

WRITING A
**GLADUE
REPORT**



NOTE

This resource is intended to assist Aboriginal offenders who are interested in having a Gladue Report prepared, as well as their families, and communities. It is also intended to assist lawyers who are determining if a Gladue Report is appropriate for their client.

IMPORTANT LEGISLATION AND DECISIONS:

WHAT IS THE GLADUE DECISION?



WHAT IS IPEELEE?

In 1996, the government changed sentencing laws in Canada. One of the most important changes is the addition of section 718.2(e) to the *Criminal Code of Canada*. This section requires judges to look at all reasonable options available other than jail when sentencing all offenders, but particularly when sentencing an Aboriginal person. This change occurred as a result of concern about the overrepresentation of Aboriginal people in Canadian jails.

In 1999, *R. v. Gladue* considered section 718.2(e) of the *Criminal Code* for the first time. This case said that section 718.2(e) was intended as a remedy to the overrepresentation of Aboriginal people in Canadian jails. It also explained that, in light of this overrepresentation, it was necessary to find a new way of determining a suitable

sentence for Aboriginal offenders by considering the circumstances that brought the offender before the court.

Thirteen years later in *R. v. Ipeelee*, the Supreme Court of Canada observed that section 718.2(e) of the *Criminal Code* and *Gladue* were not being applied as expected. In fact, the overrepresentation of Aboriginal people in the criminal justice system was worse.

With this in mind, the Supreme Court of Canada restated in this case that judges should consider the circumstances of Aboriginal people in Canada in all cases when sentencing. They called for increased action from judges to consistently implement section 718.2(e) of the *Criminal Code* and *Gladue* when sentencing an Aboriginal offender.

WHAT IS A GLADUE REPORT?

Due to the responsibility judges have to consider the circumstances of Aboriginal offenders when crafting a suitable sentence, judges require information about their background and circumstances. This is often provided in a Gladue Report.

A Gladue Report paints a picture of an Aboriginal offender for the judge. It contains information about the background of the offender and the circumstances that brought them before the court. Specifically, it details the effects colonization has had on an Aboriginal offender, their family, and community. When determining a fit sentence, a Gladue Report helps judges assess the offender's need for alternative measures in the community and ability to be successful via these measures.

A Gladue Report includes a plan that gives an offender the opportunity to address

issues that caused them to be involved in the criminal justice system. This detailed plan provides a judge with reasonable options for a meaningful sentence that can help the offender be successful and experience healing.

Gladue Reports should focus on rehabilitation and healing. A Gladue Report can be an important part of the healing journey for Aboriginal people in the criminal justice system, their families, and communities. By sharing their story and following a plan that addresses their unique circumstances, individuals can deal with issues and heal, which helps restore harmony to themselves, their family, and community.



HISTORIC TRAUMA AND GLADUE

Historic trauma refers to the conditions, experiences, and events that have affected a family intergenerationally. When historic trauma remains unresolved and internalized it is transferred from one generation to another.

Due to a history of colonization and its related policies (residential schools, government legislation such as the *Indian Act*, loss of language, suppression of spiritual practices, loss of culture and traditions, disconnection from community, dislocation, systemic racism, loss of traditional territory and lifestyle, and forced assimilation), Aboriginal people have communally experienced immense trauma that has become rooted in their collective memory and acted out by the following generations. As a result of the trauma caused by colonization, Aboriginal people experienced a profound sense of loss,

including cultural, spiritual, and familial loss. This loss continues to be compounded by the impact current policies have on generations of Aboriginal people today.

There are numerous responses to historic trauma. Many Aboriginal people have responded to continued trauma and grief with self-destructive behaviours such as addiction/substance abuse. These responses may seem necessary for the individual to ease unresolved pain and grief. However, responses to historic trauma also include family and community breakdown such as domestic violence, abuse, and involvement in the criminal justice system.

Given this reality, it is not difficult to understand the connection between historic trauma and the involvement of Aboriginal people in the criminal justice system.

HOW IS A GLADUE REPORT REQUESTED?

A Gladue Report can be requested by an individual, a lawyer, a courtworker, or by a judge's order. It is up to the offender to agree to waive a Gladue Report.

A short or long report can be prepared depending on what is more appropriate. A long Gladue Report takes approximately 10 weeks to complete. Meanwhile, in some cases the offender may be held in custody. It is advisable to determine at the beginning what type of Gladue Report is best for each offender.

The type of Gladue Report required depends on a number of factors. For instance, where less serious crimes and less lengthy jail time exists, a short Gladue Report may be most appropriate.

