Submission

of the Hon. Daniel Shewchuk

Minister of Justice and Attorney General for Nunavut

to the

Senate Standing Committee on Legal and Constitutional Affairs

on Bill C-10 the Safe Streets and Communities Act

February 2nd, 2012

Mr. Chairman, and Committee Members, I welcome this opportunity to appear today before the Standing Committee on Legal and Constitutional Affairs on an issue that is important to the Government of Nunavut, Nunavummiut and indeed Canadians as a whole. That issue is the implications of Bill C-10, the proposed Safe Streets and Communities Act. More specifically, I want to address its impact on Nunavut and its people.

Several other Justice Ministers have expressed concern about the fiscal and social effects of this Bill. Nunavut is likely to be the most affected by the new legal regime created by Bill C-10, particularly as it relates to Nunavummiut offenders and the reduction of our Judges' discretion in exercising their sentencing function.

As you are aware, the Canadian crime rate has generally been in decline. Sadly, Nunavut has been an exception to this trend. The Territory has the highest violent crime rate of all Canadian jurisdictions - six times higher than the national average. Bill C-10's emphasis on incarceration through its the mandatory minimum sentencing provisions will guarantee an influx of prisoners in our territorial jails, which are already overcrowded and will create an even larger backlog in our Courthouse.

At the present time, over 15 outstanding cases of murder and manslaughter are before the Nunavut Court of Justice. These are the most severe Criminal justice matters handled by our judiciary. These trials take place in communities separated by hundreds or thousands of kilometers, and require the deployment of tremendous human and logistical resources which are a challenge in the North. The mandatory minimum sentencing provisions of the Bill will add to

the challenges we face in our already overburdened Court system. Similar consequences will be felt in our Correctional system.

The Baffin Correctional Centre (BCC) is a minimum security facility, and is currently the only adult male correctional facility in operation in Nunavut. BCC was built in 1984 for 48 inmates but now regularly holds 90 to 99 prisoners. A new facility of 48 beds in Rankin Inlet is scheduled to open in the summer of 2012. This new institutional bed space will be automatically filled to meet some of our overcrowding challenges and to repatriate some Nunavut offenders who we have had to send to the Northwest Territories and Ontario because we have not had the space for them in Nunavut.

To compensate for the overcrowding situation of our correctional facility, an average of 55 offenders have to be sent to southern correctional facilities at an annual cost of $4.7 million dollars. It is very difficult to provide culturally appropriate programming or counseling for Inuit offenders outside of Nunavut.

The proposed Bill will result in more overcrowding in Nunavut and more Inuit offenders being sent to southern facilities. These additional inmates and the additional Court caseload will result in greater operational costs for our Corrections and Court Services Divisions and add to the already immense capital cost of a new correctional facility in Iqaluit in the hundreds of millions of dollars.

Most Nunavut offenders who are caught up in the criminal justice system deal with the cyclical repercussions of family violence, poverty, substance and alcohol abuse, and often mental illness. Bill C-10 will divert the financial resources that we require to address the root causes of criminal behavior and to fund rehabilitation programs to support a punishment model that will add further stress to our already overburdened corrections infrastructure, and our Court.

A majority of crime committed in Nunavut is fueled by alcohol abuse – a sign that underlying conditions drive our high crime rates. A recent pilot program partnering our Department of Health and Social Services and the RCMP has demonstrated that most habitually intoxicated people are prepared to seek help for their addiction if they know where to go and what to do. In the first six months of the program 147 addicted people were arrested a least twice. Seventy-eight of them agreed to get help. From those 78, 67 of them have not been back in custody. This is a small example of the cooperation and commitment from our institutions, and of the benefits of a rehabilitative-focused Justice strategy that is working for Nunavut. Nunavut, however needs sustainable solutions to meet these challenging issues through appropriate funding for program development and infrastructure. We also need our judiciary to have the flexibility to allow us to try these types of programs and to design programs that work because incarceration is not the long term solution to our problems.

We all agree that we should work together to make our country a safer, more just place for everyone. Recognizing the roots of criminal behavior and addressing these concerns through

treatment and programming is a more cost effective strategy than long inflexible sentencing. Many studies have found that harsher criminal justice sanctions actually increase the likelihood of repeat offences and that higher incarceration rates do not equate to lower crime rates. (Gabor, 2002)

Similarly, policy makers south of our borders and in Australia have realized that jailing more people for longer periods of time is costly and ineffective. Tough mandatory minimums in Texas and California have resulted in prison overcrowding and a strain on the Justice system and have done little to decrease crime rates. We must learn from the experience of these other jurisdictions.

Bill C-10's emphasis on increased jail-time and mandatory minimums will have a specific affect on Nunavut the home of most Inuit in Canada and a creation of the Nunavut Land Claims Agreement. Some Bill C-10 provisions conflict with the values and principles of the Nunavut Justice system, which is based on traditional Inuit concepts of justice and rehabilitation. Justice in Nunavut has always been intended to reflect the population and culture of the Territory which is predominately Inuit. Incarceration does not equate to the values of a people who have been living off the land for thousands of years. As well mandatory minimums do not allow for traditional community and elder involvement in the Justice system as the outcome is predetermined by the minimum mandatory sentence regardless of Community opinion or involvement.

