

Attention: Steering Committee
Law Union of Ontario
31 Prince Arthur Avenue
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July 10, 2012

Attorney General of Ontario – Honourable John Gerretsen
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON
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Dear Attorney General Gerretsen:

RE: Omnibus Crime Bill

We are writing to express our deep concern about the passing of Bill C-10 (“Omnibus Crime Bill”) and to urge the government of Ontario to take immediate steps to alleviate the hardship caused by this regressive piece of legislation.

By way of background about our organization, the Law Union of Ontario is a coalition of over 200 lawyers, law students and legal workers that strives to develop collective approaches to the struggle for social justice. The Law Union engages in legal education and advocacy initiatives in order to promote human rights and democracy both in Canada and abroad. The Law Union was established in 1974, and has had a particular focus on justice issues for many years.

This call has been endorsed by a number of organizations representing some of the people the legislation is expected to impact the most, including:

- Africans in Partnership Against AIDS (APPA)
- Canadian HIV/AIDS Legal Network
- Criminal Lawyers Association
- Defence for Children International
- Department of Criminal Justice and Criminology, Ryerson University
- Frontline Partners with Youth Network
- HIV & AIDS Legal Clinic Ontario (HALCO)
- PASAN
- Toronto Police Accountability Coalition

Background on the Omnibus Crime Bill

With the Omnibus Crime Bill receiving Royal Assent on March 13, 2012, the federal government has continued a troubling trend towards harsher sentences and greater reliance on incarceration. Some of the worst aspects of the Bill include the following:

- **Conditional sentences:** The availability of conditional sentences has been removed for any crime that could hypothetically result in a maximum sentence of 14 years and for a host of other offences. These restrictions are far too broad, often arbitrary and inflexible, and could well result in sentences that are, simply put, unjust. Some of the offences that are covered under the Bill's regime include use of a forged passport, perjury, drawing document without authority, fraud over \$5000, and possession of counterfeit money.
- **Mandatory Minimums:** The Bill establishes a number of new mandatory minimum sentences, thus removing the Court's discretion to consider the particular circumstances of the person before them. As the recent cases of *R. v. Lewis* and *R. v. Smickle* demonstrate, there is a very real concern that such provisions will be found to be "cruel and unusual punishment" and therefore unconstitutional. The removal of judicial discretion will only contribute to the already extreme over-representation of Aboriginal people in the correctional system.
- **Harsher conditions of confinement in federal corrections:** The impacts of the Bill on those sentenced to the federal correctional system are extremely serious. The Bill amends the *Corrections and Conditional Release Act* to de-emphasize the importance of rehabilitation and reintegration of offenders. The Bill removes from the Act the vital principle that prisons should rely on "least restrictive measures". The Bill makes parole harder to obtain. The Bill allows prison officials to create sub-classifications of prisoners with fewer rights and privileges. The Bill intensifies the harshness of segregation and restricts the extent to which prisoners can maintain important connections with family and community outside of prison.
- **Youth Justice:** The Omnibus Crime Bill will have very serious consequences for the youth criminal justice system, resulting in more youths going to jail and going to jail for longer periods. The Bill requires Crown Counsel to consider whether it would be appropriate to apply for an adult sentence, and to place their decision on the record. It will permit the publication of a youth's name in many circumstances, thus increasing stigma and undermining rehabilitation. These steps are completely contrary to the underlying philosophy of the *Youth Criminal Justice Act*.

Act, which aims to keep young people out of prison and give them the supports they need to turn their lives around.

These measures give the impression that crime is an increasingly serious problem in Canada. In fact, crime rates continue to drop across the country. However, the course that the federal government has chosen will make it more difficult for prisoners to re-integrate with society when they are released from prison, thus increasing the risk of crime and threats to public safety.

These “law and order” policies are utterly regressive, unsupported by any credible social science evidence, and are made only to score political points at the expense of some of Canada’s most vulnerable people.

