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Honourable Deborah Richardson,  
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Dear Solicitor General Jones and Deputy Solicitor General Richardson:

Re: COVID-19 and Ontario correctional facilities

We are writing as a coalition comprising Aboriginal Legal Services, the Alliance for Healthier Communities, the Black Legal Action Centre, the Canadian Civil Liberties Association, the Criminal Law Group at Queen's University, Grand Council Treaty 3, the HIV & AIDS Legal Clinic Ontario, Nishnawbe Aski Nation, Nishnawbe-Aski Legal Services and Queen's Prison Law Clinic.

The purpose of this letter is to request that the Ministry of the Solicitor General (the "Ministry") publicly disclose data surrounding the prevalence of COVID-19 in provincial correctional facilities and the steps being taken to prevent the spread of the virus. This information is vital for the health of all Ontarians, but especially for Indigenous and Black communities who are vastly over-represented inside these institutions.

We are specifically requesting:

1. The regular, online reporting of data disaggregated by race, gender, and correctional institution about testing and positive cases among staff and those in custody in Ontario;

2. Information about access for staff and people in custody in each institution to personal protective equipment (PPE) and sanitation tools, and information identifying by whom and how frequently cleaning and sanitation of common areas is being performed; and
3. A breakdown of the numbers of those serving sentences who have been released from custody since March 16, 2020, as well as data about the people who have entered the provincial correctional system, both on remand and those serving sentences, disaggregated by race and gender, since that date.

We enclose a Freedom of Information request made pursuant to s. 24 of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31., although it is our hope that we will receive an answer to this letter earlier than the 30 days set out in the legislation.

1. The need for online access to public health data

As you are aware, individuals in congregate living settings face a higher risk of contracting COVID-19. This is why there has been a focus on collecting and making publically available data related to long-term care and retirement homes<sup>1</sup> and homeless shelters.<sup>2</sup> It is also why the Correctional Service of Canada has created a website that is regularly updated and shows inmate COVID-19 testing in federal correctional institutions.<sup>3</sup>

We are very concerned that there is no public information available about the current data related to COVID-19 testing and positive diagnoses in Ontario correctional facilities. This leaves families fearing for the well-being of their loved ones and relying on sporadic local media reports for information about outbreaks. The lack of public information about how people in Ontario jails are being tested before they are released creates a challenge for discharge planning, especially for Indigenous people returning to remote communities. It also raises concerns about the accountability of the Ministry to the community whose safety is at the core of its mandate.

There is much evidence that people who are living inside correctional facilities are at greater risk to become infected by COVID-19. In an affidavit recently filed in the Federal Court of Canada, Dr. Tim O'Shea described the increased risk faced by people living in correctional facilities. Dr. O'Shea is a physician and certified specialist in infectious diseases, medical microbiology, and internal medicine by the Royal College of Physicians and Surgeons of Canada. He is also an Associate Professor, in the Divisions of General Internal Medicine and Infectious Diseases in the Department of Medicine at McMaster University. In his affidavit

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<sup>1</sup> Ontario, Public Health Ontario, "[COVID-19: Epidemiologic summaries from Public Health Ontario](#)" (weekly since January 15 2020)

<sup>2</sup> See reports provided three times per week about outbreaks in homeless shelters in Toronto. City of Toronto, "[COVID-19: Status of Cases in Toronto](#)" (2020)

<sup>3</sup> Canada, Correctional Services Canada, "[Inmate COVID-19 testing in federal correctional institutions June 29, 2020](#)"

(available upon request) he said, “Jails and prisons are environments particularly prone to the transmission of infectious diseases.” He also said, “In addition to being congregate living facilities, prisons encounter issues with hygiene, proper cleaning, and general overcrowding. Shared facilities such as showers, toilets, recreational areas, telephones, and dining areas make social distancing nearly impossible and contamination of surfaces a certainty. In some prisons, inmates are double-bunked or triple-bunked in single cells, a situation that is the opposite of social distancing.”

The above-noted reasons make public health information about what is happening inside correctional facilities even more important. The need for transparency about COVID-19 in correctional facilities was identified in a recent report by the Office of the Correctional Investigator (OCI), dated June 19, 2020.<sup>4</sup> That report characterizes COVID-19 as the “new normal” and has called for planning about ensuring health and safety in penitentiaries during the pandemic to be made accessible and available to the public.

The importance of race-based data about COVID-19 in the community at large became clear as the numbers of cases in Canada rose, highlighting and exacerbating pre-existing health disparities for Indigenous and Black Canadians.<sup>5</sup> The need is even greater within correctional facilities. As you are undoubtedly aware, Black and Indigenous people are over-represented in provincial corrections by staggering margins. In 2017/2018, Indigenous adult males constituted 11% of admissions to Ontario provincial facilities, while adult Indigenous females were 18%,<sup>6</sup> while making up 4% of the population.<sup>7</sup> There is less recent data available about the number of Black people in provincial jails, but research based on data from 2010/2011 found that while Black people constituted 3.9 percent of Ontario’s population, they made up 17.7 percent of admissions to Ontario’s correctional facilities.<sup>8</sup>

Given this backdrop, it is essential that disaggregated data about testing and outbreaks in correctional facilities is publicly reported. In order to ensure this information can be used to assist communities, identify trends and still maintain privacy, we request that numbers reflecting testing and outbreaks be broken down by institution and that provincial totals of testing and outbreaks reflecting gender and race also be provided.

For a number of reasons, we conclude that this data is already collected and shared within the Ministry. First, in a series of Information Notes prepared by the Institutional Services Division and released sporadically over the past months, some data is provided about testing

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<sup>4</sup> Canada, Office of the Correctional Investigator, “[COVID-19 Update for Federal Corrections - June 19, 2020](#)” (Ottawa: 2020).

