Quality standards for LAA certificates on Siksika /ᓯᓴᐧᑲ Nation

Siksiká / **ᓯᓴᐧᑲ Materials**

Effective Date: June 15, 2026

Introduction

Legal Aid Alberta (LAA) is committed to improving access to culturally informed legal services for Indigenous clients and Indigenous people and communities engaging with the justice system.

As part of this work, LAA is introducing service requirements and standards, effective June 15, 2026, for staff and roster lawyers who accept certificates for criminal, child welfare and family matters at the Siksika Nation courthouse.

These requirements were developed in collaboration with local community organizations and justice system participants, and are intended to support consistent, high-quality legal services for clients in Siksika Nation.

The requirements and standards detailed in this document align with commitments in LAA's **Indigenous Action Plan** to strengthen culturally informed, community-responsive legal services for Indigenous clients and supports LAA's commitment — outlined in ***The Path Forward: Strategic Plan 2023–2026*** — to maintaining a roster of qualified, effective and accountable counsel.

Application of requirements

The service requirements and standards detailed in this document apply **in addition** to any other requirements or standards established by LAA.

For example, a roster lawyer interested in receiving certificates for matters at Siksika Nation that fall within the **Designated Sexual Offences Standards** must also meet the requirements set out in those standards.

Counsel will be required to complete an attestation that they have reviewed the below materials and will comply with the service requirements and standards set out below.

Service requirements and standards

These requirements and standards consist of five components:

(I) Cultural Competency Workshop

An interactive virtual workshop focused on Indigenous history in Canada and how this context shapes our work in the justice system today.

(II) Resources for Indigenous clients in Siksika Nation (Appendix A)

Lists community resources available to assist Indigenous Clients in the Siksika Nation. It is incumbent upon a lawyer to know their client, the client's community, the specific legal issues facing that client in the community and the resources available to best serve that client.

While the published list is current as of April 1, 2026, roster lawyers must ensure that they are up to date with the latest resources available to serve their clients.

(III) Guidelines for counsel appearing in Siksika Nation (Appendix B)

Outlines practical guidelines and tips for lawyers practising in Siksika Nation. These guidelines reflect the practices of the courthouse and the Nation and are intended to support professional, respectful and effective advocacy for clients.

(IV) Reference materials and required reading (Appendix C)

Consists of required reading material for roster lawyers wishing to be offered certificates in Siksika Nation. There are four different sections of reading material.

The **first section** applies to all counsel. It is a list of material and resources that lawyers acting for any Indigenous Client should be familiar with. This is irrespective of whether the file is a criminal, child welfare or family matter.

Sections two to four are divided by area of law: **Criminal**, **Child Welfare** and **Family**. Counsel wishing to be offered a certificate for that area of law must be familiar with those cases listed in the relevant section. For example, counsel wishing to be offered a criminal certificate must be familiar with those cases listed in the criminal section of the materials. It is not necessary for counsel to be familiar with cases listed in a section of the materials that is not an area for which they wish to be offered a certificate.

(V) Instructions on how to properly complete Gladue Submissions under s.11.10 of the LAA Tariff (Appendix D)

Provides instructions on the requirements for Glaude submissions to comply with s.11.10 of the LAA Tariff for lawyers interested in accepting criminal certificates.

Legal Aid Alberta

Appendix A

(II) Resources for Indigenous clients in Siksika Nation

Siksika Justice – 403.734.5123

- Court work program – Two court workers available to help individuals navigate the courts and deal with criminal, traffic and family matters at Siksika Court and surrounding areas.
- Siksika Aiskapimohkiiks program – Provides diversion programs in court, offering elders mentoring, and mediation to resolve conflicts. Referrals are made by counsel, duty counsel or self-referrals.
- Healing plans – A co-ordinator prepares and assists clients with their healing plans.
- Restorative justice and specialized victim support navigation services – Provides voluntary opportunities for those who have been harmed and those who have caused harm to be active participants in their journey toward justice, accountability, and reconciliation.

Siksika Support Centre – 403.734.5715

- Provides clients with support for healing plans.
- Offers the community food bank programs, healthy choices, and outreach.

Siksika Health – 403.734.5600

- Siksika Health offers extensive services for the community. Clients may utilize substance use services through the Matrix program, a 16-week outpatient program. Opioid Agonist Therapy wrap and services. NA and AA programs.

Siksika Family Services – 403.734.4360

- Siksika Income support
- Shelter Services in Siksika
- Siksika employment and training services

Legal Aid Alberta

Appendix B

(III) Guidelines for counsel appearing in Siksika Nation

1. **Contact the client promptly once you receive your certificate of appointment.**
   Early communication reassures the client that you are engaged on their file and helps establish trust.

2. **Obtain client and collateral contact information as soon as possible.**
   Some clients may have limited or inconsistent access to a phone. Reliable communication — directly or through a trusted collateral — is essential.

3. **Show up for your clients. Attend court in person for your client.**
   In-person attendance improves client contact (many accused appearing in Siksika court attend in person to connect with their lawyer), demonstrates commitment to the court and community, and helps build trust — particularly important given the historic and ongoing challenges Indigenous accused face in the justice system.

4. **Build strong relationships with the court program staff.**
   These staff members coordinate available programming and can assist if your client chooses to pursue a healing path or restorative justice options. They are also well connected in the community and may help locate clients when contact has been lost.

5. **Establish a positive working relationship with the Crown Prosecutors in Siksika.**
   Early and respectful communication with Crown counsel is best practice. The Crown Prosecutors who appear in Siksika are particularly effective in collaborating on restorative justice options.

6. **Obtain and confirm instructions prior to speaking to a client's matters.**
   Do not seek adjournments for clients in custody unless you have spoken with the client and addressed the issue of bail. Know their situation and Gladue factors.

7. **Ensure that fully informed instructions are obtained before resolving the matter or entering Guilty Pleas**
   Some Indigenous clients may plead guilty just to avoid further interactions with the justice system. Be sure you have fully reviewed all disclosure, discussed the file and resolution options with your client, and are satisfied that your client understands the consequences of a guilty plea.

