WOMEN'S LEGAL EDUCATION AND ACTION FUND

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Submissions to the Standing Committee on Justice and Human Rights
Re: Bill C-10

How can our criminal laws better reflect the public's concern for safety, while promoting their desire for a democratic society based on peace, liberty, tolerance and justice? To accomplish this goal, legislators and the Canadian public as a whole, should try to apply more reason than fear in developing criminal law-infrastructure for safety. They must recognize the symbolic and political power of criminal laws, and determine the effectiveness of each punitive measure is in terms of securing personal and public safety. Finally, legislators must always choose the solutions that will result in a peaceful, free, tolerant, and just society.[1]

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In partnership with Kim Pate, CAEFS Executive Director
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The Women's Legal Education and Action Fund (LEAF), in partnership with the Canadian Association of Elizabeth Fry Societies (CAEFS) [hereinafter "the LEAF partnership"], respectfully submit that Bill C-10, An Act to amend the *Criminal Code* (Minimum Penalties for Offences Involving Firearms) should be defeated and that the Justice Committee should recommend its withdrawal for the reasons identified and discussed below. It is the position of the LEAF partnership that the withdrawal of Bill C-10 would be in compliance with the federal government's obligation under section 15 of the *Charter of Rights and Freedoms* to promote and protect the equality rights of disadvantaged persons in Canada.

1. **Introduction to LEAF and CAEFS**:

LEAF is a national, federally incorporated, non-profit organization founded in April, 1985 to secure equal rights for Canadian women as guaranteed by the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). To this end, LEAF engages in equality rights litigation, law reform and public education relating to women's inequality.[2] Commencing with LEAF's work in the Supreme Court of Canada case of *Andrews v. British Columbia*,[3] LEAF has contributed to the development of equality rights jurisprudence and the meaning of substantive equality in Canada. LEAF has developed and advocated equality rights arguments in contexts where sex inequality is compounded by other prohibited grounds of discrimination such as race, class, aboriginal status, sexual orientation and/or disability. LEAF has intervened in over 140 equality rights related decisions in the areas of sexual violence, pay inequity, socio and economic rights, spousal and child support, reproductive freedom, and access to justice, to name a few.

CAEFS was originally conceived of in 1969 and was incorporated as a national voluntary non-profit organization in 1978. Both volunteer and paid staff are involved in governance as well as program and service delivery throughout the association. Programs and services are developed at the grassroots level, in accordance with the needs of the community and range from early intervention and crime prevention activities, to pre and post release work with criminalized and imprisoned women and girls. At the national level, CAEFS focuses on law and policy reform initiatives, informed by its membership and those women with the lived experiences of criminalization and imprisonment.

2. **Bill C-10 Offends the Government's Obligation to Advance Substantive Equality and Is Really About Its Abdication of Responsibility for Gun Control**:

It is the submission of the LEAF partnership that Bill C-10 will have a discriminatory impact on already disadvantaged persons. The legislation will not promote substantive equality and will in fact perpetuate the inequality already experienced by those that are the target of this legislation. The Supreme Court of Canada has repeatedly endorsed the

dual purpose of section 15 of the *Charter of Rights and Freedoms*, to prevent discrimination and to promote substantive equality. At the heart of substantive equality is the recognition that differential treatment, by itself, is not a violation of equality rights, and that sometimes differential treatment is necessary to achieve substantive equality that is an equality of results.

The LEAF partnership recognizes and endorses the need for increased control over guns and a need to decrease violence in society – as women are often the target of gun related violence[4], the partnership has a special appreciation of these needs. The power of guns is inextricably linked with the notion of masculinity; most guns are owned and used by men (in Canada 85% of gun owners are men), and 30% of gun victims are women.[5] The ownership and use of guns as defensive weapons reinforce existing gender inequalities, maintaining women's subordination through violence or the threat of violence.[6] These realities significantly contribute to the women's experience of inequality in Canadian society. However, Bill C-10 is not a response to these legitimate societal concerns. Instead of accepting responsibility for gun control and the reduction of violence in Canadian society, the Federal government has individualized the responsibility of this violence through the introduction of Bill C-10.

