

Gladue Report Disbursement: Final Evaluation Report



Legal Services Society of BC

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Executive Summary

In 2011, the Legal Services Society received funding from the Law Foundation of BC to pilot a Gladue report disbursement in the province of British Columbia.

- The goal of this program was to ensure that Aboriginal people had access to comprehensive Gladue reports when facing sentencing or bail hearings.
- The purpose of the Gladue Report Disbursement is to enhance access to reports for sentencing that are specifically designed to promote the remedial aspects of Gladue principles (S. 718.2). These reports provide the courts with comprehensive information about an Aboriginal offender's background and his or her community, and present options for a sentencing/ bail plan that offers realistic and viable alternatives to prison.
- The pilot was funded by the Law Foundation between June 2011-March 31st, 2013 at which time LSS undertook a full evaluation of the first 10 months (to March 2012) of Gladue reports, to assess the outcomes for clients and other justice system partners.

Evaluation Objectives

The purpose of this evaluation is to examine whether the Gladue Report Disbursement Pilot is meeting the objectives as described in the program description. This evaluation is broadly concerned with asking two summative questions about the pilot:

1. Are Gladue reports effective in meeting the objectives?
2. What impact do Gladue reports have on clients and the justice system community?

A mixed methods research design uses both quantitative and qualitative analytic techniques. This includes a matched comparison of case outcomes, key informant interviews and file reviews.

Result Highlights

Comparisons of Gladue and non-Gladue cases

- Of 60 cases where a Gladue report was ordered in the first year
 - 3(5%) were used for bail hearings, and of those 3, 1 (33%) client received bail.
 - Of the remaining 57 Gladue reports
 - 20 (35%) received a non-custodial sentence (e.g. treatment program, conditional sentence order, restorative justice sentence).
 - 49% received some jail time for their sentence.
 - 9 reports (16%) were abandoned or incomplete.
- A sub-sample of 42 completed Gladue sentencing cases was compared to a matched sample of 42 LSS Aboriginal client cases where there was no Gladue report used.
 - Fewer Gladue clients (23) received a jail sentence than their non-Gladue counterparts (32).
 - The median sentence length in days for Gladue clients was 18 days, substantially lower than the non-Gladue sample which was 45 days.
- Another comparison of sentence outcomes was completed with 38 Gladue clients who also had a subsequent offence on record.
 - 76% (13/17) of clients who committed the same offence both times received a shorter sentence on their case with a Gladue report, while 18% (3) received a sentence of the same duration as their non-Gladue offence.
 - The median sentence length for both groups was exactly the same, 300 days.

Interview highlights

Stakeholder interviews with judges, lawyers, Crown, clients and report writers were analyzed qualitatively and are presented in this report using thematic sub-headings and quotations.

Case outcomes

- Evidence suggests Gladue reports had an impact in many cases:
 - Some received less time in jail than they would have had there not been a Gladue report.
 - Reports helped judges develop restorative justice based sentences that included sentencing circles, culturally appropriate treatment options, community based options.
- Some reports did not have an impact on the case outcome because
 - The client's pattern of behaviour created challenges to their ability to stay out of custody (e.g. breaches).
 - Public safety presented a concern in some cases and mandatory minimum sentences applied in others.
- There were tangible benefits to clients as well. Clients noted the therapeutic and personal benefits of telling their story in a non-judgemental environment where they felt they were heard and valued.

Comparing Gladue reports to Pre-sentence reports

Gladue reports are more comprehensive

- Gladue reports are longer and more thorough than PSRs, specifically with respect to the Gladue factors.
- Among clients interviewed, there was broad consensus that probation officers and PSRs can be more harmful than helpful.
- Some lawyers, Crown and judges felt that Gladue reports were comparable to pre-sentence reports they had received.

Sentencing recommendations

- Gladue writers offer more information about resources in rural and remote communities.
- Gladue reports provide options tailored to the specific needs of each person, including programs, treatment and even tailored probation conditions.
- Probation Officers have the resources and mandate to follow up on their PSR recommendations, respondents indicated that this is missing from the Gladue report process.

Strengths of Gladue reports

- **Knowledge of subject:** There was strong agreement that the greatest contribution Gladue reports make to the court is their potential to draw concrete connections between the intergenerational impacts of colonialism (residential schools, community displacement, child apprehensions) and the person in court for sentencing.
- **Knowledge of Aboriginal life experiences:** Gladue writers are better positioned to obtain and report Gladue information to the court than other justice professionals and report writers, due to their specific training, focus, and most importantly, their connection to the communities.
 - Clients were more comfortable talking with Gladue report writers and told the writer details they would not have told anyone else, especially their probation officers.
 - Gladue report writers created a safe environment for them to talk about very sensitive and private details of their lives.

Where reports can be improved

In addition to asking respondents to reflect on the strengths of Gladue reports, they were also asked to consider how reports and the Gladue program could be improved.

- **Consistency:** Many respondents indicated that the quality of reports varied by location and writer. Evidence from the evaluation suggests this is related to consistency across writers, rather than problems associated with the program design. This is also related to the inherent challenges associated with writing reports of this nature.
- **Unverified information:** Interviews identified concerns about unverified information contained in Gladue reports.
- **Advocacy:** Closely linked to concerns about the verification of information is the perception by respondents that some Gladue reports appear to advocate, rather than present neutral or objective information to the court.
- **Sentencing options:** Interviewees had varying experiences and perspectives about the quality and content of the sentencing options contained in Gladue reports. Some expressed concerns that sentence options were not realistic given the history of the person they were sentencing or the nature of the offence. This was particularly true for cases where a mandatory minimum sentence applied.

Program Design & Administration

- **Costs per report:** Based upon available information, the total actual cost per report for the sample of cases during the pilot was \$2, 337.40.
- **Funding & remuneration:** Interviews addressed the administration of the disbursement. Most were satisfied with the roster and disbursement model where lawyers applied for a disbursement and were then assigned a report writer from the provincial roster. However, there were a few challenges identified:
 - Interviews with report writers highlight the reality that reports take much longer than the time allotted in the tariff.
 - Some lawyers felt the model is too demanding on their time and that they should be compensated for the administration activities they undertake.
- **Challenges to Gladue report writers:** Most writers indicated an interest in more training and mentoring to address the challenges around trauma, aftercare for clients, access to documents and other resources to produce objective and well substantiated reports.

Summary of conclusions

The findings from this report are highly promising, and suggest that the Gladue report program is both needed and valued by those in the criminal justice system, and by the Aboriginal people receiving the reports.

- Findings from the comparative analysis complement and support the perceptions of interview respondents who felt that these reports did assist judges' and lawyers' efforts to find and implement sentences that would reduce incarceration of Aboriginal offenders.
- Findings also highlight the need for program modifications, including enhanced training and coordination of report writers, support for Aboriginal people after interviews and most importantly, more resources.
- Steps should be taken to respond to concerns around consistency in the quality and objectivity of all reports, where it is deemed they are warranted. There is no evidence that these problems are widespread, and appear to be related to broader questions about the scope, purpose and reasonable expectations of Gladue reports generally.

1.0 Introduction & background

In 2011, the Legal Services Society received funding from the Law Foundation of BC to pilot a Gladue report disbursement in the province of British Columbia. The goal of this program was to ensure that Aboriginal people had access to comprehensive Gladue reports when facing sentencing or bail hearings. At this time, judges in BC relied upon standard pre-sentence reports and defence sentencing submissions in order to apply Gladue principles when sentencing Aboriginal people. The society's consultations with Aboriginal communities and the 2007 *Building Bridges* Report highlighted the urgent need for more efforts to advance the Gladue rights of Aboriginal people across British Columbia. As incarceration rates of Aboriginal people continued to rise, particularly in Northern British Columbia, LSS was concerned that application of Gladue principles was not entirely consistent in all jurisdictions.

In response to this, LSS collaborated with Aboriginal organizations to present training workshops about Gladue rights and report writing in Aboriginal communities. A province-wide roster of LSS-trained and approved Gladue report writers from several BC Aboriginal communities was established from these workshops. Once the roster was in place, it became quickly apparent that more resources and funding support was required in order to maintain momentum, as report writers had very little financial support and many of the clients who needed reports did not have the resources to pay for them. In response, LSS applied for and received pilot funding from the Law Foundation of BC to fund reports and coordinate of the program. The pilot was funded by the Law Foundation between June 2011-March 31st, 2013 at which time LSS undertook a full evaluation of the first 10 months (to March 2012) of Gladue reports, to assess the outcomes for clients and other justice system partners. This report summarizes the findings from this evaluation.

2.0 Policy context

The over-representation of Aboriginal people in Canadian federal and provincial prisons is indisputable and has been devastating for many Aboriginal communities. This fact has been the topic of multiple commissions, inquiries and Supreme Court decisions over the last 30 years, a number of which have provided unequivocal evidence and analysis to support this finding and offered a range of recommendations and prescriptions for addressing it.

Most notably, the Royal Commission on Aboriginal Peoples (RCAP) released a report in 2006, *Bridging the Divide*, which explicitly outlined the connections between the legacy of European colonialism and the over-representation of Aboriginal people in the criminal justice system. Specifically, RCAP found that the devastation inflicted upon Aboriginal communities through colonialist policies, including the Indian Act, the residential school system, the reserve system and the failure of the Federal and Provincial governments to uphold treaty commitments led to harmful social and economic conditions in Aboriginal communities, both rural and urban. The concrete implications of this are well documented, as Aboriginal communities in Canada have disproportionately high rates of suicide, child apprehension, sexual violence, substance addictions, poverty, violence / abuse, homelessness, poor health and very high rates of arrest and imprisonment. The RCAP report became a catalyst for subsequent legislative initiatives and court decisions aimed at reducing over-incarceration by acknowledging this history and

developing strategies to reduce incarceration rates and disrupt the cycle of over-representation and criminalization.

In 1996, parliament introduced a sentencing provision to the Criminal Code, S. 718(e), which required that,

All available sanctions other than imprisonment that are reasonable in the circumstances should [sic] be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

Following this, the 1999 decision *R. v. Gladue*, the Supreme Court of Canada outlined specific principles and factors that sentencing judges would need to consider when sentencing Aboriginal offenders in order to implement S.718(e) appropriately, including,

- a) The unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts
- b) The types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage.

These have come to be referred to as the “Gladue principles”, and throughout the last decade, their precise application has been the subject of much discussion and debate within the case law.¹

Despite these efforts and repeated calls to address the issue, most recent statistics indicate that the rate of Aboriginal people in custody continues to be exceptionally disproportionate to their numbers in the larger population. In 2010/2011, 27% of the adult people in prison were Aboriginal, while Aboriginal people only comprise 3% of the overall Canadian population². Aboriginal youth are also overrepresented in custody; they make up 26% of youth incarcerated while accounting for only 6% of the broader youth population³. In 1998/1999 Aboriginal people accounted for 13% of the Provincial custody admissions and 18% of Federal admissions. By 2007/2008 their rates in prison had only risen or remained stable⁴.

Over-incarceration is complex and is connected to all levels of the justice system, including how police, the courts and corrections respond to Aboriginal people. With respect to Gladue principles, while the

¹ See, for example: *R. v. Gladue* [1999] 1 S.C.R. 688, 171 D.L.R. (4th); *R. v. Wells* [2000] 1 S.C.R. 207, 182 D.L.R. (4th); *R. v. Ipeelee* [2012], SCC 13; *R. v. Ladue*;

² Dauvergne, M. (2012) Adult correctional statistics in Canada 2010/2011. Canadian centre for justice statistics. Retrieved, <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11715-eng.pdf>

³ Munch, C. (2012) Youth correctional statistics in Canada, 2010/2011. Canadian centre for justice statistics. Retrieved, <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11716-eng.pdf>

⁴ Statistics Canada (2009). Aboriginal people as a proportion of admissions to adult custody, probation and conditional sentence, selected jurisdictions 1998/1999 – 2007/2008. Retrieved, <http://www.statcan.gc.ca/pub/85-002-x/2009003/article/10903/tbl/t3-eng.htm>

legislative frameworks have been in place since the mid-nineties, there has been a great deal of confusion and ambiguous direction from the Supreme Court regarding how the principles should be applied⁵. This lack of clarity has made it difficult for judges to implement the Gladue principles in any comprehensive manner.⁶ However, there is a growing body of law addressing this topic, and most recently *R. v. Ipeelee* sparked a flurry of activity.

R v. Ipeelee

In 2012, the Supreme Court of Canada affirmed its commitment to Gladue sentencing principles in the case of *R. v. Ipeelee*, placing emphasis on the role and responsibility of counsel and judges to ensure that sufficient evidence is before the court to adequately consider S.718(e). Specifically, it states that counsel (defense and Crown) must “bring individualized information before the court in every case”⁷ and points specifically to Gladue reports as “an indispensable sentencing tool to be provided at a sentencing hearing for an Aboriginal offender”⁸ to provide the necessary details about the Aboriginal person’s background, including

“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.”⁹

In many ways, the *Ipeelee* decision catalyzed efforts to implement Gladue rights more consistently across the country. For the LSS Gladue disbursement, it meant that demand for these reports increased rapidly, as judges and counsel took seriously their role in ensuring the Gladue rights of Aboriginal people were prioritized.

Gladue reports in case law

A cursory review of case law suggests that there is basic agreement across appellate courts and the Supreme Court that acknowledgement of a person’s Aboriginal status is not sufficient to form the basis of a Gladue sentence. In *Ipeelee*, as well as other lower court decisions, judges have highlighted the role and responsibility of judges and counsel (defense and Crown) to ensure that there is adequate information before the court to implement a decision.

⁵ Turpel-Lafond, M.E.(2000). Sentencing within a restorative justice paradigm: Procedural implications of R. v. Gladue. Native law centre, 4(3). Retrieved, http://www.usask.ca/nativelaw/publications/jah/1999/Sent_Para_Gladue.pdf; Milward, D. & Parkes, D. (?) Gladue: Beyond myth and towards implementation in Manitoba. *Manitoba Law Review*, 35(1), pp. 84-110.

⁶ Turpel-Lafond (1999); Welsh, A. & Ogloff, J.R.P. (2008). Progressive reforms or maintaining the status quo?: An empirical evaluation of the judicial consideration of Aboriginal status in sentencing decisions. *Canadian Journal of Criminology and Criminal Justice*, 50(4). DOI: 10.1353/ccj.0.0026.

⁷ *R. v. Ipeelee* [2012], SCC 13

⁸ *R. v. Ipeelee* [2012], SCC 13

⁹ *R. v. Ipeelee* [2012], SCC 13

In *R. v. Kakekagmick* (2006), for example, the Ontario Court of Appeal asserted that both counsel are responsible for ensuring that adequate information is before the court to craft a proper sentence according to Gladue principles. The decision also highlights the burden on Crown to ensure that Gladue principles are applied in sentencing.

In another provincial decision, the Manitoba Court of Appeal reaffirmed that information about the accused person's history, not simply their status as an Aboriginal person, is integral to the court's ability to implement Gladue principles. Each of these decisions identifies Gladue reports (also referred to as "Gladue briefs") as the most appropriate tool for meeting these obligations¹⁰.

More recently, in 2012/13 there have been two decisions in British Columbia that offer detailed commentary regarding the content and quality of Gladue reports, both establishing standards for content and presentation of Gladue reports. In the BC Court of Appeal *R. v. Lawson* (2012) decision, Justice MacKenzie expressed concern that the Gladue report purportedly contained unverified information about the accused person and was presented in a manner that lacked objectivity. In her analysis, Justice Mackenzie stated that Gladue reports should:

1. Include information about the report author, including their background, training and experience.
2. Not include "strong recommendations for sentence" to the judge. It was noted that suggestions about "potential restorative or rehabilitative programs" are appropriate.

However, the Court of Appeal decision does note that the judges found it "puzzling" that the trial judge asserted that the "report did not go deeply enough into the Aboriginal aspect of the man's life and of Aboriginal life in general."¹¹ The Judge continues, stating that "the report went into sufficient detail about the Aboriginal aspect of his life."¹²

In a subsequent BC Supreme Court decision, *R. v. Florence* (2013), Justice Watchuk elaborated extensively about her concerns regarding the content of Florence's Gladue report, detailing the criteria that Gladue reports should meet in order to satisfy the needs of the court in Gladue sentencing. In summary, her concerns about the report were as follows:

1. The report contained incomplete and misleading information
2. The report was presented as advocacy, rather than neutral and objective information. The judge suggested that the writer asked leading questions and made assumptions about the subject of the report.
3. The report contained unverified information.

¹⁰ Pfefferle, B.R. (2008). Gladue sentencing: Uneasy answers to the hard problem of Aboriginal over-incarceration. *Manitoba Law Journal*, 32(2), 114-143.

¹¹ *R. v. Lawson*, para. 34; Also, in para. 12 the judge indicates that the trial judge found that Mr. Lawson had been afforded the benefit of Gladue principles for past offences. However, LSS records indicate Mr. Lawson has not received a Gladue report prior to this case.

¹² *R. v. Lawson*, para. 36

Post *R. v. Ipeelee*, courts in other provinces also appear to be grappling with question of the information required by the judge to adequately meet the requirements for sentencing Aboriginal offenders. A decision from Manitoba, where there is no formal Gladue report program¹³, dealt with this question in *R. v. Knott (2012)*. In that case, the judge outlined the shortcomings of a pre-sentence report prepared by probation services, which contained a Gladue component. The judge ruled the pre-sentence report was inadequate for Gladue sentencing, because it focused on the offender's behaviour, but failed to situate his behaviour within the context of his family's and community's histories or to highlight the intergenerational legacy of residential schools and systemic discrimination. In particular, the judge was concerned that the report failed to detail the offender's family history in residential schools, as well as his family's history of addictions.¹⁴

The case law appears to be evolving on this question, as courts work to cement the process and establish the knowledge and standards required to implement Gladue principles effectively in sentencing. As interest is growing and new programs are in development across Canada, there will inevitably be continued attention to these questions.

Since the *R. v. Lawson* and *R. v. Florence* decisions, LSS has taken steps to improve upon the neutrality and objectivity of reports. For example, please see the Appendix D, which is a document that accompanies all Gladue reports submitted to the court. This letter describes the program, writer training, review process and the role of Gladue reports in sentencing.

3.0 Program description

Objectives

The purpose of the Gladue Report Disbursement Pilot is to enhance access to reports for sentencing that are specifically designed to promote the remedial aspects of Gladue principles (S. 718.2). These reports provide the courts with comprehensive information about an Aboriginal offender's background and his or her community, and present options for a sentencing/ bail plan that offers realistic and viable alternatives to prison. In alignment with the principles of Section 718.2(e), Gladue sentencing proposals are remedial and holistic rather than punitive in intent, aiming to reduce reliance on incarceration, and promote the use of restorative justice and community-based options.

As outlined in the project management plan, and consistent with the Gladue principles, the goals of the disbursement pilot are to:

- Improve Aboriginal client experience and outcomes in criminal proceedings
- Support legal aid lawyers so that their clients benefit from the remedial purpose of Gladue
- Raise awareness among justice system stakeholders about effective and credible Gladue reports

¹³ See Appendix B for a description of the Manitoba Onashowewin program, which receives funding on a case-by-case basis from Legal Aid Manitoba for Gladue reports. They are currently developing a formalized program and training.

¹⁴ Parkes, D. (2012). *Ipeelee* and the pursuit of proportionality in a world of mandatory minimum sentences. For the Defence, 33(3). Retrieved, <http://chrr.info/resources/gladue-projec>

Program History

The Legal Services Society Gladue pilot model has evolved over 3 years, and has placed emphasis on supporting and building capacity within Aboriginal communities to do Gladue reports by providing training, funding, coordination and support throughout the province. The initiative began when LSS Aboriginal services developed and delivered training for Gladue writers. The Law Foundation funding enabled LSS to build upon the training initiative by launching a disbursement to pay writers to complete reports. Until 2012, LSS was the sole provider of in-depth Gladue report writer training in British Columbia, offering 8 one-day workshops called “Understanding Gladue” and two-five day “Gladue-U” boot camps. An evaluation of these training activities was completed in 2010 and found that this initiative was meeting its objectives to raise awareness about Gladue rights and to provide resources and training to enable participants to write reports. In 2012, with the support and work of LSS’ Aboriginal Legal Services, this training program has been added as a regular course option in the School of Community and Social Justice at the Justice Institute (JI) of British Columbia. The first session will run in March 2013.

