

# GLADUE PROGRAM

## Newsletter October 2021

*Nishnawbe-Aski Legal Services*



### **Boozhoo, Waachi'ye, Aniin, Hello, Bonjour**

*By Gladue Team*

The purpose of this newsletter is to bring awareness to the Judges, Crown Attorneys and Defence Counsel regarding the Gladue program and services in our Nishnawbe-Aski Nation (NAN) territory.

As part of the Gladue services provided by NALSC, we have many programs internally that can assist in providing services for our mutual clients.

We hope you take these concerns into consideration when sentencing a NAN member.

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## Judges Request a Gladue Report

By Jennifer Stienke

It is crucial that Judges have the onus to request a Gladue report or letter. They are the fundamental component of sentencing and they should be aware of the factors that brought Indigenous peoples before the Court prior to making a life-altering decision. Crown Attorneys should make note of all Indigenous peoples before the Court and state their Gladue rights. This is to better assist NAN clients to ensure they are aware of their rights before entering the lengthy court process.

## How to Request a Gladue Report for a Client

By Melanie Henderson

Gladue reports are used for sentencing purposes only. We are no longer producing Gladue reports or letters at the bail hearing stage.

Gladue letters are also available for sentencing that is less than 90 days. They are concise and straightforward. Gladue reports require 7 to 8 weeks to complete.

When submitting a Gladue report request, please attach the client's CPIC, charges, synopsis, and the Crown Screening form. Please indicate whether the client was found guilty or pled guilty.

Gladue request forms can be submitted via email to George Edwards, at [gedwards@nanlegal.on.ca](mailto:gedwards@nanlegal.on.ca) or through the website: [www.nanlegal.on.ca/gladue/](http://www.nanlegal.on.ca/gladue/)

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# The Gladue Factors

By Terri Zoccole

When addressing the court, many Gladue factors could be noted. The following is a list of Gladue factors that are beneficial to mention when addressing the courts on behalf of Indigenous NAN clients. The best way to represent the Nishnawbe-Aski Nation peoples is to have Nishnawbe-Aski Legal Services (NAN Legal) prepare a report or letter that demonstrate factual evidence to support these Gladue factors.

- Child abuse
- Community fragmentation
- Dislocation from Indigenous communities
- Family circumstances
- Family involvement in criminal environments
- Foster care
- Homelessness
- Lack of educational opportunities
- Unemployment
- Loneliness
- Loss of Identity, cultural & ancestral knowledge
- Loss of language
- Physical and mental health
- Poverty
- Racism
- Residential schools
- Substance abuse
- Support network
- Violence (e.g., witnessing as a child)

NAN Legal has attended court proceedings at various times via Zoom court and have witnessed that lawyers are making oral submissions regarding the Gladue factors. Yes, including short Gladue factors may be time effective, but it lacks the depth and emotions a report would cover.



# Guilty Pleas When Requesting a Report

By Lenny Carpenter

A Gladue report is prepared when an Indigenous offender is to be sentenced for a criminal offence(s) that has been committed. This implies the offender has been convicted of a said offence(s), whether by trial or a guilty plea.

However, there have been recent cases where a client (offender) has not been found guilty at the time a Gladue report is requested, and the client contests the charge(s) during the report writing process or after the report is completed.

Our Gladue writers are typically working on

multiple Gladue reports simultaneously, and often prioritize work based on clients' upcoming court dates. Our work would be to the benefit of our NAN members if reports are requested as intended, and so that the appropriate time and priority can be committed to working on those reports for our clients.

We understand that at times there is an expectation of a guilty plea or finding, based on conversations with the clients in question. However, we request that the courts do their best to ensure convictions have been or will be rendered when requesting a Gladue report.



## Sealing of Gladue Reports

By Rutanya Iserhoff

The issue of confidentiality and the protection of information contained in Gladue reports is an area that needs to be addressed. Gladue reports contain highly sensitive information which is a concern for those who have access to the information in the report and how it can be used.

During the initial process of the reports, the Gladue writers inform the client and everyone who participates in the preparation of the report that the report would be only delivered simultaneously to the judge, Crown and defence counsel. A consent form is signed by the client regarding the confidentiality of the report before the interviewing and writing process have begun.

