

Gladue Report Guide



How to prepare and write a Gladue report

Gladue rights apply to all Aboriginal peoples, living on reserve or off reserve.



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This guide explains the law in general. *Gladue Report Guide* is up to date as of March 2018.

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Who this guide is for

This guide is for Gladue report writers who tell the stories of Aboriginal people in court for bail or sentencing hearings. The purpose of a Gladue report is to give the judge a complete picture of the Aboriginal person before the court. The report has details about their Aboriginal background and the circumstances that brought them to court.

Gladue principles require judges to consider an Aboriginal person's background. But not all judges are familiar with Aboriginal peoples' history in Canada. Your report is often key to educating a judge about the unique circumstances that affected and continue to affect all Aboriginal peoples.

As a Gladue report writer, you work with the Aboriginal person to describe their history in an Aboriginal context. Your report also includes restorative justice options outside and inside the correctional system that are available to the Aboriginal person. The options help the judge decide on appropriate sentencing.

Your role is vital to help the Aboriginal person before the court receive fair treatment. This guide will help you prepare effective Gladue reports to meet that goal.



Gladue Rights



Aboriginal peoples have legal rights called Gladue rights under the Criminal Code of Canada. Gladue rights recognize that Aboriginal peoples have been subject to **systemic racism** (prejudice throughout Canadian society and its institutions) in the criminal justice system. Under Gladue rights, when judges set bail, at sentencing, or when an Aboriginal person's freedom is at risk, they must consider that person's unique circumstances. They have to consider all available options other than jail that are reasonable in the circumstances.

Gladue rights apply to all Aboriginal peoples (status or non-status Indians, First Nations, Métis, or Inuit), whether the person lives on or off reserve, in an urban environment, or in an Aboriginal community or non-Aboriginal community. Gladue rights also apply to an Aboriginal person adopted by a non-Aboriginal family or raised in a foster home.

Words in **bold** type are explained in the text or in the definitions sections.

Section 718.2(e)

Changes to the Criminal Code in 1996 included the new section 718.2(e) because too many Aboriginal people were in prisons when compared to the general population. The section states that judges must consider:

- the unique systemic or background factors that may have played a part in bringing the Aboriginal person before the court, and
- the type of sentencing procedures and sanctions that may be appropriate in the circumstances because of their particular Aboriginal heritage or connection.

The Aboriginal person must tell the court directly or through their lawyer that they identify as Aboriginal to have the judge apply Gladue principles.

Gladue court case

The word Gladue comes from a Supreme Court of Canada decision in *R. v. Gladue*. In 1995 a young Cree woman named Jamie Tanis Gladue was charged with the second-degree murder of her common-law husband. She pleaded guilty to manslaughter, and the judge sentenced her to three years in prison. The sentencing judge didn't consider Ms. Gladue's Aboriginal background because she lived off reserve and was "not within an Aboriginal community."

Ms. Gladue appealed her sentence, and her case eventually went to the Supreme Court of Canada in 1999. The court decided the sentencing judge made a mistake to say Ms. Gladue's Aboriginal status wasn't important. It said the criminal justice system failed Aboriginal peoples and section 718.2(e) was a way to address the fact that courts were sending too many to jail.

The Supreme Court of Canada decided it wasn't necessary to change Ms. Gladue's sentence. But it provided guidance about the application of section 718.2(e) and what a judge needs to consider when sentencing an Aboriginal person.

Section 718.2(e) is meant to address the fact that Aboriginal peoples face racism in their everyday lives in Canada and the justice system. It makes sure they're treated fairly when bail is set or at sentencing.

Ipeelee court case

In *R. v. Ipeelee* in 2012, the Supreme Court reaffirmed the court's direction in *R. v. Gladue* and gave more guidance about Gladue rights to judges, Crown counsel, and defence lawyers.

Every Aboriginal person before the court has Gladue rights — to have their unique background and the effects of colonization considered. It isn't up to the judge, Crown counsel, or defence lawyers to decide if Gladue rights apply. Even if an Aboriginal person waives their Gladue rights at sentencing, the judge still has a duty to take judicial notice of the effects of colonization.

Crown counsel and the defence must give the judge the necessary information to properly take into account **Gladue factors** when an Aboriginal person's freedom is being decided. (See page 18 for more about Gladue factors.)

The Supreme Court also said the best way to present this information to court may be in a Gladue report or a Gladue submission. (See the Legal Aid BC booklet *Gladue Submission Guide* for information about submissions.)

When setting an appropriate sentence, judges must explain *how* they took into account systemic and background factors. Simply *referring* to these factors isn't enough. The Supreme Court also confirmed there doesn't have to be a direct link between the offence and the effects of colonization and systemic racism against Aboriginal peoples.

Gladue rights apply to *all* crimes under the Criminal Code, even very serious ones. The judge makes their decision based on the specific details of an Aboriginal person's case and comes up with a sentence appropriate for the Aboriginal person, the victim, and their community.

If an Aboriginal person committed a serious crime, they may have to go to jail. But the judge still applies Gladue principles when deciding the length of the jail sentence.



Sentencing



The fundamental purpose of sentencing is to maintain a just society by imposing just sanctions. As a Gladue report writer, you need to understand the broader framework of sentencing because you identify appropriate **restorative justice options** (see page 43) for the Aboriginal person outside of or within the correctional system.

These options should reflect the seriousness of the offence and the Aboriginal person's degree of responsibility. The sentence the judge gives must be consistent with the principles of sentencing and also address the disproportionate overrepresentation of Aboriginal peoples in our prisons.

Types of offences

In the criminal court system, offences are processed as summary or indictable. **Summary offences** are generally less serious crimes and carry lower maximum sentences. **Indictable offences** are generally more serious crimes (such as robbery) that carry greater maximum penalties. Offences that can be processed as either summary or indictable are called **hybrid offences**. The most serious offences under the Criminal Code of Canada, such as murder and high treason, have mandatory minimum penalties.

When offences have mandatory minimum penalties, Crown can decide how to proceed and has more discretion about the sentence they recommend. As a Gladue report writer, if you know whether your subject's charges are summary or indictable, you can then present realistic restorative justice options.

General principles

Under Canadian common law, judges are guided by two sources to make their sentencing decisions — general sentencing principles found in the Criminal Code (such as deterrence, denunciation, and rehabilitation) and precedent decisions made by the Courts of Appeal and the Supreme Court of Canada. In 1996 the federal government amended the Criminal Code of Canada. Section 718 sets out the purpose and principles of sentencing that apply to all Aboriginal peoples and provides judges with a guideline to decide a fit sentence in each case.

Section 718.2(e) requires judges to specifically take judicial notice of the unique effects of colonization that continue to affect Aboriginal peoples in general and the Aboriginal person before the court. All other principles and goals of sentencing continue to apply.

Guidelines and standards — Case law

R. v. Gladue (1999) and *R. v. Ipeelee* (2012) are the two Supreme Court of Canada cases that guide the application of section 718.2(e) to Aboriginal people before the court. In *Ipeelee*, the court said a Gladue report may be the best way to give the judge relevant information about Gladue factors.

Funded Gladue reports have been available through the Legal Services Society (LSS) only since 2011. At that time, with funding from the Law Foundation, LSS undertook the Gladue Pilot Project. LSS continues to fund requests for these reports. BC courts have received Gladue reports of varying degrees of quality. Various court cases give guidance about the standards and criteria Gladue reports should meet.

In *R. v. Williams* 2013 BCSC, the BC Supreme Court cited *Ipeelee* and said “courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples.” These matters “provide the necessary context for understanding and evaluating the case-specific information presented by counsel.”

In *R. v. Lawson* 2012 BCCA 508, the BC Court of Appeal said the Gladue report writer isn't an advocate and shouldn't advocate on behalf of the Aboriginal person. Reports should "be balanced, not advance the writer's own opinions, or recommend to the court any specific sentences or options." They should also "provide the court with realistic restorative justice options or rehabilitative programs available."

In *R. v. Florence* 2013 BCSC 2014, the trial judge said at minimum a Gladue report:

- should present accurate facts to give the court as complete a picture as possible of the Aboriginal person before the court;
- if possible, should contain information corroborated or verified by written sources;
- shouldn't elicit information by leading questions;
- should provide accurate references for statements; and
- should identify any assumptions the writer made when producing the report.

In *R. v. Paul* 2014 BCCA 81, the BC Court of Appeal addressed the standard a Gladue report must meet to be helpful to the judge at sentencing. The court said Gladue writers should:

- provide the court with the Aboriginal person's historical, cultural, and systemic background factors without bias, and should check against other available reports, such as a pre-sentence report (with Gladue component), forensic psychiatric report, or report/letter from a remand centre psychologist;
- address any contradictions or discrepancies between reports; and
- exercise due diligence and corroborate information as much as possible or risk undermining the report's credibility and reliability and giving the report little weight.

Courts in other jurisdictions may also give writers guidance about how to consider section 718.2(e) and the standards required of Gladue reports.

Restorative justice and community sentences

Gladue principles encourage judges to use restorative justice when sentencing Aboriginal people. They have to consider all options other than jail. This is meant to restore balance and harmony to the community. The focus is on repairing the crime's harm and giving the Aboriginal person before the court and any victims opportunities to heal. This may lead to a sentence more appropriate and meaningful to the Aboriginal person's Aboriginal culture. Restorative justice principles also apply to youth offenders.

The judge considers the views of the Aboriginal person's community about the crime and the community's justice traditions. They may order the Aboriginal person to participate in a healing circle and other culturally appropriate programs. The person is held accountable to the community, and the community is part of the process. However, support *from* the community (family, friends, or others) may not mean support *of* the community (chief and council or the broader community).

