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Courts Without Reports: The Problematic Absence of Gladue Reports at the Nunavut Court of Justice

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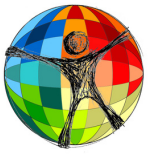

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ABSTRACT

In its shared twenty-three-year history with R v Gladue, the Nunavut Court of Justice (NCJ) has never ordered a Gladue report. The first request for one such report only arrived in 2020 and was squarely denied—despite the NCJ's self-proclaimed status as Canada's principal "Gladue Court." In a jurisdiction where Inuk adults make up ninety-eight percent of those sentenced to prison, this state of affairs warrants critical analysis.

In this article, I will argue that the lack of Gladue reports in the territory hinders the NCJ's ability to fully individualise the offenders it sentences. To first ground the analysis, the article outlines the (I.A) Gladue framework and (I.B) compares the different tools for collecting and communicating information about Indigenous offenders in the sentencing process, before (I.C) assessing jurisdictional divides on how courts tend to receive these methods. The analysis then shifts to Nunavut, where the territory will serve as a case study for how the absence of Gladue reports affects the sentencing of Indigenous offenders. I will provide a brief overview of the (II.A) purpose and function of the NCJ before examining how (II.B) the Court justifies its refusal of Gladue reports, and how (II.C) purported alternatives to these reports tend to operate in Nunavut case law. As a final and subsidiary point, I present (II.D) two jurisdictions that could serve as models for Nunavut's first Gladue writing program. Although Gladue reports are by no means a panacea for all the problems facing Nunavut, their absence is deeply problematic for the territory's administration of criminal justice.

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Introduction

Three weeks after the territory of Nunavut came into being,[1] the Supreme Court of Canada handed down its ruling in *R v Gladue*.[2] The territory's creation had been the outcome of a longstanding Inuit struggle for a homeland—and the largest Aboriginal title claim in Canadian history.[3] The ruling had been the result of enduring advocacy against Indigenous over-incarceration and endemic racism in the criminal justice system.[4] To the extent that each event signalled a new era in the relationship between Indigenous peoples and the state, there is a sense in which Nunavut and *Gladue* are caught up in each other's destiny.

It may therefore come as a surprise that in its shared twenty-three-year history with *Gladue*, the Nunavut Court of Justice (NCJ) has never ordered a Gladue report. The first request for one only came in 2020 and was squarely denied by the territory's Chief Justice.[5] In a jurisdiction where Inuk adults make up ninety-eight percent of those sentenced to prison,[6] this state of affairs warrants critical analysis.

In this article, I will contend that the lack of Gladue reports in the territory hinders the NCJ's ability to fully individualise the offenders it sentences. Moreover, its justifications for refusing

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[1] See *Nunavut Act*, SC 1993, c 28, s 79(1).

[2] See *R v Gladue*, [1999] 1 SCR 688, 171 DLR (4th) 385 [*Gladue*].

[3] See *Nunavut Land Claims Agreement Act*, SC 1993, c 29; Natalia Loukacheva, *The Arctic promise: Legal and Political autonomy of Greenland and Nunavut* (Toronto, ON: University of Toronto Press, 2007) at 41.

[4] See Jonathan Rudin, "Aboriginal Over-representation and R. v. Gladue: Where We Were, Where We Are and Where We Might Be Going" (2008) 40 SCLR 687 at 687–90.

[5] See Emma Tranter, "Top Nunavut judge denies request for territory's first written Gladue report", *The Globe and Mail* (8 October 2020), online: <theglobeandmail.com/canada/article-top-nunavut-judge-denies-request-for-territorys-first-written-gladue-2/>.

[6] See Department of Justice, *Spotlight on Gladue: Challenges, Experiences, and Possibilities in Canada's Criminal Justice System* (Ottawa: Research and Statistics Division, 2017) at 8 [Department of Justice, *Spotlight on Gladue*].

these reports are unsound, and the alternative methods of communication for Gladue information are either insufficient or underutilised.

