C-10 and its Effect on Aboriginal Communities

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Debates of the Senate - ORDERS OF THE DAY - Business of the Senate - Safe Streets and Communities Bill

Hon. Maria Chaput: Honourable senators, I cannot in good conscience support Bill C-10, which was clearly conceived with very little consideration for the negative effects it could have if passed in its current state. Some might say that it does have some positive aspects, and that is true. However, we cannot ignore certain very worrisome aspects of the bill, particularly the devastating effect it will have on Aboriginal communities.

During the deliberations of the Standing Senate Committee on Legal and Constitutional Affairs, we had the privilege of hearing testimony from various stakeholders who all addressed specific points in the bill that troubled them. Many of them also wisely suggested possible solutions. It is absolutely inconceivable to me that anyone could rise here today and say that we did not hear anything during the many hours of testimony that might cast some doubt regarding the quality of at least one provision in this huge bill. It is inconceivable that anyone could say that we were unable to come up with any improvements, to even one part of this bill.

Yes, six amendments were accepted. Those amendments had been rejected in the other place, before the Conservatives realized that perhaps they were necessary. However, after the hours and hours of testimony at the Standing Senate Committee on Legal and Constitutional Affairs, it seems disingenuous for anyone to say here today that we did not find any other problems, some of them bigger than others. It also makes me uncomfortable knowing that the hard, passionate work of several witnesses was completely disregarded in the end.

We heard witnesses talk about the mental health problems that abound in our penitentiaries, about the endless waiting lists that exist for rehabilitation programs and about prosecutors who still do not have any means of targeting the most dangerous criminals, in other words, those who, incidentally, will not even be affected by the new mandatory minimum sentences.

We also heard witnesses talk about rehabilitation programs that focus on prevention among young offenders, community programs that are achieving positive, tangible results in terms of reducing crime and recidivism.

We have also heard a great deal about the need for a program for victim rehabilitation. Bill C-10 does not address any of this. It does not address the rather key issue of mental health. It certainly does not address prison crowding because it will be mainly incarcerating people under new minimum mandatory sentences and not hardened criminals that deserve harsher sentences.

Bill C-10 also does not address community programs, other than to diminish their scope by making more use of the prison system.

Contrary to what some people just keep repeating, there is not much in Bill C-10 to deal with the real needs of victims.

We heard hours and hours of testimony. However, although the senators who sat on the committee have been enlightened, Bill C-10 is none the better for it. I find that deplorable.

Nowhere is the lack of reflection and substance more evident than in the discussion of the impact Bill C-10

could have on Aboriginal communities.

Let us begin by citing the evidence: Aboriginal people are seriously overrepresented in the prison population. The committee report points this out in its comments but concludes, unfortunately, that this problem goes beyond the criminal justice system. It is true that efforts in other areas may help reduce Aboriginal overrepresentation in prisons. But to say that the criminal justice system does not play a role in Aboriginal overrepresentation is a huge leap. This conclusion has no basis and, with due respect for the authors, reveals a certain indifference.

According to the Correctional Investigator's 2009-10 annual report, rehabilitation programs do not have the same beneficial effects on Aboriginal inmates as they do on other inmates. It is very important that we understand what this means. According to its mission statement, the Correctional Service of Canada, and I quote:

. . . contributes to public safety by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.

Still according to Correctional Service of Canada, the CSC's two primary fundamental values are:

Respect [for] the dignity of individuals, the rights of all members of society, and the potential for human growth and development;

and:

Recognizing that the offender has the potential to live as a law-abiding citizen.

If we accept that prison rehabilitation programs do not have the same beneficial effects on Aboriginal inmates, then we must conclude that the criminal justice system, in terms of the rehabilitation of Aboriginal inmates, does not do them justice.

Let it not be said that this same system bears no responsibility for the overrepresentation of Aboriginals in the prison system. Let it not be said that a bill dealing with this same system cannot acknowledge this problem either.

In committee we heard the Minister of Justice from Nunavut, Daniel Shewchuk. I think it is important to share what we learned in committee because you will find no indication of it in the bill before you.

According to the minister:

> 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. 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.

The important thing to note is that the Government of Nunavut has already found ways to fight crime, and I quote Mr. Shewchuk again:

> A majority of the crime committed in Nunavut is fuelled 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. Of 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.

This is a very real example, which decreases recidivism and makes Nunavut safer.

Why not listen to him? Why say that incarceration is required to achieve safety? The federal, provincial and territorial governments all have to work within limited budgets. The federal government's decision to limit judges' discretion means that it is dictating to the provincial and territorial governments that they must allocate a larger portion of their resources to incarceration. I would like to remind honourable senators that, in

the context of Aboriginal communities, the federal government is dictating that a larger part of their resources must be allocated to a system that does not respect them or meet their needs.

The federal government is also dictating to Aboriginal communities that they must ignore their traditional justice system. For example, traditional Inuit justice, which is recognized in the Nunavut Court of Justice's case law, is much more strongly based on restorative justice in the form of traditional community-based sanctions. It also produces better results. Of course, minimum mandatory sentences completely rule out this possibility. So once again, we are imposing solutions that are poorly suited to Aboriginal communities. Unfortunately, history seems to be repeating itself.

Here are some quotes from other witnesses who appeared before the committee.

Mr. Roger Jones, senior strategist, Assembly of First Nations:

> In 1996, the Royal Commission on Aboriginal Peoples drew two conclusions: first, that there is a consensus that the justice system has failed our people, and second, that notwithstanding the hundreds of recommendations from previous commissions and task forces, the justice system was still failing them in 1996. Tragically and unacceptably, nothing has occurred between 1996 and now, a period of 16 years, that allows us to draw any different conclusions.
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> The failure that the royal commission pointed to is characteristic of all aspects of the criminal justice system, from policing to sentencing to imprisonment to post-release services. The current criminal justice system has profoundly failed First Nations peoples by failing to respect cultural differences, by failing to address systematic biases against our people and by denying them an effective voice in the development and delivery of services.

