EXECUTIVE SUMMARY

Aboriginal people remain disproportionately over-represented in Canadian correctional institutions. This is an enormously complex problem that encompasses broad historical, political, economic, and social factors. There are no ready-made solutions for it, and the social and financial needs of Aboriginal communities are often overwhelming. Given this challenging reality, Aboriginal community members and members of the legal system must develop ways to effect real change on the ground with communities and systemically within the legal system. The *Justice Requires Humanity, Gladue: a Message for the Millennium* symposium was a collective first step for Aboriginal community and legal system members to speak to one another about these problems and to begin exploring what can be done to reduce the incarceration rate of Aboriginal people.

The core idea for the symposium originated from the Supreme Court of Canada's (S.C.C.) 1999 decision, *R.* v. *Gladue.*[1] In *Gladue*, the S.C.C. interpreted s. 718.2(e) of the *Criminal Code*[2] to require judges to examine alternatives to imprisonment at sentencing "with particular attention to the circumstances of Aboriginal offenders". This establishes a two-step process: (1) the defence counsel must present the unique systemic factors that may have brought the Aboriginal offender to the courts (i.e., personal, community, and cultural background), and (2) the court must consider the types of sentencing procedures and sanctions that may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection. This means that s. 718.2(e) is remedial in nature and that *healing must be part of sentencing*. While there is disagreement about whether *Gladue* will actually reduce the over-incarceration of Aboriginal offenders, this S.C.C. decision is a significant recognition of the position of Aboriginal offenders in the Canadian criminal justice system as a "sad and pressing social problem" and one that "may reasonably be termed a crisis".

Spearheaded by the Victoria-based Spirit of the People Aboriginal Support and Healing Centre Society (Spirit of the People), the symposium brought 150 Aboriginal and non-Aboriginal people together representing the judiciary, Crown, bar, corrections, law enforcement, and a range of Aboriginal community groups. Speakers and participants discussed the Canadian government's historic and current treatment of Aboriginal people, the consequent social and political dysfunction within Aboriginal families and communities, and how Canada's colonial history is continued inside individual lives in the form of substance abuse and addictions, violence, suicide, family and generational breakdown, poverty and powerlessness, and incarceration.

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[1] *R.* v. *Gladue*, [1999] 2 C.N.L.R. 252; [1999] S.C.R. 6888 [hereinafter *Gladue*].
[2] *Criminal Code*, R.S.C. 1985, c. C-46.

From these discussions, participants began to consider the necessity of building healthy Aboriginal communities and preliminary recommendations for addressing the incarceration issues and needs of Aboriginal offenders. Experiences and ideas ranged widely from creating a parallel Aboriginal justice system to reforming the current legal system. Many specific obstacles were identified including lack of funds, poor allocation of existing resources, absence of government will to support meaningful or effective change, importance of cultural identity and spirituality, necessity of Aboriginal healing to overcome the trauma of history, lack of understanding within the judiciary and communities regarding Fetal Alcohol Syndrome and Fetal Alcohol Effects (FAS/FAE), and the need to develop restorative and culturally-based approaches to dealing with conflicts and crime.

Symposium speakers and participants acknowledged that the symposium was only a small beginning to the work that is necessary to change the reality of Aboriginal offenders in Canada. Further, delegates expressly recognized that change will only be possible with the direct and active involvement of Aboriginal communities and players throughout the legal system. Opportunities must be created for people to continue exploring the serious questions that arose during the symposium (e.g., Who is responsible for paying for *Gladue* reports?). Constructive participatory forums are necessary to enable people to continue learning, planning, and working together to support one another in the struggle to build a different future for Aboriginal people.

Overall, Spirit of the People concluded that the *Justice Requires Humanity, Gladue: A Message for the Millennium* symposium was successful. Spirit of the People accomplished its goals of promoting awareness about the issues facing Aboriginal offenders and generating action through dialogue among representatives from the judiciary, the Crown, the bar, corrections, law enforcement, and a range of Aboriginal community groups. The speakers shared valuable information and the participants were actively engaged in the discussions. There was broad agreement among the participants and presenters about the need to continue the work and the dialogue which began at the symposium.

Funding for the symposium was generously provided by the Law Foundation of B.C., with additional financial contributions provided by theJustice Department and Dakota West Consulting. This report was funded by the Law Commission of Canada. Generous donations and in-kind contributions were provided by Thrifty Foods, B.C.G.E.U., local merchants and artists, and many, many community members and volunteers from the Victoria area.

The symposium was sponsored by Spirit of the People Aboriginal Support and Healing Centre Society and was coordinated by Shirley Lang, Dakota West Consulting.

SYMPOSIUM PRESENTERS

The Presenters Were:	The Topics Were:
Mary-Anne Thomas ▸ spiritual leader ▸ Esquimalt First Nation	spiritual blessing and Coast Salish welcome
Zac Kremler ▸ Cherokee Nation ▸ President of Spirit of the People (Victoria)	overview of Aboriginal people's situation in Canada S.C.C.'s *Gladue* decision
Bob Crawford ▸ Algonquin Nation ▸ founder and CEO of First Nations Protective Services in Toronto ▸ 27 years as a police officer (Sergeant for 10 years) with the Metropolitan Toronto Police Department, founder of the Aboriginal Peacekeeping Unit with the Toronto Police Service, founder of Spirit of the People Healing Centre for Aboriginal ex-offenders, and Toronto Aboriginal Social Services Association ▸ board member for Spirit of the People Aboriginal Support and Healing Centre Society (Victoria), Aboriginal Legal Services (Toronto), National and Regional Aboriginal Committee (C.S.C., Toronto) Mayor's Conference on Race Relations, Canadian Association of Chiefs of Police, and George Brown College Board of Governors	problems experienced by Aboriginal people in conflict with the legal system meeting inmate needs at all stages of incarceration how to create positive change for Aboriginal inmates and communities

Mavis Henry

- member of the Pauquachin First Nation
- former elected Chief of the Pauquachin First Nation
- currently enroled in the Indigenous Governance Master's degree program, University of Victoria
- presently serving on the National Advisory to the Law Commission of Canada

- colonization of Aboriginal people in Canada includes the criminal justice system and federal legislation
- Canadian government structures do not meet Aboriginal people's needs
- Aboriginal people must meet own needs and create own structures
- safety of Aboriginal women and children is usually forgotten
- importance of capacity building for Aboriginal people
- Aboriginal cultures are critical to Aboriginal people's future
- community integration of Aboriginal inmates must be supported
- Aboriginal people are internally colonized and oppress each another

John Elliott

- member of the Coast Salish Nation
- teacher of Coast Salish language, history, and culture

- conflict between Aboriginal people and the Canadian legal system
- Coast Salish people's system of law provides a map for the future
- restoration of Aboriginal justice systems necessary

Charles Elliott

- Coast Salish Nation
- professional artist for the last 37 years
- born on the Tsartlip Reserve, Saanich Peninsula
- raised and disciplined by his parents and family with the traditional teachings of the Saanich people
- 10 years on Tsartlip Band Council
- 10 years on the Saanich Indian School Board
- 4 years with the Saanich Native Fisheries
- 11 years with the Lauwelnew Parents Advisory Committee

- history of Coast Salish people
- residential schools and colonization at the root of Aboriginal people's dysfunction
- government created Aboriginal people's problems, and its attempts at solutions are inadequate
- Aboriginal people must be self-reliant, develop own solutions, and stop assimilation

