

GLADUE

YWCA Training
Manitoba 2018

Criminal Code- s.718

Purpose of Sentencing
718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

s. 718 (Con't)

s. 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

s. 718.2 A court that imposes a sentence shall also take into consideration the following principles:

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

'Gladue' Factors

- Fundamental Principle of Sentencing – Proportionality;
- New Approach does not mean overhaul, means of alleviating disadvantage;
- Fit and Proper Sentence;
- Always Individualized process.

Gladue – 'with particular attention..'

- Requires a different methodology for assessing a fit sentence;
- Must take judicial notice of systemic and background factors unique to Aboriginals;
- Must examine all culturally appropriate sentences alternatively available to imprisonment;
- Result is a new remedial approach and not a recodification of existing principles.

Ipeelee

- 2012 decision involving breach of LTSO (= *Gladue* applies to 'serious offences');
- Court endorses the practice of 'Gladue Reports';
- Applies to all sentencing matters involving Aboriginal offenders;
- Does not require casual link to be demonstrated;
- Reinforced 1999 decision and applicability of *Gladue* principles.

Common criticisms of *Gladue*

- 1.) Sentencing is not an appropriate means of addressing overrepresentation of Aboriginal people;
- 2.) *Gladue* principles are essentially a race-based discount for Aboriginal offenders; and
- 3.) Providing special treatment and lesser sentences to Aboriginal offenders creates distinctions between offenders who are similarly situated (violation of the sentencing principle, parity).

Court Responds

- ✓ Sentencing IS appropriate to address overrepresentation.
- 1.) Deterrence of criminality & rehabilitate offenders ARE codified objectives of sentencing. "To the extent that current sentencing practices do not further these objectives, they must be changed to meet the needs of Aboriginal offenders and their communities."

Court Responds (con't)

- ✓ Not a race-based discount.
- 2.) *Gladue* factors further sentencing principles and is consistent with requirement that sentencing judges engage in an individualized assessment of all relevant factors and circumstances for all offenders.

Court Responds (con't)

- ✓ Parity not violated.
- 3.) Sentencing parity principles requires that similar sentences be imposed on similar offenders for similar offences committed in similar circumstances.

MB *Gladue* Implementation Problems

- 1.) Justice system resources not dedicated to allow for courts to apply *Gladue*;
- AND
- 2.) Inadequate resources for community-based Aboriginal justice initiative, healing programs, and other community supports necessary for alternatives to incarceration.

'*Gladue*' Factors Reiterated

- Fundamental Principle of Sentencing – Proportionality;
- New Approach does not mean overhaul, means of alleviating disadvantage;
- Fit and Proper Sentence;
- Always Individualized process.