3. **Bill C-10 and the Introduction of Mandatory Minimum Sentences for Firearms Puts the Responsibility for Crime on Individuals Instead of on Society**:

Reducing acts of violence involving firearms is a laudable goal; however, the LEAF partnership does not believe that the introduction of mandatory minimum sentences or the reduction in the availability of conditional sentences will achieve this goal. Mandatory minimum sentences are not an effective means through which to achieve "peace, freedom and security"[7] or to ensure the protection of Canadians from crime.[8]

Protection from crime involves measures aimed at both prevention and punishment. Notwithstanding, if the goal is to protect the public, prevention is preferable to punishment. Clearly, the most effective way to keep Canadians, including women in Canada, safe is to prevent the commission of crime in the first place. However, the proposed legislation takes aim solely at punishment which is, by nature, aimed exclusively at offenders. Crime prevention, on the other hand, focuses on the societal nature of crime.

In the first "World Report on Violence and Health", the World Health Organization recognized that "there are insufficient programmes aimed at primary prevention – measures to stop violence before it happens – compared with secondary or tertiary prevention. There is also an imbalance in the focus of programmes – community and societal strategies are under-emphasized compared with programmes addressing individual and relationship factors."[9] The proposed legislation suffers from these same pitfalls.

Crime is a social issue. It is the view of the LEAF partnership that addressing crime, including gun violence, requires a holistic, multi-faceted approach that recognizes the social nature of crime. The LEAF partnership supports approaches such as "crime prevention through social development"[10] and believes resources are better directed toward crime prevention modules that take aim at the social, rather than the individual, nature of crime.

The LEAF partnership recognizes that a "law and order" agenda, including mandatory minimum sentences and a reduction in the availability of the conditional sentence, is based, in part, on the notion that punishment will lead to prevention. Indeed, the current sentencing principles in the *Criminal Code* incorporate this notion by reference to deterrence, both general and specific. The LEAF partnership accepts the widely held view that punishment has little, if any, deterrent effect.[11] However, even if punishment can have a deterrent effect, there is no evidence that there is a correlation between the degree of punishment and the degree of deterrence: "mandatory minimum sentences do not deter more than less harsh, proportionate, sentences."[12]

4. **The Adverse Impact of Mandatory Minimum Sentences Is Borne By Disadvantaged Groups Who Get Criminalized**:

Mandatory minimum sentences disproportionately affect women, members of racialized communities, people with disabilities, the poor, and lesbians and gay men.[13] The proposed amendments to the *Criminal Code* will further contribute to gross disparities in the criminal justice system.

Proponents of mandatory minimum sentencing schemes maintain that mandatory minimum sentences are an "equitable" approach to sentencing since *all* offenders would be sentenced in the same manner. This approach ignores two of key factors.

First, this approach ignores the types of crimes targeted by mandatory minimum sentences. For example, the *Report of the Commission on Systemic Racism* determined that: "Persons described as black are most over-represented among prisoners charged with drug offences, obstructed justice and weapons possession."[14] The proposed changes to the mandatory minimum sentence scheme in relation to firearm charges will undoubtedly further these disparities "since [Black peoples] are already over-represented among prisoners with weapons possession."[15] Furthermore, "the higher mandatory minimum sentences for a second, third or subsequent offence apply not only if the person has previously committed that particular offence, but also if he or she has committed other offences."[16] This approach to sentencing will have a particular effect on Aboriginal peoples who are "more likely to be charged with multiple offences, and often for crimes against the system [such as resisting arrest, contempt of court and obstruction of justice][17] which reflect social, rather than criminal, problems."[18]

