

Gladue Submission Guide

A Manual for Indigenous People in Court



LEGAL  **AID**
SASKATCHEWAN

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WHO IS THIS GUIDE FOR?



If you are ...

- Indigenous (First Nation, Inuit or Métis)
- about to be sentenced in court or have asked for bail

... then Gladue applies to you. You can be Status or non-Status. You can live on or off reserve. This guide will help you with your Gladue rights.

Gladue is a legal right all Indigenous people have in court anytime you are before a judge. This means the judge must look at your life story as an Indigenous person when they make decisions about you.

To help the judge understand your story, you can give them some information about your life in a Gladue submission. A Gladue submission is a document that tells the judge about your background, what you are good at, the hard things you have overcome, and your plan for the future and also fixing some of the harm your offence caused. A Gladue submission also helps the judge look at Indigenous healing to help you.

This guide will help you, your lawyer, or other support people gather the information you need to prepare your Gladue submission. You or your lawyer can give the judge your Gladue submission in court.



WHAT IS GLADUE? WHAT IS A GLADUE SUBMISSION?

In Canada, Indigenous people are put in jail more often than non-Indigenous people. This is because Indigenous people experience a lot of racism and discrimination which has affected their life stories.

A Gladue submission can help a judge understand you and your story as an Indigenous person. In your Gladue submission, use your own words to tell the judge about:

- your family history
- your community history
- the challenges you face as an Indigenous person (these are called your Gladue factors)
- what you are good at
- what your goals are
- how you achieve these goals

The Criminal Code of Canada states, “all reasonable and available sanctions other than imprisonment should be considered for all offenders, especially Indigenous offenders.” (718.2 (e))

Gladue means a judge has to ...

look at your background and your life as an Indigenous person

look at Indigenous healing and wellness to help you

... before you are sentenced or given bail.

The details about your life are called your Gladue factors.

GLADUE FACTORS



Gladue factors are events that affect Indigenous peoples in general and also have a direct effect on you, your family, or your community.

In your Gladue submission, you provide details about the factors that shaped your life, and how they may have played a part in your involvement with the criminal justice system. It's important to include the Gladue factors you, your family, and your community have faced. It's also important to remember that these factors don't define you, and that you're resilient and have used your personal strengths to overcome many challenges.

Do Gladue factors affect you? Read through this list here and put a check mark beside any that are part of your life story. You can use this list to help you decide what to include in your Gladue submission.

- Abuse (emotional, physical, sexual, spiritual, verbal, or neglect)
- Addiction, including substance use (alcohol or drugs)
- Loss of connection to Indigenous community (including loss of identity, culture, traditions, and language)
- Criminal involvement (history), whether you have a prior criminal history or have been affected by an offence (as a witness or victim)
- Health (mental and physical: suicidal thoughts or attempts, depression, trauma, diagnosed disorders or suspected disorders such as Fetal Alcohol Spectrum Disorder [FASD], any kind of mental illness)