Many Aboriginal communities have restorative justice programs available. However, sometimes even the Aboriginal community feels only a time of isolation or removal from the community will restore balance.

If a restorative justice program specifically related to the Aboriginal person's distinct background isn't available, there may be mainstream treatments or counselling programs to help them address the issues that got them into trouble with the law.

If the judge decides a restorative justice option (such as a treatment program or release with conditions) is more appropriate than jail, they may order a **community sentence**. This type of sentence allows the Aboriginal person convicted of a crime to serve all or part of their sentence in the community.

Normally they're required to report to a probation officer. The probation officer monitors their time in the community and may require them to attend various programs or counselling, and monitors their movement or other conditions. The Aboriginal person may have to go to drug or alcohol rehab, anger management, or counselling. If an Aboriginal person receives a community sentence, they *may* get less or no time in jail.

Because of mandatory minimum penalties — for serious offences (murder or high treason) or when there are certain aggravating circumstances (reoffending or firearm use) — sometimes the judge has to send the Aboriginal person to jail. However, the judge must still apply Gladue principles when they decide the length of the jail sentence.

To varying degrees, BC correctional centres have Aboriginal programs. This means in-custody restorative justice options are often available. The judge can recommend where the Aboriginal person serves their sentence. Also, if correctional staff see the Gladue report, they can take into account restorative justice options when case planning.

It's important for the Aboriginal person to understand that restorative justice or serving a community sentence isn't an easy way out. Taking responsibility for their actions and facing the issues that got them into trouble with the law can be difficult and hard work.



Definitions

Sentencing principles and objectives

Denunciation. The sentence reflects society's abhorrence (horror and disgust) for the crime.

Deterrence. The sentence discourages the person and the general public from committing the crime in the future.

Rehabilitation. A sentence that works to change the person's behaviour, such as treatment, counselling, or other programs to restore or help them reintegrate into society.

Reparation. A sentence that repairs, restores, or compensates the victim and/or the community for the harm or loss the crime caused.

Responsibility. A sentence that encourages the person to recognize and accept the harm they've done to the victim and the community.

Separation from society. A sentence to protect the public, including a custodial sentence or conditions such as in a conditional sentence order (CSO), that restricts the person's mobility in the community.

Sentencing goals

Aggravating/mitigating factors. The sentence should be increased to account for any relevant aggravating circumstances or decreased to account for relevant mitigating circumstances.

Parity. The sentence should be similar to sentences imposed for similar offences committed in similar circumstances.

Proportionality. The sentence should reflect the seriousness of the offence and the person's degree of responsibility.

Restraint. The sentence doesn't deprive the person of their freedom if less restrictive sanctions would be appropriate in the circumstances.

Totality. The combined sentence shouldn't be unduly long or harsh when consecutive sentences are imposed.

Colonization



Aboriginal peoples have lived in Canada for thousands of years. When the Europeans began arriving in the mid-1700s, they introduced disease and alcohol. This led to large-scale death and widespread health and addiction issues for Aboriginal peoples.

Canada also imposed laws, policies, and practices that discriminated against Aboriginal peoples. By 1830 a reserve system and residential school system were in place. As a result, generations of Aboriginal peoples became disconnected or dislocated from their culture, traditions, and identity.

The Indian Act

The Indian Act of 1876 focused on the assimilation of Aboriginal peoples into mainstream society. It defined status Indians as registered band members, altered traditional and hereditary forms of government, and created reserve lands set aside for Aboriginal peoples.

It also discriminated against generations of Aboriginal women and children because federal law defined a status Indian based only on paternal lineage — an “Indian” was a male Indian, the wife of a male Indian, or the child of a male Indian.

This meant Aboriginal women who married someone other than an Indian were forced to move off the reserve with their children, and were denied Indian status and important health and education benefits. Some forms of discrimination against Aboriginal women and their descendants continue today in the definitions of Indian under the act, despite amendments.

In 1927 the Indian Act was revised to ban any Indian political organization or financing without government approval. The revision also legally banned Aboriginal spiritual and cultural ceremonies and activities, such as potlatches, sun dances, feasts, and dancing.

Residential and other schools

By 1923 Aboriginal children were legally forced to attend residential and industrial schools, as an important step in assimilating and “civilizing” Aboriginal peoples. They had to renounce their language, cultural practices, beliefs, and any connection to an Aboriginal way of life. Many survivors have reported rampant abuse (such as physical, emotional, spiritual, sexual) and neglect (such as lack of affection, health care, food) among other experiences.

Some Aboriginal, Métis, and Inuit children attended Indian day schools, which were located on or near reserves. Here, they experienced many of the same abuses as residential and boarding school students.

Métis peoples have a unique history of attendance at boarding schools designed to disconnect them from their cultures and traditions. (See *Métis History and Experience and Residential Schools in Canada*, published by the Aboriginal Healing Foundation in 2006.)

Intergenerational effects

The last of the residential schools closed in 1996, but the effects of that school system are **intergenerational** (affect more than one generation of a family or community). Survivors returned home carrying shame, self-hatred, and violence. Authorities had abused them, and they often felt their own parents had abandoned them. Families became fragmented.

Children born to parents who attended the schools also struggled with the effects of abuse and neglect. Since these parents weren't raised in loving, supportive environments, they often found they didn't have the skills to provide that for their children. Some passed on the same patterns of abuse.

Many social problems have their roots in the residential school system. Today, First Nations, Métis, and Inuit communities have higher rates of:

- suicide
- health problems
- high school dropouts
- addictions
- unemployment
- violence
- substance abuse
- illiteracy
- abuse

While living through the impacts of trauma, Aboriginal peoples endure racism and the loss of knowledge of culture and identity. This leads to further alienation. The Royal Commission on Aboriginal Peoples (1996), Manitoba Justice Inquiry (1999), and Truth and Reconciliation Commission (2016) have documented the intergenerational effects of residential schools.

Foster care and adoption

In the 1960s, provincial child welfare authorities began large-scale removals of on-reserve Aboriginal children into foster care, now called the Sixties Scoop. They also allowed private adoptions by non-Aboriginal families. These actions further disconnected generations of children from their Aboriginal families and communities.

While the Sixties Scoop began in the 1960s as Indian residential schools were closing, it continued into the 1980s. Some statistics show it hasn't decreased. Today, more Aboriginal children are in care (over 65 percent of all children in care in BC as of 2017), and some Aboriginal people are the second or third generation of children taken into care.



Other effects of colonization

Other effects of colonization, especially when Indian residential school isn't a significant factor in an Aboriginal person's life, include loss of autonomy, an adversarial relationship with authority, nonconformity, and loss of hope.

The effects on the broader Aboriginal community include:

- community relocation (displacement) and/or amalgamation
- effects of oil, gas, and timber companies on the community and the land
- other effects of the Indian Act [RSC 1985, c. I-5] such as trade and commerce, wills and estates, property rights, band membership schemes
- historic and modern treaty negotiations
- Métis scrip policy and loss of lands
- the Canada–United States border that divided nations and families, and created barriers to subsistence patterns

This unique history of Aboriginal peoples resulted in systemic racism. It continues today in everyday life and within the justice system.



Gladue Reports



Gladue reports are produced for the court, usually for bail or sentencing hearings. The reports present a holistic picture of the Aboriginal person by including information about their background and the specific circumstances that brought them before the court. Each report must give details of the effects of colonization on the Aboriginal person and their family and community, sometimes going back several generations.

The report should give the judge the detailed information they need to apply Gladue principles and make the best decision possible for the Aboriginal person and their community. The judge needs to be able to answer these important questions:

- Why is this particular Aboriginal person before the court?
- What sentencing options other than jail are available to this Aboriginal person that might help them address the issues that got them into trouble with the law?
- For the Aboriginal person in jail, to what extent do the options for rehabilitation address the unique systemic and background factors?

As a Gladue writer, be aware of the many ways that Canadian laws, policies, and practices have evolved over the years and continue to affect Aboriginal peoples. Don't assume a judge knows this history, even in places where a large Aboriginal population has come before the courts.

Gladue report and pre-sentence report

A Gladue report is different from a pre-sentence report. A pre-sentence report is prepared by a probation officer. It provides the court with a risk analysis of the Aboriginal person (how likely they are to reoffend) based on their criminal record and focuses on their criminal behaviour.

A Gladue report can be written by an advocate or trained Gladue writer. It's best when a Gladue report is prepared by someone with a connection to and an understanding of the Aboriginal community. The report puts an Aboriginal person's personal history into an Aboriginal context to make sure the judge understands the connection between socialization factors and criminal behaviour. A judge can then decide on a sentence that's unique to the Aboriginal person and their culture, with an emphasis on restorative justice principles.

When Gladue principles apply

Gladue principles apply when an Aboriginal person's freedom is at risk. This includes at bail and sentencing hearings, appeals, parole hearings, Mental Health Review Board hearings, not-criminally-responsible hearings, dangerous and long-term offender hearings, and civil contempt decisions.

Bail hearings

At a bail hearing, a judge needs to know what options other than jail may be appropriate and are available while an Aboriginal person waits for their next court date. Conditions on a bail order minimize the Aboriginal person's risk to the community and make sure they appear in court when they have to. These conditions may include abstinence from alcohol and drugs, restrictions on where they can go or people they can contact, and reporting to a bail supervisor. Sometimes bail is called **judicial interim release** or **show cause**. It stays in place until trial or other resolution.

The three grounds for detaining an accused person prior to sentencing are:

- to make sure the accused attends court,
- for the public's protection or safety, and
- to maintain confidence in the justice system (related to the seriousness of the offence).

