

EVALUATION OF THE  
ABORIGINAL LEGAL SERVICES OF TORONTO  
GLADUE CASEWORKER PROGRAM

YEAR TWO  
OCTOBER 2005-SEPTEMBER 2006

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## 1.0 INTRODUCTION

In the fall of 2004, Campbell Research Associates was contracted by Aboriginal Legal Services of Toronto (ALST) to evaluate their recently established Gladue Caseworker Program over a three-year period to September 2007. At the outset of this study, in June 2005, an evaluation plan was drawn up and submitted to ALST and the program funder, Legal Aid Ontario (LAO). The plan outlined the evaluation issues, data, data sources and methodology to be carried out over the period from March 2005 to September 2007. It was based on the *Gladue Caseworker Expansion Pilot Project Proposal* submitted by ALST to Legal Aid Ontario and interviews carried out with Gladue court judges, Gladue court crown attorneys (provincial and federal), Gladue court defence counsel, defence counsel in non-Gladue/regular court, the Gladue program manager at ALST and the Gladue caseworkers.

This report presents the findings of interviews undertaken from September to November 2006 with 21 respondents, including judges, Crowns, defence/duty counsel, courtworkers, Bail Program supervisors (Old City Hall Gladue court), the ALST program director and Gladue caseworkers as well as information obtained from caseworkers' daily logs, client records and relevant program documents that cover the second year of the Gladue Caseworker Program from October 2005 to September 2006.

### 1.1 Description of the Gladue Caseworker Program

The Supreme Court of Canada decision in *R v. Gladue* (1999) indicated how section 718.2(e) of the Criminal Code of Canada is to be applied to the sentencing of Aboriginal offenders, not only those living in traditional Aboriginal communities or on reserves but also all Aboriginal people across the country wherever they lived. This section, part of the comprehensive sentencing amendments made to the Code in 1996, states:

*718.2 A court that imposes a sentence shall also take into account the following principles:*

*(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.*

The Gladue decision pointed to the need to provide judges with information regarding the background factors leading to a specific offender coming before the court as well as placing these factors in the context of the systemic discrimination Aboriginal people have faced in Canada. In addition, the sentencing judge requires concrete suggestions for a sentence that will address the reasons why the individual engaged in criminal activity and thereby provide alternatives to incarceration.

Subsequent to this decision ALST and a number of Toronto judges in the courts at Old City Hall discussed plans for a dedicated Gladue Court. In October 2001 the Gladue (Aboriginal Persons) Court began operations two afternoons a week in Courtroom 126 at Old City Hall.

In the first year, the judges who sit in this court, the Crown Attorneys and the duty counsel had specific education sessions, provided by ALST, on the issues facing Aboriginal people in the city. Training sessions were also provided for defence though the session for defence counsel was not well attended. ALST created a resource guide outlining Aboriginal-specific programs

and services in the city. This guide was distributed to all the judges in the city as well as Crown Attorneys and duty counsel and is updated annually.

The Gladue Court, as well as College Park, 311 Jarvis, 1000 Finch, 2201 Finch and Scarborough courts, has the benefit of Aboriginal courtworkers (employees of ALST) who attend court on a regular basis. There is daily coverage at OCH, College Park and 311 Jarvis but Scarborough, 1000 Finch and 2201 Finch are all served by one courtworker. Aboriginal courtworkers assist Aboriginal accused persons to find counsel, prepare release plans for bail or sentencing purposes, provide referrals to services, explain the court process to accused persons and their families and carry out other related activities.

It was felt that one of the prerequisites for the formation of the Gladue Court was a specific person whose role it would be to write Gladue reports. ALST created a new position of Gladue (Aboriginal Persons) Court caseworker for the Old City Hall court (this position is funded by the Ministry of the Attorney General). The caseworker attends Gladue Court when it sits and, on the request of the judge, defence counsel or the Crown, prepares written Gladue reports for Aboriginal offenders.

Reports provide the court with a comprehensive picture of both the life circumstances of the Aboriginal person and of the options available to the court in sentencing. In order to compile this information the caseworker interviews the client, family members and other people who know the client. In addition, research and interviews may have to be held with individuals who can put the circumstances of the individual's home community into context. Finally, the report must also provide precise details of sentencing options.

In 2004, ALST submitted a proposal to Legal Aid Ontario to obtain funding for two additional Gladue caseworker positions to enable the provisions of s.718.2(e) to be applied to Aboriginal offenders not proceeding through Old City Hall Courts (there are six other courts in Toronto where Aboriginal people usually appear: College Park, Scarborough, 1000 Finch, 2201 Finch, Superior Court at 361 University and 311 Jarvis Youth Court; as noted above ALST has Aboriginal courtworkers available in these courts - daily in College Park, OCH and 311 Jarvis and one courtworker to serve Scarborough, 1000 Finch and 2201 Finch; 361 University is not covered). The plan was to hire one caseworker for the Toronto courts other than Old City Hall and one caseworker for Central Ontario (including Hamilton and Brantford) as a pilot to assess how Gladue might be implemented and affect the regular courts.

The Gladue caseworker attends these courts when it is known beforehand that a Gladue report will be ordered. In some cases, particularly in Hamilton and Brantford, reports are ordered when a caseworker is not in attendance. If present, the caseworker can gather all relevant documents, i.e. synopsis, CPIC, etc., quickly and also has an opportunity to canvass, either with defence counsel or the Crown directly, what the Crown's position in the matter is. While there, the Gladue caseworker is able to meet with the offender and discuss with him or her just what the Gladue caseworker's role is, how long the process will take and what to expect during the process.

The ALST program director, a lawyer and law instructor, oversees the Gladue Caseworker Program and directly supervises the caseworkers. This includes reviewing every Gladue report before it is submitted to the court, assessing the implications of the Crown's position as to sentence and declining cases which are clearly inappropriate. ALST also provides funds to assist offenders obtain treatment and/or to purchase tickets so they can get to treatment facilities.

Training for the caseworkers is carried out by ALST as there is currently no particular training program for those undertaking the writing of Gladue reports. The caseworkers' training involves education on issues of the law, on the Gladue decision and on theories of punishment and sentencing. In addition, information is provided on the types of programs and services available to Aboriginal offenders, how these services operate, how they can be accessed, waiting periods etc. New caseworkers spend time observing experienced ones in court. Finally, caseworkers practice the way in which reports are to be written and how to write them. No specific training materials have been produced aside from a collection of answers to a range of questions posed by the caseworkers. Training is an on-going process. Gladue caseworkers attend relevant conferences or seminars and meet regularly with the supervisor for team meetings to share experiences, problem solve and work on the further development of the project together. In the first year all caseworkers had had some formal legal training and some had completed a law degree at the point at which they were hired (one had been doing his articles at ALST). However, those caseworkers maintained that a law degree is not a necessary qualification for this position and its associated work. There has been a complete turnover of caseworkers with three new hires in 2005-2006. Two do not have law degrees but have qualifications and experience in journalism and social service. The third has a law degree as well as experience as an Aboriginal courtworker.