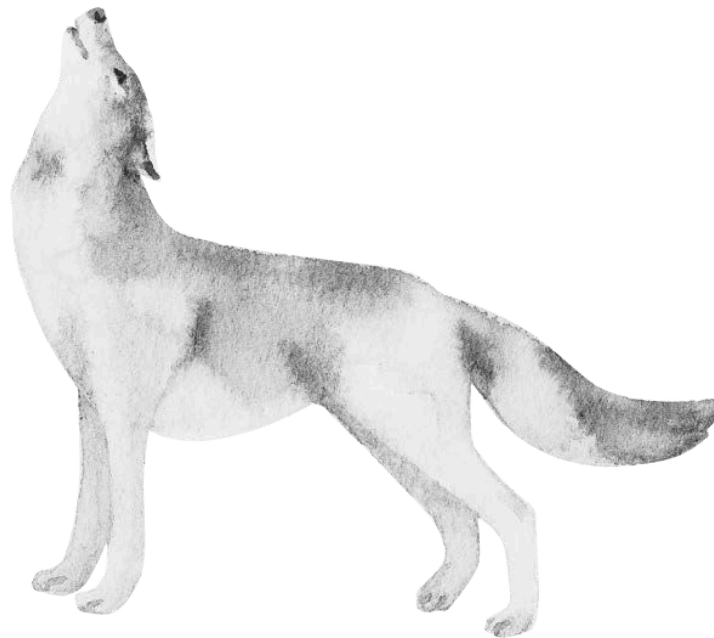
- Indigenous community breakdown or disruption (including discrimination, neglect, violence, other disruption such as someone going missing)
- Early death of family or friends because of substance use, violence, or suicide
- Lack of employment opportunity, low income, challenges finding employment
- Family breakdown (divorce, violence, neglect, abandonment, substance use)
- Lack of educational opportunity
- Foster care/adoption (Indigenous or non-Indigenous foster/adoptive parents)
- Effects of Indian residential school, day school, Métis or other boarding school (including mistreatment, loss of family contact, loss of culture, substance use, violence, settlement payments in the current generation or prior generations)
- Interventions, treatment, or counselling: alcohol, drugs, psychological, trauma,
- Loss or denial of Indian status or membership recognition
- Lack of housing or poor housing quality or affordability
- Past or present experiences of poverty
- Quality of relationships: positive and negative relationships with family, extended family, community (including whether a parent, family member, or role model experienced mental illness such as depression or addiction)
- Racism: direct or indirect, in society and institutions (community, school, workplace, jail, foster care, adoption system)
- Violence (including family violence or other type of violence you witnessed in your family, extended family, or community)

Your life experiences

It can help the judge to hear details about your life. Personal strengths help each of us to deal with or overcome challenges we face in our lives. They are important to include in your Gladue submission as are the challenges you faced or continue to face in your life.

Think about a personal strength, which means something you are good at. Can you think of a time when you helped people in your life or community?

Think about a time when your strengths helped you get through a hard time.





WHAT HAPPENS AT YOUR BAIL OR SENTENCING HEARING?

A bail hearing is different from a sentencing hearing. The judge does not say if you are guilty or not guilty at a bail hearing. The judge only decides if you should be released on bail while you wait for the trial or if you should be in custody. If the judge thinks you can be released on bail, you may have conditions, or rules, you must follow.

At a sentencing hearing, your Gladue submission helps the judge answer two important questions:

- How or why did you get before the court today?
- What else can help you besides jail?

There are many types of sentences the judge can give you:

- Discharge: This can be absolute, meaning you won't get a criminal record, or conditional, meaning you won't get a criminal record if you meet the conditions the judge sets.
- Conditional sentence order: This means you serve your jail sentence in the community with house arrest or curfew.
- Require you to pay a fine
- Suspended sentence: This means the judge convicts you but does not sentence you to jail, and instead releases you on conditions set out in a probation order.
- Restitution order: This means you have to pay for their financial losses from the crime.
- Jail
- Treatment program
- A combination of these options

In your Gladue submission, you can list options you think will help you work through the issues that led you to be before the court today. This will help the judge think about a meaningful sentence.

WHO MAKES A GLADUE SUBMISSION IN COURT?



Your Gladue submission can be presented in court in two ways. The first way is through an oral submission (speaking out loud). The second way is in writing.

You can decide with your lawyer which one of you will tell the court about your personal story. If you don't have a lawyer, you can ask duty counsel to help you. You can ask someone you trust to be at the hearing to help you give parts of your Gladue submission to the court.

You can also ask someone you trust to help you get your Gladue submission ready for the court. Some parts of your life story, such as your personal strengths and resilience, can be easier to describe to a judge if you talk about that with someone first.

Your family or community members can speak about you at your bail and sentencing hearing. This is a good way to support the information in your Gladue submission. Ask an Elder, Chief, support worker, your employer, friends or family if they would like to speak in court. They can also give you a written letter about the type of person you are.

You can use the worksheets in this guide or write your Gladue submission in a separate document to give to the judge.