A defence counsel summarized the problem as follows: "The problem of attaching a Gladue report to a probation order or sharing

it with an institution is that there is a fantastically high chance that the report will be digitized and circulated widely. There is also a problem about the selective use of the information contained in the report and sometimes also its distortion". Another lawyer noted that "(i)t is problematic when the Gladue reports end up in the hands of correctional officials who essentially treat Gladue factors as risk factors". (Barkaskas et al., 2019, p. 81)

In regard to sealing of Gladue reports, it is imperative that the courts seal the document once the court proceedings have concluded. The document that may readily be available is the recommendations that are found at the end of the report. The recommendations are respectfully submitted for the court's consideration for restorative justice options if a non-custodial sentence should be issued.

# The Role of Gladue Caseworkers

By Gladue Team

In 2017, the Ministry of the Attorney General increased funding for writers and aftercare workers. While some organizations use the term aftercare workers, Nishnawbe-Aski Legal Service Corporation distinguishes them as “Gladue caseworkers”. They work with Indigenous offenders through sentencing to reduce recidivism by following the Gladue recommendations, and collaborating with internal and external service providers to mitigate criminogenic behaviours. In partnership with the Gladue writers and clients, the Gladue caseworkers compose the recommendations which often include steps towards their healing journey. They case manage Gladue clients by providing on-going support with advocacy and service planning.

In contrast to probation and parole officers, Indigenous offenders are not sanctioned to participate in the Gladue recommendations. However, it has been noted in the north central region that Gladue recommendations have been implemented as part of probation orders. In the probation orders, it states that the probation officer needs to consult the Gladue caseworker on the participation and the progress of their shared client.

## COVID-19 Updates

By Gladue Team

- Our Gladue team continues to work remotely from home;
- Gladue report requests are slowly being received;
- Court remains virtual for urban and remote communities;
- When clients are out of custody, there is difficulty contacting clients;
- Writers have a lack of communication as writers cannot travel to First Nation communities.

# Conditional Sentence Orders (CSO)

By George Edwards



We often see Conditional Sentence Orders (CSO) being imposed on NAN members for sentencing outcomes. While these sentences, at first glance, can be interpreted as a positive, we have noticed an issue with where it can be problematic for our members.

Our Gladue reports highlight the first Gladue sentencing principle, as interpreted by case law in *R v. Gladue* (1999): “The unique systemic or background factors which may have played in bringing the particular (A)boriginal offender before the courts.” Additionally, a key component of the *R. v. Gladue* (1999) ruling calls for the courts to consider “decreasing the use of incarceration” when sentencing.

The sentencing is solely the court personnel’s duty, principally the judge presiding over the criminal matter, to impose a fit sentence using the Gladue analysis. It is usually a dual process, where the Crown will suggest the length of the term of sentence for the particular offence(s), while the defence counsel will often counter-negotiate the Crown’s sentence. Joint submissions are also used. Ultimately, it is the Judge’s sentence that has the decisive say or outcome for a sentence.

While we have seen many sentences where the Gladue factors are considered and have a positive impact for our members, including the CSO’s in lieu of in-custody sentences, we have noticed instances where the CSO imposed are up to double the length of time the Crown was requesting for in-custody sentences.

This is a concern for our members in that he/she has to serve the sentence in the community with certain conditions being imposed (e.g., keep the peace and be of good behaviour, abstain from the consumption of alcohol and drugs, etc.). Gladue clients going through the Gladue process typically are vulnerable people with alcohol and drug addictions, carry unresolved trauma, and have mental health issues. While our Gladue caseworkers will support our clients in following through on the Gladue report recommendations and other conditions, we believe there is a higher probability for our client to breach conditions than non-Indigenous offenders. And, typically, after the Gladue client breaches, he or she is expected to serve the remainder of their sentence in custody, which again, can be lengthier than the initial in-custody sentence sought by the Crown.

We feel this counters the intent of the *R. v. Gladue* ruling and the Gladue principles laid out, and we hope northern Ontario courts will take this under consideration in determining the sentence length when imposing CSO’s.

