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January 17, 1999

The Editor
The Globe and Mail
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Re: *'Crime, Time and race' : Jan. 16th*

You are quite correct in suggesting that the amendment to 718.3 of the *Criminal Code* has little meaning in its reference to Aboriginal people. It is true that Aboriginal offenders are included in the expression 'all offenders' and the consequence is that no different or new principle of sentencing is warranted by the remainder of the provision relating to Aboriginal offenders. The expression '..with particular attention to aboriginal offenders...' does not introduce any new principles to guide sentencing of Aboriginal offenders by the courts.

The courts have considered 'cultural background' as one of the factors relevant to a sentence, but it has always applied generally to all offenders. This factor has been helpful in some cases such as where the offender speaks no English and is sentenced to an unequally and unfairly harsh sentence of isolation in an English speaking prison. More recently, some 'community diversion projects' have provided alternatives to incarceration.

It is arguable that the new provision relating to Aboriginal offenders draws the courts' particular attention to the fact that the cultural background factor may more likely be relevant to a sentence in the case of an Aboriginal offender than for all other offenders, given the distinct cultures and circumstances in which many Aboriginal persons live in Canada. The provision may invite the Court to inquire about all the relevant factors, including the availability of alternatives to incarceration in the community for the particular offender. The court is merely being asked to inquire particularly about Aboriginal offenders about factors that are, in priniciple, applicable to all offenders, but quite often have a particular relevance in the case of an Aboriginal offender.

Parliament can indeed be blamed for introducing an ambiguous new provision

that essentially provides little or no benefit to Aboriginal people and that was predictably going to attract all sorts of bizarre accusations about 'special treatment' of Aboriginal people. It is an example of the negative consequences of unilaterally making small changes at the margins of the system, without the effective participation of the ostensible beneficiaries of the new legislative policy.

The main claim of Aboriginal peoples is to have the resources and recognized authority necessary to protect and enhance the community life of their people, not to invite Governments to extend different treatment to any individual claiming Aboriginal identity.

The main recommendation of the Royal Commission on Aboriginal Peoples was that federal policy changes only be made with the full and effective participation of Aboriginal people. The adoption of that recommendation would be a sound decision by the federal government. The sentencing amendment illustrates the problems that can follow in not adopting it.

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Paul L.A.H. Chartrand

The writer is a former professor specializing in aboriginal legal and policy issues. He was one of seven Commissioners appointed to the Royal Commission on Aboriginal Peoples.

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To

Gerald Morin
President, MNC

By Fax (613) 232-4262

– FYI –

Are you following the Gladue and Eurard cases? (Métis)

2 pages follow

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17 Jan/19

TO PHIL FONTAINE
National Chief AFN

By Fax. (613) 241-5808

- Happy New Year!

- FYI.

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