

Gladue and Ipeelee:
The Need for More
Emphasis on Part B

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Gladue 1999

- Interprets s.718.2(e) as remedial and in light of 1996 codification of restorative sentencing
- Serious case- domestic manslaughter
- Responds to evidence that Jamie Gladue takes positive steps: counselling, medical treatment
- No new sentencing hearing but approves of her release after 6 months with monitoring and substance abuse

Gladue

- New and different method of analysis in determining fit sentence for particular accused, particular offence and particular community that must consider:
- A) unique systemic factors which may have played a part in bringing offender before court
- B) **types of sentences and ways to apply sentencing purposes which may be appropriate because of Aboriginal heritage or connection**

Gladue

Absence of alternative sentencing does not eliminate duties under both A and B

May result in less jail time but no automatic reduction

Gladue reports (developed after the case) should mention them, but they may not/often not available. See TRC Vol 5 at pp. 239 ff

Ipeelee, 2012

- Growing overrepresentation: more than a crisis
- Error to require causal link but still need to relate background factors to offence and offender
- No serious offence cut off- mandatory in every case
- Ipeelee: Inuk with 24 convictions
- Ladue: residential school survivor with 40 convictions

Ipeelee, 2012

- Reduce Ipeelee's and Ladue's LTO breach from 3 to 1 year imprisonment
- Note struggles with addictions
- And failure to place Frank Ladue in an Aboriginal specific correctional context

But Problems

- As measured by increased overrepresentation among prisoners- (31% admissions to provincial jails and 29% to federal jails in 2018-19)
- Both *Gladue* and *Ipeelee* recognize need for non-criminal justice interventions but many demands on Indigenous communities and lack of stable funding

Responses

- TRC need to reduce overrepresentation both among offenders and victims
- better Indigenous corrections and other services and repeal mandatory minimums
- Getting a Gladue report and being informed is not enough: what is done with that often painful information?

Responses

- *My suggestion:* More attention has been paid to judicial notice of systemic factors under A and more work is required under part B to apply sentencing purposes and tailoring sentences in light of part A knowledge
- But courts resistant to re-thinking responsibility, denunciation, incapacitation and deterrence

Gladue/Ipeelee

Part B

- How should knowledge under Part A affect and shape the sentence?
- Need to re-examine and apply all the principles and purposes of sentencing in light of part A info about offender and community
- Harder to do: less progress than Part A
- *R. v. Morris* 2021 ONCA 680 at 77 seriousness of offence tied to denunciation and deterrence not related to offender

Gladue part B

- Look at level of blameworthiness beyond seriousness of the offence
- Proportionality as “a delicate task” *Lacasse* [2015] 3 SCR 1089 at para 12
- What does deterrence/ denunciation/incapacitation mean to this offender? This community?
- *R. v. Anderson* 2021 NSCA 62 at 151 citing *Gladue* imprisonment not successful in achieving sentencing goals
- *R. v. Sellars* 2018 BCCA 195 at 35
- *R. v. Okimaw* 2016 ABCA 246 at 87

Gladue Part B

- The hard work of Part B will generally be done by communities, counsel and trial judges
- Appeal courts need to be receptive to justified departures and not impose 1) serious offence cut off or 2) causal connection errors recognized in *Ipeelee*
- Exposure to Indigenous laws might be a form of deterrence, denunciation- s.19 of Criminal Code should not apply due to colonial displacement of Indigenous law and people

Conclusion

- Part A of *Gladue* a necessary start
- But need more attention to hard work of Part B
- Including knowledge and judicial deference to Indigenous law as outlined yesterday by Justices King and Smith and Dean Napoleon- see *Cree Legal Traditions* at http://www.indigenousbar.ca/indigenouslaw/wp-content/uploads/2017/10/cree_legal_summary.pdf
- Will require community, legal and correctional reforms and humility, truth and bravery