8. **Utilize and obtain Gladue related information at every step of the proceeding.**
   Gladue is a substantive legal requirement, not a procedural option. You should be collecting and compiling comprehensive Gladue information for oral or written submissions beginning with your very first conversation with the client. Counsel must be prepared to provide fulsome Gladue submissions when no Gladue report has been ordered.

9. **If you must instruct an agent to appear, ensure your instructions are fulsome and complete.** Include the following:

- Bail status
- Whether LAA Client
- Whether Client aware of purpose for court appearance
- Whether Client appearing via Webex or in person
- Confirm Crown contacted by lawyer prior to appearance with pertinent details for appearance
- Confirm purpose for appearance with no contentious issues. To be clear, an Agent is not expected to address substantive issues such as speaking to release or Summary disposition.
- Lawyers reason for not appearing, contact information in the event further instructions required
- Anything else which may be relevant for Agent to know

It is understood that the Agent has sole discretion to accept the Agency request and the onus is on the lawyer requesting to follow up with what occurred in Court including the next court date whether that is the court date which was originally requested.

10. **Keep current, interested and informed of practices and changes in matters affecting the administration of justice in Siksika Court.**

11. **In addition to the above, the following professional practice guidelines should be considered for Child Welfare matters:**
    a. Develop constructive relationships with counsel for the Director of DFNA.
    b. Request the court report outlining the protection concerns, if applicable.
    c. Obtain the Notice of Application and the Apprehension Order.
    d. Calculate the 42-day deadline for the Initial Custody hearing and determine the corresponding Siksika Nation court date.
    e. Request full Child Welfare disclosure.

Legal Aid Alberta

Appendix C

(IV) Reference materials and required reading

A. Mandatory reading list for all counsel

A roster lawyer who wishes to receive certificates for matters in Siksika Nation must attest to having reviewed the following material:

1. ***Truth and Reconciliation Commission of Canada Final Report* Volume 5**: Over-representation of adults 218-243, Over-representation of youth 252-257; **https://publications.gc.ca/collections/collection_2015/trc/IR4-9-5-2015-eng.pdf**
    - Volume 5 outlines the systemic violence and genocide faced by Indigenous women, girls, and 2SLGBTQQIA people in Canada. It emphasizes the need for a paradigm shift to dismantle colonialism and address historical, social, and economic marginalization. The report presents actionable "Calls for Justice" as legal imperatives for governments, institutions, and individuals to uphold human and Indigenous rights. Key principles include substantive equality, a decolonizing approach, trauma-informed care, and cultural safety.
    - It highlights the importance of Indigenous-led solutions, self-determination, and the inclusion of families and survivors in decision-making. The report also provides distinctions-based recommendations for Inuit, Métis, and 2SLGBTQQIA communities to address their unique needs and challenges.

2. ***Truth and Reconciliation Commission Calls to Action***:
   English: **http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf**
    - This is the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls in Canada, outlining calls for justice and addressing systemic human rights abuses against Indigenous women, girls and 2SLGBTQQIA people.

3. ***United Nations Declaration on the rights on Indigenous Peoples***
   https://www.un.org/development/desa/indigenouspeoples/wp- content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf
    - The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms the collective and individual rights of Indigenous peoples, including their rights to culture, identity, language, land, and self-determination. Adopted in 2007, it sets global standards for dignity, equality, and partnership, emphasizing that Indigenous peoples must be able to maintain their traditions and participate fully in decisions that affect their communities.

4. ***Chair's summary of the meeting on Indigenous Peoples, Peace and Reconciliation in Canada, Colombia and Norway***
   https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/chairs_summary_canada_colombia_norway_-_indigenous_peoples_19_june_2023_final.pdf
   - The Chair's Summary focused on Indigenous Peoples, peace, and reconciliation in Canada, Colombia, and Norway, highlighting Indigenous led perspectives on conflict, marginalization, and reconciliation processes. Participants emphasized that Indigenous Peoples experience disproportionate impacts from violence, displacement, discrimination, and disputes over land, resources, and self-determination, and that these dynamics undermine sustainable peace.
   - The discussion underscored the central role of truth telling, historical memory, transitional justice, and respect for Indigenous legal systems and governance traditions in reconciliation efforts, alongside the need for direct, differentiated, and meaningful Indigenous participation in peacebuilding. Speakers also stressed the particular vulnerability of Indigenous women, youth, and children, the growing risks posed by climate change, and the importance of recognizing Indigenous Peoples not only as victims but as rightsholders and knowledge keepers whose leadership is essential to inclusive, durable peace.

5. ***Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*** *(*including but not limited to Volume 1a: Chapter 8: Confronting Oppression – Right to Justice)
   https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a- pdf
   - Reclaiming Power and Place is the Final Report of Canada's National Inquiry into Missing and Murdered Indigenous Women and Girls, documenting the systemic causes of violence rooted in colonialism, discrimination, and social inequities. Drawing on testimony from over 2,300 families, survivors, and experts, it concludes that the violence constitutes a national genocide. The report issues 231 Calls for Justice aimed at governments, institutions, and all Canadians to enact transformative change and uphold Indigenous rights and safety.

6. ***Calls for Justice from The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls***: English: **https://www.mmiwg-ffada.ca/wp- content/uploads/2019/06/Calls_for_Justice.pdf**
   - The **231 Calls for Justice** outline transformative, rights-based actions directed at governments, institutions, industries, and all Canadians to address the systemic causes of violence against Indigenous women, girls, and 2SLGBTQQIA+ people.

B. Mandatory reading list for counsel on criminal matters

Overview

This list is the starting-point, and counsel appearing for Indigenous clients must update themselves as to the current state of the law. There are over 11,000 cases considering Gladue principles, and it is simply impossible to summarize all the relevant cases.

Gladue principles, established by the Supreme Court of Canada in *R. v. Gladue*, 1999 SCC 13, require judges to consider the unique systemic and background factors of Indigenous offenders during sentencing. Since then, a series of landmark cases have expanded and refined these principles across various legal contexts.