When the police arrest someone, depending on the crime and circumstances of the arrest, they can release the accused without a bail hearing. Or they can **remand** them (keep in custody) until there's a bail hearing.

Whether someone is remanded until their trial depends on the charge and other factors, such as whether they have a criminal record. If someone is released without a bail hearing, it isn't necessary to apply Gladue rights at that time.

If the judge isn't confident a defendant will show up in court at the specified times, or is concerned they might commit further crimes on release, the judge may decide the defendant should be remanded until their trial. In general, a defendant has a much better chance of release on bail if they don't have a criminal record, have supports in the community, are employed or going to school, or have another program or plan in place (a bail plan).

A legal matter can take a long time to come to trial. If a defendant isn't released on bail, they may be in custody for months. If a defendant takes the time to get a bail plan and a Gladue report, that may delay their bail hearing for a few weeks. But a Gladue report may help them to be released until their trial or hearing.

A Gladue report for a bail hearing doesn't have to be as detailed or contain as much personal information as for a sentencing hearing. The defendant doesn't usually make admissions of guilt. The judge needs to know a defendant is Aboriginal and the details of their life relevant to bail — employment, education, living situation, community supports, etc.

The judge also wants to know if a defendant has a **surety** (someone who agrees in writing to be responsible for them until their case is over). A family member or a person from their Aboriginal community can act as a surety to monitor and provide resources, such as counselling to support them while they're in the community.

A defendant can also include positive aspects of their Aboriginal culture in a bail plan. For example, the plan could include a commitment to do volunteer work for an Aboriginal Elder, their Aboriginal community, or a friendship centre.

The person who agrees to supervise the defendant, on behalf of the Aboriginal community, must be in a position and have the authority to do so. If the person is related to the defendant, the bail plan has to clearly state this and say whether the person agrees to supervise in their professional or personal capacity.

Sentencing hearings

If an Aboriginal person pleads guilty to charges against them or is found guilty at trial, the judge sentences them. Their sentence is the punishment the judge feels is appropriate given the circumstances and the crime committed. If they plead guilty, this may be considered a mitigating factor and/or be a way they take responsibility for the crime.

At the hearing, Crown counsel says what they think the judge should keep in mind when sentencing. Then the Aboriginal person's lawyer makes submissions on the Aboriginal person's behalf and tells the court what they think the judge should keep in mind when sentencing, including any sentencing plan that's proposed. If an Aboriginal person wants Gladue rights applied to their case, sentencing submissions should include a detailed Gladue report.

Once the judge has heard from both lawyers, the judge makes a decision and gives reasons for the sentence. There are three types of sentencing options (punishments):

- a fine,
- probation (on its own or as part of a community sentence order with conditions), or
- imprisonment (jail or custody).

The judge may choose to combine some of these options. The Aboriginal person may serve a custodial sentence in jail or the community (such as house arrest or under curfew).

Gladue factors in sentencing

Gladue rights require judges to consider a number of unique systemic factors that may have contributed to the Aboriginal person getting in trouble with the law. These Gladue factors must include the effect of laws and policies. Many Gladue factors are intergenerational.

The Aboriginal person and their family members may identify some of the following Gladue factors as affecting their personal and/or family history.

◆ Gladue factors ◆



- **Abuse:** sexual, physical, psychological, emotional or verbal, spiritual
- **Alcohol/drug abuse:** past and present personal, family, community impacts, including the range of Fetal Alcohol Spectrum Disorders (FASD) or Effect (FAE), or exposure to drugs during pregnancy
- **Attendance at residential, boarding, or day school:** includes mistreatment, loss of family contact, loss of culture, abuse
- **Connection to Aboriginal community:** personal, family history, community breakdown and fragmentation
- **Criminal history:** personal, family, community
- **Dislocation (removal) from Aboriginal community:** includes effects such as loss of identity, culture, and ancestral knowledge, and isolation
- **Early death among family or friends:** due to substance abuse, accidents, violence, suicide
- **Employment:** personal, family, and community history of unemployment, low income, lack of educational opportunity
- **Family breakdown:** divorce, family violence, alcohol/drug misuse
- **Family involvement in the criminal justice system**
- **Foster care or adoption:** removal and placement in Aboriginal or non-Aboriginal foster care, or adoption
- **Health (mental and physical):** suicidal thoughts or attempts, depression, anxiety, trauma, diagnosed disorders
- **Interventions, treatment, or counselling:** alcohol, drug, psychological, trauma, grief

- **Living situation:** past, present, and future
- **Loss or denial of Indian status or membership recognition:** colonial laws, policies, practices
- **Poverty:** past and current experiences
- **Quality of relationships:** positive and negative relationships with spouse/partner, family, extended family, community
- **Racism:** direct or indirect, in society and institutions (community, school, workplace, jail, foster care, adoption)
- **Remoteness:** distance from the nearest service delivery or treatment centre
- **Support networks and strengths:** past and current spiritual, cultural, family, and community supports and resources



How to Prepare a Gladue Report



In the following sections of this guide, we use the word **subject** to refer to the Aboriginal person.



Care for your subject

Preparing a Gladue report with your subject can bring up painful and traumatic events. Make sure they have support people available they can talk to after your interviews with them, such as family, friends, and counsellors. Also, have counsellor contact information handy (available from the First Nations Health Authority at **1-877-477-0775**) if your subject needs support during the interview. For in-custody interviews, call ahead for a counsellor to follow up with your subject after the interview.

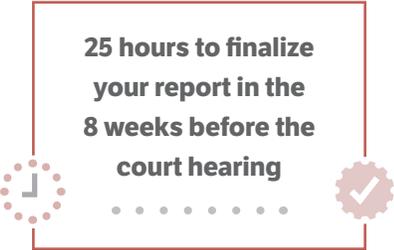


Self-care

Be aware of yourself during the preparation and writing process. This work can be very challenging, especially for writers who may have experienced Gladue factors. Learn what your own triggers are and find help if you feel overwhelmed or (re)traumatized. Don't let yourself be harmed. Take breaks before you really need them.

Learn how to cope with what you hear. Lean on friends, family, and professionals for support. Share challenges and successes in a safe environment, attend professional development workshops, and find a mentor with experience working in corrections.

It might help to keep in mind that the hard work you do contributes to helping people and the courts repair the harm done. Just bearing witness and giving people a voice is meaningful.



**25 hours to finalize
your report in the
8 weeks before the
court hearing**

Preparing a Gladue report requires significant time.

Your report is based on interviews with your subject and their community supports and resources. You may need *up to 25 hours* to do everything to finalize your report. Make sure you start preparing your Gladue report *at least eight weeks* before your subject's court hearing.

Contact your subject's lawyer

Ask your subject's lawyer if the Gladue report is for bail, sentencing, or an appeal. Ask for the Information (copy of the charges), any RCMP transcript, and other court-ordered reports, such as a pre-sentence report or psychiatric report. Ask for a copy of your subject's criminal record from Integrated Justice Systems (JUSTIN) or the Canadian Police Information Centre. Find out the Crown's initial sentencing position (ISP), the range of sentencing options the judge has to consider for the offence, and whether your subject is in or out of custody. If your subject is out of custody, get their contact information. Also ask your subject's lawyer for any potential community contacts your subject gave them.

Review your subject's criminal record

Before you meet with your subject for the first interview, review their criminal record, if any, using the Court History Assessment. (This is the listing of their past criminal record, which is included in the disclosure package from Crown counsel.) Then you're prepared to ask appropriate questions so your subject can describe in general terms their involvement with the criminal justice system. You can look up the charge(s) set out in the Information and possible sentence ranges under the Criminal Code of Canada. This will give you a better idea if a conditional sentence order (CSO), in whole or as part of a custodial and reintegration plan, is an option for the judge.

Look at all of the offences listed and see if there are any patterns. For example, you may notice that every December your subject is in trouble. Think about whether this might reflect a trauma, such as the death of a parent. Also, look at any long periods of time when your subject wasn't involved in the criminal justice system. Consider whether their record shows their personal circumstances or the types of offences changed over time.

Confirm your subject's location

If your subject is in custody, as soon as you get your referral to write their Gladue report, call the correctional centre to make sure they're still there. Ask whether they were transferred on remand due to capacity issues. If not, request your subject remain at that centre because they have a pending Gladue report.

Interview your subject

You may have to meet with your subject for several interviews to get all the information you need to write your report. Your subject has to sign a Consent to Release Information form before the interview begins, whether they're in custody or out of custody.

The first interview can take up to three hours to work through the questions (see page 28). Make sure your subject has supports available to them for all the interviews, as they may become upset disclosing sensitive traumatic information (see page 21).

In the interviews, be alert to intergenerational effects of residential schools on your subject, their immediate and extended family, and their Aboriginal community. Ask your subject what information they're comfortable having in the Gladue report and not having in it. Remind your subject their story will be shared with the court.

Often, your subject's information is sensitive or traumatic, such as instances of abuse, which they may never have disclosed before to anyone. Be sure to explore this with your subject and explain for the court any gaps or inconsistencies from past reports. For example, your subject may never have met anyone they felt they could trust with their story, or may have told parts of the story but not explored in detail how this affected them.

In the first interview, ask your subject to tell you who their contact people are. They might be friends, relatives, support workers, Elders, or hereditary or band chiefs. Try to get the names of as many contacts as possible from them, along with phone numbers.

For in-custody interviews, wear casual clothes. In the interview room, let your subject choose their seat and offer them water and snacks (arrange with staff).

For out-of-custody interviews, let your subject choose a public location to meet to ensure your safety. (Libraries often have rooms you can book for free.)

