

1
2
3 **2017.01** **Full Implementation of the Supreme Court Decision in *R. v. Gladue***
4 **for Indigenous Offenders**

5
6 **Whereas,** the Supreme Court of Canada decision, in *R. v. Gladue*, recognized that
7 there are mitigating social and historical circumstances when sentencing
8 Indigenous offenders, which currently are not uniformly applied across
9 Canada; and

10 **Whereas,** a Gladue report is a pre-sentencing, case-specific report which is written
11 and used at any time where liberty may be lost for Indigenous people
12 accused of an offence; therefore, be it

13 **Resolved,** that national council of The Catholic Women’s League of Canada in 97th
14 annual national convention assembled urge the federal government to fully
15 implement the *R. v. Gladue* decision by directing the courts of Canada to
16 ensure that Gladue reports are provided to all judges before sentencing
17 Indigenous offenders.
18

19 **BRIEF: Full Implementation of the Supreme Court Decision in R. v Gladue**
20 **for Indigenous Offenders**
21

22 In its ground-breaking decision, *R. v Gladue*, the Supreme Court of Canada recognized that
23 pursuant to s. 718.2(e) of the *Criminal Code* of Canada, there are mitigating social and historical
24 circumstances that should be considered when sentencing Indigenous individuals, whether they
25 are on or off reserve. Judges were also mandated to consider an Indigenous person's life path
26 before sentencing (Lamar A. et al, Supreme Court of Canada, *R. v. Gladue*). This mandate
27 should carry forward for use in all future correctional decisions for each Indigenous offender
28 (Correctional Investigator Report 2015/16).

29
30 The Research and Statistics Division, Department of Justice Canada in its 2013 report, identified
31 a number of challenges involved in adapting the justice system to the circumstances of
32 Indigenous people. There are currently inconsistencies on policies and practices throughout the
33 provinces and territories reflecting the principles set out in the Supreme Court decision *R. v.*
34 *Gladue* (Research and Statistics Division, Department of Justice Canada 2013 report). In January
35 2016, the Office of the Correctional Investigator reported that the number of Indigenous people
36 in Canadian penitentiaries had just reached 25% of the total inmate population. Between 2005
37 and 2015, the federal inmate population grew by 10% while the Indigenous population increased
38 by more than 50%. For federally sentenced Indigenous women, their representation rate exceeds
39 35% of the in-custody women population (Annual Report – Office of the Correctional
40 Investigator 2015-2016). This over representation of Indigenous people is deplored by the *Truth*
41 *and Reconciliation Commission of Canada: Calls to Action* (Truth and Reconciliation
42 Commission of Canada). Changes to the *Criminal Code* in 1996 and then the *R. v. Gladue*
43 decision were intended to reduce the growing rate of incarceration of Indigenous people (Office
44 of the Correctional Investigator 2013) however, to date, little progress has been made.

45
46 Gladue rights are the rights of Indigenous people to have reports written and submitted
47 (Correctional Investigator Report 2015-2016). A Gladue report is case-specific and is written and
48 used at any time where liberty may be lost, for example at bail, sentencing, discipline and
49 penitentiary assignment. Gladue reports contain information on the unique circumstances of
50 Indigenous people accused of an offence. The court can consider these reports during sentencing.
51 Sentencing in the Gladue court focuses on restorative justice and community justice programs,
52 while also making sure that offenders receive fair sentence (lawfacts.ca).

53
54 The *R. v. Gladue* decision challenged Canada to acknowledge historical and social factors in the
55 lives of Indigenous people. Its full implementation would help restore, at least to some degree,
56 the dignity and respect we owe to these first people in Canada.

57 **Works Cited**

- 58 1. April, Sebastien, Orsi, Mylene, “*Gladue Practices in the Provinces and Territories*,” Research
59 and Statistics Division, Department of Justice Canada pp.1, 11-13
- 60 2. Canada Government of, Justice Laws, 718.2 (e) of the Criminal Code
- 61 3. Lamar A. et al, Supreme Court of Canada, R. v. Gladue.
62 <https://scc-csc.lexum.com/scc-csc/en/item/1695/index.do>
- 63 4. Legal Aid Ontario, Legal Information Resource, <http://lawfacts.ca/search/node/gladue>
- 64 5. The Correctional Investigator, Government of Canada. *Annual Report of the Office of the*
65 *Correctional Investigator: 2013*. Rep.
- 66 6. The Correctional Investigator, Government of Canada. *Annual Report of the Office of the*
67 *Correctional Investigator: 2015 – 2016*. Rep.
- 68 7. Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission*
69 *of Canada: Calls to Action*, Page 3, No. 30 (2015)

70 **Action Plan**

- 71 1. Write to the prime minister, minister of justice and your member of parliament urging
72 them:
- 73 • To become aware of the need to fully implement the Gladue Decision so that
74 comprehensive, individualized reports are made and used in correctional decision-
75 making for each Indigenous offender when they enter the correctional system, and for
76 those already in the system for whom this overarching document has not been
77 completed
- 78 • To ensure that judges, lawyers and legal personnel ask for and use comprehensive,
79 individualized Gladue reports in correctional decision-making for Indigenous people.
- 80 2. Councils invite an Indigenous person who has come into contact with the correctional
81 system to share their story with them.
- 82 3. Monitor the federal government’s response to the request of this resolution.