

The Voice of the People:
Can Gladue Offer a Meaningful Source of Healing to its Clients?

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ABSTRACT

Aboriginal people who have been through the criminal justice system are a vulnerable population who often carry significant burdens of historic and personal trauma, including intergenerational effects, addiction, and exposure to violence. For many Aboriginal offenders, the Gladue report constitutes the first opportunity to tell their story. As such, many defendants view the Gladue process to be part of their healing process. There is question to whether the process can, in fact, assist in meaningful healing. Especially given the documented racism implicit in the court process and the lack of understanding many court actors have about Gladue. The purpose of this research project is to explore whether or not Gladue reports are able to offer a meaningful source of healing for its clients by interviewing a Gladue Report recipient and Gladue interviewer.

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INTRODUCTION

It is conceived that the majority of policies or initiatives that are geared towards addressing various issues within marginalized communities, both past and present, are likely to come from a place of administrative authority due to their inherent nature. This statement is to draw awareness to the embedded authoritative structure that commonly exists between the givers and receivers of service, and use this knowledge to consider its impacts on the *meaningfulness* of such initiatives for the individuals who utilize such services. It is to the latter focus that the analysis in this thesis is directed; as such the approach to this analysis will draw upon the experiences of recipients of state-supported and administered services as a mechanism for understanding their experience of such services.

This paper will focus exclusively on the working example of *Gladue*¹, an Aboriginal right and sentencing principle that is grounded in the philosophies of restorative justice. Gladue is a broad concept that can be discussed and applied as a principle, a right, a report, and a sentencing recommendation. Gladue reports are reports provided to the court to inform the ‘sacred story’ of Indigenous offenders, and which consider the historical circumstances of Aboriginal offenders to provide appropriate recommendations for sentencing. Grounded as they are within restorative principles intended to offer space for considering both historical and contemporary factors relevant to an individuals’ case, it is logical to think that

¹ Gladue rights are protected under section 718.2 (e) of the *Criminal Code of Canada*.

Gladue would also be able to serve some form of personal healing for the offender.² As such, the primary objective of this paper will be to question whether or not Gladue reports can serve as a meaningful source of healing for clients who experience this process. Although Gladue is intended, first and foremost, as a mechanism to assist criminal courts to create fit sentences for Aboriginal offenders and reduce the over-incarceration of Indigenous people in Canadian prisons, it is important that we do not lose sight of the fact that Gladue is, in essence, a story – it is a vehicle for humanizing the Indigenous offender to the court through sharing the narrative of his or her life. The sharing of the story gives voice to the person, his or her community and history and, if the Gladue process is ethical and sensitive, it should also be part of the individual’s healing journey. Insofar as healing is integral to restorative justice, such principles should transcend into the context of Gladue, that is, to reducing Indigenous over-incarceration. After all, if remedying over-representation is really what Gladue is meant to do, then healing must be an integral element of the process and report, as healing is the only thing that will pull people out of offending and onto a healing path. Accordingly, Gladue should aspire not only to inform a fit sentence, but also to assist offenders to locate and keep to a healing path.

To this end, chapter one will offer the reader the broad story of Aboriginal people in the Canadian context. It will focus specifically on the histories of the Residential School System and their subsequent impacts on contemporary

² Istvanddy, Jay. (2011). *Gladue Primer: Legal Services Society*. Crown Publications. British Columbia, Canada at pg 7.

Aboriginal issues (e.g. displacement, inter-generational abuse, poverty, over-representation in prisons) in order to develop a framework into the development of Gladue reports.

Chapter two will engage in a legal analysis of *Gladue*, presenting both its advances and inadequacies. By highlighting the importance of *R. v. Gladue* (1999), the chapter will demonstrate how the case was successfully able to raise issue with the ever-present problem of Aboriginal over-representation and pave the way for its remedy through the development of Gladue reports. Concurrently, by outlining the more recent case of *R. v. Ipeelee* (2012), the chapter will explore the limitations that Gladue faces on a contemporary level and highlight the subsequent impacts these limitations might have on Gladue report clients.

Chapter three will be dedicated to outlining two research interviews, one with the Gladue report interviewer and one with the previous subject of a Gladue report. The chapter will outline the primary findings of the research interviews and will provide the supporting structure required to analyze whether or not Gladue reports are able to offer any form of meaningful healing for its clients at the present time.

The fourth and final chapter will address the thesis's central research question: Can Gladue reports offer meaningful healing to its clients? By considering the information presented to the reader throughout the course of the research paper and based on its findings, the researcher will explain to the reader the reasons why Gladue reports appear to be unable to offer their subjects an

adequate opportunity for meaningful healing at this time. The discussion will simultaneously highlight that meaningful healing for Gladue report clients is a realistic possibility if meaningful change takes place within the legal arena. In documenting and analyzing the experiences of individuals who have had direct experience with Gladue reports, it is the intention of this research paper to provide a concrete analysis of how this restorative process differs in theory and practice.

I. Key Considerations

Before delving into the meat of this project there are a few key considerations that must not get muddled or lost during this journey. The first is our careful consideration of the complex, and often problematic, authoritative dynamic that subsists between Gladue report recipients and Gladue writers (i.e. the givers and receivers of service). We must consider the wide range of impacts, both positive and negative, that reform initiatives created by those in the position of authority might have on those they are trying to assist. Perhaps most significantly, we must enter this journey with an open mind and decide for ourselves whether or not Gladue reports are able to provide meaningful healing for those they seek to benefit. We must therefore first acquaint ourselves with the process we will be evaluating – Gladue reports.

II. Gladue Reports

Gladue reports are reports provided to the court that inform the ‘sacred story’ of Indigenous offenders and provide recommendations for sentencing, which are reviewed by the presiding judge, defense and crown counsels, and, ideally, the offender.³ Gladue reports are administered by both public and private organizations and are available to all Indigenous offenders, including First Nations, Métis, and Inuit offenders, upon their request and informed consent. Offenders who are interested in having a Gladue report written most commonly consult with their defense counsel to arrange the Gladue interview and compose the report.⁴ According to the *Legal Services Society of British Columbia*⁵ (LSS), the reports must:

- (a) Contain all necessary information in order to provide a complete picture of the client and his or her circumstances within an Aboriginal context.
- (b) Clearly outline recommendations for realistic and viable alternatives to prison.
- (c) Present accurate facts.
- (d) Provide a source for all information presented (e.g., people contacted or documents reviewed).
- (e) Corroborate facts and information using written sources or other people, whenever possible (e.g., provide peer-reviewed academic sources to support discussion of systemic issues, and information from family or community members to support client’s information).

³ Hannah-Moffat, Kelly.(2010). *Re-contextualizing pre-sentence reports: Risk and race*. University of Toronto, Canada.

⁴ Incarcerated offenders may also be approached by various organizations, which frequent prisons and offer Gladue reporting services (e.g. Correctional Services Canada).

⁵ Legal Services Society. (2015). *Gladue Report Writer Roster*. Retrieved from <http://www.lss.bc.ca/assets/aboriginal/gladueReportWriterRosterPolicy.pdf>.

- (f) Be objective and avoid bias and advocacy. It must not contain personal conclusions or opinions of the writer.
- (g) Avoid inconsistent statements (i.e., two or more statements that contradict each other) or conflicting information.
- (h) Meet minimum writing standards. The report must:
- i. Be written for its specific audience (i.e., the court).
 - ii. Use proper format (i.e., follows the LSS Gladue report template).
 - iii. Use proper grammar, punctuation, and spelling.
 - iv. Use appropriate words and clear, concise, and complete sentences.
 - v. Be well organized and flow logically.
 - vi. Contain proper citations for quotations and written sources.
 - vii. Contain no plagiarism, that is, borrowing or copying someone else's ideas or statements without properly acknowledging or citing the source of that information.⁶

In addition to the aforementioned, Gladue reports must follow reasonable timelines that intend to ensure the timely preparation of the report. This means that the Gladue report writer must: provide the LSS a draft report at least ten days before the sentencing or bail hearing court date; submit a final completed Gladue report to the client's lawyer seven days before the court hearing date. Additionally, the Gladue report client's lawyer is to submit the report to the court registry two days before the court hearing date. If the Gladue reporter fails to produce the report in a timely manner, he or she will not be compensated for the particular report.⁷

⁶ *Ibid* at pg. 4-5.

⁷ *Ibid* at pg. 6.

The Gladue report must also follow the Provincial Correctional Centers Protocol⁸ (PCCP) during preparation for an incarcerated client's report.⁹ To highlight this, the reporter should make arrangements with the prison for a private space to conduct the Gladue report interview; the reporter must take and successfully clear a security check.¹⁰

Finally, Gladue reporters must maintain confidentiality standards with the client both during and following the completion of the report.¹¹ This includes keeping all acquired knowledge confidential, "regardless of the nature or source of the information [even if] others may know the same information".¹² Accordingly, reporters should take "all reasonable steps to ensure the privacy and safekeeping of a client's file and personal records" and should provide the client's file, and all notes, to the client's lawyer upon completing the Gladue report.¹³

⁸ As outlined by the Provincial Director of the Adult Custody Division of the Corrections Branch, Ministry of Public Safety and Solicitor General in a letter to the Legal Services Society. (2011).

⁹ Legal Services Society, *supra* note 5 at pg. 7.

¹⁰ *Ibid.*

¹¹ *Ibid* at pg. 4-5.

¹² *Ibid* at pg. 8.

¹³ *Ibid.*

III. Healing

Healing is an active, not passive, process: it is something you do, not something you think or that is done to you. In this sense, healing is work, it is ongoing and requires dedication. First and foremost, it requires commitment from the individual. No one can heal you or make you heal. Personal agency is stressed above all else.¹⁴

- Naomi Adelson and Amanda Lipinsky.

To contemplate “what is healing?” is a complex and highly contextual inquiry. This is due to the fact that healing is an inherently ambiguous term that depends on the perception of the individual who is being asked the question. One definition of healing is that it is a process that seeks to find the balance between the positive and negatives in ones life.¹⁵ Another definition considers the term in relation to the description of health: “the complex web of physiological, psychological, spiritual, historical, sociological, cultural, economical, and environmental factors that contribute to wellbeing and disease patterns”.¹⁶

For the purpose of this thesis, the question of healing should be one that reflects an Aboriginal orientation and channels the principles that are most closely related to Aboriginal people. According to one study, which posed the question of “what is healing?” to a sample of Aboriginal people, healing was described as an ongoing journey that takes into consideration principles significant to Aboriginal culture, including spirituality, community, trust, and equality. To highlight this, Aboriginal thought is characterized as conceptualizing healing as community-oriented because it goes beyond the individual to include the community voice in

¹⁴ Adelson, Naomi, & Lipinski, Amanda. (2008). *The Community Youth Initiative Project in Aboriginal Healing in Canada: Studies in Therapeutic Meaning and Practice*. The Aboriginal Healing Foundation Research Series. Ottawa, Ontario at pg. 6.

¹⁵ *Ibid* at pg. 27.

¹⁶ Waldram, J.B., Herring, A., & Young, T.K. (2006). *Aboriginal health in Canada: historical, cultural, and epidemiological perspectives*. University of Toronto Press, Canada at pg. 41.

the discussion.¹⁷ Similarly, Aboriginal healing is depicted as being able to communicate with one another on an equal level “and being able to empathize with the person you are talking to”.¹⁸ Aboriginal healing also commonly takes into consideration healing modalities that are central to Aboriginal culture and histories, including “the sweat lodge, talking circles, smudging, and the sun dance ceremony”.¹⁹ Finally, and perhaps most significantly, Aboriginal healing is about acknowledging that time is a fundamental aspect of ones healing journey.

While the definitions of Aboriginal healing outlined above give the reader an idea of how healing is commonly characterized in Aboriginal contexts, the fact still remains that healing is an individualized experience. Accordingly, this thesis will consider healing in terms of whether or not the participants of the study felt that they were provided with positive offerings that were meaningful to their life as a direct result of their Gladue experience.

IV. Methodology

For the purpose of relating the voices of those who have had direct experience with the Gladue report process, the research sought out the experiences and opinions of one Gladue report interviewer, who will be referred to as participant Y throughout the study, and one Gladue report subject, who will be referred to as participant Z throughout the study. The researcher acknowledges the limitations of outlining the opinions of two single individuals, but maintains that offering

¹⁷ Adelson, Naomi, & Lipinski, Amanda supra note 10 at pg. 27.

¹⁸ *Ibid* at pg. 28.

¹⁹ *Ibid* at pg. 27.

insight into the experiences of individuals who have been directly touched by Gladue makes an inroad in an area of research that is otherwise absent. In the context of the Gladue report interviewer, the researcher recognizes that Gladue reporting processes differ based on the organization conducting the report and the respective individuals' associated positions of interest. For the Gladue report subject, the researcher accepts that the Gladue reporting experience differs between individuals and the opinions outlined in this paper are reflective of the said participant's personal experience.

The researcher ensured the careful selection of the two participants who were well entrenched on their healing path and have achieved some distance from their criminal history. The Gladue interviewer is a mature individual (age 47 at the time of this study) and has extensive experience in criminal and community justice work and is being interviewed in his professional capacity. The participant with previous experience as a recipient of a Gladue report is a mature Aboriginal person (age 49 at the time of this study). His Gladue report experience was over a decade in his past at the time of this study.