While we, the NAN Legal Gladue Team, are not legal counsel, and do not give legal advice, we feel we have an advocacy role for NAN Gladue clients, and felt it was important for us to bring this and the other concerns expressed within this newsletter to our justice colleagues in northern Ontario.

# Meet the Manager of Legal Services



Don Rusnak is a Canadian businessman, lawyer and politician who served as the Member of Parliament (MP) for the riding of Thunder Bay-Rainy River in the House of Commons of Canada from 2015 to 2019 as a member of the Liberal Party of Canada. Born and raised in Northwestern Ontario, Don has deep roots and has lived, worked and learned in the North for most of his life. He studied Political Science and Integrated Forest Resource Management at Lakehead University. In 2001, he attended the University of Manitoba, Robson Hall Faculty of Law, and during his final year, attended Osgoode Hall Law School to study in the Intensive Program in Aboriginal Lands, Resources and Governments.

Don has extensive professional experience drawing from his work in the forestry industry, the public sector, and from his own legal practice. While working with Manitoba Health, Don helped to improve the delivery of healthcare services for Northern Manitobans, and as a Crown Prosecutor in Eastern Alberta, he prosecuted criminal and regulatory offences for the Province of Alberta. Don served as the interim Executive Director for Grand Council Treaty # 3 in Kenora, where he helped restructure the organization. Prior to entering politics he operated a small but successful law firm located in Fort William First Nation.

Over the years Don has volunteered his time with many organizations, such as the Ontario Justice Education Network, Thunder Bay Community Foundation, Thunder Bay Law Association, TBRHSC Research and Ethics Board and the Martin Aboriginal Education Initiative. In 2015, Don was elected to represent the riding of Thunder Bay-Rainy River in the federal election, defeating the incumbent Member of Parliament. He was the only First Nation Member of Parliament elected in the province of Ontario and served as the first ever chair of the Liberal Indigenous Caucus. In September 2017, Don was appointed as Parliamentary Secretary to the Minister of Indigenous Services. While in Parliament Don served on Standing Committee on Indigenous and Northern Affairs, Standing Joint Committee of the Library of Parliament and Director-at-Large Canada-Ukraine Parliamentary Friendship Group. In 2019 Don left politics in order to spend more time with his young and growing family.

Today, Don resides in Thunder Bay with his wife Amanda and their 3 young children. Don is the Manager of Legal Services for NALSC based in Thunder Bay.

# Meet the Staff

## ~ Central Office ~

### Gladue Manager

**George Edwards** was one of the original three Gladue writers hired in 2014 when Nishnawbe-Aski Legal Services' Gladue services program was started. In December 2018, George was promoted to the position of Team Lead, and later to Gladue Manager. George is originally from Fort Albany First Nation. He is fluent in his Omushkegowuk (Cree) language. At a young age, George left his home community, resided in Thunder Bay during his childhood and adolescent years; eventually returning to Fort Albany when he was hired as a police officer with Nishnawbe-Aski Police Service. He was a police officer for ten years, mostly working in the Northeast region until he was honourably discharged from his policing duties. During this period, he enjoyed working and serving the communities he policed in. He gained a lot of knowledge about criminal justice procedures, federal and provincial statutes, and recognized the systemic barriers in Northern communities. George has an extensive background in legal issues and other social science disciplines. He has worked for Tikangan Child and Family Services as a Family Service Worker until he re-entered the legal field where he is very passionate about First Nation justice issues. George has post-secondary education from Lakehead University, and he obtained his Bachelor of Arts degree and Basic Constable Training diploma from the Ontario Police College.



### Senior Gladue Caseworker

**Terri Zoccole** is an Anishinaabe Kwe from Migisi Sahgaigan (Eagle Lake) First Nation. She has been with the Gladue team since October 2017. She has a B.A. in political science and worked at the Kingston Penitentiary while training to be a correctional officer. She returned to Thunder Bay and worked as a residential worker in youth justice. She is a certified counsellor with a speciality in cognitive behavioural therapy, dialectical behavioral therapy and art therapy with over 13 years experience on the frontline. She has worked in the youth justice system with providing counselling services to youth who were on probation. She had the pleasure of being the first worker who ran the Indigenous Peoples Court for the Thunder Bay Indigenous Friendship Centre. She is well known to a number of Thunder Bay lawyers, as her office is in the Thunder Bay courthouse. During her time in the Gladue program, she has written 28 Gladue letters, 2 Gladue reports and has worked with about 59 clients who have had success in their own journey. Terri is passionate about helping NAN members and guiding them to start their healing process. She looks forward to working with you in a collaborative team effort and look forward to meeting you in person.

