



Prisoners' Legal Services

A Project of the West Coast Prison Justice Society

June 10, 2019

VIA EMAIL

The Honourable David Lametti
Minister of Justice Canada

House of Commons
Ottawa, ON, K1A 0A6
mcu@justice.gc.ca

The Honourable David Eby
Attorney General

PO Box 9044 Stn Prov Gov
Victoria, BC, V8W 9E2
AG.Minister@gov.bc.ca

The Honourable Ralph Goodale
Minister of Public Safety

House of Commons
Ottawa, ON, K1A 0A6
ralph.goodale@parl.gc.ca

The Honourable Mike Farnworth
**Minister of Public Safety & Solicitor
General**

PO Box 9010 Stn Prov Gov
Victoria, BC, V8W 9E2
PSSG.Minister@gov.bc.ca

Dear Governments of Canada and British Columbia:

RE: Call to meaningfully address the crisis of the overrepresentation of Indigenous Prisoners

I am the executive director of Prisoners' Legal Services, a legal aid clinic for federal and provincial prisoners in British Columbia. We administer all of the prisoner legal aid in BC (other than appeals), including for liberty issues, human rights and health care. In the past year we have assisted prisoners with over 3,000 prison law issues.

I write to request that, in honour of National Indigenous Peoples Day on June 21, 2019, you take immediate serious steps to reduce the overrepresentation of Indigenous prisoners in Canada and BC.

The over-representation of Indigenous prisoners in custody and at higher levels of security is well acknowledged as a national crisis, and has been flagged since the 1970s.¹ While the serious crime rate has fallen, the incarceration rate of Indigenous prisoners continues to rise. Indigenous people represent 28 percent of the federally sentenced prison population. Indigenous women represent 40 percent of women prisoners. Indigenous people account for 4.1 percent of the population in Canada.²

This crisis is directly linked to the multi-generational trauma Canada inflicted on Indigenous people through colonialism, including over 100 years of residential schools. With the Truth and Reconciliation Commission's report³, Canada has finally acknowledged the genocide we committed against Indigenous people by forcibly taking children away from families to remote locations and subjecting them to programs designed to destroy their pride and self-respect. Canada is also responsible for taking land and resources from First Nations and then denying sufficient resources for Indigenous communities to be able to provide for themselves.

The over representation of Indigenous people in prison is a continuation of the genocidal practice of residential schools – it continues to separate parents from their children and it fails to create an environment of trust and respect where healing might be possible.

The courts have been unable to make any impact by applying *Gladue* principles in sentencing alone. Federal and provincial governments must take immediate and serious action to reverse this shameful trend. We ask that Canada, and British Columbia where appropriate, implement the following recommendations of the Standing Committee on the Status of Women,⁴ for all Indigenous prisoners, including men.

Recommendation 5

That the Government of Canada, in collaboration with provinces and territories and working in partnership with Indigenous peoples and communities, “commit to eliminating the over-

¹ *Report to the Standing Committee on Public Safety and National Security, Indigenous People in the Federal Correctional System* (June 2018), p. 6-7. Online:

http://publications.gc.ca/collections/collection_2018/parl/xc76-1/XC76-1-1-421-22-eng.pdf.

² Office of the Correctional Investigator of Canada, *Annual Report, 2017-2018*, p. 10-11. Online: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20172018-eng.pdf>. Stats Canada, *Adult and youth correctional statistics in Canada*, 2016/2017. Online:

<https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54972-eng.htm>.

³ *Honouring the Truth, Reconciling for the Future, Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, (2015), p. 135. Online:

http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf.

⁴ Standing Committee on the Status of Women, *A Call to Action: Reconciliation with Indigenous Women in the Federal Justice and Correctional Systems* (June 2018). Online:

<https://www.ourcommons.ca/Content/Committee/421/FEWO/Reports/RP9991306/feworp13/feworp13-e.pdf>.

representation of Aboriginal people [and youth] in custody” by 2025, “and to issue detailed annual reports that monitor and evaluate progress in doing so,” as directed by calls to action #30 and #38 of the 2015 Report of the Truth and Reconciliation Commission of Canada.

Recommendation 6

That the Government of Canada “[a]ddress the issue of disproportionate incarceration of [I]ndigenous ... women, including by increasing the use of alternative measures for those who commit non-violent offences,” as called for in 2016 by the United Nations Committee on the Elimination of Discrimination against Women in its Concluding observations on the combined eighth and ninth periodic reports of Canada.

Recommendation 31

That the Government of Canada immediately table legislation to “amend the *Criminal Code* to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences,” as directed by call to action #32 of the 2015 Report of the Truth and Reconciliation Commission of Canada and in 2016 by the United Nations Committee on the Elimination of Discrimination against Women in its Concluding observations on the combined eighth and ninth periodic reports of Canada.