Contact community supports and resources

After the first interview, get in touch with the community contacts your subject provided. You can also contact any relevant restorative justice programs or options that could help your subject address issues they identified. Here are some guidelines.

It's best to call all contacts ahead of the interview to introduce yourself and book a time to talk. Let them know how long the interview will be and the subject matter.

- Contact a minimum of six people if possible; more than six is preferred for a comprehensive report. These contacts can include program supports, counsellors, and family friends. If you can't find six people your subject connects with, you can point this out as a Gladue factor.
- Contact your subject's parole or probation officer to learn about your subject's criminal history and **community supervision** (see page 56) history, such as compliance with any conditions (curfew, counselling, or reporting requirements, etc.). Remember to first get your subject to sign a Consent to Release Information form.
- Contact your subject's spouse, children, parents, grandparents, aunts, uncles, siblings, cousins. If you can't reach someone after repeated efforts, say "Efforts to contact [name] weren't successful at the time of writing."
- Contact other important people in your subject's life: partners, family friends, teachers, mentors, Elders, foster or adoptive parents.
- Contact at least one person who can speak about the history and current circumstances of your subject's community. Many Aboriginal communities have an Aboriginal justice worker or social development worker who can help to provide an understanding of the community. In some small communities, the police, who often know everyone, can connect you with community contacts.
- Make sure information about your subject's community, especially when you discuss intergenerational factors affecting it, comes from an *authoritative community member*, such as the chief or an Elder, or program lead or manager. Your subject may identify as belonging to more than one community, such as their mother's or father's community, where your subject grew up.

- Try to find someone who can comment on the factors that make up your subject's personal history and how those factors relate to intergenerational effects and the issues that brought your subject to court.

For example, if your subject is a sex offender, it's useful to know if there's a common experience of attendance at Indian residential schools and subsequent sexual abuse in the community. Have someone else describe that link for you, so that you can put it in your report. This is particularly helpful if your subject's family didn't go to Indian residential schools. It shows the intergenerational effect might not be present in the immediate family but existed in the community at large.

- Include information from a representative of proposed treatment centres.
- Rely on secondary sources only when many attempts to get relevant information from the community have been unsuccessful.

You may choose to interview the chief, council, or band managers. A knowledgeable healer, culturally informed counsellor, Native courtworker, or other professional can also give you information. It's best to find someone who represents the ancestral community and knows your subject's family.

Do a final interview with your subject

If possible, do a final interview with your subject, especially if there are gaps or inconsistencies in information. Review all of the information they gave you, including their attitude toward the crime and if they take responsibility for it. Explore restorative justice options your subject might be open to participate in. Document why past rehabilitation efforts might not have worked.

Write and finalize your report

Following the guidelines on page 51, write and finalize your report. Compile your subject's letters of support and certificates (see page 47), and attach them to your report.

Give your report to your subject's lawyer *one week before the court date* to file with the court registry.



What's in a Gladue Report



A Gladue report contains information on several topics to tell your subject's story. It also contains restorative justice options available for your subject.

Not every section under the topics below are critical to each report. The order of topics here is a suggestion — you may find your subject's story flows better in a slightly different way.



Interviewing your subject and others is a skill you develop over time. How to gently probe to get relevant details varies from person to person. Often indirect questions open up topics. For example, rather than asking “Are you connected to your culture,” you may want to ask “Who are you closest to? Why?”

Remember, the court in *R. v. Florence* said it’s important for the Gladue report writer not to ask leading questions. A leading question results in a yes or no answer, or contains the answer in the question. Try to avoid this.

Your subject may become upset or traumatized by memories that come up while you’re asking questions. If they become distraught, stop the interview immediately. Have a counsellor’s contact information ready to give to your subject. If your subject is in custody, notify correctional staff immediately to get help from support services in the facility.



Background history

Personal history

Name, birth information, contact information

- Ask your subject their full name, nickname if they have one, and Aboriginal name if they have one; date and place of birth; home address and mailing address; phone number(s).

It’s a good idea to have more than one phone number for your subject. Get any cellphone, work phone, school phone, and emergency (message) numbers to call if you can’t reach them at the primary phone number.

Aboriginal status

- Ask if they identify as Aboriginal.

Aboriginal includes status or non-status Indian, First Nations, Métis, or Inuit. It doesn’t matter if they live on or off reserve, in an urban or rural setting, or in an Aboriginal community or not.

- Ask what Aboriginal community, Nation, or band they’re from.

They may be connected to more than one Aboriginal community. For example, they may have status with their mother’s First Nation at Black Creek, and be ancestrally connected to their father’s Inuit community.

The Gladue court case said “Aboriginal community” should be broadly defined. It can be the Aboriginal community where they live, or a network of support such as friendship centres, Aboriginal residential or outpatient treatment programs, or other Aboriginal resources they’re connected with where they live.

- Ask about their status and if they’re recognized as a member of a First Nation, Treaty Nation, Indian band, Métis community or settlement, or Inuit community.

Their Indian band may recognize them as a member culturally, but they may not be eligible for status registration legally under the Indian Act. This means they’re not eligible for a number of benefits. Ask them to explain how this happened; for example, if their mother or grandmother lost status because they married a non-Aboriginal person, or if they were **enfranchised** (see page 54).

Life experiences

- Ask for details about their significant life experiences, including:
 - where they were born; where they grew up (city or rural area, or on reserve); their living arrangements growing up (for example, how many brothers and sisters and other relatives lived in the same house); what their home life was like and their earliest memory;
 - if any significant events happened during their childhood or adolescence (for example, family breakdown or moving from the community); their age when the events happened; their memories of the events’ circumstances; and
 - their personal and family experience within the non-Aboriginal community (for example, if they experienced racism).

You may want to use a timeline, such as 0 – 6 years (to draw out events in formative years), 7 – 12 years, 13 – 15 years (critical age for youth), 16 – 19 years, 20 – 29 years, 30 – 39 years, etc.

Education history

- Ask for details about their educational experience, including:
 - school(s) they attended, when, and for how long; if they had to be boarded out or travel for school, and what that was like;
 - their general experience at school; examples if they were bullied or subjected to racism;
 - if they attended special programs at school and why; how well they did;

- if they attended different schools and why; if they missed a lot of school and why;
 - their level of education, such as high-school graduation, college, or post-secondary;
 - if they dropped out of school, the age they quit, and what was going on in their life at the time; and
 - how their level of education affects them.
- Ask for details of any learning challenges they may have, such as difficulty reading or concentrating, memory or behavioural issues, and why. For example, they may describe neglect, instability, or family alcohol abuse or family violence that affected their ability to learn. Ask how this affected their education, and if they received any specific educational support.
 - Ask if they were given any formal assessments or diagnoses, such as Fetal Alcohol Spectrum Disorder (FASD), Attention Deficit Hyperactivity Disorder (ADHD), dyslexia, or other challenges. If that's the case, check with the lawyer, advocates, or others working with them to obtain a copy.
 - If your subject may be struggling with FASD but has no formal diagnosis, give information in the restorative justice section of your report about how this may be addressed.
 - If you think they may have FASD, ask what they know about their mother's alcohol history — if their mother drank alcohol when she was pregnant with them or their siblings, how they know this, or who told them and when. Ask if you can interview that person for the report or if they might be willing to speak to the court.

Work/career history

- Ask for details about their employment history. If their history shows a pattern of sporadic employment, ask them to explain the gaps and what was going on in their life during those times.
- Ask about any special training, skills, or talents they have (for example, Red Seal, first aid, heavy machinery operator) and if there's an employer, instructor, or trainer you could talk to about their work practice. Get copies of any certificates they received.
- Ask about their experience on the job; if they quit or got fired, why; examples if they think racism was involved.
- Ask if they believe they were denied opportunities and why; for example, if they applied for a job and weren't hired, get details about what happened.

Substance abuse history

- If they have a history of substance abuse (alcohol or drugs), ask for details, including:
 - their age when they first tried the substance(s),
 - who introduced them to the substance(s),
 - what was going on in their life at that time,
 - what the experience was like,
 - for how long and how often did the substance abuse continue, and
 - if they experienced blackouts.
- Ask them to describe how the substance abuse affected their life, such as their relationships, or their mental and physical health.
- Ask for details about what they did to try to overcome addiction or substance abuse, and if they did nothing, why.

Personal wellness history

- Ask for more details about the family history they gave earlier, including:
 - if they grew up in a home where there was neglect or abuse;
 - nature and examples of abuse (physical, emotional or verbal, sexual) they endured and how often it happened;
 - times they were left unsupervised or neglected; and
 - if they witnessed forms of abuse.
- Ask if they went through periods of poor health because of illness or injury, how their life was affected, and if they have any chronic or serious health conditions that limit their abilities.
- Ask if they harmed themselves, including any suicidal thoughts or attempts; when and what happened; what was happening in their life then.
- Ask for details about anyone close to them who died or committed suicide, including:
 - their relationship,
 - when it happened,
 - how this affected them, and
 - counselling they received on the loss of the friend or family member.

Treatment history (residential and outpatient)

- Ask for details of treatment programs or other supports they tried in the past, including residential and/or outpatient; if the treatment was voluntary or required; their experience in this program.
- Ask what factors (such as trauma or substance use) were addressed in the past; if the treatment or counselling was successful or partly successful; if previous treatment plans failed to address underlying factors in their life, why.

Alcohol and drug

- Ask if they attended addictions counselling meetings; about their experience there; if sessions were effective, why or why not.

See if they can give you proof of their attendance at the meetings. For example, maybe their A&D counsellors or chaplain can provide a letter or certificate. If they don't have proof, contact treatment centres they attended, ask for the consent form your subject signed, and then get the confirmation of attendance.