WORKSHEETS FOR YOUR GLADUE SUBMISSION

The worksheets in this manual will help you write down all of your Gladue factors and the story about your life. You can change the wording to fit your story the best.

You may not need to include every topic or all of the information suggested for each topic. You can also change the order of the topics. You may need extra paper to tell your story. Don't feel like you have to stick to the space provided in these worksheets.

The judge can decide to give you a sentence other than jail, which is called restorative justice. Restorative justice options give you, your victims, and your community a chance to heal and move forward. In your Gladue submission, you can list restorative justice options based on the Gladue factors that apply to you and based on what you think will help you work through the issues that got you in trouble with the law.

Get help from a lawyer when you are working on your Gladue submission. A lawyer can tell you if you're missing important information. A lawyer can also help keep you from getting someone else in trouble with the court by mistake. Duty counsel lawyers give you free advice.

Remember to call 1-800-667-3764 to see if you qualify for a free Legal Aid lawyer.

You can also ask for help from an Aboriginal courtworker or community advocate. You are the expert of your story, but community supports and resources can help you identify Gladue factors and connect you with restorative and treatment options the court needs to know about.

Preparing your submission may remind you of painful experiences. Make sure you have support from people you can talk to while you work on it.

CONTACT INFORMATION



My Contact Information

Name _____

Phone number _____

Home address _____

Email address _____

Contact Information for Your Support Person or People

Record the contact information for your support person/persons here. Your support person or people may include family members (such as a grandparent), teachers, Elders, employer, or another community member.

Write down how you know this person beside "Relationship to you." For example, is this person your mother, father, grandmother, grandfather, etc.?

Name _____

Phone number _____

Email address _____

Relationship to you _____

Name _____

Phone number _____

Email address _____

Relationship to you _____

Name _____

Phone number _____

Email address _____

Relationship to you _____

Name _____

Phone number _____

Email address _____

Relationship to you _____

Name _____

Phone number _____

Email address _____

Relationship to you _____

Name _____

Phone number _____

Email address _____

Relationship to you _____

Name _____

Phone number _____

Email address _____

Relationship to you _____

PERSONAL HISTORY



My Indigenous Background

My Indigenous community, Nation or band

Use these lines to write down the Indigenous community, Nation or band you belong to. Write down whether you are status or non-status, Métis, or Inuit. This information will help the court consider what programs are available to you.

Loss or denial of Indian status or Métis rights

Use these lines to write down if you have lost or been denied Indian status or Métis rights. For example, someone in your family may have lost status because they married a non-Aboriginal man, moved off reserve, served in the war, or went to university. Or someone in your family may have lost their Métis rights in exchange for land or money (scrip).

Life experiences

I was born at _____

I grew up at _____

I lived with _____

Use these lines to write down important events that happened during your childhood and your age when they happened. This can include a divorce, moving to a new community, or racism.

How do you feel this affected you?

I've been diagnosed with FASD (Fetal Alcohol Spectrum Disorder)

Yes No

I haven't been diagnosed, but I think I may have it

Yes No

My mother drank alcohol when she was pregnant with me or my sisters or brothers

Yes No

Name(s) of person(s) who said my mother drank alcohol when pregnant

Education History

I or my family went to an Indian residential school

Yes

No

I lived away from home or travelled to go to school

Yes

No

Use these lines to write down how you did in school.

The last grade I attended: _____

I went to many different schools

Yes

No

If you answered yes, use these lines to write down how you were impacted by going to many schools.

I missed a lot of school

Yes

No

If you answered yes, use these lines to write down the reasons you missed a lot of school.

Use these lines to write down your challenges at school. For example, depression, anxiety, trauma, ADHA, FASD, etc.

Use these lines to write down how these challenges affected your education.

Use these lines to write down the educational support you received.

I experienced bullying or racism at school

Yes

No

If you answered yes, use these lines to write down examples of racism or bullying at school.

Employment and Ongoing Education

If you have a job, use these lines to write down the details about what you do, including if you work part-time or full-time, general labour, or volunteer work.