The two sets of interview questions were specifically designed for each participant and only touched upon the participants' experiences with Gladue. Accordingly, discussions of personal history were limited to the scope of this research and no experiences other than those of the Gladue interview and the discussion of the report in court were discussed. For Participant Z specifically, the

research did not focus on the offense or with sensitive and difficult content related to the offense, which is often included in the report itself.

Due to the sensitive nature of this research project, and because of the possibility that the research interview may have elicited traumatic effects for the subject of a Gladue report specifically, the researcher took adequate measures to ensure that both participants were properly and appropriately supported through their respective interview process. Further, by acknowledging that any interaction that touched upon personal experience carries the ability to marginalize, oppress, and re-victimize, the research emphasized the need to control risk to the greatest degree possible. Efforts to this end included maintaining the anonymity of participants throughout the project through the use of an alias, presenting participants with the interview questions ahead of the interview date, allowing participants the discretion to answer only questions they were comfortable with, and informing participants of their right to withdraw from the study at any point both during and following the completion of the interview. Participants were also compensated modestly with a small gift in thanks for sharing their stories.

CHAPTER ONE: ABORIGINAL PEOPLE IN CANADA BOTH PAST AND PRESENT

I. The Residential School System

“I came into the wrong hands when I was six. I felt so alone. I had no one.”

- *Verna Flanders, Residential School Survivor.*²⁰

“It was like living in jail in a foreign land. We were always hungry and we couldn’t talk to the older girls, even our own sisters — but if parents didn’t send us they could go to jail for up to a year.”

- *Shirley Williams, Residential School Survivor.*²¹

“There was a lot of times I used to wonder why God didn’t answer my prayers. People said ‘if you pray, God will hear you’. It seemed like I prayed so much, I used to pray to go home... [but] you just couldn’t go home. I used to wonder what kind of God it was...”

- *Alice, Residential School Survivor.*²²

Imagine yourself as child: vulnerable, innocent, and trusting of the world, being removed from everything you know to be real and right – your family, your culture, and your traditions. You are placed in a foreign environment, one that teaches you that you were not, until this point forward, living the civilized way of life. Perhaps this elicits emotions of confusion, anger, or fear. You may ask yourself, *‘Why were my parents raising me in an uncivilized way?’* or *‘How could they permit this abduction to take place?’* How long you will spend at this

²⁰ Cole, Yolande. (2013). *Residential school survivors share their stories at Truth and Reconciliation event in Vancouver*. Retrieved from <http://www.straight.com/news/428331/residential-school-survivors-share-their-stories-truth-and-reconciliation-event-vancouver>.

²¹ Brown, Louise.(2011). *Aboriginal residential school survivors share stories*.

Retrieved from

http://www.thestar.com/news/gta/2011/09/27/aboriginal_residential_school_survivors_share_stories.html. Toronto, Canada.

²² Haig-Brown, Cecelia. (1988). *Resistance and Renewal: Surviving the Indian Residential School*. Arsenal Pulp Press, Canada at pg. 122.

unfamiliar place or the next time you will see your family is unknown to you. During your time here you may witness or experience emotional, psychological, physical, and sexual abuse, without having the ability to articulate these events as abuse. You may endure many undernourished and thirsting nights. You may go days with an untreated illness, which could be the cause of your death. Or you might succumb to the substandard living conditions that you are forced to endure. The only certainty you have is that your life will never be the way it was before you were taken away from your family and home.

The above narrative reflects a small sample of the horrific lived experiences that have been documented by survivors of the Canadian Indian Residential School System. Between the years of 1857 and 1996 the Canadian Government and Catholic, Anglican, Methodist, United, and Presbyterian churches concurrently tried to assimilate over 150,000 Canadian Aboriginal children to what was considered the acceptable ideology of civilization, one principled on Euro-Canadian Christianity.²³ The objectives of such institutions, often pursued through the use of disciplinary force, were to rid Aboriginal youth from their ‘inferior’ and tainted cultural and spiritual beliefs, and replace them with those deemed civilized – those of Non-Aboriginality.²⁴ The targets of attempted

²³ Government of Canada. (2011). Aboriginal Affairs and Northern Development Canada: Evaluation of INAC's On-Reserve Housing Support. Canada.

²⁴ The Globe and Mail. (2015). *Chief Justice says Canada attempted ‘cultural genocide’ on Aboriginals*. Pluralism Lecture of the Global Centre for Pluralism. Retrieved from <http://www.theglobeandmail.com/news/national/chief-justice-says-canada-attempted-cultural-genocide-on-aboriginals/article24688854/>.

“On May 29th 2015, Supreme Court Chief Justice Beverley McLachlin spoke at the annual Pluralism Lecture of the Global Centre for Pluralism in which the historical Aboriginal treatment, and specifically the residential school system, was discussed. Here, she quotes Sir John A.

assimilation were forced to live at the schools for ten months a year and were isolated from their families and communities.²⁵ During their time in the schools, students were required to “talk, dress, think, and act like non-Aboriginal Canadians”.²⁶

Celia Haig-Brown’s book *Resistance and Renewal: Surviving the Indian Residential School* chronicles the raw self-told experiences of some Kamloops Indian Residential School (KIRS) survivors.²⁷ In their written testimonials, survivors describe the many adverse conditions they endured during their time at KIRS. To highlight this, one survivor named Martha describes how students were punished when speaking their customary languages and were only permitted to use English or French, regardless of their level of knowledge. She writes, “I was punished quite a bit because I spoke my language... I was put in a corner and punished and sometimes, I was just given bread and water”.²⁸ Students were also commonly exposed to an array of abuse (including emotional, psychological, physical, and sexual) by teachers, priests, nuns, and school support staff. For

MacDonald: “The objective – I quote from Sir John A. Macdonald, our revered forefather – was to ‘take the Indian out of the child,’ and thus solve what was referred to as the Indian problem. ‘Indianness’ was not to be tolerated; rather it must be eliminated.” She further made it clear that this treatment extended well into the twentieth century”.

²⁵ Canadian Baptists of Western Canada. (2013). *Fact Sheet: Residential Schools*. Justice and Mercy Network. Retrieved from <http://cbwc.ca/wp-content/uploads/2013/05/Fact-Sheet-Residential-Schools.pdf> at pg. 2.

“Attendance was compulsory for children aged 6-18 between 1884 and 1948”.

²⁶ Hanson, Erin. (2012). *The Residential School System. Indigenous Foundation*. University of British Columbia, Canada, paragraph 2.

²⁷ Youds, Mike. (2013). *Horror and heartbreak: Commission hears story after story of abuse at Kamloops Indian Residential School*. Kamloops Daily News. Retrieved from <http://www.kamloopsnews.ca/news/city-region/horror-and-heartbreak-among-children-1.1216716>. Kamloops, British Columbia.

“At least 36 children are known to have died at the Kamloops Indian Residential School, which operated from 1893 to 1977”.

²⁸ Haig-Brown, Cecelia, supra note 18 at pg. 82.

many KIRS survivors the strap was mentioned as the most frequently used form of punishment. However, punishments including “public humiliation, head shaving, and bread and water diets” were also commonly recalled by survivors.²⁹ To highlight this, one survivor named Cecelia described how “some people got punished; they had to lie down on the floor... just pure bread and water to eat, lying on the floor” for countless days.³⁰

In addition to enduring various forms of abuse such as those previously mentioned, sexual abuse within the schools also proved to be a significant issue. During one of the national Truth and Reconciliation Commission (TRC) events, a survivor named Bernadette Dodson, who was a residential school student from 1946 to 1957, revisited her experiences of sexual abuse by a priest. She describes how on one occasion she and a friend were compulsorily intoxicated and forced to remove their clothing.³¹ In this particular instance, the victim recalls the conversation that took place between herself and the priest when she was witnessing the priest force the other female student to undress – “I said, stop it! Don't take her clothes off!” He said, ‘you be quiet...you're next.’³² Comparable to Dodson's story, there have been countless documentations of sexual abuse by other survivors. Sylvester Green, who resided at an Edmonton residential school from 1949 to 1959, recounts the prominent dynamic of sexual abuse between student

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ The purpose of Truth and Reconciliation events were to engage the Canadian public and provide education about the history of the residential schools system, the experience of former students and their families, and the ongoing legacies of the institutions within communities.

³² Youds, Mike, *supra* note 23.

and minister. He states that there were “three perpetrators in that school...one of them was supposed to be a minister... on Sundays he would go up in the pulpit and preach the word of God. Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, he would abuse the kids”.³³

The living conditions within many of these facilities also presented serious health impediments. To highlight this, in many of the schools, conditions were substandard and, in some cases, virtually unlivable. Among them, overcrowding, poor sanitation, and inadequate access to food supply were the most grave. Expectedly, these unfavorable conditions contributed to the high rates of illness and death in the schools.³⁴ And while primary causes of death included tuberculosis, which was facilitated by malnourishment and poor ventilation within schools, other significant causes of death included student-drowning, suicide and school fires.³⁵

The operation of the Residential School System lasted for over a century, with the last school officially closing in 1996. In accordance with various administrative records and victim testimonies, it is estimated that over 4000 Aboriginal youth died in the schools and by the hand of the Residential School

³³ Curry, Bill. (2007). *The Human Toll: Sexual Abuse at Heart of Pain*. The Globe and Mail, Canada.

³⁴ Milloy, John S. (1999). *A National Crime: The Canadian Government and the Residential School System, 1879 to 1986*. University of Manitoba Press, Canada at pg. 49.

³⁵ Walker, Connie. (2014). *New documents may shed light on residential school deaths: B.C. releases trove of information about aboriginal deaths to Truth and Reconciliation Commission*. CBC News. Retrieved from <http://www.cbc.ca/news/aboriginal/new-documents-may-shed-light-on-residential-school-deaths-1.2487015>.

Justice Murray Sinclair states that mortality rates reached up to 60 per cent at some schools.

system.³⁶ On June 11th, 2008, Prime Minister Stephen Harper issued an official apology to those affected by the Residential School System.

We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions [and] that it created a void in many lives and communities, and we apologize for having done this.

We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow and we apologize for having done this.

We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you.³⁷

On June 12th, 2008, Kevin McKay, British Columbia's Chairperson of the Nisga'a Lisims Government issued a response to Stephen Harper's apology.

We feel that the acceptability of the apology is very much a personal decision of Residential School survivors. The Nisga'a Nation will consider the sincerity of the Prime Minister's apology on the basis of the policies and actions of the government in the days and years to come. Only history will determine the *degree of its sincerity* [my emphasis].³⁸

Since this time, the Canadian government's efforts to implement policies and initiatives that speak to the terrors and traumas that resulted from the Residential School system have been well documented. Among them are the

³⁶ Kennedy, Mark. (2014). *At least 4,000 aboriginal children died in residential schools, commission finds*. The National Post. Retrieved from <http://news.nationalpost.com/news/canada/at-least-4000-aboriginal-children-died-in-residential-schools-commission-finds>.

³⁷ Parliament of Canada. (2008). *Text of Stephen Harper's Residential Schools Apology*. Retrieved from <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3568890>.

³⁸ Hanson, Erin, *supra* note 22.

creation of the *Aboriginal Truth and Reconciliation Commission* (2008)³⁹, the *Common Experience Payment* (2013)⁴⁰ and the *Independent Assessment Process* (2013).⁴¹ Recently, the Canadian government has extended its mandate to include more specific Aboriginal services that seek to offer redress for the many overt and complex Aboriginal issues that exist contemporarily, and which have largely resulted from Aboriginal historical treatment. This includes the implementation of initiatives that speak to the soaring rates of Aboriginal peoples currently living in unfavorable conditions, including dislocation, poverty, and confinement.⁴² Notably, while some of these initiatives possess a nation-focused mandate, including

³⁹ Government of Canada. (2014). *Aboriginal Affairs and Northern Development Canada: Residential Schools*. Canada.

“The Aboriginal Truth and Reconciliation Commission will:

- Provide former students and anyone affected by the Indian residential school legacy with an opportunity to share their individual experiences in a safe and culturally appropriate manner.
- Prepare a comprehensive historical record on the policies and operations of residential schools.
- Complete a publicly accessible report that will include recommendations to the Government of Canada concerning the Indian residential school system and its legacy.
- Establish, to the extent that its budget allows, a research center by the end of its mandate that will be a permanent resource for all Canadians.
- Host seven national events across Canada to promote awareness and public education about the Indian residential school system and its impact.
- Support events designed by individual communities to meet their unique needs.
- Support a \$20 million Commemoration initiative to fund local, regional and national activities that honor, educate, remember, memorialize and/or pay tribute to former Indian residential school students, their families and their communities.”

⁴⁰ *Ibid.*

“The Common Experience Payment (CEP) is one element of the Indian Residential Schools Settlement Agreement... [and] is paid to eligible former students who resided at a listed Indian Residential School. Eligible former students receive \$10,000 for their first year (or part thereof) of their attendance at a listed Indian Residential School plus \$3,000 for each additional year (or part thereof).”

⁴¹ *Ibid.*

“The Independent Assessment Process (IAP) is a claimant-centered, non-adversarial, out of court process for the resolution of claims of sexual abuse, serious physical abuse, and other wrongful acts suffered at Indian Residential Schools (IRS). The IAP...aims to bring a fair and lasting resolution of the legacy of residential schools.

