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Gladue Reports: Reframing Lives

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Introduction and Greetings

*Poo-shoo, Aanii. Papahkineh nitishinikas. Kweweciioonhs nidada, Kitchikanequayash, nimama. Atik nidodem. Namekosipiink nitooncii. NamekosipiiwAnishinaape.*¹ Greetings, my English name is Leslie.² My father's name is Johnson. My mother's name is Harriet. I am of the caribou clan, which in these parts is probably part of the deer clan. I am from Trout Lake, in present-day northwestern Ontario. I am Anishinaape (Ojibwe) from Trout Lake.

What I have to say today is not entirely my own. I do, however, take full responsibility for my words. When I say that my words are not entirely my own, I mean that I am a beneficiary of generations of collective wisdom. Ancestors before me have passed on teachings and stories that I have incorporated into my own limited understanding of the world. And I do want to fully acknowledge the sacrifices and gifts of the ancestors. The ancestors that I would particularly like to acknowledge are those of the NamekosipiiwAnishinaapek, from whom I am descended. In that spirit of acknowledgement, I bring you greetings from the NamekosipiiwAnishinaapek, the Ojibwe people of Trout Lake.

I also bring you greetings from Aboriginal Legal Services of Toronto, my present employer. My life has been enriched by the direction and guidance of the wonderful people at Aboriginal Legal Services of Toronto. Before I go any further I would also like to express my gratitude to the Mississaugas of New Credit for allowing me to visit and work in their traditional territory. Miikwech.

I'm honoured to be here today to speak at the Fostering Biimaadiziwin Conference. I am going to speak about how Aboriginal peoples in Toronto can move toward *biimaadiziwin* through the process of participating in a Gladue report. (I have somewhat reworked the phraseology that I used in my conference materials, in which I referred to "clients who have a report written for them." I have since realized that using the phrase "participated in" is more respectful of the client's agency. "Participated in" reflects the collaborative nature of writing Gladue reports. I wanted to point out those misspoken words, and to attempt to move away from narratives that disempower.)

Words can foster *biimaadiziwin*. The words that comprise the narratives that are central to Gladue reports—life stories of convicted criminals—can point to the need for individuals to move toward *biimaadiziwin*. Words or expressions of commitment to a more harmonious and balanced life, especially when coupled

with actual and positive life-changing action, can further one's journey toward "the good life."

Life, whether good or not so good, is a journey—a journey that begins in recollections of the past, carries forward to the present, and projects paths into the future. It is this life story, this biography, this narrative that is highlighted each time a Gladue report is written. A Gladue report is vital to an Aboriginal person who is convicted of a criminal offence and is facing sentencing. Those convicted of a criminal offence, whether they pled guilty to or were found guilty of the offence or offences, did not exhibit, nor did their actions contribute to, *biimaadiziwin*. Fostering *biimaadiziwin* in their lives, as mapped out in Gladue reports, entails re-visioning their past, reflecting on their current circumstances, and refocusing on their future aspirations to become active participants in their own and in the community's overall move toward, or maintenance of, *biimaadiziwin*.

Defining *Biimaadiziwin*

What is *biimaadiziwin*? *Biimaadiziwin* is more than just a destination. It is a lifelong expedition. As the conference materials suggest, "Aboriginal peoples pursue *biimaadiziwin*." It is a process that is engaged in at both an individual and collective level. It is a daily journey, with new tasks, new struggles, and the potential for fresh victories every day. *Biimaadiziwin* is performative; it is a verb, not a noun. In light of this, and to supplement the definition of *biimaadiziwin* as "the good life," I would like to offer the following account by Cree elder, Rose Auger:

When you choose to make your life good, it will be good... The Creator gave you a sound mind and an incredible spirit and a way of being so that you can do anything right now! You can change that attitude same as you wake up in the morning and it's a new day. Your mind and everything else can be new. I've lived through hardship and horror, and I'm a loving, caring, and giving person because I choose to be that way. I choose to listen to the other side to guide me.³

We can look to our Aboriginal elders as living examples of *biimaadiziwin*. Their stories serve as lessons, teaching us what can be expected as we strive toward *biimaadiziwin*. In my work, I have relied on an excellent collection of examples of some aspects or components of living out *biimaadiziwin* entitled, *In the Words of Elders: Aboriginal Cultures in Transition*.⁴ The diverse experiences encompassed in this volume of narratives of Aboriginal elders provide many examples of living *biimaadiziwin*.