The training curriculum includes in-depth training to develop their knowledge and understanding of Gladue sentencing principles, the role of pre-sentence reports, the sentencing process, bail hearings and the role of the Aboriginal community in providing Gladue reports to the court. Additionally, the curriculum includes information about issues that have been empirically linked to Aboriginal over-incarceration, including Fetal Alcohol Syndrome Disorder (FASD), addictions, mental health as well as information about how to identify alternative resources aside from incarceration. Finally, writers learn the skills necessary to write reports, including interviewing, research, court report writing, identifying possible sentence options and standards for presenting this information to the court. These workshops also include a short, intensive practicum, which involves a mock sentencing where writers compose reports and then orally defend them in a simulated court environment.

Writers who successfully complete this program may be considered for inclusion on the official LSS roster of Gladue report writers, which is a list of trained and approved writers who LSS can refer to lawyers whose clients are approved for a Gladue disbursement. To provide additional support to new writers, LSS assigns them an experienced writer as a mentor to help them complete their early reports, guiding them through the process, reviewing and commenting on their work.

For a full description of the program model and activities, please turn to **Appendix B** of this report.

4.0 Evaluation Methods

Evaluation Objectives

The purpose of this evaluation is to examine whether the Gladue Report Disbursement Pilot is meeting the objectives as described in the program description.

This evaluation is broadly concerned with asking two high-level summative questions about the pilot:

3. Are Gladue reports effective in meeting the objectives?
4. What impact do Gladue reports have on clients and the justice system community?

To address these questions, the specific objectives of this evaluation will be to answer the following research questions:

1. What are the impacts of Gladue reports on case outcomes and clients?
2. Do Gladue reports help judges implement Gladue principles in a manner that other reports (e.g. PSRs) do not?
3. Is there evidence that Gladue reports contribute to restorative justice based outcomes¹⁵ in sentencing and bail decisions?
4. Do Gladue reports provide the information the court requires to implement Gladue-based sentences and what impact do they have on the criminal justice system?
5. Does the program achieve its objective of making Gladue reports more accessible to the courts, and is the program design efficient and effective at achieving this?
6. Are Gladue reports viewed as credible and effective by the criminal justice community (e.g. Judges, Lawyers, Crown)?

The period examined by the evaluation is July 1, 2011, to March 31, 2012.

Design & data collection

A mixed methods research design was employed to assess whether the pilot was effective in meeting its objectives. A mixed methods approach uses both quantitative and qualitative analytic techniques. Using multiple data collection strategies and sources enhances the rigour, validity and reliability of this research. Triangulation¹⁶ will be used whenever possible to validate findings across the research sample.

¹⁵ Please see Appendix A: Evaluation Framework and Appendix C for a definition of Restorative Justice based outcomes.

¹⁶ Triangulation is an analytic strategy that involves the use of different methods and sources to enhance the validity of and confidence in the findings. It also helps to develop a more complete picture of the phenomena under study (Ritchie & Lewis, 2003).

This evaluation includes:

- (1) a matched comparison (quasi experiment) of case outcomes in 42 Gladue cases to 42 cases that did not use a Gladue report;
- (2) A matched comparison of jail sentence length for Gladue offenders on a present (Gladue) offence, compared to previous sentences.
- (3) Key informant interviews with clients and members of the justice community.

Sampling & procedure

To develop a comprehensive assessment, multiple data sources were used and therefore multiple sampling strategies and procedures were employed as well. For each method, the sample was drawn from the first 60 clients who received a Gladue report during the pilot period (June 2010- March 31, 2012). Please note that all names have been removed to ensure anonymity of Gladue report recipients and of interview respondents. Throughout this report, any names (or initials) used are not the real names of respondents to ensure confidentiality and anonymity as per standard research ethical guidelines.

Matched pair sample

The sample was drawn from LSS' Case Management System (CMS) using a combination of purposive and convenience sampling techniques. The experimental group (Gladue clients) included 42 clients who received a report during the first year of the pilot project (From July 1, 2011-March 31, 2012). The control group sample was sampled from the population of all *Aboriginal* clients with an intake date between January 1, 2008 and December 31, 2012 whose cases are complete. They were selected based upon carefully identified matching characteristics to individuals from the Gladue group. For the analysis, the two groups are compared on case outcomes. The characteristics for matching include:

- a) Demographic characteristics: Age, gender, location of residence, income.
- b) Case characteristics: Offence type, number of offences on the referral, custody status, court location. Background research was done to learn details about the circumstances of the offence and person's criminal background to find the best possible match. Data sources for this were LSS' CMS and B.C. Court Services Online.

In some cases, it was not possible to find identical matches on all characteristics listed. In these cases, priority was given to matches based upon case characteristics (e.g. offense type; whether in/out of custody, court location, number of offences on referral), followed by offender characteristics (e.g. education level, income level).

Key-informant and client sample

Semi structured qualitative interviews were conducted with key informants in person or by telephone. Interviews were semi-structured. Purposive and convenience sampling strategies were used to select key informant participants for interviews.

The criteria for selecting interview participants included:

- a) Use or participation in a Gladue report.
- b) Ability to speak to their experience with this program comprehensively.
- c) Availability and consent to participate.
- d) Clients were sampled based upon their participation in the program. They were selected from the list of 60 clients who received a report during the pilot period. They were selected randomly (random number generated). However, as some clients are difficult to find, other clients were selected based upon their availability and consent to participate.

The sample of client and justice system members was n=34

- Lawyers (n=15) (of 54 lawyers total)
- Provincial Court Judges (n=6) (of X total)
- Crown (n=8) (of X total)
- Report writers (n=5) (of 15 total)
- Clients (n=8)

Program Records and Documents

To conduct this research, a number of records and documents were collected and analyzed:

Program materials

- Training manuals
- Report writing support documents
- Receipts/ invoices

Case materials:

- Case/client records (JUSTIN/CMS/Lawyer's file)
- Court transcripts (Sentencing submissions and judge's sentence)
- Pre-sentence reports (PSR; Psychological Assessment; additional reports)
- Gladue reports

Strengths & limitations of the methodology

Strengths & limitations of key informant interviews

There were many strengths of the interview approach. The sample includes all key stakeholder groups involved in the program. Interviews were semi-structured, which means respondents were able to raise questions and issues that are not asked in the interview. This facilitates richer and more complete information, and minimizes researcher bias during interviews. Interviews were analyzed using qualitative research software to identify themes and patterns.

With respect to limitations, the sample was limited due to availability of respondents. Although the plan included interviewing a sample of BC Superior and Provincial court judges, BC Superior court justices were not available for interviews. For this reason, the comments from judges are representative of BC Provincial court judges only.

There were also some challenges in reaching key informants. The original plan included interviews with probation services. Two representatives were contacted but did not respond to requests for interviews. Also, not all clients were available or accessible. The original plan included interviews with 10 clients, but only 8 were available to be contacted for the interviews. These interviews took place on the telephone and in person. Some were conducted in custody settings, which can raise ethical considerations. While some interviews were emotional, there was only one interview where the person was visibly upset (crying).

Strengths & limitations of comparison approaches

There are strengths and weaknesses to both of these comparison approaches. In any analysis exploring a cause and effect relationship between two variables, caution must be taken when interpreting results. In situations where random assignment to a control/ test group is not possible, establishing a causal relationship becomes even more challenging. This is true of most studies exploring criminal case outcomes. In the case of Gladue, the best possible design options are quasi-experimental designs, either with a sample of cases matched on various variables or a pre/post quasi-experimental design using the same sample of people. Both approaches have advantages and limitations; neither is perfect.

Matched comparisons are used often in criminal justice studies, and involve the selection of two samples of participants (one with the treatment, one without), that are matched to each other on pre-determined criteria. While commonly used, they are not perfect and can be tricky to do. Myriad factors contribute to sentencing decisions, including offender characteristics, offence characteristics and the dynamics of the participants involved in the case (judge, lawyer, Crown and community). For this reason, it is nearly impossible to create perfect matches and there is always the potential that observed results are due to variables in the research that could not be controlled.

To address this limitation, another comparison is used to compliment this approach. This second analysis uses only the Gladue sample group, comparing the outcomes for their case with a Gladue report to a previous offence without a Gladue report. While not a perfect comparison, this approach mitigates some concerns (outlined above) about matched samples. Using the same sample of people is the greatest advantage of this approach because it minimizes the potential for a non-comparable match.

The use of the same people means that many variables will be the same, particularly for offender characteristics, and therefore the comparisons are more accurate. In many cases, the location and dynamics with the justice system will be similar as well (e.g., whether case is in an urban or rural community), although a transient population makes this more challenging.

With advantages, there are, of course, still limitations. These primarily relate to offence characteristics, which are arguably the most influential factors in sentencing. For example, the circumstances surrounding the offence may not be comparable in each case, and the players involved different. Most importantly, however, circumstances with the offender may have changed. They may have sought programming or exemplified other behaviour that would influence the sentence in a negative or positive way. Finally, criminal history is itself a consideration in sentencing, and since the “non-Gladue” offence must precede the Gladue offence, there may be some systemic bias in this analysis. If this is the case,

one would expect the sentence at time two to be higher, given “step up” sentencing principles where offenders who have been convicted of similar offences in their past should receive lengthier sentences on their more recent, or current offence. Therefore, if this does prove to be a factor, one would expect average sentence length to be longer on Gladue report cases.

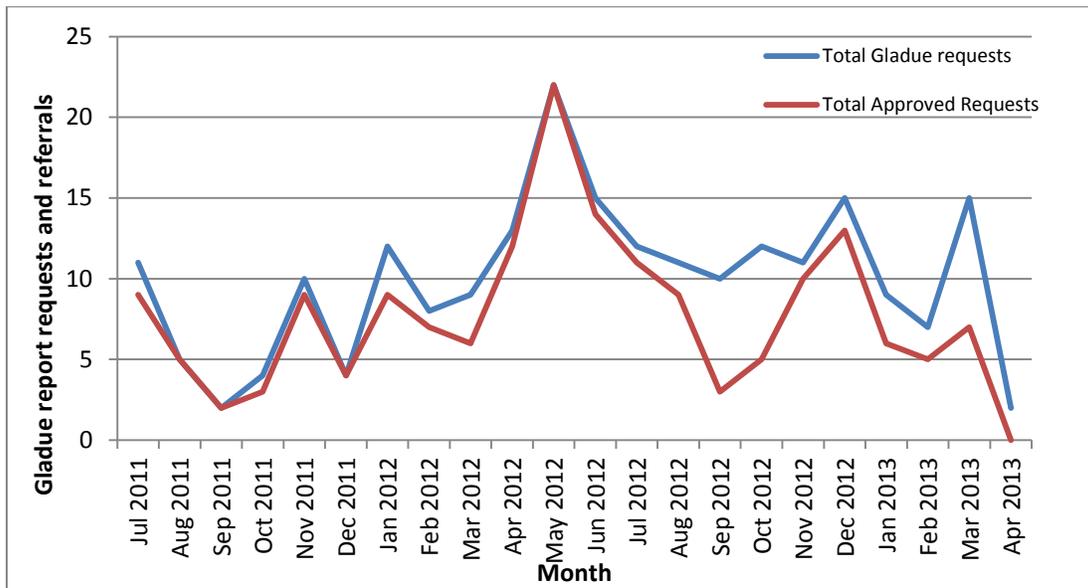
As a final limitation to this analysis, the evaluation was limited due to the timing of data collection. Since data collection commenced following the pilot study period, data could only be obtained from existing program and client files. This includes sampling limitations, as it is more difficult to identify and locate participants. Additionally, due to the complexity of criminal cases and the criminal justice system, challenges can arise when existing program information does not include all of the information needed to assess the full outcomes of the program. This proved to be a challenge and a limitation in this research, as Gladue cases are very complex, involving many people, processes and outputs.

5.0 Results

5.1 Client profile

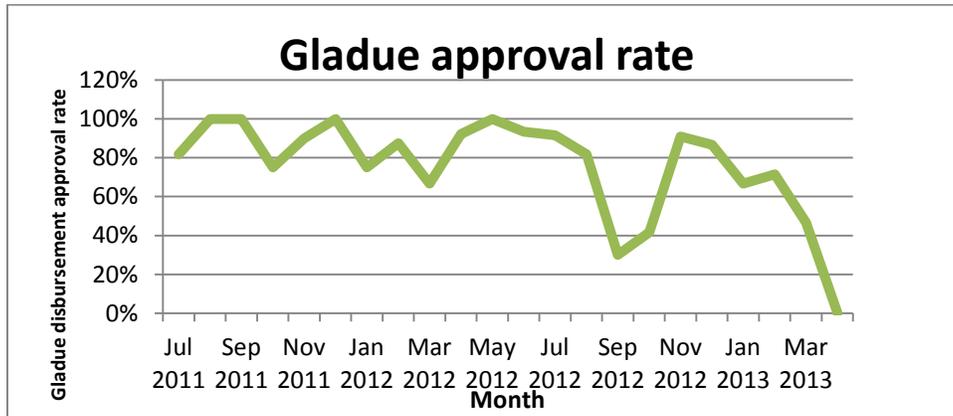
Since the Gladue disbursement began in July 2011 until present (April 2013), LSS received 219 applications for the disbursement, and of those, 171 disbursements were approved. When the pilot began the demand for Gladue report disbursements was slower, as LSS was building awareness about the initiative. Demand increased in spring 2012, spiking at 22 in one month (May). It is possible that the increase in demand is partly attributable to the *R. v. Ipeelee* decision in March 2012. Since then LSS has received 10-15 requests consistently per month.

Figure 1: Gladue disbursement requests and approved requests July 2011 – April 2013



The approval rate fluctuated as well and appears to be largely based upon available funding for reports. As demand for reports increased in mid-2012, the approval rate declined shortly after as requests began to outpace resources. Since September 2012, the number of requests have levelled off and the overall approval rate increased.

Figure 2: Gladue disbursement approval rate July 2011 – April 2013



For the pilot period (July 2011-March 31, 2013) 65 reports were requested, of those, a sample of 60 cases was taken to represent the first year of Gladue reports completed. A goal of the program was to prioritize Aboriginal women and youth requests, since these groups are among the most marginalized and over-represented in the criminal justice system. However it appears that the population served was fairly homogenous; most were adult males.

There were disproportionately fewer women in the pilot year than men. In total, seven (8.5% of requests) women applied for a report, and five of those received reports during the pilot research period. Women comprise 20% of LSS criminal applications and 18-19% of criminal referrals. Aboriginal women make up 25% of all Aboriginal criminal applications and 24% of referrals.¹⁷ Furthermore, women account for approximately 13% of the provincial and 6% of the federal prison population, and Aboriginal women comprise approximately 32% of those. Therefore, 8.5% is slightly lower than would be expected, based upon their overall representation in the LSS criminal representation population and the criminal justice system overall.

There was also a disproportionately small number of youth. In 2010/2011 youth represented 10% of LSS criminal tariff applications and 13% of referrals. In 2011/2012, youth comprised approximately 8% of the LSS criminal applications and 11% of referrals. In this sample, they represent 6% of the Gladue reports, which is slightly lower than would have been expected based upon their proportion of the LSS criminal client population. In total, 4 Gladue reports were written for young Aboriginal people, 3 male and 1 female. For the most part, the youth offences were very serious, including 2nd degree and attempted murder, 1 assault, and 1 breach of probation.

¹⁷ This data was retrieved from LSS' CMS database, and population statistics are based upon 10 years (2002-2012) of LSS applications and referrals.

Given that prioritizing reports for these populations was an early objective, this could be an area for continued emphasis in the future. Considering application numbers for these populations are low, more outreach and information to these populations may enhance the number of women and youth receiving reports.

Gladue reports: Locations

Reports are available to clients throughout the province of British Columbia, and first year data illustrates that the program is reaching many BC communities, including many rural locations. Reports were written for 25 court locations in British Columbia. However, not all clients are from the communities where they attend court. Even though reports are primarily used in courts, they touch the small towns and communities that clients call home. Tables 1 and 2 below outline the court locations and the 30 client communities that were impacted by this program.

Table 1: Court locations where Gladue reports were ordered, number of reports

Court locations					
City	# reports	City	# reports	City	# reports
Abbotsford	1	Kitimat	1	Quesnel	1
Bella Coola	1	Klemtu (Circuit)	1	Surrey	3
Chilliwack	1	Lillooet	2	Terrace	4
Courtenay	1	Nanaimo	1	Vancouver	9
Dawson Creek	2	New Westminster	2	Victoria	2
Fort St. John	3	North Vancouver	2	Vernon	1
Houston	1	Port Coquitlam	1	Williams Lake	2
Kamloops	7	Prince George	5		
Kelowna	3	Prince Rupert	3		

Table 2: Gladue client city, number of reports

Client City					
City	# reports	City	# reports	City	# reports
Abbotsford	2	Kincolith	1	Prince George	5
Anahim Lake	1	Kitimat	1	Prince Rupert	3
Bella Coola	1	Klemtu	1	Salmon Arm	1
Buick	1	Lillooet	1	Surrey	4
Chilliwack	1	Lytton	1	Terrace	3
Coquitlam	1	MacKenzie	1	Tsay Keh Dene	1
Courtenay	1	Maple Ridge	1	Unknown	2
Dawson Creek	2	Nanaimo	1	Vancouver	9
Kamloops	7	North Cowichan	1	Victoria	1
Kent Institution	2	North Vancouver	1	Williams Lake	2

These findings suggest that the roster design of the Gladue program may be one of the program’s greatest strengths because it can reach the small, rural and isolated communities where the need for this work is often greatest. The ‘roster model’ is based upon a provincial roster of Gladue report writers who live in different regions of the province. Since the program is not concentrated in one central community, communities that often do not have access to programs of this nature are served, such as

Lillooet, Klemtu or Williams Lake. This analysis of demographics suggests that the program has been effective at reaching out to small communities.

Histories: Gladue factors

An analysis of 30 Gladue reports sheds some light on the Gladue factors that were brought to the court's attention. Of these 30 reports, report writers obtained information from clients, collaterals and other documents to piece together details of the subject's personal history and Gladue factors. In terms of the number of collaterals contacted, 26% (8) of the reports cited more than 10 collaterals, 44% (13) cited between 5-10 collaterals and 30% (9) cited 2-4 collaterals.

Some details about the Gladue factors detailed in the reports are summarized below.

Health

- 30% of subjects had a physical or mental disability:
 - ADHD/ADD (10%); Brain injury (3%), concurrent disorder (13%), PTSD (6.7%)
 - 16% had been diagnosed with FASD, and another 16% were undiagnosed but suspected of having FASD.
 - 3% experienced a physical injury and one person had a suspected brain disorder that was undiagnosed.

Childhood experiences

- Many were removed from their families in childhood (53%):
 - 10% were adopted into a non-Aboriginal family, 20% went to a non-Aboriginal foster family and another 10% went to live with other family
 - However, the reality for children in foster care is that many do not stay in one place, they are moved around between foster families, group homes and sometimes other family. 20% of the report subjects reported spending their entire childhoods living between families and group homes
 - 33.3% were removed or dislocated from the Aboriginal family and community
- Abuse characterized many of their lives:
 - 83% of the report subjects had parents with substance abuse issues
 - 73% of 30 reports had experienced physical violence and neglect as a child
 - 36% of the report subjects were sexually abused by a family member and another 16.7% reported being sexually abused by a member of their community
 - 23% stated they suffered emotional abuse from their family.
- 63% had experienced some form of traumatic event or grief in childhood, including
 - multiple deaths of family members or people close to them (23%),
 - 6% had been victimized sexually multiple times, and
 - 30% had witnessed family violence.

