Kenora Lawyers Sentencing Group
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Members of Parliament:

RE: BILL C-10, The *Safe Streets and Communities Act*

We are members of the Kenora Lawyers Sentencing Group.

We represent a largely Aboriginal clientele from over forty First Nations Communities in Treaty Three and Nine territories, stretching from the Canadian border with the United States, to Hudson Bay, to the Manitoba-Ontario border.

Our jail has bed space for about one hundred and seventy seven inmates. By a recent head count in September eighty three per cent of the one hundred and thirty five male inmates were Aboriginal; one hundred per cent of the thirty females were Aboriginal.

The Kenora Jail head count reflects what the Supreme Court of Canada recognized in its 1999 decision, *R. v. Gladue*—Canada's failure to come to terms with the over-incarceration of Aboriginal offenders in the correctional system. (http://scc.lexum.org/en/1999/1999scr1-688/1999scr1-688.html)

Though First Nations people fill the prisons and jails across Canada at a rate 5 times higher than the Aboriginal population base (4% of the Canadian population; 20% of the prison population); the per capita rate for Northwestern Ontario and the prairie provinces is much higher. (*Corrections and Conditional Release Statistical Overview 2010* at pp. 51 to 52 (Public Safety Canada http://www.publicsafety.gc.ca/res/cor/rep/_fl/2010-ccrso-eng.pdf); *Aboriginal Offender Statistics* (Corrections Canada, http://www.csc-scc.gc.ca/text/prgrm/abinit/know/4-eng.shtml); *The Incarceration of Aboriginal people in adult correctional services*, Table 3 (Statistics Canada, Juristat 2009, http://www.statcan.gc.ca/pub/85-002-x/2009003/article/10903/tbl/t4-eng.htm))

In *Gladue*, the Supreme Court referred to section 718.2 of the *Criminal Code* which mandates that judges consider options to jail that are "reasonable in the circumstances...with particular attention to the circumstances of aboriginal offenders." (http://laws-lois.justice.gc.ca/eng/acts/C-46/page-361.html#h-262)

The court went on to say that "the excessive imprisonment of aboriginal people is only the tip of the iceberg insofar as the estrangement of the aboriginal peoples from the Canadian criminal justice system is concerned." (para. 61)

Starting with the *Tackling Violent Crime Act* (2007), the first omnibus bill, then the so-called *Truth in Sentencing Law* (2010) and now Bill C-10, the *Safe Streets and Communities Act*, the government continues to ignore and exacerbate the plight of Aboriginal people and ignore and limit Restorative Justice options, including Conditional Sentences, diversion and rehabilitation programs and sentencing circles—all of which are encapsulated in the catch phrase "*Gladue* considerations."

The government's initiatives will also do nothing to ameliorate the harsher treatment of Aboriginal offenders within the Corrections Canada prisons (*Annual Report of the Correctional Investigator 2009-2010* at pp. 21 to 22 (http://www.oci-bec.gc.ca/rpt/annrpt/annrpt20092010-eng.aspx).

Neither Public Safety Minister Vic Toews nor Minister of Justice, Rob Nicholson, have ever argued that providing better services to Aboriginal offenders is the rationale for the *Tough on Crime* agenda or spending money on expanding prisons. (Neither have they mentioned aging buildings or overcrowding. See Evidence of Don Head, Commissioner of Correctional Services, Canada in Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, September 30, 2009 at pp. 51 to 56 (http://www.parl.gc.ca/Content/SEN/ Committee/402/lega/pdf/14issue.pdf; and see, for example, the Evidence of Rob Nicholson before the Standing Committee on Justice and Human Rights, Wednesday, May 06, 2009 at pp. 11 to 18 (http://www.parl.gc.ca/content/hoc/Committee/402/JUST/Evidence/EV3874272/JUSTEV20-E.PDF); and before the Standing Senate Committee on Legal and Constitutional Affairs, September 16, 2009 at p. 13 (http://www.parl.gc.ca/Content/SEN/Committee/402/lega/pdf/13issue.pdf))

CONDITIONAL SENTENCES

With Bill C-10, the government continues to narrow the range of offences available for Conditional Sentences, directly, by eliminating eligible offences; and indirectly, by increasing the number of offences which attract a minimum penalty, making these offences also unavailable for Conditional Sentences.

Conditional Sentencing is the life-blood of *Gladue*.

MANDATORY MINIMUMS

Bill C-10 also increases the number of offences for which a mandatory minimum sentence is prescribed. These sentences are not supported by the government's own research.

In the Legislative Summary attached to the *Tackling Violent Crime Act* (2007) the following negative effects of mandatory minimums are listed (p. 4, "*4. Incidental Effects of Mandatory Minimum Sentences*" http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/billsls.asp?source=libraryprb&ls=C2&Parl=39&Ses=2&Language=E&Mode=1):

- forcing offenders to trial who have nothing to lose by fighting their cases;
- the crowding of jails;
- the lack of evidence that mandatory minimums prevent recidivism;
- the adverse effect on minority offenders, who are more likely to be charged with offences carrying a minimum penalty, citing the experience of Australia where studies "have shown that mandatory minimum sentences disproportionately affect Aboriginal offenders, which has resulted in the repeal of certain sentencing legislation;" and
- fewer public funds available for prevention (see *The Funding Requirement and Impact of the "Truth in Sentencing Act" on the Correctional System in Canada*, Office of the Parliamentary Budget Office http://www.parl.gc.ca/pbo-dpb/documents/TISA_C-25.pdf ; the report estimates that the costs of housing prisoners in federal and provincial correctional institutions will double by fiscal year 2015-16 (p. 12))

In addition to these considerations, mandatory minimums eliminate most of the room for *Gladue* considerations to operate, and are, with respect to all offenders, Aboriginal and non-Aboriginal, a trap for low-severity offences and low-risk offenders. The Supreme Court recognized the role of sentencing judges to determine whether aboriginal offenders go to jail or "whether other sentencing options may be employed which will play perhaps a stronger role in restoring a sense of balance to the offender, victim, and community and in preventing future crime" (*R. v. Gladue*, para. 65).

Mandatory minimums eliminate a judge's sentencing options.

With mandatory minimums and the emaciation of the Conditional Sentencing regime, Parliament will have contradicted itself, by leaving little room for the effective application of section 718.2 of the *Criminal Code*. Parliament will also have ignored what the courts, aboriginal peoples, academics, lawyers, criminologists and prisoner advocacy groups have been saying for years about the over-representation of aboriginal peoples in the system.

We ask that you courageously confront the government on the abdication of its constitutional role to protect and accommodate the interests of aboriginal peoples and its failure to address their over-representation in the correctional system.

We ask you to continue to speak out so that Canadians get to know the real "truth in sentencing."

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