⁴² Milloy, John S, *supra* note 30 at pg. 49.

Gladue and Aboriginal Sentencing rights and the *Post-Secondary Student Program*, other programs take into consideration the needs of their local contexts and have been strategically placed in areas of necessity and accessibility (e.g. *The Wabano Centre for Aboriginal Health* in Ottawa and *The Native Child and Family Services* of Toronto).

Despite the visible presence of these government-driven initiatives and their hopeful promises to improve the life circumstances of Aboriginal peoples, the question remains whether or not these initiatives are positively influencing and giving meaning to the lives of the people who utilize them. If history repeats itself, there is reason to challenge the assumption that initiatives undertaken actually have the intended remedial and positive impact on those they seek to benefit. This consideration will be revisited in the chapters to follow. Before delving into such a discussion, however, the research must first grapple with the complexity and visibility of what have come to be commonly regarded as contemporary “Aboriginal issues”.

II. Aboriginal Issues: Displacement, Poverty, Inter-generational Abuse and Over-Representation

“While Aboriginal people in Canada comprise just four per cent of the population, in federal prisons, nearly one in four is Métis, Inuit, or First Nations.”⁴³

- *Office of the Correctional Investigator (2013)*

“Despite years of efforts, things are *not* getting better.”⁴⁴

- *Francis Scarpaleggia, Liberal MP on the soaring Aboriginal population rates in Canadian jails.*

“The poverty rate is staggering. A 50 per cent poverty rate is unlike any other poverty rate for any other disadvantaged group in the country, by a long shot the worst”⁴⁵

- *David Macdonald, a senior economist at the Canadian Centre for Policy Alternatives.*

In the case of Indigenous peoples⁴⁶ in Canada, there has been a significant volume of academic literature published that documents the connection between colonialism and the plethora of challenges and pathologies that currently impact Indigenous people. The latter include soaring rates of Aboriginal displacement, dislocation, addiction, poverty, suicide, inter-generational abuse within Aboriginal familial homes and communities, and the over-representation of Aboriginal bodies in all areas of the criminal justice system.⁴⁷ The linkages of these issues have been documented in two very important ways: (1) Aboriginal issues are often correlated

⁴³ Office of the Correctional Investigator. (2013). *Aboriginal Offenders - A Critical Situation*. Retrieved from <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>. Ottawa, Ontario.

⁴⁴ Campion-Smith, Bruce. (2013). *Prison watchdog calls soaring aboriginal population in jail a 'critical situation'*. Retrieved from http://www.thestar.com/news/canada/2013/03/07/prison_watchdog_calls_soaring_aboriginal_population_in_jail_a_critical_situation.html. Ottawa, Canada.

⁴⁵ Hildebrandt, Amber. (2013). *Half of First Nations children live in poverty*. Retrieved from <http://www.cbc.ca/news/canada/half-of-first-nations-children-live-in-poverty-1.1324232>. Canada.

⁴⁶ Indigenous peoples in Canada include three broad groups, Indians, Métis and Inuit, who have Aboriginal rights described in Canada's constitution.

⁴⁷ In 2013, it was estimated that Aboriginal people accounted for 4.3% of the total Canadian population.

to one another: (2) the widening inequalities between Aboriginal and non-Aboriginal people in Canada continue to persist.

When considering Aboriginal overrepresentation within the Canadian criminal justice system statistically, it has been well established that the Aboriginal incarceration rate is at least ten times higher than the non-Aboriginal national average. In turn, Aboriginal people are disproportionately represented across prison populations at every level.⁴⁸ To highlight this, in the 2008-2009 annual report by the *Office of the Correctional Investigator* it was estimated that “Aboriginal rates of incarceration were almost nine times the national average” (i.e. one in five federally incarcerated offenders is a person of Aboriginal ancestry).⁴⁹ In 2013, it was estimated that Aboriginal people represented 4.3% of the total Canadian population but comprised a staggering 23% of federal inmates.⁵⁰

The numbers on the incarceration of Indigenous women are particularly concerning. The 2013 the *Office of the Correctional Investigator* reported that one in every three federally sentenced women was Indigenous, and their sisters comprised 41% of women held in provincial jails.⁵¹ Interestingly, Indigenous youth display similar rates of over-representation. In 2014, *Statistics Canada* reported

⁴⁸ Annual Report of the Office of the Correctional Investigator (2013). *The Changing Face of Canada's Prisons: Correctional Investigator Reports on Ethno-Cultural Diversity in Corrections*. Ottawa, Canada at paragraph 2.

⁴⁹ Office of the Correctional Investigator. (2008-2009). *Annual Report of the Office of the Correctional Investigator 2008-2009*. Retrieved from <http://www.oci.bec.gc.ca/cnt/rpt/annrpt/annrpt20082009-eng.aspx> Ottawa, Ontario at pg. 29.

⁵⁰ *Ibid.*

⁵¹ Milan, Anne, & Robles Urquijo, Covadonga. (2011). *Female Population in Women in Canada: A Gender-based Statistical Report in Statistics Canada*. Social and Aboriginal Statistics Division. Canada.

that Aboriginal youth constituted 7% of the youth population of Canada yet accounted for 41% of all youth custody admissions.⁵² Within this population, the male-female disparity in the adult correctional system is replicated but far more polarized: Aboriginal girls accounted for 53% of female youth admitted to the corrections system, whereas 38% of males admitted were Aboriginal youth.⁵³

The over-representation of Aboriginal inmates also persists with regards to disciplinary incidents within the confines of Canadian prisons. It has been documented that Aboriginal inmates are more likely to experience segregation placements, the use of force in incidents, and greater exposure to maximum-security measures in comparison to their non-Aboriginal counterparts.⁵⁴ Therefore, not only are there far more Indigenous people in Canadian prisons, but once in prison, Indigenous inmates are more likely than non-Indigenous inmates to be involved in incidents that result in disciplinary consequences. If discrimination and racism are dominant factors linked with the over-representation of Aboriginal peoples in Canadian prisons, then it seems likely that these factors will negatively impact the life chances and experiences of Aboriginal peoples within those prisons.

Identifying the reasons why Aboriginal over-representation within the prison population subsists is an important consideration that must be visited throughout this discussion. According to some scholars, the relationship between

⁵² Correctional Services Program. (2013-2014). *Youth correctional statistics in Canada*. Retrieved from <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14164-eng.htm>.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

the over-representation of Aboriginal people and the criminal justice system is identified as a consequence of the approaches commonly utilized by the judicial system.⁵⁵ To highlight this, the Court in *R. v. Gladue* characterized these rates of over-representation as “an unfortunate institutional approach that is more inclined to refuse bail and to impose more and longer prison terms for Aboriginal offenders”.⁵⁶ Other scholars deem this thought to be qualitative in approach and limited in method and urge that we redirect our focus outside of the justice system to consider how larger social and structural factors display impacts on this inquiry.⁵⁷

One example of this is Jane Dickson-Gilmore and Carol La Prairie’s book, which considers the relationship between inter-generational effects of Aboriginal people and their impacts on the rates of over-representation. Authors highlight how, among other factors, higher offending rates of Aboriginal people “explain more of over-representation than do other factors, because higher offending rates can be linked to greater social justice issues”⁵⁸ and ultimately result in the likelihood of carceral sentences.⁵⁹ It is further affirmed that the criminal justice systems’ practice of ‘differential processing’ in regards to Aboriginal offenders, the process of treating Aboriginal offenders differently than those who are non-

⁵⁵ Pfefferle, Brian R. (2006-2008). *Gladue Sentencing: Uneasy Answers to the Hard Problem of Aboriginal Over-Incarceration*. Manitoba Law Journal, Volume 32, no.2, pg.113-143. Manitoba, Canada at pg.113-143.

⁵⁶ *R. v. Gladue*, [1998] 1 SCR 688 at para 65.

⁵⁷ Dickson-Gilmore, Jane, & La Prairie, Carol. (2005). *Will The Circle Be Unbroken? Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change*. University of Toronto Press, Canada at pg. 41.

⁵⁸ *Ibid*.

⁵⁹ *Ibid* at pg. 53.

Aboriginal, mobilizes the “outright discrimination by criminal justice system actors and the state.”⁶⁰ Highlighting this point, “Aboriginal people are more frequently held in remand compared to non-Aboriginal defendants”⁶¹, they are more likely to be arrested for offenses that are likely to result in prison sentences⁶², and they are more likely to have longer records which present higher risk profiles at sentence and impact the likelihood of an incarceration sentence.⁶³

Dickson-Gilmore and La Prairie also examine the larger sociodemographic context of Aboriginal people in order to assess its impacts in the discussion of over-representation. It is identified that the unfavorable conditions that many Aboriginals are exposed to at an early age, including extreme conditions of poverty, exposure to violence, and exposure to substance abuse, for example, “not only encourage the likelihood of conflicts with the law, in some cases it may render the choice of a criminal lifestyle as a fairly rational one.”⁶⁴ Accordingly, achieving any form of significant socio-demographic change in the context of Aboriginal people in Canada will require policy reform within criminal and social justice systems.⁶⁵

The over-representation of Aboriginal people in Canada extends far beyond the confines of the criminal justice system. Among other overt issues, poverty,

⁶⁰ *Ibid* at pg.42.

⁶¹ *Ibid* at pg.43.

⁶² *Ibid* at pg.53.

⁶³ *Ibid* at pg.44.

⁶⁴ *Ibid* at pg.55.

⁶⁵ *Ibid* at pg.56.

addiction, and problems of mental health⁶⁶ prove to be striking concerns that affect the lives of innumerable Aboriginal people across Canada.⁶⁷ For example, impoverished conditions, both on and off reserves, may be regarded as one of the gravest challenges facing current and future Aboriginal generations. In 2012, *Citizens for Public Justice* released a poverty trend scorecard documenting the continued increase of impoverished conditions, impacting Aboriginals and minority groups across Canada. The report described how Aboriginal people are vulnerable to economic disadvantage, which is strongly correlated to “poor health outcomes, lower education attainment, lack of employment, and lower levels of community connection and engagement”.⁶⁸ Highlighting this, in 2010, it was estimated that poverty among Aboriginal adults living off-reserves was 15.2% in comparison to the 9% for all of Canada.⁶⁹

The realities of extremely poor living conditions on Canadian reserves and their impacts on the adverse impacts on the rates of Aboriginal health and wellness are also an important consideration in this discussion. While many falsely perceive reserves to be stress-free environments that provide ‘free’ housing benefits and tax exemptions, the documented realities of the living conditions on

⁶⁶ Khan, Saman. (2008). *Aboriginal Mental Health: The Statistical Reality*. Aboriginal People Issue of Visions Journal. Volume 5 (1) at pg. 6.

“Aboriginals people experience major depression and suicide at twice the national average.”

⁶⁷ Among the Canadian provinces, Winnipeg, Manitoba proves to have the worst conditions.

⁶⁸ Block, Sheila. (2010). *Ontario's Growing Gap: The Role of Race and Gender*. Canadian Centre for Policy Alternatives. Ottawa.

⁶⁹ Citizens for Public Justice. (2012). *Poverty Trends Scorecard*. Retrieved from <http://www.cpj.ca/files/docs/poverty-trends-scorecard.pdf>. Canada at pg. 14.

Poverty also gravely effects perhaps the most vulnerable population of all – Aboriginal youth. In the 2013 study conducted by the Canadian Centre for Policy Alternatives, it was reported that Indigenous children in Canada are over two and a half times more likely to live in poverty than non-Indigenous children. Consequently, the average child poverty rate for all Indigenous children in Canada is 40% compared to 15% for non-Indigenous children.

Canadian reserves speak a very different truth. Poor sanitation and water quality, absence of employment, inadequate access to health care services, unstable living structures, and overcrowding are just some of the harsh realities that countless Aboriginals endure on a day-to-day basis. In 2011, CBC news exposed the highly deficient and blatantly dangerous living conditions on the Attawapiskat reserve, a First Nation reserve located in northern Ontario. The story emphasized how substandard conditions on the reserve, which included employment deficiencies, virtually unlivable housing structures, and overcrowding⁷⁰ gravely impacted the mental and physical health of residents, emphasizing a concern for Aboriginal youth.⁷¹ While the text focused its attention on one case study it maintained that the majority of reserves across the nation are facing comparable pandemics.⁷²

In 2013, James Anaya, a UN spokesperson for the rights of Indigenous people, visited various Indigenous territories across Canada in an effort to grasp the severity of the current ‘Aboriginal situation’.⁷³ According to Anaya, the current living conditions of the majority of Indigenous people illustrated that Canada is amidst a national “crisis when it comes to the situation of Indigenous peoples of the country”.⁷⁴ In statistical terms, “at least one in five Aboriginal Canadians live

⁷⁰ According to Jonathan Solomon, chief of Kashechewan First Nation, he has witnessed people living like sardines in some units, in some cases having three generations living under one roof, and not by choice but by necessity.

⁷¹ Reading, Charlotte and Fred Wien (2009). *Health inequalities and social determinants of aboriginal Peoples’ health*. National Collaborating Centre for Aboriginal Health. British Columbia, Canada at pg. 12.

