TO: THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

TOPIC: BILL C-10, THE SAFE STREETS & COMMUNITIES ACT

SUBMISSION BY: RUPERT ROSS, CROWN ATTORNEY (RETIRED)

Bill C-10 is intended to help victims of crime, with special provisions dealing with the sexual abuse of children. I have been a Crown Attorney for 26 years, and have prosecuted many such cases. I am fearful that this legislation left as it presently stands, will unintentionally cause vulnerable children greater harm.

Because child abuse is such an abhorrent crime, I supported a strong response when I began my career. In pre-trial discussions, I insisted on long sentences, with the result that few accused pleaded guilty. Most child abuse happens within families and family homes, not at the hands of strangers. Those trials were – and still are – made extremely difficult because of the lack of corroborating evidence. The abuse does not happen in front of witnesses, but in private. There are no surveillance cameras. There are seldom physical injuries a doctor can point to, or any helpful DNA evidence. Since most accused are family members or friends, they have legitimate reasons to be alone with the child. In other words, most child abuse trials rely completely on one thing alone: the word of the child.

Those abused children seldom present themselves strongly in an court. Their abuse embarrasses them, and they struggle for words to describe it. Most abuse has been ongoing, with many separate events, leading to confusion about what happened and when. Given the family setting, disclosure suddenly throws all their relationships into chaos, leaving everyone second-guessing everything. If the abusers were fathers or brothers, their mothers are often deeply conflicted and ambivalent in their support; many try to get their children to recant so life can "return to normal". Child Welfare authorities often intervene as well, apprehending the child and their siblings and placing them with strange families. Their whole world is now upside down – and everything depends on what they tell the judge. That pressure is often overwhelming; I have watched child victims become totally unable to think, remember or speak on the witness stand, especially during intense cross-examination.

In my experience, most abused children only want two things: to be believed and to have the abuse come to an end. In the absence of a guilty plea, however, Judges require that allegations be proven 'beyond a reasonable doubt', and the hesitant words of a frightened child living in relational chaos are seldom sufficient on their own. In my early years, acquittals were the norm, and children had two questions for me. The first was "How can the judge say he believed me, but then say he was Not Guilty?" The second question often came as the child fled the courthouse in tears: "Why did you put me through this *for nothing*? How *could* you?" I still worry about those children.

I began to ask myself a similar question: "What is most important in this case, getting this accused in jail - or having this child know that we *accept* her story of abuse, we have convicted her abuser in a *public* forum, he is now registered as a sexual offender, he'll be under state control for a long time, and she'll be *protected* from him for a long time?" When Conditional Sentences were introduced, they provided just the answer I

needed. I could offer defence counsel my agreement to support the imposition of a Conditional Sentence, with no jail, in return for a guilty plea. The vast majority accepted my offer. I achieved what are, to me, the most essential goals of justice, *especially the validation of the child victim's disclosure of abuse*. I no longer had to push them through a system that too frequently pronounced the accused "Not Guilty". Nor did I have to suffer the smirking faces of acquitted men as they stepped out of the prisoner's box and went totally unencumbered back into their world. That will happen much more frequently if Bill C-10 is promulgated as it presently stands; we will have far *fewer* guilty pleas and far *fewer* convictions in cases of child sexual abuse. As a result, we will have far *fewer* sexual offenders under state supervision.

I fail to see how this improves the situation of vulnerable children in Canada.

My concern is elevated when those children come out of dysfunctional families in troubled First Nations. Aboriginal experts indicate that between 60% and 80% of all people in many communities have been touched by sexual abuse, whether as offenders, as victims or both. Abuse is so common in some places that I have heard older siblings yelling at their disclosing younger sister, saying "We put up with it; what makes you think you're so special!" I know of child victims who were removed from their communities, only to "hit the streets" in urban centers and disappear into drugs and violence. It is my considered view that abuse within First Nations is the direct result of colonization pressures since first contact, but that story is too complex to relate in this document; what I *can* say here is that, in my experience, our insistence on jailing people for behaviour we 'created' makes punishment-centered prosecution a very uncomfortable task for those who must do it day-in and day-out. I am very glad to be retired.

I also fear that minimum punishments will cause an even greater *systemic* harm: the destruction of aboriginal efforts to bring health to abusive families. The Hollow Water First Nation in Manitoba is a good illustration. It deals primarily with intra-family sexual abuse cases, primarily against children, and charges are laid in court. Provided the accused enters a guilty plea, the healing team goes to work with everyone concerned - offenders, victims and their families alike. The case is held 'in abeyance' while healing work is done. As long as the offender demonstrates a sincere engagement with the healing effort, the crown will ultimately recommend a non-jail sentence, and the court will grant it. That is followed by a further three years of healing under a court-imposed Probation Order. I have watched Hollow Water create near miracles, restoring abusive families to health in circumstances where I predicted nothing but failure. They have only had two instances of recidivism, both in the project's early days, a statistic that puts them well ahead of the prison system.

Minimum jail sentences will put an end to that healing program. Most accused will be forced by the threat of jail to plead "Not Guilty", leaving no room for the healing team to go to work. The efforts of the entire community to heal itself out of sexual abuse – something they now characterize as 'de-colonization' – will be entirely defeated. Vulnerable children will be made more vulnerable, not less.

I certainly support jail for many cases involving the sexual abuse of children. There are some acts of sexual abuse that are too horrific for any crown to ever agree to a non-custodial disposition. There are also some offenders, particularly those who capture and abuse children unknown to them, who must be jailed to protect other children; fortunately, those cases normally present un-conflicted children, families supportive of

the prosecution and a great deal of corroborating evidence. Achieving incarceration goals in those cases is a much simpler task.

I am concerned, however, about restricting crown freedom in those cases where the abuse occurs within extended families, because those cases present different dynamics and different justice goals. Those cases, in my view, deserve an 'escape hatch' of some sort, where a judge, at the joint urging of both defence and crown counsel, can conclude that the goals of public acceptance of the *truth* of the victim's allegations, together with the offender's public agreement to put themselves *under state control* for significant periods of time, are concessions of such significance that the sentence can be served in the community rather than a jail.

In short, my 26 years has made me strongly opposed to *blanket* minimum sentences and the *blanket* deletion of possible Conditional Sentences in cases of child sexual abuse. In taking that position, I must cite exactly the same reasons that were advanced by those who proposed this legislation in the first place: the need to protect vulnerable children.

I would be pleased to attend the Committee personally, should it wish further elaboration.

Sincerely,

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Dancing With A Ghost: Exploring Indian Reality (1992) Penguin Books
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