

schools or other background or contextual factors that help explain why an Aboriginal offender is before the courts.¹³⁹

Even if excellent Gladue reports were prepared from coast to coast, they would still fail to make a difference in the amount of Aboriginal overrepresentation in the prison system without the addition of realistic alternatives to imprisonment, including adequate resources for intensive community programs that can respond to the conditions that caused Aboriginal offending.

Call to Action:

- 31) We call upon the federal, provincial, and territorial governments to 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.

A failure to provide sufficient and stable resources for the community and treatment programs that are necessary to implement *Gladue* and *Ipeelee* helps explain why those decisions have not slowed increasing Aboriginal overrepresentation in prison. In addition to these significant challenges, there are now new barriers to implementing effective and just alternative sentences for Aboriginal offenders.

Mandatory minimum sentences

One of the most dramatic examples of the trend towards mandatory minimum sentence is the *Safe Streets and Communities Act* (Bill C-10), which came into force in 2012. The Act specifies minimum sentences that judges must impose for certain crimes. As a result of the new legislation, certain offences are no longer eligible for a conditional sentence.¹⁴⁰

Bill C-10 and other similar *Criminal Code* amendments have undermined the 1996 reforms that required judges to consider all reasonable alternatives to imprisonment, with particular attention to the circumstances of Aboriginal offenders. The Commission believes that the recent introduction of mandatory minimum sentences and restrictions on conditional sentences will increase Aboriginal overrepresentation in prison. Such developments are preventing judges from implementing community sanctions even when they are consistent with the safety of the community and even when they have a much greater potential than imprisonment to respond to the intergenerational legacy of residential schools that often results in offences by Aboriginal persons.¹⁴¹