The importance of Inuit traditional justice has been recognized by our Nunavut Court of Justice in its jurisprudence as have Inuit societal values practiced long before the creation of our country. The reduction of our Judges' discretion by mandating minimum sentencing in the case of many of the offences committed in Nunavut will have an impact on the application of alternative sentencing and Inuit traditional community-based restorative justice measures. This impact will also be felt in the application of recognized sentencing principles developed by the Supreme Court of Canada in the *R. v. Gladue* case.

The sentencing principles outlined in *Gladue* are a measured and appropriate response to the dramatic overrepresentation of Aboriginal Canadians within the Canadian Justice system and the disadvantage that historical abuse and poverty pose for many aboriginal people in Canada.

The *Gladue* Principles do not mean that aboriginal offenders will always receive less harsh sentences, it simply means that the Court must look at the realities of the life of aboriginal Canadians and take these issues into account when imposing a sentence.

In Nunavut, the Court has taken *Gladue* into account in a good number of cases in order to come to a just and fair sentence. Inuit in Canada face historical and socio economic challenges which *Gladue* and the Nunavut Court of Justice mandate should be taken into account when sentencing an Inuit offender. Mandatory minimum sentencing ignores the *Gladue* case law and ties the Court's hands when dealing with aboriginal offenders.

The Government of Nunavut believes that taking away discretion from Judges is not the right approach. Our Nunavut based Judges play a critical role in the operation of the criminal justice system in Nunavut. The mandatory minimum sentences proposed in Bill C-10 would remove the discretion from sentencing Judges to effectively determine which sentence can best balance all fundamental objectives of sentencing. Prohibiting our Judges from exercising their discretion to determine an appropriate sentence for an offender before them is contrary to the spirit and letter of a large body of jurisprudence that recognizes the unique position of sentencing judges in assessing and determining the most appropriate sentence in the individual case.

There are good reasons for conferring discretion on a Judge charged with imposing a fit sentence. The Judge has heard the particular circumstances and evidence of the offence and the offender, and is best able to craft a sentence that will balance all the goals of sentencing. The Judge is also best equipped to assess what will address the needs and circumstances of the community where the crime occurred. This argument is especially strong in Nunavut where our resident Judges have become expert in dealing with the unique circumstances and population of our Territory. The one size fits all solution of mandatory minimum sentencing does not fit in a unique region of Canada such as ours.

The *Criminal Code* contains a statutory acknowledgement of the principal of restraint, stating that the purpose of sentencing is to separate offenders from society *only where necessary*. Section 718.1 of the *Criminal Code* states that proportionality is the fundamental principle of sentencing, and that "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender". Proportionality reflects the delicate balance that must be achieved in fashioning a just sentence. Nunavut respectfully submits that Bill C-10 as it reads does not strike this balance.

In addition to being the newest Territory, Nunavut also has the youngest population in Canada and the most rapid population growth. The tougher youth crime measures in Bill C-10 will mean more of our young people will end up incarcerated – this will have a serious impact on our communities and on our families. With what we are learning about the benefits of addressing root causes of criminal behavior through treatment of underlying substance abuse issues, locking up more youth would be counterproductive.

The decision to allow the publishing of young offender's names causes us concern as this will cause stigma and embarrassment for young persons and their families in Nunavut's very small interconnected communities. Additionally, Bill C-10 requires an assessment to determine the impact of publishing a young offender's name. We in Nunavut do not have the facilities or specialists needed to conduct this type of assessment. We will therefore be forced to fly young offenders south for the required testing at tremendous cost.

Finally, I would like to speak of Consultation. Bill C-10 will clearly have a great effect on each and every Province and Territory both socially and financially. The amendments to the *Criminal*

Code in the Bill are a major change in the sentencing regime in this country and signal a shift in the general philosophy behind our criminal justice system. As well, as previously outlined, mandatory minimum sentencing and tougher penalties will result in greater costs for the Provinces and Territories as their jails and Courts see an influx of new clients. A transformative Bill of this importance should be the subject of extensive consultation with all stake holders, particularly the Provinces and Territories.

Bill C-10 was introduced in September 2011 and passed by the House of Commons in December. At no time was our Government asked for its opinion or invited to address the House of Commons Committee. While I thank this Committee for the opportunity to speak, more consultation prior to the introduction and passage of the Bill in the lower House should have occurred. Prior to introducing any substantive bill, our Government consults with any and all interested parties. Bill C-10 was never given a chance to be molded and improved by Provincial and Terrestrial experience and comment. We strongly believe that if given the chance our Government and our Provincial and Territorial colleagues could have offered support and counsel which could have lessened the costs of this Bill and helped the Federal Government to better appreciate our concerns about mandatory minimums.

All indications are that the Government of Canada intends to implement the measures in Bill C-10, I am therefore asking you to take into account that this decision and this Bill will no doubt disproportionately affect Nunavut. I therefore ask that the Government of Canada work with the Government of Nunavut to ensure Nunavut is given the financial support needed to tackle the new judicial and correctional pressures which Bill C-10 will bring about. In the meantime, I ask that the implementation of this Bill be put off to allow adequate time for the Government of Nunavut in conjunction with the Government of Canada develop the infrastructure necessary to accommodate this new burden on our Justice and Corrections system.

Thank you very much for the opportunity to speak to you today. Merci, Qujannamiik.