- For most report subjects, residential school was a defining feature of their past and a determining factor in their futures:
 - 66.7% of report subjects histories were directly connected to residential schools, including parents and grandparents who had been in residential school
 - Residential schools also had an impact on entire communities, a legacy that manifests itself in the social fabric of the community. 40% of the report subjects came from entire communities that had been affected by residential school (all the children went to a local residential school)
 - Residential schools left a legacy of dysfunction that came out in the narratives of Gladue report subject's home and community lives. This included witnessing or experiencing endemic substance abuse (50% of all report subjects), endemic sexual abuse (30% of all report subjects), endemic physical abuse (43% of all report subjects) and endemic poverty (40% of all report subjects) in the communities they came from.

5.2 Do reports have an impact?

This section will focus on presenting findings related to the first two evaluation questions:

- 5.1 Did the report have an impact on case outcomes?
- 5.2 Is there evidence that Gladue reports contribute to restorative justice based outcomes in sentencing and bail decisions?

A primary objective of the Gladue report disbursement is to provide a tool to the court to support the implementation of Gladue principles. The following three methods were employed to assess these research questions:

- a) A case outcome comparison of clients with and without Gladue reports, to determine whether there are any visible patterns in sentencing outcomes.
- b) A review of a small sample of transcripts from cases with Gladue reports for references to the Gladue report.
- c) All interview participants were asked about their perception of the impact that the Gladue report had on the cases they were discussing.

This section consists of two separate analytic comparisons of cases with and without Gladue reports. The first is a comparison of the Gladue client sample with other Aboriginal clients that have been matched on case and demographic variables. The second is a comparison of Gladue clients' case outcomes with the case outcomes on previous offences of a similar nature. These quantitative comparisons are followed by results from qualitative interviews.

Prior to presenting comparison findings, the outcomes of all 60 Gladue report cases from the pilot reporting period (July 2011- March 2012) are presented in Table 3 for context. For cases where the report requests were abandoned (n=7), the following reasons were cited:

- The client did not want to prolong sentencing (n=4)
- There was insufficient time for the report (n=2)
- Change in lawyer or change in circumstances (n=1)

Table 3: Gladue case outcomes

Sentence Outcomes	Count	% of sentences
Bail (bail granted/ total reports used for bail)	1/3 ¹⁸	33% of bail cases
Conditional Sentence	6	11%*
Probation	9	16%*
Time Served	4	7%*
Suspended Sentence	1	2%*
Jail	28	49%*
Incomplete case ¹⁹ /Abandoned reports ²⁰	9	16%*
Total	60	100%

**percentage based upon only reports used in sentencing, not bail hearings (n=57).*

As shown in Table 3, almost half of the Gladue clients received jail time; however, this does not mean that the Gladue reports were ineffective. While reducing the over-representation of Aboriginal people in prisons is a long term goal of this program, the roots of this problem are systemic and they extend beyond the sentencing process. To assess the early success of this program, it may be more appropriate to focus on indications of changes at the individual level, including personal shifts in the person before the court and seemingly small changes in attitudes and actions on the part of decision makers in the judicial system. In addition, Gladue reports are not intended to prevent jail in all cases. . Therefore, it is to be expected that some people will need to be removed from the community for safety reasons.

5.2 Comparison of case outcomes: Gladue clients to clients with no Gladue report

This section presents results from a comparison of case outcomes for 42²¹ clients with a Gladue report to a matched sample of 42 non-Gladue Aboriginal clients. To conduct this analysis, each Gladue client was matched with an Aboriginal client who did not receive a Gladue report.²² Careful attention was paid to ensure that the matches were as accurate as possible, each match was checked manually using CMS court services information ensure that the matches were comparable. Once matches were checked and selected, the sentence outcomes were compared.

¹⁸ One of these reports was later used in sentencing as well.

¹⁹ This means that the case is not yet complete (i.e. sentencing had not occurred at the time of data collection) or that the outcome data is unavailable (n=2).

²⁰ “Abandoned reports” refers to the number of reports abandoned after an original authorization request had been granted.

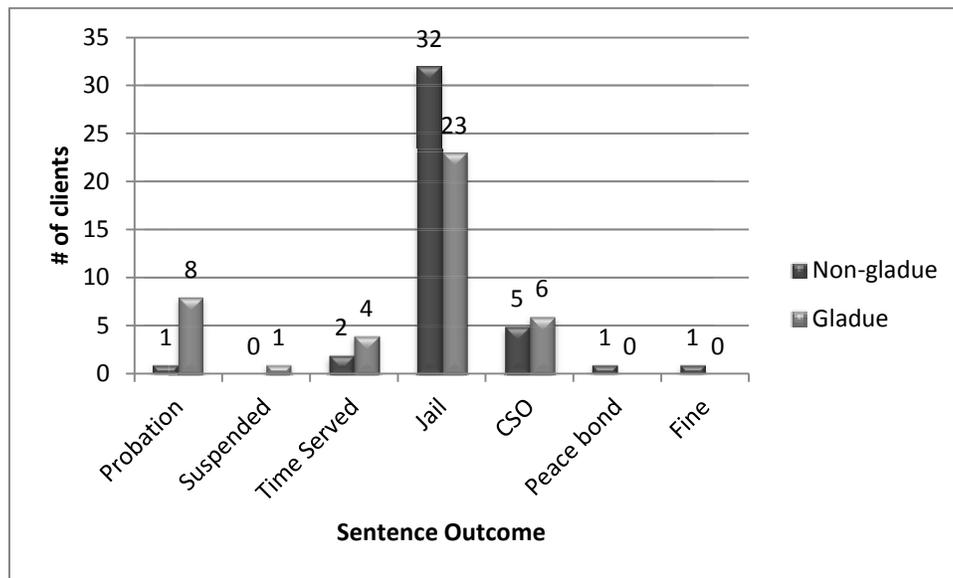
²¹ The original evaluation plan was to compare a sample of 30 case outcomes (N=60), however information was available for 42 matches, so more were used. They were selected randomly from the overall sample of 60.

²² The experimental group (Gladue clients) included 43 clients who received a report during the first year of the pilot project (From July 1, 2011-March 31, 2012). The control group sample was sampled from the population of all Legal Services Society *Aboriginal* client files with an intake date between January 1, 2008 and December 31st, 2012 that have been billed. They were selected based upon carefully identified matching characteristics to individuals from the Gladue group. For the analysis, the two groups are compared on case outcomes.

It should be noted that it is nearly impossible to find two cases that are exactly alike, as there are many factors that could influence the outcome of a sentence. The purpose of this analysis is to identify any short-term patterns that may be partly attributable to the Gladue pilot, and to contextualize these findings within the qualitative interviews and other data sources.

Chart 1 below presents an aggregate comparison of the sentence outcomes for clients in both the Gladue and non-Gladue groups. In this sample, nine fewer Gladue clients (23) received a jail sentence than the non-Gladue comparison group (32). Gladue clients were more likely to receive a probation order, time served or a conditional sentence order (CSO) than their non-Gladue counterparts.

Chart 1: Comparison: Sentence outcomes of LSS Non-Gladue and Gladue clients



(n=84; 42 non-Gladue and 42 Gladue clients)

Findings indicate that fewer Gladue clients received a sentence of incarceration, and while the mean length of incarceration was longer for Gladue clients, the median sentence length was actually shorter. Table 4 presents a comparison of the average sentence lengths for the Gladue and non-Gladue samples.

Table 4: Sentence length comparison of matched sample

Comparison of Average Sentence Lengths (Days)		
	Gladue clients (n=42)	non-Gladue clients (n=42)
Mean	237 Days	110 Days
Median	18 Days	45 Days
Standard Deviation	401.2	180.2
Maximum Sentence length	1825 Days	730 Days

The mean sentence length was 110 days for non-Gladue clients and 237 days for Gladue clients. However, the standard deviation and maximum sentence length indicate that this mean is skewed due

to one lengthy sentence that is inflating the mean (outlier). Thus, the median may be a more robust metric to use. The median sentence length in days for Gladue clients was 18 days, which is substantially lower than the non-Gladue sample, which was 45 days. Overall, this analysis suggests that fewer Gladue report recipients received a jail sentence, and they were more likely to receive a shorter sentence than their non-Gladue counterpart.

To supplement these findings, a comparison was completed with a sample of 38 Gladue clients, examining the sentence on their Gladue file, as compared to a previous sentence for a similar offence. The comparison looks at the length of incarceration (days) they received as a sentence on the offence for which they received a Gladue report (“Gladue”), and compares it to the length of incarceration for a previous offence (“Non-Gladue”).²³ The comparison examines:

1. The number of clients who received an increased, decreased or the same sentence they had received previously. This was then grouped by offence seriousness²⁴ for comparison purposes (i.e., whether the Gladue offence was more, less or of equal seriousness to their previous offence). See Figure 3.
2. For those who received a jail sentence, the average sentence length of Gladue cases was compared with the average sentence length of the previous non-Gladue files

²³ It is important to note that many clients had multiple prior sentences, and many had multiple charges on one file. On files with multiple offences, the most serious offence was used.

²⁴ Seriousness was determined based upon a seriousness index used by LSS internally. The offences are ranked in order of seriousness using a two-year average of costs per offence type.

Figure 3: Sentence length on Gladue file compared to previous non-Gladue sentence, grouped by offence severity



Figure 1 presents the findings of a sentence length (in days) comparison for 38 Gladue clients who received a sentence of incarceration on their Gladue or on a previous non-Gladue file (or both). In an effort to control for the seriousness of the offence on each case in the comparison, the cases are grouped according to whether their offence on the Gladue file is “more serious”, “less serious”, or the “same offence”²⁵ to that on their previous, non-Gladue offence. These groupings were cross-tabulated with the comparison of sentence length (in days), to see whether the sentence was longer, shorter or the same length.

Gladue clients who committed the same offence on both their previous and Gladue files offer the most direct comparison (bottom circle). For those with the same offence, one would expect their sentence to increase or remain the same if the Gladue report had no impact, given that the offence is of equal severity to a previous offence, that this is a subsequent offence and that the analysis controls for the person’s background history. However, results indicate that 76% (13/17) of clients with the same

²⁵ “more serious” (e.g., Gladue = Assault; Non-Gladue = “Theft under \$5000”);
 “less serious” (e.g., Gladue = Theft under \$5000; Non-Gladue = Assault);
 “same offence (e.g., Gladue =Robbery; Non-Gladue = Robbery)

offence received a shorter sentence when they had a Gladue report. Three (18%) clients with the same offence received a sentence of the “same length.” As one might expect, a larger proportion of clients with a more serious offence on their Gladue file (42%) received a higher sentence than they did on their previous offence, and an additional 42% received their first jail sentence. These results are suggestive of the possibility that clients with a Gladue report are more likely to get a non-custodial sentence when they are convicted for an offence that is equal to or less serious than their previous offences. However, those who commit a more serious offence are more likely to receive some incarceration, and possibly a longer sentence than for previous offences.

To examine length of sentence for this sample, the average length of sentence for both samples is presented in Table 6.

Table 5: Sentence length comparison of Gladue clients sentence outcome to previous offence sentence

Comparison of Average Sentence Lengths (Days): Previous offence and Gladue file		
	Gladue offence (n=38)	Previous offence (n=38)
Mean	452 Days	490 Days
Median	300 Days	300 Days
Standard deviation	461	585
Maximum	1825	2555

The mean sentence length for the sample of non-Gladue clients (n=29) was slightly longer, 490 days compared with 452 days for the Gladue sample (n=22). The median sentence length is 300 days for both the non-Gladue and Gladue samples, which suggests that both means are skewed by large maximum sentences and large standard deviations. Again, the median is likely the most robust of the two measures, and thus indicates that overall there is no difference in sentence length.

To summarize, these comparisons suggest that Gladue reports may contribute to fewer and shorter incarceration sentences for Aboriginal people. The first comparison found that jail sentences were slightly shorter, on average, for Gladue report recipients than for non-Gladue clients, and fewer Gladue clients received jail sentences overall. The second comparison did not find a difference in the median sentence length outcomes for Gladue files and previous non-Gladue files, but again fewer Gladue clients received a sentence of incarceration. While both comparisons have limitations, together they are suggestive of a pattern of reduced jail time for Aboriginal offenders who receive a Gladue report, particularly as both analyses found fewer Gladue clients received a jail sentence than non-Gladue clients. Additional research would be required to further examine the conflicting evidence in the second comparison.

While these findings are not trivial, they must be interpreted with some caution. There are many factors that contribute to the length of a jail sentence, and while this evidence is suggestive of a positive impact, these findings are not enough to establish a causal link between Gladue reports and shorter sentences. Future replication of this analysis would contribute to a better understanding of the discrepancy

between findings. The next section of this report will present findings from interviews and related document-based data sources to contextualize and enrich the results from this analysis.

5.3 Behind the numbers: Interviews

While these comparative analyses are very useful for establishing whether there are patterns to suggest Gladue reports have an overall impact on sentence outcomes, more information is needed to assess whether the Gladue program is meeting its goals. The purpose of Gladue reports is to assist the court to implement Gladue principles, which are oriented towards restorative justice, not simply a reduction in incarceration. As Mary Ellen Turpel-Lafond states,

“... restorative justice means a philosophy of personal and community healing and an approach to remedying crime in which it is understood that all things are interrelated and that crime disrupts the harmony which existed prior to its occurrence, or at least which it is felt should exist. The appropriateness of a particular sanction is largely determined by the needs of the victims, and the community, as well as the offender. The focus is on the human beings closely affected by the crime.”²⁶

Therefore, the emphasis is on developing the most fitting sentence, not necessarily the most lenient. Interview results are presented below and a detailed description of outcomes from a smaller Gladue sample are summarized in **Appendix C** to provide more context to quantitative findings and to illustrate how Gladue reports assisted in the creation of non-custodial sentences.

Interviews offer an opportunity to contextualize and draw more meaning from the data, allowing for deeper analysis of the role that Gladue reports had in the sentence outcomes examined in the previous section. Interviews elicited diverse and surprising perspectives. Of those who felt Gladue reports did affect sentencing outcomes, some felt the report assisted the judge to implement a non-custodial sentence, sometimes with restorative justice goals, while others simply felt it contributed to a reduced sentence of incarceration. There were also participants who felt that the report did not have an impact, or were unsure of the role the report played. A few thought that perhaps the final sentence informed by the report was detrimental to the client and/or public safety.

²⁶ Turpel-Lafond, p. 3

Case example

"We had an individual who was suffering from FASD, he was abused as a child and there were multiple barriers. He was facing real jeopardy because of the nature of his charges, an assault causing bodily harm that involved a sexual assault. He had also been abused in custody on those charges. If someone had gone into interview him, I would imagine the quality of the information they could get from him would have been poor. If a Probation Officer had gone in, the person may have come across as defiant, or anti-authority.

In this case, however, he had a good lawyer who saw that this person was more than this and ordered a Gladue report. What we got at the end of the day was this excellent report that outlined his history, his community, his grandparents, his own personal history of abuse. The person who did the report contacted collaterals and agencies and there ended up being a number of people from the community who were not required to, but who came to court and said they were part of the community, knew him and were willing to support him. This was amazing.

Leaving this kid in jail, he would have been in protective custody; he would have been in a terrible state. He was functioning at a really low level and it would have been like putting a 5 year old in an adult jail. As soon as we got this information, we thought, "oh my god", and since there were other resources available, we got those into place for him." (S.L, Crown)

Conditional sentences & probation orders

Six Gladue clients received conditional sentence orders and, according to interviews with those involved in some of these cases, the report had a direct impact on the outcomes of their cases:

"Absolutely this report had an impact on the client's sentence. This is a model decision because the judge acknowledged the report. He acknowledged that this client had a difficult life and then gave him a conditional sentence that was later upheld in the court of appeal. This client was a prolific offender, who usually goes to jail. He got a conditional sentence as a result of the report, warts and all. Crown's position was 9 months." (J.L., Lawyer)

"Based upon your experience, do you think these reports contribute to an overall reduction in incarceration of Aboriginal offenders?"(Interviewer)

"Yes, definitely. One client would have received another year, on top of time served, but received a community service order. Another client received CSO when Crown was requesting 5 years and yet another saw a reduction in the length of time, from the 5-8 years requested by Crown, he received 2-3 years. The results are not just trifling." (D.S., Lawyer)

In another example, the lawyer reported:

"Crown was asking for a significant amount of jail time, but didn't get it because of the report. The sentence ended upon being a total of 8 months, time served plus 2 weeks. The purpose of the two weeks was to get him into an addictions program. Crown was asking for 2 years of Federal time." (J.D., Lawyer)

A report writer recounted her experience when one of the reports was presented to the court,

“Once the Crown read her story and understood where she had been in her life he came over to shake her hand and acknowledged how far she had come. It is important for them to see the bigger picture of who these people are and the opportunities for growth.” (E.B., Report writer)

In *R. v. H.* (2011) the judge concluded that, based upon sentencing submissions containing an LSS Gladue report, a conditional sentence order would be an appropriate sentence (line 23-29). This client had been in custody for the duration of trial, and the sentence mandated he be released to attend an Aboriginal program. As Mr. H. did not have a trustee to whom he could be released from custody and who could transport him to the program, the Judge ordered in the conditions that he be *“released from the place of incarceration into the care of [the report writer] for the purpose of being transported directly to the [Aboriginal organization].(Para 9)”*

Length of sentence

There were multiple cases where, although the final sentence still included jail time, interview respondents reported that that the person received less time in jail than they would have had there not been a report presenting the Gladue factors to the court. In some cases, before the Judge ruled on sentence, Crown modified their original request or entered into a joint submission to reduce the jail sentence length. For example, one lawyer noted:

“The report was instrumental in causing the Crown to scale down the quantum of time they were seeking for my client. Before the report, their position had been that the client needed to serve a federal sentence and more time in custody. After the report, Crown was of the view that no further jail time was required. So, the report directly contributed to one man not spending time in a federal institution for considerable time... He is now on a probation order which requires him to answer to his local band in ways that would not exist in the ordinary system. I wouldn’t say it is an easy sentence because he is being required to re-integrate into a society that banished him based upon his behaviour years before and based on a series of offences to his community and himself... Now he will have access to culturally specific healing in a way that he would have no other means of accessing.” (A.S., Lawyer)

Program objectives are clear that the purpose of Gladue reports is to reduce over-representation, but should not be thought of as “get out jail free cards.” Rather they are tools designed to assist the court to implement the most appropriate sentence for each individual before them. In one case where the judge imposed a jail sentence due to concerns about the safety of the community, this lawyer reflected:

“The person would have gone to jail with or without the report, but the report had an impact on the length of sentence. It may have helped to influence the terms of the probation order as well. The judge referred to the report more than once and made reference on record about how disturbing the content was and how helpful it was. Based upon it, although the sentence was jail, it was substantially less than what Crown was seeking. He definitely referred to the principles when he gave his decision.” (C.M., Lawyer)

For many serious offences, mandatory minimum sentences apply that obligate a judge to impose jail time. In these cases, some judges used their discretion to develop a sentence that fit the circumstances of the offender, based upon the contents of the report. While mandatory minimum sentences do

present a challenge to the spirit of Gladue principles, judges can still decide whether to impose a federal sentence or a provincial sentence, they can suggest a person be sent to a specific institution for programming and they can define a tailored probation order to follow the jail sentence. For example, in one case where a jail term was mandatory, the judge imposed a weekend sentence so that the client could participate in a week-day residential program that provided employment and supports to help him address his addictions.

