



April 15th, 2024

Subject: BCFNJC Gladue Services Department: Temporary Triage Policy 2024 Update

The BC First Nations Justice Council (BCFNJC) is committed to implementing the BC First Nations Justice Strategy, which includes in Strategy 6 the implementation of a comprehensive Gladue strategy supported by a dedicated Gladue Implementation Agency. BCFNJC's Gladue Services Department (GSD) seeks to advance Strategy 6 and provide Indigenous people in British Columbia with the highest quality Gladue products in the most time efficient manner.

As the quality of our reports has increased and awareness of our services has grown, the demand for Gladue products has exceeded all previous demands for Gladue products. In 2021-2022, the first year that BCFNJC took over providing Gladue products BCFNJC produced 319 Gladue Reports, which is over a 100 more reports that were provided by Legal Aid BC in the previous year. In 2022-2023 BCFNJC received 510 Gladue Report requests and provided 465 Gladue Reports.

To date BCFNJC has provided substantially more Gladue Reports than were previously provided by Legal Aid BC, while providing these reports in a trauma informed and Indigenous-centered way. Also to date the demand for Gladue Reports has exceeded the capacity of our staff and roster team.

BCFNJC is addressing a high volume of requests for Gladue Reports while ensuring clients are being met with improved, effective services. BCFNJC issued a press release on March 27, 2024, to communicate the high demand to Rights and Title Holders, as well as those working in the justice system. As the press release explains, there has been an increased demand for Gladue Reports at sentencing, and for other purposes in the colonial legal system since BCFNJC assumed responsibility for the delivery of Gladue Services in 2021. We are committed to meeting this demand efficiently and effectively however, this will take time.

To ensure the best use of our capacity and resources, we have diversified our work product based on need. We now provide Gladue *letters* for matters with a sentencing range of 6 to 24 months in jail and Gladue *reports* for matters facing jailtime of over 24 months. This is a temporary measure intended to ensure the greatest number of Gladue Products are provided to the greatest number of Indigenous people in B.C. as we build and grow our team to meet the ever-increasing demand.

To increase the quality of the Gladue work product and to stabilize the availability and timeliness of services, we are actively moving from a roster writer model to a staff model with additional staff hiring commencing May 2024. However, to meet the demand we are still using Gladue roster writers in addition to our staff.

Last week, letters were sent to counsel who had outstanding requests for Gladue Reports. The intent of these letters was to gather further information to allow our team to address the issue of delays in writing Gladue Letters and Reports. These have caused a flurry of questions and concerns for Indigenous persons served. We apologize for not communicating better in the first instance. This letter will clarify information that was sent by BCFNJC's intake team and answer additional questions that we have heard from members of the bar and bench.

TEMPORARY TRIAGE POLICY

BCFNJC has had a triage policy, adopted by our Council, since fall 2022 as the demand for Gladue products has increasingly outweighed supply. The decision to prioritize some reports over others was not taken lightly then, and the more recent decision of staff to update the policy in response to a growing backlog and delays delivering reports in a timely manner, was made with much thought and discussion with senior staff and members of the Gladue steering committee.

There have been instances where the delayed production of a Gladue Letter/Report will mean that a person remains in custody for longer than the sentence they would receive. There have also been instances where the Gladue Letter/Report would not have made a significant contribution to the outcome of a shorter sentence or completion of a condition that will result in a discharge. We acknowledge that the continued delay in the provision of a Gladue Report or Gladue Letter is unfortunate, but we commit to communicating delays in a transparent manner so informed decisions can be made by counsel.

Updated Processes – Summarized and Explained

Gladue Letters:

Gladue Letters will be provided for Youth matters that have an initial sentencing position less than 24 months and Adult files that have an initial sentencing position of 6 – 24 months. A Gladue Letter is a condensed Gladue report. It is typically 7-10 pages in length. It is trauma-informed, as our writers do not conduct extensive interviews with clients and collaterals that may retraumatize them when the liberty risks to the client are minimal. Gladue letters were developed by Aboriginal Legal Services (ALS) in Toronto and BCFNJC's leadership team has worked collaboratively with experts from across the country to make the work product appropriate for persons served in BC. We are pleased to note the positive reception of Gladue Letters which have been delivered by BCFNJC staff since October 2023.

Gladue Reports:

The Gladue Report is for Youth and Adults facing an initial sentencing position of **24 months and over**. The Gladue Report is for **custodial sentencing, ReVOII sentencing (enforcement stage) and on a case-by-case basis, dangerous offender hearings, long-term offender hearings and parole hearings**.

