



December 13, 2021

The Honourable Audrey Gordon
Minister of Health and Seniors Care
302 Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

VIA EMAIL

Re: Human Rights and Triage Protocols during the COVID-19 Pandemic

Dear Minister Gordon,

I am writing to you on behalf of the Manitoba Human Rights Commission. I hope this letter finds you well and your team safe and well. We thank you for your ongoing efforts in navigating the current public health crisis and working to ensure the health and safety of Manitobans.

The Commission is writing this letter to call upon Manitoba Health to develop, implement and publicly release clear policy guidance with respect to triage protocols in the context of the COVID-19 pandemic. In particular, the Commission wishes to reaffirm the human rights imperative underlying this issue and the importance of centering human rights principles when it comes to triage protocols and the allocation of resources, including critical life-saving health care services and supports.

The Commission understands the complexity of the ever-evolving circumstances surrounding COVID-19 and appreciates the tireless efforts of government officials and health care providers in continually working to address the impacts of the pandemic on health care service delivery. We recognize the tremendous pressures that have been placed on our health care system and that there may be a need for triaging protocols or rationing of acute care services and/or critical medical equipment when health care systems are pushed beyond their limits. While these protocols are important for ensuring medical professionals are making ethically informed and justifiable decisions, they may also have the potential of discriminating against groups who have experienced historic and ongoing structural disadvantage in the health care system, including but not limited to persons with disabilities, older people, and Black, Indigenous and people of colour.

Since the emergence of the COVID-19 pandemic in Manitoba, the Commission has been monitoring the response to the pandemic and has heard from many community members who are concerned that certain aspects in the management of the COVID-19 pandemic are having a negative impact on their human rights. In April 2020, the

Commission released a report entitled “*A human rights based approach to the COVID-19 pandemic: Principles and Actions*”, which outlines broad principles and actions that are fundamental to a human rights-based approach to the management of the pandemic. These principles included the need to protect vulnerable communities and respond proactively to the potential for ableism, racism, xenophobia and other forms of discrimination. This April 2020 report underlined the need for all levels of government to provide healthcare services and information related to COVID-19 in an accessible and equitable manner, and without stigma or discrimination of any kind. It also called upon governments to **ensure that healthcare systems have the resources, personnel and equipment necessary to provide equitable and non-discriminatory health care and services** to all people with particular focus on communities whose healthcare needs have been neglected in the past, including persons with disabilities and Black, Indigenous and people of colour. This report can be found on our website: <http://www.manitobahumanrights.ca/v1/education-resources/resources/pubs/guidelines/covid19principles.pdf>

After monitoring the impacts of the COVID-19 pandemic on human rights in Manitoba, the Commission released an update to this report on December 10, 2020. In this update, we specifically highlighted the need for governments and health care providers to ensure that **any protocols or decisions made with respect to the allocation of limited critical care services during the COVID-19 pandemic conform with human rights law, including the fundamental principle of non-discrimination**. In the December 10th update, we note that “any triage protocol implemented in Manitoba should prioritize human rights principles in accordance with the paramountcy clause of *The Human Rights Code* and avoid potentially discriminatory criteria, including the prioritization of utilitarian considerations, or criteria that maximizes ‘life-years saved’ or quality-of-life considerations.” We also called upon governments and decision-makers to ensure that structurally disadvantaged groups including persons with disabilities, older people, racially marginalized communities and others “are meaningfully engaged in the process of developing and implementing a protocol to ensure that its use does not harm their communities.” This report can be found on our website: <http://www.manitobahumanrights.ca/v1/education-resources/public-consultations/pubs/public-consultations/december2020update.pdf>

On May 15, 2020, the Manitoba Government and Shared Health Manitoba released the ‘COVID-19 Ethics Framework Information for Providers’ to support and inform ethical decision-making related to COVID-19, including triage, priority setting and resource allocation. This document called for the development of a triage process to determine how beds, ventilators, vaccines, IV fluid, personal protective equipment, nurses, etc. will be allocated in times of scarcity. While the Commission was encouraged by the release of this ethical framework, we are deeply concerned about the continued lack of clear and publicly available policy guidance as to how triaging decisions are made when it comes to the allocation of critical life-saving care and other health care related services and supports, as well as decisions made with respect to which patients are transferred out of province for reasons related to COVID-19. We also note that this ethical

framework does not adequately address or provide guidance with respect to specific human rights and obligations in health care delivery and triaging decisions.

There is an urgent need for clear and transparent policy guidance in Manitoba with respect to triage protocols and a need to ensure these protocols centre human rights principles. With the emergence of new COVID-19 variants, the increasing number of hospitalizations and the corresponding stresses placed on our health care system, it is imperative that health care providers and patients have clarity around how triage decisions are made, and that the allocation of health services occur in a non-discriminatory manner. Manitoba Health must ensure that health care providers and medical staff are properly supported and appropriately trained in rights-based triage protocols in order to ensure a consistent and equitable approach that aligns with human rights obligations. In the absence of such policy and training, the Commission is concerned about the possibility of discriminatory attitudes, stereotypes and assumptions about disability, ancestry, age, etc. playing a factor in triaging decisions and the allocation of critical life-saving care.

Stakeholders – including the Human Rights Triage Protocol Coalition and Doctors Manitoba – have also expressed concerns about the lack of clear and publicly available triage protocols in the context of the COVID-19 pandemic. The Commission wishes to highlight a recent document released by the Human Rights Triage Protocol Coalition that similarly calls upon the adoption of transparent rights-based triage policies, protocols, directives, priority setting and resource rationing and allocation, and provides related recommendations. The Commission urges Manitoba Health to center this document in the development and implementation of any triage protocols. This document can be found here: <https://www.hrtpc.ca/>.

We understand that government officials and health care providers are working diligently to address the impacts of COVID-19 and balance public health risks alongside the importance of maintaining the rights of individuals within the health care system. While we appreciate the significant challenges associated with this task, we are concerned that the continued absence of clear and transparent triage protocols will have significant consequences for persons with disabilities, older people, Black, Indigenous and people of colour and other groups who have experienced historical and ongoing structural disadvantage in the health care system. These groups furthermore face deepening inequities when there are gaps or delays in health care services and supports.

As the agency responsible for the promotion and protection of human rights in Manitoba, the Commission reminds you of our collective legal obligation to ensure that public services are provided 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 individuals are not being discriminated against in the context of health care services, and that any response to the COVID-19 pandemic does not adversely or disproportionately impact structurally disadvantaged persons and communities. To this end, we trust you will take the necessary steps to implement clear and transparent

policy guidance with respect to rights-based triage protocols developed in consultation with relevant stakeholders and members of structurally disadvantaged communities, and in a way which aligns with our human rights obligations.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Sharma', with a stylized flourish at the end.

Karen Sharma
A/Executive Director

cc. Karen Herd, Deputy Minister