Second, this approach manifestly ignores the well-documented racism inherent in the criminal justice system that will be intensified with the introduction of this mandatory

minimum sentencing scheme. Canadian Courts at all levels,[19] justice inquiries,[20] a Royal Commission,[21] government supported studies,[22] independent research,[23] and community groups have all highlighted the fact that systemic racism is endemic to the criminal justice system. The over-representation of Aboriginal women, women of colour and other disadvantaged women in the criminal justice system in Canada is well documented. For example, in 1999, the Canadian Centre for Justice Statistics released a report which stated that "Aboriginal female inmates accounted for almost one-quarter (23%) of the female inmate population.[24] Furthermore, "from 1996-1997 to 2001-2002, the number of federally sentenced Aboriginal women increased by 36.7% compared with 5.5% for Aboriginal men."[25] The *Report of the Commission on Systemic Racism* in Ontario reported that Black peoples were disproportionately incarcerated in Ontario and that racism is manifest at all levels of the criminal justice system, from police practice to sentencing as well as the prison system.[26] In October 2006, the Office of the Correctional Investigator of Canada released a report which joins the history of reports in Canada which demonstrates that the incarceration of Aboriginal peoples continues to rise at dramatic rates regardless of provisions like sections 718.2(e), restorative justice initiatives and/or conditional sentencing.[27]

As these inquiries have demonstrated, penal sanctions have a devastating impact on Aboriginal and racialized peoples. That mandatory minimum sentences will exacerbate the systemic racism in the criminal justice system cannot be over-stated. Canada has also been admonished internationally as a result of these racially disproportionate numbers for Aboriginal women.[28] Mandatory minimum sentences would further this national crisis.

Mandatory minimum sentences will disproportionately affect disadvantaged women in additional ways. There is evidence supporting the proposition that prosecutors' exercise of discretion with respect to the level of charges, choices of summary or indictable offences, position on bail, and sentencing evince patterns of systemic racism against African-Canadian and Aboriginal accused and in favour of white accused.[29] Research conducted by both CAEFS and Judge Ratushny in her 1997 Self-Defence Review establishes that most women charged with homicide of allegedly violent partners forego the use of possible defences available to them, such as self-defence and/or provocation, and simply plead guilty to manslaughter. This is done out of concern that their defence might fail and they would be convicted of murder and receive a mandatory sentence.[30] There is ample evidence that suggests that poor, Aboriginal and other marginalized peoples plead guilty in disproportionate numbers due to a range of social and legal factors.[31]

Offenders with mental disabilities are disadvantaged by mandatory minimum sentences because unless their condition amounts to a mental disorder that deprived them entirely of their ability to distinguish right from wrong, pursuant to section 16 of the *Criminal Code*, judges are required to ignore their reduced capacities and mandated to impose a mandatory minimum sentence if one applies.[32]

In the United States, where mandatory minimum sentences schemes are practiced there is evidence that suggests that this racialized pattern of incarceration further contributes to

the disproportionate incarceration of racialized peoples. Research conducted in the U.S. has also found that mandatory minimum sentences in that jurisdiction are applied disproportionately to the disadvantage of racialized women, and are used widely to induce plea agreements, often to a lesser charge so as to avoid the mandatory minimum.[33]

In Australia, mandatory minimum sentences have been shown to have a differential impact on Aboriginal women.[34] A government committee in Australia determined that mandatory minimum sentences have a particularly "harsh impact…on certain groups…including Indigenous people, people with intellectual or psychiatric disabilities and women." [35] In their legislative summary the current government has already conceded that mandatory minimum sentences have had such adverse effects in Aboriginal communities that parts of the legislation have been repealed.[36] In 2000, mandatory minimum sentences in Australia were condemned internationally by the United Nations International Convention on the Elimination of All Forms of Racial Discrimination. The CERD Committee determined that:

> The mandatory sentencing schemes appear to target offences that are committed disproportionately by indigenous Australians, especially juveniles, leading to a racially discriminatory impact on their rate of incarceration. The Committee seriously questions the compatibility of these laws with the State party's obligations under the Convention and recommends to the State party to review all laws and practices in this field.[37]

Canada would do well to heed these international concerns.