Another witness, Ms. Christa Big Canoe, Legal Advocacy Director, Aboriginal Legal Services of Toronto said:

> We believe that the Safe Streets and Communities Act will make the problem of Aboriginal over-representation in prison even worse, while at the same time not actually addressing the legitimate safety concerns of Aboriginal and non-Aboriginal people in this country. . . .
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> When Aboriginal people only represent 4 per cent of the Canadian population but are one quarter of the people incarcerated in this country, there are obvious problems and failures within the justice system, both historically and currently. Courts have recognized the Canadian justice system has failed Aboriginal people in this country. We provide services to Aboriginal people to stave off or minimize the impact of those failures. We see this act, particularly in relation to mandatory minimum sentences and the prohibition of conditional sentences, has potential to cause further harm.
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> Specifically, the increased reliance on minimum sentences means less opportunity for conditional sentences. This is problematic because it prevents the judge from considering them as a sentencing option.

Ms. Christa Big Canoe ends up by saying:

> I put this to you because as a First Nations woman who works in Canadian law representing Aboriginal people, the dream would be that one day there would be no need to have a provision in the Canadian Criminal Code that specifically asks us to pay special attention to Aboriginal people because the hope would be that the remedial nature of when the legislators put this in would come to fruition, that there would not be the continuing and systemic issues that Aboriginal people face. The reality is we are not there. In fact, reports and statistics demonstrate that Aboriginal incarceration is only increasing, not lessening. The mandatory minimum and the removal of certain types of conditional sentences on certain offences will only compound this and make it worse.

If there is one lesson to be learned from the testimony we heard in committee, it is that crime is a very complex issue. If we truly seek to understand crime, we must not be afraid to talk about mental health, rehabilitation, alcoholism, poverty, prevention, collaboration, restorative justice, true and lasting security,

victims' rights, victim rehabilitation, the unique characteristics of communities, fair sentencing, and the circumstances surrounding every accused and every victim. We must not be afraid to talk about statistics either.

I cannot support a bill that amends the Criminal Code, yet fails to consider almost every factor related to crime. Such a bill cannot disregard the piles of studies — produced by both academics and individuals working in the field — that sound the alarm.

The government cannot get rid of crime simply by saying that it is now tough on crime. That may be a convincing catchphrase, but it does not work that way.

Many others have said that Canadians' confidence in the criminal justice system is shaky even though crime rates are consistently declining. If that is true, and if the government believes that there really is a lack of confidence, why not take the initiative to have a real discussion about crime? Or about how crime rates are dropping? Or about how crime rates could fall even lower if we invested more in prisoner rehabilitation and treatment of mental illness? Or about how victims get more support in provinces that are supposedly soft on crime?

Or about how Aboriginal communities should develop their own solutions to fight crime, which we should support? Are we merely trying to take advantage of this public perception for purely political reasons? I hope that is not the case. I am disappointed that, for all manner of reasons that I find unacceptable, we have not seized this opportunity and postponed having the real, in-depth conversation about crime and public safety that Canadians deserve.

Honourable senators, we were able to glimpse the unintended effects that Bill C-10 could have on the safety of our communities, and we made no corresponding amendments. Therefore, I cannot support this bill.

Senator Fraser: Would the honourable senator accept a question?

I would ask my question in English because I do not have the vocabulary in French. Senator Chaput was an assiduous member of the committee, and she will remember the testimony from Mr. Scott Wheildon, the lawyer who practises in Nunavut.

Senator Chaput: Yes.

Senator Fraser: He explained that Nunavut relies heavily on circuit courts, courts that travel, and he described what it is like for a small Inuit community where someone commits an offence and the community handles it in its age-old way and the community is reconciled and life gets back to normal; and then the court arrives, flies in, descends from the heavens and says, "Well, sorry, we do not care about traditional justice. You have to face trial." Now they will face even more mandatory minimums than in the past.

What does the honourable senator think that will do to the Inuit people's faith in our system of justice?

Senator Chaput: That is a very good question. I am thinking of what was said when discussing the importance of their traditional justice system, which has been recognized in case law and which is based on restorative justice.

There is no doubt that the result will be that they have less confidence in the justice system which, in my opinion, seems to be increasingly discriminatory towards them. It will be even more detrimental for these communities, and I regret it.

Hon. Dennis Glen Patterson: Honourable senators, I would like to ask Senator Chaput a question.

I have been listening to the comments about Nunavut and Aboriginal offenders being prejudiced by mandatory minimum sentences. I would like to ask the honourable senator if she knows that in the *Gladue* decision that has been spoken about in the chamber tonight, the Supreme Court said that the section in the code is not to be taken as a means of automatically reducing the prison sentences of Aboriginal offenders, but that, in fact, generally the more serious and violent the crime, the more likely it will be as a practical matter that the terms of imprisonment will be the same for similar offences and offenders.

Since Bill C-10 focuses largely on serious, violent crimes of repeat offenders, would the honourable senator agree that the *Gladue* principle largely does not apply to offences under Bill C-10?

Senator Chaput: The principle of the *Gladue* ruling states that judges must take into account the specific circumstances of an Aboriginal community as well as its traditional methods for dealing with whatever happens in the community.

If judges have that discretion, it does not mean that the entire community, every member of an Aboriginal community, will have any less. On the contrary, the judge must take the specific circumstances into account and render a judgement based on what is possible. This does not spare a hardened criminal from being punished. That is not this issue here. The specific circumstances must be taken into account in order to ensure that justice is served. That is my understanding of the ruling.

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