their proper role? This article considers how some of these questions have played out in the ten years of Quebec jurisprudence that have followed the decision.

[illegible]

somewhat less change in Quebec than in other provinces. Much of the Supreme Court's decision focused on the overrepresentation of aboriginal offenders in the Canadian prison system, citing shocking statistics from a number of provinces but making no specific mention of Quebec.[3] And indeed, the representation of Aboriginal offenders in Quebec prisons seems to be closest to their representation in the general population (3% versus 2%). Western provinces, by contrast, tend to have incarceration rates for Aboriginal offenders that are grossly disproportionate to their representation in the general population, notably Saskatchewan (79% versus 15%) and Manitoba (71% versus 16%).[4]

Of course, all judges in Canada, including those in Quebec, are bound by s. 718.2(e) of the *Criminal Code* and its

[illegible]

that warrant further exploration if the vision reflected in *Gladue* is to be realized.

2. Factors Limiting the Impact of *Gladue* in Quebec

(1) Perceptions that *Gladue* Has No Impact for Sentences for Serious Offences

Perhaps most significantly, a number of Quebec cases make reference to *Gladue* only to find that it has no impact on sentencing given the seriousness of an offence. This determination typically relies (often inappropriately) on two passages from *Gladue* and *R. v. Wells.*[8] In *Gladue*, after a lengthy discussion on the importance of restorative principles in Aboriginal conceptions of justice, the Supreme Court made the following qualification:[9]

> In describing the effect of s. 718.2(e) in this way, we do not mean to suggest that, as a general practice, aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice, and less weight to goals such as deterrence, denunciation, and separation. It is unreasonable to assume that aboriginal peoples themselves do not believe in the importance of these latter goals, and even if they do not, that such goals must not predominate in

[redacted]

available to the court to take systemic and background factors and the circumstances of the offender as an Aboriginal person into account:[32]

> [illegible]
>
> attempt to acquire information regarding the circumstances of the offender as an aboriginal person. Whether the offender resides in a rural area, on a reserve or in an urban centre the sentencing judge must be [illegible]

indeed regardless of whether there is any program of alternative sanctions in the offender's community).[50] In practice, however, [illegible]

[redacted]

toward restorative models of justice.

Judges may also be understood to engage with restorative and community-based justice in their sentencing decisions when they encourage closer relationships between courts and communities in their reasons. For example, in *Amitook*, Judge Westmoreland-Traoré questioned in her disposition why the Attorney General chose to bring proceedings in Montreal, when this distance from the offender's community created

[redacted]

recognized that the concepts and principles of restorative justice would need to be developed over time, and through

judges' interactions with the contexts of Aboriginal offenders.[93] Judicial willingness to engage with communities

create and raise awareness about sentencing circles, justice

committees and other community resources to address the concern that community-based alternatives to incarceration are insufficient.

Thus, it seems from the foregoing that judges cannot go it