Restorative justice-based sentences

Interview results indicate that some judges were able to use Gladue reports to design restorative justice-based sentences in cases where it was appropriate and where resources permitted. The definition of a restorative justice-based sentence is broad and is defined in this research as it was in *R. v. Gladue* [1999] (Para 71)

“...restorative justice may be described as an approach to remedying crime in which it is understood that all things are interrelated and that crime disrupts the harmony which existed prior to its occurrence, or at least which it is felt should exist. The appropriateness of a particular sanction is largely determined by the needs of the victims, the community, as well as the offender. The focus is on the human beings closely affected by the crime.”

Some examples of restorative justice-based aspects of sentences that resulted from Gladue reports included:

- A sentencing circle that resulted in the person returning to their community (where they were once banned) to learn about their history and traditions. Since the person was an aspiring artist, the healing plan also included a provision that the person pay restitution to their Band by selling their artwork. This offered an opportunity for him to develop his skills, while giving back to his community.
- There were multiple examples of treatment plans that included culturally appropriate treatment coupled with community-based opportunities for participating in and learning culture (fishing/trapping to feed the community, volunteering to assist elders in the community).
- One person was asked to write their autobiography, offering both an opportunity for reflection and an opportunity to share their story with others in similar circumstances.

In some cases the judge used part or all of the recommendations from the reports in their sentence:

“The sentencing recommendations were reasonable and they were implemented. In this case they were followed closely by the judge, with new programs identified as well, which was value added.” (M.B., Lawyer)

Even in cases where a judge was unable to develop a truly restorative justice-based sentence (due to lack of resources in the community or unwillingness of offender/victim, for example), there was evidence that some judges were making an effort to develop a sentence that would meet the specific needs of the person in front of them. For some who did receive a jail sentence, it appeared that efforts were made to ensure they provided opportunities for healing, rather than retribution. For example,

some judges imposed a short jail sentence for clients on waiting lists for treatment, to ensure they would not get lost while waiting for the program, as illustrated in the following case:

“This judge has seen the client on many occasions, and she has lived a life I can’t even imagine and somehow survived it. She is chronically involved in petty theft to the point where she has a record that a judge would easily get into years of jail sentence for. The writer wrote an awesome narrative on the client’s life that I think impacted the judge to sympathize with the client, rather than enact retribution upon her for stealing a steak or becoming intoxicated and stealing. Sometimes the community wants to hammer these people. She did receive jail time, she got time served plus more. I think part of the reason for this is because arrangements had been made for her to enter a women’s shelter to begin healing, and I think the judge gave more time so she wouldn’t get out in the community before she could get into the program.” (M.T., Lawyer)

While some may argue that it is problematic, and not restorative, for a jail sentence of any length to be used as a stop-gap measure to help clients access treatment in the absence of proper community supports, this illustrates, nonetheless, that efforts were made to reduce incarceration. In many cases, people receiving these reports had little or no supports in the community, and were often living in poverty with no housing and no money. Details such as lack of transportation can present barriers to their ability to access programs or abide by certain conditions. In at least 3 cases discussed during interviews, the lawyer indicated that the report assisted the court to define a sentence that would ensure the client had access to the programs they needed. In addition to the example above, another lawyer recalled:

“There was one client who had some theft unders [sic] and was being held in custody. Some arrangements were made so she could be released from the jail to a person in the community who would take her directly to the treatment centre. I had never thought of doing it this way.” (G.F., Lawyer)

Although reduced incarceration is the goal of Gladue reports, in some cases the judge simply cannot implement a community sentence. This is one of the greatest challenges to restorative justice, and one that many people working in the justice system grapple with. The protection of the community is also paramount, and in the absence of adequate funding for programs and services in many BC communities, sometimes this presents a barrier to restorative justice. This is particularly true for chronic and repeat offenders:

“If you have someone who is in a pattern of offending and incarceration for sentences you want to take it away from punitive and back to restorative.... [in the case of chronic offenders] what judges tend to do is say ‘I can’t be concerned with your well-being any more, I’m concerned about the protection of the community.’ I think, in part, this is where the over-representation of Aboriginal people in our criminal justice system comes from. You can’t treat them like run of the mill, Caucasian members of society. I think we are directed by our superior courts to not give up on chronic offenders, and Gladue reports are a tool to keep it restorative” (J.D., Lawyer)

“The judge sentenced him to additional jail. I think she recognized that he was someone who needed to be separated from society, given his record. I don’t think she included some of the programming that was recommended in the report.” (G.S., Crown)

Over the long run, however, Gladue reports do offer a resource to the courts to begin seeking out alternatives for chronic offenders, even when this is coupled with incarceration.

In a few of these cases, where incarceration is mandatory, the Gladue report was used to help the correctional assessment centre or the judge find an institution that would offer the person the programs or healing they required, such as Kwikwèxwelhp Healing Village²⁷. In other cases, the report simply brought the Gladue factors to the forefront:

“Yes absolutely the report had an impact. In one case I spent half an hour in conversation with the judge about the Gladue factors. They are always commented on by the judge, always the subject of some or a lot of submissions by counsel. Have any of the recommendations been taken? In my cases, I don’t think so. I think most of those cases involved a significant amount of jail time.”(J.K., Crown)

Cases where report had a minimal impact

Some interview respondents felt the reports did not have an impact, or did not have a positive impact on the outcome of the case. For some, this was because the client was not in a healthy place or was in a pattern of behaviour that made it difficult to stay out of custody for any length of time. In response to the question, *“Did the report have an impact on your client’s case?”*, one lawyer stated:

“No. Not because of the report. The client doesn’t stay out of custody long enough. There were new charges and events always overtake him. He is again facing significant charges, he will likely face more.” (J.F., Lawyer)

Others expressed concern that even when the sentence was non-custodial, the person did not have the supports in the community or were not in a place where they could succeed on a community-based sentence:

“Ultimately this client who has a record of 99+ convictions ended up with a community sentence order that seemed focused on a treatment plan that never came to fruition. He has since breached his order and is currently in custody. So yes, it did have an impact, it was a judge who is inclined to put clients on a conditional sentence, so that was of assistance as well. I think it did partly have an effect. The accused did last longer on the order than I would have expected. So I have to give credit where credit is due, because when he was first sentenced I didn’t think it would do him much good because I figured he would serve it all in jail.” (N.R., Crown)

²⁷ This is a Corrections Services Canada minimum security prison for Aboriginal men. It offers holistic treatment programs, support from elders and other programs to meet the specific needs of Aboriginal men. <http://www.csc-scc.gc.ca/text/facilit/institutprofiles/elbow-eng.shtml>

Finally, some respondents stated that they did not know what role the reports had in the final sentencing decision, but felt that it provided important information nonetheless.

“Hard to say if there was an impact. You don’t know what the judge would have done without the report. It certainly has helped me make the arguments that I need to. I feel as defence counsel, to be able to put the objective information before the judge in submissions, I can’t help but think it would be of some help” (J.D., Lawyer)

Another lawyer commented:

“I believe they have [an impact on the client’s case]. As much as one can judge these things, you don’t have a direct comparison, but I believe that it is useful information for the court. It helps the court to craft sentences that are more geared towards the individuals they are sentencing and to avoid using boilerplate sentencing. It helps direct judges about what things we can do with the client that may be more helpful to them.” (M.B., Lawyer)

There were also some who expressed concern that the sentence recommendations in the report, or the sentence outcome set the client up for failure or could compromise community safety. In particular, some felt that victim’s interests were not adequately represented in the reports.

“When we speak of restorative justice, what is lacking here is contact with the victims. Anything in the reports that I’ve seen it is like the victim doesn’t exist. Many of the victims are Aboriginal. Where do they come into this model?” (C.R., Crown)

This is a question that merits further discussion and consideration. While the objectives of the reports are to bring the information about the accused to court, the spirit of the Gladue principles are based in restorative justice. The principles of restorative justice require that victims are included in the sentencing process to repair the harm done by the offence and ideally to repair damaged relationships. This often involves a sentencing circle, and may result in a restitution agreement or offender/victim reconciliation process.

To contextualize these findings, respondents’ answers to the question asking whether the Gladue report had an impact on the outcome of their case have been coded and are summarized in the table below. Some respondents provided feedback on more than one Gladue case, thus these findings are not representative of the number of interview respondents, but rather the number of cases discussed.

Table 6: Did the Gladue report have an impact on the outcome of the case?

	Yes (No Jail)	Yes (Shorter jail sentence)	Yes (Received jail, but report used by Judge)	No (Recommendations were unrealistic given circumstances)	No (There were no resources in community)
Lawyers	3	11	2	1	4
Crown	2	1	2	3	1
Report writers	2	2	1	0	0

The findings presented appear to support the findings from the comparative analyses which found that Gladue reports may contribute to shorter jail sentence lengths. 14 respondents indicated that the sentence was shorter than the Crown's original sentencing position, and 7 people indicated that client did not receive jail, and that these outcomes are wholly, or at least in part, attributable to the Gladue report. Five respondents stated that the client still received jail, but the judge used the report in sentencing and 4 respondents stated that the report did not have an impact because the sentencing recommendations were not realistic to the client's situation or severity of the offence. While 5 stated there was no impact because there were no resources in the community to keep the person out of jail.

Finally, all judges were asked whether there was a need for Gladue reports. All 6 judges replied that there was a need for Gladue reports in British Columbia. The findings from these interviews are fleshed out in more detail in the coming sections of this report.

Outcomes for clients

Interviews for this evaluation also revealed important benefits of the report writing process for clients that relate to the long-term objectives of the program. Many clients interviewed indicated that their Gladue report offered them their first opportunity to tell their story in their own words and on their own terms. They noted the therapeutic and personal benefits of telling their story in a non-judgemental environment where they felt they were heard and valued.

"He took the time to sit and listen. He didn't cut me off or interrupt me and just listened. He didn't try to do any digging, pushing buttons, and there was no negativity from him. It was very straightforward. That is what I liked about it." (J.F., Gladue report recipient)

"After we got over the interviews, that opened the door for us to start healing together as a family. It was a positive spin on it. It started us talking about, 'okay, this happened, now how do we deal with it?'" (L.P., Gladue report recipient's family member)

Reconnecting clients to their history

Clients reported that their Gladue reports contained information about their background, culture and families that they would not have otherwise known. For example, while meeting a client in a prison setting, after he had received jail time for his offence, he discussed his thoughts about the report. He said:

"I found out good stuff about my mom. [The writer] got a hold of the right people who knew more about my background. [I found out] that my mom was a residential school survivor. It gave me insight as to why she was so harsh. I was abandoned by my family. Between 12 and 16 years-old I was in every single institutional setting out there. Stability is important. I never had that. Belonging and stability. ...The report linked that, the physical and emotional violence and my problems with authority figures." (L.S., Gladue report recipient)

Another client expressed having a similar experience:

"Because I was apprehended at a very young age, taken out of my native home and put into a white family and grew up white in foster care, I didn't really know a lot about my history, or my

culture and native traditions. I know that I grew up feeling a lot of shame about being native and that shame carried through into the rest of my life. It was interesting to find out, when I read the Gladue report, about the kind of circumstances that native people are going through, like racism. The area where I was born into was a very poor native culture. There was a lot of poverty, alcoholism and family dysfunction....Hearing about the native population that I came from and the hardships, was very eye-opening for me. I understood a lot better what my parents were going through at that time. It helped me understand a lot more. I was very grateful for that. It was a gift....I found out a lot about me, where I came from and what the hardships must have been.”(B.G., Gladue report recipient)

Some also noted that the reports validated positive aspects about who they are, rather than simply focusing on the negative:

“From what I read, the guy took his time and did his homework. It took a lot of consideration and a lot of thought. It kinda blew me away. The strongest part of the report is where it stated my background, what I do to help people and how I help people and what kind of a person I am.” (A.T., Gladue report recipient)

True to the spirit of restorative justice, in some cases the report writer became an important source of support for the client, providing them with resources they may not have otherwise received.

“The communication the writer had with the client had a substantial influence and impact outside the court proceedings. The client seemed to develop a different perspective on life and the circumstances. The writer encouraged him to engage in a healing process that he would not maybe have done otherwise. Accessing resources in the community, which he wouldn’t have done had the writer not been so diligent. Those steps, in addition to the report itself, helped this client’s case outcome [of no jail time].” (M.B., Lawyer)

Some clients reported becoming close with the report writers following sentencing. For some, the writers helped facilitate aspects of their sentence in the community. In one case, a report writer volunteered to provide transportation to a residential treatment program to ensure the client could access it, which also assured the court that the tangible steps were in place for the client to succeed with this community sentence.

Clients’ perceptions of Gladue writers are discussed further in the next section of the report.

6.0 Do Gladue reports make a unique contribution to sentencing?

The previous section addressed the short-term outcomes of the Gladue pilot during the first year of operation. This section will move on to address the second evaluation question, which asks whether Gladue reports help judges implement Gladue principles in a manner that other reports do not. In other words, are they distinct from other sentencing reports, or do they duplicate efforts?

To answer this question, interview respondents were asked to discuss their perceptions and experiences with Gladue reports in comparison to pre-sentence reports (PSR) and other court reports. There was general agreement that both Gladue reports and PSRs vary in terms of content and quality, but overall there were emergent themes from the interviews that highlighted key differences between these two types of reports.

Gladue reports more comprehensive

Generally, most respondents indicated that Gladue reports are longer and more thorough than PSRs. Although some respondents reported they do receive very in-depth PSRs at times, they indicate that Gladue reports are often longer and more detailed, specifically with respect to the Gladue factors in the person's background and community.

"The Gladue report that I did receive was instrumental in obtaining a non-custodial sentence for a client who had been in custody for a long time on a serious driving file. The writer did a tremendous job of digging out the sources and issues that never seem to make it into a PSR. It was balanced, objective and thorough. It was a superior product to what I usually get in a PSR."
(J.L., Lawyer)

"I was extremely impressed with the content of the report and I think the judge was as well. It went into more detail about the background than I had expected. It was written so well that it was emotionally touching and that helped with the advocacy. It helped the trial judge connect with the important factors rather than just having it be more like the PSR. Extremely well written and well researched. ... I think the PSR type Gladue reports do not [help]. This is because they are written by people who do not have any training to understand the principles. Probation Officers/ bail officers—my understanding is that they have almost no cultural sensitivity whatsoever. This report is the only one that I think really is trained and really does understand."
(R.J., lawyer)

In the reasons for sentence in *R. v. A.* (2012), a case where an LSS Gladue report was used, the judge said of the reports

"...while the pre-sentence report is certainly very thorough, the Gladue report is much deeper and concerned with the Aboriginal history and background and makes the point that how his mother's experience with the residential school has really in the end had life-long consequences for him because of her drinking to deal with the consequences of her own upbringing."

Also, despite the concerns cited about the objectivity of the report, the judge in the *R. v. Lawson* (2012) Court of Appeal decision noted that the information contained in the PSR was "similar to that in the

Gladue report, although it was less detailed and did not mention that Mr. Lawson's grandmother had been sexually abused in residential school.²⁸

Gladue reports offer context and draw connections between the person's behaviour and history of colonialism that impacted generations of that person's family and community, thus drawing out the "unique systemic or background factors which may have played a part in bringing the Aboriginal person before the courts"²⁹

PSRs do contain sections devoted to Gladue factors (referred to as "Gladue components") which, according to interview respondents, typically include one to two paragraphs that outline the person's history, and some details about their community, such as demographics, location and cultural heritage.

"Frankly, I don't criticize probation officers for this, but in our area most Gladue components of PSRs must be taken from a template. The wording is the same every time. They are only 3 or 4 paragraphs and worded the same way every time. They never seem to be updated or change. One paragraph usually deals with resources, but sometimes that paragraph is outdated. The dynamics of what is available on a First Nations community is always changing. A lot of this has to do with funding, funding comes and funding goes." (Judge A.L., B.C. Provincial Court Judge)

"I have found PSRs with Gladue Components to be pretty inadequate because it is usually only a paragraph or two. I don't rely on those at all...If I don't have a Gladue report I won't count on the PSR to cover off Gladue for me." (C.M., Lawyer)

One judge observed that this may be related to probation officers' work load and training which would render it difficult for them to do the work necessary to produce reports of the same quality and content as Gladue reports.

"The Gladue writer has true expertise in dealing with Aboriginal communities and has true understanding about the background. Probation Officers are good, but don't have the time to learn and apply this knowledge because they are so busy doing reports for many people, supervising and following up. I would expect a Gladue writer to be more deeply knowledgeable about this particular subject" (Judge D.E., B.C. Provincial Court Judge)

A report writer voiced the concern that probation officers do not adequately address the Gladue factors, if at all:

"The PSR component tells a little bit about the band, their culture and sometimes a little bit more detail. Often I read that the 'client has declined their Gladue rights,' but there is no indication about how this was done. This should be done with a lawyer" (E.B., Report writer)

²⁸ R. v. Lawson, (2012), para 37.

²⁹ R. v. Gladue (1999)

Overall most agreed that Gladue reports provided greater information and detail about the offender, their background and the systemic factors that contextualize their offending patterns.

“The Gladue reports are better. Far more helpful. PSRs with a Gladue component, I find to be, well I can predict what will be in 90% of them. They will provide the history, they will tell me about the band. They probably have a handful of questions they ask the person. They don’t really stray from that format. While it is helpful to have that information, it is just a start. They should be getting into the detail which is something I don’t think I have ever seen in a PSR Gladue component.” (Judge E.S., B.C. Provincial Court Judge)

These findings appear consistent with another study comparing Gladue reports to pre-sentence reports. Hannah-Moffat and Maurutto (2010) examined 12 months of court observations and completed a content analysis of 15 pre-sentence and Gladue reports in Ontario to examine how the reports operationalized the concept of risk. They found some key differences in terms of the objectives of the reports, the presentation of the person’s circumstances, and the depiction of the offender. They observed that PSRs frame individuals and their behaviour differently than Gladue reports. PSR’s offer facts about the person’s history, their life circumstances and their family, but do not contextualize those facts within the broader social or historical picture. In contrast, Gladue reports discuss context and detail about how those social issues and events (residential schools, displacement, community dislocation and breakdown) directly affected the trajectory of the person’s life and how it connects to their offences³⁰. The authors state:

“One of the primary objectives of Gladue reports is to contextualize the offender’s personal and family circumstances within the history and treatment of Aboriginal people in Canada... Although PSRs and Gladue reports both document histories of adoption and foster care, Gladue reports detail how these experiences affect attachment to others, and discuss how separation from family, community and traditions may affect an offender’s subsequent life experience.”

There was no indication that respondents felt that PSRs should be replaced, and many noted that they have received excellent, detailed and well-written PSRs. Rather they expressed the view that Gladue report writers, when properly trained, are better resourced and positioned to provide the court with adequate information to implement the Gladue principles in sentencing Aboriginal offenders in accordance with the guidelines outlined by the Supreme Court of Canada.³¹

One report writer considered this question, suggesting:

“I wonder if it has to do with who is asking the question. Probation Officers are still part of the system, so clients see them that way and will open up more to a Gladue writer who they see as there for them.” (M.S., Report writer)

³⁰ Hannah-Moffat and Maurutto (2010). Pp. 15-16

³¹ See R. v. Gladue (1999); R. v. Ipeelee (2012), R. v. Ladue(2011)

Among clients interviewed, there was broad consensus that probation officers and PSRs can be more harmful than helpful. As M.S. (report writer) stated above, many clients view probation officers as part of a system that has historically marginalized them. Of great concern to respondents was the way the criminal justice system labels and classifies people. Fear of being labelled “risky,” “deviant” or “defiant” makes people inherently distrustful of the process and do not engage.

PSRs are not generally favourable to me. Probation are on the side of Crown. They are not there to help me. I don't tell a Probation Officer nothing. I walk in and answer questions, that is it. I don't look good on paper. People in the system, to them, on paper, I look violent and unpredictable. I don't look good. I've never spent more than 30 minutes with a probation officer.” (L.S., Gladue report recipient)

For this reason, clients indicate that they do not open up to probation officers; rather, they give them minimal information.