Mental health/psychological

- Ask for further information about any diagnosis for mental health issues; if they were prescribed medication, what kind, and how it affected them.

See if they have documentation of their official diagnosis and if there's anyone you can talk further to about these issues (for example, a doctor or therapist).

Counselling

- Ask for details about any counselling experience in the community and correctional facilities, including who, what, where, and when they attended; why counselling was effective, or not.

See if they can give you proof of their attendance at the sessions, and who you can contact for the report. Get copies of any certificates of attendance they received.

Criminal history

Before the interview, review your subject's past criminal record, if any (see page 22). Then ask appropriate questions in the interview, such as the following:

- If you saw any patterns to their offences, ask your subject what was going on in their life at those times and how this may have contributed to their behaviour.
- If you saw any long periods of time when your subject wasn't involved in the criminal justice system, ask them what was happening in their life at that time and how this may have contributed positively to their life.
- If their record shows their personal circumstances or the types of offences changed over time, ask them to explain how and why this may be.
- For bail, if they previously failed to attend court or breached a condition, ask them for information on how their circumstances may have changed.
- In cases where they have a lengthy criminal and incarceration history, ask them to explain what worked or didn't in the past, and why rehabilitative options may be more appropriate in the current circumstances.

In your report, summarize relevant information in one or two paragraphs.

- Provide specifics about your subject's involvement with the criminal justice system using the Court History Assessment.
- Reproduce the charge(s) contained in the Information.
- Don't give information that minimizes the effect of a guilty plea.
- Address your subject's criminal behaviour and pattern of reoffending. Use your subject's quotes to convey in their own words their involvement.
- Include information about their attitude toward and understanding of the offence. Be careful not to give any information that may link them to other criminal activity.
- If they have a lengthy record, you don't have to mention every charge. Summarize the charges, such as minor crimes, property crimes, drug possession, breaches, etc. Explain the context of the crime, but don't introduce new evidence or facts about the charges.

Don't mention the illegal activities of family members or friends, if your subject mentions that in the interview. Don't mention charges they were acquitted on, stays of proceedings, any juvenile record, or pardoned convictions.

For bail (or on appeal of a conviction), it's very important not to admit guilt. Say "the alleged" incident or offence, and be careful not to mention any other potentially criminal acts they haven't been charged for.

Attitude toward the offences and impacts

- If your subject pleaded guilty or was found guilty at trial *and isn't going to appeal*, ask them to explain their attitude toward the offence(s), and the impact on their victim and the community.

For example, if they accept responsibility, what was going on in their life at the time; what they would do differently.

- Ask them to explain how they plan to avoid criminal activity in the future. Use quotes from your subject.

When writing this section in your report, make sure your subject isn't admitting guilt at a bail hearing or thinking about an appeal, or admitting responsibility for crimes they're not charged with (for a sentencing or appeal hearing).

Also be careful not to implicate other people in offences they may not have been charged or convicted for.



Family history

As your subject recalls their personal history, they will likely cover many of the following issues (not all of them may apply to your subject). It's important you get as much detail as possible about how and why each unique experience affected your subject's life so you can write about it in your report.

Names of parents, siblings, relatives, foster or adoptive family

- Ask for the names of all maternal and paternal family members in your subject's life, or their foster or adoptive family members.

Indian residential school

- Ask who, where, and when they or family members went to residential school; if family members went, how your subject knows about this.
- Ask how this affected them and their family; for example, culture loss, language loss, family breakdown, history of physical, emotional, or sexual abuse, etc.

Foster care

- Ask for details of their own history, or what they know of their family's history and experience in foster care, and how they know this (who told them, when, where, etc.); for example, what circumstances may have led to them, or their parents, brothers and sisters, or children being removed from their biological home; when and where this happened; how this affected them and their family.
- Ask if there's anyone else you can talk to among the family or friends or counsellors for more details, and if they have access to court records or documents you can review to get more details.
- Ask for as much detail as possible and/or contacts you can speak to if there's a family history of child protection issues; for example, if abuse or neglect led to contact with child welfare authorities but not to apprehension.

Adoption

- Ask about adoption-related issues, including if they or members of their family were adopted by an Aboriginal or non-Aboriginal family; if so, who, when, and where.
- Ask them to describe their own experience or what they know about their family's experience (and who told them); for example, loss of connection with their family or community as a result and the effect on them.

Relationships (with relatives, partners, friends, etc.)

When you write your report, consider describing the relationships in a separate paragraph (or more) for each significant family member.

- Ask about the kinds of relationships they have, if any, with their family; anyone they identify as someone they look up to, or are close to, and why, and how this relationship affected them.
- If a single parent raised them, ask how this affected them and the family; if they identified problems with their family relationships (who, when, why).
- Ask about cultural traditions and customs they learned, including what, when, and who taught them (parents, grandparents, Elders, other relatives, community members).

Remember, Aboriginal community is broadly defined, so your subject may have learned Aboriginal traditions by attending urban Aboriginal gatherings, events, or functions such as at a friendship centre. They may not have learned traditions from their specific Aboriginal Nation, but may still have acquired some identity and received support as an Aboriginal person.

- Ask for details if/how they were personally affected by someone else's substance abuse in their life; for example, if they grew up in a home where there was substance abuse or addictions (who, what, where, and when).

Loss of family

- Ask for details about family relationships they lost; for example, because of accidental death, suicide, or crime, or family members who are missing or whereabouts unknown; how they were affected by the death or disappearance of family or friends.
- During the interview, you may notice a recurring pattern in your subject's life that's connected to the anniversary of a loved one's death (or another trauma). Ask for more details.



Aboriginal community history

For this section, interview your subject, their relatives, and a representative from your subject's Aboriginal community (such as a band social worker, hereditary chief, trauma worker, counsellor, or someone with knowledge of your subject's off-reserve or urban Aboriginal community). These interviews allow you to confirm facts and help the court consider your subject's unique Aboriginal history. This history includes the laws, policies, and practices that affect Aboriginal peoples generally and your subject's community specifically.

Remember your subject can belong to more than one community, such as their parents' community, the urban or off-reserve community they grew up in (not just their traditional community), and so on. In this case, ask about each community separately. A community can also mean a network of support, not a geographical location.

The following table may help you present your subject's information to the court in a coherent manner, especially if more than one of their relatives and several generations went to Indian residential schools.

Name of family member:	Relationship to your subject:
<input type="text"/>	<input type="text"/>
Name of Indian residential school:	Location:
<input type="text"/>	<input type="text"/>
Run by:	Dates in operation:
<input type="text"/>	<input type="text"/>
Age on arrival:	Age on departure:
<input type="text"/>	<input type="text"/>
Relevant information:	
<input type="text"/>	
Case law/research:	
<input type="text"/>	

Aboriginal community

- Ask the name and general history of their Aboriginal community (location, population, cultural identity), and if it's easily accessible or isolated.
- Ask what their home community was like when they were born, and now; what it means to them to be from the community; how they see their people compared to others.
- Ask about housing in the community; for example, if there's poor or no housing available, overcrowding, lack of clean water, poor economic conditions, chronic unemployment, or only seasonal employment.
- Ask about problems with community health; if the community is "dry" or if there are issues with substance abuse; if there's a history of domestic violence or foster care.

- Ask about the community's unique cultural practices and traditional activities (powwows, potlatches, etc.); if the society is matrilineal or patrilineal; the status of their culture (disconnected or revitalized); how many speak the Aboriginal language.
- Ask if there was an Indian residential school or day school in or near the community; how many members attended it (judges expect this number to be precise and corroborated with official statistics); the effects from that experience, both community-wide and for different families; how common the effects were, such as ongoing abuse and substance abuse; the effect of Indian residential schools settlement payments on the community.
- Ask about other colonial effects; for example, other laws, policies, and practices that affected the community and may still be felt today; how these issues directly or indirectly affect them and their family; the community's approach to these intergenerational effects; what positive steps the community is taking to address these issues (and if your subject takes part in this).

Connection to community or communities

- If they lived in their Aboriginal community, ask them to explain their experiences and give details about who they're in contact with, the community's relationship to them, and what traditions/cultural practices they learned.
- Ask about their participation in Aboriginal community traditions and activities, celebrations, or family gatherings as a child or adult; for example, fishing, hunting, berry picking, longhouse or sweat lodge ceremonies, Hobiye, sun dances or winter dances, Métis jigging, potlatches, funeral feasts, shame feasts, friendship centre events, or volunteering for Elders or other community members.
- Ask for details about traditional activities they learned, such as carving, beading, making drums, hunting, fishing, carrying out ceremonies, etc.
- If your subject *doesn't* feel connected, ask them to explain why they don't; for example, if they (or their parents) were placed in foster care outside of their Aboriginal community, adopted by a non-Aboriginal family, suffered a loss of status, or were banished.
- If they never lived in their community, ask why not; for example, they may have been disconnected from their family and culture because their grandmother lost her status by marrying a non-Aboriginal and had to move off reserve; find out how this law affected their family personally, such as loss of culture, family support and connections, educational opportunities, etc.

- If the community is divided or deprived of access to their traditional territory, ask your subject how they feel about this; if they or their family members speak their Aboriginal language, or why not; if there are other parts of their culture they haven't learned, and why.
- Ask why they're connected to a community other than the band they're registered with (for example, through marriage, or a move off reserve, etc.); if they live in an urban area, ask for details about connections they made with other Aboriginal people or organizations in the city.
- If they live off reserve, ask if they return to their traditional community for visits and cultural events (how often and when), or why not; if they're connected with their Aboriginal spouse or partner's community, ask for details.