1. ***R. v. Gladue*, 1999 SCC 13**: This was the SCC's first interpretation of S. 718.2(e). It established that sentencing judges must consider the unique systemic and background factors of Indigenous offenders, must take judicial notice of the history of colonialism and systemic discrimination and seek restorative alternatives to imprisonment whenever possible when sentencing Indigenous people.

2. ***R. v. Wells*, 2000 SCC 10**: Confirmed that while ***Gladue*** factors must be considered, they do not automatically result in a non-custodial sentence. For serious violent crimes, traditional sentencing goals like deterrence and denunciation may still result in imprisonment.

3. ***R v Powley*, 2003 SCC 43**: Set the criteria for who qualifies as "Métis" for the purpose of Section 35 constitutional rights.

4. ***R. v. Ipeelee*, 2012 SCC 13**: Reaffirmed and strengthened ***Gladue*** by clarifying that these principles apply to all offences, including serious ones and breaches of Long-Term Supervision Orders. It rejected the idea that ***Gladue*** is a "race-based discount".

5. ***United States v Leonard*, 2012 ONCA 622**: Established that the Minister of Justice must consider *Gladue* factors when deciding whether to extradite an Indigenous person to a foreign country.

6. ***R v Okimaw*, 2016 ABCA 246**: Highlighted the appellant's unique background and systemic factors, including the impact of colonialism, displacement, residential schools, violence, substance abuse, and mental health issues, which should have been considered more thoroughly in determining the sentence. The decision emphasized the need for sentencing to be

proportionate to the gravity of the offence and the offender's degree of responsibility, taking into account the unique circumstances of Aboriginal offenders.

7. ***R v Swampy*, 2017 ABCA 134**: The Court emphasized the importance of considering *Gladue* factors in assessing the moral culpability of Indigenous offenders to ensure a proportionate sentence. Good appellate guidance in Alberta on the proper implementation of s. 718.2(e) in sentencing proceedings.

8. ***R v Irkootee*, 2018 NUCJ 32**: Focused on applying *Gladue* in cases of intimate partner violence where both the offender and victim are Indigenous.

9. ***R v G.G.*, 2018 SKQB 169**: Emphasized that it is the duty of defense counsel and the court — not just the offender — to ensure *Gladue* information is before the judge.

10. ***R v Fiddler*, 2018 SKQB 197**: Highlighted the tension between the gravity of a violent crime and the significant systemic disadvantages faced by the offender.

11. ***R v Pye*, 2019 YKTC 21**: A Yukon case emphasizing the importance of providing specific, community-based sentencing alternatives in *Gladue* submissions.

12. ***R v Bird*, 2019 SCC 7**: Explored the application of *Gladue* to the breach of residency conditions in a Long-Term Supervision Order, reinforcing the need for culturally sensitive supervision.

13. ***R v Chanalquay*, 2015 SKCA 141**: Clarified that *Gladue* factors go toward assessing the moral blameworthiness of an offender rather than just functioning as a mitigating list. It is not just a "stacking" of factors but requires an analysis of how those factors impact the offender's moral blameworthiness.

14. ***R v Matchee*, 2019 ABCA 251**: *Gladue* factors must be robustly applied to assess the moral blameworthiness of Indigenous offenders; these factors are not a "race-based discount" but are essential for achieving a proportionate sentence. The sentencing judge's comments were seen as demonstrating a misunderstanding of the application of *Gladue* factors, particularly in relation to serious offences and the connection between systemic factors like residential school attendance and the offender's circumstances.

15. ***R v Mills*, 2019 ABQB 683**: The decision reflects a careful balancing of the need for denunciation and deterrence with the Accused's personal circumstances, including his Indigenous heritage and the systemic factors affecting his life as outlined in the *Gladue* Report.

16. ***R v Paquette*, 2020 ABPC 173**: Addressed the intersection of *Gladue* factors and Fetal Alcohol Spectrum Disorder (FASD) in the sentencing process.

17. ***R v Crier*, 2020 ABQB 475**: The Court stated:
"However, the Supreme Court in *Gladue* and *Ipeelee* also make it clear that I need not find a direct causal connection or nexus between the *Gladue* factors and the crimes committed by an offender. This is not to say that there need not be some linkage or connection ... I would note that not only would such proof be near impossible in most case, if not all cases, but requiring such proof from someone already disadvantaged by the unique circumstances experienced by Indigenous offenders would only serve to further humiliate Indigenous people and would detract from the valid sentencing goals that s.718.2(e) seeks to promote. ..." (para 84)

18. ***R v Friesen*, 2020 SCC 9**: The Court stated:
[92] Likewise, where the person before the court is Indigenous, courts must apply the principles from ***R. V. Gladue*, 1999 CanLII 679 (SCC)**, [1999] 1 S.C.R. 688, and *Ipeelee*. The sentencing judge must apply these principles even in extremely grave cases of sexual violence against children (see *Ipeelee*, at paras. 84-86). The systemic and background factors that have played a role in bringing the Indigenous person before the court may have a mitigating effect on moral blameworthiness (para. 73). Similarly, a different or alternative sanction might be more effective in achieving sentencing objectives in a particular Indigenous community (para. 74).

19. ***R v Zora*, 2020 SCC 14**: Discussion of how onerous bail conditions disproportionately impact vulnerable and marginalized populations and that those living in poverty or with addictions or mental illnesses often struggle to meet conditions by which they cannot reasonably abide

20. ***R v C.C.C.*, 2021 BCSC 599**: A B.C. case exploring intergenerational trauma and the specific history of residential schools as part of the *Gladue* analysis.

21. ***R. v. Sharma*, 2022 SCC 39**: A 5-4 decision upholding the constitutionality of laws that limit the availability of conditional sentences (house arrest) for certain serious offences. (Late 2022/Effective 2023): While the dissent argued this disproportionately harms Indigenous

offenders, the majority ruled that Parliament is entitled to set limits on sentencing discretion for serious crimes.