My analysis will be split in two sections. Section I assesses the disparate approaches to communicating Gladue information before Canadian courts. The first part briefly outlines the Gladue framework, the second compares the different methods for communicating Gladue information, and the third and final part notes a jurisdictional divide on how courts tend to perceive these methods. Section II shifts the analysis to Nunavut, using the territory as a case study for how the absence of Gladue reports affects the sentencing of Indigenous offenders. The first part gives a brief overview of the purpose and function of the NCJ, the second examines how the Court justifies its refusal of Gladue reports, the third takes a deeper look into how different legal and actors affect the sentencing process, and the fourth part concludes by presenting two jurisdictions that could serve as models for Nunavut's first Gladue writing program.

Section I. A Varied Landscape: Disparate Approaches to Gladue Communication

A. The Gladue Framework

Before analysing the Gladue framework, I will raise a small terminological point. Identifying a party's last name in a judicial style of cause is a standard legal custom—such that terms like "*Oakes* test"[7] or "*Jordan* application"[8] have become common parlance for Canadian jurists. Throughout this article, I will employ the words "Gladue framework," "Gladue report," and "Gladue information." I do so in conformity with Canadian courts[9] and

[7] See *R v Oakes*, [1986] 1 SCR 103, 26 DLR (4th) 200.

[8] See *R v Jordan*, 2016 SCC 27 [*Jordan*].

[9] See e.g. *R v Ipeelee*, 2012 SCC 13 at para 60 [*Ipeelee*]. See also *R v Parranto*, 2021 SCC 46 at para 250; *R v Nahanee*, 2022 SCC 37 at para 66; *R v Sharma*, 2022 SCC 39 at para 6.

public policy actors.[10] Nonetheless, I wish to acknowledge how this practice ought perhaps to be approached with more care. Jamie Gladue suffered through a criminal justice process whose documented harm on Indigenous people—particularly women—has taken on her name.[11] To speak of a "Gladue factor" is to consider an Indigenous offender's "lack of education, poverty, unemployment, and fragmented [family]," [12] among other systemic and background factors related to colonialism. These are stigmatising associations. In a post-Truth and Reconciliation Commission context that calls for "intercultural understanding, empathy, and mutual respect,"[13] it may be opportune to remove this associational burden from Ms Gladue.[14] For now, I will leave it to those better placed than myself, namely Indigenous groups, to tender a suitable alternative.

i) *R v Gladue*

On appeal in *Gladue* was the construction and application of s.718.2(e) of the *Criminal Code*, mandating courts to consider "all available sanctions other than imprisonment that are reasonable in the circumstances [for] all offenders, with particular attention to the circumstances of aboriginal offenders."[15] After expounding Parliament's position that over-incarceration in Canada was generally problematic—and specifically concerning

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[10] See e.g. Department of Justice, *Spotlight on Gladue*, *supra* note 6 at 27 ("In some jurisdictions, *Gladue* Reports are written with the specific purpose of providing information relevant to s. 718.2(e).").

[11] See generally Michaela M McGuire & Danielle J Murdoch, "(In)-justice: An exploration of the dehumanization, victimization, criminalization, and over-incarceration of Indigenous women in Canada" (2022) 24:4 Punishment & Society 529.

[12] Paula Maurutto & Kelly Hannah-Moffat, "Aboriginal Knowledges in Specialized Courts: Emerging Practices in *Gladue* Courts" (2016) 31:3 CJLS 451 at 463 [Maurutto & Hannah-Moffat, "Aboriginal Knowledges"].

[13] Truth and Reconciliation Commission of Canada, Calls to Action, (Winnipeg: Truth and Reconciliation Commission, 2012) at 7. Though this call for action pertains to educational practices, its spirit resonates throughout the document and seems appropriate to mention in other contexts than schooling.

[14] For more on the judicial discourses surrounding the sentencing of Indigenous women, see generally Elspeth Kaiser-Derrick, *Implicating the System: Judicial Discourses in the Sentencing of Indigenous Women* (Winnipeg, MB: University of Manitoba Press, 2019).