Current circumstances

Residence (past, present, future)

- Ask about their living arrangements right now (city or rural area, on or off reserve, or homeless); who, where, and how many people live there; their relationship to the people they live with; the general living conditions of the home, or effects of living without a fixed address.
- For a bail submission, if released, ask where they would go and who they would live with (get contact information).
- In the case of community supervision, ask what the living arrangements would be, and who would support them if they're released from custody.

Employment/ongoing education

- Ask about current employment or education attendance (what, where, when, for how long, etc.).
- If they're unemployed, ask what, if any, issues stand in the way of their employment, such as mental or physical limitations; if any ongoing learning challenges have been identified, ask if they addressed them.
- Ask if they have a hard time finding work and why that is; for example, lack of education or limited opportunities in their community; if they're attending courses to upgrade skills or schooling; other relevant information about work skills or professional certificates.

Family

- Ask about their marital status and details about their past and present relationships, such as length of their marriage or marriage-like (common-law) relationships and effect of their behaviours on their relationships. In your report, describe their current contact and relationship with any partner.
- If they have children, ask about their genders, ages, and past and current relationships with your subject, if they live with your subject, and if not, why not.

Financial

- Ask about their current financial situation; their current source of income; how they support themselves and their family; their financial obligations (for example, rent, child support).
- Ask if they have savings or assets, or any debts.
- If they identified experiencing poverty as an issue, ask how this affected them; if they had to apply for social assistance, or use food banks or shelters; if they had a history of receiving employment insurance.
- If they attended Indian residential school, ask if they applied for the Indian residential schools settlement; if so, ask them to describe the process and any effect it had on them (for example, some people found the process painful and it triggered them or caused other problems); if they received a payment, ask about the effect on them or their family.

Health

- Note if they're in good health, and ask if they have physical or mental health issues; ask them to describe their mental, emotional, and behavioural state.
- Ask when was the last time they used drugs or alcohol.
- Ask if they're now under a doctor's care, and if they had any formal diagnoses. Get their doctors' names and visit dates, and submit any official medical reports with your report.
- Find out if there's any medication use that's relevant to the offence or their current state. Get their medical documentation to back this up, if possible.

- Ask them to describe any physical, emotional, or mental health challenges or disabilities that prevent them from living on their own, and what type of help they receive.

Find out who you can contact for the report. Then you can ask the support person what kind of help your subject needs, such as day-to-day living, or managing assets or debts. Find out if they're eligible for social assistance they're not receiving, or any other programs (such as Community Living BC).

For example, if they're living with the effects of FASD, in your report describe when they were diagnosed and by whom, and include any supports they identify that help them manage their life.

- Ask about friends or memberships in social, professional, or religious associations; if they have a support network (who, when, and why they call on these people).

If your subject identified having suicidal tendencies, ask if they need counselling and support. If they say they have suicidal tendencies now, stop the interview and refer them to a trained professional immediately.

Personal goals and attributes

- Ask if there's a program they're interested in and if it's available to them, or a job or volunteer opportunity they're interested in; what their employment plans are for the future, and if they can build on past experience.

Find out if their Aboriginal community offers an educational program or funding for skills training, or about Aboriginal student grants or funding that could help them achieve their educational goals.

- Ask if they have goals for their family or community, what they are, and about any other goals.

In your report, describe what you identified (for example, people, places, personal attributes, etc.) that may help your subject attain their goals. Describe how these contribute to restorative justice options.

- If they say they have community support, confirm those supporters by interviewing them (in person or by phone). Get a letter of support from the band, chief, teacher, etc.

Summary and restorative justice

Before you begin to describe the restorative justice options in your report, briefly sum up your subject's background.

Summary

Focus on the facts that played a role in their offence. Then list the Gladue factors that had a negative effect in their life. Treat this as a bullet list only. Then describe the details of the restorative justice options you're suggesting.

Use the following language in your report to set up this section:

Over the course of preparing this report, a number of Gladue factors became apparent, including that:

[Subject's name] is an Aboriginal person of _____ community or First Nation.

S/he has expressed a willingness to address the underlying factors that have contributed to matters before the court.

[Subject's name] is an Aboriginal offender with [no/a short/a long] criminal record.

A number of adverse impact factors that affect Aboriginal peoples in general are present in [Subject's name]'s personal life, including:

(List all relevant factors)

1.

2.

3.

(etc.)

The following restorative justice options, which consider the nature of the offence, the background circumstances affecting the subject's life, and suggestions from family and community supports, are respectfully submitted for the court's consideration:

See the Gladue Report Template on page 59.

Restorative justice options

- Make sure the restorative justice options you give:
 - are proportional to the offence(s) and your subject's degree of responsibility,
 - address the issues that brought your subject before the court,
 - promote the interests and safety of the victim and community as a whole,
 - include key components of healing to build personal relationships and cultural connections for your subject, and
 - explain how they safeguard against your subject offending and/or breaching conditions in the future.
- Identify culturally appropriate alternatives (see Culture/traditions on page 44). Cultural options should be specific to your subject's Aboriginal community and traditions whenever possible. If they live in an urban area far from their Aboriginal community, look into local Aboriginal resources that might be helpful and meaningful.
- For a sentencing hearing, ask your subject's lawyer what the sentencing range is (if any) for their offence(s).

It's important to know if there's any discretion available to the judge and what options may be appropriate. Knowing the sentencing possibilities may help identify restorative justice and sentencing alternatives.

Some judges prefer that an Aboriginal person explicitly express remorse for the offence — not just regret or take responsibility. Consider this if your subject pleaded guilty or reported they take responsibility for the offence before the court.

- Give the least restrictive options that are reasonable in the circumstances. If your subject is required to serve a minimum term of incarceration for the offence(s), set out the programs available in prison to assist them, including Aboriginal programs.

For mandatory terms of two years plus a day (federal sentences), you could mention section 84 of the Corrections and Conditional Release Act. This allows an inmate eligible for parole to express an interest in being released to an Aboriginal community. The judge will be interested to know that the Aboriginal community can become involved in release planning. This allows inmates in some cases to serve part of their sentence in an Aboriginal community or an Aboriginal residential facility, such as Circle of Eagles Lodge Society.

- Don't make sentencing recommendations (such as house arrest) or recommend terms of probation. The judge decides what's appropriate in the circumstances.
- If your report is for bail or appeal, and your subject made no admissions of guilt, don't address remorse or responsibility for the offence.

Culture/traditions

- Outline in detail the culturally relevant options available to your subject. If your subject identified cultural dislocation or loss as a factor in their life, list programs or educational or cultural supports they're willing to participate in. Make connections with what your subject said earlier.
- List community activities or cultural traditions your subject can participate in or volunteer for. Examples include potlatches, winter dances, sun dances, feasts, berry picking, gathering firewood, hunting, fishing, big house ceremonies, longhouse ceremonies, beading, drumming, etc. Examples from their past can often provide the basis for restorative justice measures.
- Get details from a community representative about cultural traditions your subject can take part in. Include specifics — names, contact information, activity details, location, how they can get to and from the activity, etc.
- Include any potential barriers to your subject carrying out a cultural option (for example, a community shunned your subject and won't participate). Include what your subject can do to address identified barriers, such as participate in a healing circle, traditional feast, or another traditional restorative justice option.
- If the cultural option needs the victim to participate, check if the victim and the community will participate or not. Include the name of the person who represents the victim, and if possible, get a letter saying they're willing.

Community connections

- List Elders, cultural teachers, spiritual advisers, or others your subject connected with or wants to connect with.
- Give details about community Elders or others willing to work with your subject (who they are, where they live, the proposed activity, why that activity, and how it'll help). Be clear which community members gave information.
- Identify someone in your subject's community that they, their lawyer, or an advocate can contact (a family member, friend, Elder, social development worker, chief, or band councillor) if they need help while in the community.

- List who makes up your subject's support network (spiritual, cultural, family, community, service providers, medical professionals) and if staying in their community provides them with access to these people.
- Include a support plan (such as an Alcoholics Anonymous sponsor, a trusted friend). For bail, describe how specific people and resources in your subject's community could help them keep any bail conditions.

Counselling programs

- Describe counselling resources in your subject's Aboriginal community to help them address the issues that got them into trouble with the law. Counselling programs can relate to alcohol or drug addictions, trauma, family violence, couples or parental counselling, employment, or life skills. Describe underlying background factors the program can address, not just symptoms (for example, unresolved trauma, not just addictions).

An example is an Aboriginal residential treatment program for alcohol and drug rehabilitation that also offers trauma counselling to address intergenerational impacts, and helps your subject develop an aftercare plan to address housing and recovery maintenance, etc.

- Include programs your subject is involved with now, when the programs started, how long they run, what benefits they saw, and if they want to continue. Describe background factors (trauma, substance abuse, etc.) the program addresses and how.
- If they identified a program they want to participate in, explain why they think this program will help them; for example, they may have participated in similar programs that helped them in the past. Explain how this program is different, or what changed in their life to make them think the program can help now. See page 48 for questions to ask treatment centres.
- Include educational, employment, life skills, or other culturally appropriate programs that can help your subject. Give specific information about enrollment dates, course length, the certification (diploma or other) they want to achieve, or employment (on or off reserve).
- Provide letters of support from the community; for example, the chief and council, a friendship-centre alcohol and drug counsellor, or an Aboriginal residential treatment or healing lodge.
- List other relevant or mainstream healing resources available in the community or in custody, even if they aren't Aboriginal programs. If your subject lives in an urban area far from their Aboriginal community, look into local Aboriginal resources that might be helpful and meaningful.