Differences between a Gladue Report and a Gladue Letter are as follows:

Gladue Report:	Gladue Letter
<ul style="list-style-type: none"> • Contains 3 pages of client narrative on their personal life • Contains detailed sections including: Community Profile, IRS attendance and Laws and Legal Traditions • Includes a Healing Plan • Use more direct quotes and block quotes • Each section is a few paragraphs in length • Provides information on all Gladue factors 	<ul style="list-style-type: none"> • Contains 2-3 paragraphs of client narrative on their personal life • Contains the same sections as a Gladue Report, however they are abbreviated • Includes a Healing Plan • Use summarized information rather than direct quotes • Each section is about 5-6 sentences in length/all sections are the same length • Provides information on all Gladue factors

No Gladue Work Product:

Adults who are facing custodial sentences of 6 months and less will not be eligible for BCFNJC Gladue Services, due to our capacity and the amount of time it takes to assign and write Gladue Letters and Reports vis-à-vis the sentence the individual is facing. In these cases, BCFNJC hopes that defence and Crown counsel will fulfil their obligations to bring Gladue information to the Court, exercise their discretion in accordance with s. 718.2(e) and the related jurisprudence, and that the judiciary will ensure that this work is being done in the absence of a BCFNJC Gladue work product.

Where the GSD is unable to provide a Gladue Letter or Gladue Report, the Native Courtworker and Counselling Association of British Columbia (NCCABC) will be working closely with us to ensure that Gladue submissions are made at sentencing, as they have historically done.

Again, this is a temporary measure intended to ensure the greatest number of Gladue Products are provided to the greatest number of Indigenous people in B.C. as we build and grow our team to meet the ever-increasing demand.

Declared Sentencing Range or Position:

For BCFNJC to properly assess and move forward with a Gladue Report or Letter request ***we now require either the proposed sentencing range or the initial sentencing position. Please continue to submit requests for letters and reports, our team will assess and triage whether we are able to provide a letter or report within the required timeframe.***

Impact on Youth:

It has been highlighted that our Triage Policy may disproportionately affect youth. We want to clarify that **every youth request will get either a Gladue Report or Gladue Letter. The type of Gladue product will be determined on a case-by-case basis depending on the severity of the situation and the evolving capacity of BCFNJC's staff.**

Information Gathering Process:

We have also identified that there has been a gap in gathering information to assess Gladue requests. We are working with our justice partners to develop a better information gathering process for the GSD to better triage requests. We ask that those who request a Gladue product advise:

- whether the matter is being heard in First Nations Court (FNC);
- what the sentencing range is **before or without a Gladue Letter/Report**;
- the circumstances of the need for the report (i.e. first time offender, completing a Healing Plan within FNC, etc.)

Due to the nature of the demand, there will be some requests that we are unable to meet. However, this policy is subject to discretion and case-by-case assessment:

- We will continue to accept requests on a case-by-case basis if a discharge or no criminal record, is contingent upon a Gladue Letter/Report.
- We will continue to hear from Rights and Title Holders, members of the bench and bar, as we refine the policy and respond to community need as best we can.

We want to reiterate that this triage policy is temporary. BCFNJC will reassess our team's capacity and the waitlist every month with the aim of increasing the availability of reports as soon as possible. We are pursuing multiple paths to increase funding for Gladue reports and are ready to expand our team as soon as we can.

We have heard your concerns and appreciate the feedback that we have received from our justice partners.

It is our goal to be able to provide a Gladue Letter or Gladue Report for everybody that requests one. Funding that is designated for a particular arm of the BCFNJC is specific to that department, as such, we cannot redistribute funds from one initiative to another (for example, funding provided to open Indigenous Justice Centres is distinct and separate GSD funding).

BCFNJC receives funding for our GSD from BC's Ministry of the Attorney General and Justice Canada. In the last two fiscal years as the demand for Gladue Products has increased we have supplemented the funding we have received with additional funds from the Law Foundation of BC. We will continue to seek further stable funding for the GSD and work with our partners to meet the needs of our Indigenous people in BC.

We appreciate your cooperation, understanding, and patience in this interim period where we work to better our department and meet the growing demand for a resource that is vital to our Indigenous Peoples.

Sincerely,



Amandeep K. Sehmbi, Acting Provincial Director
Gladue Services Department
BC First Nations Justice Council