Situating Gladue

Having settled on a definition (and provided one personal account) of living *biimaadiziwin*, I now offer some explanation of Gladue reports. Gladue reports have not always been around. They are fairly recent vintage. The term “Gladue report” was only coined after 2001, at least in Toronto.

Gladue reports are a product of both legislative amendment (1996) and judicial decree (1999). Legislatively, Bill C-41 addressed codification of sentencing principles and included provisions for conditional sentences, which are essentially jail sentences served in the community, but subject to various conditions. Bill C-41 also contained s. 718.2(e) of the *Criminal Code of Canada*, which states,

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.⁵

Judicially, the Supreme Court of Canada’s decision in *R. v. Gladue*,⁶ provided clarification to courts on the proper interpretation and application of s. 718.2(e). Subsequent case law (decisions) has refined the scope of application of the s. 718.2(e) sentencing provision.

Gladue reports thus address and document, as articulated in Gladue, the “unique circumstances of Aboriginal offenders,” and offer, where warranted,⁷ recommendations that embrace “all available sanctions other than imprisonment.” In other words,

[Gladue reports] provide the court both with detailed information regarding the person’s background, including the impact of systemic factors, as well as suggestions for alternatives to incarceration that could meet those identified needs.⁸

In Toronto, a specialized court designated a Gladue (Aboriginal Persons) Court, has been operating out of the Old City Hall Courts since 2001.⁹ Gladue courts also operate out of the College Park Courts and the 1000 Finch Courts. It was in the Gladue court at Old City Hall that Gladue reports were first introduced.

Gladue Reports in Context

How do Gladue reports foster *biimaadiziwin*? To answer that question, we must examine or dissect how the reports are written. In my experience, Gladue reports have three important interrelated sections: background, current circumstances, and recommendations for future action. We will discuss each section in detail; however, before we do, some commentary on the necessity and utility of the Gladue report is in order.

In essence, Gladue reports are Aboriginal client life stories. Historically, client life stories, especially those of Aboriginal clients, have generally been given little weight in the criminal court process. Often, Aboriginal client life stories come across as simply an afterthought, or another procedural encumbrance. While lawyers do their best to sum up an Aboriginal client's situation and circumstances within their written and oral submissions, these recitations are often woefully inadequate in terms of providing detailed and nuanced Aboriginal client life histories.

Generally, just before imposing a sentence on the criminally convicted client, the judge asks, "Do you have anything you would like to say before I deliver my reasons for sentence?" This often feels like a formality, as it is asked, of course, after the judge, Crown, and defence have been doing all of the talking, using language that is often incomprehensible to the Aboriginal client. It is incomprehensible not only because the words and phrases and their meanings are unfamiliar, but because the various oral and written submissions, and the procedures attached to those submissions, are confusing. As if it is not enough that this sometimes convoluted process unfolds in a potentially chaotic courtroom, many of the proceedings have already occurred outside of the confines of the courtroom. These out-of-court negotiations only add an air of secrecy to the whole affair and breed mistrust in the Aboriginal client. It is only after all of the aforementioned activity has transpired that the client, often oblivious to the terms of the negotiations that have all but been concluded on his behalf, is queried and made to stand to give voice to and explanation for his or her actions/situation.

Understandably, the client is nervous, and likely has not prepared a written statement, which only adds to the stress of the situation. Clients are often only able to mutter a few nervous statements about "being sorry," explaining that they were under the negative influence of a substance or several substances (legal and/or illegal) when they committed the crime. Perhaps, hopefully, the presence of multiple oppressive societal pressures and/or situations in his or her life has been mentioned. This is where a Gladue report becomes an invaluable source of information for the court and the oftentimes stressed out and inarticulate client.

Gladue reports punctuate that highly formalized, distinctly non-Aboriginal space where Aboriginal languages are generally not spoken, and Aboriginal understandings of justice, harmony, and balance do not hold sway. It is an adversarial site with winners and losers, where too often the focus is on punishing the loser.¹⁰

Adversarialism is generally not thought of as engendering *biimaadiziwin*; however, as noted in one Ojibwe prayer, *biimaadiziwin* necessarily entails a certain amount of clashing or contestation. Unlike the fights that are usually carried out in the courts of the Anglo-Canadian legal system, in which one party argues against the other, or a citizen is pitted against the state, *biimaadiziwin* necessitates a struggle against our own greatest individual and collective foe— ourselves. *Biimaadiziwin* is keeping ourselves in check, in balance, in good relations with all of our neighbours, and with all of our sentient and non-sentient relations.