5. **Mandatory Minimum Sentences Do Not Benefit Victims of Crime**:

Women who are victims of male violence benefit very little from an increase in mandatory minimum sentences of imprisonment for offences of violence committed with firearms. There is no proof that minimum terms of imprisonment deter potential offenders from violent acts; research into the lack of deterrent effect of the death penalty has repeatedly shown that certainty of conviction is a deterrent; severity of punishment is not. Mandatory minimum sentences do promise incapacitation of the offender from committing further acts of violence during the period of incarceration. But if incapacitation is the goal of sentencing reform, there is no logical justification for confining it to offences committed with firearms. More fundamentally, incapacitation standing alone does not provide a principled basis for a scheme of penal sentencing.

If the goal of the Bill C-10 provisions is to combat gun crime more generally, it is difficult to see how these provisions contribute to that end. Women's safety is furthered when men are prevented from possessing firearms. Mandatory minimum sentences of imprisonment come too late to be of much use to the thousands of Canadian women who have been injured or killed by their husbands and boyfriends. The provisions do nothing

to take guns out of circulation or make them harder for violent men to access. They do nothing to change societal attitudes that celebrate male aggression; they ignore the links between these attitudes and the fact of male violence against women. Nor do they give women the social and economic equality they need to resist this violence.

The *Criminal Code* already contains mandatory minimum sentences for a number of violent crimes committed with firearms. There is no evidence that these sentences have made women any safer or that they are a meaningful component of a national strategy to fight violence against women.

6. Mandatory Minimum Sentences Do Not Comply with Accepted Sentencing Principles – The Preferred Approach is to Prevent the Commission of the Crime:

Mandatory minimums unnecessarily fetter the discretion needed by judges to impose a sentence that is "proportionate to the gravity of the offence and the degree of responsibility of the offender."[38] A survey of Canadian judges found that slightly over half felt that mandatory sentencing laws impinged on their ability to impose a just sentence.[39] Mandatory sentencing schemes over-emphasize the sentencing principle of deterrence, ignoring empirical evidence that has found that the deterrence effect of incarceration is, at best, uncertain.[40]

Deterrence heavy logic also fails to acknowledge statutory amendments to Canada's sentencing regime in 1996 which attempted to redress the observation that Canada has become "a world leader in putting people in prison".[41] The Supreme Court of Canada imposed a duty on judges to inquire into the systemic circumstances that may have led to the criminality of an offender[42] in order to rectify the "sad and pressing social problem",[43] of the over-incarceration of Aboriginal peoples in our prison system. More recently, the Ontario Court of Appeal acknowledged that the "community at large and the courts, in particular, have come, some would say belatedly, to recognize that racism operates in the criminal justice system."[44] Mandatory minimum sentences conflict with legislative and judicial obligations that require judges to impose sentences that are fit for the offender by considering all alternatives to incarceration.[45] Mandatory minimum sentences also thwart the responsibility that must be borne by a system that has perpetuated familiar racialized patterns of crime and punishment.

In addition to deterrence, the *Criminal Code* sets out other fundamental principles of sentencing – e.g. denunciation, separation, rehabilitation, reparation of harm done to victims and community, and the promotion of a sense of responsibility in offenders – which are better achieved without resort to mandatory minimum sentences. The proposed legislative amendments adopt a get "tough on crime"[46] approach. While this may win votes, it does nothing to remedy the social problems that lead to crime in the first place. For example, it ignores those sentencing principles which can help ensure the successful reintegration of offenders into the community thus reducing recidivism.