## 1.2 Expansion of the Gladue Caseworker Program in Year 2

The pilot Gladue Caseworker Program in the non-Gladue Courts was implemented in Toronto courts (other than Old City Hall) in the fall of 2004 and in Hamilton/Brantford in spring 2005. In late fall 2005 the ALST program director met with the regional judge and other members of the judiciary to plan the implementation of a Gladue court at 1000 Finch. This Gladue court began operation at the end of January 2006 and also takes Aboriginal cases from 2201 Finch. Between January and March 2006 discussions were held with the judiciary about establishing a Gladue court at College Park. This court began hearing cases in early June 2006. Currently, a Gladue court operates at OCH all day Tuesdays and Fridays with one caseworker attending and at 1000 Finch on Mondays for a half-day and at College Park on Thursdays for a full day covered by the second caseworker. The two caseworkers also handle Gladue reports requested by other Toronto courts.

In the second year, as well, the position of Gladue aftercare worker was created and funding obtained from Miziwe Biik Aboriginal Employment and Training for 52 weeks which is the limit of this funding arrangement. This individual assists the offender in carrying out the conditions of the Gladue sentence by facilitating the offender's contacts with required services and making the necessary arrangements for obtaining the service according to the sentence handed down.

Although the judiciary has been very supportive of the program expansion, the key constraint has been arranging for court time in the busy Toronto courts to dedicate to a Gladue court. The support of the senior regional judges, other members of the judiciary and many justice personnel involved with the courts has been a major facilitating factor in the establishment of additional Gladue courts.

A number of education and information sessions were carried out by the ALST program director over the past year:

- with four judges in Brantford to obtain their input and discuss the progress regarding the Gladue program in that location;
- with judges (approximately 12-13) at 1000 Finch and College Park prior to implementing the new Gladue courts;
- with duty counsel (approximately 20) at OCH and College Park on several occasions;
- with federal Crowns (6-7) at OCH;
- with new lawyers at LAO (approximately 10-15);
- at a conference for Aboriginal justice programs also attended by Crowns working with these programs (approximately 60-70 participants).

The session conducted at LAO was taped as a DVD and is available to any interested party from LAO.

The ALST website has been regularly updated with the materials produced by ALST in relation to cases involving Aboriginal people (e.g., factum argued on the base of intervenor status before the Supreme Court of Canada in R. BWP, subsequent decision, decision in R v. Sim) as well as unreported cases, articles and case comments.

### 1.3 Funding of the Gladue Caseworker Program

The program is fully funded by LAO over a period of three years as follows:

Salaries (two Caseworkers @ \$40,000 per year each)	\$80,000
Benefits	11,200
Supervision	24,000
Training	1,500
Mileage	6,000
Computers	2,500
Evaluation	10,000
Rent	10,000
Administration	<u>21,780</u>
<b>Annual Total</b>	<b>\$166,980</b>
<b>Three Year Total</b>	<b>\$500,940</b>

### 1.4 Evaluation Issues

The program proposal describes the pilot project goal as being:

*“To determine the effectiveness and impact of Gladue Caseworkers providing reports for Aboriginal offenders before sentencing judges in courts where no formal Gladue Court has been established”.*

Seven objectives have also been set out in the proposal:

- > Sentences for Aboriginal offenders will better conform to the principles set out in s. 718.2(e) of the Criminal Code and the decision of the Supreme Court in R v. Gladue;
- > Greater awareness of the Gladue decision in courts outside of Old City Hall;
- > Raised expectations from the bench that counsel will specifically advert to Gladue in their submissions;
- > More participation from Aboriginal service providers and First Nations in terms of assisting in the carrying out of sentences;

- > The development, in some communities, of Aboriginal alternative justice programs;
- > The development of Gladue Courts in some jurisdictions; and
- > Development of models to allow the Gladue Caseworker position to be put into place in other jurisdictions across the province.

Over the three-year period from April 2004 to September 2007 there are five major areas that this evaluation addresses. These are outlined below.

- Project Implementation in non-Gladue Courts
  - publicity/notice/written information provided
  - preparation, training, education of justice personnel
  - resources available/provided
  - caseworker qualifications, training
  - implementation steps
- Gladue Project Operation
  - identifying candidates for Gladue
  - referral/request for Gladue report
  - roles of courtworkers, Bail Program, probation, duty counsel
  - report preparation process
  - contents/format of reports
  - ALST contribution to offenders' sentence conditions
  - development of forms and operational guidelines
  - documents/information pamphlets produced and distributed
  - supervision
  - information meetings
  - attendance at conferences, seminars, workshops
- Gladue Process in Gladue and non-Gladue Courts
  - accused declines Gladue
  - time to sentencing
  - documents obtained
  - offender interviewed
  - discussions with personnel at court when request first made
  - who interviewed re offender
  - agencies contacted re recommendations
  - Gladue enabling/facilitating judges to follow legal requirements of s. 718.2(e)
  - positions taken by Crowns on sentencing
  - atmosphere, procedures, resources of Gladue/non-Gladue courts
  - relationship to bail
  - factors facilitating Gladue court process
  - factors impeding Gladue court process
- Results for Offenders
  - offenders' views of court process and treatment
  - offenders linked with resources to help them
  - sentence based on Gladue recommendations
  - changes in offenders' lives as result of Gladue
  - offenders connected to Aboriginal community

- Impact on Courts and the Justice Community
  - changes in dealing with Aboriginal cases in non-Gladue courts with/without Gladue process
  - perceptions of the Gladue program/court
  - effects on justice personnel.

As the above outline of the issues and areas addressed by this evaluation indicates, data is being collected from the Gladue courts at OCH, College Park and 1000 Finch in Toronto as well as the non-Gladue courts in Brantford and other locations that are being served by Gladue caseworkers. At this point, the information from the interviews has been reported in the following sections according to the respondent category, i.e., judges, defence/duty counsel, Crowns, Aboriginal courtworkers and Bail Program supervisors at OCH. Although ultimately the Gladue court (OCH) and other court data will be analysed separately, there is not yet enough experience in the non-Gladue courts or an adequate number of respondents from these courts to present the information based on the two different court situations.

## 2.0 EVALUATION DATA SOURCES AND METHODOLOGIES

This report on the second year of the Gladue Caseworker Program collected data from a number of sources:

- ALST and Gladue program staff
- Individuals involved in the court process: judges, Crown attorneys, defence/duty counsel, Aboriginal courtworkers and Aboriginal Bail Program supervisors;
- Program records and documents.

Aboriginal offenders who have experienced the Gladue process have not been interviewed at this stage of the evaluation.

### 2.1 Respondents Interviewed for Year 2 Report

The table below outlines the categories and numbers of individuals who were interviewed for this report.