Use these lines to write down the help you had given others in the past, whether in a job or volunteer position.

Use these lines to write down your skills, talents and training.



If you do not have a job, use these lines to write down details why you are unemployed. This might be because you have learning challenges or a lack of schooling, or there may not be enough jobs in your community.

I am attending a program or course to upgrade my education and skills

Yes

No

If you answered yes, use these lines to write down which program or course you are taking.

I have experienced racism in the workplace

Yes

No

If you answered yes, use these lines to write down examples of racism in the workplace.

Personal Wellness History

I grew up in a home where I or others experienced neglect or trauma

Yes

No

If you answered yes, use these lines to write down details of the kind of trauma (physical, verbal, emotional, or sexual), when it started, and how often it happened.

Use these lines to write down any poor health because of illness or injury.

Use these lines to write down any long-term or serious health conditions that limit your abilities.

I have harmed myself or thought about suicide

Yes

No

If you answered yes, use these lines to write down when and what was happening in your life just before.

If someone close to you died unexpectedly or from suicide, such as family or friends, use the next lines to say how this affected you.

Treatment History

Treatment programs I have been in, including addictions meetings or other counselling.

Use these lines to write down the Gladue factors you were trying to address; for example, trauma or substance abuse.

The treatment program helped me

Yes

No

If you answered no, use the next lines to write down why the treatment didn't work and what's different now.

I received a diagnosis for mental health issues

Yes

No

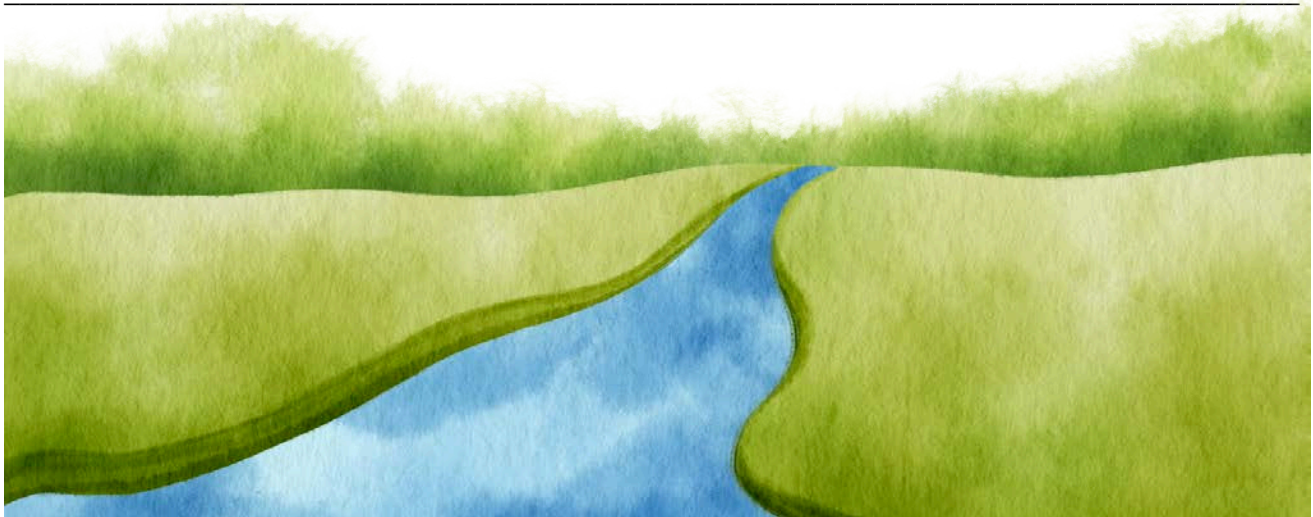
Medication was prescribed

Yes

No

If you answered yes, use the next lines to write down the medication prescribed to you:

I have not had treatment because: _____





FAMILY HISTORY

My Family Members

It is important to tell the court if you don't know your family history because you were fostered or adopted and never told about or met your biological family. Use these lines to write down the names and birthdates of your family if you know them, or write down your foster or adoptive family if you had one.

