

### Background to *R. v. Gladue*

Jamie Tanis Gladue, an aboriginal woman living in Nanaimo, British Columbia, pled guilty to manslaughter for the killing of her common law husband. Ms. Gladue, one of nine children of a Cree mother and Métis father, had been living with the deceased, Reuben Beaver, since she was 17 years old. They had one daughter, with another child on the way when he was killed. The relationship included a history of physical and alcohol abuse. Mr. Beaver was fatally stabbed following a night of drinking and fighting over whether the deceased was having an affair with the accused's sister.

The case turns on the interpretation of s. 718.2 (e) of the Criminal Code of Canada. The section, part of a comprehensive series of amendments made in 1996 to the sentencing law in Canada, states:

718.2 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.

Ms. Gladue appealed her sentence. The Supreme Court of Canada upheld the disposition as to sentencing, but provided detailed reasons on the operation of section 718.2(e) and the duty of sentencing judges to find alternatives to incarceration for Aboriginal defendants. The Court acknowledged that systemic factors contribute to the overrepresentation of aboriginal people in the criminal justice system, explicitly endorsed restorative justice, and called for creative criminal justice responses appropriate to the circumstances of aboriginal people.

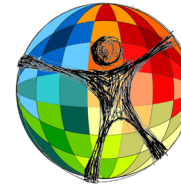
Nevertheless, as of April 9, 2006, Aboriginal offenders represented 17% of the federal offender population despite comprising only 3% of the Canadian general population (Public Safety and Emergency Preparedness Canada).

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### Centre for Human Rights and Legal Pluralism

Following the principles which animated the Deans and Professors Maxwell Cohen, John Humphrey and F. R. Scott, the Centre for Human Rights and Legal Pluralism is a focal point for innovative legal and interdisciplinary research, dialogue and outreach on issues of human rights and legal pluralism. The Centre's mission is to provide students, professors and the wider community with a locus of intellectual and physical resources for engaging critically with how law impacts upon some of the compelling social problems of our modern era.

McGill Centre for  
Human Rights  
and Legal Pluralism



Centre sur les droits de la  
personne et le pluralisme  
juridique de McGill

## Aboriginal Criminal Justice Ten Years after *Gladue*: Perspectives from Quebec and Canada



Thursday, February 5, 2009  
5:30pm, Moot Court, Faculty of Law  
3644 Peel St., McGill University



The event has been generously supported by the Law Class ('63) Fund  
Image Source: Bill Reid Foundation

**Kent Roach** is a Professor of Law at the University of Toronto where he holds the Prichard and Wilson Chair in Law and Public Policy. He has written a number of books including *Due Process and Victims Rights*; *The Supreme Court on Trial, September 11: Consequences for Canada* and with Robert Sharpe *Brian Dickson: A Judge's Journey*. His most recent book is the 4th edition of *Criminal Law* in Irwin's Essentials in Canadian Law series. He represented Aboriginal Legal Services of Toronto in its interventions in *Gladue* and *Wells*.

**The Honourable Louis Legault**, of the criminal and penal division of the Court of Quebec, has served as a judge in youth and criminal courts in James Bay and Ungava Bay, and has participated in numerous judicial symposia on Aboriginal justice since 2006. Judge Legault was in private practice until his call to the bench in 1990. During his 1999-2000 term as President of the Canadian Association of Provincial Court Judges, Judge Legault created the Committee on Aboriginal Justice, which he continues to steward. Judge Legault also served as the captain of the Faculty of Law of McGill University's basketball team from 1970-1971.

**Paul Turmel** has been engaged at the judicial level and within corrections for all Aboriginal communities of Quebec as Executive Director of Native Para-Judicial Services of Quebec since 1984. Previously, he worked as Financial and Community Management Advisor for the Inuit Communities of Quebec within Kativik Regional Government. He was appointed to the Quebec Parole Board in December 2004. Mr. Turmel has been a speaker and panelist at various seminars and events related to the administration of justice in Aboriginal contexts, and was a resource person in the development and the setting up of new initiatives to improve the performance of legal services within Quebec's Aboriginal Communities.

**Jonathan Rudin** received his LL.B. and LL.M. from Osgoode Hall Law and is the Program Director at Aboriginal Legal Services of Toronto. He has appeared before all levels of court, including the Supreme Court of Canada. While at ALST he helped establish the Gladue (Aboriginal Persons) Court in Toronto. Mr. Rudin has written and spoken widely on issues of Aboriginal justice. He also teaches on a part-time basis in the Law and Society Program at York University.

**Donald E. Worme, Q.C.**, of the Kawacatoose First Nation, Treaty #4, received his call to the Saskatchewan Bar in 1986, and has since practiced extensively in criminal law and Aboriginal rights litigation. He is a founding member and member in good standing with the Indigenous Bar Association in Canada, where he served as President between 1989 and 1991. Don has been an active Member of the Saskatchewan Human Rights Tribunal since 2001 and is mandated to review decisions and human rights complaints.

## Welcome Note

### **Professor René Provost**

Director, Centre for Human Rights and Legal Pluralism  
Faculty of Law, McGill University

## Introduction of the Guest Speakers

### **Professor Alana Klein**

Faculty of Law, McGill University

## Guest Speakers

### **Professor Kent Roach**

Prichard-Wilson Chair  
Faculty of Law, University of Toronto

### **Judge Louis Legault**

Court of Quebec (Criminal and Penal Division)

### **Mr. Paul Turmel**

Executive Director  
Native Para Judicial Services of Quebec

### **Mr. Jonathan Rudin**

Program Director  
Aboriginal Legal Services of Toronto

### **Mr. Donald Worme, Q.C.**

Partner  
Semaganis Worme, Saskatoon

## Moderator

### **Professor Alana Klein**