[15] *Criminal Code*, RSC 1985, c C-46, s 718.2(e).

for Indigenous peoples—s.718.2(e) was interpreted as calling upon sentencing judges to investigate the causes of over-incarceration, with a particular emphasis on the structural nature of the crisis. Sentencing, although a limited remedial tool, would at least be a potential means of redress.[16]

Gladue's most crucial guidance concerned the information required to sentence an Indigenous offender. Two components are relevant here. First, the *substance* of such information. Second, the *form* in which this information is conveyed. On this first aspect, the Court directed judges to give particular attention to "(a) the unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection."[17] These factors are what we shall call "Gladue information." On this second aspect, the Court stated that in addition to courts taking judicial notice of the "broad systemic factors affecting aboriginal people," information regarding the case at hand would be communicated through several means. Namely, through counsel submissions "and from a pre-sentence report [taking] into account [the factors comprising Gladue information]," which may be sourced from "representations" from the offender's community.[18] These methods comprise "Gladue communication."

One important element is the Court's refusal to mandate a form for Gladue communication. The Court only went so far as to specify how it would be conveyed "[in] the usual course of events."[19] In the wake of a "watershed"[20] legislative reform of sentencing principles, one could assume that the Court wanted to set expectations for lower courts on how Gladue information would be typically communicated rather than impose a rigorous new procedural standard.

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[16] See *Gladue*, *supra* note 2 at paras 52, 61–64.

[17] *Ibid* at para 66.

[18] *Ibid* at para 93(7).

[19] *Ibid*.

[20] *Ibid* at para 39.

ii) *R v Wells*

Arriving shortly after *Gladue*, *Wells* provided additional guidance on applying s.718.2(e). Its central finding concluded that the provision did not mandate that restorative justice systematically outweighs principles of denunciation and deterrence in sentencing.[21] Especially for serious and violent crimes, this implies that incarceration was never automatically out of the question for Indigenous offenders.[22] While not in explicit contradiction with *Gladue*,[23] these words of caution strike a different tone than the Court's admonition of prison as "harsh and ineffective"[24] and Indigenous over-incarceration as symptomatic of "a sad and pressing social problem."[25]

Also crucial were the additional clarifications on the role of the sentencing judge in collecting Gladue information. *Wells* reiterated how counsel were expected to adduce the evidence necessary to give proper consideration to the "unique circumstances of Indigenous offenders," adding that s.718.2(e) imposes a positive obligation on judges to inquire into these relevant factors. The Court further explained that "[in] most cases, the requirement of special attention to the circumstances of aboriginal offenders can be satisfied by the information contained in pre-sentence reports."[26]

The operating value in *Wells* seems to be a form of pragmatism: The Gladue assessment, though novel, would not be transformative. The sentencing judge's positive obligation would be limited only to "appropriate circumstances" in which these inquiries could be "practicable" and would not denature the judicial role to that of a "board of inquiry."[27]

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[21] See *R v Wells*, 2000 SCC 10 at para 40 [*Wells*].

[22] See *ibid* at para 44.

[23] See *Gladue*, *supra* note 2 at para 33 ("it will generally be the case as a practical matter that particularly violent and serious offences will result in imprisonment for aboriginal offenders as often as for non-aboriginal offenders.").

[24] *Ibid* at para 54.

[25] *Ibid* at para 64.

[26] *Wells*, *supra* note 21 at para 54.

[27] *Ibid* at para 55.

iii) *R v Ipeelee*

The years following *Gladue* seemed to spell failure for its remedial ethos. Due partly to limited judicial engagement with the ruling, incarceration rates for Indigenous offenders continued rising.[28] By 2012, forthcoming legislative changes aiming to constrain judicial discretion in sentencing, namely through mandatory minimum penalty regimes, left little room for optimism.[29] Acknowledging s.718.2(e)'s failure to address Indigenous over-incarceration, *Ipeelee* thus emerged as a powerful restatement of *Gladue*. The ruling would endeavour to correct the "misunderstandings and misapplications"[30] of *Gladue* from lower court decisions in the intervening years.

Relevant to our analysis is the Court's guidance on the substance and form of Gladue information. On substance, *Ipeelee* reiterated that courts were required to take judicial notice of how "[histories] of colonialism, displacement, and residential schools [...] translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples."[31] The factors comprising judicial notice would not necessarily be person-specific, but would contextualise Indigenous offenders' unique personal circumstances.[32] On form, *Ipeelee* mandated counsel to convey the offender's "individualised

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[28] See *Ipeelee*, *supra* note 9 at para 62. See also Jonathan Rudin, "Looking Backward, Looking Forward: The Supreme Court of Canada's Decision in *R. v. Ipeelee*" (2012) 57 SCLR 375 at 375 [Rudin, "Looking Backward"]. For limited judicial uptake in Quebec, see generally Alana Klein, "Gladue in Quebec" (2009) 54:4 Crim LQ 506. For a more comprehensive look into Indigenous overrepresentation in the immediate years following *Gladue*, see generally Jonathan Rudin, "Addressing Aboriginal Overrepresentation Post-Gladue: A Realistic Assessment of How Social Change Occurs" (2009) 54:4 Crim LQ 447.