⁷² Stastna, Kazi. (2011). *First Nations housing in Dire need of Overhaul: Shortages, Overcrowding and Ramshackle Homes the Norm on Many Reserves*. CBC News, Canada.

⁷³ This includes: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Quebec.

⁷⁴ Anaya, James. (2013). *United Nations Special Rapporteur on the rights of Indigenous peoples: Statement upon conclusion of the visit to Canada*. Ottawa, Canada.

in homes in need of serious repair, which are often also overcrowded and contaminated with mold”.⁷⁵ These conditions, in turn, “lead to increased wear and tear and...premature deterioration of existing housing stock, resulting in dilapidated and often unsafe housing conditions”.⁷⁶

As documented, these living conditions are associated with the social aspects of one’s life. Throughout Anaya’s report, he identified that the single condition of overcrowding correlated to five identifiable social problems – “high rates of tuberculosis ⁷⁷, depression, family violence, unemployment, and unwanted displacement to urban centers”.⁷⁸ In identifying these correlations, the latter portion of the report focused on developing a realistic plan for resolution in order to eliminate the current pandemic. Anaya emphasized the importance of recognizing both the *existence* and the *significance* of Canada’s Aboriginal situation. Further, the report maintained that having “full respect for Indigenous peoples’ constitutional, treaty, and internationally-recognized rights” is a requirement in order to arrive at any form of meaningful outcome.⁷⁹

There has been an array of similar Government-initiated studies conducted into understanding Canada’s current Aboriginal situation. These studies include

⁷⁵ First Nations Information Governance Centre. (2012). *First Nations Regional Health Survey (RHS) 2008/10*. National Report on the Adult, Youth and Children Living in First Nations Communities. Ottawa, Ontario at pg. 53.

“Half of First Nations adults were living in homes with mould or mildew (50.9%), representing an increase since the previous RHS 2002/03 (44.0%)”

⁷⁶ *Ibid.*

⁷⁷ Assembly of First Nations. (2011). *Fact Sheet: Quality of Life for First Nations* (2011). Retrieved from http://www.afn.ca/uploads/files/factsheets/quality_of_life_final_fe.pdf

Tuberculosis among First Nation citizens is 31 times higher than the national average in Canada.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

the 2006 Statistics Canada report entitled *Aboriginal Statistics at a Glance: Housing Conditions*, which finds that the majority of housing on Canadian Aboriginal reserves currently do not meet the most basic safety standards, meaning living structures are not structurally sound, windproof, waterproof, weatherproof, sanitary, or adequately ventilated.⁸⁰ The report emphasized that almost half (45%) of all Aboriginal people living on Canadian reserves are living in homes in need of major repairs, compared to 36% a decade ago.⁸¹ Similarly, the 2011 federal report evaluating the Department of Indian and Northern Affairs' *On-Reserve Housing Support* program found that the poor state of affairs that exists on many Canadian reserves represents an overall detriment to the health and well being of Indigenous residents.⁸² Without rectification of these poor living conditions, it is asserted that the state of affairs on reserves will continue to worsen and contribute to the decline of the current overall Aboriginal situation. As such, a recommendation was made that at least 20,000 to 35,000 new residential units would need to be built across Canada in order to meaningfully improve the current conditions on Aboriginal reserves. Interestingly, according to the *Assembly of First Nations Fact Sheet: Quality of Life for First Nations*, actual positive change will require far more than 20,000-30,000 homes, estimating a greater numerical figure of 85,000 units.⁸³ Currently, in 2015 and several years after these recommendations were made, no adequate progress has been made in

⁸⁰ Definition obtained from Alberta Health. *Minimum Housing and Health Standards* (1999 at p.1)

⁸¹ Statistics Canada. (2010). *Aboriginal Statistics at a Glance: Housing Conditions*.Canada.

⁸² Government of Canada. (2011). *Aboriginal Affairs and Northern Development Canada: Evaluation of INAC's On-Reserve Housing Support*. Canada.

⁸³ Assembly of First Nations, *supra* note at pg. 3.

improving on-reserve housing. To highlight this, in June 2015, the *Standing Senate Committee on Aboriginal Peoples* (SSCAP) issued a report on the current conditions on on-reserve housing. Here, the SSCAP identified that despite the fact that “\$300 million was set aside by the federal government in a trust fund for the First Nations Market Housing Fund in 2008, [which] expected to result in 25,000 new homes in 10 years, the most recent data provided figures that [only] 99 homes had been built by May 2015.”⁸⁴

III. The Effects: Addiction, Poor Mental Health, and Suicide

“Suicide is an invisible problem in Canada and it is an invisible epidemic among [First Nations] youth. We have known for years that it is our collective failing that we, as political leaders, have not addressed this”.⁸⁵

- *John Rafferty on Aboriginal Youth Suicide (2011)*.

When an individual is exposed to unfavorable living conditions, including overcrowding, high residential mobility, and deprivation, it is reasonable to expect that such conditions will impact and even generate greater social problems. As previously outlined, the majority of challenges facing Aboriginal communities are recognized to have linkages to high crime rates on reserves, and to the over-representation of First Nation, Métis, and Inuit people at every level of the

⁸⁴ Standing Senate Committee on Aboriginal Peoples. (2015). *On-Reserve Housing and Infrastructure: Recommendations for Change*. Retrieved from <http://www.parl.gc.ca/Content/SEN/Committee/412/appa/rep/rep12jun15-e.pdf>. Nova Scotia, Canada at pg. 2.

⁸⁵ Murray, James. (2011). *John Rafferty on Aboriginal Youth Suicide*. Retrieved from <http://www.netnewsledger.com/2011/10/05/john-rafferty-on-aboriginal-youth-suicide/>. Ottawa, Canada.

criminal justice system and within Canadian prisons.⁸⁶ To reiterate this, the 2006 Statistics Canada report on the subject of Aboriginal people stated that “in 2004, *Criminal Code* incidents on reserves across Canada represented 4% of the national total, according to police-reported data examining crimes committed on reserve”⁸⁷, 25 % of which were deemed violent. The same report also identified higher rates of violent crime committed on reserves, highlighting that violent crime that was reported was “eight times higher for assaults, seven times higher for sexual assaults and six times higher for homicides than rates in the rest of Canada”.⁸⁸

These unfavorable conditions, in turn, contribute to significantly higher rates of mental health problems for Aboriginal people living on reserves. To exemplify this, Kirmayers’ *The Mental Health of Indigenous Peoples* identifies that “Aboriginal peoples suffer from a range of health problems at higher rates than the general Canadian population and they continue to have substantially shorter life expectancies”.⁸⁹ One specific mental health illness that underscores this point is depression. While depression is a common mental illness affecting a significant number of the Canadian population, Indigenous or not, figures prove to be especially true for First Nations people, “who experience major depression at twice the national average (16%)”.⁹⁰

⁸⁶ Rudin, Jonathan. (2005). *Aboriginal Peoples and the Criminal Justice System*. Pg. 1-3. Toronto, Canada.

⁸⁷ Statistics Canada. (2006). *Aboriginal people as victims and offenders*. Retrieved from <http://www.statcan.gc.ca/daily-quotidien/060606/dq060606b-eng.htm> at pg. 21.

⁸⁸ *Ibid.*

⁸⁹ Kirmayer, Laurence J., Gregory M. Brass, and Caroline L. Tait (2000). *The Mental Health of Aboriginal Peoples: Transformations of Identity and Community*. McGill University, Quebec, Canada at pg. 9.

⁹⁰ Khan, Saman, *supra* note 62 at pg. 6-7.

Examining the correlations between unfavorable sociodemographic conditions and the health and well-being of individuals can be applied to an array of other Aboriginal issues. Williams and Latkin's 2007 article on the correlations between poverty and drug use examine how deprived living conditions promote significantly higher figures of illicit drug use, specifically in regards to heroin and cocaine.⁹¹ While it is affirmed that more research must be conducted in order to determine alternative aspects of living environments that may put individuals at risk for drug use and abuse, the correlation among living conditions and the use of drugs is clearly identified.

In 1988, the Winnipeg Free Press issued an article that explored how living in impoverished conditions has shown to facilitate the use of drugs in the context of a Canadian Native reserve located in Winnipeg. Here it was found that the extreme conditions of poverty and shortage of jobs "conditioned people to live on welfare" and, in turn, influenced their behavioral choices to participate in the use of drugs and alcohol, particularly among impoverished adolescents.⁹² In a similar study, the relationship between alcohol abuse and drug use was examined. It was found that the abuse of alcohol, also at a young age, could lead to alcohol dependence and increase one's likelihood of using dangerous inhibitors and, in some cases, lead to premature death.

⁹¹ Williams, Chyvette T, & Latkin, Carl A. (2007). *Neighborhood Socioeconomic Status, Personal Network Attributes, and Use of Heroin and Cocaine*. American Journal of Preventive Medicine. Elsevier Inc. Volume 32, Issue 6 at pg 203-210.

⁹² *Ibid.*

By and large, Aboriginal communities experience attempted suicide and suicide at significantly higher rates than non-Aboriginal communities.⁹³ Studies indicate that suicide rates among Inuit youth are between 6-11% higher than the national average, while First Nations suicide rates are at twice the national average.⁹⁴ Further, “over a third of all deaths among Aboriginal youth are attributable to suicide”.⁹⁵ And while the rates of suicide differ between Aboriginal communities and from province-to-province, suicidal ideation, attempted suicide and suicide among Aboriginals, and particularly youth, remain at a significantly higher figure than non-Aboriginals across Canada.⁹⁶

IV. Conclusion

This chapter has explored the gravity and complexity of just a handful of the systemic problems facing Aboriginal communities across Canada. The high visibility of such issues and the confirmation of their existence in the research implicate a two-fold analysis. On one hand, through widespread media attention to Aboriginal histories and issues such as Indian Residential Schools, public knowledge of Indigenous issues is better understood, and has provoked a call for

⁹³ Riley, Dianne. (1998). *Drugs and Drug Policy in Canada: A Brief Review and Commentary*. (Doctoral Thesis). Canada at paragraph 30.

“Individuals who are regarded as being most at risk for experiencing harms from legal and/or illegal substances include “street youth and school drop-outs, injection drug users, women, seniors, the poor, Metis, Inuit and off reserve aboriginal people”.

⁹⁴ *Ibid.*

⁹⁵ Kirmayer, Laurence J., Brass, Gregory M., & Tait, Caroline L., supra note 35 at pg. 13.

⁹⁶ MacNeil, Melanie S. (2008). *An Epidemiologic Study of Aboriginal Adolescent Risk in Canada: The Meaning of Suicide*. Journal of Child and Adolescent Psychiatric Nursing. Volume 21, Issue 1, pg. 3-12.

action to resolve these problems.⁹⁷ On the other hand, frequent discussions and growing awareness of Aboriginality and the many attendant problems has, for some, resulted in an inaccurate stereotype of ‘the Aboriginal’ as a social problem and, thus the dichotomous ‘other’.

Combatting denigrating conceptions of Aboriginality can conceivably be best achieved by targeting the assumptions that elevate pathologies experienced by communities and individuals over the positive attributes of those communities. Perhaps the first step towards meaningful change is to try to better understand the complex histories that have shaped many modern Aboriginal issues and explore and challenge the forces that continue to sustain those issues. Contemporarily, there are Aboriginal-focused initiatives that concentrate on the reduction of Aboriginal issues through a restorative justice lens. They don’t, however, necessarily deviate from grouping Aboriginal people as a singular identity or from the pejorative assumptions about Indigenous lives and people held by many non-Indigenous Canadians.⁹⁸

Gladue reports, which are principled on restorative justice and represent a central defining element elucidating an Indigenous offender’s personal history and experiences, have been proposed as one possible means of raising both Canadian and Aboriginal awareness of the linkages between the past and present realities characterizing Indigenous society. If this teaching transpires within a context of

⁹⁷ Thomas, Paul G. (2000). *Making Aboriginal Issues Matter in the Government of Manitoba: Some Organizational and Procedural Options*. University of Manitoba, Canada. Pg. 1-13.

⁹⁸ Adelson, Naomi. (2005). *The Embodiment of Inequity: Health Disparities in Aboriginal Canada*. The Canadian Journal of Public Health, Canada at pg. 47-48.

gathering and sharing the sacred stories of Indigenous offenders, the assumption follows that the reports will have a healing effect which can remedy the high-incarceration rates of Indigenous people. It is to the assessment of the viability and accuracy of this assumption that the remaining chapters of this thesis are directed. But first, let us gain a better understanding of the process that we will be evaluating— *Gladue*.

CHAPTER TWO: THE LEGAL ANALYSIS

I. The Advent of...Gladue?

“He’s going to get it. He’s really going to get it this time.”⁹⁹
- *Jamie Tanis Gladue*, the Appellant.