22. ***R v Natomagan*, 2022 ABCA 48**: Discussion of Gladue factors in Dangerous Offender Proceedings. The Court stated:

[139] We recognize the effects of the intergenerational disadvantage Mr. Natomagan has experienced as an Indigenous person. Systemic racism is not an abstraction. We will never know who Mr. Natomagan might have been, or whether he would have committed the same offences, had his life experiences — including his experiences in the criminal justice system — been less harsh.

[140] We also recognize the limitations of the actuarial risk assessments when applied to Indigenous offenders. Those limitations must be understood and weight must be allocated in a way that is consistent with the courts' obligations, including accuracy in fact-finding, combatting racial bias, and reducing the over-incarceration of Indigenous people. In the dangerous offender context, **section 718.2**(e) of the ***Criminal Code*** mandates a careful review of risk assessment methodology and predictions, having regard to Indigenous history and experience.

23. ***R v Runions*, 2023 ABCA 29**: Discussion of Gladue factors in Dangerous Offender Proceedings. The Court stated:

[43] While public safety is the enhanced objective for dangerous offender sentencing (*Boutilier* at para **56**), when an offender's liberty is at stake to the extent that it is in dangerous offender proceedings, it is particularly important to undertake a robust analysis of the evidence. We recognize that public safety is paramount and *Gladue* factors may play a more limited role at the dangerous offender designation stage. However, *Gladue* considerations are highly relevant at the penalty stage when considering how culturally sensitive programming might enhance future rehabilitation and community control options: *Zoe* at paras **57-58**. As this Court stated in *Natomagan* at para **123**: [*Gladue*] recognized that a single judgment about sentencing will not correct the disadvantages experienced by many Indigenous people, including systemic bias in criminal justice. Nonetheless, since "sentencing judges are among those decision-makers who have the power to influence the treatment of aboriginal offenders in the justice system", it was necessary to address "the limited role that sentencing judges will play in remedying injustice against aboriginal peoples in Canada." As the crisis of over-incarceration worsens, it is necessary to address the roles played and tools used by all decision-makers who influence the deprivation

of liberty of Indigenous offenders through any means, including sentencing, placement and parole.

[44] Here, the sentencing judge noted the various treatment options available to the appellant that emphasize Indigenous healing through traditional and cultural means (paras 544 and 578-579). At the designation stage, the sentencing judge concluded that these treatment options did not alter the appellant's high risk of recidivism and intractability. At the penalty stage, the sentencing judge found that *Gladue* factors did not reduce the appellant's overall blameworthiness or gravity of the predicate offence (para 606). But the sentencing judge failed to turn his mind to whether *Gladue* considerations could have a positive effect and improve the prospects of successfully managing the risk: *Zoe* at para **58** citing **R v Moise, 2015 SKCA 39** at para **24**.

24. ***R v McGinn*, 2023 ABPC 56**: This case discusses bail, in the context of s. 493.1 and s.493.2 of the CCC.

25. ***R. v. No Chief*, 2023 ABCA 345**: Reconfirmed that *Gladue* is an individualized process. The court noted that while systemic factors are always relevant, they must be linked to the specific circumstances of the offence to significantly mitigate a sentence for violent crimes. "…The Crown shares that responsibility and an important step in achieving that objective is to carefully consider the appropriate charge particularly in non-violent offences when Indigenous offenders are involved."

26. ***R v Rabbit*, 2023 ABCA 170**: The Court stated:

[41] Our first foundational point is the fundamental principle of sentencing, stated at **section 718.1** of the ***Criminal Code***.

[42] Vats of judicial ink have been spilled over the second foundational point. Still, Indigenous people continue to be vastly overrepresented in the criminal justice system, and this overrepresentation continues to rise: ***R v Hills*, 2023 SCC 2** at para **87**; at paras **7/8**.

[43] With or without a *Gladue* report, s 718.2(e) of the ***Criminal Code*** requires judges to do the work of appreciating the degree of responsibility of Indigenous offenders. The *Gladue* report filed in this case is tragically typical. It could have been drawn from past jurisprudence, studies and reports, beginning with the appellant's parents' residential school experience. The appellant endured abuse and addictions in his family home, was taken out of his community and placed in group care, and struggled to readjust to his home community, poverty, low education levels, disconnection from family and culture, unstable relationships, and depression.

27. ***R v Phillips*, 2023 ABCA 210**: The Court highlighted the importance of considering the unique systemic and background factors affecting Indigenous offenders, as mandated by s 718.2(e) of the Criminal Code and established in case law. The Court determined that the appellant's substance abuse and resulting psychosis, which were directly linked to her *Gladue* factors, diminished her moral culpability for the offence. The sentencing judge's failure to properly engage with these factors and to assess the appellant's moral blameworthiness in the context of her Indigenous background and personal circumstances constituted an error justifying appellate intervention. The Court also noted that the sentencing judge erred in treating the appellant's untreated addiction and psychotic state as aggravating factors, overlooking the mitigating impact of her Gladue factors on her moral culpability.

28. ***R. v. AD*, 2024 ABCA 178**: The ABCA decision highlighted the necessity of considering **Indigenous victims** within the *Gladue* framework. It allowed a Crown appeal because the sentencing judge focused solely on the offender's background and failed to account for the unique vulnerabilities of the Indigenous female victim.

29. ***R. v. Bourdon*, 2024 ONCA 8**: The trial judge accepted there was no evidence that the appellant's difficulties "were linked to systemic, background or intergenerational factors related to his Aboriginal heritage". ..." the systemic and background factors identified by the appellant are not "tied" to nor "illuminate" his moral blameworthiness. In any event, the trial judge correctly recognized that the paramount objective in sentencing the appellant was the protection of the public and reasonably concluded that no measure short of an indeterminate sentence would adequately achieve this objective."

30. ***R. v. Cope*, 2024 NSCA 59** (Currently before the SCC): This is a pivotal ongoing case. The SCC is reviewing how *Gladue* should be balanced in sentencing when **both the offender and the victim are Indigenous**.