If a short Gladue Report is required, a lawyer can contact a courtworker and request that they interview an offender. Following the interview, the courtworker can write a short Gladue Report that introduces the judge to the offender's background and circumstances. Alternatively, instead of a written report, a lawyer or courtworker can verbally present the same information to the judge.

For more serious crimes involving longer time spent in custody, a long Gladue Report may be more appropriate. However, long Gladue Reports can be used for less serious crimes at the court's discretion.

WHO SHOULD WRITE A GLADUE REPORT?

Gladue writers assist the offender in telling their story to a judge. They will interview the offender, their family, friends, and other members of the community to tell the complete story of their life and circumstances.

A Gladue writer must have an intimate working knowledge of Aboriginal culture, beliefs, and the realities of life for many Aboriginal people in Canada. This helps build trust between them and the offender. They must also have an extensive working knowledge of Aboriginal communities and the connection between intergenerational trauma and the involvement of Aboriginal

people in the criminal justice system. As a Gladue Report must be accurate and well-written, a Gladue writer must be an excellent writer who remains neutral and does not include personal opinion, while still capturing all relevant information for the report. In light of these requirements, it would be helpful for a Gladue writer to have a post-secondary degree in a related field.

Therefore, training should be provided for those writing Gladue Reports. For training to be relevant and beneficial, it should be provided by people who have an extensive working knowledge of Aboriginal communities.

INTERVIEWING FOR A GLADUE REPORT

An important part of writing a Gladue Report is conducting interviews with the client, their family, friends, and other members of the community. It is important to ensure that interviewees share as much information

as they are able. It will help the judge see the offender as an individual and explain what life has been like for them from many perspectives.

Before the Interview:

Signed Consent Forms

Prior to an interview, Gladue writers should ask each interviewee to read and sign a Consent Form. The Consent Form must state that the information they share will be public information, is voluntary, will be recorded (ensure you ask each person for consent to being electronically recorded prior to recording), and that interviewers are required by law to report any harm done to a child revealed in an interview.

Providing Support for Interviewees

Sharing personal stories can be painful and may contain sensitive information. Encouraging a person to share stories that often have deep emotions and wounds attached and then leaving them without support is not helpful. Emotional, mental, and spiritual support must be available for all those interviewed in preparation for a Gladue Report. Ask interviewees if they have supports available. If they do not, help them access the support they need.

Stay Organized

While conducting interviews, keep a list of times and dates of interviews you conduct. This will help you remember who you interviewed, when and at what time you interviewed them, and who you were unable to contact.

Stay Neutral

While interviewing and writing the report, always remember to stay neutral. Do not insert your own opinions, judgments, or interpretations into the report. Instead, allow the information provided in interviews to speak for itself.

Provide a Balanced Report

Include all information from the interviews you conduct in the report, even if the offender asks for an interview to be excluded. As well, contact all collateral contacts, even if the offender requests that you do not. It is important to paint a full picture of the offender's life and circumstances. Excluding some information, or only focusing on positive information, will not provide a balanced report.

Verify Offender's Criminal Record

When possible, prior to interviewing the offender, ask the Crown to verify their criminal record.

Interviewing the Offender

Build a Relationship

Developing a connection and building a relationship with the offender during an interview is essential. In order to build a relationship, it is vital to be honest and transparent about why you are interviewing them and how you will use what they share.

It may take a while to build a connection with the offender. Be patient, remembering that a history exists before you arrived at the interview. There may be distrust and triggers that are set off during the interview. Give the offender time and space to get to know and trust you.

Be Patient and Listen

When asking a question in an interview, allow time for the offender to answer the question. Do not rush through the interview as though the questions are just a checklist. Instead, create space for the offender to tell their story in their own way, while remembering to record all relevant information. Throughout the interview, be sensitive to the trauma the offender has experienced and may still be experiencing.

It is important to communicate to the offender that, as a Gladue writer, you are part of a team of people supporting them to move towards healing and success.

Interviewing Collateral Contacts

To provide a complete picture of an offender's life, other perspectives should be included in a Gladue Report. These other perspectives are collected from collateral contacts. They allow the Gladue writer to capture all sides of the story. Other perspectives can also help support the offender's story.

Collateral contacts may include family, friends, co-workers, and other members of the community. Again, it is important to build a connection with the person you are interviewing and to give them time to tell their story.

These interviews can also be very emotional and leave people feeling vulnerable. Emotional, mental, and spiritual support must also be available for collateral contacts.

WHAT IS INCLUDED IN A GLADUE REPORT?

A Gladue Report should personalize an Aboriginal person involved in the criminal justice system. The report should describe the unique background and circumstances of each offender. In order to provide a balanced report, the report should include all information about the offender, both positive and negative. When possible, record each person interviewed using their own words in quotations, particularly about significant events. This can help the judge better understand the unique experience of each person interviewed in a powerful way.