“PSRs turn out bad for everyone. I only give them 1 or 2 word answers. To them I'm a criminal. A convict. POs leave out information. Says what he wants to say and leaves out the other [stuff]....The Gladue report writer wrote all of it down on paper.” (D.M., Gladue report recipient)

“I did go and get a pre-sentence report. She was very nice, but I felt that she was rushed and in a hurry, and she didn't really want to know about my circumstances, or anything special about me. She just wanted to know what I did, why and it was just matter of fact. With the Gladue writer, we met 3 or 4 times just to go over my history, what I knew about my family background.” (B.G., Gladue report recipient)

The views on the quality of pre-sentence reports appeared to vary by geographic region. With little exception, lawyers in northern communities expressed concerns about the quality of pre-sentence reports, citing endemic racism, minimal Gladue component research and concerns about Probation Officers' close relationship with Crown and corrections. In urban communities, reviews were mixed, but lawyers and Crown reported fewer concerns of this extent or nature. Most respondents noted that the quality of pre-sentence reports varies depending upon the writer.

Having said this, Gladue clients all stated they did not have positive experiences with probation officers. They stated they were less comfortable or willing to share information with them and felt that the probation officers were not safe.

Reports are comparable to PSRs

While many shared the view that PSRs do not adequately address Gladue factors, there were some who felt that Gladue reports were comparable to pre-sentence reports they had received. One lawyer stated:

“...previously Gladue-component PSRs have been very focused on providing the court with information about systemic problems in the community and the historical aspect. In one [northern location] I used information that a previous probation officer had provided in her report. I would consider them comparable. Well, no, that is not fair. I would think that the

Gladue report writers have spoken to a broader spectrum of people counselling and restorative justice communities than the probation officers have. They are comparable with respect to the historical information, and the individuals, it has always been comprehensively done. The background for the individual has been comprehensively reviewed.” (H.L., Lawyer)

All but 2 Crown also felt that the reports were comparable in many respects. One Crown expressed his view about the quality of PSRs, suggesting that Gladue reports would only be duplicating efforts:

“Probation reports are almost always of the highest calibre and quite fair... PSR writers have a much greater understanding of their role. ... Gladue components should be done within the framework of a probation report. We have a mechanism that does this, if POs need more training about Native context, we can do that. They are already doing the report...” (A.G., Crown)

Concern about the consistency with which Gladue reports provide enough information to the court was raised by all parties. In summary, there was concern that some Gladue reports contained “boiler-plate” descriptions of Aboriginal communities and offered little detailed information linking the person’s behaviour to their familial/community history. These concerns are addressed in a later section of this report.

Sentencing options

In a review of 30 Gladue reports, they offered the following sentencing options:

Table 6: Type of sentencing options provided in Gladue reports

Type of sentencing option	Number of reports
Community sentence order with specific community programs	9
Probation conditions with specific cultural programs or conditions	9
Bail conditions with specific treatment options	2
Probation conditions or community sentence order with no specific programs	6
If custody: House arrest with community programs	1
If custody: Aboriginal institution and culturally specific programs	1
If custody: Multiple options, including community programs	2
Total	30

The primary distinction interview respondents highlighted between Gladue reports and traditional PSRs was the additional information Gladue writers could offer about resources in rural and remote communities that made it possible for the court to design individualized sentences:

“Most importantly the Gladue reports highlight resources that the PSRs do not. PSRs are geared towards larger communities and don’t go on to describe what clients can avail themselves of or

what resources exist in small rural communities. It seems that Community Corrections have a heavy caseload and that they have boilerplate clauses. They are not geared to what goes on in the tiny communities...[and] a lot of times they are not geared to the individual offender. Some offenders are so handicapped that they can't get anything out of it and they may have a hard time attending the suggested program on a regular basis." (J.P., Lawyer)

Another judge noted that the PSRs sometimes seem outdated, suggesting resources that are no longer available in the communities.

The reports provide options tailored to the specific needs of each person that include programs, treatment and even tailored probation conditions. In some reports, for example, the conditions include a statement for Probation Officers to inform them that the offender has FASD, and what behaviours to expect as a result. One report suggested the following probation condition:

"Inform your supervisor that you may have an organic brain injury known as FAS or ARND and that it means you might have difficulty following through, keeping appointments, reading, communicating, understanding instructions and understanding what is expected of you."
(Gladue report excerpt)

One judge said of the suggested probation conditions in Gladue reports and PSRs:

"The Gladue reports seemed to be more pragmatic about abstinence from substances. In other words, they don't recommend them if they don't think the client can adhere to them. Whereas, in a PSR they tend to impose them." (Judge D.E., BC Provincial Court)

Gladue reports focus on sentencing options for community-based sentences, including residential treatment programs, day programs, housing options, cultural programs. They also offer suggestions for probation conditions, developing conditions that are reasonable and realistic for the subject of the report. However, there were concerns that this ideal was not fully realized in practice, and some improvements were suggested and are outlined in a later section this evaluation. All 6 judges and 15 lawyers agreed, as did all but 1 Crown that Gladue reports offer information about community resources, Aboriginal specific programs and treatment options and other resources that they would otherwise not have known about.

According to respondents, PSRs are more likely to offer treatment and program options for custodial sentences, and appear to place less emphasis on community sentences. However, one research study by Public Safety Canada that looked at PSRs across Canada found that the presence of a PSR (compared to cases with non pre-sentence report of any form) was more closely associated with a community sentence and treatment recommendations than those without PSR reports. In 140 cases with a PSR, judges gave a community sentence in 71.4% of the cases, and in cases with no PSR, 53.1% gave a community sentence. The authors suggest that this may mean that the presence of a PSR is not necessarily the deciding factor, as it is quite possible that the judge was already contemplating a

community sentence in many of the cases. Furthermore, they also highlight 19 additional variables that were correlated with community sentence, including risk, lifestyle and criminal history.³²

In a small sample of PSRs available (3) for review during this evaluation, only 1 of three offered examples of multiple specific community treatment options that were specific and tailored to meet the complex needs of the person in the report. The other two offered a general statement “take programs as directed by probation officer”, and only one of those listed 1 specific (non-Aboriginal) organization. With respect to probation conditions, all 3 included no drug and alcohol conditions and no contact orders with the victims. One report also included a curfew and drug and alcohol testing. Only one outlined the options for custodial sentences, providing information about both provincial and federal sentences.

Follow-up after the report

Some respondents noted that probation officers have the resources and mandate to follow up on the recommendations and information contained in traditional PSRs, which is an important piece of the sentencing process. They indicated that this is missing from the Gladue report process. For example, one Crown prosecutor said about a client who had received a Gladue report, but breached his Conditional sentence conditions:

“He did make efforts to follow up on the treatment, it is not really his fault that he didn’t go, I should be clear about that. The point is that it was put into this Gladue report, this plan that he would go to this treatment centre, but there was zero follow-up on it. It is just a report, with someone who has nothing to do with the picture afterwards. Whereas a Probation Officer has the power to assist people to follow up on recommendations and will do that.” (N.R., Crown)

A report writer also noted that she felt follow-up was needed with clients:

“I think the flaw in this process is the follow-up. The person is totally connected to the report writer and then they get shoved over to probation who has no idea who they are.”(E.B., Report writer)

While these were the only two direct comments regarding follow-up, other issues raised indicated that some follow-up or aftercare process is an issue that requires attention. It is important to note that the purpose of Gladue reports is restorative, however, so follow-up and aftercare in this context may look different than the model of enforcement used by probation officers. Discussion will return to the issue of follow-up later in the report.

The purpose of this section was to highlight the distinctions that participants drew between Gladue reports and pre-sentence reports in an effort to answer the question about whether Gladue reports make a unique contribution to sentencing. Findings suggest that, for the most part, respondents feel

³² Bonta, J., et al. (2005). *Presentence reports in Canada*. Public Safety and Emergency Preparedness Canada www.psepc-sppcc.gc.ca

that Gladue reports do present different, and in some cases more comprehensive information about the offender that specifically assist the court's consideration of Gladue sentencing principles.

The next section examines the content of Gladue reports in more detail, presenting findings related to the depth and quality of reports. Discussion will return to the topics covered in this section, with a focus on respondent feedback on the quality, content and areas for improvement.

7.0 Do reports provide adequate information & are they credible?

The third and fourth evaluation objectives address the following two questions:

1. Do Gladue reports provide courts with the information needed to develop Gladue-based sentences and what impact do they have on the criminal justice system?
2. Does the justice community (e.g., judges, lawyers, Crown) consider Gladue reports credible and effective?

These evaluation questions were answered using the following three data sources:

1. Interviews with Crown, lawyers and Provincial Court judges
2. Small sample of sentencing transcripts
3. A sample of 30 Gladue reports

Strengths of Gladue reports

Key informant interviews included a section focusing on the content and quality of Gladue reports, encouraging respondents to reflect on the most useful aspects of the reports in sentencing and about areas for improvement.

From abstract to concrete: Individualizing the impact of colonialism

There was strong agreement that the greatest contribution Gladue reports make to the court is their potential to draw concrete connections between the intergenerational impacts of colonialism (residential schools, community displacement, child apprehensions) and the person in court for sentencing. Reports elaborate upon the historical events, institutional experiences and family/community backgrounds of each person, using specific examples from each offender with more depth and detail than other sources.

One judge noted that the reports provide the background information required to articulate a full assessment of the Gladue principles that go beyond simply acknowledging the legacy of colonialism:

“We can utter the words that are in Gladue about taking note of the systemic discrimination that First Nations people have suffered, but frankly that is verbiage. But if I have a Gladue report about a particular First Nation whose [for example] economic base has been destroyed, who had to move three times, then subsequently lost their graveyard and were left to deal with the [the unearthed remains of their ancestors graves] when the river froze. [This type of information] allows me, when crafting my decision, to be a lot more specific about how the Gladue principles are in play.” (Judge A.L., BC Provincial Court Judge)

Another judge noted, when asked about whether the Gladue reports provide the information they need to implement Gladue principles during sentencing:

“They are at the centre of applying the Gladue principles. I don’t see how you can know the special circumstances of Aboriginal offenders without them, and I don’t know how you would be aware as a sentencing judge of the options available for Aboriginal offenders, other than jail, without these types of reports” (Judge S.F., BC Provincial Court Judge)

Reflecting on a case in a rural northern community where the offender was facing a lengthy jail sentence, one lawyer stated:

“It was beneficial because the judge was fairly new to [the community]...it was important that he have the information provided in the Gladue report to have as full a sense of the individual and his community. He certainly would not have gotten that to the same extent without the Gladue report.” (A.W., Lawyer)

Using a particular case example, another judge noted the contribution the report made to his or her decision:

“For me, that was the most important report that I have dealt with. It provided me with a lot of information that connected the statements that we read about in Gladue and Ipeelee about the traumatization of Native communities through the process of colonization with the specific facts of that case. So many people were involved in that case, it was so intergenerational. It actually made the process of understanding those antecedents as [concrete as possible]. It didn’t make sentencing any easier, but was helpful in understanding that community.” (Judge N.T., BC Provincial Court Judge)

Another judge noted:

“For me [the greatest strengths] are knowing about the person. The information I found most helpful was the personal information that enabled me to find out as much as possible about what is going on with them. There is limited time to get to know the person very well and a lot of individuals are not going to open up in a court room in any event. You can look at a record and see a rash of offences and know that something is going on in that person’s life, but not know what. The Gladue report writer can get that information.” (Judge E.S., BC Provincial Court Judge)

Knowledge of Aboriginal life experiences

Many interview respondents felt that Gladue writers are better positioned to obtain and report this information to the court than other justice professionals and report writers. One Provincial Court judge offered detailed commentary on the information that Gladue writers are able to obtain that is most helpful to the court:

“Identifying times in that person’s life when traumatic things have happened that caused them to get into the situation they are in. Specific detail about the individual is truly helpful. You want that person to open up, and you want to talk to as many people as possible. It is not a situation where you can throw half an hour and expect this person to open up. Sometimes they cannot even identify the things that have impacted them. Sometimes simply re-stating some of the things that have happened in that person’s life is all that is necessary for us to see.” (Judge E.S., BC Provincial Court judge)

Due to their specific training, focus, and most importantly, their connection to the communities and social histories they are writing about, Gladue writers know how and where to get the information needed.

“Report writers are able to get information that the defence and probation officers are not able to. They come up with more information about the accused. They come up with more and different programs than traditional players have. It is a very important program to be funded.” (J.K., Crown)

Many lawyers were open about the challenges to obtaining this information and the reality that they are often not well positioned to talk to the right people or to ask the difficult questions:

“Report writers can delve into details that I would not be able to do as counsel and they can corroborate information given by the accused, by talking to community, friends or elders. That is something that would be next to impossible for me to do as a legal aid lawyer.” (D.S., Lawyer)

“The report is helpful in that it collects information that I would not be able to gather from a client. I’ve recently had a gentleman in his 50s who recounted some horrific stories about what happened to him in residential school. The Gladue report fleshed a lot of that out and as a result information came to light that his claims had a lot of credibility.” (J.P., Lawyer)

“I tried to explore his issues and family issues, and felt it was something that should be explored, but was not able to do it.” (M.B., Lawyer)

In an interview with a report writer, she weaved together the characteristics of Gladue reports that make them powerful tools for addressing the over-representation of Aboriginal people by informing the court about the intricacies and interconnections between the circumstances of the person before them, systemic discrimination and legacy of colonialism:

“They are a real eye opener. The greatest benefit of this program is the capacity to tell the story to the court, to show them how this is an intergenerationally wounded society where [consequently] sexual abuse, physical abuse, alcohol and substance abuse is normalized and endemic. There is no hope in some of these communities.... Judges don’t see that side of life, they only see the person who is in front of them. Well that person is generally abused as well. When the judge sees this, they see that it is this person’s thinking that needs to change, and throwing them into an unhealthy place will not achieve this. We can offer alternatives and things that might help this person, if the time is right. This is the greatest value of this program.” (S.T., Report writer)

Another lawyer noted that, prior to the report, they had not been aware that they should be asking the kinds of questions that Gladue reports do about Aboriginal people’s backgrounds:

“Her awareness of the family background and the client’s situation, which was quite extreme, and it had an effect. I wasn’t aware, it was not something the client would freely talk about. The whole experience caused me to think that perhaps I should be asking questions that I had not thought to ask before. It is not information people will volunteer.” (J.M., Lawyer)

Clients reported that they were very comfortable talking with the Gladue report writers, with many noting that they told the report writer details about their lives that they would not have told anyone else, especially their probation officers and people they perceive as part of the system. As one lawyer put it:

“PSRs are prepared by probation officers... who are viewed as agents of the state by clients....The properly trained Gladue writer is likely to have the questions and be equipped to explore the background issues that a probation officer may not be aware of or may feel are none of their business.” (E.G., Lawyer)

One client noted that his history of institutionalization had shaped his experiences and made him wary of doing interviews and reports:

“I wanted the judge to know. I wanted the judge to know that there are circumstances with my history and what led up to the [offence].

Have you ever had that opportunity before?

I was raised in a therapeutic community, being Aboriginal I was taken away from my parents young. As a youth we were constantly being examined, poked and prodded. As an adult I don't think I used the opportunity as much as I did this time around.” (J.F., Gladue report recipient)

Gladue report writers created a safe environment for them to talk about very sensitive and private details of their lives. For example, interviewees identified the importance of knowing that the report writer would not be judgemental and understood where they come from:

“[The writer] shared with me. Made me open up because she was human with me.” (D.M., Gladue report recipient)

“[He] took the time to sit and listen, didn't cut me off or interrupt. He just sat and listened. Didn't try to do any digging, pushing buttons, no negativity from him and very straightforward and very blunt. That is what I liked about it. I feel that for someone to tell your [SIC] story that is all the recorder should be. When people try to tell your story you get interrupted, and then I think ‘why bother you don't want to hear it anyways.’” (A.T., Gladue report recipient)

A report writer shared a similar perspective on the interview:

“I felt like I was actually doing a service. People were appreciative of having someone who could sit and listen to their story, without judgement and could then connect the dots.” (E.B., Report writer)

The cultural connection was also very important to clients, many of whom indicated they felt at ease knowing that the report writer was Aboriginal and could understand their background. For example:

“Her being an Aboriginal elder may have helped the process. I get really defensive with authoritative white men. I don't get hostile, but at the same time there is a wall. But I was ready as well. She made me feel very comfortable, she was the nurturing type, we had something to eat before we did any writing.” (J.F., Gladue report recipient)

Another lawyer also commented on the fact that racial dynamics underpin the entire report writing experience, and thus identifying as Aboriginal is integral to a writers' ability to help the client open up about issues they would not share with non-Aboriginal people in the 'system':

"I've found the fact that the only people who can successfully dig out these details from indigenous individuals, who are closed mouthed to a society that has discriminated against them for some many years, [are Gladue writers]. It is not surprising that they open up to First Nations people who are from their own background and are clearly more sympathetic to the situations that they are hearing. They have experience from their own families to validate and allow them to ask the kinds of questions that simply get short shrift with a non-Aboriginal interviewer."
(M.T., Lawyer)

Finally, due to their connections to Aboriginal communities, Gladue writers are also able to access and provide important information about programs and sentencing options that non-Aboriginal report writers are often not positioned to offer:

"If the report writer is able to provide details about the types of treatment available, this is valuable information. When I get a good report and they know the resources in the community and they know what is available for each individual person, that is very helpful. Gladue writers are the only people equipped to provide this information." (S.C., Crown)

Gladue writers not only have knowledge of available programs, but are also able to provide detailed information about the resources and support that a person has behind them. This information is not always readily apparent to the judge. Some respondents indicated that Gladue reports offer a comprehensive picture of a person's current circumstances, and this is helpful for assessing the viability of community sentencing options.

"Judges often have a history with the same clients over and over again. This judge had some history and was concerned the person would not access resources. The report provided details about the people who had been spoken to...and who were willing to step up. Had that not been there, the judge would likely have put him in jail" (J.F., Lawyer)

Where reports can be improved

In addition to asking respondents to reflect on the strengths of Gladue reports, they were also asked to consider how reports and the Gladue program could be improved. The following portion of the evaluation summarizes the main themes that emerged from these comments.

Consistency in quality and content

While many respondents viewed reports as useful and beneficial to the court, there were some concerns raised that the most important features were not provided in every report.

One lawyer commented that the report she received was not as helpful as she had hoped, and her experience suggests that not all reports are providing the same depth of information necessary to enable the court to implement Gladue principles:

“Gladue report writers need to ensure that they make it clear how the general issues – with respect to intergenerational abuse and how it relates to residential school — apply to the particular individual before the court.” (J.S., Lawyer)

Of those who advanced these concerns, it appeared the most common issue with the report was that it lacked sufficient detail about the offender to satisfy the court’s obligation to consider the Gladue principles.

When asked “what is missing” from some reports, one judge replied:

“Depth about the offender’s background and options for sentencing. For example, going back to grandparents, whether they went to residential school, or not. Three generations of grandparents, parents and offender. Whether they went to residential schools, why did they come to a city or town, when did they come in, where are they living, what circumstances have they been living in. What, if any, connection the family has to the culture and traditions. If there has been a disconnect from culture and traditions, why? Are there health issues in the family? One case, for example, there was a client with a history of diabetes who went a couple of years without treatment, which would have led to difficulties. (Judge S.F., BC Provincial court judge)

This was also one of the concerns raised about the Gladue report in *R. v. Lawson (2012)*, where Judge Gulbransen says:

“... in my view [the report] does not go deeply enough into the Aboriginal aspect of this man’s life and of Aboriginal life in general...”