Chief Andy Thomas

- hereditary chief, Esquimalt First Nation
- elected Chief of the local Esquimalt Nation since 1972
- involved with the Tribal Council, Assembly of First Nations, B.C. Summit, and Union of B.C. Indian Chiefs

- colonization has disrupted Aboriginal legal systems and damaged Aboriginal communities
- culture offers hope for the future and hereditary systems provide stability
- restorative systems of traditional justice must be implemented
- resources are necessary for Aboriginal communities to heal

Donna Joseph

- member of the Kwagiulth Nation
- from the Tsawataineuk Band, northern Vancouver Island
- Native Court Worker in Victoria for 5 years (the only court worker for the Victoria area)

legal system is only just beginning to mitigate sentences for Aboriginal youth who return to their culture

- guest speaker to the law centre, social worker programs, criminology classes, and many First Nations women's groups
- participant in all First Nations cultural ceremonies
- elected Elder for the Tsa-Kwa-Luten Healing Lodge, and serves on many boards including the Law Society, First Nations Advisory Board of Camosun College, and Family Court Committee with Victoria City Hall

- lots of work remains to change the situation of Aboriginal people in conflict with the legal system
- Aboriginal legal professionals are needed in the legal system

Honourable Thomas J. Gove

- practised law 1974-90 with an emphasis on family, youth, child advocacy, and criminal law
- served as a Judge of the Provincial Court of British Columbia 1990-94 for family, youth, and criminal cases
- 1994-95 served as Commissioner of Inquiry into Child Protection
- since 1996, practised and taught case conferencing in family and child protection cases
- presented over 75 keynote addresses to conferences, forums, and meetings on child and youth welfare and advocacy
- currently working on conferencing, developing an educational program on drug criminality

- *Youth Criminal Justice Act*[3]
- *Youth Criminal Justice Act* creates sentencing flexibility for judges by treating children as children
- *Youth Criminal Justice Act* emphasizes alternatives to standard custody and trial methods
- new conferencing provisions provide tools for Aboriginal communities to tell the stories of their members to the judge

Alan Markwart

- Acting Assistant Deputy, Minister of Child and Youth Mental Health & Youth Justice
- involved with justice system for almost 30 years

- *Youth Criminal Justice Act* to provide positive change for Aboriginal youth and communities

[3] *Youth Criminal Justice Act,* Bill C-3, 36th Parliament 2nd Session. This new Act will replace the *Young Offenders Act* during the spring 2002.

- responsible for policy and planning for youth correctional services in B.C. and for federal/provincial relations respecting youth justice legislation and cost sharing

- *Youth Criminal Justice Act* provides opportunities to address the needs of Aboriginal youth
- *Youth Criminal Justice Act* encourages Aboriginal communities to get involved in helping their young offenders

Alvin Kube

- Saulteau First Nation, northeast B.C.
- degree in sociology
- honourable discharge from the Canadian Army, Princess Patricia's Light Infantry
- decorated for service with the U.N. Emergency Force in Cyprus
- with the Federal Government for 13 years (11 years with the CSC)
- Deputy Warden for a federal prison for Aboriginal offenders in Hobbema, Alberta

- over-representation of Aboriginal people in prisons a complex issue
- participation of Aboriginal communities is required to help Aboriginal inmates
- ss. 81 and 84 of the *Corrections and Conditional Release Act*[4] allow for agreements with Aboriginal communities

Kathy Louis

- Cree Nation
- regional vice-chairperson of the National Parole Board, Pacific Region
- facilitated workshops for 23 years for the criminal justice system and National Parole Board
- one of the Aboriginal board members that implemented the Aboriginal Elder Assisted Parole Hearing with the National Parole Board

- presentation included interviews with:

  Aaron Bruce, Squamish Justice program

  Louise Wilson, Gitxsan Unlocking Aboriginal Justice program

  Daisy Clayton, Nisga'a probation officer, Prince Rupert

[4] *Correctional and Conditional Release Act*, R.S.C. 1992, c.20.

Honourable Carlie Trueman

- provincial court judge, Criminal Division, Main St., Vancouver
- practised criminal law in northern B.C.
- called to the bar in 1980
- appointed to the B.C. Provincial Court in 1993
- interested in how alcohol and other drugs affect the lives of people and their contact with criminal justice
- member of the Law Foundation's Advisory Committee for the publication of *Fetal Alcohol Syndrome and the Criminal Justice System*
- volunteers with the Lawyers' Assistance Program

- what FAS/FAE is and its consequences for the criminal justice system
- FAS/FAE discrimination arguments under ss. 7 and 15 of the *Charter of Rights and Freedoms*[5]

Bruce Parisian

- member of the Cree nation
- Executive Director of the Victoria Native Friendship Centre since 1999
- owner of Creeation Consulting Management Inc. specializing in delivery of training, strategic and policy planning, evaluation, and organizational development services
- 20 years' experience in planning, developing, and evaluating programs for women, youth, income assistance recipients, physically challenged, organized labour, on- and off-reserve Aboriginal populations, and groups disadvantaged by geographic location and/or ethnicity (includes 17 years with the federal government as a program manager)

- distinction between services provided by the federal government to Aboriginal people on reserve and those in urban settings
- capacity building an important issue for urban Aboriginal people to address
- how to define community in urban setting
- existing resources for Aboriginal people

[5] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter the Charter].

Honourable A.C. Hamilton, Q.C.

- lawyer for 21 years
- appointed to the Manitoba Court of Queen's Bench in 1971 - Superior Court Judge for 21 years
- author of 1994 report, *A New Partnership,* for the Minister of Indian Affairs and *A Feather, Not A Gavel: Working Towards Aboriginal Justice*
- extensive involvement with Aboriginal justice issues in Manitoba and member of the Aboriginal Justice Inquiry Commission
- presently the Chairman of the Board of Governors for the Manitoba Ochichakkospipi Healing Lodge in Crane River (reintegrates federal offenders with their families and communities)
- founding member of the Indian and Metis Friendship Centre in Brandon, Manitoba
- in 1993, retired early to work on mediation and Aboriginal issues

- First Nations cultures and histories unique in Canada
- alternative systems of law must be considered in order to enable Aboriginal communities to heal
- legal system disempowered Aboriginal communities
- *Gladue* imposes new obligations on lawyers and courts

Ross Green, Q.C.

