AFRICAN CANADIAN LEGAL CLINIC

Promoting Justice, Defending Equality, Building Community

November 4, 2014

MEDIA STATEMENT - *FOR IMMEDIATE RELEASE*

On Friday, November 7, 2014, the African Canadian Legal Clinic (ACLC) will be intervening in an important Supreme Court of Canada matter, *The Queen v Nur*, which will consider the constitutionality of mandatory minimum sentences for possession of a restricted firearm.

This case is an appeal by the Crown of the November 12, 2013 decision of the Ontario Court of Appeal (ONCA) striking down s.95(2) of the *Criminal Code*. This provision calls for a three-year mandatory minimum sentence for a first time offence of possession of a restricted firearm. The ONCA ruled that this provision creates a grossly disproportionate sentence, amounts to cruel and unusual punishment and is therefore unconstitutional due to its violation s. 12 of the *Charter* in particular. The ONCA based this decision on the fact that section 95 is written so broadly that it captures offenders with diminished levels of moral blameworthiness.

Contesting the Crown's appeal at the Supreme Court of Canada will be Anthony Morgan, ACLC Policy and Research Lawyer, and Faisal Mirza, ACLC Co-counsel. As the ACLC did at the Court of Appeal, they will once again assert the argument that the three-year mandatory minimum sentence is grossly disproportionate, and thereby violates the *Charter*.

The ACLC's position is that this mandatory minimum should be struck down by the Supreme Court because it prohibits sentencing judges from accounting for relevant socio-economic factors of systemic discrimination and historic disadvantage that have contributed to the offending behaviour and which could lead to a reduced sentence. In effect, this mandatory minimum significantly undermines the ability of judges to craft a proportionate sentence. The ACLC's lawyers will argue that the three-year mandatory minimum imposes a differential burden on African Canadian offenders and perpetuates existing disadvantage due to the ways in which it prevents sentencing judges from considering the ways the particular social and economic realities of African Canadians heightens their exposure to this offence. The ACLC is arguing for the establishment of a legal principle that requires judges to examine the relevant and important systemic factors that are linked to the racial identity of an African Canadian accused and which may have contributed to their offending behaviour.

Margaret Parsons, the Executive Director of the ACLC states, "To craft an appropriate sentence, judges must be directed to consider whether the contemporary impacts of the historical legacies of slavery, colonialism and anti-Black racism that continue to affect African Canadians played a role in the offender's involvement in the crime." Ms. Parsons went on to say, "For too long Canadian judges in the criminal justice system have taken a colour-blind approach when it comes to African Canadians, and in result, the rate of incarceration of African Canadians in federal prisons has ballooned by almost 90% since the early 2000s. This hyper-criminalization and over-incarceration of our community continues to spiral out of control. This case offers the Supreme Court the opportunity to rebalance the scales of justice."

To learn more about the matter, please contact Anthony Morgan at morgana@lao.on.ca or by phone at 416 214-4747.

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