Jamie Tanis Gladue was born in McLennan, Alberta in 1976 to a Cree mother Marie Gladue and a Métis father, Lloyd Chalifoux. In 1995, Gladue’s, sister Tara, and common law spouse Reuben Beaver (the victim) moved to Nanaimo, British Columbia to live with Chalifoux in an off-reserve housing complex. On the eve of September 16th, 1995 Gladue attended a party hosted in honor of her 19th birthday. Attendees included friends, Tara, and Beaver. Throughout the course of the evening, several attendees accounted Gladue repeatedly vocalize her concerns about Beaver’s suspected infidelity with Tara, in which Gladue repeatedly uttered threats like “*the next time he fools around on me, I’ll kill him*” and “*he’s going to get it...he’s really going to get it this time*”.¹⁰⁰ After the party, Gladue headed back to the apartment complex in which she resided with Beaver. Upon entry, Gladue located Beaver and Tara “coming down the stairs together from [Tara’s] suite”. This discovery, in Gladue’s mind, confirmed her suspicions of Beaver’s infidelity and led her to confront Beaver.¹⁰¹

Shortly after a brief public argument, both parties returned separately to their apartment, where the quarrel escalated. According to the testimony of a

⁹⁹ *R. v. Gladue*, [1998] 1 SCR 688 at para 1.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid* at pg. 695.

neighbor, Mr. Gretchen, on the evening of the incident he saw Beaver running down the hallway of the complex being chased by Gladue, who was in possession of a large kitchen knife.¹⁰² Gladue then proceeded to stab Beaver once in the left chest, which penetrated his heart and ultimately led to his death. Directly following the incident, Mr. Gretchen, who believed that Gladue did not grasp the severity of her actions, accounted her walking back into her suite asserting, “I got you, you fucking bastard”.¹⁰³

The following year, in 1996, Gladue was charged with second-degree murder in the Beaver’s death. In 1997, “following a preliminary hearing and after a jury had been selected, Gladue entered a plea of guilty to manslaughter.”¹⁰⁴ During sentencing, Gladue’s defense council requested the trial judge consider alternative options to imprisonment for Jamie Gladue due to her Aboriginal heritage, and as directed by section 718.2(e) of the *Criminal Code*, which specifies:

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.¹⁰⁵

This section, which was the result of changes to the sentencing provisions of the *Criminal Code* passed in 1996, directed courts to deviate from traditional ‘retributive’ forms of punishment and adopt a restorative justice approach to

¹⁰² *Ibid.*

¹⁰³ *Ibid* at pg. 696.

¹⁰⁴ *Ibid* at pg. 696- 697.

¹⁰⁵ *Criminal Code of Canada*. Section 718.2(e), [1985], c. C-46.

sentencing generally, but especially with regard to the sentencing of Indigenous offenders. As such, this provision requires judges to ‘remedy’ the over-incarceration of Indigenous people by considering alternative forms of punishment that are reasonable in the circumstances of the offense and offenders. Accordingly, judges are required to pay particular attention to the unique background and circumstances of Aboriginal offenders and to actively consider these in crafting a fit sentence.¹⁰⁶ While there is a common misconception that section 718.2(e) speaks only to Aboriginal sentencing, it is in fact a merely a condition of “general application that *mentions* the consideration of Aboriginal offenders”.¹⁰⁷

Requested to address s.718.2 (e), Gladue’s sentencing judge reasoned that, because Jamie did not reside on a reserve she did not qualify for any ‘special’ consideration arising from the application of s.718.2 (e). Thus relieved of the obligation to consider Jamie’s ‘unique background and circumstances’ or any reasonable alternatives to incarceration, the Court sentenced Jamie to three years imprisonment and a ten year weapons prohibition.¹⁰⁸ Following this decision, Gladue appealed her case to the *British Columbia Court of Appeal* (BCCA) under section 718.2(e). Interestingly, despite the fact that the BCCA did establish that the sentencing judge erred in the finding that the provision did *not* apply to “off-

¹⁰⁶ Even though section 718.2 (e) has been included for the particular benefit of Aboriginal offenders, it is not limited to them and has, in fact, has been used for the benefit of many non-Aboriginal offenders.

¹⁰⁷ Rudin, Jonathan. (2008). *Aboriginal Over-representation and R. v. Gladue: Where We Were, Where We Are and Where We Might Be Going*. Pg. 687-713. Toronto, Canada at pg. 702.

¹⁰⁸ *Ibid* at pg 696-697.

reserve” Aboriginals,¹⁰⁹ the Court deemed Gladue’s original sentence proportionate to the crime she committed, and thus upheld.¹¹⁰

II. The Supreme Court Ruling in *R. v. Gladue*

The tensions that emerged in the Gladue case in combination with the fact that Jamie further appealed her decision to the Court provided sufficient reason for the *Supreme Court of Canada* (SCC) to speak on the topic of Aboriginal offenders.¹¹¹ As one component of its discussion, the SCC highlighted that, moving forward, judges will need to work with legal actors, including lawyers, probation officers, and youth service members in order to obtain adequate background information on Aboriginal offenders, which, in turn, created the foundation for Gladue reports. According to the SCC, the requirements spelled out in the Gladue case requires judges to obtain information about: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection.¹¹² Further, in cases where judges may find a prison sentence necessary, the SCC highlighted that the two

¹⁰⁹ Turpel-Lafond, M.E. (2005). *Sentencing within a Restorative Justice Paradigm: Procedural Implications of R. v. Gladue*. Canada at pg. 35.

¹¹⁰ After six months of serving her three-year sentence the court allowed the appellant to have day parole.

¹¹¹ The *R. v. Gladue* judgment was delivered in 1998.

¹¹² *R. v. Gladue*, [1998] 1 SCR 688.

aforementioned factors are to be applied to the length of the period of incarceration.¹¹³

R. v. Gladue can be characterized as one of the most, if not the most, significant cases speaking to the problem of Aboriginal over-representation in the Canadian criminal justice system. By opening up a much-needed space to discuss the Indigenous culture, history, and the role of colonization in the contemporary issues facing Indigenous individuals and communities, *R. v. Gladue* has offered an important platform for creating meaningful change through the use of the law. Interestingly, while there has been a number of decisions further refining and clarifying *Gladue* since 1999 (including, for example, *R. v. Wells*), in 2012 the Court followed up on *Gladue* with its decision in *R. v. Ipeelee*, a decision which reverberated through the courts and media outlets across Canada.¹¹⁴ Here, the Court raised issue of the inconsistent and inaccurate interpretation and application of the Aboriginal rights and sentencing principles since the time of their earlier decision in *Gladue*.

¹¹³ Lafond-Turpel, Judge M.E, *supra* note 105 at pg. 37-38.

“Judges now have a duty to obtain the required information from the offender’s defense counsel and a pre-sentence report”.

¹¹⁴ *R. v. Wells*, [2000] 1 S.C.R. 207.

III. *R. v. Ipeelee*

“Proportionality is the *sine qua non* of a just sanction. Proportionality, the fundamental principle of sentencing, is intimately tied to the fundamental purpose of sentencing – the maintenance of a just, peaceful and safe society through the imposition of just sanctions.”¹¹⁵

- *Per McLachlin C.J. and Binnie, LeBel, Deschamps, Fish and Abella JJ* in *R. v. Ipeelee*.

“The failure to apply the Gladue principles in any case would also result in a sentence that is not fit and is not consistent with the fundamental principle of proportionality. Therefore, application of the Gladue principles is required in every case involving an Aboriginal offender, including the breach of an LTSO, and a failure to do so constitutes an error justifying appellate intervention.”¹¹⁶

- *Per McLachlin C.J. and Binnie, LeBel, Deschamps, Fish and Abella JJ* in *R. v. Ipeelee*.

Thirteen years following *R. v. Gladue*, the SCC revisited its original decision in *R. v. Ipeelee*, which was heard alongside *R. v. Ladue*. The case involved the application of Gladue to these Inuit offenders, who violated their Long Term Offender designations. In *Ipeelee*, the Court not only addressed the misapplication of Gladue rights in the cases of *Ipeelee* and *Ladue*, it also asserted the statutory duty for all courts to ensure the adequate and consistent application of Gladue rights is readily enforced in all future cases.

Both defendants, Manasee Ipeelee and Frank Ladue, are of Aboriginal decent and share similar life paths: exposure to unfavorable childhoods, issues surrounding substance abuse, and extensive criminal backgrounds. Both offenders were found to have breached the conditions of their long-term supervision order (LTSO), which prohibited them from consuming alcohol and drugs. In Ipeelee’s case, the sentencing judge imposed “three years’ imprisonment, less six months of

¹¹⁵ *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. (pg. 434).

¹¹⁶ *Ibid* at pg. 437.

pre-sentence custody at a 1:1 credit rate”.¹¹⁷ Ladue was sentenced to “three years’ imprisonment, less five months of pre-sentence custody at a 1.5:1 rate”.¹¹⁸ Both offenders appealed their sentence on the grounds that their respective sentencing judge failed to apply section 718.2(e) and, in turn, did not consider their unique background and circumstances as Aboriginal people. At the provincial Court of Appeal, the appellate judge denied Ipeelee’s appeal request; the judge in Ladue’s case, however, accepted the request for appeal and subsequently reduced his sentence to a one-year prison term.

The fact that both offenders possessed similar personal and criminal histories, but received quite dissimilar appeal and sentencing outcomes, raised concern regarding consistency and accuracy of the application of Gladue principles by the justice system. Among other areas of deliberation, the SCC debated how judges are to determine a ‘fit’ sentence for a breach of an LTSO, with a particular focus on Aboriginal offenders. While asserting the fact that individuals who breach their LTSO, and are subsequently categorized as long-term offenders, face limitations for sentencing options that are alternative to lengthy periods of incarceration, the SCC maintained the fundamental importance and duty of judges to ensure the adequate enforcement of Gladue rights and principles.

A sentencing judge has a *duty* to apply all of the principles mandated by ss. 718.1 and 718.2 of the Criminal Code in order to devise a fit and proper sentence which respects the well-established principles and objectives of sentencing set out in Part XXIII of the *Criminal Code*.¹¹⁹

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid* at pg. 435.

Further, in cases where judges deem a prison sentence necessary, the period in which the offender is separated from the community ought to be utilized in a manner that emphasizes healing and rehabilitation for the offender (i.e. programming) “so that upon release, the substantial risk of reoffending may be controlled”.¹²⁰ The Court observed that, when lower courts fail to enforce the Gladue principles, the sentences delivered would not be fit or consistent with the fundamental principle of proportionality in sentencing. Accordingly, the application of Gladue principles is required in every case involving an Aboriginal offender, including the breach of an LTSO, where that person is facing a “deprivation of liberty”.¹²¹

In Ipeelee’s case, the SCC held that the sentencing judge failed in his application of Gladue, specifically in his conclusion that rehabilitation was not a relevant sentencing objective. As a result, the approach taken “gave only attenuated consideration to Ipeelee’s circumstances as an Aboriginal offender” and failed to reflect on the context of Aboriginal histories. It was unanimously decided to dismiss the appeal and order a one-year prison sentence for Ipeelee. In the case of Ladue, the majority agreed with the appellate court that a one-year sentence was proportionate to the offense committed.

On a more general level, the SCC spoke to the harsh reality that Canadian courts have, since the direction handed down in *Gladue*, “failed to take into

¹²⁰ *Ibid* at pg. 438.

¹²¹ *Ibid* at pg. 462.

In the event that a court fails to follow the direction outlined in *R. v. Ipeelee*, the Court asserts that appellate intervention is “automatically justified”.

account the unique circumstances of Aboriginal offenders that bear on the sentencing process”.¹²² By affirming the intent of section 718.2 (e) of the *Criminal Code* for Aboriginal offenders, the SCC asserted the necessity for the courts to remedy such failures and direct judges to sentences that not only reflect the unique background and circumstances of Aboriginal people, that will also offer the opportunity for the offender to meaningfully heal.¹²³ At the same time, the SCC also expressed the necessity for courts to be conscious, consistent, and respectful of Aboriginal history and culture during court proceedings and ensure that Gladue rights and principles are applied in all future contexts and cases.¹²⁴

While *R. v. Gladue* reflected the Court’s concern over high rates of Aboriginal over-representation in Canada and laid the foundation for Gladue reports, *R. v. Ipeelee* demonstrates the difficult reality that the implementation of Gladue faces grave challenges and, as such, has not adequately progressed since its inception. In many respects, the difficulties implementing the *R. v. Gladue* decision arise from a profound lack of knowledge and understanding of the Gladue decision and the resulting Gladue rights on the part of court actors, with the result that courts are consistently misapplying Gladue rights and principles and, in turn, contributing to the further oppression and marginalization of Aboriginal offenders.

The rates of over-representation prior to and following the amendments to the sentencing provisions of the *Criminal Code* clearly elucidate the lack of progress with Gladue. As highlighted in the introduction, between 1995 and 1996,

¹²² *Ibid* at pg. 436.

¹²³ *Ibid*.

¹²⁴ *Ibid* at pg. 437.

Indigenous people comprised approximately 3.7% of the Canadian population, but comprised about 12% of the federal prison population and 16% of the provincial population. In 2013-2014, well over a decade following *R. v. Gladue*, Indigenous people comprised 4.3% of the Canadian population, but occupied 21.5% of federal prison inmates.¹²⁵ Exacerbating these dismal numbers is an even more shocking rise in the rates of admission and incarceration of Indigenous women in particular, who comprise approximately 33% of all women incarcerated.¹²⁶ Today, it is approximated that one in every three federally sentenced women is Aboriginal.¹²⁷

The consideration of these figures demonstrates two primary issues. The first is the evident lack of understanding by legal actors of the spirit, intent and application of *Gladue*. The second is that the first situation must be changed; court actors must be educated and encouraged to respect *Gladue* and ensure that the *Gladue* rights of Indigenous people before the courts are respected. Until these issues are adequately recognized, it is the researcher's impression that *Gladue* will remain stagnant and unable to achieve the remedial effects intended by the Court or any form of meaningful change in the lives of those it seeks to assist for that matter.¹²⁸

¹²⁵ Office of the Correctional Investigator. (2012). *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*, Report of the Office of the Correctional Investigator. Retrieved from <http://www.oci-bec.gc.ca/ent/rpt/oth-aut/oth-aut20121022-eng.aspx>.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ Rudin, Jonathan, *supra* note 82 at pg. 1-2.