RESPONDENT CATEGORY	NUMBER	LOCATION	METHODOLOGY
ALST program supervisor	1	ALST	face-to-face meetings and a formal telephone interview
Gladue caseworkers	3 current	ALST Brantford	face-to-face meetings and a formal telephone group interview
Judges	8	Toronto – 6 Brantford – 2	Telephone interview – 8
Crown attorneys	3	Toronto – 3	Telephone interview – 3
Defence counsel	3	Toronto – 1 Hamilton – 1 Brantford – 1	Telephone interview – 2 self-completed questionnaire – 1
Bail program	1	OCH	Telephone interview
Aboriginal courtworkers	3	Brantford – 1 Fort Erie/Cayuga – 1 Hamilton – 1	face-to-face meeting - 1 Telephone interview - 2
<b>TOTAL</b>	<b>21</b> (1 individual has been in 2 positions)		

Numerous attempts were made to contact other respondents identified by program staff. However, some either did not respond at all; some had difficulty finding time around their court schedule before the evaluation interview period ended; some were on vacation and others had unanticipated matters arise. In many cases, specific arrangements for interviews were changed several times, not all of which ultimately resulted in being able to speak with the potential respondent.

Sections 3.0, 5.0 and 6.0 of this report detail the evaluation findings based on these interviews which were carried out from September to October 2006.

## 2.2 Program Records and Documents

ALST provided the consultants with:

- the program proposal
- quarterly and annual reports to LAO
- training materials
- samples of Gladue reports.

Where relevant, information from these sources has been integrated into the preceding and following sections of this report.

## 2.3 Data Bases Developed for the Evaluation

At the outset of the evaluation in 2004 the consultants designed two data bases in a spreadsheet format to capture on an ongoing basis the daily activities and time required of the caseworkers and the specifics regarding characteristics of the individual clients and their cases. In the second year of the program (October 2005-September 2006) Gladue caseworkers provided information on these data bases for 26 clients and a total of 439 working days from October 2005 to the end of September 2006. This information has been summarized in sections 3.0 and 4.0 of this report.

### 3.0 GLADUE CASEWORKER PROGRAM OPERATION

This section outlines the information collected from interviews and the caseworker daily activity data base as it pertains to the operation of the Gladue Caseworker Program.

#### **Gladue Caseworker Program Management Activities and Time**

As in the first year, the ALST program director estimates that supervising the Gladue Caseworker Program requires approximately 40-50 hours per month (over half of the time that the director is present at ALST). The program director is in the office four days per week (and often five) and is always available to the caseworkers, by cellphone or e-mail if not in the office. Caseworkers reported that they were always able to obtain very fast response from the program director when needed. The activities carried out by the program director in relation to this program include:

- outreach work
- meetings with justice personnel
- speaking to justice groups to educate them about Gladue and promote the program
- reviewing reports: reviews all several times after revisions
- weekly staff meetings – review referrals for appropriateness
- individual meetings regarding specific cases
- responding to questions
- “troubleshooting”
- liaising with the funder
- administration, managing the budget and approving expenditures.

#### **Gladue Caseworkers’ Activities and Time**

The caseworkers’ tasks and time allocation is presented below based on their daily log reports.

<b>TASK</b>	<b>AVERAGE TIME PER DAY YEAR 1 (based on 262 days reported by 3 caseworkers)</b>	<b>PERCENTAGE OF DAILY TIME YEAR 1 (slight differences in totals are due to rounding)</b>	<b>AVERAGE TIME PER DAY YEAR 2 (based on 439 days reported by 4 caseworkers)</b>	<b>PERCENTAGE OF DAILY TIME YEAR 2 (slight differences in totals are due to rounding)</b>
<b>Court Time – Total:</b>	<b>1.24 hrs.</b>	<b>17.3%</b>	<b>2.0 hrs.</b>	<b>28.4%</b>
Travel to and from court	.13 hrs.	1.8%	.36 hrs.	5.1%
Time spent in court	1.11 hrs.	15.4%	1.64 hrs.	23.4%
<b>Office Time – Total:</b>	<b>5.54 hrs.</b>	<b>77.1%</b>	<b>4.73 hrs.</b>	<b>67.1%</b>
Report research and preparation	2.67 hrs.	37.1%	3.03 hrs.	43.0%
Administration	.52 hrs.	7.2%	.84 hrs.	11.9%
Consulting with supervisor/team meetings	.19 hrs.	2.6%	.22 hrs.	3.1%
Other in-office tasks	2.16 hrs.	30.0%	.64 hrs.	9.1%
<b>Out of Office Time – Total:</b>	<b>.41 hrs.</b>	<b>5.7%</b>	<b>.33 hrs.</b>	<b>4.7%</b>
Travel for meetings/interviews	.13 hrs.	1.8%	not tracked in year 2	not tracked in year 2
Meetings with Gladue clients	.10 hrs.	1.4%		
Meetings with justice personnel	.06 hrs.	.8%		
Conferences/workshops/seminars	.12 hrs.	1.7%		
<b>Total Daily Hours</b>	<b>7.19 HRS</b>	<b>100%</b>	<b>7.05 HRS</b>	<b>100%</b>

As the table indicates, the greatest proportion of caseworker time in both year 1 and year 2 was devoted to the research and writing required to produce the Gladue reports. This has increased somewhat in the second year (43.0% versus 37.1%). While over three-quarters of their time in year 1 (77.1%) was spent in the office either preparing reports or carrying out related tasks, in year 2 this has declined to approximately two-thirds of caseworker time (66.7%). Travelling to court and being in court now occupies over one-quarter (28.4%) of their time whereas in year 1 these tasks consumed less than one-fifth of the caseworkers' overall time (17.3%). As in year 1, other out-of-office time for meetings and interviews accounts for a relatively small proportion of their total hours (5.7% in year 1 and 4.7% in year 2).

### **Other ALST Contributions to the Gladue Caseworker Program**

ALST contributions to the program in addition to caseworkers and management are:

- applications to treatment centres;
- purchase of bus tickets and putting individuals on the bus (recently hired a 'follow-up' worker);
- appearance in court as an intervenor on some cases.

### **Gladue Reports**

The Gladue reports themselves contain the following information:

- offender's name;
- names of the defence counsel and the judge;
- sentencing date;
- a synopsis of the offence;
- past record of the offender;
- individual's personal circumstances;
- contacts made with the offender's family;
- options for services consistent with proposed sentence;
- plan for services to meet offender's needs;
- putting the offender's situation into the Aboriginal context by describing the systemic issues affecting Aboriginal people, e.g., history of adoption or foster home, impact of residential schools on the offender or offender's family, homelessness, factors leading to a separation from Aboriginal traditions;
- any applications to and arrangements made with residential treatment facilities;
- recommendations for sentence taking into consideration the Crown's submission.