Gladue reports attempt to map out and put on paper aspects of an Aboriginal client's life journey that may not necessarily be highlighted in other written or oral presentations made on behalf of or by the client. Furthermore, as will be noted later in this paper, Gladue reports also discuss the potential for Aboriginal client life stories to align more closely with aspects of *biimaadiziwin*.

Gladue reports can also function as counternarratives to information that judges generally rely on when considering an Aboriginal client's life, namely, providing their criminal record and a synopsis of criminal allegations. Criminal records and synopses of criminal actions often speak to a life of desperate reaction against the forces of colonialism and colonization that frequently impinge on Aboriginal clients' lives. Colonialism and colonization have, as a matter of course, been the basis of the historical relationship between the Aboriginal peoples and the governments of what is now known as Canada.

The debilitating effects of colonialism and colonization manifest in the lives of Aboriginal clients in myriad ways. One of the most common ways in which colonialism has found expression and realization in Aboriginal communities is through the construction and implementation of institutions and practices that forcefully remove Aboriginal peoples from their traditional territories, their communities, and their families. In short, these practices have torn Aboriginal peoples away from their roots. In instances where separation and dislocation are an intergenerational reality, the physical and psychological after-effects of that displacement have resulted in chaos for generations of individuals, families, and communities.

Racism is also an unfortunate consequence of the policies of colonialism and colonization. Trying to find ways to feel less oppressed or discriminated against, often on an individual basis—even for a little while—can lead to actions deemed criminal. These actions very often lead to interaction with the bureaucracy of Canada's legal system.

The situation does not always have to be that bleak, however. A renewed, more contemporary, and forward-looking examination of the historical colonial relationship between Aboriginal peoples and the Canadian state can encompass aspects of decolonization. Gladue reports, in their own small way, can contribute to the work of decolonization, especially as it pertains to reframing understandings and relationships between the original peoples of Great Turtle Island, settler governments/bureaucracies, and criminal law.

Dissecting Gladue Reports: Background, Current Circumstances, Recommendations

Returning to the work of the Gladue report, especially in relation to reframing Aboriginal clients' lives, we will examine the historical, present-day, and future-looking components of the reports.

Background

The background section of a Gladue report is historical in nature and, as such, often engages a social deficits model. As much as I would like to declare that *biimaadiziwin* is only forward-looking, I have to admit that it affords looking back as well. Who has not heard a version of the adage, “In order to know one’s future, one must know one’s past”? So it is with Gladue reports, and their partial reliance on a social deficits model.

The historical portion of the Gladue report is often the most cumbersome. It requires chronological accuracy and logical flow. It is also the heavier part of the report—heavy in the sense of hearing and presenting the sometimes horrific truths of some Aboriginal people’s lives. There is, however, an aspect of empowerment and an opportunity for empowerment when Aboriginal clients share episodes from their often troubled pasts. While it can be traumatic or sorrowful to retell incidents that have caused pain—some have cautioned against revictimizing clients by having them repeat their horrible circumstances—there is also the chance that this will allow Aboriginal clients to begin to reclaim the power of their stories, and transform or harness the power of their narratives.

Words truly have power—both the power to hurt and the power to heal. If Aboriginal clients, by recounting their stories, can hear or see their biographies from a different perspective—from an empowered perspective—they may be able to “stand outside of themselves” and see their lives from a different vantage point. Often, Aboriginal clients were not to blame for what happened to them and they were very young at the time. If they can begin to comprehend the implications of that, hopefully they can take away the power their past has to hurt them and see how surviving the past has made them all the stronger today. In so doing, they remove themselves from the role of victim and place themselves in the role of empowered survivor. An empowered survivor has a much greater chance of moving toward *biimaadiziwin* than an individual who is still living in anguish, fear, and anger. *Biimaadiziwin* is empowerment.

It is this re-visioning and reframing of their past that provides Aboriginal clients with the opportunity to move toward *biimaadiziwin*, even at this early stage in the process. I am aware that this realization does not always immediately occur in client’s lives, but it is the possibility that it can occur at some future date that sustains the hope for movement toward *biimaadiziwin* in clients’ lives.

Current Circumstances

The current circumstances section of the Gladue report is much as it sounds. It addresses the Aboriginal client’s situation at the time he or she is interviewed for the Gladue report. It is likely that the client is under some form of restriction, for example, a bail release with conditions or closed (secure) custody at a jail or detention centre.

