

C - D A S

CRIMINAL DEFENCE ADVOCACY SOCIETY

January 10, 2017

VIA EMAIL: dcrossin@smrlaw.ca &
edjohn@fns.bc.ca

Mr. E. David Crossin, Q.C.

President, Law Society of British Columbia
and

Mr. Edward John

Co-chair, LSBC Truth and Reconciliation Advisory Committee

Dear Messrs. Crossin and John:

RE: Funding of Gladue Reports

We write because more than 17 years after the historic decision of the Supreme Court of Canada in the case of Jamie Tanis Gladue, the sentencing of Aboriginal offenders in British Columbia continues to present troubling issues that we believe demand attention and correction. We seek the support of the Law Society of British Columbia.

In the *Gladue* decision the Court observed that the Canadian criminal justice system has failed Aboriginal persons and directed that sentencing judges do their work differently. The sad fact is that in B.C. judges still send too many Aboriginal persons to prison and for too long. One of the principal reasons that this unacceptable situation continues is that our judges are not well and fully informed; without help they do not know what they do not know and therefore cannot take into account!

In the *Gladue* decision the Court stated that counsel – both Crown and defence – must present real and full background information to the court when an Aboriginal person is to be sentenced. As the Court noted in 2012 in the *Ipeelee* decision, such information is best prepared in a so-called Gladue Report written by a trained and knowledgeable person (usually Aboriginal). These reports take many hours and real skills to research and write.

In British Columbia the history of Gladue Reports commenced in 2000 when Bennett J. (now J.A.) declined to order the preparation of a report at public expense.¹ During the next 10 years some reports were funded by the Legal Services Society in the guise of expert reports and others were privately funded (and written by persons whose qualifications and objectivity were sometimes considered questionable.) In 2011 the Law Foundation provided funding to LSS for a pilot Gladue Report project: that project ran its course but LSS continues to fund most of the Gladue Reports prepared for B.C. judges. This is not a satisfactory situation:

- The province has, on repeated occasions, strenuously resisted accepting any responsibility to fund the preparation of Gladue Reports.²
- Crown counsel take a clearly adversarial stance to the presentation of Gladue Reports and regard them merely as tools to be used by defence counsel.
- LSS is not the best vehicle for the preparation of Gladue Reports and also is not funded for this work.

The *Criminal Code* specifically provides for the preparation of pre-sentence reports (prepared and written by probation officers who are government employees), for expert reports required when an offender's mental health is an issue, and for reports written by independent experts during the court of dangerous offender proceedings. These necessary reports are all prepared at public expense.

C-DAS members believe that it is still too often true in B.C. that Aboriginal offenders are not sentenced fairly and properly and that this situation must be changed. We ask for the enthusiastic support of the Law Society of British Columbia and, more specifically, that:

- LSBC communicate with the Premier and the Minister of Justice to suggest that the provincial government 'step up to the plate' and do so immediately. It is, we believe, an important responsibility of a provincial government to fund the preparation of Gladue Reports.
- More importantly, that LSBC stand behind and financially support a test case which, we believe, will be necessary and will very likely need to be decided in the SCC. Such a case will require the participation of senior counsel, will be

¹ *R.v.D.R.*, 2000 BCSC 136 (CanLII); January 25, 2000.

² *R.v.H.G.R.*, 2015 BCSC 681 (CanLII); April 29, 2015 and *R.v.Bill*, 2014 BCCA 60 (CanLII); February 7, 2014 are the principal decisions. We are prepared to offer detailed commentary upon these cases and decisions if that is requested.

financially expensive, and cannot be taken by an offender whose case is funded by the LSS.

If it is wished, we shall be pleased to meet with your committee. We shall also be pleased to meet with and make a presentation to the Benchers.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Cunliffe Barnett'.

Cunliffe Barnett

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A handwritten signature in black ink, appearing to read 'Kasandra Cronin'.

Kasandra Cronin,
President, C-DAS

On Behalf of the Criminal Defence Advocacy Society