

ON.17.01 Full implementation of the Supreme Court's Gladue Decision (1999) for Indigenous Women Offenders

- 1 **Whereas,** in its ground-breaking Gladue Decision (1999) the Supreme Court of
2 Canada recognized that there are mitigating social factors and historical
3 circumstances that should be considered when sentencing Indigenous
4 offenders and then in all subsequent correctional decision-making; and
- 5 **Whereas,** the preparation and application of comprehensive Gladue reports for
6 Indigenous women are uneven and insufficient; and
- 7 **Whereas,** the present intersection of culturally-based marginalization, discrimination
8 and abuse, together with disabling mental health issues, contribute to the
9 constantly increasing rate of incarceration of Indigenous women;
10 therefore be it
- 11 **Resolved,** that the Ontario Provincial Council of The Catholic Women's League of
12 Canada in 70th annual convention assembled, request that national council
13 of The Catholic Women's League of Canada urge Justice Canada to fully
14 implement the Gladue Decision (1999)
- 15 • by ensuring that a comprehensive individualized social history report
16 is provided to the judge before setting bail or sentencing an Indigenous
17 woman
 - 18 • by mandating that a comprehensive Gladue report is applied to all
19 correctional decision-making for a convicted Indigenous woman, to
20 include penitentiary assignment, security level assignment,
21 institutional transfer, rehabilitative programs, discipline, parole and
22 release
 - 23 • by allocating funds and support for sufficient and well-trained
24 personnel to both inform Indigenous women offenders of their rights
25 under Gladue and prepare the necessary Gladue reports; and be it
26 further
- 27 **Resolved,** that this resolution be forwarded to national council of The Catholic
28 Women's League of Canada for consideration at the 97th annual
29 convention August 2017.

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1 Historical and social factors place many Indigenous women at high risk of incarceration. The Government
2 of Canada's *Indian Act of 1876* still governs the over six hundred aboriginal communities in Canada,
3 conferring the status of "Indian," but not "person," upon their members (The Indian Act, 1876). The
4 Indian Act was amendment in 1884 (The Indian Act of Canada: Origins, 2007). It disrupted family life by
5 forcing aboriginal children into residential schools where they had to conform to a European lifestyle, be
6 clothed like European children and speak English or French (Trevithick, 1998). Indigenous women are still
7 struggling with the effects of the residential school experience (Stout and Peters, 2011). In addition,
8 Indigenous women present an increasingly high profile of mental illness or alcohol addiction.
9 Programming to alleviate these conditions is often insufficient and culturally insensitive (Wesley, 2012);
10 (Bell, et al, 2015).

11 Today Indigenous women disproportionately experience poverty, unemployment, lack of education,
12 isolation and poor health care (Walsh, et al, 2012). These factors combine to place Indigenous women at
13 risk for conflict with the law. Indigenous women account for 36% of all incarcerated women, while
14 comprising only between 2% and 3% of the Canadian population (Senator Kim Pate, Inaugural Address,
15 2016). This over representation of Indigenous women is deplored by the *Truth and Reconciliation*
16 *Commission of Canada: Calls to Action* as well as by Senator Kim Pate, who in her inaugural address to
17 the Senate, lamented the increasing rate of incarceration of Indigenous women (Truth and Reconciliation
18 Commission of Canada, 2015); (Senator Kim Pate, Inaugural Address, 2016).

19 Incarceration of a woman currently costs over \$220,000 a year; therefore, an alternative is necessary
20 (Annual Report of the Office of the Correctional Investigator p.8, 2015/2016). Such alternatives are
21 available and they meet the goals of the correctional system: the safe and humane custody of offenders
22 and their release as individuals capable of living law-abiding lives (Annual Report of the Office of the
23 Correctional Investigator p.4, 2015/2016). In the case of the *Crown vs Jamie Tanis Gladue*, the court
24 mandated that the option of a sentence other than imprisonment be available for all offenders, but
25 particularly for Indigenous offenders. A Gladue report provides the sentencing or bail hearing judge with
26 details of the accused's life, describing the circumstances such as residential schooling or transfers to a
27 foster home that disrupted her childhood and youth, physical or sexual abuse, and health issues or
28 addictions (R. v. Gladue, 1999). These reports are usually prepared by Gladue caseworkers at the request
29 of the judge, defense counsel or Crown Attorney. A useful model is the *Gladue Primer* crafted in British
30 Columbia. A comprehensive Gladue report is fundamental to correctional decisions that provide
31 alternatives to incarceration (Gladue Primer, 2011).

32 Healing lodges and culturally-relevant programming with Elders could be expected to foster successful
33 reintegration of an offender into society (Annual Report of the Office of the Correctional Investigator
34 p.47, 2015/2016). While some jurisdictions have found the means to provide Gladue reports for
35 Indigenous offenders, the practice is not widespread (April, et al). Funding is therefore necessary for the
36 training and support of personnel, preferably Indigenous persons, to interview the women and write the
37 reports. Judges are mandated to use comprehensive Gladue reports prior to sentencing to reduce the
38 number of imprisoned Indigenous women. These reports, also used in all future correctional decisions,
39 can improve the outcome for incarcerated Indigenous women offenders (R. v. Gladue, 1999).

40 The Gladue Decision (1999) challenged Canada to acknowledge historical and social factors in the lives
41 of Indigenous women. Its full implementation would help restore, at least to some degree, the dignity
42 and respect we owe to these first women in Canada.

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Action plan

1. Write to the prime minister, minister of justice and your member of parliament urging them:
 - to become aware of the need to fully implement the Gladue Decision so that comprehensive, individualized reports are made and used in correctional decision-making for each Indigenous woman offender when she enters the correctional system, and for those already in the system for whom this overarching document has not yet been completed
 - to ensure that judges, lawyers and legal personnel ask for and use comprehensive, individualized Gladue reports in correctional decision-making for Indigenous women.
2. Monitor the federal government's response to the request of this resolution.
3. Councils invite an Indigenous woman who has come into contact with the correctional system to share her story with them.