Aboriginal justice traditions

If you have access to knowledge keepers in your subject's Aboriginal community, ask:

- Has your subject ever taken part in any Aboriginal restorative justice programs? If so, give examples.
- Does the Aboriginal community offer a restorative justice process that can help your subject?
- Could your subject take part in any Aboriginal justice traditions, such as holding a shame/cleansing feast, a sentencing circle, or potlatch?
- Are there other traditional approaches to healing and reaching resolution that are appropriate for your subject?

Explain why the identified options are relevant to Aboriginal concepts of justice. (You must use a reliable source.)

Summarize the final bail or sentencing plan

Once you've spoken with your subject and their family, friends, support workers, and Aboriginal community, you should have a clear idea of realistic and appropriate options for the judge to consider for your subject's bail or sentencing plan.

- In a bail plan, for example, you can include your subject's commitment to attend a cultural gathering once a week; work with an Elder; volunteer for their Aboriginal community or friendship centre; or participate in other activities that keep them connected to their Aboriginal culture.
- Keep in mind a bail or sentencing plan needs to address your subject's specific situation and shouldn't put at risk vulnerable members of their community, including Elders. For example, if your subject is charged with assault, don't include options that would put them in contact with the victim.
- Be as specific as you can. A detailed bail or sentencing plan provides the court with options that may allow your subject to stay in their community.
- Options for bail need to ensure your subject:
 - will attend their court dates,
 - will be safe in the community, and
 - won't reoffend if they're released from jail.

Other required information

You also need the following information for your report.

Court and case information

- Court location
- Name of presiding judge or justice (judge in a Provincial Court case and justice in a Supreme Court case)
- Name of Crown counsel
- Name of the defence counsel (your subject's lawyer)

Offence information

- Files currently before the court (file numbers and information about the charge)
- Your subject's date of arrest
- Date of bail or sentencing hearing

Documents for review

- Check if your subject has the particulars (disclosure) from the Crown. If they don't, you have to contact your subject's lawyer to get it.
- If you're preparing a Gladue report for a sentencing hearing, ask your subject if there was a pre-sentence report prepared, and if they received a copy from the probation officer. You may also get this from your subject's lawyer.
- Get any letters of support or certificates your subject may have; for example, reference letters from their community members, or certificates of completion from a course, counselling program, or addictions treatment program. Attach them to your report.

Treatment centres checklist



You must contact the treatment centres to ask about access to services and programs. In your report, give the person's name you spoke with. Depending on your subject's specific circumstances, ask:

- What are the admission requirements (for example, being sober for two weeks)?
- Is space available now? If not, what is the typical wait period?
- Is a referral necessary? From whom?
- Are both men and women accepted?
- Are there Aboriginal requirements for admission?
- Is the program appropriate for those diagnosed with (or suspected cases of) FASD? (What resources would make this an acceptable fit?)
- Can the program accommodate someone on methadone or other prescription medication?
- Are sex or violent offenders eligible? If so, are there any special screening requirements the court should be aware of?
- Where is it located, and how would your subject get there?
- Is the program residential or non-residential?



- Are there medical facilities on-site (in case detoxification is needed, for example)?
- Are family or friends allowed to visit?
- Are participants allowed to leave the premises?
- What Aboriginal-directed/oriented content does it offer?
- Does the centre have a specific program for residential school survivors?
- What are the areas of focus (alcohol addiction, drug addiction, past traumas, etc.)?
- What educational programs are available (basic life skills, trades)?
- What's the cost? Who pays for it?
- How long is the program?
- What kinds of aftercare resources are offered, if any?



Guidelines to Write a Gladue Report



Every piece of information in your report should help the judge understand how your subject came to be in their situation, and if a restorative and culturally sensitive sentence might help them address the underlying background factors they identified. The judge decides what's appropriate in the circumstances. But the information in your report helps them know which options they could consider.

General tips

Length



Weigh the importance of information to keep your Gladue report at 10 to 14 pages. Don't repeat information.

Order



Try to put events in chronological order.

Language



Use formal language for the court. Follow plain language principles to avoid complicated words and sentences.

Websites



If you include a website and link, summarize the content. Then the reader can look at the website later. Include only reputable and official websites, such as for bands and Indigenous Services Canada.

Word processing



Set your word processing program to English (Canada). Check for spelling and grammar.

Read aloud



Once you finish writing your report, read it out loud. If it doesn't sound smooth to you, the reader will likely have difficulty following it.

Objectivity

It's your responsibility to present a full and balanced view of your subject based on the information from the people you interview for your report and the documents you use. This means you include both positive and negative information.

If your interview notes contain any statements that contradict each other, address the contradiction with the people you interviewed, if possible, to give them an opportunity to respond. Use your subject's own words to describe significant events and effects to capture subjective experiences.

Make sure you're not accidentally adding your own interpretations about what was going on in someone's life, or what the reasons might have been for their behaviour. You can report connections other people make, but you can't include your own.

Advocacy

You must adopt a neutral and objective approach in your report. Don't insert your own assumptions or opinions, either directly or indirectly. Use specific examples and details, such as when discussing abuse, so the court can draw its own conclusion about whether the treatment was abusive. Don't include what someone seemed to imply.

Use the word "options," not "recommendations." The Gladue report in *R. v. Lawson* was criticized for being more of an "advocacy piece" instead of an objective report, particularly in its strong recommendation for a conditional sentence.

Common trouble spots include abuse, racism, and reasons for substance use. When writing about those topics, be sure to pay extra attention to your word choices.

Corroboration

You must make every effort to confirm information you receive directly from your subject through interviews with other people. Judges have criticized Gladue reports that contain unsubstantiated facts. Make sure you accurately attribute all information in your report to the person or source who provided it. Then cite the source that confirmed the information (for example, family or community members, school assessments, etc.).

Let your subject's story guide you to people and documents you can access to confirm events. Using direct quotes identifies the source and has impact by giving voice to the speaker in their own words.

Confirm information by phone, or best of all, get it in writing, such as a letter of support. You can use reports and other documentation (Canadian Police Information Centre; pre-sentence reports; medical reports; report cards; certificates from a course, counselling program, or addictions treatment program; diplomas) for corroboration. Attach these documents to the report. The more information in a Gladue report that's supported by other people or documentation, the better.

Even if you can't support the information in some way, or if there's no one who can back up the information (often the case for information about abuse), you can still include it. Explain in the report that you can't get corroboration if your subject is disconnected from their family and community, pointing out this is a Gladue factor.

Details to include

Focus on details relevant to what brought your subject before the court and the restorative justice options available.

- For all parts of your report, ask yourself how Gladue factors impacted this aspect of your subject's life. (This helps to distinguish a Gladue report from a pre-sentence report.)
- Acknowledge "normalization" — how the factors you identified became your subject's normal way of life.
- You don't need to write detailed life histories for each person you interviewed.
- You need to address how your subject has been affected by colonization factors. Note systemic discrimination against them by their family and Nation.
- You may find some overlap between topics your subject gave you information for. Sort out where appropriate detailed information should go as you shape your report.
- Summarize your subject's strengths, preferably in their own words and in the words of those around them. These might include a supportive family or band member, counsellor, teacher, or former employer. These people can speak about your subject's personal attributes, such as being a hard worker, good at athletics or fishing, a loyal friend, and/or a helper to the Elders.

- Show your subject’s *unique* Aboriginal background. Avoid generalizations and the use of secondary sources.
- Don’t forget to note whatever is positive in a person’s situation. For example, maybe people treated your subject cruelly throughout childhood, but your subject never showed violence toward others; this is positive and worth noting.
- Don’t include an admission to crimes your subject isn’t charged with, or offences they committed as a youth under 18.



Definitions

For writing a Gladue report

Aboriginal. Term refers to all Indigenous peoples of Canada, including status and non-status Indians, First Nations, Métis, and Inuit, whether they live on reserve or off reserve.

Aboriginal community. The court in the Gladue case said “Aboriginal community” should be broadly defined to include First Nations communities on reserve or off reserve and urban Aboriginal communities.

Attention Deficit Hyperactivity Disorder (ADHD). A chronic condition that includes a combination of persistent problems, such as difficulty sustaining attention, hyperactivity, and impulsive behaviour.

Defendant. Someone charged with an offence.

Enfranchisement. A legal process that stripped Aboriginal peoples of their Indian status under the Indian Act. For example, in 1867 the Canadian government offered Aboriginal peoples the right to vote as a means of assimilation; accepting meant giving up Indian status. Most Aboriginal women were involuntarily enfranchised when they married non-Aboriginal men. Others lost status by moving off reserve, serving in the war, or going to university, or for other reasons.



Fetal Alcohol Spectrum Disorder (FASD).

Formerly called Fetal Alcohol Syndrome (FAS). A range of disorders in children that results from alcohol exposure during the mother’s pregnancy. FASD causes irreversible brain damage and growth problems that lead to learning and behavioural challenges.

First Nation. Term chosen by many Aboriginal peoples to replace the term Indian band. Can refer to one or more bands, a governing body, or an Aboriginal community. The word Nations appeared in the Royal Proclamation of 1763, recognizing Indians as owners of their lands.

Indian. Term that was used by Europeans in North America to describe Aboriginal peoples. Under the Indian Act, defined as a “person registered or entitled to be registered as an Indian.”

Inuit. Aboriginal peoples in northern Canada who aren’t covered under the Indian Act.

Judicial notice. When a judge can recognize and accept a fact without needing anyone to prove it in court (when the truth of the fact is so well known that it would be unreasonable to doubt it).

“In all instances it will be necessary for the judge to take **judicial notice** of the systemic or background factors and the approach to sentencing which is relevant to Aboriginal offenders” (*R. v. Gladue* at para. 83).