- lawyer and author, Saskatchewan
- employed by the Legal Aid Society in Saskatchewan
- Bachelor of Law, Masters of Law, and degree in commerce
- author of *Justice in Aboriginal Communities: Sentencing Alternatives*
- many publications including *Treat* Gladue *As Call to Action* (March 2000)
- qualified as an expert in the area of community sentencing by Saskatchewan Court of Queen's Bench *(R*. v. *Carratt*, June 24, 1999)

- courts must consider *Gladue* reports
- *Gladue* reports reflect the Aboriginal lifestyles and social economic issues
- disproportionate number of Aboriginal people incarcerated in Canada
- Aboriginal concepts of justice clash with western legal system

Victoria Desroches

- Cree Nation
- holds degrees in social work and law
- Ph.D. candidate
- originally from Big Trout Lake, northern Ontario (near Kenora)
- private practice – criminal law

- *Gladue* a positive step towards both addressing the unique needs of Aboriginal offenders and developing alternatives for Aboriginal people entangled in the legal system
- *Gladue* obligates courts to consider alternatives for offenders at the time of sentencing
- *Gladue* reports must be treated as fresh evidence and failure to consider reports should be appealed
- current legal system is focussed on punishment, not healing
- developing case law supports creative application of *Gladue*

Dancers, drummers, and singers

- members from the Coast Salish Nation, Kwagiulth Nation, and Nuu-Chah-Nulth Nation

celebrated traditional dances, drumming, and songs

- history of the dances and significance of dance techniques
- importance of dance and laws behind its transmission

PRESENTATIONS

Presenters	Presentation Highlights *(paraphrased)*
Zac Kremler	**Highlights** ▸ with the *Gladue* decision, the S.C.C. attempted to ameliorate the bitter history of the Canadian government and Aboriginal people ▸ government policies were intended to decimate or assimilate Aboriginal people ▸ Aboriginal people were systematically stripped of their independence, traditions, and spirituality, and this has resulted in the over-representation of Aboriginal people in Canadian prisons ▸ to concur with *Gladue*, the historic focus on punishment must change and the judiciary must be open to restoring relationships between the offender, victim, and community ▸ symposium provides a valuable venue for participants to overcome preconceived beliefs, assumptions, and lack of knowledge about Aboriginal people ▸ the Aboriginal journey to recover has been a real challenge for Aboriginal people and their communities, but the question remains, "what can be done?" **Recommendations** ▸ ***Gladue* can be a starting point for positive social change for Aboriginal people.** ▸ **Dialogue between all the stakeholders will enable the development and implementation of strategies to promote positive change in Aboriginal communities.**
Bob Crawford	**Highlights** ▸ participation in First Nations culture and ceremonies encourages personal healing and search for balance in own life ▸ there is a need for strong support for inmates prior to, during, and after incarceration ▸ Aboriginal offenders are too often without any support

- for lack of intervention or access to a support network, many Aboriginal people have fallen through the cracks
- Spirit of the People (Toronto) founded and designed specifically to serve the needs of Aboriginal people and address the lack of appropriate programs
- disproportionate number of Aboriginal people in Canadian prisons—in Canada, Aboriginal people constitute 3% of the total population but 15-20 % or more of the offenders in prison
- system has let Aboriginal people down—not merely an Aboriginal problem, but a Canadian issue
- inmates in prison are isolated—upon release, offenders often are not welcome back to their communities and many don't want to go back to place of origin
- many inmates end up moving to the city, and because they lack life skills, their urban experience is traumatic
- an offender who does not receive some type of support or intervention within the first 30 days of release will almost always return to prison because they will re-offend until they are re-incarcerated
- Aboriginal population growing five times as fast as the mainstream population
- Aboriginal over-representation in prison is a societal burden and over-crowded prisons means that offenders will likely end up on the streets

Recommendations

- **The issues of Aboriginal youth must be addressed immediately.**
- **Positive social change will only happen with cooperation, partnerships, and communication between government, the justice system, and Aboriginal communities.**

Mavis Henry

Highlights

Imposition of Criminal Justice System

- current justice infrastructure was not created by Aboriginal people, so does not address Aboriginal needs
- Aboriginal people must reclaim their history because it shapes their

unique identity

- British and Canadian history and laws reflect a lack of understanding about Aboriginal people
- criminal justice system is in need of reform, but it is hard to work within a colonial system, so the system must be "de-colonized"
- Indigenous peoples are unique—have special connections to the land and unique understandings and beliefs about natural order (e.g., west coast Aboriginal people have a strong connection with cedar without which they cannot survive)
- prisons not designed to address the spiritual needs of Aboriginal inmates, so communities need to get involved
- workers in the criminal justice system are reluctant to think of themselves as colonizers
- over-representation of Aboriginal offenders in prison reflective of a historically entrenched colonial philosophy, and a colonial industry of controlling Aboriginal people
- legal justice is not social justice, and there are too many professionals in the way of an offender being heard

Indian Act[6] ***and Upcoming B.C. Referendum***

- *Indian Act* has been a control mechanism employed by the federal government and has had a detrimental effect on Aboriginal communities, but First Nations people need the federal resources to try to maintain some state of social wellness
- fears that if *Indian Act* is repealed, resources for Aboriginal needs will no longer be allocated for Aboriginal needs (i.e., as much as the *Act* confines Aboriginal people, it is still a guaranteed source of financial support)
- upcoming B.C. referendum is another attempt at legislative genocide, and educating the average non-native about Aboriginal issues is extremely difficult
- any legislation derived from provincial referendum process will not reflect Aboriginal expectations
- hard to counter anti-Indian politics because Aboriginal people do not have the command or sympathy of the media—Aboriginal voice or opinion is not heard or understood

[6] *Indian Act,* R.S.C. 1985, c. I-5.

Aboriginal Women

- increasing number of groups addressing the issues of Aboriginal people in general, but there are almost no services for women

Aboriginal Children

- serious safety concerns regarding Aboriginal children living in violent situations—abuse becomes normalized in many Aboriginal communities
- Aboriginal youth have too few positive role models in these violent circumstances and there are few opportunities to learn otherwise

Urban Aboriginal Population

- urban displacement of Aboriginal people without ties to their Aboriginal community causes a loss of connection to traditional place and history
- urban Aboriginal population is young and poorly educated, many are unemployed and have many children, and there is little access to basic social services and health care
- that urban Aboriginal people can easily return to their community and be taken care of is a myth

Denial

- "Get over it." reflects lack of support for Aboriginal issues and provides no incentive for politicians to learn respect for humanness
- Aboriginal people ignored to the point where they say, "I do not have power; my voice, experience, and history don't matter."
- Aboriginal people need opportunity to practise their rights, traditions, and culture—without some recognition of Aboriginal people's rights, there won't be progressive consultation with communities by government

Reintegration

- Aboriginal communities concerned about maintenance and support when an offender is returned to serve time in their community—these must be addressed or the offender will likely return to their old patterns
- offenders' situations often exacerbated by existing problems like FAS/FAE or addiction—many communities want to rehabilitate the offender, and bring them back into the community, but often

lack the capacity to handle these problems

Neo-colonialism

- colonization not just about non-native actions; Aboriginal people must look at how they have adopted foreign ways of controlling and abusing power
- Aboriginal people must look at internal social justice issues and must learn to speak for themselves—Aboriginal peoples' voices too often silenced, and the oppressed become the oppressors

Recommendations

- **Aboriginal communities must restore basic ideals and values of caring in order to recognize human value.**
- **Young people need a supportive environment in order to improve and reclaim themselves.**
- **The rights and issues of Aboriginal women and children have been overlooked and must be recognized in all future work.**
- **Governments must reassess their manner of interaction with Aboriginal people.**
- **Capacity building is one of the keys to success—Aboriginal people must secure government support through funding initiatives in order to provide effective, Aboriginal-oriented support programs.**
- **Aboriginal people must be active in capacity building process and must create structures that reflect Aboriginal unique needs and expectations.**

John Elliott

Highlights

Coast Salish Legal System

- Coast Salish people here as long as the winds and rocks, and lived in a fair and just way, but a different justice system has been imposed with negative consequences to Coast Salish traditions and culture
- Coast Salish laws derived from the Creator—laws were severe and highly regarded by his people
- Coast Salish people already had legitimate system of law in place that reflected their values, and people must return to these

teachings

Families

- people want love—need their families and want the best for them
- it is wrong to look at our families in a negative way—Aboriginal children are the most loved and most wanted, and are precious gifts to the community

A Coast Salish Story

On Saturna Island, six girls were turned to stone because the community left them unguarded. They were left vulnerable without anyone watching them while they played and swam. The Creator turned them to stone. They are still there on their tummies. Because they were neglected, the Creator took responsibility for them and made them perpetual symbols of the need to love and protect children.

