVID-19 are treated in humane, safe surroundings, and not isolated in cells in proximity to other prisoners who have not tested positive. Should this require you to transfer prisoners into the community for adequate treatment or to bring temporary hospital-like accommodations onto the prison grounds, we call on you to do so.

We call on you to make onsite and regular COVID-19 testing available to all prisoners and make regular testing for front-line staff mandatory, as is the case in many long-term care facilities.

We call on you to provide masks, cleaning supplies, and hand soap to all prisoners free of charge. These should be replaced frequently and also made available on request. Masks should meet the recommendations put forward by the federal government and be replaced frequently. Cleaning supplies and hand soap provided should be proven effective against COVID-19. Mandatory masking policies for Correctional Officers should be enforced. Informing

Correctional Officers that the wearing of masks is optional (p.21-22, 54), is blatantly unacceptable and flies in the face of public health protocols.

We call on you to test all HVAC systems regularly and make the results made publicly available.

In April, the Correctional Investigator urged you to release “the results of external infection prevention and control audits/inspections.” We call on you to do this immediately.

Limiting the spread of COVID-19 in prisons must not undermine safe conditions of confinement, dignity, or timely reintegration

We need to protect the health and lives of prisoners– because it is what is legally obligated and because it is right.

Please respond on an urgent basis.

Signed,

Harsha Walia, Executive Director
British Columbia Civil Liberties Association

Emilie Coyle, Executive Director
Canadian Association of Elizabeth Fry Societies

Abby Deshman, Director, Criminal Justice Program
Canadian Civil Liberties Association

Tom Engle, President
Canadian Prison Law Association

Adelina Iftene (Phd)
Assistant Professor, Schulich School of Law and Associate
Director, Health Law Institute
Dalhousie University

Jennifer Metcalfe, Executive Director
Prisoners’ Legal Services

Catherine Latimer
John Howard Society of Canada

cc.

Ivan Zinger, Correctional Investigator of Canada