Focusing resources on programs that privilege restorative sentencing principles, including the reparation of harm and the promotion of a sense of responsibility in offenders will better serve the needs of victims, communities and offenders.[47]

Mandatory minimum sentences result in the incarceration of offenders for longer periods of time. However, these longer periods of incarceration do not reduce crime rates or recidivism.[48] In fact, they increase prison costs, resulting in a decrease in available public funds to be spent on community programs and crime prevention initiatives, which may well have a more significant impact on making our "streets and communities safer."[49] Getting "tough on crime" is not an adequate, viable or effective solution to threats to public safety. Canadians' safety will be better served by funding crime prevention strategies. Preventing crime before it happens, when done properly, is in the long run a much less costly and much more effective means of reducing violence and crime in a society.

The most effective crime prevention strategy is the development of healthy and vibrant communities. Crime is a complicated phenomenon with no one cause. It is clear, however, that there are a number of social problems that correlate with criminality such as poverty, lack of education, family dysfunction, histories of trauma and abuse, lack of access to social programming and lack of employment opportunities.[50]

A viable and effective criminal justice policy must seek solutions to these social problems if it truly wants to address public safety concerns. Such an approach would privilege the development of healthy communities over hyper- punishment.

The Canadian federal government has been taking steps in this direction already for over a decade. The National Crime Prevention Centre (NCPC), part of the Ministry of Public Safety, recognizes that "the surest way to prevent crime is to focus on factors that put individuals at risk...",[51] setting its goal as crime prevention through the development of healthy communities. In order to fulfill its mandate, the NCPC funds diverse programs and initiatives intended to support communities, such as sports and arts based after school programs, social services and support for struggling families and community education initiatives that work to develop conflict resolution skills and discourage racism.[52]

Such initiatives do not offer a "quick fix" to criminality. Instead, they are long term solutions that require sustained financial and governmental support to work. While the results of crime prevention through community development may not be immediate, they are much more likely to be effective.

7. **Conclusion**:

It is the view of the LEAF partnership that the proposed legislation, which focuses exclusively on the punishment of offenders, will not advance the rights of equality seeking groups; rather it will lead to further discriminatory adverse effects on historically disadvantaged groups. The LEAF partnership urges the government to abandon this

approach in favour of "a policy that focuses on fair sentences, compassion, and understanding of victims as well as offenders, along with policies that focus on providing real rather than apparent security and change in social policy."[53]

