SUBMISSION TO:

THE STANDING SENATE COMMITTEE ON
SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

RESPECTING:

BILL C-83

AN ACT TO AMEND THE CORRECTIONS AND CONDITIONAL
RELEASE ACT AND ANOTHER ACT

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1. INTRODUCTION AND OVERVIEW

Bill C-83, had its third reading in the House of Commons on March 18, 2019 and was introduced into the Senate with a first reading on March 19, 2019 and a second reading and referral to the Standing Senate Committee on Social Affairs, Science and Technology on May 2, 2019. The Committee Report was presented with amendments on May 30, 2019 and the Blood Tribe was advised that the Committee completed its review of Bill C-83 and reported back to the Senate with amendments but that the Blood Tribe could still make a submission to the Committee which would be distributed to the members.

The Blood Tribe understands that this Bill has several provisions affecting First Nation individuals who are convicted for criminal offences and their communities and while not in opposition to these changes the Blood Tribe wishes to submit some concerns to the Committee with regard to the overall approach to the issues.

2. DISCUSSION AND CONCERNS

Failure to Address the Systemic Concerns

It is a well-established fact that First Nation’s peoples are over represented in the correctional system. We appreciate that the Corrections and Conditional Release Act is not the Act that would necessarily address concerns about how First Nation people are incarcerated in the first place however more emphasis needs to be put on these systemic concerns and then how incarceration is extended for First Nations peoples once they are in the correctional system.

The issue of overrepresentation in the correctional system is not new to the various Senate Committees and specifically the Standing Committee on the Status of Women conducted a study on indigenous women in the federal justice and correctional systems. That Committee heard from Prof. Vick Chartrand in 2017 and she noted that there is a substantial body of research that explores how Canada’s criminal justice system works against indigenous people at every level; police checks and arrests, bail denial and detention, sentencing miscarriages and disparities, and the high rates of imprisonment.¹ She further noted that Indigenous women represent 2% of the general population and about 36% to 39% of the federal prison population.

A Brief presented to the House of Commons regarding Bill C-83 noted that as of March 31, 2017, Indigenous inmates represented 28% of the federal prison population, while comprising on 4.3% of the population of Canada.² That Brief further noted that in 2017/18, Indigenous offenders comprised 36% of all segregation admissions.³

Bill C-83 legislates that special factors are to be considered when making decisions for Indigenous offenders. These factors echo earlier legislative attempts made to amend the Criminal Code, dubbed the “Gladue factors”. The Blood Tribe is concerned that these discretionary factors will not make a difference, as they have not done so in criminal sentencing or their common law implementation in a correctional setting, at least as it relates to the over representation of First

¹ Prof. Vicki Chartrand, Associate Professor, Department of Sociology, Bishop’s University speaking as an individual before the Committee on Thursday, December 7, 2017.
³ Supra p. 62
Nation’s people in the correctional system. The Gladue factors are also too often used against Indigenous persons in correction decision making as opposed to being used as mitigating circumstances and reducing the number of Indigenous persons in custody.

Release Plans

The addition of the term “Indigenous Organization” only applies to the consultation provisions of the national advisory committee and who can qualify to enter service agreements under the Bill. It does not apply to the parties that can be involved in a release plan. This has received criticism from Sen. Kim Pate, who before her appointment to the Senate was an advocate for inmates, as it restricts release options for Indigenous offenders to be released in urban communes with an Indigenous Organization in that community acting in lieu of a Band Council. Sen. Pate has also pointed out that the Bill in its current form does nothing to address the chronic failures on the part of corrections staff to ensure prisoners have access to these transfers to their communities, a failure noted by the Office of the Correctional Investigator in its recent annual report.

The Blood Tribe has played an active role in the past with respect to correctional services and reintegration of inmates into the community but no emphasis was put on the importance of these services by the Province and funding was withdrawn.

Appendix “A” provides background about the Blood Tribe and it should be noted that due to the size of the Blood Tribe membership and its land base there continues to be a significant role that the Blood Tribe can fulfill in release plans if given the opportunity and resources.

Failure to Consult

One of the fundamental concerns of the Blood Tribe with respect to Bill C-83 is that Canada did not consult with us prior to drafting these amendments and therefore did not take into consideration the Blood Tribe’s perspective on the current Act or the proposed amendments. This failure to consult on any Bill that may impact the Blood Tribe is a longstanding concern and one that we feel obligated to continue to stress is not acceptable to us.

The Blood Tribe wants to be clear with Canada that there is an underlying fundamental problem with its consistent approach to proposing legislation that may and will affect our rights, regardless of what that legislation relates to.

Given the undisputed fact that Indigenous persons are over represented in the correctional system and the fact that, notwithstanding what steps are taken, this number does not substantially decrease, it is clear that a different approach needs to be taken and that approach must include meaningful consultation with First Nations.

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5 Solitary by another name is just as cruel (Nov 12, 2018) [https://www.theglobeandmail.com/opinion/article-solitary-by-another-name-is-just-as-cruel/](https://www.theglobeandmail.com/opinion/article-solitary-by-another-name-is-just-as-cruel/)
3. CONCLUSION AND RECOMMENDATIONS

The entire correctional system, from intake to release must be reviewed from the perspective of addressing the issue that First Nation members are over represented in the system. Meaningful consultation with First Nations must be conducted in any review or amendments to legislation or the drafting of Bills prior to approval by the House of Commons or by the Senate.

