



June 23, 2020

The Honourable Cliff Cullen
Minister of Justice and Attorney General
Room 104 - 450 Broadway
Winnipeg, MB R3C 0V8

Danny Smyth
Chief of Police
Winnipeg Police Service
P.O. Box 1680
Winnipeg, MB R3C2Z7

The Honourable Chief Judge Margaret I. Wiebe
Provincial Court of Manitoba
5th Floor - 408 York Avenue
Winnipeg, MB R3C OP9

Sent by Email

Dear Minister Cullen, Chief Judge Wiebe and Chief Smyth,

I am writing you with respect to recent changes in the administration of our justice system in response to the COVID-19 pandemic. It is our understanding that direct lock-up agreements with police services across Manitoba have been suspended to prevent the transmission of COVID-19 in correctional facilities. As a result, police agencies are now required to house accused persons until the courts remand them into custody or they are ordered released. We urge you to ensure that the detention of accused persons occurs in a manner consistent with the protections afforded by domestic and international human rights law.

The Manitoba Human Rights Commission recognizes the ever-evolving circumstances surrounding COVID-19 and understands that justice officials are working diligently to balance public health risks alongside the importance of maintaining the rights of individuals who have come in contact with the justice system. While we appreciate the significant challenges associated with this task, we are concerned with the potential negative consequences of these recent changes, particularly resulting from the suspension of direct-lock up agreements. Reports from the Winnipeg Police Service and community serving agencies suggest that individuals facing charges are being held for periods of up to 43 hours in facilities that are not properly equipped to meet their basic needs while awaiting custody determination by the courts. These reports suggest that these provisional facilities are not equipped to provide detained persons with food,

water and basic sanitation supplies; or to provide detained persons with necessary access to legal representation and medical services. It is also our understanding that some of the provisional detention cells are not equipped with running water or toileting facilities.

As the agency responsible for the promotion and protection of human rights in Manitoba, we remind you of our collective obligation to protect the rights of all Manitobans, including those who find themselves in contact with our criminal justice system. We respectfully direct you to the United Nations Standard Minimum Rules for the Treatment of Prisoners (“*The Mandela Rules*”), which set out basic obligations for governing bodies with respect to the accommodation, sanitation, food, personal hygiene and health care services for detained persons. We are concerned that the current model in place for holding charged individuals may compromise Manitoba’s ability to meet these minimum rules. We urge government officials and decision-makers to find proactive solutions to meet the basic needs of individuals facing charges in Manitoba.

We further note that the urgency and importance of meeting the basic needs of charged individuals is amplified by the risks associated with COVID-19. At this time, it is critical that detained individuals be given the resources necessary to comply with our government’s public health orders, including physical distancing, frequent handwashing, access to sanitation supplies and facemasks. We note that COVID-19 is found to disproportionately impact vulnerable communities, including Black, Indigenous and people of colour, who are already overrepresented in our justice system.

Finally, we draw your attention to our collective obligations under *The Human Rights Code* to provide public service in a non-discriminatory manner, so as to respect the inherent worth and dignity of every human being. We stress the importance of ensuring that any changes to the administration of our justice system respect the right of every person to reasonable accommodation of disability related needs, as well as other needs emerging from a characteristic protected under *The Code*. This includes timely access to medical care and treatment arising from a disability.

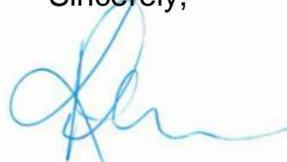
We appreciate that the recent changes to the administration of our justice system are not only intended to address concerns related COVID-19, but align Manitoba with other Canadian jurisdictions by requiring a judicial order prior to admitting an accused person to a provincial correctional facility. We appreciate the legal imperative of this change, which we note is further supported by Rule 7 of *The Mandela Rules*. However, we also note that that this change requires an efficient and accessible judicial system, capable of making custody determinations in a timely manner.

While the Commission recognizes that COVID-19 has presented governments and decision makers with unprecedented challenges, we stress the importance of approaching the COVID-19 pandemic through the lens of human rights. In April 2020, the Commission released *A Human Rights Based Approach to COVID-19: Principles and Actions*. We encourage governments and decision makers to align their responses to COVID-19 with international and domestic human rights laws, including *The Human*

Rights Code, The Charter of Rights and Freedoms and the Universal Declaration of Human Rights. This is all the more important where system transformations made in response to COVID-19 will remain in place permanently following recovery from the pandemic. To this end, we trust you will take the necessary action to ensure that conditions for accused persons in Manitoba align with our human rights obligations.

In keeping with the MHRC's commitment to public accountability and its duties in serving the people of Manitoba, this letter will be made public.

Sincerely,



Karen Sharma
A/Executive Director

cc. John Burchill, A/Chairperson, Manitoba Human Rights Commission