<sup>5</sup> Government of Ontario, Public Health Ontario Enhanced Epidemiological Summary, “[COVID-19 in Ontario – A Focus on Diversity](#)” May 14, 2020

<sup>6</sup> 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)

<sup>7</sup> Department of Justice, “[JustFacts: Indigenous overrepresentation in the criminal justice system](#)” (May 2019)

<sup>8</sup> Akwasi Owusu-Bempah, “[Race, Crime, and Criminal Justice in Canada](#)” in The Oxford Handbook of Ethnicity, Crime, and Immigration, Chapter: 11, (London, Oxford University Press: January 2014)

and positive cases. Second, we are advised that data on outbreaks in correctional facilities is currently being collected across the province as part of the Action Plan to support vulnerable populations, led by the Ministry of Children, Community and Social Services. We have been advised that this data also includes information on testing. Although this data is being collected, it has not been made public. We urge the province to do so urgently. Finally, according to the Information Notes, data about institutional capacity is extracted from the Offender Tracking Information System (OTIS), which also records the race of each inmate.

## 2. PPE and other barriers to transmission of COVID-19

In an Information Note dated June 2, 2020, the Ministry of the Solicitor General outlines the use and availability of PPE in institutions.<sup>9</sup> However, the guidelines and protocols have not been made publicly available. This means they cannot be reviewed to determine if they are in accordance with the recommendations made by UNODC, WHO, UNAIDS and OHCHR in their joint statement on COVID-19 in prisons and other closed settings.<sup>10</sup>

The June 2 Information Note describes the use of PPE in great detail as it relates to correctional staff when admitting and discharging inmates or by nursing staff when completing medical examinations.<sup>11</sup> It appears from the Information Note that staff may easily access PPE such as face masks, eye protection, gloves, and gowns, and are instructed to wear it according to the guidelines of the Ministry of Health and Public Health Ontario. Further, as of April 27, 2020, all staff are required to wear a face mask at all times while at work in an institution. Reliable access to PPE does not appear to be similarly accorded to those on remand or serving a sentence – those who actually live in the institutions 24 hours a day. According to the Information Note, “Inmates are provided with cleaning supplies and direction on the proper cleaning protocols, as well as appropriate PPE where necessary.”<sup>12</sup> Limited access to PPE only when inmates are exhibiting symptoms leaves the rest of the institution’s population vulnerable to the virus.

Staff at ALS and BLAC have heard from inmates in correctional institutions who are very concerned about sharing cells and the inability to maintain two metres of physical distance while not being provided with the necessary PPE that is now mandatory for all residents of Toronto in enclosed spaces.

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<sup>9</sup> Ontario, Ministry of the Solicitor General, “Response to COVID-19 Information Note”, June 2, 2020 (Toronto: 2020).

<sup>10</sup> World Health Organization, “[UNODC, WHO, UNAIDS and OHCHR joint statement on COVID-19 in prisons and other closed settings](#)” May 13 2020

<sup>11</sup> Supra note 9.

<sup>12</sup> Ibid at p 49.

### 3. Information about the reduction in the number of inmates

In the June 2 Information Note the Ministry cites a 31% decrease in the provincial correctional population across 25 institutions since March 31, 2020. Other than statements reported in the media<sup>13</sup>, there is no publically available information about exactly how this reduction was achieved. The Information Note dated June 16, 2020 references inmates serving intermittent sentences receiving Temporary Absence Pass (TAPs); proactive temporary absence review for inmates with fewer than 30 days remaining to serve; and hearings at the Ontario Parole Board.

In addition to being over-represented, Indigenous people in corrections experience disproportionately unfair treatment as a result of systemic racism. In the 2018 Supreme Court case of *Ewert v Canada*, Wagner J. (as he then was) wrote:

Recent reports indicate that the gap between Indigenous and non-Indigenous offenders has continued to widen on nearly every indicator of correctional performance. For example, relative to non-Indigenous offenders, Indigenous offenders are more likely to receive higher security classifications, to spend more time in segregation, to serve more of their sentence behind bars before first release, to be under-represented in community supervision populations, and to return to prison on revocation of parole.”<sup>14</sup>

A similar trend was noted in a report of the Office of the Correctional Investigator into the experiences of Black inmates in federal penitentiaries which found that Black inmates consistently had less access to escorted temporary absences and unescorted temporary absences.<sup>15</sup>

For this reason, we are requesting a breakdown of the number of people released under each of the above processes, including the number of Indigenous and Black people who were able to access early release, as well as the criteria that was established for the proactive temporary absence review. We are also requesting that the Ministry provide data about the numbers of new inmates in the provincial correctional system since the beginning of the pandemic, both on remand and those serving sentences, disaggregated by race and gender.

On March 17, 2020, Premier Doug Ford declared a State of Emergency, which is still in place more than 100 days later. People in correctional facilities remain at risk. We are deeply concerned about their health and well-being, especially as the province readies for a second-

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<sup>13</sup> National Post, “[COVID-19 spurs prison reform from provinces but federal government slow to act](#)” April 16, 2020

<sup>14</sup> *Ewert v Canada*, 2018 SCC 30 at para 60.

<sup>15</sup> <sup>15</sup> Canada, Office of the Correctional Investigator, “[A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report](#)” (Ottawa: 2013)

wave of the pandemic. Ready access to public health data, transparency, and accountability are essential tools to ensure the safety of our communities.

We await your response to this letter and the enclosed Freedom of Information request.

Respectfully,

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