Recommendations

- **Aboriginal people must return to traditional teachings and Aboriginal justice systems**

Charles Elliott

Highlights

- Aboriginal people need to become reliant upon themselves and de-assimilate—historically Coast Salish people had own laws
- colonization is unjust under international law
- colonial conditions mean First Nations people can never enjoy a full life because they are denied the full existence of rights that all free nations enjoy
- in residential school, he was denied his language and experienced oppression and indoctrination—a common experience for Aboriginal people, and they still suffer today
- living conditions must change—inadequate funding for housing, little opportunity for our grads and post-secondary grads, no opportunities within our own community, only government administrative jobs
- his own community must work towards ridding itself of assimilation
- 1996 *Royal Commission on Aboriginal Peoples* resulted in nothing for Aboriginal people
- almost no results from the Supreme Court of Canada's decision in *Delgamuukw*[7]
- many government studies and reports not acted upon—governments' current consultation practices ineffective and inadequate
- existing programs inadequate to deal with the corruption and abuse in the Aboriginal communities
- current governmental regime only created problems—attempts at solutions minimal and grossly inadequate

Recommendations

- **There must be effective consultation by government with Aboriginal families, individuals, and band councils.**
- **Aboriginal people must develop their own solutions to deal with community dysfunction.**
- **Future programs must be geared towards independence, self-**

[7] *Delgamuukw* v. *British Columbia*, [1997] 3 S.C.R. 1010.

help, and the survival of Aboriginal people.

Chief Andy Thomas

Highlights

- Aboriginal people had own justice systems, but now they are corralled like animals—Church and government responsible for this
- residential schools were not schools, but prisons—Indian people looked after better in jail than in residential schools
- Church and government should be charged for their crimes against Aboriginal people and put in their own jails
- years of oppression have affected Aboriginal people
- only way for his people to become healthy again is to return to their traditional ways—includes working to implement restorative systems of traditional justice
- unlike elected chiefs, the hereditary chiefs do not change every two years, so hereditary system is more stable and he is "better able to work in the trenches"
- legal process is a legal system not a justice system because it does not give people justice, but instead fills jails

- Aboriginal Healing Foundation has recently helped Esquimalt to develop a traditional restorative justice program
- many volunteers work in restorative justice today
- land claims are a lawyer's dream because it costs a lot of money to go through the courts
- legal system, Church, police, and government have abandoned First Nation people, and now they (First Nations) are abandoning themselves (e.g., if people phone in an incident to the police, no one shows up; the Church called the Indian children who attended public school devils)
- need for resources, especially mental health dollars—money allocation is based on population rather than need, so people are unable to get proper support
- difficult to return to teachings when the communities are without their traditional teachings—if the elders do not know their traditions, the knowledge is not passed on

- if families share, they can survive—people are thirsty and hungry for those teachings—the Longhouse kept the Coast Salish teachings alive

Recommendations

- **Aboriginal people must get off the reserves and return to their territories.**
- **Aboriginal people must return to their traditional system of laws.**
- **There should be community programs for prevention and trauma intervention.**
- **Capacity building must be supported in Aboriginal communities.**
- **Communities must work together to develop an understanding about their issues and history, and must effectively relate this approach to programming.**
- **Rehabilitation programs must come from a healthy perspective and must be comprehensive.**
- **Aboriginal people need adequate funding and opportunity to rehabilitate themselves, but this can only be done through learning the traditional ways, and returning to traditional systems.**
- **There is a need to deal with people individually, on a case-by-case basis.**

Donna Joseph

Highlights

- spirituality is a lot of work at the beginning—it involves living a good life to create goodness around oneself
- value of returning to traditional teachings is not only rewarding for the offender, but now the courts are increasingly recognizing these efforts in sentencing
- many positive experiences come out of her work (One young man whom she was able to reach through her teachings was genuinely interested in reclaiming his identity, and worked hard to do so. She related his work with the court, and explained that he was on the right path in trying to reclaim his culture and traditions. The result was a better sentence for the young man.)

- legal system is horrible, complicated, and vast
- tries to find common ground with her clientele—it is immediately obvious who is ready to change, and this makes her go that extra mile when working with the Crown and the lawyers on behalf of her client
- numerous obstacles to incorporating cultural components into the lives of young people, and many bands are not willing to help out—however, other bands are willing to assist their youth (e.g., with canoe trips and tribal journeys)
- legal system in Victoria is open to recognizing culture at the time of sentencing, but that the process requires a lot of time
- legal system is open to mitigating sentencing for Aboriginal youth who return to their culture, but there is still a lot of work to be done

Recommendations

- **Communities and the courts must be pro-active with Aboriginal youth to help and encourage them to escape the legal system.**

Honourable Thomas J. Gove

Highlights

Youth Criminal Justice Act

19.(1) A youth justice court judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a youth worker may convene or cause to be convened a conference for the purpose of making a decision required to be made under this Act.

(2) The mandate of a conference may be, among other things, to give advice on appropriate extrajudicial measures, conditions for judicial interim release, sentences, including the review of sentences, and reintegration plans.

(3) The Attorney General or any other minister designated by the lieutenant governor in council of a province may establish rules for the convening and conducting of conferences other than conferences convened or caused to be convened by a youth justice court judge or a justice of the peace.

(4) In provinces where rules are established under subsection (3), the conferences to which those rules apply must be convened and conducted in accordance

with those rules.

41. When a youth justice court finds a young person guilty of an offence, the court may convene or cause to be convened a conference under section 19 for recommendations to the court on an appropriate youth sentence.

42.(1) A youth justice court shall, before imposing a youth sentence, consider any recommendation submitted under section 41, any pre-sentence report, any representations made by the parties to the proceedings or their counsel or agents and by the parents of the young person, and any other relevant information before the court.

