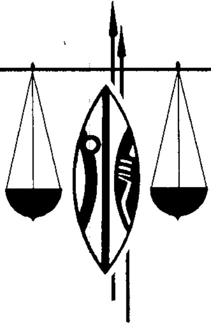

MEDIA STATEMENT - *FOR IMMEDIATE RELEASE*

The African Canadian Legal Clinic (ACLC) applauds the Ontario Court of Appeal for its declaration that section 95(2) of the *Criminal Code* violates the *Canadian Charter of Rights and Freedoms*. On February 19-22, 2013, the Ontario Court of Appeal heard six challenges to the constitutionality of the mandatory minimum sentences for possession of a firearm. Lawyers opposed to mandatory minimum sentences argued that the three year minimum sentence on Crown election to proceed by indictment, for a first time offence of possession of a loaded restricted firearm, and the five year minimum sentence for a second or subsequent offence of possession of a loaded restricted firearm, among other gun-related mandatory minimum sentences violate sections 7 (life, liberty and security of the person) and 12 (cruel and unusual punishment) of the Canadian *Charter of Rights and Freedoms*.

In its decision released on November 12, 2013, the Court held that the three year mandatory minimum sentence for a first time offence of possession of a restricted firearm fails the 'gross disproportionality' test under section 12 of the *Charter* and is therefore unconstitutional and to be declared of no force or effect. The Court based this decision on the fact that section 95 is written so broadly as to capture offenders with greatly varying levels of moral blameworthiness. The Court noted that "**a three-year penitentiary sentence for what is essentially a violation of a term of a licence, albeit a knowing violation, is unheard of in Canada. Even accepting that the unique dangers posed by prohibited and restricted firearms could justify a mandatory jail sentence for what is in essence a licensing offence, a sentence of three years goes well beyond what could be justified for such an offence under any penal theory. A three-year penitentiary sentence is grossly disproportionate to the severity of the offence described in my reasonable hypothetical.**"

On behalf of the ACLC, interveners in the case, Faisal Mirza and Virginia Nelder argued that the three year mandatory minimum imposes a differential burden on African Canadian offenders and perpetuates existing disadvantage contrary to the principles of equality and proportionality, as it largely prevents sentencing judges from applying their discretion to consider important systemic factors linked to an accused' racial identity that may have contributed to the offending behavior. "Without the discretion to tailor the sentence, the mandatory minimum sentencing regime perpetuates systemic discrimination," said Nelder. **Now that there is no longer a mandatory minimum, pursuant to *Criminal Code* section 718.2 sentencing judges are specifically directed by Parliament to consider non-carceral sentences for all offenders where appropriate. The Supreme Court has said that a sentencing judge's duty requires consideration of all available information regarding the factors that have contributed to bringing the particular offender before the courts. Nelder points out that "this necessarily means that background and other systemic factors should be taken into account in sentencing African Canadians."** The ACLC expects that this decision will have a beneficial impact on the African Canadian community by limiting and reducing the disproportionately high rates of incarceration of African Canadian offenders in the federal prison population.

Dirk Derstine, counsel for the Appellant Nur, and Virginia Nelder will hold a press conference to discuss the Court of Appeal decisions at 2pm this afternoon at Metro Hall, 55 John Street, Room 308.

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