8. **Endnotes:**

[1] H. Dumont, "Disarming Canadians, and Arming Them with Tolerance: Banning Firearms and Minimum Sentences to Control Violent Crime. An Essay on an Apparent Contradiction," (2001) 39 Osgoode Hall L.J. 329 at para 8.
[2] The extent of women's inequality in Canada was documented most recently in the Statistics Canada report "Women in Canada: A Gender-based Statistical Report" released in March 2006.
[3] (1989) 1 S.C.R. 892
[4] On average, 40% of women killed by their husbands are shot. Wendy Cukier, "Guns and Domestic Violence" Coalition for Gun Control, citing Kwing Hung, "Firearm Statistics", March 2000 available at: http://www.guncontrol.ca/Content/DomesticViolence.html
[5] Amnesty International, "Arms Report: Why Act Now?" 2003 at 46-48 available at: http://www.amnestyusa.org/arms_trade/pdfs/chapter3_colour.pdf; see also W. Cukier, supra
[6] Amnesty International, *supra*
[7] Bill C-10, preamble.
[8] Anthony N. Doob & Carla Cesaroni, "The Political Attractiveness of Mandatory Minimum Sentences," (2001) 39 Osgoode Hall L.J. 287 – 304 at 301. See generally all articles in (2001) 39 Osgoode Hall L.J. 261-716.
[9] World Health Organization, (2002), *World report on violence and health: summary*. Geneva at 28. See also Michau, L. "Good practice in designing a community based approach to prevent domestic violence."
[10] Waller, Irvin and Dick Weiler, Crime Prevention Through Social Development. (Ottawa: Canadian Council on Social Development, 1985).
[11] See, for example, *R. v Proulx*, [2000] 1 S.C.R. 61 at para. 107 citing Canada. Canadian Sentencing Commission. *Sentencing Reform: A Canadian Approach: Report of the Canadian Sentencing Commission.* Ottawa: The Commission, 1987 at 136-7; *R. v. Wismayer* (1997), 115 C.C.C. (3d) 18 at 36; R. Broadhurst & N Loh "Selective Incapacitation and the Phantom of Deterrence" in R. Harding ed., *Repeat Juvenile Offenders: The Failure of Selective Incapacitation in Western Australia* (Crime research Centre, University of Western Australia, 1995) at 55; Thomas Gabor and Nicole Crutcher, *Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures* (Ottawa: Research and Statistics Division, Department of Justice Canada, 2002), online: Department of Justice <http://canada.justice.gc.ca/en/ps/rs/rep/2002/rr2002-1a/pdf>; The Canadian Sentencing Commission as cited in Alan Manson, "Finding a Place for Conditional Sentences" (1997) 3 C.R. (5th) 283 at 291.
[12] See, Alan Manson, "Finding a place for Conditional Sentences" {1997) 3 C.R. (5th) 283 at 291. See also M. Tonry, "Mandatory Penalties" in M. Tonry, ed., Crime and Justice: A Review of Research, vol. 16 (Chicago: University of Chicago Press, 1992) at 243. See also D.S. Nagin, "Criminal Deterrence Research at the Outset of the Twenty-first Century" in M. Tonry, ed., Crime and Justice: A Review of Research vol. 23 (Chicago: University of Chicago Press, 1998) at 1.
[13] CAEFS Reform Paper at 9-14
[14] Government of Ontario, *Report of the Commission on Systemic Racism in the Criminal Ontario Justice System* (Toronto: Queen's Printer for Ontario, 1995), 69-70.
[15] Faizal R. Mirza, "Mandatory Minimum Prison Sentencing and Systemic Racism Mandatory Minimum Sentences," 39 *Osgoode Hall Law Journal* (2001) at 20.
[16] Legislative Summary, Bill C-10 An Act to Amend the Criminal Code (Minimum Penalties for Offences Involving Firearms) and To Make a Consequential Amendment to Another Act (10 May 2006).
[17] Canadian Criminal Justice Association, "Aboriginal Peoples and the Criminal Justice System," (15 May 2000) http://www.ccja-acjp.ca/en/aborit.html
[18] Ibid.