IV. Conclusion

Change is, of course, difficult and rarely a linear or direct process. While some of the ‘bumps in the road’ towards change can result from the lack of procedural or systematic processes in place, it is also the case that new or unfamiliar systems tend to elicit greater tensions due to their newness, if not their nature. This is not to say that change per se is hard, but rather that introducing or altering past practice to achieve change is often deeply difficult for those entrenched within particular ways of understanding and acting. That said, while change is difficult, it is also often imperative.

It seems clear that the creation and implementation of a structure(s) that could bridge the divide between Gladue in theory and Gladue in practice was both a necessity and a problem for the post-*Gladue* legal arena. For this reason in 2000, the year following the SCC’s ruling, the Ontario Conference of Judges and the Canadian Association of Provincial Court Judges considered the imposition of a new structure to address post-Gladue inadequacies, including overcoming difficulties accessing Gladue-relevant information both about offenders and possible sentencing alternatives. Collectively, it was agreed that the imposition of a pre-sentencing mechanism (Gladue reports) would be a step in the right direction toward creating remedial change. It was this step that actualized the practice of researching and compiling ‘Gladue reports’ for the sentencing of Indigenous offenders.

The final chapter of the research will look to the degree to which ‘Gladue reports’ have impacted, if at all, the vindication of meaningful healing for clients. Prior to this, however, the research will present the two case studies. The goal of this chapter will be to offer insight into the experience of Gladue by individuals who have been directly touched by it.

CHAPTER THREE: THE CASE STUDIES

I. Interview 1: The Gladue Report Interviewer

“But more so my focus was on helping the individual. No matter what their charges were, it was treating them as an individual and helping them to really understand where they were at in their life. And, you have to be very careful with Gladue reports. Basically, with re-victimization and opening up old wounds.”

- Participant Y, Research Interview (2015)

“One thing I bring in the interview process is boxes of Kleenex.... because there’s a lot of shedding of emotion”.

- Participant Y, Research Interview (2015)

Participant Y had numerous years of experience working in the Canadian justice system and with Aboriginal offenders. As a professional Gladue report interviewer and writer, participant Y, at the time of the study, worked with a private organization that focused on providing its clients, who are Aboriginal, an overall positive Gladue reporting experience. Due to the fact that there is limited information available on the Gladue reporting process from an in-depth procedural standpoint, it was one of the intentions of this research to visit this conversation during this interview.

Participant Y described his involvement and passion for working with Ottawa’s Aboriginal community by highlighting the fact that he has spent close to thirty-five years working in this field and, in more recent years, with Gladue reporting. Intriguingly, rather than looking at Gladue reports as a singular process, participant Y conceptualized Gladue as one component of an individual’s

healing journey because of the offenders ability to share his or her story and be heard, which he believes can provide an entry into healing:

I found the Gladue is an opportunity for the individual to heal. It wasn't just addressing historic and systemic and traumatic issues in their life but it also, um, gave a foundation for the individual to move on with their life. While at the same time giving uh the courts an understanding of the individual and, uh, how they became involved in the justice system.¹²⁹

Given that a Gladue report has the potential to significantly impact an offender's life, participant Y emphasized that an offender's informed consent is one of the most crucial components of the report. To underscore this, it is not only imperative that the offender's needs are addressed and their rights are respected, it is also important for the offender to have a clear understanding of what their rights and responsibilities are both during and following the completion of the report.

Usually when I set up an appointment I give them a few days to absorb what's happening. You know, think about some of the things they want to say. In my initial contact with them what I do is I basically state to them that 'you know this is the first time in your life that you'll be able to put the cards on the table – you know, explain who you are as a person...and you really need to think about that and what you're going to say.'¹³⁰

Following the time to grasp the symbolic meanings and importance linked to the Gladue reporting process, including the offender's understanding that he or she may have to deal with various emotions that result from the interview, the offender signs a 'consent to participate in a Gladue Interview' with the Gladue reporter and the interview can then proceed. During the interview, which can take

¹²⁹ Boudakian, Taleen. (2015, March 27). Personal interview 1. Carleton University, Ottawa.

¹³⁰ *Ibid.*

between one and three hours, the offender and the reporter pace through discussions about the offender's life history, family life, and future goals. Recommendations for sentencing and rehabilitation are also discussed between parties.¹³¹ The Gladue interview is then transcribed, processed into a report and delivered to the defense and crown counsels, and the judge. Following, the presiding judge administers a judgment, which is to be informed by the Gladue report and consistent with Gladue rights and principles.¹³² As underscored in the previous chapter, Gladue reports are not to be treated or perceived as a 'get out of jail free card' for offenders. Rather, the report is to be understood as an alternative method of justice that opposes retributive methods of punishment and optimizes restorative and rehabilitative approaches. With this in mind, participant Y affirmed that Gladue, when respected and properly administered, has the opportunity to guide offenders on a different life path through the use of the law.

It's a complement to the justice system. It really helps in...it helps the judge have more tools to make decisions in the courtroom. It doesn't trump the justice system...it doesn't trump the judges decisions. But, I can tell you this – a lot of the judges that are working within the Western justice system don't know a lot about our communities and do not know a lot about Gladue – and this is one of the biggest issues in the justice system...they do not have the knowledge of all the resources that are out there.¹³³

Despite participant Y's confidence in the possibilities of Gladue and its ability to provide positive opportunities for Aboriginal offenders across Canada, Gladue's pitfalls and the unfortunate lack of progress since the SCC's initial ruling over a

¹³¹ *Ibid.*

¹³² Istvanddy, Jay, *supra* note 2.

¹³³ Boudakian, Taleen, *supra* note 125.

decade ago are also acknowledged. For participant Y, Gladue's stagnancy is attributed to one primary factor – the lack of education. Further, participant Y's emphasis on the need for the SCC to continue to speak to the misapplications of Gladue principles and raise awareness of the fact that Gladue is a legal right was evident.

Gladue has been pretty stagnant. You know, we haven't really seen any major changes for the last ten years and uh it just bothers me that uh that something so simple about getting information, on the information highway to the individuals that need it, is not being done.

You know, you make a ruling on the Supreme Court and it has to be followed. I mean that's the whole formula... the point. That's the reason why the Supreme Court was put in place. But that's not the case in the justice system. It seems to be challenged; it seems to be um problematic. And then, when you get behind the scenes of why this is happening it comes down to one thing – they're not educated.

I just think that uh the justice system really has to take the blinders off. And it's really, like I mentioned earlier, its really about education and really understanding the importance of the Gladue reports. As I said too, it's a Supreme Court ruling and uh it needs to be respected that way. And for people not to have the opportunity to have a Gladue report sometimes, because of the neglect of the justice system, I think is terrible.¹³⁴

¹³⁴ *Ibid.*

II. Interview 2: The Gladue Report Subject

“It didn’t serve me well... that’s what I’m saying... it didn’t serve me well.”

- *Participant Z, Research Interview (2015)*

“We need to have people spending time and you know realizing that this persons story is sacred, its their life, you know and being apart of it, as little as that might be, listening to them, helping them on their journey, making those recommendations to ensure that they get the help they need”.

- *Participant Z, Research Interview (2015)*

“The healing journey that we talk about...it can be somewhat of an obstacle”.

- *Participant Z, Research Interview (2015)*

“I have come to learn, though, that [a checklist] is not what a Gladue report is. It is supposed to touch on these on these different aspects. But, that didn’t happen for me though.”

- *Participant Z, Research Interview (2015)*

At this point in the research, the researcher has participated in an exploration of Gladue through external research and the experience of a Gladue report interviewer. The research will now present the experience participant Z, an individual who has been the subject of a Gladue report. At the time of the study, Participant Z was a middle-aged Aboriginal male who demonstrated a significant criminal history. At a very early age, participant Z was victimized by the ‘sixties scoop’, a government initiative that forcibly removed Aboriginal children from their familial homes and placed them in foster care or the adoption system. Typically, displaced youth were adopted by white middle-class families and raised as non-Aboriginals, distancing them from their traditional Aboriginal heritage. This practice lasted for over a period of twenty years (1960-1980) and it is

approximated that over 20,000 Aboriginals were removed from their families and homes and placed with non-Aboriginal families.¹³⁵

According to Raven Sinclair's *Identity Lost and Found: Lessons from the Sixties Scoop*, one's identification of the colonial context by which the Sixties Scoop emerges, specifically the "history of government-Aboriginal colonial relations"¹³⁶ is an imperative consideration as it contextualizes the prominent ideology of human civilization of the time. As outlined earlier in the thesis, one of the purposes of Residential Schools were to "civilize" those who were Aboriginal by engraining non-Aboriginal thought into daily behavior, which is the same ideology that encompassed the child welfare system and fueled the Sixties Scoop era.¹³⁷ According to participant Z, his experience with adoption into a non-Aboriginal family caused him serious and problematic detachment from his biological heritage/culture, which, in turn, elicited unfavorable emotions of distress and dislocation.

From the time that participant Z became a young adult, he was in trouble with the law for various minor offenses. Minor offenses evolved into more serious ones and ultimately led him to serving a significant prison sentence in Algoma Treatment & Remand Centre, which is located in Sault Ste. Marie. It was here, while incarcerated, that another inmate notified him of his Gladue rights and the

¹³⁵ Crey, Ernie, & Fournier, Suzanne (1998). *Stolen From Our Embrace. The Abduction of First Nations Children and the Restoration of Aboriginal Communities*. D&M Publishers Inc.

¹³⁶ Sinclair, Raven. (2007). *Identity Lost and Found: Lessons from the Sixties Scoop*. *First Peoples Child and Family Review*. A Journal on Innovation and Best Practices in Aboriginal Child Welfare Administration, Research, Policy & Practice. Canada. Volume 3, Issue 1, Pg. 67-69.

¹³⁷ *Ibid*.

possibility of having a Gladue report conducted. Subsequently, participant Z was approached by *Correctional Services Canada* (CSC), who offered to conduct his Gladue report.

Knowing that his report would be conducted by the same organization (CSC) responsible for the terms of his incarceration, participant Z reported experiencing grave reservations about both the Gladue process and the report. Specifically, he feared that divulging personal information about himself to CSC would later be used against him in a negative or harmful way. Despite this, the desire for a different life path outweighed his fears and, accordingly, he agreed to the Gladue report. He describes his experience as follows:

[The interview] was very much a checklist. [The interview] didn't touch on historical trauma, intergenerational trauma. [The interview] didn't touch on the fact that I was a sixties scoop child, [or that] my mother was Aboriginal [and] my father was Italian. This stuff wasn't looked at all. It was just a matter of checklist: Are you status or non-status? What community do you have? What connection to culture [do you have]? You know, very basic questions. So yeah, my experience with that process wasn't a pleasant one.¹³⁸

Participant Z's Gladue report failed to acknowledge or consider his life histories and the intergenerational traumas he believed had impacted his life path. As such, participant Z believed that his report failed to offer the judge an accurate depiction of his sacred story and, as a result, was incapable of making any positive contribution to his sentencing. More than this, however, he emphasized how his report failed to reflect an accurate and respectful depiction of

¹³⁸ Boudakian, Taleen. (2015, March 27). Personal interview 2. Carleton University, Ottawa.

the principles that Gladue is supposed to vindicate in theory – specifically those of healing, rehabilitation, and restoration. For the combination of these reasons, he emphasized to the researcher that his Gladue experience left him with feelings of grave embarrassment, dehumanization, and demoralization, and ultimately did not provide him with the opportunity to heal.

I felt ashamed. I felt ashamed more than anything else... I ended feeling less than a person actually through that experience. I walked away from there feeling that it didn't help me, it left me feeling ashamed, that you know I didn't have that connection.¹³⁹

In the end, the sentencing judge sentenced participant Z to serve a period of incarceration and made a program recommendation for the 'Pathways Initiative', a customized program that seeks to offer traditional methods of healing and support reflective of Aboriginal principles.¹⁴⁰ Despite this recommendation and participant Z's described enthusiasm for the program, numerous obstacles materialized along the way. This included lengthy waitlists and the absence of the program at the institution to which participant Z was ultimately placed by CSC, ultimately disallowing for him to participate in the said program.

The pathways program, because of the waitlist, as there is many people in line for this program, didn't, you know, didn't happen for me. And um when I was about to get into this program they moved the program to a different institution, just before. So I was really discouraged by that.