This submission does not constitute consultation.

We respectfully submit our concerns about Bill C-28 and the overall concerns about the correctional system to the Standing Committee on Social Affairs, Science and Technology.

The Blood Tribe Chief and Councillors, on behalf of the Blood Tribe.
APPENDIX “A”

THE BLOOD TRIBE

Historical and Cultural Context

Tribal principles governing the Blood Tribe’s actions are articulated in the Elders declaration *Kainayssini*. The declaration is a recording of what Blood Tribe Elders understand to be the purpose of our existence. *Kainayssini* sets out our tribal system and guiding principles for the protection and preservation of that system, and lays out a practical guide as to what must be done presently and in the future to ensure the survival of the Blood Tribe and the Blood people. The Blood Tribe is obligated to maintain the foundations of its existence including its land, its language, its culture, and its rights.

The Blood Tribe has always existed as a nation. From time immemorial, the Tribe has controlled its lands and its religious, political, economic and cultural destinies. We are the caretakers of our land and our rights, not for ourselves but for our children and generations into the future. This is a sacred trust given to us by the Creator. We have a duty to safeguard this trust against the immediate and perhaps short sighted interests of other parties, including the Government of Canada.

The land is not ours to exploit, and our Aboriginal and Treaty rights are not ours to negotiate or limit. They are for future generations and must be kept intact for them.

European settlement altered the life of the Bloods in fundamental ways including obscuring our history and denying the validity of our political and land rights. The Canadian government failed to honour the Blackfoot Treaty (Treaty No. 7) and instead imposed British law over every aspect of our lives which eroded our independence and undermined our inherent authority. The validity of our life systems is under constant attack. But, we are a proud and tenacious people and have survived attempts to eradicate us. Today, we are still engaged in the struggle to preserve for future generations the fundamental values, principles, and rights and freedoms that are necessary for the Bloods to remain a distinct and unique people.

Contemporary Blood Tribe

The Blood Tribe/Kainai is located in southern Alberta on the Blood Reserve, the largest Indian reserve in Canada at 518.5 square miles, and has a population of approximately 12,000 members. The Tribe’s primary industry is agriculture; other industry includes ammonite mining, house construction, oil and gas development, and small business and tourism.

The Blood Tribe operates and manages its own education system, agricultural and economic development projects, health programs and services, correctional facility and policing, among other things. The Blood Tribe has also enacted several bylaws and codes in a number of areas, including in the areas of elections, membership and finance.

The Blood Tribe has made a concentrated effort to incorporate the principles of *Kainayssini* in all contemporary Blood Tribe legislation, policies and agreements. In particular, the election bylaw, membership code and financial administration code all reference *Kainayssini*. 
Relationship with Canada

The Blood Tribe’s historical relationship with Canada is rooted in the Blackfoot Treaty (Treaty No. 7) which was entered into between the parties, on a nation-to-nation basis, on September 22, 1877. The Treaty is a solemn and binding agreement which exists in perpetuity. By the Blackfoot Treaty, we agreed to share our lands with the British Crown except for specifically reserved areas which are kept for our exclusive use. The Treaty created a unique relationship between our people and Canada, modifying only one aspect of our rights: the right to exclusive use of the land. Therefore, we retain the same legal and political status we had when we entered into the Blackfoot Treaty. Specifically, we retain the right to be self-governing and our leadership continues to be the governing body of the Blood people.

The Blackfoot Treaty created certain obligations on the part of Canada. In particular, Canada is required to act with honour in all of its dealings with the Blood Tribe; no appearance of sharp dealing will be sanctioned. From this duty flows the duty to consult whenever any legislation has the potential to affect our Aboriginal and Treaty rights; such rights being constitutionally entrenched in Section 35(1) of the Constitution Act, 1982. The duty to consult may, in turn, require accommodation on the part of Canada and our consent.

The Treaty relationship also gives rise to a fiduciary relationship between the Blood Tribe and Canada, with the Blood Tribe as beneficiary and Canada as fiduciary. As such, Canada is vested with a general fiduciary obligation that consists of protection and non-interference. The duty of protection entails protection for Blood Tribe people, and our lands and resources; while the duty of non-interference allows for the development and implementation of governing structures which are best suited to the Blood people, taking into account our culture and values.

Thus, it is the Treaty relationship that informs all dealings between the Blood Tribe and Canada and such dealings, in keeping with their original nature, are required to be on a nation-to-nation basis. However, there is a continuing disregard by Canada of the nation-to-nation relationship and that is not acceptable to the Blood Tribe. It is not likely that Canada would consider treating any of its non-First Nation treaty partners in the same manner that it has treated its First Nation treaty partners, including the Blood Tribe. Canada would not impose legislation on them which affects their rights and their people, then, after the fact, ask them for their thoughts. That would be unacceptable in that arena. It is equally, if not more, unacceptable here because it is the Treaties with First Nations that allowed for Canada.