- *Youth Criminal Justice Act* has new and exciting provisions for rehabilitation and resolution outside of the standard legal justice system methods
- new provisions of the *Youth Criminal Justice Act* have extra-judicial measures that may limit the use of custody, and there are special provisions for serious violent offences

- *Youth Criminal Justice Act* includes schemes for diversion measures and alternatives to incarceration—ways that the new *Youth Criminal Justice Act* tries to push cases out of the system and attempts to deal with them in an informal and timely way
- *Youth Criminal Justice Act* presumes that the court should consider alternatives for all non-violent offences—that detention is not necessary for protection of public's safety
- new provisions reflect the great concern about remand overuse by introducing a number of legal criteria restricting the use of remand—remand is not a substitute for addressing mental health and child protection issues
- purpose of sentencing is to make an offender accountable through the applications of sanctions that have meaningful consequences
- sentencing must not result in punishment that is greater than the crime—be as least restrictive as possible and focus on proportionality
- alternatives to be used more often: judicial reprimand (just short of conditional discharge), absolute and conditional discharge, intensive support supervision, and deferred custody (a conditional sentence for youth for non-serious crimes)

- standard custody no longer customary practice except for special circumstances (e.g., s. 42 special provision for rehabilitative sentences for presumptive offences such as murder, sexual assault, serious violent crimes)
- problematic is the absence of the incorporation of the *Gladue* provisions into the new *Youth Criminal Justice Act*—may negatively impact Aboriginal youth and justice unit's use of remand
- *Youth Criminal Justice Act* is extremely complex—contains 200 sections, but still fails to address many topics, such as victim safety and security
- there is now the option of intensive youth rehabilitation, instead of handing out adult sentences

Conferences

- inclusion of conferences in the *Youth Criminal Justice Act* emphasizes a new openness towards sentencing

- children must be treated like children and this can be accomplished through conferencing, but the process takes longer, and requires more legal work to be done
- *Youth Criminal Justice Act* could be used in different ways across the country—people in B.C. employ the current *Youth Criminal Justice Act* in the most innovative manner in the country
- three possible types of conferences:

  1. *conferences outside the court system where no transcript is kept by the court* (e.g., families involved in conferences set up by the RCMP, schools, etc.) and which do not need to be related to crime legislation or cover the conventionally thought-of areas
  2. *conferences convened when a young person is charged by a number of people* (i.e., probation, judge, police). Each community or province decides how to proceed, and the conference can take place anywhere. The outcome is advice as to how to deal with the young offender—to either proceed with the charge or recommend appropriate sentencing
  3. *conferences convened by judges and sometimes records are kept.* This reflects a paradigm shift and judges are now doing this across the country. Judicial mediation is difficult compared to other forms of mediation. In criminal cases, judges in

sentencing circles interact with the accused to determine the outcome and sentence. There are problems with time restraints, and it only takes place in certain types of cases

- plans that result from conferences are usually presented to the judge, but it is useless for judges to order offenders to follow through on rehabilitation programs because true recovery is only possible if offenders go on their own accord.
- standard courtroom structure precludes the judge from getting the necessary background and cultural information from the offender's family—without this information, judges cannot make an order that will help the youth, and conferencing may remedy this problem

Recommendations

- **Conferences are an exciting opportunity if implemented effectively in Aboriginal communities; it is important for family and elders to participate and interact in all conferencing planning and proceedings.**
- **Aboriginal communities should use conferencing to make sure that their members' stories are heard, and to have that information taken into account by the legal system.**

Alan Markwart

Highlights

- new conferencing provisions in the *Youth Criminal Justice Act* create opportunities to address the needs of Aboriginal youth and to get communities involved in helping their young offenders
- *Youth Criminal Justice Act* presumes that courts should consider alternatives for all non-violent offences and that detention is not necessary for protection of public's safety
- with multi-disciplinary case conferences, all players or workers involved with the young offender work together to develop a service plan—typically, the family of the offender is a part of developing the plan
- alternatives to dealing with offenders and victims include restorative justice, victim reconciliation, and family sentencing (New Zealand model)
- concern about this type of conferencing is that participation of *all*

players may create a need for additional protection of young offenders

- whatever is said at mediation must not be used at or influence the trial—if a judge is in attendance, it limits the ability of the young offender to speak "off the record"
- conferences are not described in the *Youth Criminal Justice Act,* so there is an opportunity to define and be creative—judge can order or convene a conference
- conferencing takes place at end of the court process, so can be very important to the offender's sentence
- conferences are useful when young people leave the custody of the state, and can be located anywhere the judge chooses
- judges have the power to order anyone's attendance at a conference, but victims can choose to attend
- when creating the conference provisions, the intent was to respect the Aboriginal youth and background
- conference system brings down the level of hierarchy and allows Aboriginal people to be more aware of the laws
- some improvements in the training available for judges and RCMP to build working relationships with Aboriginal people and communities

Recommendations

- **The phrase "Measures should…" in the *Act* sounds like *Gladue* provisions—*Gladue* provisions should apply to the new youth court as well.**
- **It is difficult to impose province-wide rules since conferences are very community oriented—communities must make the rules for conferencing and provincial courts should take these community rules into account before sentencing.**
- **A genuine commitment to individual healing requires that power be returned to families and communities.**
- **For conferencing to work effectively, government and the Aboriginal communities must be willing to participate. The new conferencing approach will allow greater participation of all players dealing with Aboriginal youth.**
- **Everyone must commit to the conferencing process and**

develop positive solutions to help Aboriginal youth.

Alvin Kube

Highlights

Typical Aboriginal Offender

- vast over-representation of Aboriginal people in federal prisons.
- typical characteristics and experiences of Aboriginal offenders in the federal prisons are that they
    - attended residential school,
    - are graduates of the foster system,
    - have little education,
    - have a 90% chance of having been sexual abused,
    - live without a family,
    - have an 89% chance of being addicted to alcohol,have experienced significant amounts of violence,
    - have encountered the provincial legal system at some earlier point in time
- 90% of offenders leaving custody complete parole without committing a crime

Corrections and Conditional Release Act

- low recidivism is indicative of how progressive Canada is in how it treats offenders as compared to other countries
- ss. 81 and 84 of the 1992 *Corrections and Conditional Release Act* provide an opportunity to reduce the disproportionate number of incarcerated Aboriginal people
- *Corrections and Conditional Release Act,* ss. 81 and 84, provide for the return of Aboriginal people to serve their sentences in their community—communities must provide the necessary support for the offender
- federal detention centres treat an Aboriginal person as Aboriginal only if he or she self-identifies—most offenders choose to not identify themselves as Aboriginal
- it is up to the offender to initiate action under ss. 81 and 84—*Corrections and Conditional Release Act* includes onerous provisions that are difficult to read
- there are no resources for the offender and parole officers when taking action under these provisions—money is available to any community wanting to investigate healing for their offenders, but

there is no money available for infrastructure

Section 81

- s. 81 of the *Corrections and Conditional Release Act* provides for an agreement between the Minister and an Aboriginal organization interested in taking over the management of an offender

  Section 81 reads as follows:

  > ***81.*** *(1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.*
  >
  > *(2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-aboriginal offender.*
  >
  > *(3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and of the aboriginal community*.

- corrections cannot release offenders into Aboriginal communities without a s. 81 agreement and none are in place—most Aboriginal communities are too busy or often not interested in having the offender back in their community
- liability is an issue if the offender reoffends after release into the community—any community that takes responsibility for an offender is liable under s. 81 and must purchase insurance
- minimal funding for the community to assist with care for the released offender—government pays more money to incarcerate the offender than it pays to have the offender rehabilitated in the community
- cost of incarceration is $30 to 60 thousand per offender per year—corrections receives $130.00/day per offender, but the community receives $80.00/day
- any Aboriginal organization with a keen interest in an offender will be considered—there is little distinction between reserves and urban community groups in regards to application under s. 81
- s. 81 provides that offenders can have lawyers assist them, but this

is probably not necessary

Section 84

- s.84 provides for an Aboriginal offender to be released on day parole to their Aboriginal community

  Section 84 reads as follows:

  84. *Where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community*

  (a) adequate notice of the inmate's parole application; and

  (b) an opportunity to propose a plan for the inmate's release to, and integration into, the aboriginal community.