I should mention too that mainstream programming is much easier and accessible to get in to. If um you're waiting for Aboriginal programming, you'll wait longer. And what happens is that your parole dates pass you by and so when you go for, in front of the

¹³⁹ *Ibid.*

¹⁴⁰ Correctional Service Canada. (2013). *Aboriginal Offenders: Pathways Initiatives*. Retrieved from <http://www.csc-cc.gc.ca/politiques-et-lois/702-cd-eng.shtml>

parole board, your program needs being met, they will deny you parole because you haven't completed the programming.¹⁴¹

Despite the fact that Participant Z did not partake in this particular program, he ultimately did participate in an Aboriginal substance abuse program while incarcerated which addressed the issue deemed by the sentencing judge to be most pressing for Z; he also frequently attended traditional Aboriginal ceremonies that were facilitated in the prison. Like the challenges of availability and accessibility of rehabilitative programming, however, participant Z described how these gatherings generated obstructions of their own kind. In his experiences with ceremonial gatherings, the overtly racist behavior by correctional officers towards Aboriginal inmates and their elders was an unfortunate and far too common reality.

Our elders are often discriminated against, our elders are often held up at barriers, our elders are treated to less than at times. And um to give you an example of that...if you have an elder come in there are start talking about colonization and assimilation, they'd probably be shown the door.¹⁴²

Further, despite the fact that commissioner directives¹⁴³ are in place to guard against such unfavorable treatment, participant Z emphasized that, based on his experience and in his opinion, unfavorable treatment of Aboriginal offenders occur both more frequently and explicitly in comparison to non-Aboriginal offenders at all levels of the prison environment. One example of this is described:

¹⁴¹ Boudakian, Taleen, *supra* note 134.

¹⁴² *Ibid.*

¹⁴³ Commissioner Directives are penitentiary codes that outline what is and is not acceptable towards the treatment of an offender, and what is and is not acceptable behaviour by the offender.

One of the things that we can do is wear regalia and stuff like that at the ceremonies, but its all depending on who's working at that time. As far as correctional officers, you can be sent back to your cell and [forced to] change back into institutional clothing. Um, there is a lot of racism within corrections when it comes to Aboriginal people. For instance, our medicines are often uh, they're [correctional officers] not supposed to open our medicines unless I'm there, you know the offender is there, or um in the presence of an offender or the elder. And yet, they'll [correctional officers] rifle through our medicines, throw feathers on the floor. And, to me, that's a sign of racism, that's a sign of disrespect.¹⁴⁴

In participant Z's opinion, his poorly administered Gladue report combined with the difficulty of obtaining recommended programming and the unfavourable treatment that he experienced while incarcerated, ultimately denied him any form of meaningful healing through his Gladue experience or after, in participating in the options supported by his Gladue report. Accordingly, he described that it was only upon being re-integrated back into the community, getting involved with other Aboriginal people, and participating in cultural ceremonies outside prison that he was provided with his desired connection to culture and, subsequently, was able to begin his healing journey.

I know about it [culture] now is because I've chosen to um to embrace my culture, spiritually you know and getting involved in ceremonies and you know in teachings and all these different things that have been offered to me, and it's made a tremendous impact upon my life. It's given me a different outlook on life and it's given me a good way to walk. And um you know, I didn't have necessarily that inside [in prison]. As much as the elders tried to do, to help guys [offenders] along, um they're often met, like I said, with obstacles through administration...and it just became very frustrating to the point that you didn't want to anything to do with it anymore. And that's the thing. That's what happens. A lot of

¹⁴⁴ Boudakian, Taleen, supra note 138.

guys [offenders] get so frustrated with, you know, being met with resistance that um they lose hope.¹⁴⁵

The above narrative illustrates that the healing process must begin with the Gladue research process, especially the interview, and carry on through the report to the recommendations it contains and their implementation. At the present time, it is clear that there is a significant issue with handing the responsibility for Gladue, which is supposed to offer methods of healing, over to agencies or individuals who are part of the justice system and often engrossed with the risk management approach central to that system.

In participant Z's opinion, in order to afford adequate healing mechanisms for all offenders, with a particular focus on those who are Aboriginal, healing-focused mandates must be adopted and implemented in courtrooms, prisons and, following release, in communities. Participant Z further maintained that the only way for such improvements to be achieved is by increasing education. Specifically, it is believed that combatting Aboriginal over-representation and ensuring that Gladue is properly respected and enforced must first begin with increasing knowledge in the legal arena, where legal actors must gain better understandings of Aboriginal histories, culture and associated traumas. Once this knowledge is acquired, participant Z believes that this will clarify the objective of Gladue reports for all legal actors and also assist in assuring the adequate administration of Gladue rights and principles originally outlined by the Court.

¹⁴⁵ *Ibid.*

III. Findings

(a) Increasing Education

“I don’t think that there’s enough education within the judicial system”.

- *Participant Y, Research Interview (2015)*

“It comes down to one thing – they’re (judges) not educated. Do they want to be educated on it? I don’t know...um that that’s to be seen. But that’s education – if you don’t know about something but you’re in that such of a high power of position you would think they (judges) would want to educate themselves to be able to understand what they’re (judges) dealing with.

- *Participant Y, Research Interview (2015)*

“It’s difficult for um an Indigenous person to receive their healing in corrections, and through that process, when there’s lots of obstacles that seem to appear”.

- *Participant Z, Research Interview (2015)*

“People need to be educated about. You would think that judges...with being in that position of power would understand that...especially when they are dealing with people’s lives”

- *Participant Z, Research Interview (2015)*

The need for increasing education on the subject of *Gladue* emerged as a central finding in both research interviews, where both participants stressed the need for legal actors to increase their knowledge of the purpose and application of Gladue rights and principles in regards to Aboriginal offenders. For both participants, understandings of Gladue must first begin with the acknowledgement and appreciation that Gladue reports are a significant representation of an offender’s life, their *sacred* life story.

Participant Y: I’m very transparent with people and sometimes I just tell them the way it is...you know as hard as it is right now for you to be able to tell your story, your sacred story that you have, it’s also very important that you get this out and heal for yourself, but also for the courts to know that what’s happened in the court system possibly can have a link to what’s happened, what’s happened in your past.

Participant Z: We need to have people spending time and, you know, realizing that this person's story is sacred. It's their life you know? And being a part [of it], as little as that might be, listening to them, helping them on their journey, making those recommendations to ensure that they get the help they need, right?¹⁴⁶

In addition to judges increasing their comprehension of the purpose and administration of Gladue rights and principles, both research participants highlighted that a significant component of such education rests on judges becoming more aware and culturally sensitive to the specific Aboriginal traditions and cultural differences that offenders may or may not possess. In the personal experiences of participant Z, he outlined how his cultural tradition of avoiding eye contact with the judge, which he perceived to be a demonstration of his respect, may have been falsely interpreted as a sign of disrespect and, in turn, negatively impacted the way in which the judge perceived him and, further, his sentence.

Not all indigenous people have this tradition –I got to make sure that's the right word – tradition. But, um for instance not everybody has this idea that you're not supposed to look somebody in the eye. As an Indigenous person, some perceive this a sign of disrespect, not with everybody though. There are some people that that's okay with in Indigenous culture [and] in Indigenous communities now. But often in the courtroom, if that's something that, you know, you've been taught not to do...such as looking somebody in the eye, if your in a courtroom your looking at the ground, the judge looks at it as a sign of guilt or a sign of disrespect to him.

I think the courtrooms really need to be educated on cultural differences and, you know, in the institutions. There is a lot of um, yea lots of education that needs to take place there. And you see this systematic racism over and over and over through the courts, in the prisons, um and it doesn't do anything for the offender,

¹⁴⁶ *Ibid.*

[especially] if you're Aboriginal and trying to find your healing, trying to find your path. That's just one of many examples, but there are so many.¹⁴⁷

In addition to speaking to the various ways that increasing education in the Aboriginal context is a matter of necessity in the criminal justice system for both participants Y and Z, they also spoke to the need for increasing education in the greater context of all offenders. For participant Y, a primary element of this knowledge rests in the understanding by legal actors that courtroom proceedings cannot continue in the manner they currently operate when dealing with Gladue cases. Of course, acknowledging that associated resources, or lack thereof, are a crucial explanation of why the justice system functions in the uneducated manner that it does when dealing with Gladue reports, it is concurrently held that meaningful change will only transpire when the adequate time is taken to understand the individual and devise appropriate recommendations based on their requirements.

In the diversion program, you know when we take individuals, Indigenous people, away from the Western justice system...we take it into our own hands...we look at the individual and appropriately come up with recommendations based on the community and our elder of what that individual's needs are and we address it accordingly.¹⁴⁸

It is apparent that increasing education across several areas of the criminal justice system is a necessity. Importantly, it must be understood that acquiring this education must be a continuous and ongoing process; it must be approached cautiously and with an open mind. It is only when these issues are met and

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

addressed by the criminal justice system that the problem of Aboriginal over-representation can begin to be combatted.

(b) Promoting Good Gladue Reporting

“I have come to the understanding what an actual Gladue report looks like now. The fact that I write them now actually...and the fact that I see what they are supposed to be. It’s a thorough look at historical, intergenerational trauma, as well as a story telling opportunity. My opportunity to tell my story.”

- Participant Y, Research Interview (2015)

“I’m not saying that we need to just have Indigenous people writing these reports...we need to have *good* people writing these reports.”

- Participant Z, Research Interview (2015)

Another central finding that emerged from the two case studies was that both participants expressed the need for improving existing mechanisms for administering Gladue reports. For participant Y, this discussion centered upon the positive interview methods utilized by his organization and the need for other organizations to adopt a similar approach. To highlight this, he described that having counseling experience is imperative as it not only provides the interviewer the ability to adequately deal with the emotions that may arise during the interview, it also increases the probability that the interview will proceed at a respectful and appropriate pace and in a manner conducive to creating a safe and healing context for sharing sensitive and difficult information:

You just don’t jump into the interview right away. It’s [first] where are you from? How are you? Um, I let them know a little bit about who I am as a person... because you [the client] have to feel comfortable and you [the client] have [has] to trust me. Um you need to see my approach. And um, your approach, your eye contact, the way you sit, you cannot be intimidating. Um, those are really important aspects of doing the Gladue interviewing. And I think

the only way you'll pick that up is if you have past experience with interviewing people.

I think one of the things that you really, that people really need to understand when it comes to Gladue, and you can't take this lightly, is that the people that interview uh, the individuals that are in need of a Gladue really have to have exceptional counselling, an exceptional counselling background, I think. You need to have an understanding of how to interview, um because you're opening, you're re-opening wounds – you know a lot of past history that could be physically, mentally, sexually abuse. The writing part in in interviewing the questions is simple. It's what you do with it. You know, when you peel back and you're getting right into the heart of it. You gotta be able to read the person when you're talking to them and you notice that they feel uncomfortable... you gotta know when to stop, slow down, [say] 'here let's take a break for a second. You know, I see you're not doing so well right now, let's take a break'.¹⁴⁹

For participant Z, discussions regarding the need for better Gladue report administrators centered upon his unfavorable experience with the process several years prior, as well as his acquired knowledge of good Gladue reporting throughout the years following the time of his report. Interestingly, while participant Z did highlight the necessity for better Gladue interviewers, he simultaneously held that this does not necessarily mean designating only reporters that are Indigenous for the job. Rather, this means employing those who demonstrate care for the Gladue report client; who do not perceive the Gladue report process as a checklist; and who do not only demonstrate interest for the job based on its financial offerings.

I'm not saying that we need to just have Indigenous people writing these reports – we need to have good people writing these reports. People that, you know, are coming at it from a different angle opposed to being um some checklist and you're outta here. We need

¹⁴⁹ *Ibid.*

to have people spending time and realizing that this person's story is sacred, it's their life, you know and being a part of it, as little as that might be, listening to them, helping them on their journey, making those recommendations to ensure that they get the help they need. We need good people to write these reports. Not somebody just wanting their thousand dollars from legal aid and be done with you, right?¹⁵⁰

Like the need for increasing education on the subject and administration of Gladue, it is evident that the need for promoting good Gladue reports also stands as a matter of necessity. For both research participants, implementing more offender-focused Gladue report mechanisms that concentrate on directing clients towards a better life path is an imperative component of a Gladue. When this is absent, participants expressed how Gladue clients become more susceptible to things like re-victimization or the re-opening of 'old wounds', which may ultimately cause greater difficulty for clients to attain healing or be re-integrated back into the community. Accordingly, participant Z emphasized the need for the criminal justice system to "take their blinders off"¹⁵¹ and acknowledge Gladue's presence. This brings the research to its final primary finding – remembering that Gladue is a right.

¹⁵⁰ Boudakian, Taleen, *supra* note 138.

¹⁵¹ *Ibid.*

(c) Gladue is a Right

“Gladue is a Supreme Court ruling and uh it needs to be... it needs to be respected that way. For people not to have the opportunity to have a Gladue report sometimes because of the neglect of the justice system, I think, is terrible.”

- Participant Y, Research Interview (2015)

“There’s a lot of people out there that are incarcerated, or going before the courts...Western justice does not allow people the opportunity to be able to have a Gladue done, so... and uh I think, I even said this – [and] I forgot who I said this too – but because Indigenous people won the opportunity to have Gladue reports written for them...when you really look at the principles of Gladue I think it should be applied within the justice system in general, to every race.”

