



March 1, 2021

VIA E-MAIL

The Honourable Sylvia Jones
Solicitor General
Ministry of the Solicitor General
George Drew Building
25 Grosvenor Street, 18th Floor
Toronto, Ontario M7A 1Y6

The Honourable Doug Downey
Attorney General
Ministry of the Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, Ontario M7A 2S9

Dear Solicitor General Jones and Attorney General Downey,

RE: COVID-19 Situation in Ontario's Correctional Institutions

We are writing to share the urgent and pressing concerns of the Criminal Justice bar with respect to the rapidly deteriorating COVID-19 situation in Ontario's Correctional Institutions.

Since early in the pandemic, correctional facilities have been identified as a high-risk potential hotbed for the spread of COVID-19. In recognition of this, efforts were made in the first half of last year to reduce the inmate population by releasing individuals where possible.

Over the past month, the situation in Ontario's Correctional Institutions has drastically deteriorated and the situation is now extremely dire for those residing and working in these institutions. Many of those in custody in provincial facilities are awaiting trial and as such, are presumed to be innocent. Indeed, many of these persons have been in custody awaiting trial for far longer than would ordinarily be the case because their trials have been repeatedly adjourned due to the suspension of jury trials. Those who are serving custodial sentences are serving sentences of less than two years in duration for less serious offences.

Numerous provincial facilities are now in lockdown as COVID-19 runs rampant through the institution. The most dramatic example is the Maplehurst Correctional Complex in Milton, wherein the number of active cases rose from 0 to 178 in the span of 11 days. As of February 17, 2021, the reported number of Covid cases at Maplehurst was over 280, including several dozen corrections staff.

In the context of these lockdowns, inmates are being confined to their cells for several days, a week or more at a time, and deprived of some of their most basic human rights, contrary to the United

Nations Standard Minimum Rules for the Treatment of Prisoners. They are unable to access phones to connect with counsel or their families and other support people, unable to access fresh air and exercise, and often prohibited from accessing showers for a week or more at a time.

The Courts have strongly condemned lockdowns in innumerable decisions pre-Covid, in light of the significant physical and psychological damage they can impose¹. The psychological impacts of lockdowns are exacerbated in the context of a COVID-19 outbreak wherein inmates may have genuine concerns for their well-being and even their lives. While on lockdown, inmates remain isolated from other human contact, and are unable to communicate with their families. Since the beginning of the pandemic, inmates at various institutions have been unable to have any visits from family or friends. To be deprived of phone-calls to family as well during this especially difficult time is particularly devastating for both the inmate and his or her family.

There are also reports of inmates, including some who have tested positive for Covid-19 at the Maplehurst institution, still being triple-bunked².

Finally, the ability for inmates to prepare for and participate in Court appearances is also being significantly hampered. Our members have shared reports of:

- Bail hearings being cut off in the middle of the hearing;
- Time on Zoom being limited to 45 minutes per hearing, when hearings may well last much longer;
- Audio hearings being conducted in an inmate's cell on the range, leading to noise disruptions for all justice participants and an inability for the inmate to concentrate and meaningfully participate in the hearing;
- Inmates being unable to access disclosure for weeks on end to review and prepare for Court appearances, and not able to access it at all during lockdown;
- Lawyers being unable to visit clients while the institution is in lockdown. This means that lawyers cannot review disclosure with their clients, take instructions, or adequately prepare clients for upcoming matters;

¹ See for example [R. v. Inniss, 2017 ONSC 2779 \(CanLII\)](#) at paras. 38-39 wherein Justice Forestell wrote in reference to the UN standard of one hour of suitable exercise in open fresh air daily, "It is shocking that detention centres in Toronto in 2017 are consistently failing to meet minimum standards established by the United Nations in the 1950's." See also [R. v. Persad, 2020 ONSC 188 \(CanLII\)](#) at paras. 31-34.