31. ***R. v. Davis*, 2025 BCCA 113**: The court ruled that the trial judge erred by giving *Gladue* factors "limited weight" simply because the offender had been employed and lacked a prior record, clarifying that *Gladue* applies even to those who have achieved some success despite systemic barriers.

32. The ***Criminal Code of Canada***, including sections, 113, 493.2, 718.2(e) and 810.03 (4.1) (Indigenous accused or vulnerable populations).

33. The ***Youth Criminal Justice Act***, including section 38(2)(d)

C. Mandatory reading list for counsel on child welfare matters

Overview

Even though only one in 10 children in Alberta is of Indigenous heritage, these children make up almost 70% of those in the child welfare system. This overrepresentation of Indigenous children in care remains consistent, and Alberta's is among the highest in Canada.

Systemic issues and many socioeconomic factors including the legacy of the residential school system and the Sixties Scoop, differing worldviews about family and responsibility for children, and distrust between Indigenous people and governments factors have had an impact. The result is that Indigenous families and children have not been effectively served by the system that is supposed to see to their safety and well-being.

LAA established in 2023 a Child Welfare Panel to ensure the lawyers taking child welfare certificates had experience, cultural competency and knowledge of relevant the child welfare legislation both provincially and federally and locally (where appropriate) and could provide quality representation to individuals involved in the child welfare system. An ever-changing legal landscape required refinements by LAA to ensure roster lawyers possess the requisite knowledge and experience to competently conduct these matters. LAA has developed **Quality Standards for LAA Certificates issued for Child Welfare Certificates**, (the "Child Welfare Standards").

Minimum requirements for child welfare certificates

Effective April 1, 2026, LAA has set minimum standards for lawyers to receive child welfare certificates. Roster Lawyers must meet the following requirements to receive Child Welfare certificates:

a. Minimum of three years of practice in child welfare law in Canada with approximately 33% of the practice being in the area of child welfare law. Lawyers practicing in rural locations where child welfare files are not as prevalent may be considered even if they do not meet the 33% requirement.
b. Significant knowledge of the *Child, Youth and Family Enhancement Act (*hereinafter referred to as "CYFEA"*), the* CYFEA Regulations and Children Services Enhancement Act Policy Manuel.
c. Specific education and experience in representation of Indigenous individuals in child protection matters and a deep understanding of *An Act Respecting First Nations, Inuit and Métis Children, Youth and Families*.
d. An understanding of the interplay between CYFEA and the *Family Law Act* as it relates to private guardianship, guardianship and other parenting arrangements.
e. Strong communication, problem solving, conflict management, resolution focused and negotiation skills in working with families involved in the child welfare system.

Required reading and comprehension

- ***Child, Youth and Family Enhancement Act*** *and* **CYFEA Regulations**
- ***An Act Respecting First Nations, Inuit and Métis Children, Youth and Families Act***
- **Children Services Enhancement Act Policy Manual** *(working knowledge)*

Caselaw

Child, Youth, and Family Enhancement Act (CYFEA)

1. ***New Brunswick (Minister of Health and Community Services) v JG*** **[1999] 3 SCR 46**: The SCC held that the state's application for the custody of a child engages a parent's constitutional rights under section 7 of the Charter, in that they recognized the parental right to life, liberty and security of the person in child protection matters.

2. ***SDK v. Alberta,*** **2002 ABQB 61**: Parents and Guardians of children who are subject to Child Welfare proceedings are entitled to receive, upon request, disclosure of all relevant information in the possession of the Department, subject to the reviewable discretion of the Department, which may decline to disclose information which is irrelevant or may disclose the identity of informers.

3. ***BN v. Alberta,*** **2004 ABCA 40**:The Court set out the BN inquiry legal standard for determining whether a PGO proceeding may proceed in the absence of a child's parents and factors to be considered to make that determination.

4. ***Alberta v. DN,*** **2019 ABPC 147**: The Director does not have the legal authority to disrupt a parenting situation by physically removing a child from one parent and placing the child with another parent or some other person, or forcing such a placement under threat of apprehension. ("Soft Apprehension") Where the Director does apprehend a child under CYFEA, the apprehension is subject to court oversight and the procedural protections provided under the Act.

5. ***DR (Re),*** **2011 ABPC 196**: In this case the Court addresses the concept of "good enough parenting". This is the standard by which parents are to be assessed as to their ability to raise a child. The test for granting a PGO is not that a better set of parents has been found, such as a foster home. That is to say, if parents are good enough, Child Welfare cannot be involved. Good enough parenting requires a Court to examine both sides of the equation: the parents' ability to be good enough parents to a child and to address any specific needs of the child. Good enough parenting is insufficient, however, if a child has special needs.

6. ***AA (Re), 2020 ABPC 225***: The Court provides further direction on the four main components of good enough parenting: a) meeting the children's health and developmental needs; b) putting the children's needs first; c) providing routine and consistent care; and, d) parental acknowledgement of any problems and engagement with supportive services.

7. ***BJT v. JD and Director of Child Protection for PEI., [2022 SCC 24]***: The Court noted a parent's mere biological tie is simply one factor among many that may be relevant to a child's best interests and judges are not obliged to treat biology as a tie-breaker when two prospective custodial parents are otherwise equal. Placing too great an emphasis on a biological tie may lead some decision makers to give effect to the biological parents claim over the child's interests and parental preferences should not usurp the focus on the child's interests.

Initial Custody

8. ***Alberta (Child, Youth and Family Enhancement Act, Director) v WH, 2007 ABPC 144***: Section 21.1(2) of CYFEA does not actually specify what the legal test that the Director must at an initial custody. The court articulated the legal test on initial custody is as follows:

1. Is the child in need of intervention?
2. If the child is in need of intervention, is it in the best interests of the child, having regard to the matters set out in s 2 of the Act, for the child to be in the custody of the Director pending the hearing of the application for a permanent guardianship order (PGO)?

