
Senate Standing Committee on Justice and Constitutional Affairs
Senate of Canada

IN THE MATTER OF
BILL C-10, *"An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts"*

"The Safe Streets and Communities Act"

Submission of the
MANITOBA KEEWATINOWI OKIMAKANAK, INC.

February 15, 2012
Ottawa, Canada

Tansi, Boozhoo, Edlanet'e, good evening. On behalf of the thirty northern Manitoba First Nations and the 65,000 First Nation citizens represented by the Manitoba Keewatinowi Okimakanak, Inc. I would like to thank you for the opportunity to make this brief presentation on Bill C-10, *The Safe Streets and Communities Act*. MKO also wishes to speak to the Committee about the meaning of the Treaty relationship and the honour of the Crown and about how we must work in partnership to make sure that all First Nation citizens equitably share in and enjoy a safe and secure Canada and to share in the opportunities enjoyed by all Canadians.

It is a core vision of the 30 MKO First Nations that each of the MKO First Nations should be the safest and most secure place to live for each the citizens of the MKO First Nations. The MKO First Nations are, first and foremost, committed to achieving the highest standards of public and community safety and security based on community-driven preventative and restorative approaches supported by community-based policing. It is the objective of these initiatives to place an emphasis on reconciliation between the victim, the community and the offender and on the rehabilitation and reintegration of offenders as productive members of the family and community. This vision also reflects the inherent and Customary Laws and community and cultural values of the MKO First Nations.

MKO's vision of community safety and security is founded on community-driven preventative and restorative approaches supported by community-based policing.

These community-based approaches are particularly important and relevant for those remote MKO First Nations with policing services which are at levels significantly less than comparable policing services available to other Canadians.

Numerous studies and the Manitoba Aboriginal Justice Inquiry have all pointed to alternatives to incarceration as being the key to long-term success in rehabilitating and reintegrating aboriginal offenders and in addressing the problems that likely led to them breaking the law. Community-based approaches are also essential to achieving a reconciliation between the victim and the offender.

Restorative and alternative justice initiatives, such as sentencing circles and elder counseling, have shown success in the MKO region. Let me share example of how the MKO First Nations have worked to bring our vision to reality.

Between 1998 and 2011, 6,770 accused persons were diverted into the alternative and restorative justice initiatives as part of the MKO First Nation Justice Strategy. Of these persons, 2,667 were diverted in 2010 and 2011.

One evaluation of the MKO First Nation Justice Strategy was carried out as part of a recidivism study was conducted by Justice Canada's Aboriginal Justice Strategy for the period 2002 through 2007. At that time, the MKO FNJS participated by providing information on 500 completed diversions. Justice Canada's summative report revealed that the recidivism study indicated that the MKO activities as part of the Aboriginal Justice Strategy had a positive impact by reducing the rates of re-offending by AJS participants. The evaluation found that AJS participants are less than half as likely to re-offend as those who do not participate in an AJS program and that this impact is sustained over time (offenders were tracked for at least four years following their participation in an AIS program).

The case studies exercise of the evaluation revealed benefits from MKO AJS programs at a community level. For example, it found that victims are given a voice in the justice process, as well as an opportunity to face and better understand the offender, including the offender's background and the circumstances that led to the offense.

At the same time, the study found that offenders are provided with opportunities to take responsibility for their actions, to learn from mistakes, to understand the impact of their actions in the victim and to give back to their communities. An innovative technique called Photo Voice was used as a part of the case studies methodology to encourage community members to participate and to share their perspective on AJS programs in their communities in the context of the program evaluation.

An earlier evaluation that was completed July, 1999 highlighted what was then a new justice model, consisting of an Aboriginal Magistrates Court (JJP) carried out in close coordination with MKO Community Justice Workers. The evaluation pointed positively to a reduction in court delay, greater efficiencies and better use of court time, more community involvement and a court which was culturally appropriate to people appearing before the court. Accused persons and other involved parties could respond or speak to the Magistrate in their native language and the court could consult with Elders and other court workers on matters of community concern and importance. The evaluation also noted offenders in the MKO First Nation Justice Strategy are held accountable to their community.

As another example of MKO efforts to bring our vision of restorative justice to life, MKO is working to support the development and adoption of uniform minimum standards for the preparation and consideration of Gladue Reports. As set out in the decision of the Supreme Court of Canada in *R. v. Gladue*, [1999] 1 S.C.R. 688 regarding the application of s. 718(2)(e) of the Criminal Code, a judge must account for the special cultural considerations of an aboriginal offender in considering whether a restorative justice process may be more appropriate than incarceration.

The purpose of a Gladue Report is to enable a court to account for special cultural considerations in considering sentencing options and in particular whether a restorative justice process may be more appropriate for an offender than incarceration.

The consistent consideration by the court of Gladue Reports prepared in accordance with uniform minimum standards represents a valuable restorative justice option and an essential alternative to incarceration in response to the circumstances of an aboriginal offender. The consistent application of the Gladue Report process will help to address the significant over-representation of Aboriginal peoples in Canadian jails.

Even though the preparation and consideration of a "Gladue Report" is a requirement of the *Criminal Code*, as interpreted by the courts, as already mentioned, there are no uniform minimum national standards for the preparation and consideration of Gladue Reports, including addressing the cost of preparing Gladue Reports, and there are no requirements or standards for the training and certification of persons preparing Gladue Reports.

MKO suggests that the federal legislative framework be amended to require the development, adoption and application and minimum national standards for the preparation of Gladue Reports.