My grandmother/birthdate _____

My grandfather/birthdate _____

My mother/birthdate _____

My father/birthdate _____

My sister(s)/birthdate(s) _____

My brother(s)/birthdate(s) _____

My Family's School and Home

Members of my (biological) family went to an Indian residential school, day school, or Métis or other boarding school

Yes

No

If you answered yes, write down the school and when they attended _____

How I know about it _____

Use these lines to write down how you and your family were affected, including if it led to family breakdown, loss of culture or language, or emotion, physical or sexual abuse.

Foster Care

I or members of my family have been in foster care

Yes

No

If you answered yes, write down who was in foster care _____

Why were they in foster care? _____

When and where did this happen?



INDIGENOUS COMMUNITY HISTORY

My Indigenous Community

List the Indigenous community you belong to, including:

- your Indian band
- your Métis community
- any Indigenous community you are related to even if you are not registered with them
- any urban Indigenous community you're connected to, such as through friendship centres, Indigenous societies or groups

If you belong to more than one community, describe the following for each community.

Location(s) of my Indigenous community(ies):

Population of my Indigenous community(ies) (the number of people who live there, if you know it) _____

Use the next lines to describe the cultural identity of your people. For example, Métis, First Nation or Inuit.

Connection to my Community

Use these lines to write down if you feel connected to your Indigenous community and culture, including:

- traditions you have learned and who taught you
- who you are in contact with
- who you look up to

Use these lines to write down if you have taken part in Indigenous traditions and activities, celebrations or gatherings as a child or an adult, including:

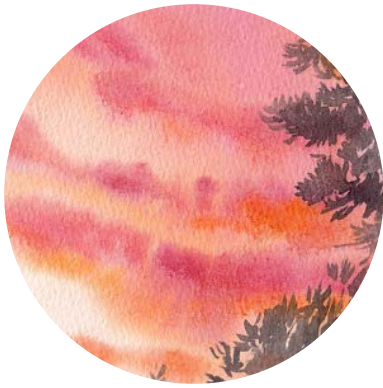
- fishing, hunting or foraging
- sweat lodge ceremonies
- sundances, winter dances or Métis dancing
- potlaches, funeral feasts, shame feasts or friendship events
- volunteering for elders or community members

If you live off reserve, use these lines to write down:

- how often you return home for cultural events and visits
- if you identify with an urban Indigenous community or your spouse's Indigenous community

If you do not feel connected to your Indigenous community and culture, use these lines to say why. You might not feel connected because you or your parents were placed in foster care or adopted outside of the Indigenous community, or someone in your family lost their Indian status because of marriage or moving off reserve.

Use these lines to write down how it feels for you and/or your family to not be connected to your Indigenous community. This might make you feel sad or lonely.



CURRENT CIRCUMSTANCES

Where I Live

I live (check all that apply)

- in the city on reserve off reserve
 in a rural area (outside of the city)
 in a shelter or I'm homeless

Use these next lines to write down where you've lived, who you've lived with and your relationship with them when you were arrested.

For a bail submission or community sentence, write down where you will go and who you will live with if you are released.

Contact information of the person or people I would be living with:

It is a dry residence (no drugs or alcohol allowed)

Yes

No

My Family Life

I am married or live common-law

Yes

No

If you are married or live common-law, write down how long you have been together and describe what the relationship is like. Mention previous relationships if you want to.

I have children

Yes

No

If you have children, write down their names, ages, and if they live with you.

If your children do not live with you, write down the reasons why and describe your contact and relationship with them.

My Health

Use these lines to write down a description of your physical health, including:

- physical problems that affect your life and your ability to work
- troubles with living on your own because of FASD

Use these lines to write down a description of your mental health, including:

- if you have been diagnosed with trauma from physical, sexual or emotional abuse
- if you feel suicidal and need counselling and support

Use these lines to write down any medication you are using, as well as your doctor's name (if known) and when you began using this medication.