The Court indicated that a Supervision order would be appropriate in the circumstances rather that keeping the child in care and felt it should be an option available at the initial custody stage.

9. ***Alberta v. KS and KK, 2008 ABQB 565***: On an Appeal of a decision where the Provincial Court had granted a Supervision order at an initial custody hearing, the Court of Queen's Bench allowed the appeal although the issue was moot as the children had been returned to the parents. The Court found "When presiding over initial custody hearings, Provincial Court Judges must grant an order pursuant to one of the two statutory options available to them under 2. 21.1 of CYFEA.

10. Since 2022, there have been at least five decisions from the Alberta Court of Justice and one decision from the Alberta Court of King's Bench which have articulated what is being referred to as the "expanded" test for initial custody. This new expanded test would require the Director to provide credible or trustworthy evidence that, if believed, could establish:

- That the child in need of intervention; and

- That reasonable intervention services would not be adequate to protect the safety, security, or development of the child if the child were returned to the parent.

a. ***SB*, 2022 ABPC 207**: Justice Hancock first expanded the test at initial custody.

b. ***SB*, 2022 ABQB 446**: On appeal Justice Jerke, found in favor of the Director and reiterated the original test and child was again taken back into care.

c. **Alberta (CYFEA, Director) v AM, 2023 ABPC 93**

d. **Alberta (CYFEA, Director) v LL, 2024 ABCJ 177**

e. ***RN*, 2022 ABPC 157**

11. ***SE v The Director of Child and Family Services*, (4 May 2023) Calgary FLO1-38131 (ABKB Marriott)**

12. ***GB & KS v. Alberta* (unreported June 4, 2025, decision of Justice Stuffco)** wherein at an initial custody hearing her returned the child to the parent under a Supervision order.
This case is under appeal by the Director.
(To be heard October 2026)

Terms of Orders

13. ***Alberta v. CT*, 2021 ABPC 13**: The terms of a Supervision Order or a TGO should provide a clear set of objectives, a roadmap, so that parents know what they have to accomplish to be successful. They should be specific and achievable. Terms should be objectively discernible where possible (what does clean and tidy residence mean? Who decides? What do I have to do to "follow the recommendations set out in the Parenting and Psychological Assessment?

14. ***JK v. Alberta*, 2019 ABQB 539**: This case if often cited for the principle that access for a parent to a child should not be at the Discretion of the Director. The purpose of s. 34(8) of CYFEA, which gives the Court the authority to make an order prescribing post PGO access between a child and a former guardian, is to remove the absolute discretion of the Director. The Court should stipulate the access terms, to set out the terms of the access in such a way that the access will take place not leave access to the absolute discretion of the Director.

35.1(1) Applications

15. ***HMA (Re),* 2015 ABPC 29**: This decisions sets out the two step procedure for assessing applications for a Review of a PGO order under 35.1(1).

An Act Respecting First Nations, Inuit and Métis Children, Youth and Families Act

16. ***Reference Re: An Act Respecting*, 2024 SCC 5**: In hearing the Province of Quebec Reference, the SCC was found that the Federal legislation, *An Act Respecting* was Constitutional and not ultra vires the Parliament of Canada.

17. ***Alberta v. KC and JP*, 2020 ABPC 62**: In an early decision after An Act Respecting came into force and effect, concerning an Inuit child found that the federal Act and its minimum standards and Notice requirements to serve an Indigenous Governing Body (IGB) did apply. The federal Act is to apply alongside the provincial legislation, and the federal Act is only paramount where there is a conflict or inconsistency. The Court found that there is an "operational inconsistency" which arises in this case based on the provisions of "Placement of Indigenous child" found in sections 16 and 17 of the federal Act. The Court is therefore required to apply s. 16 and 17 of the federal Act in PGO applications, including this one.

18. ***DB (Re),* 2021 ABPC 140**: In this case, the Court allowed an IGB, the Blood Tribe, to make representation in proceedings as it is envisioned the Indigenous community would have an important and meaningful role in providing information and recommendations to the Court about a child's cultural heritage. The case law is moving toward a more interactive participation for an IGB than mere representations. This does not mean a shift in all cases towards party or intervenor status but instead will recognize a unique opportunity to assist and benefit the Court in appreciating the child's indigenous heritage.

19. ***MM v. Alberta* (CYFEA, Director) 2021 ABPC 317**: In a decision regarding if an Indigenous Nation can have leave to take part as an intervenor in a Private Guardianship application by foster parents regarding indigenous children. The Court provided a thoughtful review of the intervenor law, s. 53.1 of CYFEA requiring that bands be served in private guardianship applications regarding indigenous children as well as the *TRC Calls to Action, the Sixties Scoop Settlement, the MMIWG Calls to Action, An Act Respecting. And the UN Declaration on the Rights of Indigenous Peoples Ac*t(2021); Interpretative tool. She allowed the Nation to have intervenor status, call witnesses, file affidavits, cross witnesses and make representations. The band's involvement was restricted to the suitability of the foster parents as private guardians, matters connected to the Nation's culture, traditions, laws and teachings, information about the family and community relationships important to the children, and other matters that might be

relevant to the considerations and any terms and conditions that should attach to any private guardianship order, should an order be granted.

20. ***JW v. Director of Child and Family Services*, 2021 ABQB 325**: The question on the appeal was whether the Federal Act alters the threshold for when the Director may obtain an apprehension order without notice to a guardian. The court found that both acts put the best interests of the child ahead of the interests of the guardian, family or cultural community. The Court noted it is better to risk an unnecessary apprehension, which can be quickly corrected given the legislated process in place, than risk harm coming to a vulnerable child. The Federal Act does not alter the risk allocation when First Nations, Inuit or Metis children or Youth are involved.

