

Edmonton lawyers laud Supreme Court blow to Harper's tough-on-crime laws

More dismantling expected of minimum sentences that hurt aboriginal people, lawyers say

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Aboriginal rights lawyer Lionel Chartrand applauds the Supreme Court's ruling that two key "tough on crime" measures brought in by the previous Conservative government are unconstitutional. (Supplied)

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For some of Lionel Chartrand's clients facing The Truth in Sentencing Act, lying seemed like the best option.

"I've had a number of clients in that position, where they beg with me, plead with me, 'I just want to plead guilty,'" said Chartrand, an aboriginal rights lawyer, recalling how far they were willing to go to escape conditions such as triple-bunking or 23-hour solitary confinement.

"But I feel they have viable defences and, in some cases, it's my view that they're not guilty."

On Friday, the Supreme Court struck down the measure, which took away enhanced credit for time served before sentencing to those denied bail because of a prior conviction.

Supreme Court strikes down 2 Conservative sentencing reforms

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"The premise that they built it on was that prisoners were trying to stay in hell holes like the Edmonton Remand Centre in order to build up pre-trial time and get one-in-a-half or two-for-one or three-for-one credit, which was absolutely false," said Tom Engel, an Edmonton criminal defence lawyer.

He said the effect was to induce more guilty pleas, which he believes to be the provision's true purpose.

"They feel this pressure and they want to get out of the conditions in the remand centre so that they can start serving in a jail where the conditions are much better," Engel said.

'It's a good start towards having access to justice'

The measure was one of dozens introduced by the former Conservative government as part of their tough-on-crime agenda.

The same day it was quashed, the Supreme Court also struck down minimum one-year sentences for drug traffickers with previous convictions within a decade.

The court said the sentencing requirement caught not just serious drug trafficking, but also less blameworthy conduct, making it constitutionally vulnerable and violating "the guarantee against cruel and unusual punishment."

But the decision also concluded that other mandatory minimums are similarly at risk of constitutional challenges. Indeed, a year earlier, the high court struck down mandatory minimums for gun crimes.

"These harsh existing laws with minimum penalties disproportionately and negatively affect aboriginal persons who are often in less fortunate conditions and circumstances."

- Lionel Chartrand, aboriginal rights lawyer

"It's a good start towards having access to justice and due process," Chartrand said. He noted the court recognized "the

proper role" of judges who he believes are best positioned because of the evidence before them to deliver the most appropriate sentence to the particular offender and case.

But he said remaining minimum sentences violate the spirit of another provision, which requires courts to consider the circumstances of aboriginal offenders.

"These harsh existing laws with minimum penalties disproportionately and negatively affect aboriginal persons who are often in less fortunate conditions and circumstances." Chartrand said.

He said there are many situations in which reduced penalties would be appropriate for aboriginal offenders, but the court can't consider them because of the mandatory minimum.

Chartrand said that takes its toll, especially on younger offenders. He said being removed from day-to-day life for longer periods decreases their ability to function well in society or access resources to address addictions and other challenges.

"Often, it has the unfortunate effect to really demoralize someone where it reduces their sense of hope and determination to forge ahead and try to carve out a good life life for themselves and their family or children," Chartrand said.

"It doesn't really help them or society in general."