  84.1 *Where an offender who is required to be supervised by a long-term supervision order has expressed an interest in being supervised in an aboriginal community, the Service shall, if the offender consents, give the aboriginal community*

  (a) adequate notice of the order; and

  (b) an opportunity to propose a plan for the offender's release on supervision, and integration, into the aboriginal community.

- parole staff have a responsibility to advise offenders of their right to apply for day parole
- Aboriginal offenders must take the following steps:
  - write to their home community or other Aboriginal community expressing interest in returning to that community for day parole
  - if the community agrees, the inmate can apply to the National Parole Board to return to his or her chosen community
  - community is involved with developing a release plan for the offender
  - offender must comply with the community behaviour standards

- National Parole Board makes the final decision

- funds available under s. 84 are only short term
- s. 84 mandates Correctional Services of Canada to let communities know of this provision—each community defines its own role and may withdraw from the process whenever it chooses
- community members can volunteer under s. 84 (e.g., to provide home placements)

Recommendations

- **Over-representation of Aboriginal people in prisons in Canada is an immense and complex problem that Aboriginal communities must be actively involved in solving.**
- **Although there are no current agreements under s. 81 or s. 84, there is potential for these provisions to bring positive change for Aboriginal inmates. Aboriginal communities and urban institutions must get involved in the recovery of their offenders in the legal system.**

Kathy Louis

Highlights

- developing working relationships is difficult because Aboriginal people face professional jealousy from one another
- cultural teachings enable one to stay connected and keep an emotional and spiritual balance
- unconditional love is important—you do not have to like what people do or condone the harm they cause in order to love them
- Aboriginal people must be able to work with one another in the courts, and it is important to heal the pain of the offenders and the community
- it is a challenge for communities to remember their traditional laws since many have lost their culture

Presentation Included Three Interviews

Interview # 1: Aaron Bruce, Squamish nation, law student, Squamish, B.C.

- started the Squamish justice program—completed a needs assessment and structured the program by talking with the elders and professionals

- values were key: accountability, trust, respect, passion and empathy
- Squamish community wanted to return to their traditions—all interested people and service providers attended a large meeting held in a circle format to explore values, commonalities, and unity
- Squamish community members arrived at an understanding about their goals and values
- ongoing meetings are necessary—important to look at the family and their values, and to give everyone a voice
- a holistic community approach will break the cycle of community and family dysfunction

Interview # 2: Louise Wilson, Gitxsan nation, Gitxsan Unlocking Aboriginal Justice, Hazelton, B.C.

- have sentence advisory program in place—lengthy process to develop contracts regarding sentences for offenders
- sentencing contracts are presented to provincial court for implementation including adult alternative measures
- currently have genealogy program that facilitators can access—ties in with child welfare work and provides a sense of belonging and self-worth to the people involved in the contracts
- future programming will focus on
    - ss. 84 and 81 of the *Corrections and Conditional Release Act*
    - child welfare

Interview # 3: Daisy Clayton, Nisga'a Nation, First Nations probation officer, Prince Rupert, B.C.

- being Aboriginal enables her to work with Aboriginal offenders—she is familiar with their struggles and effectively communicates and develops trust with offenders
- feels alone at times and unsupported because First

Nations probation officers are rare in B.C.

- has a different approach to Aboriginal offenders—interested and genuinely caring, and is willing to work hard for the offenders who show a real interest in healing
- wants to give back to the community and encourages more First Nations people to get involved

Recommendations

- **There is a need to work collaboratively to establish communication and bridge building among stakeholders.**
- **The people who work within the legal system must be supported.**

Honourable Carlie Trueman

Highlights

FAS/FAE and the Courts

- people with Fetal Alcohol Syndrome (FAS) face major barriers when trying to get help—FAS is usually missed by the criminal system
- FAS is an important issue and all members of the legal system must be educated about it
- FAS is visible and an issue in native communities, but it is not only an Aboriginal issue
- FAS is associated with poverty
- there is no justice system, just an adversarial legal system and systems never give justice—only people give each other justice
- now a push to give back justice to the community—to be effective, a community must be able to deal with FAS
- *Gladue* is important because it pushes the court to rethink sentencing, and reminds the judiciary that jail does not work well
- *Gladue* applies to all Aboriginal cases and is a way to get FAS issues heard in the court process
- only 10% of FAS or Fetal Alcohol Effect (FAE) victims have visible FAS/FAE characteristics
- there is no easy way to determine if a person has FAS or FAE
- 90% of FAS/FAE victims are not growth delayed, and many do not

have a nervous system dysfunction

- children with FAS/FAE often have no academic problems in school, but exhibit behavioural problems—a secondary disability; in effect, these children are punished solely because they are FAS/FAE
- FAS/FAE-affected people test average, but their intelligence or judgment is not the same—their real-world functional ability is at a 7-9 year old level
- in *R.* v. *W.(D.),*[8] decided by Provincial Court Judge Turpel-LaFond, a child with FAS and a criminal record was sent to psychologists to determine if he knew what he was doing—psychologist stated that he had limited comprehension, and diagnosed him with FAS. Judge Turpel-LaFond directed her methods and reasons for judgment to all legal system workers.
- doctors want the legal system to be aware of FAS/FAE, but it needs further study—the offender must be retained for psychological assessment, and getting a FAS/FAE diagnosis is slow
- 22% of people with FAS/FAE are also suffering from alcohol dependency—there are other related neurological disorders that should be considered in criminal courts
- small communities can solve problems, but getting access to medical resources is an obstacle—ideally paediatricians should be diagnosing FAS/FAE, but they do not normally see people over 18 years of age
- many native people live in remote areas without access to FAS/FAE resources and get missed completely

Section 15 of the Charter of Rights and Freedoms

- courts are obligated to consider the FAS disability under ss. 7 and 15 of the *Charter of Rights and Freedoms*
- s. 15 of the *Charter* and s. 8 of the *Human Rights Code*[9] deal with families with disabilities—a person must establish a mental disability to receive the protection of the sections
- catch-22 situation—you need funding to get assessment and you need to prove you have FAS to get the funding
- s. 7 of the *Charter* (fundamental justice) requires that a person

[8] *R.* v. *W.(D.)* (16 January 2001), Sask. R., Uned. 17 (Sask. Youth Ct.); www.mlb.nb.ca
[9] *Human Rights Code*, R.S. 1996, c. 210.

must be able to present himself or herself accurately before the court—if a person does not have this ability, there may be a violation of ss. 7 and 15 rights

Recommendations

- **The courts must learn about FAS/FAE because it is an important medical disability with serious implications for the way the judiciary treats offenders with FAS/FAE.**
- **When someone is diagnosed with FAS/FAE after conviction, the validity of the judgment must be challenged.**
- **The courts must be more creative when dealing with FAS/FAE offenders, and lawyers must bring this information forward to the judge so that the offender may be dealt with in a fair, effective manner.**
- **A checklist on FAS/FAE developmental disability should be provided to professionals in the legal system to enable identification of symptoms and ensure appropriate action.**
- **There is no central registry for FAS/FAE and after a person with FAS/FAE is diagnosed, that record can be lost. The wheel is reinvented each time the person comes into conflict with the law, or worse, the FAS/FAE is missed all together. A system for identification and records of people diagnosed FAS/FAE must be developed, instituted, and maintained.**
- **A specialist, Dr. Fitzgerald, has explained that FAS/FAE shows up in children who are underprivileged and who do not have access to medical help. Terms such as underprivileged and living in poverty have *Gladue* written all over them. All FAS/FAE offenders must be properly assessed to avoid *Charter* violations.**