Additionally, respondents highlighted other information that would be useful to the court during Gladue sentencing, including:

- More empirical research and statistics to establish the socio-economic circumstances and systemic discrimination of Aboriginal people in Canada with specific information about particular geographic regions and First Nation communities
- More information about the effects of dislocation from communities and how that is directly connected to colonialism and the intergenerational harms of residential schools

Yet there are also many examples where key informants indicated that this information was included in the report and constituted the greatest strengths of the Gladue report. Therefore, it appears that the issue is consistency, where not all report writers are offering the same type or level of analysis. This interpretation of findings seems supported by statements from other justice professionals, who indicated the quality of reports they had seen varied:

For example, one judge noted about the quality of reports:

“I have seen a great difference. Some have been phenomenal in the detail and work that has gone in. Others not so much. A lot of generic stuff, not a lot of individualized information about the offender. Those, some of those, were to the point where they were not of any

value. So there is a big disparity. Those at the other end, however, I found very valuable.”
(Judge E.S., Provincial Court Judge)

A Crown attorney responded:

“Overall they have been helpful. There are the odd reports that are not up to standard. It depends.” (S.C., Crown).

Indeed, upon review of 30 reports in the sample, many reports do include this information, but not all of them. These findings, therefore, highlight the need to enhance the consistency in quality, depth and content of LSS Gladue reports, in order to ensure they comprehensively cover the Gladue factors and are useful to the court.

Unverified reports

Interview respondents also raised concerns about unverified information contained in Gladue reports, because there was no evidence in the report that the writer had taken steps to verify statements made by the subject of the report with other sources (e.g. residential school records), or because there was specific information they suspected was false or inconsistent with other information they possessed. Some Crown attorneys said they found inconsistencies with other or previous court reports

“...there were inconsistencies between what the client said currently and in the past. Including that he had been a victim of sexual abuse, which was a matter not reported on until this particular report. This was not reported to the psychologist who prepared the psych assessment.” (C.R., Crown)

Other Crown reflected similar experiences

“It appeared that the report writer did not follow up with external sources to the offender, and his family to confirm facts that were being asserted. They did not use, as far as I could tell, prior reports that had been written about the offender. From a prosecutorial perspective, it was not very helpful to anybody because it was like the offender and his family were interviewed and what they had to say was just accepted. Even though much of the report is useful, it needs to be presented so that I can see it as objective and fair.” (J.K., Crown)

“Some reports include things that were not validated or there were no collaterals, but wrote the report as though it were fact and emphasized statements such as the subject’s belief they have FASD, without collateral information to verify this.” (S.C., Crown)

In fact, all Crown interviewed felt, as did some lawyers and judges, that there was not enough evidence of independent verification of facts presented in some reports. This view was articulated in the BC Supreme Court ruling in *R. v. Florence (2013)*, where Judge Watchuk stated:

“A Gladue report must, to be of the assistance described in Ipeelee, be balanced and objective as stated in Lawson. It must present accurate and comprehensive information through a neutral lens.

It is troubling that information regarding three important areas of sentencing (remorse, rehabilitation and the history of the family violence) is, at a minimum, incomplete and misleading.” (Para. 76 -77)

In this case the report was accorded little weight, due to the perception that there were inaccuracies and inconsistencies with other documents before the court (including police records), but also because it appeared to the judge that the writer had not attempted to verify information obtained through self-reports. For example, Judge Watchuk observed that the report did not include collateral information from other institutional organizations, such as a police CPIC, Surrey Pre-trial records or Ministry of Children and Family Development documents, to back up the Gladue client’s claims. (Para. 58-60).

While these concerns are very important, this issue will require broader discussion about the reasonable and practical expectations of Gladue report writers. A later section of this report summarizes the challenges that Gladue report writers face in writing reports, some of which contribute to the problems cited above. For example, due to bureaucratic barriers with many institutions and organizations (e.g., MCFD or residential schools), it is very difficult for report writers to obtain “official” documentation to verify some reports within the 6-8 week time period writers have to complete the report. Gladue writers do not have the same access to records as probation officers.

Similar criticisms have been advanced against probation pre-sentence reports as well, thus it would be inaccurate to suggest these problems are isolated to Gladue reports. Additionally, the purpose of Gladue reports is to present information to the court that has historically been excluded from the official record. Some have pointed out that the selective documentation and recording of history is at the root of the intergenerational legacy of colonialism in Canada and that the persistent silence about the mistreatment and abuses committed against Aboriginal people is precisely what has enabled their systemic discrimination and oppression to continue. This is what these reports are designed to overcome. Thus, while objective and accurate reporting of facts must not be compromised, it may be problematic to insist that self-reported experiences by Gladue report subjects must be verified against official records that have historically excluded Aboriginal peoples’ perspectives. This would seem to undermine one of the central strengths and goals of these reports. Careful consideration and discussion may be warranted to establish the standards of objectivity and documentation required in Gladue reports so that they are not held to standards that systemically undermine their utility.

Advocacy

Closely linked to concerns about the verification of information is the perception by respondents that some Gladue reports appear to advocate, rather than present neutral or objective information to the court. The advocacy role sits with the defence counsel in a criminal case, and thus the perception that Gladue reports advocate for non-custodial sentences leads to the concern that Gladue reports are biased towards the defence position and are therefore not neutral reports for the court.

Concerns about the objectivity of reports highlight the need to enhance the presentation of the reports so that they are considered credible and objective. Some felt a few report writers “crossed a line” from objective information gatherers to advocates for the person for whom they are writing the report.

“In two reports I thought quite clearly the report author went beyond the appropriate information, they became advocates. There is nothing wrong with advocating the options available in the community, but they became advocates to the point where they were saying the person’s behaviour was all caused by awful circumstances...” (Judge A. L., Provincial Court Judge)

“You do run the risk of getting the odd author who is being more of an advocate, rather than providing this unbiased, quasi expert report that advises the court about the person’s background and their history. So this is my main concern with the reports, but overall I think it is incredibly valuable because there is just such a lack of knowledge [about Aboriginal people]”.
(S.C., Crown)

Importantly, most respondents indicated they did not have this experience with every report, and thus this appears tied to the issue of consistency. Nonetheless, the perception that some Gladue reports are advocacy pieces can have harmful outcomes for clients, as there are cases where reports were dismissed or ascribed little weight by the judge on that basis. If this view persists, it could also be harmful to the credibility of Gladue reports generally.

Since Gladue reports are considered to be reports written to the court, not for defense, some expressed the view that they must meet the same standards that official court reports (for example, Psychological reports) are held to. At the same time, however, similar concerns were advanced towards pre-sentence reports, as some respondents felt that they were biased towards corrections and Crown perspectives in some cases.

“The PSR is funded by the Government of BC, it is supposed to an objective fact finder but in my experience over the past 10 years they seem to function more as assistants to the Crown. The background on Aboriginal offenders, for example, is incredibly sparse and usually consisted of a paragraph or two....PSRs are rushed and slip shod by a core of writers who are overly tasked with people being sent to them. It is rare to find a good PSR, although they do exist.” (J.L., Lawyer)

Thus, again, these concerns suggest that a larger discussion about the standards of objectivity and the role of reports is merited, as there seem to be varying perspectives on what these are and how they should be assessed. The case law, specifically *R. v. Lawson (2012)* and *R. v. Florence (2013)* reinforces the need for such a discussion.

Sentencing options

Interviews also asked respondents to comment on the sentencing options in the reports. Again, interviewees had varying experiences and perspectives about the quality and content of the sentencing options contained in Gladue reports. As discussed in the previous section, some found the suggestions useful, creative and beneficial.

Others expressed concerns that the options were not realistic given the history of the person they were sentencing or the nature of the offence. This was particularly true for cases where a mandatory minimum sentence applied, and the report writer suggested a community sentence. Consequently, they felt that the sentence options may set the client up for difficulty.

“Often the suggestions are useful, but not always. Sometimes the options, given the person’s history, circumstances of the offence, it would never withstand an appeal. (Judge E.S., Provincial Court Judge)

“I’ve had at least two reports where it was clear that the report writer did not understand the system and recommended a sentence that could not be imposed.” (L.M., Crown)

“The recommendations at the end were not useful, in terms of resources that were realistic for that particular offender. It may be that the writer was relying on information that was not current and often with programs in those communities they are limited by funding and grants” (C.M., Lawyer)

Many concerns hinged on safety considerations and protection of the wider community.

“The sentencing recommendations were completely disconnected in this case. The report writer suggested going on a wait list for counselling. They were about the accused and not the community...We are ignoring the community and we have to acknowledge the need to include the Aboriginal community and understand that protection needs to include the needs of the offender as well. There comes a point when the crime is so serious that the specific concerns about the offender are going to override other factors.” (C.R., Crown)

Some were concerned about the appropriateness of the sentencing options for each client, particularly whether the person could reasonably follow through with them. For example, a few lawyers raised concerns about “no-alcohol” probation conditions for offenders with known addictions issues:

“The [Gladue report] recommendations are used by judges and they do pay attention to them, but often times I find things like, “no drinking” get put into the recommendations....that comes back to [need for] individualizing the reports to the people you are dealing with. If they have a probation history that suggests non-compliance with those conditions, then I will have trouble arguing for that.” (M.F., Lawyer)

Most who viewed the sentencing options as unrealistic explained how the suggestions could be improved. Primarily, respondents suggested that writers ensure that concrete details about the viability of the options are included, such that the court can assess whether the sentencing options are realistic.

“I need tangible, objective, verifiable information that the sentencing recommendations are in place and that they are reasonable.” (C.R., Crown)

For example, many Crown indicated they would need details about length of waiting lists, eligibility criteria and evidence that the person will realistically be able to access the program in order to consider sending someone to treatment, rather than custody.

Due to abuse, marginalization and dislocation, many of the people being sentenced do not have some of the basic resources they would need to access the programs, such as money, housing, transportation or community supports. Furthermore, there is very little in the way of programs or support to help facilitate the transition from court/jail to community programs. For this reason, many respondents voiced their concern that the details concerning access (such as how the person

will find transportation, whether the living arrangements in a community are realistic and safe, whether the client will have the means to succeed) need to be addressed before the court can consider a community sentence. It is not enough to suggest what would be effective, but some pre-work needs to be undertaken to ensure that it is realistic and accessible.

“A lot of these programs do not take sex offenders, for example, so for Crown it is good to have the information available in the report about the steps the person would need to take, and to prove that they are or could be in place.” (L.M., Crown)

However, one report writer commented on the challenges of developing sound, realistic sentencing options for clients with so many barriers:

“It is challenging to find realistic sentencing options, you really have to be from the community and you have to know who to talk to. Also, housing is a big issue here, some people are simply criminalized because of homelessness. Sometimes you end up setting up a strict plan, and wonder are we setting him up for failure. What if they don’t have the supports? What if there is nothing in the community to meet their needs? There is so much that could go wrong. ” (E.B., Report writer)

Another writer spoke about her varied experiences, and the importance of community supports for community sentences:

“I felt very good about him returning to the community because I had done the work and knew he had the support in the community.”

However, with two other clients who lacked this support she was less confident:

“The last two, I probably spent more time trying to connect with family members and there was no community that they were linked to. I didn’t have a chief, council, or addictions/ social worker to call and find out about their family. So, I felt like I was trying to build a community underneath them. His brother was willing to open his home and I was trying to find resources in that community, but I just knew in my heart he would end up back in jail. (E.V., Report writer)

Thus, successful community sentencing options hinge upon the availability of adequate supports and resources in the community. In the absence of this, and adequate supports, Gladue clients can be set up to fail in the community. One of the greatest challenges to implementing community sentences is the reality that many services simply do not exist where they are needed. This lack of community resources is a Gladue factor in itself. Rural and remote Aboriginal communities are isolated, under-resourced and often do not have the capacity to support the many needs of their residents. At the same time, those who need the services may not have the means or desire to travel for assistance, or if they do they run the risk of disconnecting from family, friends and culture. This fact renders it very difficult for report writers and the court to develop creative community-based sentences.

Having said this, the Gladue report program offers the potential to provide this kind of support to people and to bridge gaps in services. Discussions with report writers and lawyers revealed examples where report writers did take it upon themselves to “build that community underneath them,” to provide support where needed and break down some barriers that prevent clients from accessing resources. As in *R. v. H. (2011)* discussed in an earlier section of this report, there are examples where report writers volunteered to transport clients from prisons to residential treatment centres.

“There is a big disconnect in what is recommended and then the actual steps required to make sure it is implemented. That issue needs to be bridged. There is a gap between theory and practice. In one report, she made a bunch of amazing recommendations and then funding became an issue. What she did was ensure there was funding in place and picked him up and then drove him to the first residential centre. There is a big gap between what is out there, and the means to access it (funding). We need some sort of organization between treatment, counsel and the Gladue writer. Some resource or way to connect these various individuals to the treatment centres. We need something to bridge the gap to go the extra step to say what is happening, and how that is going to work.”(D.S., Lawyer)

Other report writers maintained their relationships with the community, family and Gladue recipient after sentencing, following up with them and offering support over a longer term. In another case, the report writer provided ongoing transition support as the client moved from a Federal institution and through two separate residential treatment centres, and then secured an apprenticeship for that client once he completed his treatment programs.

Case Example

“I was at an elder-assisted parole hearing at Matsqui, for a kid that I did a Gladue report for, who had FASD and had grown up in a rural community. He was sentenced for up to 7 years, although they had been asking for 15. I told him if he smartened up, I would assist him through the Gladue process and I would walk with him all the way through that process. I gave him that commitment and we have continued that process, through two institutions and now he is at an Aboriginal treatment facility. He is lined up for a cooking program, and now we have a well-respected chef who will sponsor him when he comes out. Part of that is when I was at the parole hearing, the parole officer had that report.” (J.L., Gladue report writer & mentor)

This finding raises new questions about the scope and role of the Gladue program in achieving its long-term aim of reducing over-incarceration of Aboriginal people. In addition to providing reports, writers who are going above and beyond their Gladue report writing responsibilities to support report subjects are demonstrating the potential of this program to fill important service gaps that contribute to over-incarceration. While not originally part of the scope of this program, this support work is integral to achieving the Gladue report program goals.

In summary, this section presents findings that respond to the question about whether the content and quality of Gladue reports are meeting the needs of the court. So far, findings suggest that Gladue reports have many strengths and contribute valuable information to the sentencing process that have a demonstrated impact on the case outcomes. Specifically, Gladue reports are unique in their capacity to present the Gladue factors to the court in a manner that remains true to the principles of restorative justice and the Gladue decision.

However, findings also highlight key areas where Gladue reports can be improved. Specifically, future program development should focus on improving the consistency of Gladue report quality and content across writers. This may include training enhancements, as well as additional emphasis on the mentoring and reviewing process. Additionally, more discussion is required to consider how to respond to concerns that Gladue reports are perceived as advocacy pieces, including bias and unverified information. Based upon findings, it seems clear that this perception is partly connected to the consistency issues, as many reports were considered highly credible and objective. The perception may also be related to the way reports are written and presented. These problems could be addressed through training, as well as enhancements to the review process. Further, more focus on stakeholder engagement could open channels of communication among all parties (e.g. Crown, Judges, writers, lawyers) affected by Gladue reports, and may present opportunities to alleviate some of this concern.

The next section of the report will turn to operational considerations. Analysis of program and case costs will be presented and contextualized with findings from key informant interviews.

8.0 Is the program design efficient and effective

This section will consider the administrative and coordination of the report disbursement, as well as report writer and lawyer perspectives on the program model. This will be addressed through analysis of costs as well as interview results.

8.1 Administration & case costs of Gladue reports

Program Coordination

Coordination costs of the Gladue program include the cost of one program manager and a part-time coordinator. The Program Manager is responsible for all aspects of program administration, including budgeting, coordination of report writers and mentors, review and approval of report requests, and review and approval of final Gladue reports. The program manager also engages in regular communication with lawyers, report recipients and their families, and other stakeholders (Crown, for example). Finally, the manager also performs all public relations about the program, which includes stakeholder relations through workshops, presentations and development of information materials that clarify the role, objectives and processes of the Gladue report program.

In the first two years of the program the LSS Manager of Aboriginal Services spent an estimated 80% of their time on this program. The table below presents an estimate of costs per report, based upon 80% of the program manager's salary. Note that this includes the costs of time spent on all management activities listed above.

Table 7: Coordination costs per report for Program Manager

Program Manager Estimate of cost per report	Cost
80% of Annual Salary (incl. benefits)³³	\$99,928.32
80% of Monthly salary	\$8,327.36
Cost per report (est. based on 10 reports per month)	\$832.74

In addition to the manager, a coordinator's position has been phased in since the fall of 2012. Some of the coordinator's work has been project-based, but has been evolving as the program is implemented and has developed into an ongoing coordination role. The activities of the coordinator have included:

- Operational: Monitoring hearing dates/outcomes, liaising with lawyers/writers, liaising with Case Management, assigning writers, support person for writers/editors, emergency report writing/re-writing, and follow-up with late lawyer payments.
- Project based: establishing protocols with Corrections branch (clearances/consent to releases), training/mentoring new editors/writers, developing/revising writer templates/guides,

³³ 20% was added to the Program Manager's Annual Salary to account for employee benefits.

establishing a Gladue writer's manual (everything needed to write a Gladue report), JI Gladue course promotion and curriculum development.

The original project budget included \$60 per hour for 20 hours a month for the coordinator position. Based on an estimate of 10 reports per month, this is \$120 per report (2 hours).

The actual coordination costs from April 2012 – February 2013 have totalled \$15, 420, for a total of 257 hours of work at \$60 per hour, or \$128 per report. However, the role of the coordinator is growing as demand for reports is increasing. In just the last four months, the coordinator has invoiced for 170 hours, which brings the actual costs for that period to \$255.00 per report.³⁴ This is partly related to the additional work involved in developing and establishing a new program.

Based upon these figures, for the purposes of this analysis, the coordinator costs per report will be based upon an estimate of \$200.00.

Report costs

The original program budget for 10 reports per month allocated \$1560 per report. This was based upon a monthly estimate of \$12, 000 for report disbursements and \$3600.00 for coordination of the program. Based upon available information, an estimated actual cost per report has been calculated and is presented below. This estimate is based upon 41 cases, chosen from the 60 clients sampled for this evaluation on the criteria that their Gladue disbursement had been billed at the time of sampling. Results are presented below.

Disbursements billed

The average cost of disbursements (including travel) billed for reports during the period April 1, 2011- March 31, 2012, is \$1,096.35, as shown in Table 7 below. This includes the disbursements, which are set at 1,080.00, plus an extra fee disbursement for travel (115 km at \$0.50/km) in additional funding for travel if necessary.

Table 8: Average Gladue report costs

Total Disbursements requested	Total Disbursement Billed	Average disbursement request per report	Average disbursement billed per report
\$50,010.00	\$ 44,950.30	\$1,219.76	\$ 1,096.35

However, there are additional costs involved in preparing reports that are not reflected in the Gladue tariff authorization costs, but that are nonetheless essential to the program. These are primarily

³⁴ Invoices indicate that 170 hours of 257 were used from October 2012 to March 2013 (4 months). This equals \$255 per report in that period.

mentoring and editing costs. Due to the highly technical nature of Gladue reports, and the varying levels of experience with report writing, Gladue writers require ongoing support. This includes mentoring by experienced writers throughout the interviewing, researching and composition process.

Table 8 shows the average extra fees for mentoring and editing costs on cases in the sample for which invoices were available. In total, additional invoices were received for 20 cases in the sample. The total cost of these reports (before extra fees) was \$21, 362.80.

Table 9: Gladue Mentoring and Editing Invoices received 2011/2012

Invoice Type	# Invoices received	Total	Mean amount invoiced	Median amount invoiced	Max. amount invoiced	Min. amount invoiced.
Total Invoices	20³⁵	\$8,725.52				
Mentor	10	\$ 5711.12	\$ 607.90	\$ 300.00	\$ 1,266.12	\$ 33.60
Editor	13	\$ 3014.40	\$ 231.20	\$ 202.50	\$ 435.00	\$ 120.00

Table 8 includes only approved Gladue cases for which additional invoices were received during April 1, 2011 and March 31st, 2012.³⁶ The first column shows the total number of invoices received, and the second column shows the total amount for all invoices in each category. The sample was small, so both the mean and median are presented, as well as the maximum and minimum amount billed.