At any rate, because their liberty is constrained, clients' thoughts invariably turn to what they can do to ensure that their autonomy is not compromised again in the future. For those who are incarcerated, it is an ideal opportunity to list the various programs they have participated in while imprisoned and what they have learned from those programs. The lessons learned and applied in their lives will hopefully translate into crime-free living.

In whatever way their freedom has been constrained, the Aboriginal clients also have time to review the circumstances that led to their current situation, and sometimes offer reasons why their lives have taken a less than desirable course. It is at this point that the social deficits model is most applicable.

When clients are considering their current circumstances, they may also take time for self-reflection and to chronicle their life paths. A social deficits model is often employed at this time as well. The important thing to note at this stage of the process is that the social deficits model does not carry forward into the next section of the Gladue report—the recommendations.

Recommendations and Conclusion

The recommendations section of the Gladue report looks to the future. It is the portion of the report that charts a new and hopeful path for the Aboriginal client. In this section, the client and the writer of the Gladue report ideally spell out the ways in which the client can move toward *biimaadiziwin*.

In an ideal situation, the offender will be sentenced to serve time in the community, subject to certain conditions (a conditional sentence). The Aboriginal client's conditions (which are preferably developed in collaboration with the client) could include the following: attaining stable, safe, and, if necessary, supportive housing; accessing a source of income; addressing debilitating and troublesome addictions; enrolling in required counselling; registering in academic upgrading and/or job-skills training; and searching out and utilizing culturally competent and holistic health practitioners/facilities.

To help the Aboriginal client manage and meet his or her rehabilitative commitments and/or orders, the client would do well to seek out and access the assistance of friends, family, and community service providers or helpers, such as Gladue aftercare workers.¹¹ In essence, the client's support system can help him or her move toward *biimaadiziwin*. Members of the support system can then model aspects of *biimaadiziwin* simply by responding to the best of their ability to the client's sincere request for assistance.

Friends, family members, and helpers who support the client as he or she travels a new life path are, in turn, helped or uplifted as they witness the client's move toward *biimaadiziwin*. They then, as if by osmosis, share in *biimaadiziwin* and will, hopefully, spread the good feelings of *biimaadiziwin* to their own friends, families, and the community at large.

In this way, *biimaadiziwin* is “paid forward.” It is dispersed, and like multiple pebbles dropped in an ocean, waves of *biimaadiziwin* radiate in concentric rings, interact with other swells of *biimaadiziwin*, and create even bigger and more persistent undulations of *biimaadiziwin*. Or, to adopt another analogy, the good vibes, positive energy, or sweet sound that reverberates from each individual can grow and coalesce into a sweeping symphony of *biimaadiziwin* song, a collective of positive *biimaadiziwin* vibrations.

This may sound too good to be true, overly positive, and vague on details—even, perhaps, naive—as each client has different needs and to varying degrees. With, however, the right combination and amount of collaboration amongst various social service agencies and workers (housing, income security, addictions, counselling, education, and holistic health centres/practitioners), we can all contribute to one life transitioning toward *biimaadiziwin*. Movement toward *biimaadiziwin* represents hope, and hope is elemental to fostering *biimaadiziwin*.

Miikwech.