² Alyshah Hasham, *Five Ontario jails have significant COVID-19 outbreaks. Toronto South Detention Centre outbreak grows to 27 active cases.* (January 29, 2021). Toronto Star. Available at <https://www.thestar.com/news/gta/2021/01/29/five-ontario-jails-have-significant-covid-19-outbreaks-toronto-south-detention-centre-outbreak-grows-to-27-active-cases.html>

- Inmates being unable to engage in any communications with counsel at all during any period in which they are under lockdown. If they are able to finally obtain access to a phone, communications with counsel are almost always in noisy environments where background noise makes it impossible to carry on any kind of meaningful conversation, let alone confidential conversation. Pre-Covid, inmates were often brought late or not at all to their private calls with counsel. During Covid, they are not brought at all with increasing frequency; and
- Pre-arranged counsel meetings being arbitrarily cancelled just minutes before they are set to begin.

Ultimately, these issues not only impact the health and safety of staff and detainees, they also decrease public confidence in the correctional system and the administration of justice.

Given the high-risk nature of the correctional setting and the negative impacts on the rights of inmates resulting from the spread of Covid-19 through the facilities, those living and working in these institutions must be prioritized for early vaccination. While it has been reported that the Ministry of Health confirmed that Indigenous inmates in provincial correctional facilities are to be included in Phase 1 of the vaccine rollout³, all other inmates must also be prioritized either in Phase 1 or early in Phase 2.

Additionally, there are immediate essential steps that must be taken to ameliorate the current conditions (with priority given to those institutions in lockdown):

1. A **safe** environment that meets minimum public health standards is essential for the well-being of both inmates and corrections staff. This must include the immediate repair, upgrade, or replacement of any ventilation systems that fail to meet public health standards.
2. Personal protective equipment must be provided to all inmates to move safely around institutions to access necessary areas, such as telephone and Zoom facilities, showers and outdoor spaces. This should include N95 masks for all inmates in institutions presently undergoing Covid outbreaks, hand sanitizer, antiseptic wipes, disinfectant, and other cleaning supplies in amounts sufficient for all inmates on a constant basis.
3. Access to working technology must be made available or upgraded to enable Court appearances, particularly bail and sentencing proceedings, to proceed with meaningful participation by the accused person. The result of a bail proceeding may be the release of an individual from the facility, reducing the risk for that particular accused person and reducing over-crowding in the institution. Similarly, the result of a sentencing hearing may be release

³ Alyshah Hasham, *Ontario confirms Indigenous jail inmates are a priority for Phase 1 of vaccine rollout*. (February 18, 2021). Toronto Star. Available at <https://www.thestar.com/news/canada/2021/02/17/ontario-confirms-indigenous-jail-inmates-are-a-priority-for-phase-1-of-vaccine-rollout.html>

from custody in the event of a non-custodial sentence or transfer to a less-overcrowded federal correctional institution.

Investment must be made immediately to increase the Zoom capacity at institutions to enable accused persons to meaningfully participate in these hearings.

4. The existing remote defence access system, which currently exists at a few select facilities in the province, should be expanded to all other institutions. This allows counsel to remotely and confidentially meet with clients by video while reducing visitors to the institutions and prisoner movement throughout the institution.
5. Laptops or tablets ought to be made available for inmates to review disclosure and prepare for trial. These laptops can be provided to inmates in their individual cells, if necessary, to decrease risks associated with moving persons throughout the institution. This approach is common in the penitentiary system.
6. Inmates in institutions that are not permitting visitors should be given regular access to video conferencing platforms to allow them to maintain contact with their family and support networks.
7. Guidance should be provided to Crown attorneys regarding bail and the impact of COVID-19 on release decisions, particularly with respect to non-violent and administration of justice offences. While this was a relevant factor early on in the pandemic, its importance has waned despite the second wave of infections. It may be some persons are too high risk to be released, however this should be a small subset of individuals facing violent crimes.

We would welcome the opportunity to discuss these concerns with you further, and would be happy to provide further input on these and other matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charlene Theodore', with a stylized flourish at the end.

Charlene Theodore, President
Ontario Bar Association