21. ***Asikiw Mostos O'Pikinawasiwin Society v BL*, 2022 ABPC 76**: This is the first reported case in Alberta to address the interplay between CYFEA and the federal Act wherein an IGB had enacted its own child welfare legislation. The IGB argued they had the sole authority to deal with the indigenous child outside of CYFEA under AMO law, when an IGB has enacted its own child welfare laws so CYFEA no longer applies. This matter was the subject to an upcoming Court of Queen's Bench Application for a declaration that the AMO law, as to the children of Louis Bull Tribe, has the force of federal law and priority over CYFEA and that CYFEA does not apply to this Indigenous child, and the Provincial Court is prohibited from hearing the foster parent's application and all Provincial Court applications relating to this child regarding access, disclosure and guardianship should be stayed. The Court stayed the entire private guardianship application brought by the foster parents and released the trial dates pending the Queen's Bench Application.

22. ***RS v Alberta*, 2022 ABPC 176**: This matter involved two competing Private Guardianship applications for an Indigenous child. The Court noted the provisions of section 17 of the *Federal Act* enhances the best interest analysis under the CYFEA by emphasizing the importance of preserving the Child's connection to his Indigenous culture.

23. **SK v Alberta, 2022 ABPC 144**: The Court noted that the ranking of placement priorities in s. 16, placing biological family first, extended family and community next and non-indigenous folks last. This ranking, while expressly subject to the qualifying words: "to the extent that it is consistent with the best interests of the child" confirms the importance of and is consistent with other provisions of both the *Federal Act* and the *CYFEA* that speak of the central importance of ensuring children are given the best available opportunity to have a close connection to their families, culture, and communities.

24. ***MB (Re)*, 2022 ABPC 270**: The Court rejected the Blood Tribe argument that the placement provisions ought to operate as a "default" or a "priority scheme." The Court found that this was inconsistent with the plain statutory meaning of ss 4 and 16(1) of the *Federal Act* and would

interpret the *Federal Act* in such a way that frustrates the purpose of the provincial *Act* and defeats the presumption that the provincial legislation is valid.

25. ***AMF v. Alberta* (CYFEA) 2023 ABCJ 287**: The Court provided clarity regarding the procedural requirements for private guardianship applications under CYFEA in relation to indigenous children in care. Notice is required to be provided to the child's parents under *An Act Respecting* even if the parent's guardianship may have been terminated under a PGO. Notice must be also provided to the IGB to whom the child is associated as well as to the care provider. The Court also confirmed that a Private Guardianship is a significant measure that falls within *An Act Respecting.* A Court hearing a PGO application must conduct a s.16 Priority of Placement analysis. Where the child cannot be placed with either biological parents or extended family, the Court must then consider alternative placements with an adult who belongs to the same Indigenous group, and community of people as the child.

26. ***Alberta v SN*, 2024 ABCJ 147**: The Court found that "initial custody is a significant measure" requiring service on the child's biological parents, whose guardianship had been terminated, by a PGO.

27. ***EL v Alberta (Children and Family Services)*, 2025 ABCJ 89**: In a recent decision involving a Metis child and an access application by a non-indigenous care provider the court noted "Placing children with close relatives of non-Indigenous status contributes to the assimilation of the child's Indigenous culture. Hence, the definition of "family" must be interpreted to include people the child considers to be a close relative only prior to CS's involvement.

D. Mandatory Reading List for Counsel on Family Matters

In family law the relevant statutes are as follows:

The Divorce Act
The Family Law Act
The Family Property Act
The Protection Against Family Violence Act
Family Homes on Reserves and Matrimonial Interests or Rights Act SC 2013c.20
The United Nations Convention on the Rights of the Child
The Child Support Guidelines
The Spousal Support Advisory Guidelines

The family legislation applies to all families and equally to indigenous families. Below are the relevant sections of the *Divorce Act* and the *Family Law Act* that focus on a child's heritage when making decision on Parenting.

Overview

Parenting

Pursuant to 16. (1) of the *Divorce Act*, the Court must make parenting decisions in the best interests of child. S. 16(3) specifically sets out factors that the Court must consider in making that determination including: 16.(3)(f)...the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage. Pursuant to s. 18 of the *Family Law Act*, the Court must consider the best interests of the child and in determining that 18(2) (iii) the child's cultural, linguistic, religious and spiritual upbringing and heritage.

1. ***Van de Perre v Edwards*, [2001] SCC 60, [2001] 2 SCR 1014**: Racial Identity is one factor to determine personal identity, it is not determinative. Other factors given priority since more relevant to needs. In this case, mixed race child so want exposure to both sides. No evidence that would get greater exposure to racial background via primary residency over generous parenting time. Best interests of the child decisions are matters of judicial discretions and appellate courts must act with restraint. May only intervene if there is "a material error, a serious misapprehension of the evidence, or an error in law".

2. ***B.J.T. v. J.D.*, 2022 SCC 24, [2022] 1 SCR 668**: In the context of Child Welfare matter, the Court drew on *Van de* Perre and best interest of the child factors. No one factor is given priority. Relevance and weight is a matter of judicial discretion based on the evidence. The Court affirmed *Van De Perre* view on appellate review." While biological ties *may* be relevant in a given case, they will generally carry minimal weight in the assessment of a child's best interests. "Too

much emphasis on biological ties can lead to focus in on parent's claims instead of child's best interest.

3. ***AMLC v BDC*, 2023 ABKB 179**: The Court noted that evidence must be put forth as to the importance of heritage/culture. This factor is in light of the specific, distinct culture. For example, the Alberta Metis community is not an acceptable substitute for the Manitoba Metis community with its own distinct traditions and culture.

4. ***N.S. v. R.M.*, 2021 ONSC 4566)**: In dealing with relocation case involving an Inuit child , the Court noted best interests of the child factor includes fostering the children's relationship with their Indigenous upbringing and heritage. The Order needs to consider how the father's parenting time will allow him to teach the children about Inuit culture. He needs meaningful time to be able to teach them about their culture, one week in the summer is insufficient.
5. ***AK v JJ*, 2025 ABCA 345**: On an application for Private Guardianship under the *Family Law Act,* the Court noted that the s. 18 best interests of the child factors under the *Family Law Act* can be read as complementary and applied harmoniously with the *Act Respecting*.

