



March 30, 2020

Via email: bill.blair@parl.gc.ca

The Honourable Bill Blair, P.C., M.P.
Minister of Public Safety and Emergency Preparedness
Public Safety Canada
269 Laurier Avenue West
Ottawa, ON K1A 0P8

Dear Minister Blair,

Re: COVID-19 and Incarcerated and Detained individuals

We are writing on behalf of the Criminal Justice Section and its Committee on Imprisonment and Release, and the Immigration Law Section of the Canadian Bar Association (CBA Sections) with serious concerns about the safety of the incarcerated and detained population in Canada in light of the current COVID-19 pandemic. The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The Criminal Justice Section represents a balance of prosecutors and defence lawyers from all parts of the country and the Committee consists of specialists in prison law and sentencing issues. The Immigration Law Section has approximately 1,000 members across Canada practising in all areas of immigration and refugee law.

We realize that this is a very demanding time for you and your colleagues in the federal government. While not yet a prominent topic in the media or public discourse around the virus, we believe that few situations are as potentially explosive and life threatening because of the COVID-19 pandemic as those within Canada's prisons, jails and immigration detention facilities – for those detained and for the general public.

We urge you to act now to prepare detailed action plans for prevention and treatment of COVID-19 among incarcerated and detained populations and to make those plans easily available to the public. The CBA has raised concerns about inadequate levels of health care in federal facilities, including crowded immigration detention facilities, and noted that health care demands are only likely to increase with an aging prison population.¹ Coupled with the close quarters in these facilities, limited access to hygiene and preventive products, and inability to act on social distancing recommendations from public health authorities, we believe the current situation may soon become dire.

¹ [Resolution](#), Health Care for Federal Offenders

As a general principle, the CBA has argued that incarceration and detention should be the option of last resort when necessary for public safety.² With the additional health threats now present, it is especially important to consider releasing those who can safely be released from custody in prisons and immigration detention facilities. Some regions have already directed Crowns to look at whether detention is necessary when making bail recommendations. Others are considering creating a list of those on remand or sentenced for non-violent crimes for early release. Other options might include expanding use of conditional pardons under section 748 of the *Criminal Code*, asking Corrections Service Canada and the National Parole Board to expedite the process for applying for parole by exception under section 121 of the *Corrections and Conditional Release Act*, and expanding the use of and relaxing requirements for temporary absences and intermittent sentences.³ These approaches must be coordinated, with consistent policies between federal, provincial and territorial institutions.

The overuse of lockdowns, eliminating outdoor recreational time and ending personal visits will impact the physical and mental health of those detained. The long-term consequences of protracted detention during this health crisis cannot be overstated.

In addition to the human rights implications for incarcerated and detained individuals, there could be significant health consequences for the general population from not addressing this situation quickly. If the virus spreads unchecked in these facilities, workers are at increased risk of infection. When those workers return home, their families and the surrounding population with whom they have contact are at increased risk. Prisoners or “new arrivals” coming into or leaving facilities could similarly pose significant health risks to fellow prisoners and detainees, staff, CBSA officers, legal counsel and visiting family members. Measures to deal with these risks are required urgently.

We ask that you work immediately with your provincial and territorial counterparts to develop a comprehensive plan for all Canadian prisons and immigration detention facilities. We trust that our comments will be helpful and would be pleased to assist as we are able.

Yours truly,

(original letter signed by Gaylene Schellenberg for Kathleen Pentz and Ravi Jain)

Kathleen Pentz, Q.C.
Chair, Criminal Justice Section

Ravi Jain
Chair, Immigration Law Section

CC Honourable David Lametti, P.C., M.P., Minister of Justice and Attorney General of Canada
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² See for example, discussion in CBA submission on [Bill C-83](#), *Corrections and Conditional Release Act amendments* (CBA: Ottawa, 2018).

³ Others have recently expanded this discussion of possible options for early release. See, for example, [Global News](#) (prison-covid-19-measures-alberta) and [National Post](#) (death-sentence-advocates-warn-of-covid-19-spread-in-jails-prisons).