Editorial ? Some thoughts on sentencing

In this new year, one subject likely to come up in the House of Commons is reform of the Criminal Code of Canada's provisions setting minimum sentences for a wide variety of offences.

The Code has always had some minimum or fixed sentences, one example being life sentences with no parole eligibility for 25 years for anyone convicted of first-degree murder. However, the ?tough on crime? agenda of the Harper Conservatives included many new restrictions on the ability of trial judges to impose what they considered to be an appropriate punishment for the particular circumstances of the offence and offender.

We may never know whether any minimum sentence actually acted as a deterrent, since none of the offenders expected to be caught and therefore had no reason to reflect on the possible severity of the punishment. However Statistics Canada charts show the number of adults in custody in federal institutions steadily increased during the Harper government's decade in office.

In the circumstances, a recent article in the Globe and Mail should provide a nudge to the Trudeau government.

Written by three Aboriginal Legal Services members and Kent Roach, a professor of law at the University of Toronto, the opinion piece suggests sentencing reforms should top Trudeau's list of new year's resolutions.

Noting that the prime minister promised two years ago to ?completely implement? the Truth and Reconciliation Commission's 94 calls to action, the writers drew his attention to the 32nd call which, unlike most of the others, needed only ?a simple amendment to the Criminal Code.?

In it, the Commission called on the government ?to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.?

The Commission made that particular recommendation as a way of addressing what the Supreme Court of Canada recognized in 1999 as a crisis of Indigenous over-representation in prisons. In R v Gladue, the court noted sentencing principles under s. 718.2(e) of the Criminal Code directed courts to take into account non-custodial options, ?with particular attention to the circumstances of Aboriginal offenders,? and said those principles apply to all Indigenous persons, regardless of place of residence or lifestyle.

?The Supreme Court made this extraordinary statement at a time when Indigenous persons constituted 12 per cent. Today, the figure is between 26 per cent and 27 per cent of all prisoners. What was a crisis has become much, much worse,? the article said.

The writers contend that abolishing the minimum sentences would do more than reduce the overall rate of incarceration in Canadian prisons, which according to Statistics Canada, saw 40,147 adult offenders in Canadian federal and provincial prisons on an average day in 2015-16, for an incarceration rate of 139 per 100,000 population.

?This simple amendment would help address the over-representation of Indigenous people in prisons across the country . . . The public also could have saved money on prison sentences that judges thought were not necessary.?

Terming mandatory-minimum sentences ?a bad idea,? the writers said Parliament ?cannot possibly know all of the varieties of offences and offenders caught by them. They are blind to whether offenders live in abject poverty, have intellectual disabilities or mental-health issues, have experienced racism and abuse in the past or have children who rely on them. The mandatory-minimum sentence does not allow a judge to decide if incarceration is necessary to deter, rehabilitate or punish the particular offender.?

As we see it, that should be obvious to one and all, and there is no need for the government to study the issue before acting.