[19] *R. v. Brown* [2002] O.J. No. 295; *R. v. Parks* (1994), 84 C.C.C. (3d) 353; *R. v. Gladue*, [1999] 1 S.C.R. 688; *R. v. S. (R.D.)* (1997), 118 C.C.C. (3d) 353 (S.C.C.); *R. v. Richards* (1999), 26 C.R. (5th) 286.
[20] Aboriginal Justice Implementation Commission, *Report of the Aboriginal Justice Inquiry of Manitoba* (November 1999) http://www.ajic.mb.ca/volume.html Accessed 24 March 2006; Commission of Inquiry into the Matters Relating to the Death of Neil Stonechild, http://www.stonechildinquiry.ca .
[21] Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Queens Printer, 1996)
[22] Canada, Aboriginal Peoples and the Justice System (Ottawa: Minister of Supplies and Services, 1993); Government of Ontario, *Report of the Commission on Systemic Racism in the Criminal Ontario Justice System* (Toronto: Queen's Printer for Ontario, 1995); Law Commission of Canada, *Transforming Relationships through Participatory* Justice, 18 (Toronto: Law Commission of Canada, 2003); Office of the Correctional Investigator, "Backgrounder: Aboriginal Inmates," (16 October 2006) http://www.oci-bec.gc.ca/newsroom/bk-AR0506_e.asp Accessed 20 October 2006.
[23] Michael Jackson, "Locking up Natives in Canada" (1989) 23 U.B.C. L. Rev 215 at 215-216; Robynne Neugebauer ed., *Criminal Injustice: Racism in the Criminal Justice System* (Toronto: Canadian Scholars Press Inc., 2000) and Wendy Chan and Kiran Mirchandani, eds. *Crimes of Colour: Racialization and the Criminal Justice System in Canada* (Peterborough, ON: Broadview Press, 2002).
[24] Canadian Centre for Justice Statistics, *Aboriginal People in Canada*, 11 www.statcan.ca/english/freepub/85F0033MIE/85F0033MIE2001001.pdf; Michael Jackson, "Locking up Natives in Canada" (1989) 23 U.B.C. L. Rev 215 at 215-216.
[25] Quoting from a Canadian Human Rights Commission Report in Josephine Savarese, "Gladue was a woman: the importance of gender in restorative-based sentencing," *New Directions in Restorative Justice: issues, practice, evaluation* (Centre for Restorative Justice, Simon Fraser University, 2005), 134-150.
[26] Government of Ontario, *Report of the Commission on Systemic Racism in the Criminal Ontario Justice System* (Toronto: Queen's Printer for Ontario, 1995).
[27] See Office of the Correctional Investigator, "Backgrounder: Aboriginal Inmates," (16 October 2006) http://www.oci-bec.gc.ca/newsroom/bk-AR0506_e.asp Accessed 20 October 2006.
[28] Amnesty International, *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Aboriginal Women in Canada* (April 2003)http://www.amnesty.ca/campaigns/sisters_overview.php
[29] NAWL Provocation Paper at 39 and CAEFS Reform Paper at 9-14
[30] CAEFS Reform Paper at 12
[31] K. Edward Renner and Alan H. Warner, "The Standard of Social Justice Applied to an Evaluation of Criminal Cases Appearing Before Halifax Courts," 1 *Windsor Y.B Access Just.* 62; Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Queens Printer, 1996); Canadian Criminal Justice Association, "Aboriginal Peoples and the Criminal Justice System," (15 May 2000) http://www.ccja-acjp.ca/en/aborit.html
[32] CAEFS Reform Paper at 13
[33] Marc Mauer, Cathy Potler and Richard Wolf, "Gender and Justice: Women, Drugs and Sentencing Policy" (The Sentencing Project: Washington, D.C., 1999) at 11. Se also CAEFS, LEAF and NAWL Reform Papers.
[34] Russell Hogg, "Mandatory Sentencing Laws and the Symbolic Politics of Law and Order," *UNSW Law Journal* 22(1) (1999); Russell Goldflam and Jonathan Hunyor, "Mandatory sentencing and the concentration of powers," *Alternative Law Journal* 24, 5 (October 1999).
[35] Senate and Legal Constitutional References Committee, "Inquiry into the Human Rights (Mandatory Sentencing for Property Offences) Bill 2000," www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/ 2002-04/hra_mandsent/submissions/sub19.doc;
[36] Legislative Summary, Bill C-10 An Act to Amend the Criminal Code (Minimum Penalties for Offences Involving Firearms) and To Make a Consequential Amendment to Another Act (10 May 2006), p.7.
[37] Committee on the Elimination of Racial Discrimination, "Concluding Observations by the Committee on the Elimination of Racial Discrimination," (19 April 200) http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.101.En?Opendocument
[38] *Criminal Code,* R.S.C. 1985, c. C-46, s. 718.1 [*Criminal Code*].
[39] Julian Roberts, Rafal Morek and Michael Cole, Mandatory Minimum Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models (PDF), prepared for Research and Statistics

Division, Department of Justice Canada, Ottawa, 20 September 2005, p. 10, citing Canadian Sentencing Commission, Sentencing Reform: A Canadian Approach, Ottawa, 1987.