- Participant Y, Research Interview (2015)

What may be lost or muddled in discussions surrounding the application of Gladue is the fact that it is a legal right that must be accessible to all Indigenous people. A common finding that was identified throughout both research interviews was the reality that Indigenous people gained the opportunity to have Gladue reports written for them following the Supreme Court’s ruling. Despite the fact that participant Y acknowledged that Gladue reports have been specifically designed with Indigenous-focused principles in mind, including considerations of rehabilitation and healing, he also asserted his belief that reports should be applicable within the greater context of the justice system because of their principally inherent restorative nature. While participant Y remains optimistic about Gladue’s capabilities, he also acknowledged that this type of constructive change can only sensibly be achieved if the courts recognize the significance of Gladue rights and principles. Specifically, courts must grasp the significance of the stories that come before them and appreciate how these stories have impacted the life journeys of individuals, as well as the decisions that have been made along the way.

For participant Y, a primary component of promoting the application of Gladue as a legal right rests, in part, upon judges acquiring the type of education that was discussed in previous sections. With this education, however, there must also be the true will for change.

You know, you make a ruling on the Supreme Court and it has to be followed. I mean that's the whole formula, the point, that's the reason why the Supreme Court was put in place. But that's not the case in the justice system...it seems to be challenged; it seems to be um problematic. Um, and then when you get behind the scenes of why this is happening it comes down to one thing – they're not educated. But that's education. If you don't know about something but you're in such a high power of position you would think they [would] want to educate themselves to be able to understand what they're dealing with.¹⁵²

Contrasting participant Y's views with participant Z's discussion surrounding Gladue as a legal right, the latter opinion centered upon his personal experiences with and opinions of the process. Participant Z believes that part of the reason why judges are failing to properly understand and apply Gladue is because of their 'tough on crime' agenda, which is believed to follow the approach of "locking offenders up now and worrying about them later".¹⁵³ Accordingly, like participant Y, participant Z identified that a major impediment to the courts' upholding Gladue as a right rests, once again, on the lack of judicial education about Gladue. This acquisition of this education will assist judges to appreciate the healing intent of Gladue reports:

I think that we need to start addressing these things and uh looking at um the healing components of Gladue reports and what the Supreme Court's actual ruling on that is. You know, I don't

¹⁵² *Ibid.*

¹⁵³ Boudakian, T, *supra* note 125.

think the Supreme Court meant [the Gladue reports] to be a checklist. And you know if you do some research on questions on other Gladue reports being written... they're very much basic stuff, basic checklist stuff, right? And I don't think that was ever meant to be. I think it was a way of that person, like I said, story telling, you know understanding where that, who that person is, and the history of things too, right? A Gladue report's supposed to have a judge see who you are as a person and make those recommendations that are gonna be best suited for you. Not to have you look like, you know, you're less than.¹⁵⁴

Like the need for increasing education and promoting good Gladue reporting, the judicial system, specifically judges, must come to the realization that Gladue is a right and must be respected as such. Participants agree that the failings of the current Gladue reporting 'situation' are, in part, attributable to the current lack of education possessed by legal actors. It is clear, however, that education and the opportunity for change are available and, regrettably, what appears to be absent much of the time currently is the will to learn and the desire for change.

V. Conclusion

This chapter has presented and analyzed the primary findings that emerged from the interviews conducted in this thesis. During this analysis, it was identified that, despite the fact that the two research participants were interviewed in dissimilar capacities, their opinions on and ideas of Gladue displayed notable similarities. Participants agreed that there is an absolute need for the justice system to increase its knowledge on Gladue, both in terms of understanding its principles and in their application during courtroom proceedings. There is also the

¹⁵⁴ *Ibid.*

need to promote and implement better Gladue reporting mechanisms, which must ensure a safe and positive experience for the client and be conducted in a manner that is safe and encourages healing. Finally, and perhaps most importantly, there is an absolute requirement for the justice system to adequately acknowledge the fact that Gladue is a right that is protected by law that must be accessible to all Indigenous people who seek to vindicate now and in the future.

The fourth and final chapter will reflect on the information presented throughout the thesis. It will consider how previous historical and legal analyses have impacted the primary research question. It will also reflect on the findings of the research, using the interviews as guidance for answering the thesis' central inquiry of whether or not Gladue reports are able to provide Indigenous clients with meaningful healing at the present time.

CHAPTER FOUR: MEANINGFUL HEALING

“When Indigenous people refer to traditional healing, they are speaking of the use of herbal remedies as well as specific ceremonies and rituals to promote spiritual, mental, physical and psychological well-being. The fact that Indigenous traditional healing can address several different areas of health means that it is a holistic concept. The physical, mental, emotional and spiritual aspects of the human being are all interrelated; weakness in any of these areas causes a person to become unbalanced.”¹⁵⁵

- *Julian A. Robbins and Jonathan Dewar, 2011.*

I. Meaning...full Healing?

The findings revealed in this research project have demonstrated that exploring whether or not Gladue reports are able to provide their clients with meaningful healing is a difficult question to assess. This is due to a variety of reasons. What may offer healing to one person may not offer the same type of healing for another. Healing is a personal journey and an ongoing process. Healing can be conceptualized through numerous meanings and definitions. It is also important to note that, while the extant literature¹⁵⁶ on healing indicates that it is a multi-faceted and individualistic experience, it is also one which is rooted in community, that is, healing is both a personal and communal process.¹⁵⁷ As such, for the reason that only two people were interviewed for this study, and were

¹⁵⁵ Robbins, Julian A and Jonathan Dewar. (2011). *Traditional Indigenous Approaches to Healing and the modern welfare of Traditional Knowledge, Spirituality and Lands: A critical reflection on practices and policies taken from the Canadian Indigenous Example*. The International Indigenous Policy Journal, Trent University. Volume 2, Pg. 3.

¹⁵⁶ Egnew, Thomas R. (2005). *The Meaning Of Healing: Transcending Suffering*. *Annals of Family Medicine*. Pg. 257-260.

“Healing is an intensely personal, subjective experience involving a reconciliation of the meaning an individual ascribes to distressing events with his or her perception of wholeness as a person.”

¹⁵⁷ Robbins, Julian A, supra note 150 at pg. 2.

selected because of their direct experience with Gladue, it must be conceded that the research findings are limited and may have little generalizability, if any. The findings are, therefore, reflective of the individual experience and expertise of those interviewed, and while the interview subjects are sharing their personal views, as members of a community discussing a concept rooted in the communal, their reflections and beliefs can nonetheless assist us to begin to understand 'Gladue as healing'. The researcher further emphasizes that this study offers academia an important entry into a discussion of Gladue that is otherwise absent. Specifically, it provides insight into the experiences and opinions of individuals who have been directly touched by the Gladue process in their own voice. In this regard, the strength of this research is conveying the voice of people in a way that has not been conveyed on an academic level.

By reflecting on the definition of healing provided earlier in the paper (an ongoing journey that considers Aboriginal culture, including principles of spirituality, community, trust, and equality) and taking into consideration the wide-range of information presented throughout this thesis, the researcher finds that Gladue reports, as a complete system, face serious impediments to providing Gladue clients with the opportunity to heal in the present context. This finding is heavily informed by the fact that the participants of this study, particularly the participant who was a subject of a Gladue report, felt that their Gladue report experience not only did not provide them with positive offerings that were

meaningful to their life, but, in fact, elicited unfavorable emotions that further caused further victimization.

The researcher suggests that the inadequacies expressed by Gladue are largely due to the fact that legal actors currently display serious misunderstandings about the purpose and intent of Gladue reports and, as such, are at risk of not offering Gladue report clients with meaningful healing experiences or opportunities. Further, as reflected in *R. v. Gladue*, Indigenous histories may not consistently be acknowledged or comprehended by those in a position of authority (i.e. judges), demonstrate that the inability to understand the significance of the human story are at serious risk of being overlooked courtroom proceedings. Despite this, the researcher agrees with the participants that there is reason to be optimistic that Gladue reports are *capable* of meeting their outlined mandates following the imposition of meaningful change. It is important, however, to acknowledge that such change will only transpire if there is greater respect of Gladue rights in the courtroom, and if there is greater attention to the report research and writing process as significant components of an individuals healing journey.

It is sensible, then, for one to think that the journey into the acquisition of meaningful change for Gladue reports must trace back to the very beginning where the histories and cultural traditions that precede Indigenous people in the current context are learned and respected. Throughout this journey, both present and future legal actors who govern the courtroom must cautiously respect the

ultimate purpose of Gladue rights, principles and reports, which are, in a prominent capacity, to address historical trauma and assist in the remediation of the current and future lives of Indigenous people in Canada.

II. Conclusion

Healing depends highly on the environment in which it transpires. If the environment does not allow for healing to take place, the acquisition of healing becomes increasingly difficult, if not impossible. At the present time, based on the reports of the actors interviewed here, it appears that the meaningful healing of individuals through the use of Gladue reports currently faces serious impediments due to its existing environment. It is further held that the type of meaningful healing that is required can only sensibly be achieved if serious changes transpire within the Canadian criminal justice system. Revisiting and improving the structural conditions surrounding the operation of Gladue reports will assist in the creation of an opportunity for individuals to access the theoretical healing opportunities of Gladue reports on a practical level.

CONCLUSION

This research paper has taken its reader on a journey into exploring one central question: Can Gladue offer meaningful healing to its clients? As previously highlighted, this question is complex. This is attributed to the fact that the histories preceding the emergence of Gladue reports require careful consideration from those who seek to understand their importance and, further, because the ability to heal or restore depends highly on the social environment in which the healing is supposed to take place. The researcher therefore asserts two primary points based on the information gleaned from the interviews conducted: (1) Gladue reports face great impediments to providing meaningful healing to clients; (2) meaningful healing of individuals resulting from Gladue reports is a realistic possibility following the enactment of meaningful change by the criminal justice system, hence a major restructuring of its social culture or environment.

Throughout the researcher's investigation into healing, the existing plethora of Gladue commentary was identified. Largely, if not entirely absent, however, were the personal experiences and opinions of those who experienced the Gladue process. By acknowledging this fact, and the subsequent importance of bringing forth this type of research, the researcher was prompted to engage in this study and create an inroad for future scholars to broaden this area of research.

In the first chapter, the researcher presented the reader with a historical analysis of Aboriginal people in the Canadian context, specifically examining the gravity and complexity of some of the many systemic problems currently facing

Aboriginal communities across Canada. During this consideration, the researcher focused on the realities of the Residential School System, impoverished conditions, inter-generational abuses, the over-representation of Aboriginal bodies, and their subsequent impacts on contemporary Aboriginal issues, including the high rates of addiction, poor mental health, and suicide.

In the succeeding chapter, the researcher presented a legal analysis of Gladue, considering both its advances and inadequacies. The researcher explored the SCC's ruling in *R. v. Gladue* (1999), demonstrating to the reader how a single, yet significant, case was able to successfully reveal the ever-present problem of Aboriginal over-representation in Canada and pave the way for the constructive development of Gladue reports, a reporting mechanism that takes into consideration the specificities of the human story and provides recommendations for sentencing. By exploring the SCC's ruling in *R. v. Ipeelee* (2012), the researcher subsequently presented the limitations that Gladue faces on a contemporary level, specifically highlighting the unfavorable impacts that such limitations expressed by Gladue have on recipients of Gladue reports.

The third chapter offered an analysis of two research interviews, one with a Gladue report interviewer and one with the previous subject of a Gladue report. The opinions and experiences outlined by the research participants, including the need to increase education, promote good Gladue reporting, and acknowledge that fact that Gladue as a right provided the researcher the structure it required to better circumscribe the question of whether or not Gladue reports are able to offer

any form of meaningful healing to clients in the present context. By reflecting on the plethora of information presented throughout the course of the research paper, the final chapter highlighted the that Gladue reports currently face serious challenges into providing report recipients with meaningful healing due to the numerous issues and obstacles facing them.

This thesis has revealed that Gladue is a complex process that requires enlightened consideration and cultural sensitivity. This is especially so when considering Aboriginal people who have been through the criminal justice system and often carry significant burdens of historic and personal trauma, including intergenerational effects, addiction and exposure to violence. As such, for many Aboriginal offenders, the Gladue report constitutes the first opportunity to tell their sacred story, insofar as the telling of this story may assist them to locate a better life path, Gladue must be respected for this possibility and the story for its power.

Remediating Aboriginal issues in contemporary Canada is not only a matter of fact; it is a matter of necessity. The task that remains is to devise a realistic plan to achieving such remediation. Gladue reports are a positive first step towards combatting this problem by bringing forth the personal stories of the individuals and providing informed sentencing recommendations in the judicial setting. While education is an essential component of this discussion, a plan of action must be implemented and informed by Aboriginal thought in order to conceive and achieve meaningful healing for Gladue report clients. Until such a

time, Gladue reports continue to face the risk of providing its users with unfavorable impacts, including that of re-victimization.

The uncertainty of how to approach this plan of action in a way that will be meaningful and respectful to Aboriginality is one that is understandable. However, it must be remembered that every positive end began with a beginning, some of which were conceivably more complex and difficult to approach than others. Accordingly, the paper would like to leave off with a quote, much like it first started. “There is light at the end of the tunnel...if you do not see light...consider it an opportunity to create an opening yourself.”¹⁵⁸

¹⁵⁸ Kallarakkal, Ashok. (2015). Quote. Retrieved from http://www.goodreads.com/author/quotes/6549865.Ashok_Kallarakkal.

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