The total cost of additional invoices for mentoring and editing was \$8725.52 for these 20 reports. When this is added to the total cost of the original report disbursements (\$21, 362.80), the overall costs for those 20 reports increased by 41%, to a total of \$30,088.32. The extra costs on the entire sample of 41 reports (\$44,950.30) represent a 19% increase over the original total cost of reports.

Estimated cost per report

Using these calculations, we can estimate the unit cost per report. The table below summarizes the estimated per report cost of each input, to arrive at a total estimated cost for one Gladue report, which is \$2,337.40.

³⁵ Some invoices included fees for both a mentor and an editor. Therefore the totals below will add to more than 20.

³⁶ These do not include reports that have: a) not yet been billed; b) not had separate invoices for additional services (i.e., mentoring/ editing). It is important to note that this list of cases with extra invoices is not exhaustive. It is likely that there are other Gladue related invoices that this writer is unaware of.

Table 10: Estimated costs per Gladue report

Input	Estimated cost
Avg. Disbursement per report (including travel)	\$ 1, 096.35
Avg. Extra fees per report (based on 19% of disbursement cost)	\$ 208.31
Est. Program Manager	\$832.74
Est. Coordinator	\$ 200.00
Total	\$ 2,337.40

These findings suggest that actual costs of reports are greater than the original budget estimations. This can partly be attributed to the extra costs that are expected when a new program is implemented; for example, new policies and processes must be established, relationships and arrangements need to be developed and unforeseen issues inevitably arise.

The actual costs calculated for the sample in this evaluation offer an estimate to inform future program budgeting, based upon experience thus far. These figures must be understood with the caveat that these are estimates based upon available documentation. The next section of the report will address additional questions about the program design, and will include further discussion about funding and remuneration for writers.

8.2 Funding & remuneration

Interviews also touched on the coordination and organization of the disbursement. Most were satisfied with the roster and disbursement model where lawyers applied for a disbursement and were then assigned a report writer from the provincial roster. Some, however, voiced concerns about this approach.

Remuneration

One of the primary concerns was reimbursement for report writers. Report writers receive their payment through the lawyer. After the lawyer bills LSS for the disbursement the lawyer forwards the payment to the report writer. However, writers indicated that it took a long time to receive payment from the lawyer:

“Many writers do not have other means for support and so it can be a big challenge for writers if they are not paid right away” (J.B., Report writer)

One writer indicated that she had never received payment from the lawyer, because the lawyer had not submitted the invoice.

Some respondents suggest that as lawyers become more familiar with the billing process and since the coordinator has become available to follow up with billing, payment times are improving:

“The lawyers are starting to pay more quickly now. I used to wait months, but now it is much better.” (D.G., Report writer)

Furthermore, interviews with report writers highlight the reality that reports take much longer than the time allotted in the tariff. Most writers estimate spending 30 to 80 hours on each report. The length of time that a writer spends on a report can vary according a number of factors. These include:

- The information available (particulars, disclosure, previous expert and pre-sentence reports) from the lawyer and/or Crown
- The availability of other institutional records, including medical records or foster care records
- Requirement for travel and accessibility of the Gladue client and/or their contacts
- The number of interviews required to complete the report (1 to 4 interviews)
- The amount of information requiring verification
- The work and research required to identify adequate restorative justice based sentencing options (accessible treatment options, community supports, etc.)

Thus, while extra costs are high (19%), it appears that the activities that drive costs up are an important element in the success of the program. More analysis of interview findings, invoices and case costs should be considered to examine this further.

More funding needed

Lawyers and report writers expressed concerns that writers are not paid adequately for the amount of work that they are doing:

“18 hours³⁷ does not even touch what people are expending to put these reports together. If you are going to support, train and have an expectation of a certain level of expertise you need to pay people properly.” (J.G., Report writer)

“In my case the writer was in the Lower Mainland and my client was in custody up north. They gave her a disbursement for half the trip. So it cost her money to do her job. Of her own volition she saw my client on more than one occasion because of her desire to do a good job. It was 25 pages of work, and clearly reflected the attention to detail and quality that one would expect from a report.” (J.L., Lawyer)

One writer estimates that she puts in about 30 hours per report, while others estimate between 50 and 80 hours, depending upon the circumstances and the number of people they need to talk to. Another writer indicated that she spends at least 20 hours on just the interviewing, and still has to spend time reviewing documents, doing other collateral checking, identifying community program options/restorative justice options and then writing the report.

³⁷ Report writers are paid \$60 per hour, at 18 hours for the preparation and writing of Gladue reports in the disbursement.

"I would say we are not well paid for the amount of time and energy we put in. I put in way more hours than what the tariff pays. It is different for each case, and each one is different. The tariff might cover the writing part of it." (E.B., Report writer)

Some lawyers articulated their view that the model is too demanding on their time and that they should be compensated for the administration activities they are required to undertake during the report process. Often lawyers are the first point of contact for report writers, and are asked to provide materials, help coordinate access with their client and apply for and process the disbursement:

"The lawyer is not compensated for the report and yet we are expected to do multiple hours of work that we are not paid for. Sometimes we are asked to review the report, that can take 3 hours. More time is spent on the Gladue report than other PSRs because of the structure of the program. (M.B., Lawyer)

"A PSR does not cost and there is no administrative function on the lawyer, so it is much easier for us to order a PSR. With a Gladue report the amount of work involved by a lawyer for doing this is considerable and we get no compensation for it. But if one is going to follow through and do a good job, that is what we do." (J.L., Lawyer)

8.3 Challenges of report writing

Gladue writer self-care

Writers have expressed a need to debrief and get support during and after completing a report. The nature of Gladue interviews are such that they unearth stories of trauma, violence and sadness. For many writers, who have also experienced or witnessed similar stories, this can be emotional and may trigger past trauma or vicarious trauma. For this reason, it is essential to have resources available to support writers, and budgeting for mentors is an effective means for doing this.

"Important that report writers don't forget about themselves. You are taking this information in and it is horrific. There is a reason these people are where they are. Self-care is very important. As an Aboriginal person I have experienced this and studied it. I internalize it. There are nights where I don't sleep and can't find a way to put the words onto paper." (S.T., Report writer)

"Every report could be improved. But the thing is that you are asking the author to look into the background of the offender and put onto paper the story of that person's life. How could it be improved? By providing better funding and more energy and resources to the author so they can follow up on some of the potatoes they overturn while digging through the field." (J.L., Lawyer)

"Report writers need to be prepared to ask the questions. Asking people about negative events in their lives can trigger trauma. People break down and cry. The writer has to be gentle and make them understand that retelling their story will help them. There could be more training on this. One thing that was great, the counsellor did an hour long presentation in our training about a client in custody who completely unravelled." (G.G., Report writer)

Another report writer indicated that she no longer takes on reports because she felt there was not enough emphasis or support for the emotional effects on the writer.

“Seeing people put their hearts on the line and then not having the follow up, is too much.” (E.B., Report writer)

While most writers felt comfortable and safe with the report writing process, one writer indicated that she felt unsafe during one report interview and felt that more training and preparation would be beneficial:

“I took the referral, but there was no information provided to me about the person and nothing in the training about how to ensure the necessary precautions. I went to interview the person in custody and they had severe mental health issues. In hindsight, it would have been helpful to know that I could speak to the mental health worker on the ward and find out more information about the person and any precautions (like secure room or partitions).”(S.T., Report writer)

“There needs to be preparation for the writers too. There are minor, mid-grade and heinous crimes and the training needs to be different for each of these. I would limit new writers, for example, to less serious offences.” (E.B., Report writer)

Although safety concerns are paramount, the example above may have been an exceptional case, and many writers indicated that they have not had safety concerns while interviewing in a custodial setting. Safety is an issue requiring further dialogue with writers, and perhaps an enhanced training component on writer self-care and safety.

Re-traumatizing clients?

Closely related to self-care were concerns about the aftercare of clients who participated in reports. The nature of the Gladue interview topics are such that they open old emotional wounds, leaving the clients raw and vulnerable. The writers were particularly worried about clients interviewed in custody, as the setting is harsh and vulnerability can be dangerous.

“The interviews are very hard. They are very emotional. Especially if a person is in custody. I’ve had guys say, ‘I can’t talk about that because I can’t cry in here.’ Sometimes I wonder if we are re-traumatizing them. We need to have resources available and continuous training for how to take different approaches to interviewing. They need someone to debrief with after the interview.” (D.G., Report writer)

All writers agreed that ongoing training in this area is needed, and that resources must be allocated and more work needs to be done to establish proper aftercare for clients and their families who open up in these interviews:

“...[During the interview] a whole bunch of memories were triggered and he started having dreams and thoughts. He and I sat and talked for hours and he told me a lot. It triggered a bunch of stuff and there was no support inside and nowhere for him to go.... I felt very concerned about him not having any support.” (E.V., Report writer)

“The interview is incredibly personal and emotional. There were times when I was the first person that they told this information to. When I am done interviewing I sit with them and really try to see how they are doing. I never feel comfortable just leaving because I know what it is like

for them inside, they have to look tough and are not allowed to cry, they can't show weakness. So, I just opened a can of worms, and I'm gonna throw him to the wolves?" (M.C., Report writer)

The evidence suggests that Gladue reports are more than simply documents for the courts, they involve a substantial amount of emotional and psychological energy from writers and report participants. There appears to be a need to develop a program component that focuses on immediate aftercare for clients and writers, with longer-term follow up.

Access to collateral information and documents

Access is a huge challenge for writers, as they are independent and there is not a widespread awareness about the program across the many institutions report writers rely on for information and access to clients.

"Getting information is the greatest challenge. Six to eight weeks is not sufficient to gather the information I need to about clients who have been in the system for a long time." (D.G., Report writer)

In response to the question "What are the biggest challenges with writing a report?", one report writer replied:

"Communication. Because people are not necessarily here or in this region and trying to get people to be interviewed and get everything setup and get people to tell you a story that you can actually substantiate has been the greatest challenge. Communicating between LSS, the lawyer..." (L.H., report writer)

One of the greatest challenges for writers was obtaining access to the documents needed to write and verify the reports. Unlike probation, they do not have the same access to background information, such as CSC files or previous pre-sentence reports. Writers rely upon lawyers for these documents, or must pursue a lengthy freedom of information or formal document request. For example, obtaining documents from the Ministry of Children and Family Development (MCFD) was nearly impossible for one writer. Restricted by an 8-week timeline, the request process through MCFD presented too many bureaucratic hurdles, so she was unable to completely verify the client's report that he had been abused in foster care.

"The report that I did for one person took months because I was waiting for MCFD to acknowledge that my request was not just a general inquiry." (E.V., Report writer)

Report writers also spoke of the difficulty in obtaining pre-sentence reports and previous psych reports. While, officially, these documents are available to them, there are many barriers and time can run out before the information is made available.

This challenge ties in closely to some of the concerns raised in *R. v. Florence* (2013) and by some Crown who were concerned about verification and collaterals. Despite their efforts, in some cases, the use of official documents is simply not feasible given the time report writers have. Consideration could be given to raising awareness of the program among organizations that are not traditionally considered as

criminal justice system stakeholder groups, (e.g. MCFD, schools) to foster an understanding about the program, and possibly agreements to facilitate easier access to documents, with a client's consent.

Training and Mentoring

Most writers indicated an interest in more training and mentoring to address the challenges around trauma, access to documents and other resources to produce objective and well substantiated reports. One writer and mentor reflected:

“The model was to provide mentoring, we ghostwrote with them to build comfort and skills. If we don't have a skill set in the writers, putting them in a position where they may be writing a report on an offender and having them provide an advocacy piece, or if it is related in that fashion, will not be received well by Crown counsel or the judge.” (J.B., report writer)

Additionally, writers also expressed an interest in having ongoing training opportunities and networking opportunities so they could share strategies and resources:

“We need ongoing training. We did some FASD workshops, for example. Things where we can talk about roadblocks and what others have done to overcome it and more information about how we can problem solve, what are others doing, get a network going. If we had other people we can talk to...I like the editing too, I need that.” (G.G., Report writer)

In summary, findings suggest that more resources and funding may be required to enhance this program and address some of the early challenges. Report writers indicate that more training, ongoing mentorship/ resources and opportunities for networking with other writers is needed. In particular, more emphasis could be placed on supporting writers emotionally, to deal with the trauma and stress related to this work.

Interview findings also suggest that report writers are spending more time on reports than they are funded for. Additionally, coordination and case cost estimates suggest that more administrative resources may be required. Although some of the higher than anticipated costs may be partially attributable to start up and implementation, overall, findings suggest additional funding should be considered.

9.0 Summary & Recommendations: Is there a need for Gladue reports?

In summary, overall findings suggest that the Gladue report program has made a substantial contribution to towards the implementation of Gladue principles in British Columbia. Feedback about the content of the reports was generally very positive, and offered many constructive suggestions improving the quality and objectivity of the reports, and enhancing outcomes for clients.

Before turning to recommendations, some final thoughts from interview respondents about the overall need for Gladue reports seems an appropriate place to end this discussion. Despite the issues and areas for improvement raised by interview respondents, almost all people interviewed (with the exception of one Crown attorney) indicated that these reports make a valuable contribution to the sentencing process and are much needed by and for Aboriginal people involved in the criminal justice system:

“What are your recommendations for this program?”

“My recommendation is that the Legal Services Society recognize that it behoves them to honour the spirit of Ipeelee and to do for First Nations people what is absolutely required by the historical imperative. How can we hold our heads up if we just continue to paper this thing along and pay it lip service? That is what happened after Gladue. That is why Ipeelee came along. Because judges paid attention for a short period of time, because when no one came along to enforce the issue, it simply got shuffled off into a single paragraph on a PSR. That is what happened. That is what will happen again if these reports are not restored. Not next month or next year, but today. I’ve got clients who need these reports and have been denied by lack of funding. It’s... It’s... people should be ashamed. We all should be ashamed.” (A.S., Lawyer)

“...Judges were not aware of the extent of the problems in the communities. Both times they indicated it was an eye-opener for them. For example, the percentage of unemployment in the small communities, or the percentage of families who had been effected by sexual assault issues. (V.L., Lawyer)

When asked about whether he thought the program was important one client said:

“Yes, if it will open up the eyes of the judge. White people, they don’t understand the plight of the Native.” He continued to illustrate this point, discussing the public response he observed in a news story to a high profile case involving Gladue principles: “Public outcry was terrible. They were calling it a ‘get out of jail free card.’ That is how uneducated white people are.” (L.S., Gladue report recipient)

In response to a question about his experience with the justice system another client stated:

“The court system doesn't really care about our people. Just another Indian off the street.” (A.T., Gladue report recipient)

A comment by a lawyer reinforces their concerns:

“The intensity and breadth of racism in the North is astounding. There was a jury selection in [town name omitted] about two years ago where after lengthy submissions the judge finally

agreed to challenge the panel and asked how many people though they would be able to deliver a fair verdict on an Aboriginal accused. Approximately 15 people stood up and said they didn't think they could." (L.A., Lawyer)

Some respondents were optimistic and hopeful that the Gladue report initiative has the potential to begin addressing some of these issues:

"The best part about this process is feeling for the first time that this person is going to have a voice in court. For the first time this person is going to be seen as a human. [These reports] are breaking through the middle class measuring rod." (D.G., Report writer)

Another writer with a long history of working on Aboriginal justice issues in Northern BC said:

"I think this program was one of a kind and I think it made history for Aboriginal people in BC. I have received a lot of gratitude from Elders, communities, clients and chiefs. This program was not only helping their sentencing, it was helping their lives. I hope this program continues because I have seen so much positive come out of it. There is too much working against these people and there is almost nothing available for people in jail. This program is so rare and so important." (M.C., Report writer)

Concluding discussion

The purpose of this evaluation was to examine early outcomes from the first year of the LSS Gladue report disbursement pilot. The findings from this report are highly promising, and suggest that the Gladue report program is both needed and valued by those in the criminal justice system, and by the Aboriginal people receiving the reports. Findings from the comparative analysis complement and support the perceptions of interview respondents who felt that these reports did assist judges' and lawyers' efforts to implement sentences that would reduce the incarceration for Aboriginal offenders.

Findings also highlight the need for program modifications, including enhanced training and coordination of report writers, support for Aboriginal people after interviews and most importantly, more resources. Steps should be taken to respond to concerns around consistency in the quality and objectivity of all reports, where it is deemed they are warranted. There is no evidence that these problems are widespread, and in part they appear to be related to broader questions about the scope, purpose and reasonable expectations of Gladue reports generally. Continued monitoring and evaluation of Gladue initiatives are needed to supplement and refine the assessment of this program's contribution, however early indications highlight the value and potential of this program.

In conclusion, the Gladue report disbursement pilot has initiated one of the first substantial efforts to implement Gladue principles in the province of British Columbia. Through establishing this foundation, LSS has taken a leadership role in addressing barriers to Aboriginal people's access to justice in British Columbia. Although there have been challenges in the first year of implementation, early outcomes suggest this program is achieving positive results for clients. The challenges identified in this evaluation present important opportunities for continued growth and innovation to achieve success in the future. In particular, as demand for Gladue reports is growing steadily the current model may need to be

modified to sustainably meet evolving needs. LSS has already begun to respond to some concerns, particularly those raised in *R. v. Lawson* and *R. v. Florence*. For example

1. Enhancing quality and consistency of reports:
 - a. The five-day training session has been re-designed and informed by feedback from stakeholders to ensure report writers are trained and capable of producing high quality Gladue reports. The screening and certification processes have also been reviewed and enhanced.
 - b. A template has been created and additional training and support initiatives developed to improve the consistency and quality of Gladue reports.
 - c. Measures to support writers through the writing process have been enhanced, including greater focus on mentorship, editing and debriefing support.
2. Stakeholder engagement:
 - a. An advisory committee has been created, involving justice community experts and professionals. The role of the advisory is to provide guidance for the program, including critical analysis, procedural and substantive feedback. They also act as a link to the entire justice community, including the bar, law school, Crown, Aboriginal communities and political leadership, and other jurisdictions.
 - b. The program manager continues to deliver presentations and workshops to justice system partners to enhance awareness of the program.
 - c. The program manager is building relationships with the Crown, Corrections and MCFD, to foster agreement and understanding about the role of Gladue reports. Additionally, some work is focusing on facilitating information sharing and coordination. Crown and Corrections have access to documents that are also used in Gladue reports (for example, past PSRs, Psych reports, MCFD records). Additionally, Crown were invited and attended the most recent Gladue writer training at the J.I.
 - d. Political relationship building and partnering with tribal councils (for instance, the Program Manager is providing editing and mentoring support for Tsay Keh Dene who will fund their own reports.

Recommendations

Report writer training & certification

- a. **Mentorship:** The mentorship component of the report writer training is an essential aspect of the training. It addresses ongoing training needs and provides an important debriefing and support resource for new writers. To continue this, more funding would be required as evidenced by the amount of extra case costs derived from mentorship.
- b. **Debriefing and trauma support:** Ensure that there are debriefing supports and trauma related training for Gladue report writers. Many report writers and others involved in reading reports (e.g. program manager, mentors) expressed the emotional impact that writing reports has, and some suggested that more training or opportunities for debriefing and communication with other writers may be beneficial. One writer suggested more opportunities for writers to come together and share resources, strategies and experience, such as a conference or meet ups. Again, this level of coordination would require more funding and resources.
- c. **Strengthen the process for approving and adding writers to the roster:** Allocate additional resources towards training and approval of report writers to establish a strong basis for ensuring that Gladue reports are credible and objective. Steps should be taken to inform the judiciary, Crown and other stakeholders about the content of training and the certification process. Enhanced understanding about the training and certification of writers should assist with addressing concerns raised by the judges in *R. v. Lawson* and *R. v. Florence* regarding credibility and objectivity. Please see Appendix D, which outlines the steps that LSS Aboriginal Services has already implemented to ensure the quality and objectivity of reports.
- d. **Training enhancements:** Involve as many members of the justice community and other stakeholders (particularly Crown and the judiciary) in the training process. Their expertise is most valuable to the writers, and they are the primary audience for these reports. Their knowledge and feedback about report quality and standards is vital to the success of the program.
- e. **Communicate training & certification criteria:** Make the training and certification criteria available to stakeholder groups. This would enhance overall awareness and understanding about the program goals and objectives, while providing a reference for assessing the qualifications report writers.