# Meet the Staff

## ~ Central Office ~ Continued

### Gladue Writer

**Jennifer Stienke** recently joined the Gladue team in July 2021. She was born and raised in Thunder Bay, where she attended Hammarskjold High School and received her French certificate. She graduated from the University of Ottawa with an Honours Bachelor of Social Science with a major in criminology and minor in psychology in June 2020. While in Ottawa, she volunteered at the Wabano Center for Aboriginal Health in the mental wellness department. She received administration training and learned about various Indigenous traditions. After returning to Thunder Bay, she worked various positions at the John Howard Society, more specifically as the Community Justice Worker and managed the Direct Accountability Program. She worked with marginalized populations who were charged with minor offences and helped divert them. She is excited to continue learning about Indigenous culture and the criminal justice system.



### Gladue Writer

**Melanie Henderson** is a registered band member of Sagkeeng First Nation in Manitoba, located outside of Winnipeg, and has spent most of her life in Ontario. She graduated from Lakehead University with a B.A. in Political Science in 2016. Before being hired with the Gladue team, Melanie was hired in August 2017 as an HR Clerk/Receptionist. She appreciated being given a chance to work at Nishnawbe-Aski Legal Services and eventually applied to be a Gladue writer and was hired in February 2019. She finds fulfillment in helping NAN people. She enjoys speaking with and interviewing clients. She is constantly learning new things about how to navigate the criminal justice system with the help of co-workers and appreciates being a member of the Gladue team.



**Gladue Caseworker - Vacant**

# Meet the Staff

## ~ East Office ~

### Gladue Writer

**Rutanya Iserhoff** is a member of Fort Albany First Nation who grew up in Timmins, Ontario. She is a recent graduate of Nipissing University, where she graduated from the Criminal Justice program. She has always had a keen interest in the law field. Working with Nishnawbe Aski Legal Services as a Gladue Writer since July 2020 and it has been a positive learning experience and she is happy for the opportunity to work with NAN community members.

### Gladue Writer

**Lenny Carpenter** is a member of Attawapiskat First Nation and originally from the James Bay community of Moosonee. He is a former journalist, having served as a reporter, editor and publisher for Wawatay News, the newspaper for Wawatay Native Communications Society covering NAN communities across northern Ontario. He has also interned at CBC Thunder Bay. Lenny worked for Journalists for Human Rights, a non-profit media development organization. There, he managed the Indigenous Reporters Program, which aims to improve the quality and quantity of Indigenous voices in Canadian media. He also has experience and training in filmmaking, having graduated from the Film Production program at Confederation College. In 2013, he was the director of the B'iindigaate Indigenous Film Festival. He has been a Gladue writer since July 2019.

### Gladue Caseworker

**Shannon Naveau** has been with NAN Legal since January 2018. She graduated from high school in Timmins then moved west to continue her studies. She has her office administrators certification and has taken some psychology at Red Deer College. Afterwards, she has worked for various law offices in Saskatchewan and Alberta as a Legal Secretary/Legal Assistant. Shannon relocated back to Timmins in 2014. Shannon is a member of Mattagami First Nation and continues to learn about her culture and background, as she did not grow up in her community. She is passionate in her position with NAN Legal as a Gladue Caseworker in helping our community members.

### Gladue Caseworker

**Giles Akiwenzie** is a full status band member of the Chippewas of Nawash sovereign nation who joined the Gladue team in February 2021. Prior to this, he established a successful commercial fishing business which he was the owner/operator/captain. He brings with him 8 years of experience as a fully-trained Probation and Parole Officer from the Moosonee office after being voted the valedictorian of the 14th graduating class of Probation and Parole Officers. While attending York University, where he graduated from with a B.A. in Political Science, he was voted the founding president of the Native Student Association at York University in 1993. Giles is committed to reducing recidivism through exhibiting professionalism and empowering NAN members on their healing process, now and for the next 7 generations to come.