Métis. A person of mixed Aboriginal and European descent. The Métis National Council and the Supreme Court of Canada in *R. v. Powley* define Métis as a person who (1) identifies as a member of a Métis community; (2) has an ancestral connection to that community; and (3) is accepted by that community. Métis peoples are recognized as a distinct Aboriginal nation in Canada.

Non-status. Aboriginal peoples whose ancestors were never registered under the Indian Act, or who, through intermarriage with non-Aboriginal people or “voluntary” enfranchisement, lost their legal status while retaining their Aboriginal identity.

Offender. Someone found guilty of an offence.



Possible sentences. Some offences may have a mandatory jail sentence, or may not be eligible for a conditional sentence order (CSO). Also, in some circumstances, sentences can be combined; for example, the judge could impose a fine as well as a suspended sentence, or probation to follow a jail sentence or CSO. It's a good idea to ask the Aboriginal person's lawyer what sentences are available for the offence they're charged with.

- » **Absolute or conditional discharge.** Where an accused person pleads or is found guilty, but the judge decides it's not contrary to the public interest and is in the person's interest to impose a discharge. An absolute discharge means no probation, and the person doesn't have a criminal record for this offence. With a conditional discharge, the person must follow the conditions of a probation order for a specified period of time. If they complete the probation without breaching conditions or reoffending, they have no criminal record for the offence. A person with a prior criminal record is usually not eligible for a discharge.
- » **Community sentence.** A non-custodial sentence that allows the offender to serve all or part of their sentence in the community (probation or a CSO), usually under supervision of a probation officer; also sometimes called a community-based sentence. This may require the offender to attend a program, such as a residential treatment program, to help them address the issues that got them in trouble with the law.
- » **Community supervision.** A sentencing condition that may include that the offender will work with an Elder or other community member such as a justice worker.
- » **Conditional sentence order (CSO).** A jail sentence the offender serves in the community (also known as house arrest). A conditional sentence has several conditions that restrict freedom. For example, an offender may have to obey a strict curfew, or stay in their home except to go to work or medical appointments. They may be prohibited from consuming alcohol or illicit drugs, and are often required to attend counselling or treatment. Sometimes a CSO may be served while the person is at a residential treatment centre. If they don't follow the conditions, they likely have to serve some or all of the rest of their sentence in jail.
- » **Fine.** The court can impose a monetary penalty to be paid within a set period. If a person has unpaid fines, they may not be able to renew their driver's licence (if the offence is motor vehicle related) or obtain a pardon. The government can also take steps to recover the money from them.



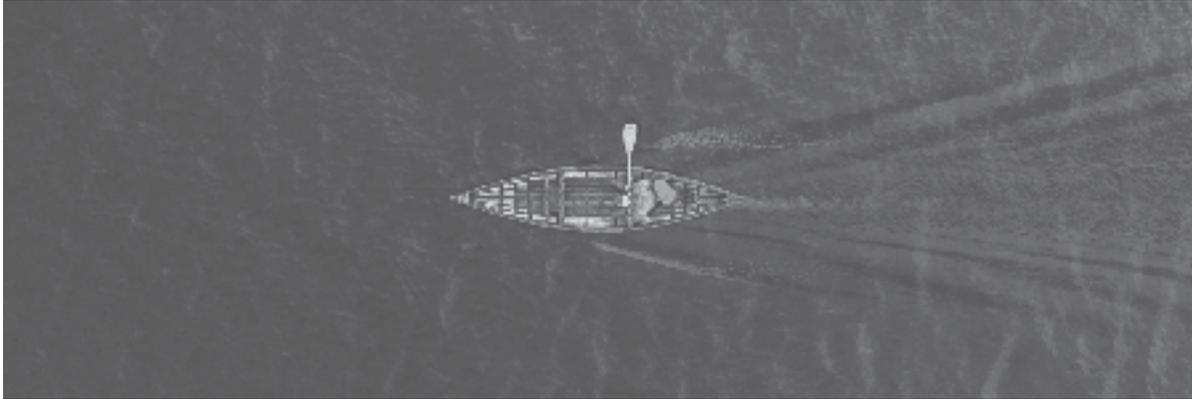
- » **Intermittent sentence.** If the judge sentences an offender to less than 90 days in jail, they may be able to serve the sentence on weekends only. This allows them to continue working. They also have to follow the conditions of a probation order when not in jail and possibly after completing the custodial part of the sentence.
- » **Jail.** The offender receives a custodial sentence and is incarcerated in a provincial or federal institution.
- » **Suspended sentence.** Where an Aboriginal person is found guilty but a discharge isn't appropriate, the judge may impose a suspended sentence with a period of probation. If the person obeys the conditions and doesn't reoffend, no further sentence is imposed. If the person breaches conditions, they may be brought back to court to have a sentence imposed and also be charged with the offence of breaching a court order.

Restorative justice. A form of justice focused on repairing the harm done by a crime and giving the offender, victim, and community opportunities to heal.

Sentencing principles. Purpose and principles of sentencing set out in Part XXIII of the Criminal Code (sections 718 – 718.2) that guide judges when deciding a fit sentence in each case (see page 6).

Status Indians. Aboriginal peoples legally registered as Indians under the Indian Act.

Trauma. Continuing after-effects of overwhelming emotions from experiencing deeply personal life-changing events. Examples include health or behaviour problems, addictions, or low self-esteem. Patterns can develop such as an abused person becomes an abuser. Some people may bury memories but are vulnerable to triggers that cause more emotional turmoil.



Where to Get More Help

Aboriginal Legal Aid in BC

aboriginal.legalaid.bc.ca

This website for Aboriginal peoples has information on Gladue rights, Aboriginal legal issues, and who can help.

Attorney General

www2.gov.bc.ca (in the search bar, type criminal justice)

The BC government website provides information about the criminal justice system, including bail and sentencing.

Canadian Legal Information Institute

canlii.org

This website has case law involving Gladue principles.

Native Courtworker and Counselling Association of BC

nccabc.ca

- » **604-985-5355** (Greater Vancouver)
- » **1-877-811-1190** (elsewhere in BC)

Native courtworkers give culturally appropriate services to Aboriginal peoples involved in the criminal justice system. They can also connect your subject to Aboriginal community groups for help with other issues such as substance abuse or family problems.

Restorative Justice Programs in BC

www2.gov.bc.ca (in the search bar, type restorative justice)

The BC government website provides general information about restorative justice for service providers, potential participants, and others.

Gladue Report Template

Use the following template as a guide when you write your Gladue report. For an electronic version of this template, email the Legal Services Society (LSS) at gladue.coordinator@lss.bc.ca.

Gladue Report for _____
[Bail or Sentencing] _____ **hearing**

CONTACT INFORMATION

Name: _____

Date of birth: _____

Place of birth: _____

Address: _____

Aboriginal community: _____

COURT AND CASE INFORMATION

Court: _____

Court file number: _____

Defence counsel: _____

Court date: _____

Summary of the offence(s): _____

Fill in your subject's personal information and the name of their Aboriginal community, Nation, or band.

Fill in court and case information.

INFORMATION SOURCES

People you contacted to prepare this report:

- 1.
- 2.
- 3.

Fill in the names of people you contacted to prepare your report. See the Contact community supports and resources section on pages 24 – 25.

List the documents you reviewed to prepare your report. See the Documents for review section on page 47.

Documents you reviewed to prepare this report:

- 1.
- 2.
- 3.

CRIMINAL RECORD

The Criminal Record attached as Appendix [X] was reviewed with Mr./Ms. _____

and they made the following comments:

PERSONAL HISTORY

Describe your subject's personal history. See pages 28 – 34 for information to include.

FAMILY HISTORY

Describe your subject's family history. Include relationships with their relatives, partners, friends, etc. See pages 34 – 36.

CURRENT CIRCUMSTANCES

Residence _____

Finances _____

Employment/ongoing education _____

Health (physical and mental) _____

Fill in your subject's current living arrangements, financial situation, and employment or education attendance. See pages 39 – 40.

Describe your subject's health. Include physical, mental, or cognitive impairments such as Fetal Alcohol Spectrum Disorder (FASD). Include any substance use. See pages 40 – 41.

Personal goals and attributes

List programs, training, and other opportunities. Include community supports. See page 41.

ABORIGINAL COMMUNITY HISTORY

Give information about your subject's Aboriginal community and their connections to it. Explain any effects of colonization on them, their family, and their community, including intergenerational effects of Indian residential school. See pages 36 – 39.

RESTORATIVE JUSTICE OPTIONS

Give details about restorative justice options you're including. See pages 43 – 46.

SUMMARY

Summarize in point form your subject's background. Include Gladue factors that affected them. See page 42.

- ---
- ---
- ---
- ---

Respectfully submitted,

[Your name]

Gladue report writer, on *[date]*

WRITER'S QUALIFICATIONS

Brief summary:

Briefly summarize in three areas:

- education
- qualification
- experience

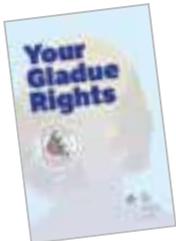
More about Gladue rights



*Gladue Rights
at Bail and
Sentencing*



*What's
First Nations
Court?*



*Your Gladue
Rights*



*Gladue
Submission
Guide*

aboriginal.legalaid.bc.ca

How to Get Free Copies of Legal Aid BC Aboriginal Publications

Legal Aid BC offers many free publications on Aboriginal issues, such as Aboriginal harvesting rights and income assistance on reserve.

Read: aboriginal.legalaid.bc.ca/read

Order: crownpub.bc.ca
(under Quick Links, click BC Public Legal Education & Information)

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