Recommendation 32

That the Government of Canada remove the requirement to automatically incarcerate an Indigenous female offender in a maximum security facility for the first two years of a murder sentence.

Recommendation 33

That the Government of Canada ensure that *Gladue* reports are not misused against an Indigenous female offender during classification, incarceration and/or parole hearings, and that personnel at Correctional Service Canada and at the Parole Board of Canada receive training on the purpose of *Gladue* reports.

Recommendation 39

That the Government of Canada implement and further invest in community based rehabilitation and restorative justice methods for Indigenous female offenders rather than incarceration for low and medium security Indigenous female offenders.

Recommendation 40

That the Government of Canada, in collaboration with provinces and territories and working in partnership with Indigenous peoples and communities, immediately and on an ongoing basis

“provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending,” as directed by call to action #31 of the 2015 Report of the Truth and Reconciliation Commission of Canada.

Recommendation 41

That the Government of Canada, in partnership with Indigenous peoples and communities, establish community courts in Indigenous communities for nonviolent offences.

Recommendation 42

That the Government of Canada, in collaboration with provinces and territories, “commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act*, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by Canada in November 2012,” as directed by call to action #42 of the 2015 Report of the Truth and Reconciliation Commission of Canada, and adopt without delay Bill C-262, An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples.

Recommendation 44

That the Government of Canada classify, in its initial assessment and whenever possible, Indigenous female offenders at a medium security level or lower in order to provide them with appropriate treatment and rehabilitation services, and ensure, in cases where a maximum security is needed, that Indigenous female offenders have access to culturally appropriate services.

Recommendation 52

That the Government of Canada, immediately “ensure that Indigenous offenders have timely access to correctional programs – including culturally specific programs – according to their needs and preferences, to support their successful reintegration,” as called for in the 2016 Fall Reports of the Office of the Auditor General entitled Report 3 – Preparing Indigenous Offenders for Release—Correctional Service Canada.

Recommendation 61

That the Government of Canada ensure access to healing lodges for Indigenous female offenders with a medium security classification.

Recommendation 62

That the Government of Canada, in recognition of the fact that healing lodges operated by Indigenous communities do not receive as much support as healing lodges operated by Correctional Service Canada, ensure that equal funding be provided to community-operated healing lodges.

Recommendation 63

That the Government of Canada immediately “eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system,” as directed by call to action #35 of the 2015 Report of the Truth and Reconciliation Commission of Canada, and address the lack of community operated healing lodges under section 81 of the Corrections and Conditional Release Act.

Recommendation 64

That the Government of Canada, in consultation with Indigenous peoples and communities, create and provide adequate funding for healing lodges operated by Correctional Service Canada and communities and to other culturally appropriate programming for Indigenous female offenders in urban communities.

Recommendation 66

That the Government of Canada, in consultation with Indigenous peoples and communities, provide additional resources to Correctional Service Canada and Indigenous communities to increase the use of sections 29, 81 and 84 of the Corrections and Conditional Release Act.

Recommendation 73

That the Government of Canada provide additional resources to properly evaluate all Indigenous female offenders upon entry to a federal correctional facility for mental illness, trauma, and disabilities, to assign the appropriate care for treatment and rehabilitation.

Recommendation 78

That the Government of Canada enter, as soon as possible, into Memorandums of Understanding with provincial and territorial mental health facilities to ensure that if Indigenous female offenders need mental health care they can access that care in their province or territory of incarceration.

Recommendation 82

That the Government of Canada, in partnership with Indigenous peoples and communities, “undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD), including:

- i. providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD;
- ii. enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD;
- iii. providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community;
- iv. adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety,” as directed by call to action #34 of the 2015 Report of the Truth and Reconciliation Commission of Canada.

Recommendation 85

That the Government of Canada require Correctional Service Canada to provide its staff with enhanced guidance and training on how the colonial impact on Indigenous history and culture should be considered in case management decisions and that this training be created in partnership with Indigenous peoples and organizations.

Recommendation 90

That the Government of Canada enact legislation reinstating the accelerated parole review process under the Corrections and Conditional Release Act.

Recommendation 92

That the Government of Canada provide increased funding for community-based residential facilities operated by Correctional Service Canada or owned by non-governmental agencies who signed contracts with Correctional Service Canada, in particular for private home placements, which provide offenders with services and supports in a home environment.

Thank you for your consideration and action on this important matter.

Yours truly,

PRISONERS' LEGAL SERVICES



Jennifer Metcalfe
Executive Director
Barrister and Solicitor