Bruce Parisian

Highlights

- distinguishes between the services provided by the federal government to Aboriginal people on reserve and Aboriginal people in urban settings—although these two groups have much in common, there are distinct needs
- capacity building is an important issue for urban Aboriginal people
- people living in one area are considered a community because of their common interest, background or nationality—a community's

resources are its Aboriginal people; elders, families, and children

- other resources include local, regional, and national Aboriginal organizations, and non-Aboriginal institutions, government agencies, businesses and non-Aboriginal people
- urban reality for First Nation people is that once Aboriginal people leave their reserves, they lose any benefits that accrue to reserve residency—according to the *Royal Commission on Aboriginal People*, off-reserve Aboriginal people are markedly disadvantaged in comparison to their non-Aboriginal counterparts, generally have less education, are less likely to have jobs, and are more likely to be poor

Recommendations

- **Capacity building is an important issue for Aboriginal people. Capacity building is defined as**

  > *an approach to development, not something separate from it. It is a response to the multi-dimensional processes of change, not a set of discrete or pre-packaged technical interventions intended to bring about a pre-defined outcome. In supporting organizations working for social justice, it is also necessary to support the various capacities they require to do this: intellectual, organizational, social, political, cultural, material, practical or financial.*

- **Urban Aboriginal people must work toward**
  - **cultural revitalization and healing,**
  - **consensus building,**
  - **rebuilding nations and reclaiming nationhood,**
  - **establishing Aboriginal governments,**
  - **exercising power,**
  - **negotiating new relationships and arrangements with all governments,**
  - **developing partnerships, and**
  - **supporting the developing of these capacities.**
- **Governments must reform of their local government services and programs to better support the development of urban Aboriginal communities of interest (e.g., friendship centres and other organizations that assume responsibility for service provisions). Adequate funds must be provided to national and**

local government authorities for Aboriginal communities of interest.

- **Aboriginal families and individuals are increasingly affected by decisions made by government service providers, and must have input into the decisions made on their behalf.**

Honourable A.C. Hamilton, Q.C.

Highlights

- First Nations cultures and histories are unique in Canada and alternative systems of law must be considered to enable Aboriginal communities to work towards their healing—separate Aboriginal legal systems that allow First Nations communities control may address some of the problems faced by First Nations people in the legal system
- legal justice system has been a tool to disempower First Nations people—there is no trust in the legal system
- many cultural difference between First Nations and non-First Nations communities—in a less destructive First Nations justice system, young offenders would maintain contact with their parents and family, and would even live with their grandparents
- conventional courts are currently not well equipped to deal with Aboriginal youth
- a First Nations justice system would have its own judges and own court of appeal (e.g., three Aboriginal appeal court judges), the proceedings would be recorded, and Aboriginal offenders could stay in their communities
- concerns about separate legal system have been raised—Crown attorneys want to ensure that anybody in a civil action can go to the Provincial Superior Court for judicial review of their case if needed (e.g., Was the case conducted properly? Were *Charter* rights observed?)
- *Charter* is applicable and desired for the proposed Aboriginal courts
- healing circles could act as peacemakers—alternative court system could provide better options for dealing with offenders and allow them to avoid the regular legal system
- in the U.S., there are parallel Aboriginal justice systems—examples for Canadian Aboriginal people to study
- *Gladue* says that counsel is obligated to bring information to the

attention of the judge—if they do not review the background or history of the offender, the court of appeal is obligated to do so

- *Gladue* poses new obligations on lawyers—these provisions are available to anyone at the time of sentencing and courts should apply *Gladue* provisions to other non-criminal offences as well (e.g., fishing)
- *Gladue* does not affect family relations—courts only consider the best interest of the child whereas it might be more culturally appropriate to let the circle (community) have the final decision about children
- in Canada, the mainstream system has jurisdiction over people on-reserve and family decisions are made that undermine cultural and language transmission to children—this is ethnocide
- a court for Aboriginal people that is empowering for Aboriginal people could provide support and be an effective tool to reduce the over-incarceration of Aboriginal people—a way to assist Aboriginal communities working toward their independence

Recommendations

- **The current legal system is bureaucratic and expensive. It costs money to deal with Aboriginal offenders, so what is spent might as well be effective. The money spent on duplication of services must be reallocated to support alternative Aboriginal court systems.**
- ***Gladue* is limited because it does not explicitly provide support for non-criminal areas of law—*Gladue* must be read broadly so that it extends beyond criminal law into other fields of law.**

Victoria Desroches

Highlights

- *Gladue* is a positive step towards addressing Aboriginal offenders' unique needs and finding alternatives for Aboriginal people involved in the legal system
- *Gladue* obliges courts to consider alternatives for offenders at the time of sentencing
- *Gladue* is empowering for Aboriginal people because each offender is an individual deserving of the court's attention
- judicial duty to treat s. 718.2(e) as remedial and give it real force—*Gladue* is a tool to interpret that section of the *Criminal Code*

- preparation as key to applying s. 718.2(e)—thorough preparation is dependent on time, resources, and cohesion within the Aboriginal community
- getting *Gladue* report information can be touchy, messy, dirty and uncomfortable—it is very hard to share terrible experiences with strangers in the legal system, so it helps if the inquirer is First Nations
- first client meetings are critical—families must be willing to talk about the case and get involved, but there is a trust issue to overcome
- no band council has ever refused an invitation to be part of a *Gladue* type of discussion for an offender—all aspects of the offender's life are brought into the discussion (e.g., teachers)
- $65,000 per year to pay for one police officer—should reallocate funds to pay for comprehensive *Gladue* reports and healing/rehabilitative plans

- *Gladue* reports create positive results—in *R.* v. *C.(B.)*,[10] a package was prepared and presented it to the judge, and it worked. A success story:

  > *A youth spent his sentence cutting grass around the reserve and was monitored by community members. A pipe-carrier became his mentor. The community came together and the Chief, band members, and elders participated. The youth was given conditions he had to abide by and an extensive review process was conducted. He has not re-offended in four years.*

- *Gladue* gives judges a level of discretion they never had before—jails do not work, so creativity is needed
- pre-*Gladue*, in *R* v. *Armbruster,*[11] an attempt to incorporate the historical background of an offender was rejected by the judge—submissions made to the court of appeal but the *Criminal Code* provisions were ignored

Recommendations

- ***Gladue* submissions are post-conviction and are not made until there is a pronouncement of guilt. This means there cannot be a sentencing application without this information. *Gladue* submissions are not the same as pre-sentence reports, but are richer in content. *Gladue* information must be treated as fresh evidence in each case.**
- ***Gladue* submissions are the most important submission made outside the trial process and the onus is on the bench to make a *Gladue* inquiry. The defense counsel must prepare *Gladue* reports, not the probation officer, because each has a different agenda and different relationship with the offender.**
- **The judge wants to know who the Aboriginal person is and she or he can only learn this with a comprehensive report. It is the responsibility of the legal system and offenders' family and community to produce a thorough *Gladue* report.**
- **Funding is a serious barrier to completing comprehensive *Gladue* reports because the necessary work is extensive. Most Aboriginal clients are unable to pay, and lawyers must work either pro bono or be funded through legal aid services. Many lawyers say their clients wave their *Gladue* rights, but often**

[10] No citation provided.
[11] *R.* v. *Armbruster* (1999), 138 C.C.C. (3d) 64 (B.C.C.A.).

lack of money is the real reason. There is an ethical responsibility to prepare comprehensive *Gladue* reports whether there is money available or not.