6. ***SK v DG*, 2022 ABQB 425**: In this decision, Justice Loparco found that " It is essential that Indigenous children be given the opportunity to maintain and develop strong connections with their family, with their Indigenous group, community or people to which they belong and to preserve their connection to their culture. It is also important to recognize Canada's obligations pursuant to the *United Nations Declaration on the Rights of Indigenous Peoples* to ensure indigenous families and communities retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child: see *UNDRIP*." One Guardian may have sole guardianship rights over a child's Indigenous heritage. Other guardians would need to seek approval prior to engaging in any activities relating to the Indigenous heritage. In this case, the Cree Grandparent was deemed to be in the best position to be sole guardian of the child's Indigenous rights and education since the child is Cree.

7. ***URM (Re)*, 2018 ABPC 96**: This case involved the Siksika Nation applying to intervene on competing Private Guardianship applications under the *Child Youth and Family Enhancement Act* ('CYFEA"). The Court noted"…[Even though a cultural connection plan, as contemplated under may not be required for applications under the *Family Law Act* that *Act* still mandates the Court to consider all aspects of each child's needs and circumstances, which include, under s 18(2)(b)(iii), the child's cultural, linguistic, religious and spiritual upbringing and heritage. Therefore, whether this Court is dealing with Indigenous children under the *Family Law Act* or under the CYFEA the legislation mandates that the Court must consider the cultural-connection aspect of the best interests of URM and PKM."

Child Support

Under the Child Support Guidelines in calculating a person income, the Court may impute income pursuant to s.19.(1)(b) to a parent who is exempt from paying federal or provincial income tax. Therefore, income that an indigenous payor may receive may be grossed up for the purposes of calculating child support

8. ***Dahlgren v Hodgson*, 1999 ABCA 23**: The Court noted guideline income can take into account many forms of income, benefits, compensation, or attribution of these that would otherwise not be treated as taxable income under the *Income Tax Act*. When dealing with these, it is important it be grossed up as guideline income is based on gross before tax income.

9. ***Calver v Calver*, 2014 ABCA 63**: A Court's discretion to impute income must be exercised reasonably. Living allowances generally do not constitute income.

10. ***Peters v Atchooay*, 2022 ABCA 347**: "Indigenous people living and working on a First Nations reserve are exempt from paying both provincial and federal income tax. Under s 19(1)(b), the court may therefore gross up income to account for this". The question of whether a settlement payment constitutes Guideline income, such as a settlement agreement between Canada and Beaver First Nation, was left open. In Alberta, this remains unsettled law. However, it is relevant to the "means" with respect to ability to repay arrears in the *Colucci* framework.

11. ***Peepeekisis Cree Nation v Whitecalf*, 2025 SKCA 89**: Peepeekisis Governing Council held $30,000 in trust for individual band members of whom Maintenance Enforcement were seeking seizure, until such time as the band member makes a request for the money. The payor owed $24,000 to the payee and MEO was seeking seizure directly from the Nation. The Court noted that if the recipient that MEO is subrogated for is an "Indian" as described under s. 89 of the *Indian Act*, then MEO can seize the "Cow and Plow" settlement amount directly from the Nation and the Nation is obligated to pay.

Family Property

12. ***Paul v. Paul*, 1986 CanLII 57 (SCC), [1986] 1 SCR 306; *Derrickson v. Derrickson*, 1986 CanLII 56 (SCC), [1986] 1 SCR 285**: The SCC has held that orders made under provincial laws regarding family property do not apply to property on reserves, including exclusive possession orders. These laws are inoperable due to the *Indian Act*.

13. ***Family Homes on Reserves and Matrimonial Interests or Rights Act S.C. 2013***: s. 16-20 The preamble specifies the need for the legislation given the fact that provincial and territorial laws are not applicable on First Nation reserves and specifically mentions the need to address matters of family violence and exclusive possession. The Act provides

Section 7 - First Nation reserves may pass laws regarding family property.

Sections 16-19 – Process for applying for EPOs.

Section 16(5)(b) – allows for exclusive possession as part of an EPO.

Section 20 – Exclusive possession orders can be applied for.

Note: as of July 1, 2022, EPO applications under the Family Homes on Reserves and Matrimonial Interests or Rights Act are not available in Alberta as the Province has not authorized "designated judges" under the Act.

14. ***Emergency Protection Orders Regulations*, SOR/2014-266**
Canada Gazette, Part 1, Volume 148, Number 15 – Emergency Protection Orders Regulations

"The *Family Homes on Reserves and Matrimonial Interests or Rights Act* (the Act) provides for the issuance of emergency protection orders to allow for exclusive temporary occupation of the family home in the case of family violence. It does not, however, provide the rules of practice and procedure that law enforcement agencies must follow in order to issue the orders."

"The proposed *Emergency Protection Orders Regulations* will set out clear rules of practice and procedures that will be needed in provinces that do not have existing systems for issuing emergency protection orders. The Regulations are also needed to help provinces that have systems in place already to adapt them for use on reserve and to ensure First Nations that opt to develop their own matrimonial real property laws have a clear model to inform the processes they set up under their own laws for emergency protection orders."

Without the proposed Regulations, law enforcement officials and courts would lack the clear process they need to be able to issue and implement emergency protection orders on reserve."

Appendix D

(V) Instructions on how to properly complete *Gladue* Submissions under s.11.10 of the LAA Tariff

When LAA's Compliance and Certificate Standards Unit reviews Glaude submissions, they look for specific things. Below is a link to the template and some additional best practices and tips.

Gladue Report Analysis-CS and C

This is a handy checklist to use to ensure that you are complying with all requirements for making proper and fulsome Gladue submissions.

Gladue and IRCA Best Practices Checklist

This is a list of tips to ensure that you are engaging in best practices when making Gladue submissions.

Gladue Tip Sheet

Note: Counsel should not reference an aged Gladue Report or Gladue submissions without a fulsome updating. If a Gladue Report or Gladue submissions was completed more than two years ago, it is inappropriate to use that report, or reference those submissions, without updating it (them) in a comprehensive manner.