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THE LAW OF DOMESTIC CONFLICT IN CANADA

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This resource covers the complex intersection of family law, civil law and criminal law in cases of domestic violence, balancing substantive law and the practice of law. The work covers topics such as evidentiary issues in criminal proceedings, sentencing principles, common offences such as assault, uttering threats, and stalking and defences advanced such as self-defence and provocation.

Highlights

This release updates Chapter 6—Domestic Conflict and Aboriginal Peoples.

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This release includes the following updates:

- *R. v. Windebank*, 2025 ONCA 369, the Ontario Court of Appeal upheld the designation by a sentencing judge that the Aboriginal accused was a dangerous offender. The accused appeals on three grounds, including the sentencing judge's failure to account for the *Gladue* principles in making the dangerous offender designation. Thís was rejected by the Ontario Court of Appeal. Neither defence nor Crown extensively addressed the *Gladue* factors; the accused's ancestry could not be verified, and so agencies could not complete an update of the 2012 *Gladue* report; and the accused still committed violent offences despite accessing culturally appropriate resources while in custody on prior offences. The Ontario Court of Appeal stated:

> In any event, the availability of Indigenous based programs and the appellant's prospect for treatment by participating in these programs was raised at the hearing. In her reasons, the sentencing judge recognized that there were other relevant considerations at the penalty stage including the principles "developed for Indigenous offenders." The record did not suggest that the appellant's Indigenous background could have had a significant impact on his future prospects for treatment. In her reasons, the sentencing judge referred to both the 2012 *Gladue* report and the culturally specific programming that the appellant had enrolled in but like other programming, his violent offending had not been curtailed by past programming.
>
> It is clear from the psychiatric evidence in the record that the appellant's risk of violent recidivism was the product of his serious personality disorder, his substance use disorder, his poor treatment and supervision history, and the dim prognosis for meaningful change. There was simply no evidentiary foundation for the appellant's suggestion that the Indigenous programming would address the risk he poses to the community. Therefore, the failure of the sentencing judge to specifically refer to the *Gladue* principles, in the circumstances of this case, is not a reversible error.