Endnotes

1. Unfortunately, the author is not a fluent speaker or writer of the Ojibwe language, Anishnabemowin; therefore, the spelling of any words in Anishnabemowin are based on the author's minimal training in and knowledge of Anishnabemowin. The author feels, however, that efforts to reclaim the use of Anishnabemowin are part of a continuing process of decolonization.
2. Papahkiineh (Leslie King), Namekosipiwanishinaape (Ojibwe of Trout Lake), Atik (Caribou) dodem, is the youngest son of Kweweciioonhs (Johnson) and Kitchikanekweash (Harriet), and sibling to Diane, Martin, and Edward (all since gone to spirit). Leslie has been a Gladue case-worker at Aboriginal Legal Services of Toronto since September 2008. He completed his law degree at the University of Victoria in 2008. His previous degrees are in Indigenous learning and political science. Leslie has previously worked in corrections and tourism, and as a trapper.
3. Rose Auger, "Rose Auger: Buffalo Robe Medicine Lodge" in S. Johnston, Chief S. Baker, and Kirkness, V. J. (Eds.), *Khot-la-cha: The Autobiography of Chief Simon Baker* (Vancouver: Douglas and McIntyre, 1994), as cited in M. A. Hart, *Seeking Mino-Pimatisiwin: An Aboriginal Approach to Helping* (Halifax: Fernwood Publishing, 2002) at page 44.
4. Peter Kulchyski, Don McCaskill, and David Newhouse (Eds.), *In The Words of Elders: Aboriginal Cultures in Transition* (Toronto: University of Toronto Press, 1999).
5. *Criminal Code*, R.S.C. 1985, C-46, Part XXIII, s. 718.2(e).
6. *R. v. Gladue*, [1999] 1 S.C.R. 688.
7. At some point the seriousness of an offence obviates the possibility of a conditional sentence, but for the purposes of this paper, we will only consider circumstances that could have a conditional sentence as an outcome.
8. Jonathan Rudin, "Addressing Aboriginal Overrepresentation Post-Gladue: A Realistic Assessment of How Social Change Occurs" (2009), 54 *C.L.Q.* 447 at 464. For more information on the ramifications and application of the Gladue decision, please see the website of Aboriginal Legal Services of Toronto <www.aboriginallegal.ca/gladue.php>.
9. Judge Brent Knazan, Ontario Court of Justice, "Sentencing Aboriginal Offenders in a Large City—The Toronto (Aboriginal Persons) Court." Paper presented at the National Judicial Institute, Aboriginal Law Seminar, January 23–25, 2003, at 4. See the website of Aboriginal Legal Services of Toronto <www.aboriginallegal.ca/docs/Knazan.pdf>.
10. For some comments on different understandings of justice from Aboriginal and Anglo-Canadian points of view, and one of the challenges that arises from that difference between the two, please see the following excerpts from the Aboriginal Justice Inquiry of Manitoba:

At the most basic level of understanding, justice is understood differently by Aboriginal people. The dominant society tries to control actions it considers potentially or actually harmful to society as a whole, to individuals or to the wrongdoers themselves by interdiction, enforcement or apprehension, in order to prevent or punish harmful or deviant behaviour. The emphasis is on the punishment of the deviant as a means of making that person conform, or as a means of protecting other members of society.

The purpose of a justice system in an Aboriginal society is to restore the peace and equilibrium within the community, and to reconcile the accused with his or her own conscience and with the individual or family who has been wronged. This is a primary difference. It is a difference that significantly challenges the appropriateness of the present legal and justice system for Aboriginal people in the resolution of conflict, the reconciliation and the maintenance of community harmony and good order.

The right of all people to the use of a familiar language, preferably their first language, is not always met. Canadian courts do not automatically provide interpreters for Aboriginal people, nor do enforcement and corrections agencies. An even more fundamental question, beyond this immediate and pressing omission, is whether Aboriginal people understand the concepts behind the language used in the legal system, even when interpreters and translators are used.

The above excerpts can be found at A. C. Hamilton and C. M. Sinclair, *The Justice System and Aboriginal Peoples: Report of the Aboriginal Justice Inquiry of Manitoba, Vol. 1*. The Aboriginal Justice Implementation Commission <www.ajic.mb.ca/volume1/chapter2.html>
11. Aboriginal Legal Services of Toronto employs two Gladue aftercare workers.

References

- Auger, R. (1994). Rose Auger: Buffalo Robe Medicine Lodge. In S. Johnston, Chief S. Baker, and V. J. Kirkness (Eds.), *Khot-la-cha: The Autobiography of Chief Simon Baker* (Vancouver: Douglas and McIntyre, 1994) as cited in Michael Anthony Hart, *Seeking Mino-Pimatisiwin: An Aboriginal Approach to Helping* (Halifax: Fernwood Publishing, 2002).
- Hamilton, A. C., & Sinclair, C. M. (1999). *The Justice System and Aboriginal Peoples: Report of the Aboriginal Justice Inquiry of Manitoba, Vol. 1*. Aboriginal Justice Implementation Commission <www.ajic.mb.ca/volumel/chapter2.html>.
- Knazan, B. (2003). *Sentencing Aboriginal Offenders in a Large City—The Toronto (Aboriginal Persons) Court*. Paper presented at the National Judicial Institute, Aboriginal Law Seminar, January 23–25. Aboriginal Legal Services of Toronto <<http://aboriginallegal.ca/docs/Knazan.pdf>>.
- Kulchyski, P., McCaskill, D., & Newhouse, D. (Eds.). (1999). *In The Words of Elders: Aboriginal Cultures in Transition*. Toronto: University of Toronto Press.
- Rudin, J. (2009). Addressing Aboriginal Overrepresentation Post-Gladue: A Realistic Assessment of How Social Change Occurs. *Criminal Law Quarterly*, 54, 447.