- **There is no shortage of money spent on the prosecution side because it is easy to fund politically. There is more support for punishment than for healing. The question of who pays for *Gladue* reports must be determined.**
- **People in the legal system must take a role, get active, and be creative. Jails are not working, and the onus is on people to create positive change.**
- **Judge M.E. Turpel-LaFond brought a circle into youth court and she sits in the circle. These are small steps that make a community safer. There is a need to create some sort of credibility for alternatives, but people must take risks to create those alternatives.**

Ross Green,Q.C.

Highlights

Gladue reports have the potential to be a rich resource for the courts because they reflect unique lifestyles and social economic issues surrounding Aboriginal people—societal problems that offenders face are important for the courts to consider at the time of sentencing

- in *Gladue*, the S.C.C. said alternatives to incarceration are long overdue and the over-representation of Aboriginal people in jail is proof of this
- Dr. Martin Brokenleg (Lakota, South Dakota) works to reclaim high-risk youth and teaches that for even the most troubled youth, family is important—mentors and family ties must be used to reach troubled youth
- over two years have passed since the release of *Gladue*—not all judges in Saskatchewan will consider *Gladue* reports, but it is the responsibility of all persons (judges/lawyers) to bring these reports forward and give s. 718.2(e) meaning
- Judge Murray Sinclair has argued that the Crown spends much more time on a case when they seek jail time—an indication that the Crown makes incarceration a priority
- 75% of people in jail in Saskatchewan are First Nations and 90% of the women in jail are First Nations—custody rates are twice as

high and this represents a pressing problem that must be addressed

- Canada incarcerates twice as many people as other countries
- many reasons for the over-representation of Aboriginal people—substance abuse, racism, poverty, family breakdown, overt racism, and systemic discrimination (e.g., Red Earth and Shoal Lake in Saskatchewan have the lowest income per capita in Canada)
- Aboriginal people have a holistic view of justice that is radically different from that of the western system

Recommendations

- ***Gladue* is a call to action and must be taken seriously by all members of the legal system.**
- **In order for *Gladue* to be heeded and fully implemented, adequate funding must be provided for *Gladue* sentencing reports and judges must consider alternatives to incarceration.**
- **Healthy community relationships will enable the community to support offenders as well as provide alternatives for sentencing. Courts must work towards fostering ties between offenders and communities.**
- **Aboriginal people must work to reclaim their youth because they are imperative for the future of healthy communities**.

PARTICIPANTS—PROFILES

Participant Occupational Profile

Occupational Field	Number
education	4
Aboriginal community resources	25
National Parole Board	4
legal services	33
Aboriginal justice programs	7
Corrections Canada	1
B.C. corrections	4
judiciary	11
provincial parole	3
police	2
defence counsel	3
students	3
Crown counsel	7
probation	2
Spirit of the People (*Note: Includes staff, volunteers, and board members*.)	12
First Nations Traditional Dancers (*Note: The dancers also have other occupations that were not recorded at the symposium*.)	30
	151

EVALUATION

General

Most delegates and presenters gave written or oral expressions of appreciation to Spirit of the People for organizing and hosting the symposium, but only 25 of the 150 delegates partially or fully completed the evaluation form. While the small number of completed evaluations are insufficient to provide an overall, comprehensive evaluation, they nonetheless offer valuable insights for the organizers. Generally, the combination of evaluations, follow-up letters, and oral statements reveal an overwhelmingly positive response from both delegates and presenters. Most participants' comments regarding food, registration packages, and registration procedures were also positive.

What follows is a short summary of the responses provided to Spirit of the People by symposium participants.

My best experiences were:

- meeting so many aboriginal men and women passionately committed to changing the justice status quo
- networking and interconnectedness—a conference of common goals
- feasting and dancing
- tremendous diversity of talent and experience
- meeting other presenters and sharing information

What should your colleagues hear from the symposium?

- that so many of our clientele have alcohol-related development disorders and are not capable of learning from their errors—they need extra special attention and constant reminders of behavioural expectations
- about the possibility of supporting Aboriginal offenders in their communities instead of increasing the disproportionate number of institutionalized Aboriginal people
- to look forward not back—we can't change the past, but we can learn and ensure we don't make the same mistakes
- that we need to work together for the betterment of all

- about the range of existing community programs for Aboriginal people—these give guidance and encouragement for others working to establish needed programs
- about the importance of community involvement, values, and ownership of programs

What else would you like to discuss?

- start-to-finish stories about community development experiences that demonstrate both good examples and problems
- community involvement in the justice system
- more in-depth discussion of all symposium topics—smaller groups would have helped
- action planning for Aboriginal community involvement in justice and social issues

Was the information relevant?

- no—not the application of *Gladue* to regulatory statutes
- no—the agenda was to promote participation in the legal system, but we needed to hear from experts and grassroots workers about community facilitation, funding, activities, and service gaps
- yes—especially the presentations that discussed practicalities and realities, and provided tools for restorative justice

What would you add or delete from the symposium?

- delete: trying to guilt non-Aboriginals, work at bridge building instead
- add: insights and experiences of incarcerated people about how they could have avoided incarceration and how to help others
- add: that it is impossible to de-institutionalize incarcerated individuals without adequate funding
- add: experience and knowledge from the 1990's movement to de-institutionalize patients from mental hospitals
- add: more small group dialogue
- add: a visit to the big house, perhaps for the feast and dances.

Have you changed any misconceptions, judgments, or beliefs?

- no—it was preaching to the converted
- no—instead, beliefs and understanding were reinforced
- yes—knowledge about what was being done and who was doing it
- yes—increased understanding of the differences between Aboriginal nations

Suggestions and Complaints

Location	Some participants thought all or part of the symposium should have been held in a traditional Aboriginal setting (e.g., Longhouse). The most common complaint was that the facilities were over-crowded.
Scheduling	Many people suggested that more time should have been allotted to cover the amount of information presented. Other comments regarding scheduling were mixed (e.g., presentations were too long or too short). Several people suggested that the debriefing period should have been shorter.

Future Work

The over-representation of Aboriginal people in Canadian prisons is a terrible and complex problem that is inherently linked to poverty, powerlessness and power imbalances, and displacement of Aboriginal people from their lands. Consequently, changing the situation of Aboriginal inmates and communities is also an enormously complex undertaking. While the symposium was useful to the legal community and participants, it was obvious that it was just a beginning and much, much more work remains.

One of the frustrations that consistently arose was the inadequate funding for restorative justice initiatives. Given this, future gatherings should include representation from funding agencies and an exploration of creative funding alternatives to pay for restorative justice work.

Finally, while events such as the symposium are a way to promote new strategies and necessary social change, it is too easy for participants to slip back into their daily work routines without incorporating the new learning. This suggests that perhaps some type of ongoing follow-up to the symposium might be useful. *Spirit of the People* may explore hosting some form of smaller-scale gathering to ensure continued bridge building and collaborative problem solving between the participants.