



# 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.<sup>1</sup>

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.<sup>2</sup> 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).<sup>3</sup>

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.<sup>4</sup> 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**

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<sup>1</sup> “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>

<sup>2</sup> 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>.

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

<sup>4</sup> <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 Canada<sup>5</sup>, as well as the Parole Board of Canada and provincial parole boards.<sup>6</sup>

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.

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<sup>5</sup> *CCRA*, s 3.1.

<sup>6</sup> *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”.<sup>7</sup> The Service is also required to use the least restrictive measures required to protect society, staff, and offenders.<sup>8</sup>

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

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<sup>7</sup> CCRA, s 3.

<sup>8</sup> 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.<sup>9</sup> 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,

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Tom Engel  
President, Canadian Prison Law Association

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<sup>9</sup> *CCRA*, ss 3(b), 4(c.2).