The steps taken to prepare the Gladue reports include:

- at least one, and usually more than one, one-two hour interview, in person and/or by telephone as required, is carried out with the offender;
- family members are contacted for information; sometimes the offender prefers not to have this done but caseworkers deem it important to corroborate the offender's statements;
- treatment services are contacted and arrangements are made for the offender to receive these;
- obtaining information from the Crown Attorney involved regarding their initial sentencing position;
- the proposed treatment plan and sentencing recommendations are discussed with the offender; the offender needs to understand and agree to these.

In the second year of the program, 75 cases requiring Gladue reports have been referred to ALST. According to the caseworkers, it takes five to ten working days to prepare a report.

Given their overall workload, including their attendance at court two-three days a week, four to six weeks are necessary to provide a Gladue report to the court. Caseworkers indicated that their realistic capacity is carrying three reports at a time. The reports are provided to all parties, i.e., judge, Crown, defence, the day prior to the sentencing date.

The number of days from referral of the offender for a Gladue report to the actual sentencing date is described in the table below.

NUMBER OF DAYS	NUMBER OF CASES (26)
20 or fewer	4
21-30	4
31-40	2
41-50	8
51-60	2
61-70	1
71-80	1
105	1
176	1
194	1
328	1
Report Withdrawn	2
Offender Disappeared	1
Referral Date Unknown	1

The caseworkers estimate that the length of elapsed time to prepare a report has increased in the second year of the program due to the growing number of referrals. They also indicated that, currently, up to six weeks may be necessary (i.e., a total of 42 elapsed days). However, it appears that almost forty per cent of cases (10 out of 26 known) have been sentenced in 40 days or less. To control the workload carried by the caseworkers and the time required to provide the court with the Gladue reports ALST has instituted the policy of not accepting Gladue requests where offenders are facing short sentences (i.e, less than 30 days) when they are remanded to custody pending sentence. However, every case is decided on its own merits by the program director. Information sessions have been held to inform judges and defence of this policy.

### **Comparison of Pre-Sentence Reports with Gladue Reports**

Pre-sentence reports (PSRs) are prepared by probation officers at the request of the court and contain information about the offence and the offender that may be helpful to the court in determining sentence. They are usually based on information obtained from the offender's record, the arresting officers and other sources who may have had an association with the offender.

Almost all judges (except for one who was "not sure" – not yet having seen a great many Gladue reports) see the reports as being distinctly different from PSRs in several respects:

- The reports deal with the offender in a holistic and "healthy" way – there is an open acknowledgement of the individual's problems without passing judgement on the person or "labeling" them;
- Occasionally PSRs reference the Gladue report;

- Gladue reports are better organized and provide much greater detail, especially regarding the culture and history of the offender as an Aboriginal person (2 responses);
- The Gladue reports focus on factors relevant to section 718.2(e);
- The Gladue reports build a plan for the offender that is based on Aboriginal programs and services (3);
- The Gladue reports include much more background regarding the offender's family and personal history;
- PSRs do not specifically address the needs of the particular offender;
- PSRs are highly structured and always follow a routine format.

One judge commented that there is a fair amount of overlap between the Gladue reports and PSRs with PSRs having the advantage of access to institutional records regarding the offender. In addition, PSRs are more directive regarding a recommended disposition.

All three Crowns felt that there is a difference between Gladue reports and PSR's. All also felt that Gladue reports provide greater detail on the background of the accused and draw out the issues facing the accused. One Crown noted that the Gladue reports provide referral information for programs within the Aboriginal community that are culturally appropriate.

Two out of three defence consider the Gladue reports to be different from PSRs:

- The areas of concentration – they go much further with respect to the background of the offender;
- There is much greater detail;
- The Gladue caseworkers interview family members.

Courtworkers commented that the differences between Gladue reports and PSRs include:

- Gladue reports are more in-depth and well written;
- Gladue reports provide more background on the behaviour of the individual and why it is that way; they provide a different view of the accused and better information for the judge and defence.

One courtworker noted that in some cases both a PSR and a Gladue report are being requested and felt this is not necessary.

The Aboriginal Bail Program supervisor also sees differences between Gladue reports and presentence reports:

- Gladue reports are more sensitive to the background of the accused;
- Gladue reports provide more background on the accused and more information about the family;
- the plan is an important part of the Gladue report.

### **The Gladue Process**

According to the caseworkers identification of candidates for Gladue usually occurs at the point at which the accused enters his/her plea. In the non-Gladue courts these candidates are often identified to the caseworker by the courtworker (where there is one) and the offender's defence counsel or duty counsel. Judges have also made requests to the courtworker when there is no caseworker in court (as they usually attend the non-Gladue courts for sentencing) and the courtworker contacts the ALST program manager with the referral. In the Gladue courts most often defence/duty counsel bring cases to the caseworker's attention.

Judges indicated that, in most cases, defence have requested a Gladue report of the court although sometimes the judge has done this when they see an offender for whom it might be appropriate and defence has not asked for one.

Based on the interviews carried out all three Crowns indicated that they had proposed offenders for Gladue by speaking directly to the accused person, the defence counsel or Aboriginal courtworkers. In all cases mentioned, a Gladue caseworker was available.

Defence counsel interviewed said that the courtworker often advises them of a candidate for Gladue when a plea is entered. Courtworkers confirmed that they have proposed a Gladue process for an accused person, usually by mentioning the option to a defence counsel. Both of these courtworkers found that Gladue caseworkers were available when needed. In non-Gladue courts when a caseworker has not been present defence has completed a referral form which is sent to ALST with the request.

Only one judge reported seeing a challenge to the application of Gladue. This challenge was made by the Crown based on questioning the identification of the offender as an Aboriginal person. The judge accepted the offender's statement in this regard.

Three Crowns who were interviewed have challenged the application of Gladue for a number of reasons:

- non-Aboriginal people applying - issue of self-identification;
- the judiciary not being well informed about the Gladue process;
- the lack of resources to support recommended plans – this is not a problem in the Toronto area, but in other places.

Two defence counsel have experienced a challenge regarding the application of Gladue, in one case because it was seen to be duplicating the PSR and in the other case because it involved a young offender. Neither of the two courtworkers interviewed have seen any challenges in applying Gladue

Five of the eight judges have experienced an offender who declined Gladue. In most cases, the offender wanted to shorten their custody as they were spending time in remand before sentence and did not want to wait for the Gladue report. In some instances, the offender was not willing to have family members contacted for the purpose of the report. Most often the offender's refusal was accepted although one judge reported ordering a Gladue report despite the decline because the offender would have been better served.

Two of the three Crowns indicated that offenders declined a Gladue process for similar reasons, i.e., they just want to plea and do the time or for personal reasons that "only make sense to the accused".

One (of three) defence lawyers had a client who declined Gladue because the time to obtain the report would have been greater than the time in custody being requested by the Crown (the offender having been remanded to custody instead of bail pending sentence). No report was prepared in this case.