Having made this recommendation, however, MKO shares the concerns raised by many other organizations that the effects of Bill C-10, particularly the provisions that will curtail conditional sentencing and impose new mandatory minimum sentences, will result in a particularly negative and disproportionate impact on Aboriginal offenders.

MKO is very concerned that Bill C-10 will impact the benefits of community-based restorative justice systems and the consideration by the court of Gladue Reports.

MKO is also very concerned that Bill C-10 will undo much of the progress of MKO's alternative and restorative justice initiatives.

Against the backdrop of MKO's successes and the slow but steady progress being made toward MKO's vision of community safety and security, I would like to share with the Committee the present stark statistics of the disproportionate family separation, detention and incarceration of Aboriginal peoples:

- ▶ In Canada, 20 per cent of inmates in federal prisons are Aboriginal people. In Manitoba, 70 per cent of the inmates in provincial facilities and 50 per cent of the inmates in the two federal institutions are Aboriginal people.
- ▶ Aboriginal peoples make up only 15 per cent of Manitoba's population and about four per cent of the population of Canada.

- ▶ In Manitoba, Aboriginal offenders are sent to prison more often than non-Aboriginal offenders. In Manitoba, Aboriginal offenders make up more than two-thirds of offenders in custody but less than half of those serving conditional sentences.
- ▶ In Manitoba (and Yukon) Aboriginal women account for 83% of all female admissions.
- ▶ 80% of the more than 10,000 children in care in Manitoba are Aboriginal.
- ▶ 88% of inmates in the federal medium security Stoney Mountain Penitentiary were involved in the child welfare system between the ages of 13 and 17.

In order for First Nations - and all Canadians - to address the root causes of actions and behavior which affect our safety and security, we must work in partnership to eradicate the poverty and the economic and social disparity that exists between First Nation communities and other Canadians. In a country like Canada, equitable treatment before the law is a basic human right. It is also a Treaty right.

For Canada's First Nations to continue to live in marginalized and racialized conditions and to experience significantly disproportionate rates of isolation, detention and incarceration in the 21st century is unacceptable.

The lack of community-driven preventative and restorative approaches supported by community-based policing when combined with the effects of Bill C-10 will impose significant risks to the safety, security and well-being of the MKO First Nations and are inconsistent with the United Nations Declaration and with our rights as indigenous peoples.

The northern Manitoba First Nations are requesting that the United Nations investigate the violations of our human rights and of our Treaty and indigenous rights due to the risks to safety, security and well-being that we already experience due to the inequities in the administration of the criminal system in Canada and which inequities will only intensify as a result of Bill C-10.

How many more people in northern Manitoba First Nations must be isolated, placed in care, detained or incarcerated must before the Government of Canada will take action and work with First Nations to make a plan to create safe and secure First Nation communities? What will it take for the Government of Canada to make a firm commitment to work with our First Nations to bring restorative justice systems supported by community-based policing to the northern Manitoba First Nations?

How can we make this happen? How can we get the job done? This Committee and previous First Nation and other presenters regarding Bill C-10 have also heard that achieving the safety and security of Canadians is all about adequate resources. Virtually every presenter has advised this Committee that the present level of resources are inadequate and that safety and security is all about making sure that there are adequate policing, court and probation services and alternative and restorative justice processes. Adequate resources to ensure the safety and security of Canadians - including First Nations - must be the first priority.

Conclusions:

- ▶ Bill C-10 goes against the principles of Canadian family values by putting more women and youth in jail and by putting more children in foster care. The Conservative government should not pass this Bill; the provincial governments and the Canadian taxpayer should not pay for it; and Canadians – including First Nations people - should not suffer its damaging effects on families and communities.
- ▶ The “fill the jails” approach of Bill C-10 is morally and fiscally irresponsible and Canadians won’t be any safer. It is better to invest in addressing the poverty which is the underlying cause of many offences than to spend hundreds of millions of dollars putting more Canadians - and mainly Aboriginal Canadians - in jail. The MKO First Nations are not looking for more jails, we are looking for more jobs and adequate housing. This is how we can work together to build safe streets and communities in Canada.
- ▶ Bill C-10 will perpetuate the cycle which often begins when First Nations children are removed from their families and mothers and placed in foster care. Our children are more likely to be placed in youth detention centres and to wind up in jail as adults. The evidence is that the majority of First Nation people in jails were placed in foster care as children.

- ▶ Bill C-10 will further the legacy of the Indian Residential School System in Canada.

MKO recommends that as key elements of Canada's approaches and investments in community safety, security and well-being:

- ▶ that the provisions of Bill C-10 providing for limitations on conditional sentencing, changes to the consideration and granting of pardons and mandatory minimum sentences be withdrawn;
- ▶ that the Committee recommend that Canada immediately communicate its intention to develop and enter into an arrangement to expand the First Nation Policing Program in order to support community-based policing in the MKO region and for other First Nations; and
- ▶ that the Committee recommend that Canada work with First Nations to enhance and expand alternative and restorative justice programs and which include a focus on fostering a reconciliation between the victim and the offender.

Let us work in partnership to make this happen for the safety, and security and well being of our communities and for our children. Let us work in partnership to eliminate the poverty and marginalization of First Nation citizens in Canada.

Let us all make a commitment to work together in partnership to make Canada and inclusive and just society where First Nation communities and our citizens are safe and secure and can look forward to the opportunities afforded to all Canadians.

Ekosani, Mási-cho, Meegwetch, thank you.