When interviewing an individual for the report, try to be as organic as possible. Encourage each person to share their story, even if it means returning to an earlier section later.

The outline provided below is solely to help a Gladue writer ensure all relevant information is included. It is not meant to restrict them to asking each question in sequence. As reports are unique to each individual, the sections included may differ. It is important to remember that the content of the report is what matters most.

Format of a Gladue Report

Introduction

The introduction to a Gladue Report should include the following:

- Overview of offender's life circumstances

- How the information was gathered

- Who was successfully contacted and who could not be contacted

- That this report is “produced in accordance with the case *R. v. Gladue* [1999] 1 SCR 688, *R. v. Ipeelee* (2012) SCC 13, and section 718.2 (e) of the *Criminal Code*.”

Offender's History (*individual, Family and Community*)

One of the most important aspects of a Gladue Report is recording the offender's history. This includes their personal history, family history, and community history.

Personal Information About the Client

- What is your full name? Ask for proper spelling.

- What is your date of birth?

- Where were you born?

Detailed Family History

- What are the names of your family members? (*include parents, siblings, paternal and maternal grandparents, uncles, aunts, and cousins*)

- Did you grow up living with your immediate family?

- Did you grow up in a home where one or more family members struggled with substance abuse?

Relationships

- Are you married?

- What is your relationship with police?

- What is your relationship with non-Aboriginal people?

History of/and Relationship with their Community

- What is the name of your community? Rural or urban?

- Did you grow up on reserve? Do you currently live on reserve?

- What is the history of your community?

What is your relationship with your community?

Do you feel that you are a part of your community? If you feel you cannot be part of your community, why?

Psychological Assessment/Psychiatric Treatment

Have you had any psychological assessments, psychiatric treatments, or counselling?

Describe history of treatment or medication.

History of Substance Abuse

Have you struggled with substance abuse in the past? (drugs or alcohol) Are you currently struggling with substance abuse?

History of Abuse and/or Neglect

Did you grow up in a home where there was domestic violence and/or neglect?

Were you physically, emotionally, verbally, or sexually abused by anyone?

Was domestic violence present in your home? If so, how has it affected you?

Are you currently experiencing domestic violence? If so, how does it affect you?

Have you been involved in relationships where there has been domestic violence?

History of Residential School Experience

Did you or any member of your family attend residential schools? If so, where and when? How has this affected you and your family?

History of Foster Care/Adoption

Have you been in foster care?

Have any family members been in foster care?

Have you been adopted?

Have any family members been adopted?

Education

What is your educational history?

Employment

What is your employment history?

Format of a Gladue Report continued...

Health and Wellbeing

Have you been assessed and diagnosed with FASD?

If so, how has that affected you?

Do you have any medical issues?

Have you been in the hospital?

Are you on any medications?

What do you do to take care of your health? (*physical, mental, emotional, and spiritual*)

Do you have any mental health issues? Describe individual and family history of mental illness. If so, what help have you received to manage mental illness? Have you been diagnosed with any disorders?

Suicide

Have you had thoughts of suicide? Have you ever tried to commit suicide?

If you did, have you received help?

Describe any history of suicide in family.

Life Experiences

Are there any major life experiences that have affected you? How did they affect you?

Programs

Have you attended any treatment programs?

Have you attended any additional programs (courses, workshops, etc.)?

Are there programs you would like to attend that you think would be helpful?

Spirituality/Culture

Is spirituality meaningful for you?

How do you care for your spiritual health and wellbeing?

Do you presently see an elder for spiritual and cultural guidance/support?

Do you attend ceremonies? Yes? No? If Yes, with whom?

Hobbies/Interests

What activities do you enjoy?

How might participating in things you love doing help you?

Dreams and Goals

Is there something that you dream of doing in life? Do you have goals that you would like to achieve?

What are you doing/can you do to reach those goals?

Current Circumstances

How would you describe yourself?

Living situation

What is your current living situation? Who lives with you? What kind of influence do they have on you?

Financial situation

What is your current financial situation? Also, include any history of poverty, social assistance, welfare, and/or employment insurance.

Children

Do you have children? If so, please record the name and age of each child.

What is your relationship with each child?

Current Charges

What are your current charges before the court?

Do you feel remorse and responsibility for the offences? Do you take ownership of the offences?

Do you have a criminal record? Detail history of criminal behaviour.

Have you spent any time in jail? If so, how long? Have you spent time on bail for current offences? If so, how long? Did you have conditions? If so, what were they? Have you been charged with breaching any of your conditions?

Have you spent time in any other institutions or group homes?