One of two courtworkers had seen an accused person decline a Gladue process. In this case, the defence noted that a PSR had already been prepared and they should move forward as "PSRs are just about the same as Gladue" (the courtworker noted they are not). The accused

agreed and the case proceeded. In the end the accused received probation, an outcome the courtworker felt would have been the same, in this case, under Gladue.

### **Program Issues**

A number of issues related to the Gladue caseworker program operation were identified by the caseworkers and program director.

- ▶ The workload for Gladue caseworkers is increasing with the result that it is taking a longer time to provide reports to the court. This is the one criticism that judges, defence and Crowns expressed (see section 5.0 below). Caseworkers attend the Gladue courts on a regular basis, though sometimes there are no or very few cases which are referred (or appropriately referred) for Gladue. Caseworkers indicated frustration with their non-productive time in court when they could otherwise be working on reports.
- ▶ The caseworker appears in the non-Gladue courts only on the day set for sentence. However, there can be several postponements. The result is that the caseworker travels to and spends time in court unnecessarily.
- ▶ Caseworkers feel pressures from a number of directions (i.e., judges, Crowns, defence with clients in custody) to “speed up” the reports. However, they are very concerned about the quality and accuracy of the reports as they are responsible for obtaining the information and basing recommendations on this. It is not clear that there is a simple answer to this – whether it is a scheduling organizational issue, a resource issue or an ongoing situation that is an integral aspect of the functioning of the justice system.
- ▶ Some justice personnel have suggested preparing “short”, “expedited” and “stand-down” reports (see section 6.0), partly as a solution to the time issue. A report could be prepared based on one meeting with the offender and the development of sentencing options. However, this falls far short of the areas covered by Gladue reports which, according to the justice respondents, are their major strength. These “short” reports appear to be closer to the nature of the PSRs that are now readily available, except that the disposition options would be non-custodial. It is not clear that such reports would adequately meet the needs of either the court or the offender.
- ▶ Identification of Gladue candidate where Aboriginal identity is in question – judges and caseworkers generally accept the statement of the offender. Some respondents raised the question of whether there should be a standard process for assessing identification. However, ALST is not prepared to carry out any determinations for the court of whether or not a person is Aboriginal.
- ▶ Residential treatment centres, which are an important resource for offenders, often will not accept individuals and make concrete arrangements until after sentence has been passed by the court; however, judges need to see specific plans for the offender in the Gladue report prior to sentence.
- ▶ It is important to have the cooperation of courtworkers, bail program workers and others (in Brantford - the Native Inmate Liaison officers, probation officer and the justice programs). Over the past year, relationships among other Aboriginal justice workers and the Gladue program have been very effective in promoting the smooth functioning of the program.

- ▶ The distinction between the role of the Aboriginal courtworker and that of the Gladue caseworker remains unclear for some justice personnel. This sometimes leads to the expectation that caseworkers will carry out courtworker tasks if the courtworker is not available.

## 4.0 PROFILE OF GLADUE CASES

The two sections below present a profile of the characteristics of offenders for whom Gladue reports have been prepared and an outline of the types of cases associated with these offenders. ALST estimated that approximately 75 Gladue reports had been prepared for all Gladue and other courts from October 2005 to October 2006. Caseworkers were able to document a total of 26 cases on the data base prepared by the evaluators. Turnover in the caseworkers, revisions of the data base format and training of the caseworkers in the use of the data base resulted in some cases not being captured during this time period. It should be kept in mind that the client profile is based on only a third of the offenders for whom reports have been prepared and, as a result, is not representative of all of the Gladue cases.

### 4.1 Client Profile

The following table outlines a profile of the offenders for whom Gladue reports were prepared between October 2005 and the end of September 2006.

CHARACTERISTIC	NUMBER OF CLIENTS (Total clients = 26)
<b>Age at Referral:</b>	
16 years	1
17-19 years	2
20-25 years	6
26-30 years	2
31-35 years	3
36-40 years	2
41-45 years	6
Over 45 years	1
Unknown	3
<b>Young Offenders:</b>	2
<b>Gender:</b>	
Male	19
Female	3
Unknown	4
<b>Prior Mental Health Issues:</b>	
Yes	8
No	13
Unknown	5
<b>Fostered/Adopted:</b>	
Yes	8
No	14
Unknown	4
<b>Childhood Physical Abuse:</b>	
Yes	14
No	8
Unknown	4

CHARACTERISTIC	NUMBER OF CLIENTS (Total clients = 26)
<b>Childhood Sexual Abuse:</b>	
Yes	11
No	10
Unknown	5
<b>Residential School – Family:</b>	
Yes	0
No	21
Unknown	5
<b>Residential School – Offender:</b>	
Yes	0
No	23
Unknown	3
<b>Involved with Aboriginal Culture/ Community:</b>	
Yes	14
No	9
Unknown	3

Offenders ranged in age from 16 to 46 years. One-half are under 31 years and one-half are 31 or over. The great majority are male. Fewer than half have been diagnosed with prior mental health issues and the same proportion has had a history of being fostered or adopted. Almost two-thirds had experienced physical abuse in childhood while approximately fifty per cent had a background of sexual abuse. Among these 26 cases, none of the families of offenders or the offenders themselves are reported to have experienced residential school. However, these are only one-third of the offenders for whom reports have been prepared in the past year and caseworkers indicated that many of the offenders have in fact had family members who had attended residential schools. More than half of the 26 individuals for whom information has been provided have some involvement with their Aboriginal culture and community.

## 4.2 Profile of Court Cases

The table below outlines a number of characteristics of the cases and Gladue referrals of the 26 individuals for whom information was provided.

CHARACTERISTIC	NUMBER OF CLIENTS (Total clients = 26)
<b>Referred by:</b>	
Judge	4
Defence	18
Duty Counsel	2
Unknown	2
<b>History of being Referred to Mental Health Court :</b>	
No	23
Unknown	3

CHARACTERISTIC	NUMBER OF CLIENTS (Total clients = 26)
<b>Pre-sentence Custody on Gladue Charges:</b>	
Yes	15
No	7
Unknown	4
<b>Days in Custody Prior to Sentencing:</b>	
3	1
57	1
73	1
105	1
147	1
154	1
172	1
185	1
225	2
717	1
Unknown	8
<b>PSR Report Submitted:</b>	
Yes	11
No	10
Unknown	5
<b>Sentence Consistent with Recommendations:</b>	
Completely	11
Mostly	4
To some extent	2
Not at all	2
Unknown	6

Over 80 per cent of the Gladue referrals came from defence/duty counsel. One-third of the offenders had been granted bail while two-thirds had been remanded to custody on the charges for which they were to be sentenced under Gladue. The range of custody time varies from three days to 717 days. Most had spent over 100 days in custody.