The Social and Economic Cost for Ontario

Ontario’s Ministry of Community Safety and Correctional Services (MCSCS) estimates the cost of the Omnibus Bill at greater than \$1 billion in infrastructure-related costs in this province alone. The Bill may add as many as 1,500 additional prisoners to the provincial correctional system, which would require at minimum a new 1,000-bed facility to be built. A recent article in the *Law Times* quotes MCSCS spokesman Seirge Le Blanc as stating that the Bill is expected to result in more than \$50 million annually in ongoing additional operating expenses for new jails and correctional institutions.¹ There will also be increased costs for probation and parole officers to manage more offenders in the community.

A recent report by the parliamentary budget officer indicates that the provinces will have to pay \$137 million in added costs due to the elimination of conditional sentences for certain offences.

This is an enormous cost for policy decisions that increase repression without increasing public safety. There is no convincing evidence to suggest that crime can be reduced by harsh sentences.² Indeed, harsher sentences can increase the risk of re-offending.³ Two of the largest American jurisdictions, California and New York, are now pulling out of their investments in the “bigger and tougher” jail philosophy.

¹ Law Times, “How will Ontario pay for omnibus crime bill?” (March 26, 2012).

² See, for example: A. Doob and C.M. Webster (2003). “Sentence Severity and Crime: Accepting the Null Hypothesis” in M. Tonry (ed.) *Crime and Justice: A Review of Research, Volume 30*. Chicago: University of Chicago Press, pp. 143-195.

³ Nagin, D. S., Cullen, F. T., and Johnson, C. L. (2009). Imprisonment and reoffending. University of Chicago, 115-200.

A focus on prevention, social equality and rehabilitation are the only effective long-term policy choices.

This government has said that the province is facing a time of austerity, and that cuts to vital services need to be made – thus cutting the very kinds of services that promote social equality and prevent crime. Yet, at the same time, Ontario is contemplating building more prisons and housing more and more people in jails.

This is not sound social policy.

Resisting the Omnibus Bill

We recognize that the Omnibus Bill is now law, although the *Lewis* and *Smickle* cases call into question its legality. However, even before the constitutional challenges begin, there are steps that Ontario can take to minimize the harsher impacts of the Bill.

The government of Quebec has already signalled its intention to do so. Speaking for the province, Minister Jean-Marc Fournier stated on March 13, 2012 that his government would do everything in its power to limit the clout of the legislation. The Minister has indicated that he will issue a directive to various players in the justice system to avoid applying the strictest provisions of the crime bill, particularly when it comes to young persons.

We strongly urge the government of Ontario to take similar action before the Bill begins to take effect on August 9. For example, as the Attorney General, you have the power to issue prosecutorial guidelines. You could encourage Crown prosecutors to:

- In cases where the Crown would have consented to a conditional sentence (because the person does not pose a danger to society) and that is no longer available because of the amendments, instruct Crowns to give serious consideration to consenting to a period of probation rather than filling up our provincial jails.
- Similarly, in cases involving mandatory minimums, prosecutors should consider pursuing other reasonable offences that preserve judicial discretion in sentencing.
- Crown Attorneys should be directed to seek non-custodial sentences for non-violent offences and for offenders who do not pose any public safety risk.
- The justice system as a whole should place greater reliance on mental health and addiction diversion strategies. Notably, Quebec has indicated its intention to

create a program to treat people with addictions instead of imprisoning them. Ontario should do the same.

- In terms of youth justice, Ontario can ask that a young person's name only be made public in exceptional circumstances; relieve prosecutors of the obligation to demand an adult sentence for someone under 16. Quebec has signaled its intention to take these very actions.
- Ontario should ensure that all players in the youth justice system receive proper training not only on the new provisions of the Youth Criminal Justice Act, but also on the overall objectives of the Act. You must ensure that the current provisions for bail programs, alternative measures and diversion are fully implemented across the province. In particular, you must specifically ensure that alternative measures/diversion provisions are available to known populations that face special challenges.

Most importantly, we urge this government to commit appropriate funding to the kinds of services that are most needed in order to combat crime: mental health services, addiction programs, income security, health and education.

Ontario must show leadership. We look forward to your response to this important issue: law.union.of.ontario@gmail.com.

Yours truly,

Jackie Esmonde

Jackie Esmonde
on behalf of the Law Union of Ontario