WHAT ARE RECOMMENDATIONS IN A GLADUE REPORT?

Because a judge must consider all reasonable options other than jail, a Gladue Report provides them with alternatives to jail called recommendations. These alternatives are not recommendations for sentencing (i.e. probation, etc.), but options for restorative justice that address the offender's underlying issues and promote healing.

Recommendations are crucial and can help ensure that the offender successfully completes their sentence and experiences healing. Recommendations might include participation in a treatment program, accessing particular community supports and services, participating in cultural activities, meeting with an elder for spiritual support/guidance, participating in ceremonies, and many more.

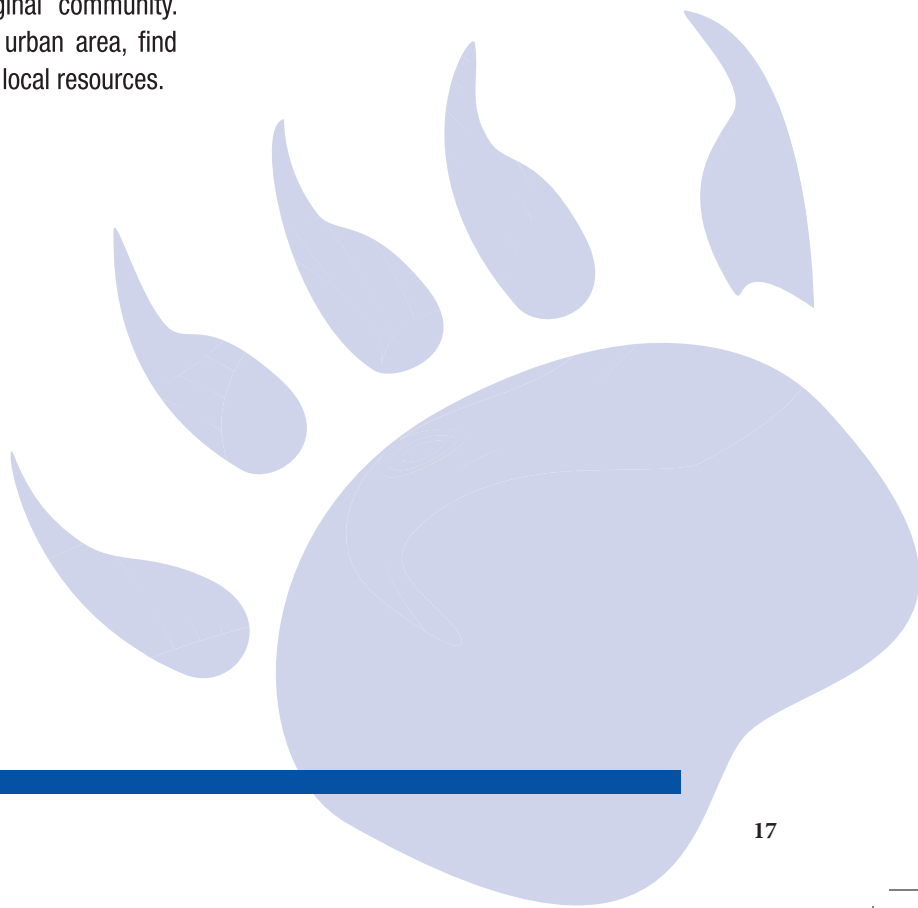
Be as specific as possible when including recommendations in a Gladue Report. For example, if a recommendation is that the offender attends a treatment program, include detailed information about the program (i.e. name, location, etc.), the date the offender will enter the program, and how long they will attend the program. This shows a judge that there is a definite plan for the offender's release into the community.

Having a Gladue Report does not automatically mean an offender will not go to jail. In some situations, time spent in custody may be necessary. Therefore, if a sentence includes custody, recommendations may include programming available to inmates that will vary with each institution.

Recommendations must be accessible, achievable, and meaningful. One way to craft suitable recommendations to include in the report is to consult the offender. Ask them what programs and supports are available in their community, how they feel these programs might assist them, whether there are programs that will help address underlying issues, and who will offer them support, guidance, and encouragement in their community. Also, be realistic about barriers to successfully completing recommendations and whether there is anything the offender can do to address any barriers.

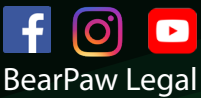
Recommendations should be culturally appropriate and relevant to the traditions of each offender's Aboriginal community. If an offender lives in an urban area, find accessible and meaningful local resources.

Once recommendations are included in the report, review them with the offender to ensure they are realistic and manageable. If there are barriers to successfully completing the plan, reconsider the options provided. Once you have finished writing the Gladue Report, review the entire report with the offender to ensure accuracy.



NOTES





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