In addition to the Gladue report, a PSR was submitted for half of these offenders. In half of the cases the recommendations contained in the Gladue report were “completely” accepted as the basis for sentence. For another quarter the sentence was “mostly” consistent with the Gladue recommendations. In two cases none of the sentencing conditions of the Gladue report were acted upon (one offender was given 16 months additional).

## 5.0 RESULTS OF THE GLADUE PROGRAM

### **Format and Structure of the Gladue Reports are Appropriate and Helpful**

All of the respondents interviewed at this stage of the evaluation were asked whether the format and structure of the Gladue reports they had received were appropriate and helpful for the purpose of sentencing.

All judges interviewed feel that the format and structure of the Gladue reports are appropriate and helpful. According to them, the reports are helpful in several ways:

- the background of offenders is provided in depth, both in terms of generic factors related to the history of Aboriginal people in Canada and specific circumstances regarding the offender's life;
- the Gladue reports propose community-based options for the disposition of the offender with a detailed treatment plan that responds to the needs of the individual;
- the plan includes referrals to services and the involvement of an aftercare worker at ALST who will follow-up with the offender to connect the individual with these services;
- the reports focus on the particular factors that are relevant to section 718.2(e) and are targeted to these issues;
- the service plans are based on the involvement of the Aboriginal community and programs;
- the reports provide an honest opinion regarding the offender's motivation for rehabilitation;
- the reports are written in a direct and straightforward manner.

Two judges, with longer experience with the Gladue court, indicated that the reports are now much more precise and better targeted to the concerns relevant to Gladue. One criticism was that the reports are sometimes too long with respect to disadvantages in the offender's background that are not relevant.

All three of the Crowns interviewed see the Gladue reports as being appropriate and helpful:

- they outline the connection to the community or the lack thereof;
- provide family history in an in-depth and focused manner;
- provide great background about how the accused came to be in the situation he/she is in;
- help Crowns to make judgment calls.

One Crown commented that the Gladue reports are not always helpful when they do not:

- link the background with the offender's criminality;
- provide concrete proposals in the way of treatment/counseling, etc;
- provide sufficient background regarding the accused in situations where the Crown's plea position doesn't involve significant jail time but where the court would like additional background on the accused.

All three defence had received at least one Gladue report and feel that the structure and format are appropriate and helpful for them in several ways:

- they provide a comprehensive background both specific to the individual as well as regarding the 'larger picture' of the offender in the context of being an Aboriginal person;
- they are written very coherently and in a professional manner;
- they include direct quotes from family members and others closely related to the offender – this is better and less biased than a summary.

### **Gladue Reports Enable the Court to Follow the Requirements of Section 718.2(e)**

Respondents were questioned to what extent the Gladue reports enable the court to follow the requirements of section 718.2(e) of the *Criminal Code of Canada*, the key purpose of preparing these reports and providing them to the court for the sentencing of the offender.

Seven of eight judges said that the Gladue caseworker program has enabled or facilitated them in following the legal requirements of section 718.2(e) "a lot". One said "very little" as the caseworker does not play a large role in court. Those saying "a lot" mentioned the following:

- caseworkers provide detailed and culturally specific treatment plans in consultation with the offender and assess the offender's motivation to follow this plan (4);
- there is the assurance that referrals will be made and an aftercare worker will assist the offender in contacting the needed services;
- the caseworkers know what the court is looking for in preparing the Gladue reports and, as a result, the reports focus on factors related to section 718.2(e) (3);
- caseworkers connect Aboriginal offenders to the local Aboriginal community;
- the reports provide recommendations without 'passing judgment' on the offender.

All three Crowns interviewed feel that the Gladue reports have enabled the court to follow the legal requirements of section 718.2(e) "a lot", for essentially the same reasons - the Gladue reports provide the court with a lot of information and suggestions that are helpful in sentencing. One Crown suggested that there have now been enough Gladue cases to provide a "map" on how to do this, see the Gladue process, the wording on decisions that show how it is done.

All defence also see the Gladue caseworker program as enabling the court to follow section 718.2(e) 'a lot'. It has done this by:

- focusing on the requisite factors relevant to s. 718.2(e)
- providing a lot of very detailed information;
- bringing Gladue to the attention of the courts.

Courtworkers are divided in their view with one saying "a lot" and one saying "some":

- judges are aware of Gladue and say it is to the offender's advantage when sentencing; judges say they give consideration to Gladue reports;
- some judges do, some don't - visiting judges and Crowns mean there is not always consistency in the consideration of Gladue.

### **Gladue Report Recommendations are a Sound Basis for Sentence**

All judges deem the Gladue report recommendations to be a sound basis for sentence. Their responses describe how the reports do this:

- treatment options are suggested and sentence options proposed;
- there are plans for the offender – caseworkers are familiar with the Aboriginal community, talk to the services involved and will connect the offender with these services;
- the plans for the offender are detailed and there is the assurance that the arrangements will be facilitated and the offender will be connected with the required services – the arrangements are in place (2);
- there is more information as well as more recommendations than defence usually proposes;
- the consent of the offender regarding the recommendations is obtained.

### **Gladue Reports Result in Changes to the Crown's Submission on Sentence**

According to the caseworkers, the recommendations in the majority of Gladue reports are “completely” or “mostly” accepted by the court when sentencing. The three Crowns indicated that the Gladue reports have resulted in their changing their original positions on sentence in a few cases. The kinds of information that have influenced their sentence recommendation are information about the individual that they normally wouldn't see (detailed history and the plan for an alternative to custody), the plan of care and proposals for treatment. In the cases in which they have not modified their sentence submission, Crowns explained that in more serious cases (violence especially), there was little Gladue could do - the report was not to blame, it was the nature of the charge. One Crown noted that if the report doesn't provide helpful information their position might not change.

### **Gladue Caseworker Program is Beneficial for Aboriginal Offenders**

All judges feel that the Gladue caseworker program is beneficial for Aboriginal offenders for a number of reasons:

- a rehabilitation plan is developed for offenders and the required arrangements are made for them (3);
- detailed information regarding the background of the individual offender is provided to the court;
- reasonable and practical options for the offender are presented;
- the message to the offender is coming from another Aboriginal person – the caseworkers, along with the courtworkers have a better understanding of the offender's situation and needs (2);
- the sentence is more tailored to the individual's needs and is usually lighter.

One judge pointed out, though, that the program only benefits Aboriginal offenders if it is adequately staffed and funded. When there has been turnover of caseworkers, some offenders have missed the opportunity to obtain this benefit.

The Crowns see the Gladue caseworker program as being beneficial for Aboriginal persons. It is beneficial due to the information that reports provide to the court and the plans for treatment. In addition, the program is beneficial to Aboriginal offenders because it helps prevent their return to the criminal justice system and, even in situations with repeat offenders, it offers more helpful and case-specific ways of dealing with criminal behaviour.

