**When Enough is Enough?**

By: Abby Stein

We often hear the phrase “the children are our future” but does that impose a duty on society and the legal system to protect them? Absolutely. The appeal I am about to comment on involves a number of sensitive topics which may be met with different opinions, and this is just one.

In R v Dumas, 2020 MBCA 28, a 48-year-old attempted to appeal indeterminate sentences imposed onto him for 2 separate sexual assaults. One being the sexual assault of a 30-year-old man, and the other being the sexual assault with a weapon on a 15-year-old girl. As all citizens do, the accused indeed has a right to a fair trial, and in this case, he argues that a 20-year determinate sentence followed by a 10-year supervision order should have been ordered. He claims that the sentencing judge failed to properly apply the relevant *Gladue* factors and thus, the sentence was unreasonable.

Now, I am of the opinion that *Gladue* factors are of the utmost importance and need to be vigorously applied wherever they are applicable. The justice system is greatly overrepresented by the Aboriginal population and that in itself is an injustice. There have been systematic factors influencing generations and we must do all we can in our power to consider these backgrounds and aid people in leading fulfilling lives. But when does the application of these factors become a burden on the ultimate aim of justice? In my opinion, the accused in this trial is the perfect example of exactly that. When enough is enough…

The Manitoba Court of Appeal echoed exactly that in this case and provided comprehensive reasoning while acknowledging the *Gladue* factors. Indeed, the accused had a horrific background which resulted in significant trauma and offending behaviours. However, this individual had amassed about 75 prior convictions, as well as 11 sexual offence convictions if we include the 2 being appealed from. 11 convictions. 11 different lives effected.

The sentencing judge then brought forward expert evidence from two doctors, one of each representing the court and defence. The doctor for the defence testified that the accused suffers from pedohebephilia and falls within a category of “persisters” who continue to offend at a significant rate even beyond the age of 60. This diagnosis means that the accused has a preference for prepubescent or pubescent children. The doctor then commented that this condition is not trauma-related and that the accused is at a high risk to reoffend.

If we take this evidence at face value, the offender’s condition becomes one which is not affected by *Gladue* factors. Even the doctor for the defence commented that the chances of the accused successfully managing these tendencies in a public setting were “not good”.

The appeal was thus, dismissed, and rightfully so. If children are our future then we must protect them. One particular way to do so is limit chances of being sexually assaulted. As

heinous of a crime it is in itself, the consequences on the children and their loved ones are tremendous. Even with the involvement of *Gladue* factors, the passing on of one's trauma to a new generation is unacceptable. While I agree that the factors need to be considered on a case by case basis, there must be a limit when someone is a reoffender. In this particular case, the offender was charged 11 times. Assuming that these charges began to accumulate once the accused was 18, that makes it 11 assaults in 30 years. Also assuming that this individual spent a number of those years in prison, this is a pace which should have been stopped dead in its tracks long before it reached the number which it did.

While I agree with the Court of Appeal's decision to dismiss this appeal, I believe that harsher punishments are required in certain circumstances. Sexual assault, especially that of children and youth, is exactly that type of circumstance. It can be argued that were it not for the courts short sentencing of the accused in the past, there may not have been a number of new sexual assault cases which occurred, and the "chain" of trauma being passed from generation to generation would have been broken.

To speak on the role of *Gladue* factors, I must again repeat that I truly believe that these factors are integral to the ultimate goal of justice and in making sure our justice system is not overrepresented by any one population as a result of systematic trauma. However, when an accused has been medically deemed to repeat his/her offences and evidence supports that this is not due to the result of trauma, do we continue to give out lighter sentences based on these factors? I do not believe that is in line with the goal of the factors themselves when it comes to a crime of this nature.

The *Gladue* factors provide courts with the ability to consider the background and generational issues which an individual may be facing. It can be viewed as a type of correction by the government for their previous acts which lead to an individual being in the circumstances in which they stand in from of a court for. Is the lighter sentencing of an accused for certain crimes still appropriate? In my opinion, it definitely is when it involves many crimes, but sexual assault, exploitation, or any other related crimes involving youth are not the same in that sense. By allowing a repeat offender to re-enter society and risking the safety of youth is unacceptable, whether or not the accused's actions were considered alongside *Gladue* factors.

Allowing lighter sentences for these crimes continues on that chain of trauma which the *Gladue* factors themselves aim to resolve. In my opinion, a case by case basis for the application of the factors needs to be considered when there is a high risk of a repetition of offending, specifically when it can lead to a youth experiencing trauma and thus effecting their own lives. Along with using these factors to correct the past, I believe that we need to use them to build a better future.