RESTORATIVE JUSTICE OPTIONS AND HEALING PLAN



If you have a lawyer, they make sentencing or bail recommendations for the judge to consider. As part of your Gladue submission, you can suggest restorative justice options that you are interested in. These are options you think will help you work through the issues that got you into trouble with the law. Not all communities may have traditional or culturally appropriate options.

Remember, restorative justice options are meant to be for the safety of your victim and community as a whole. What you say about your options must:

- fit the seriousness of your crime
- show you take responsibility for the harm done
- explain why you did what you did (you don't have to share things you think might cause a problem for yourself or others)
- address the issues that brought you to court

Restorative justice options are based on the Gladue factors you identify for yourself. Use the checklist from pages 6 and 7 to list the Gladue factors that apply to you.

Healing Plan

Are there any activities, hobbies or pastimes that you like to do? Are there any activities (cultural, spiritual, emotional, creative, educational, physical) that you would enjoy participating in?

Who You'd Like to Culturally Connect With

Give details about Elders, cultural teachers, spiritual advisors, or others you want to connect with. If there's a positive role model in your community, say why you'd like to connect with them. Check to make sure they're willing to help you. If staying in your community gives you important access to support people, include a safety plan, with the names of who you can call when you need help such as a sponsor, trusted Elder, or friend. For bail, say what specific people and supports in your community can help you keep bail conditions.

Programs You Attend or Would Like to Attend

Describe programs you attend now, when you started, how long they run, what benefits you've seen, and if you're interested in continuing or going to another level if available. Programs can include counselling for addictions or family violence, or any educational or employment programs. Describe how the programs are helping you with factors such as trauma or substance use.

Describe programs you'd like to attend and explain how they will help you. This could be an alcohol or drug rehabilitation program, or residential treatment program. Write down these details:

- program names and contact information
- if you're eligible, the application dates and process
- where and when they're offered
- residential or non-residential
- cost, times, how you'll get to and from them
- if you've taken steps to apply, is aftercare is available?

DOCUMENTS TO BACK UP YOUR SUBMISSION



Take documents with you to your hearing to back up details in your submission. The more documents you can give the court, the better it is for your case. Examples include:

- Records or certificates from school, courses, or skills training
- Medical documents about an official diagnosis or prescribed medication or treatment
- Letters of support, acceptance, or confirmation
 - A statement from your employer if you're working, or other employment records
 - Confirmation from a counsellor, chaplain, Indigenous liaison worker, or Elder that you've had counselling or addictions treatment
 - Acceptance from a treatment program that you'd like to attend in your Indigenous community
 - Confirmation that your community and the victim of your offence (if there's one) are willing to participate in a restorative justice option (if they're needed)
 - A statement about your character, including your strengths and personal qualities

Give the original documents to the judge and the copies to your lawyer and Crown counsel.

If you have information but no documents to prove it or people who can come to court, give contact information of people who'll back you up by phone, letter, or email. If you can't confirm some information because you're disconnected from your family or community, explain this to the judge. This is actually a Gladue factor.



The Indian Residential Schools Crisis Line

1-866-925-4419

AVAILABLE 24/7

www.sac-isc.gc.ca

**Federal Indian Day Schools Health Support
Line**

1-888-221-2898

AVAILABLE 24/7

www.sac-isc.gc.ca

**Missing and Murdered Indigenous Women
and Girls Crisis Line**

1-844-413-6649

AVAILABLE 24/7

Jody Oakes, Gladue Services Coordinator

Legal Aid Saskatchewan

306-933-1012

joakes@legalaid.sk.ca

Legal Aid Saskatchewan champions access to justice through professional legal services on the territories of Treaties 2, 4, 5, 6, 8 and 10, homeland of the Metis Nation and the Nêhiyawak, Nahkawinniniwak, Nakota, Dakota, Lakota, and Denesuline peoples all of whom we recognize as the keepers and protectors of the land and waters and we commit to reaffirming our relationship with them.