Aftercare for clients

- f. **Implement aftercare support for Gladue report recipients:** The Gladue report process offers an important opportunity to support Aboriginal clients in very important and tangible ways, that are bigger than the reports themselves. Importantly, both clients and writers expressed concern about the need for immediate aftercare support for clients after Gladue interviews. The issues discussed are emotionally heavy and may trigger old traumas. It is essential that arrangements be put in place prior to interviews,

to ensure clients in custody and in their communities have some support to turn to should the interview weigh heavily on their emotional well-being. This could be coordinated through elders, councils/ chiefs or family members, if available. For clients in custody, arrangements with mental health support workers or program coordinators would be appropriate. For those with few community connections who are not in custody, writers could use the opportunity to connect them with culturally appropriate programs to assist them with their healing journey. Arrangements should be discussed with clients prior to the interview, or at the outset.

Sentencing recommendations:

- g. **Practical & feasible sentencing recommendations:** To enhance the utility of sentencing recommendations, reports should present information about the steps the client has taken to access alternative programs, treatment or restorative justice options. This might include, determining eligibility, making applications, securing placement on waiting lists, identifying and obtaining commitments from community/band members for reintegration or restorative justice, and/or other steps. It is important these actions are initiated prior to sentencing. Judges and Crown stated in interviews that these details can make the difference between granting a community sentence, or not because enhances their confidence that these options will be successful, and can help satisfy other sentencing concerns, such as protection of the public.

In some cases, report writers play an integral role in assisting client to take these steps. As writers identify possible program or restorative justice options, they can convey this information to the client or their lawyer, as they can assist the report recipient to develop concrete healing plans and take steps towards implementing them. This may include contacting treatment centres to be assessed for eligibility and be added to the waiting list in advance of the sentencing.

For clients with few supports, more work needs to be done to find community alternatives. The lack of available programs or community supports should not justify a custodial sentence.

- h. **Follow up with reports & recommendations:** To ensure recommendations are feasible and implemented, work is required to follow up with both clients and the programs/ community organizations that were recommended. Additionally, for clients who are incarcerated, it would be of benefit to the clients to ensure their Gladue report is used in the assessment and classification process.

Support staff

- i. **Establish a full-time coordinator's position:** The program requires a greater level of coordination to address many of the recommendations and concerns raised in this report. A key recommendation would be reconsideration of the administration and coordination of the overall program to enhance the cohesiveness and efficiency of the

program, while responding to some of the concerns around the quality and consistency of reports.

- i. The program requires more staff resources. There is a need for someone to perform coordination activities, such as assignment of report writers, access to documents, training needs and support to writers and lawyers
- ii. There is also a need for someone to take on aftercare and follow up for clients. The roster approach to the program presents challenges for follow up and aftercare on clients.
- iii. A comprehensive system for case coordination and tracking is needed, to support ongoing program management and to ensure data is accessible for future evaluations of the program.

- j. **Consider establishing an aftercare worker position:** In order to implement recommendation G, more resources will be required to support the work involved in establishing practical and achievable healing plans. This role could also be responsible to do follow up for clients who are incarcerated, to ensure their reports are used for classification decisions.

Centralized coordination of this role would be of benefit to clients and report writers. In the Toronto Aboriginal Legal Services model, an aftercare position was created to support this function. The burgeoning Manitoba Onashewewin program is situated within an existing Aboriginal restorative justice organization that is equipped with the resources to do this. A model that situates the Gladue report writer program in an Aboriginal organization, such as Toronto and Manitoba's, may be considered for the future of the program. If the LSS roster model is maintained, consideration should be given to how aftercare and follow up can be supported.

Support & resources for writers and lawyers

- k. **Develop a repository of knowledge on Aboriginal services and Service gaps:**
"The circle of restorative justice is not complete when there are long waiting lists for treatment beds, or no transportation assistance for defendants to get to counseling. Making Gladue sentencing recommendations to reduce the number of Aboriginal people in prison becomes a hollow exercise without this critical next step."³⁸

It is recommended that LSS use the Gladue program to develop and advocate for a network of services that will meet the needs of Aboriginal people. This program is the first coordinated provincial effort aimed at identifying and enhancing access to non-custodial sentencing alternatives for Aboriginal people. As such, it is uniquely situated to both develop a repository of programs, and to identify unmet needs and service gaps. This opportunity should be harnessed. More importantly, writers can use this as a

³⁸ Quotation attributed to Program Manager, Pamela Shields.

resource for identifying potential community sentencing options when writing reports. This would enhance efficiencies and benefit the entire community.

- l. **Identify and implement report writer communication networks:** The roster approach can lead to isolation for some writers. Identify opportunities for developing a network of report writers so that they can learn from and support one another. This will enhance the overall capacity of all writers.
- m. **More financial support for writers:** Based upon interviews with writers, clients and lawyers, writers spend more time than the tariff pays them to complete reports. Some also absorb other costs, such as travel costs and telephone bills, to ensure that the reports are completed on time. Allocate more funding and resources to writer compensation, ensuring the tariff accurately reflects the number of hours (30-60 hours, including travel, writing and interviewing) that report writers spend on each report.
- n. **Administrative support for lawyers:** Lawyers highlighted the need for more resources in the tariff to support the work they do to coordinate and support the Gladue report writing process. The current model relies on lawyers to facilitate communication between the client and writer, provide the writer with reports and documentation and coordinate payment for the writers. This work is currently unpaid. Some administrative fees should be included in the tariff for lawyers.

Enhance communication with stakeholders

- o. **Open communication channels with key stakeholders:** Provide opportunities for feedback and knowledge sharing with justice system stakeholders, to enhance visibility and understanding of the program goals and objectives. There may be confusion about the overall program goals and processes, which may be contributing to some negative perceptions about the program. Opening channels of communication could alleviate confusion and/or present an opportunity to dialogue about challenges and solutions with key partners.

Appendix

Appendices A-D

Appendix A: Gladue programs in other jurisdictions

ABORIGINAL LEGAL SERVICES OF TORONTO

In Ontario, much of the implementation of Gladue programs has developed from bottom up, with community organizations developing local Gladue programs to meet the needs of Aboriginal people. Aboriginal Legal Services of Toronto established the Toronto Gladue court, which specializes in responding the needs of Toronto's urban Aboriginal population. More than simply a courthouse, Aboriginal caseworkers from the ALST Gladue Caseworker program support the lawyers, Crown and judges at the Gladue court, liaise with Corrections or probation services and connect Aboriginal people with a number of Aboriginal specific programs, including mental health, addictions and advocacy services located at the court. The courts primarily handle bail hearings, sentencing and guilty pleas. The primary function of the caseworker is to prepare sentencing reports for lawyers upon request, to assist the court in applying Gladue principles³⁹. Caseworkers work closely with people receiving reports to assist them in identifying and securing relevant treatment options that could form the basis of an alternative sentence. Caseworkers receive an annual salary of \$40,000, and the total cost of the Gladue Caseworker program, funded by Legal Aid Ontario, was \$166,000.00 in 2006.

ONASHWEWIN (MANITOBA)

Manitoba currently has no formal Gladue report program. Legal Aid has informally been funding a local Aboriginal restorative justice organization, *Onashewewin*, to do Gladue reports for some Aboriginal people in sentencing, but not for bail. Onashewewin, has contracted with their own Justice workers, who have backgrounds in Native studies and experience with Aboriginal justice, to write the reports. The organization is currently working with local consultants to develop a formal training session. Legal aid funds \$500.00 per report for the contracts. The organization indicates that the greatest challenge so far has been to obtain adequate or sustainable funding for this initiative. They are currently exploring options for funding.

MI'KMAQ LEGAL SUPPORT NETWORK (NOVA SCOTIA)

Nova Scotia is the only province where Gladue reports are funded by the court for sentencing. Mi'kmaq Legal Support Network has a roster of approximately 16 Gladue writers recruited from Aboriginal communities and universities to contract for reports. Writers are given 10 weeks to write reports, and the court is invoiced \$2,875 for each report, which includes travel and administration fees. MLSN staff

³⁹Aboriginal Legal Services of Toronto, <http://www.aboriginallegal.ca/gladue.php>.

Legal Aid Ontario (2008). The development of Legal Aid Ontario's Aboriginal strategy. Retrieved, http://www.legalaid.on.ca/en/publications/downloads/0807-29_DiscussionPaper_public.pdf

review and edit the reports. Consistent with other provinces, MLSN has experienced a substantial increase in demands for Gladue reports since *Ipeelee*.

Appendix B: Program Description

Process for Applying for a Disbursement

Legal Services provides Gladue report funding to Aboriginal people who have been approved for legal aid under the disbursements tariff. Lawyers apply for this disbursement, and once approved, LSS assigns a Gladue writer who is familiar with the client's culture, community and/ or is close in proximity to the client. Once the writer is assigned, the report can take up to eight weeks to complete as the writer contacts the client, their family, community members, completes research on their community/culture and identifies possible treatment and community based options for sentence to include in the report.

While all Aboriginal clients involved in a sentencing or bail hearing can apply for a disbursement, priority is given to youth, people who have a bail hearing, a lengthy record, or who are facing the most serious sentences (indictable, federal incarceration). Those who have survived residential school or foster care, have FASD or mental health concerns or have community or family who can support a community healing plan are also prioritized for report funding.

Writing process

Report writers have eight weeks to complete a report. Writers begin by contacting the lawyer and report recipient, and will often meet with the report recipient more than one time, for 2 to 4 hours at a time. Following this, writers contact as many family members, friends and community members (band, social workers, employers, teachers, etc...) as possible to obtain information about the person's background, their upbringing, family, community and other details about their life trajectory. Writers use this information to flesh out and corroborate the information provided by the report recipient, and sometimes the writer must return to meet with the client if new or conflicting information is identified. The writers also endeavour to locate past pre-sentencing reports, psychological reports and the offending background of the person, to contextualize, verify and supplement the information from interviews. In some cases, when consent is granted, attempts are made to verify information through historical records, including Ministry of Children and Family Services files, adoption records, Indian Residential School archives and Corrections records.

Following this, writers identify and contact treatment centres, programs and community members who may be able to offer a reasonable community sentencing alternative to incarceration. Ideally, report writers work with the accused to implement steps to access these supports, determining eligibility and feasibility, filling out applications and working with the report recipient's community (Band, chiefs, elders, family) to develop a plan if they are willing and able to welcome them back to their home community. Once completed, reports are submitted to LSS one week in advance of sentencing for review and verification. Upon approval, they are forwarded to the court or lawyer to be filed as a pre-sentence report.

Gladue reports: Format and content

The format of Gladue reports vary depending upon the writer and information available, but are often presented in a format similar to traditional pre-sentence reports provided by Corrections services. In addition to reviewing basic personal information and offence details, Gladue reports delve deeply into the histories and backgrounds of the people to be sentenced, examining specific factors that illuminate the relationship between their offenses and the systemic factors known to contribute to the criminalization and over-incarceration of Aboriginal people (Gladue factors). Specifically, they look at systemic and multi-generational issues that are understood to be rooted in colonization.

Reports provide details about the person's life experiences, physical or sexual abuse, family relationships, living conditions, Fetal Alcohol Spectrum Disorder (FASD), mental health issues and disabilities. They go deeper to learn about their family's history, detailing whether their parents or grandparents were in residential school and what the concrete implications of those experiences were on subsequent generations of that family, and specifically on the person before the court. They discuss the history of the communities, whether they were displaced from their traditional territories, their hunting or fishing grounds destroyed or whether a residential school was placed there. Again, reports outline the concrete connection between these events and the social conditions in those communities, such as, endemic poverty, chronic addictions, widespread sexual abuse and physical abuse, then go on to illustrate how this contributed to the particular person's offending history.

Reports also discuss the person's attributes, including their contributions to community, skills, educational achievements, employment, interests and efforts to address any underlying issues. Additionally, they identify the people in their lives who can provide support in their healing plans.

The last section in the report identifies alternative sentencing options based upon the person's unique circumstances and consultations with communities/programs, to provide a realistic set of options. The goal is to provide non-custodial options that will address the person's underlying issues, and will ideally restore the person's connections to family, community and culture while still responding to the harm caused by the offence. In some cases, reports may include a variety of sentencing options for a judge to consider, depending upon the type of sentence they will impose. These often include relevant probation conditions, community treatment options, residential treatment options or restorative justice options, and opportunities for the client to reconnect with their cultural traditions. If custody appears inevitable, the writer may offer suggestions for the appropriate type of prison sentence (Federal and Provincial) or may offer information about a particular institution that offers relevant programming and community options for reintegration upon release.

Appendix C: Behind the numbers

This table includes the initial sentencing position of the Crown, and compares these to the actual sentence outcome. Many of these cases illustrate efforts by the court to use restorative and/or rehabilitative oriented sentences, in conjunction with or as an alternative to incarceration.

Case background	Initial sentencing position	Outcome
Youth charged with 2nd degree murder	Adult sentence – 10 years jail, no possible parole	Time served, 6 months additional jail; Intensive Rehabilitation, Custody and Supervision Order (IRCS)
Assault with a weapon	18 months in prison	Time served (7 months) + 2 years probation
Sexual Assault (x4)	3-5 years in Federal Jail	18 months jail(mandatory minimum). The judge tried to introduce a CSO, but was bound by the mandatory sentence. ⁴⁰
Break and Enter with intent	Unknown	By joint submission, conditional sentence order with a plan to have client attend an Aboriginal cultural treatment program while awaiting acceptance to a culturally appropriate residential alcohol and drug treatment centre. The judge also included a healing circle in the conditions.
Aggravated assault with a weapon	Unspecified federal sentence (2+ years)	Mandatory minimum sentence required - 60 days in jail. Judge cited factors identified in Gladue report, sentenced client to weekends in custody, so client could continue to attend residential alcohol treatment program on weekdays.
Break and Enter + multiple breach charges	Jail time (unspecified)	4 month conditional sentence (concurrent on 3 files). Victim offender reconciliation.
Robbery	Unknown	Time served (1 year). 3 year

⁴⁰ The lawyer, in writing stated the following about the outcome in this case: “I believe the report... submitted carried a lot of weight with the court as the judge clearly linked [client’s] offending to the fallout from the residential school experience of those in the community and of [client’s] parents and family members. I don’t think the report changed the Crown’s position, based on what I heard in court, [they are] taking the position that these were very serious offences that required significant jail time to achieve denunciation and specific and general deterrence. The judge did not agree with that, saying that serving a sentence in the community would have a much greater impact in those areas than would a jail sentence which most of the community would perhaps never know about.”

		probation with a number of restorative programs. Including: Attend VisionQuest Learn Coast Salish language Community Service for local Aboriginal nation Residential treatment program Trauma counselling and employment programs
Robbery	2 years Federal time	8 months (time served = 7 months). The extra time was to ensure client would be released directly into a residential treatment program.

While there are many examples where the report did have an impact, there are also cases where it did not. These cases are important to examine, as they highlight where the program can be strengthened and improved. In addition to *R v. Lawson (2012)* and *R. v. Florence (2013)*, a small sample of these cases are provided below.

Case background	Initial sentencing position	Outcome
Woman charged with assault	Federal time – 3-5 years	720 days in custody. Judge found that Gladue report was out of date (had been ordered well in advance of sentencing). PSR was newer, circumstances had changed and client had been charged with breach of recognizance. Judge found this reasonable grounds to assume that she could not abide by conditions in community and required a jail sentence.
Aggravated Assault	2 years federal time	730 days in federal custody. The judge did not comment on or use the report in this case.
Vehicle theft	Federal time	The judge indicated that the report was an “advocacy based piece.” Judge stated that it did not provide enough information about the accused. The report was set aside.

Appendix D: Letter accompanying Gladue reports submitted to court

This draft letter is attached to all Gladue reports submitted to the court. It can be changed and updated accordingly as needed.

The following provides general information on Aboriginal Services, and specific information on LSS's *Gladue* report pilot project.

My mandate as Manager of Aboriginal Services is to improve legal services to Aboriginal people by prioritizing the recommendations made in *Building Bridges: Improving Legal Services for Aboriginal Peoples (Building Bridges)*. This report was commissioned by LSS in 2007. I am responsible for the design, implementation and project management of projects, and services targeted for Aboriginal persons, (First Nations, Inuit, and Métis) within the province. The *Gladue* report pilot project is one such initiative.

Funding for a *Gladue* report is initiated by a request for disbursement from legal aid-funded defense counsel rather than a court order. Despite funding flowing from such a request, the report is not a tool for defense. As noted in *R. v. Ipeelee*, [2012] 1 S.C.R. 433, a *Gladue* report "...is an indispensable sentencing tool to be provided at a sentencing hearing for an Aboriginal offender and it is also indispensable to a judge in fulfilling his duties under s. 718.2(e) of the *Criminal Code*." A *Gladue* report contains specific information on the offender before the court, including personal, family and community history, to support the judge in considering alternatives to imprisonment.

Over the past two years, LSS has provided *Gladue* report writing training to representatives of Aboriginal communities and organizations province-wide. LSS no longer provides this training as the Justice Institute of BC now includes a five-day *Gladue* report-writing course in their Aboriginal programming.

LSS has implemented a review process to ensure the credibility and integrity of all LSS-funded *Gladue* reports. The *Gladue* reports present the court with details on the Aboriginal status and circumstances of the defendant, and practical information for the court in consideration of the least restrictive options that are reasonable in the circumstances. Report writers are prohibited from including sentencing recommendations and addressing issues of deterrence and denunciation. The reports include:

- a brief summary of the report writer's training, experience and background.
- a legal review to ensure that the reports do not cross the line into personal opinion and advocacy.

LSS currently maintains a roster of trained *Gladue* writers who have taken the training or have equivalent experience working in the justice system. The writers are contracted by LSS to prepare reports for legal aid clients. The *Gladue* Report Writers Roster policy details the requirements to be considered for the LSS *Gladue* roster, which includes the following:

- (a) Successfully completed a *Gladue* report writing training course approved by LSS.
- (b) Be Aboriginal or be closely connected to the Aboriginal community (e.g. an Aboriginal Justice Worker who does not identify as Aboriginal).
- (c) Any other relevant factors that LSS deems appropriate, such as training provided by the Native Courtworkers Association, and Correctional Services Canada Aboriginal Liaison program.

While comprehensive knowledge of *Gladue* principles and report writing skills are essential for inclusion on the *Gladue* report-writing roster, work experience and cultural competency are of critical importance. The current roster is comprised of writers who have a minimum of two years experience working in the justice system including Aboriginal restorative justice, law enforcement, mediation and probations. LSS selects *Gladue* writers for the roster who are trusted members of the Aboriginal community who are either Aboriginal or have a background working with Aboriginal communities and agencies. The *Gladue* writers have an appreciation of the unique history of Aboriginal people and are effective in gathering information from family, community members and service providers.

LSS appreciates that a rigorous standard must be maintained for the *Gladue* reports to be of service to the court. The reports should convey the historical, cultural and systemic background of the Aboriginal offender in a trustworthy manner without bias. The reports should provide options for restorative justice programs including treatment plans that are specifically tailored to the needs of the Aboriginal offender.

Finally, I would like to emphasize, as previously stated, that this is a pilot project. A formal evaluation will be completed in 2013. The budget is limited and continued funding is contingent on the results of the evaluation and available budget.

Pamela Shields
Manager, Aboriginal Services
Legal Services Society

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