Crown respondents feel that the Gladue report provides more detailed information for the court's consideration which makes a difference in the way in which Gladue Aboriginal offenders with the assistance of the Gladue caseworker and non-Gladue Aboriginal offenders are dealt with.

The defence lawyers who were interviewed (3) see the Gladue caseworker program as beneficial to Aboriginal offenders for the following reasons:

- clients get non-custodial sentences;
- there is more lenient treatment of Aboriginal offenders who have the benefit of a Gladue report at sentence;
- it brings information before the court and places things into context, resulting in more appropriate sentences.

All courtworkers also reported that the program is beneficial:

- judges acknowledge that they are applying Gladue in sentencing;

- Gladue caseworkers have the education and time to persist and interview the client and family members to get the information needed for the Gladue report - they have the skills required to do this for the client.

### **Gladue Caseworker Program is a Benefit to the Court Process**

Most judges (7) see the Gladue caseworker program as being of benefit to the court process. However one indicated that it is both a benefit and a hindrance – a hindrance because of the length of time required to have the reports ready for the court. On the other hand, the benefits to the court are several:

- this offers a tool to the court which may streamline the process overall;
- there is some ‘spillover’ from the Gladue sentencing considerations to the way that the court views sentencing responsibilities in other cases;
- the Gladue caseworker program is necessary so that the court can fulfill its legal obligations to follow section 718.2(e);
- the more information that can be provided regarding an offender, the better;
- the caseworkers contact the offender and others and provide reliable information for sentence decisions;
- it enables the court to institute principles of therapeutic justice, not simply retributive justice. One judge said “We are almost there already. There is no other way of doing this.”

With respect to whether the Gladue caseworker program is a benefit or hindrance to the court process, all three Crowns see it as a benefit. It is seen as providing the required information that sets the offender in an Aboriginal context and allows for dealing with Aboriginal offenders in a culturally-sensitive manner that reduces the burden on the criminal justice system.

All defence (3) consider the program as a benefit to the court process:

- it provides detailed information on the factors relevant to s. 718.2(e);
- there is much more information available to the judge and better judgments are handed down;
- the process gets better input which makes it fairer.

Two (of three) courtworkers interviewed see a benefit to court process from the Gladue caseworker program:

- they bring added help to the cases – it is hard for a courtworker to do it all in busy courts;
- judges and Crowns use Gladue reports in making decisions which is a benefit to the offender.

### **Effects of the Gladue Caseworker Program on the Court Process**

Several judges indicated that the Gladue caseworker program has had some effect on the court process:

- Gladue courts may have taken the pressure off the bail courts by taking lengthy cases out of the plea and bail courts;
- in Gladue court judges take more time in the sentencing process and to determine the appropriate sentence; although the process is slower, this is not detrimental to the court in general; (2)
- in non-Gladue courts - generally judges are trying harder to keep Aboriginal persons out of custody or in custody for only short periods – the caseworker program has improved our sentencing outcomes; (2)

- there is a lot of downtime in Gladue court due to having to hold matters down so that the caseworkers can speak to the offender.

Crowns see the effects of the Gladue caseworker program on the court process as bringing more flexibility to the court process and providing helpful information (detailed background) to assist in sentencing.

Two out of the three defence respondents do not think that the caseworker program has had any effect on the court process though the third one said:

- it has resulted in more appropriate sentences.

Courtworkers see Gladue as facilitating the court process vis-à-vis section 718.2(e) and, in some cases, results in lower less harsh sentences.

### **Effects of the Gladue Caseworker Program on Justice Personnel**

Half of the interviewed judges could point to some effects of the Gladue caseworker program on justice personnel:

- defence are now obtaining information from the Gladue caseworkers in preparing their case;
- justice personnel, including clerks and court reporters, are now more educated about the history of Aboriginal people and how this history continues to have significant effects (2);
- their outlook has changed – they see how the Gladue decision is played out on a day-by-day basis;
- has increased the interest on the part of some judges in having better information on all offenders so that sentences can be tailored to individuals' needs.

Again, half of the judges indicated that they have seen a greater interest on the part of justice personnel in adopting the Gladue process:

- the two new Gladue courts are evidence of this;
- there has been more enquiring by judges regarding sentence requirements specifically tailored to individual offenders.

Crowns reported that the effects include:

- those in the process (judges, Crowns, some duty counsel) have expressed an interest in trying something different and have received the training to familiarize themselves with the Gladue process - better able to play the role in court;
- allows for bringing forward the cases in a credible way, still pursue prosecution;
- provides the court with more tools and information to deal with Aboriginal accused.

Two of the Crowns agree that there is a great interest in the program and in seeing a wider application of the program (although one noted maybe not the program as we now know it in all locations, but some application of it).

Two defence lawyers identified effects of the Gladue caseworker program on justice personnel:

- defence make better sentence submissions;
- it assists the judges and defence in getting a better picture – Crowns tend to ignore the positive factors.

The same number said that they have seen increased interest in Gladue from other defence and also from judges – “they would love an expansion of the program”.

The courtworkers who were interviewed pointed to several effects of the program on justice personnel:

- see some judges who comment on the reports and the Gladue caseworker as being well prepared and having well-presented reports and acknowledge their use in sentencing;
- justice personnel are aware of and use Gladue reports.

Two courtworkers feel that there is interest among justice personnel in adopting a greater and wider application of the Gladue process, especially in courts where it is not in use now.

## 6.0 SUGGESTIONS FOR IMPROVEMENT AND CHANGES

### **Factors Facilitating the Application of Gladue**

Program staff, Crowns, defence/duty counsel and courtworkers were asked about the factors they feel are facilitating the application of the Gladue requirements under section 718.2(e). Their responses are detailed below.

#### Program Staff:

- reports must be seen as 'neutral' and without bias regarding the disposition of the offender;
- decisions of the Ontario Court of Appeal indicate that the Gladue decision considerations must be brought into application;
- there is a more receptive climate on the part of all justice personnel;
- the recently funded (by Miziwe Biik) position of the Gladue aftercare worker who works with the Gladue caseworkers and takes responsibility after sentence for connecting offenders with the services required according to the sentence;

#### Crowns:

- knowledge of s.718(e) and the process involved in applying it;
- knowledge of the case law;
- having more resources available for Gladue court;
- education about the section and the process.

#### Defence:

- an educated defence bar that knows how to use the resources and tools of the Gladue caseworker as well as s.718.2(e) – if defence counsel doesn't ask, it doesn't happen; (2)
- the knowledge of the caseworkers – they "really know their stuff".

#### Courtworkers:

- widespread awareness of Gladue among judges and lawyers;
- knowledge and consistency of judges and Crowns;
- offender awareness of the process - word of mouth spreads this - that keeps them out of jail;
- use of Gladue reports by lawyers and Crowns in bail considerations.