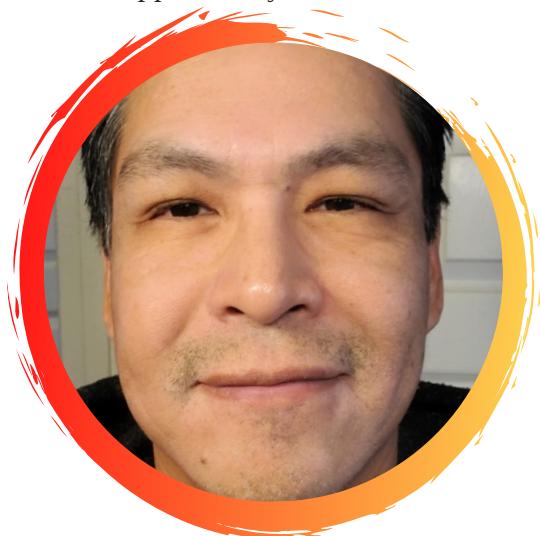


# Meet the Staff

## ~ West Office ~

### Gladue Caseworker

**Bob Albany** is a registered band member of Fort Severn First Nation and is originally from Minaki, Ontario. He joined the Gladue team in January 2020. He has a career spanning 26 years where he has worked in various roles with child and family services, youth justice (open and secure custody, community support team), mental health and addictions for both youth and adult, and restorative justice. Bob's career highlight has been when he was first trained in trauma informed care and approaches back in 2005. This changed the way he worked with people and also empowered him to learn more in-depth about the adverse effects of childhood trauma. This brought him a great learning experience from many educators, trainers and mentors in his work. Bob has learned to relate the mainstream ways of understanding trauma and its effects, to his spiritual beliefs as an Anishinaabe. This includes traditional ways of justice. He values both ways of understanding of how people can be greatly affected by childhood trauma and end up in the justice system with needs for support and reclaiming personal identity. Bob finds the Gladue process very challenging because we must see the person for who they are, and to treat everyone humanely with an opportunity to reclaim themselves.



### Senior Gladue Writer

**Bryan Phelan** is Metis, from the Monkman family of Lake Winnipeg. He grew up in Kenora before moving to Sioux Lookout, where he worked most of the next two decades as a journalist and manager for the Wawatay Native Communications Society. Bryan also served for 10 years as a volunteer minor hockey coach and executive. Now back in Kenora, he has been a Gladue writer for Nishnawbe-Aski Legal Services since 2015. He has travelled extensively to First Nations across Northern Ontario, interviewed hundreds of people for his work, and canoed, fished and golfed with some of them along the way. Bryan earned bachelor degrees in journalism (University of Kings College, Halifax, where he received a public service journalism award) and social work (University of Manitoba, Winnipeg). His wife Anna and son Shane are Kitchenuhmaykoosib Inninuwug (Big Trout Lake People).



**Gladue Caseworker - Vacant**

**Gladue Writer - Position Filled**



## Professional Development

Our NALSC Gladue team continues to receive professional development training. Our most recent Gladue training focused on motivational interviewing and social work skills to build partnerships with our justice colleagues and community stakeholders. This was provided by the Crisis and Trauma Resource Institute (CTRI) to achieve the 4 R's (Rehabilitation, Reparation, Recidivism, and Restorative justice).

## Announcements

The Gladue team would like to congratulate [David Buzzese](#) on his retirement and thank him for all the support over the years! It's been a pleasure working with you.

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The Gladue team would also like to congratulate [Tyler Hopkins](#) on his new position as criminal duty counsel with Legal Aid Ontario in Kenora, Ontario. We're excited to continue to work with you.

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[Wendy Capri](#) has recently been hired as a Gladue writer and will be working out of the West Office.

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**HAVE A SAFE & SPOOKY  
HALLOWEEN**