[40] See, for example, *R. v Proulx*, [2000] 1 S.C.R. 61 at para. 107 citing Canada. Canadian Sentencing Commission. *Sentencing Reform: A Canadian Approach: Report of the Canadian Sentencing Commission.* Ottawa: The Commission, 1987 at 136-7; *R. v. Wismayer* (1997), 115 C.C.C. (3d) 18 at 36; R. Broadhurst & N Loh "Selective Incapacitation and the Phantom of Deterrence" in R. Harding ed., *Repeat Juvenile Offenders: The Failure of Selective Incapacitation in Western Australia* (Crime research Centre, University of Western Australia, 1995) at 55; Thomas Gabor and Nicole Crutcher, *Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures* (Ottawa: Research and Statistics Division, Department of Justice Canada, 2002), online: Department of Justice <http://canada.justice.gc.ca/en/ps/rs/rep/2002/rr2002-1a/pdf>; The Canadian Sentencing Commission as cited in Alan Manson, "Finding a Place for Conditional Sentences" (1997) 3 C.R. (5th) 283 at 291.

[41] *R. v. Gladue*, [1999] 1 S.C.R. 688 at para. 52 [*Gladue*].

[42] *Ibid.* at para. 83.

[43] *Ibid.* at para. 64.

[44] *Peart v. Peel Regional Police Services Board*, [2003] O.J. No. 5979 at para. 94 [QL]. See also *R . v. S. (R.D.)*, (1997), 118 C.C.C. (3d) 353 (S.C.C.) and *R. v. Parks* (1993), 84 C.C.C. (3d) 353 (Ont. C.A.).

[45] Section 718.2(e) of the *Criminal Code, supra* note 2 states: "A court that imposes a sentence shall also take into consideration the following principles: all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders."

[46] Justice Canada, "Speech for the Honourable Vic Toews, Minister of Justice and Attorney General of Canada," presented to the Canadian Professional Police Association, Ottawa, 3 April 2006, http://news.gc.ca/cfmx/view/en/index.jsp?articleid=204839.

[47] Jeff Latimer, Craig Dowden & Danielle Muise, Justice Canada, The Effectiveness of Restorative Justice Practices: A Meta-Analysis (2001); Barton Poulson, "A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice" (2003) Utah L. Rev. 167. See also, Mark S. Umbreit, "Restorative Justice through Mediation: The Impact of Programs in Four Canadian Provinces" in (Burt Galaway & Joe Hudson, eds., *Restorative Justice: International Perspectives* (City?: Publisher?, 1996); Heather Strang & Lawrence W. Sherman, "Repairing the Harm: Victims and Restorative Justice" (2003) Utah L. Rev. at 16; and Leena Kurki, "Restorative and Community Justice in the United States" (2000) 27 Crime & Just. 235 at 265.

[48] Thomas Gabor, Department of Criminology, University of Ottawa, "Mandatory Minimum Sentences: A Utilitarian Perspective," Canadian Review of Criminology, July 2001, pp. 385-404 at 395.

[49] Justice Canada, "Speech for the Honourable Vic Toews, Minister of Justice and Attorney General of Canada," presented to the Canadian Professional Police Association, Ottawa, 3 April 2006, http://news.gc.ca/cfmx/view/en/index.jsp?articleid=204839; See also Erik Luna, "Introduction: The Utah Restorative Justice Conference" (2003) Utah L. Rev. wherein he notes that the United States spends about the same amount on corrections alone as the entire GDP of New Zealand; See also Hogg, R. "Mandatory Sentencing Laws and the Symbolic Politics of Law and Order," *University of New South Wales Law Journal*, (1999) 22(1), at 263 for the point that a state's increase in their corrections budget takes vital resources away from education, health, workplace safety, environmental and social services.

[50] DeKeseredy, Walter et al. (2003). "Perceived Collective Efficacy and Women's Victimization in Public Housing." In Criminal Justice. 3(1). 5 – 27.

[51] http://www.psepc.gc.ca/prg/cp/ncps-en.asp 13 November 2006.

[52] *Ibid.*

[53] Anthony N. Doob & Carla Cesaroni, "The Political Attractiveness of Mandatory Minimum Sentences," (2001) 39 Osgoode Hall L.J. 287 at 304.