#### Bail Program Supervisor:

- that it works for offenders - treatment, counseling and employment are provided and there is support;
- there is a lot of hope for the offender;
- big effort for youth and young adults - there may be recidivism, but there is trust;
- a real team has developed among the various workers and more positive community supports are there now too.

### **Factors Impeding the Application of Gladue**

The same respondents were also questioned about the factors that seem to be impeding the application of Gladue. Again these are described below.

**Program Staff:**

- because a lot of Gladue offenders residing in Toronto are not part of any community it is sometimes hard to corroborate the information they provide to the caseworker;
- defence should introduce case law in support of the Gladue recommendations after they have received and reviewed the report;
- program resources are strained as the demand for Gladue reports is increasing – the Brantford caseworker has been asked to do Gladue reports in additional courts nearby (i.e., Guelph and Cambridge);
- in some locations there are not always community resources available for treatment of and assistance to Aboriginal offenders – plans and recommendations depend on these.

**Crowns:**

- lack of knowledge of the section and the process;
- lack of knowledge about the offender can hinder the process - real role for the Gladue caseworker and the Aboriginal courtworker;
- there are not enough resources (Gladue caseworker and funds) - resources are taxed now;
- offences involving greater violence are less likely to get Gladue but sometimes the process ends up looking like a Gladue process.

**Defence:**

- a lack of resources; (2)
- judges who are less familiar with Gladue and sometimes just rely on routine sentencing parameters;
- a lack of awareness on the part of the bar – they need to be educated.

**Courtworkers:**

- Gladue is not available in all jurisdictions and not even fully in some of the areas now covered (especially where there are rotating judges and Crowns);
- not sure if the Gladue caseworker can go to all courts or only certain designated courts;
- turnover in Gladue caseworkers;
- some defence are not as aware of the process and ask courtworkers for Gladue reports;
- the lack of a relationship of caseworkers with courtworkers, probation, Native Inmate Liaison Officer, follow-up workers - the team.

**Bail Program Supervisor:**

- judges who put everything over, this prolongs the process - offenders are held in custody longer.

**Ways in Which the Gladue Caseworker Program can Better Assist the Court in Following the Requirements of Section 718.2(e)**

Five judges indicated ways in which the Gladue caseworker program can better assist them in following the requirements of section 718.2(e):

- ▶ speed up the preparation of the reports – one took four to six weeks which is too slow when the individual is in custody;
- ▶ the time required for the reports is too long – ALST seems to have enough caseworkers now to handle this;
- ▶ reports should be provided faster;
- ▶ ALST should have annual conferences with the judges involved to inform them about what the program is doing – e.g., am not aware of the availability and role of the aftercare worker;

- ▶ caseworker could indicate if the offender may be at high risk for flight and should be court-monitored;
- ▶ would be helpful to have more informal contact with the caseworkers – be able to get to know them better.

Two Crowns have suggestions on how the Gladue caseworker program can better assist the court in following the requirements of s.718.2(e). The suggestions are:

- ▶ develop better relationships with the Crowns and duty counsel;
- ▶ it would be helpful to have reports in a wide-range of sentencing situations rather than just instances where the Crown is seeking heavy jail terms; it would be helpful if there were proposals regarding averting the reoccurrence of the behaviour, also having concrete links in the reports between the background and the behaviour.

Only one defence counsel had a suggestion about the Gladue caseworker program:

- ▶ ALST should consider a form of shortened or expedited report for bail and short custodies.

One defence added the comment that “it all comes down to dollars as the caseworker can’t sit in court all day every day and wait for sentence.”

One courtworker suggested that more publications to inform Crowns and judges are needed to create greater awareness as well as more presentations on Gladue at events such as judges’ conferences.

### **Respondents’ Suggestions Regarding the Gladue Reports**

A number of suggestions regarding the reports were offered by five of the eight judges interviewed:

- ▶ the plan of care needs to provide greater detail with more information regarding the particular individual – sometimes it is too generic; a lot of detail is necessary if the request is for no custody;
- ▶ they could be prepared faster (2);
- ▶ judges should be given the reports at least 48 hours ahead so that they have time to give them thorough consideration;
- ▶ the reports would be easier and faster to review if they were prepared in subtitled sections denoting the specific disadvantages relevant to the Gladue decision; a summary or simple list of these disadvantages as they pertain to the individual offender would be helpful;
- ▶ with some offenders coming before the court that have already had a Gladue report prepared on a previous occasion, it might be expedient just to update the former report;
- ▶ reports should be available for bail hearings.

Two Crowns had suggestions for improving Gladue reports:

- ▶ focus on the level of connectedness to the community from which they come, or awareness of their community;
- ▶ it would be helpful if the report writers were able to include more input from family members, employers, etc., about the offender, more concrete proposals for a post-plea plan and more information regarding the criminal behaviour and causes of that behaviour.

It was also suggested by one Crown that there is a need for a short form version of a Gladue report, a "Stand Down Gladue Report", something that could be quickly prepared and very relevant.

Defence (2 out of 3) suggestions with respect to the reports include:

- ▶ make them available even if the offender is not facing a custodial sentence;

- ▶ sometimes the recommendation is worded as “go to a rehabilitation facility” - this is too broad; the recommendation must be specific with arrangements worked out prior to sentence; however, some facilities will not do this until after sentence has been passed.

## 7.0 CONCLUSION

The ALST Gladue Caseworker Program has made significant strides in year 2. It has worked with the judiciary to establish additional Gladue courts in new locations and has, as a result, increased the availability to Aboriginal offenders of non-custodial sentences based on Gladue considerations as set out in s. 718.2(e). A new position, that of Gladue aftercare worker, has been created and funded by Miziwe Biik (though only for 52 weeks) to follow-up sentences with the offender and link them to the services dictated by the court.

Justice personnel, including judges, Crowns and defence, are very supportive and generally highly satisfied with the operation of the program. For the most part, the courts have followed the recommendations put forward in Gladue reports when passing sentence.

An important function of the program is its education and communication activities to promote an understanding of the Gladue decision and s. 718.2(e) and increase the application of Gladue in Canadian courts. These are carried out with judges, Crowns and members of the defence bar as well as through the ALST website and presentations at conferences and meetings of legal and Aboriginal justice personnel.

There are some issues regarding the length of time it is taking for reports to be submitted and, related to this, the capacity of the program to carry a growing workload as additional cases are being referred. In the view of many respondents (judges, Crowns and defence) this is related, at least to some extent, to the resources available to the Gladue Caseworker Program to meet the demand for Gladue reports. Some respondents also indicated that they would like to see the program be able to accommodate Aboriginal offenders in other courts than those now served. At this point, funding by LAO for two caseworkers to serve 1000 Finch, College Park and Hamilton/Brantford is only guaranteed until September 2007. Withdrawal of the positions from those courts will leave a large gap in services for Aboriginal offenders as well as present greater challenges to the court to meet the legal requirements of Gladue.