[29] See Rudin, "Looking Backward", *supra* note 28 at 375. For a detailed look into these legislative changes and their impact on Canadian sentencing, see also Anthony N Doob & Cheryl Marie Webster, "Weathering the Storm - Testing Long-Standing Canadian Sentencing Policy in the Twenty-First Century" (2016) 45 Crime & Justice 359.

[30] *Ipeelee*, *supra* note 9 at para 63.

[31] *Ibid* at para 60.

[32] See *ibid*.

information before the court in every case."[33] Crucially, the ruling commented on the "current practice" of Gladue communication:

> it appears that case-specific information is often brought before the court by way of a Gladue report, which is a form of pre-sentence report tailored to the specific circumstances of Aboriginal offenders. Bringing such information to the attention of the judge in a comprehensive and timely manner is helpful to all parties at a sentencing hearing for an Aboriginal offender, as it is indispensable to a judge in fulfilling his duties under s. 718.2(e) of the *Criminal Code*.[34]

This passage is the Court's sole description of a Gladue report.[35] It implies that they are one type among other forms of PSR, and that they convey individualised case-specific information about the Indigenous offender.

At first blush, *Ipeelee*'s description of "current practice" seems to fulfil the same role as *Gladue*'s reference to "the usual course of events."[36] Namely, by merely describing how the process will usually occur, the Court refused to mandate an exact procedure for Gladue information. However, some ambiguity remains.

Researchers and lower courts are yet to conclusively agree on whether this passage in *Ipeelee* mandates that a Gladue report be rendered available to all Indigenous offenders who desire one. Alexandra Hebert has interpreted this paragraph as suggesting that "[s.718.2(e)] demands that Gladue reports be made available to all Indigenous offenders,"[37] with Terry Skolnik stating that what the Court deemed "indispensable" were Gladue reports as a "tool."[38] Some jurisdictions have adopted this interpretation,

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[33] *Ibid*.

[34] *Ibid*.

[35] For all references to the term "Gladue report" in Supreme Court jurisprudence, see *supra* note 9.

[36] *Gladue*, *supra* note 2 at para 93(7).

[37] Alexandra Hebert, "Change in Paradigm or Change in Paradox: Gladue Report Practices and Access to Justice" (2017) 43:1 Queen's LJ 149 at 156.

[38] Terry Skolnik, "Criminal Justice Reform: A Transformative Agenda" (2022) 59:3 Alta L Rev 634.

granting Gladue reports to Indigenous offenders as a right. Most have not. This inconsistency across Canada shall be addressed in more detail in a later section. What remains essential to grasp at this juncture is the Court's reluctance to conclusively state whether s.718.2(e) of the *Criminal Code* mandates the preparation of Gladue reports.

B. Communicating Gladue Information

This section will examine three ways Gladue information reaches courts. I have selected these methods for two reasons. First, because the Supreme Court names them in *Gladue*[39] and *Ipeelee*[40] as the avenues for Gladue communication. Second, because empirical evidence suggests that these are the most common means through which judges receive Gladue information.[41]

Another crucial–albeit underdiscussed–factor contributing to a judge's Gladue assessment is judicial knowledge and training.[42] Research suggests that within "conventional court structures, understandings of Aboriginal histories or circumstances continue to be framed by the 'common knowledge' of the judiciary," which may prove insufficient for grasping the case-specific circumstances of Indigenous offenders.[43] Studies have

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[39] See Gladue, *supra* note 2 at para 93(7).

[40] See *Ipeelee*, *supra* note 9 at para 60.

[41] See Jane Dickson & Kory Smith, "Exploring the Canadian Judiciary's Experiences with and Perceptions of Gladue" (2021) 63:3–4 Can J Corr 23 at 29. For a list of tools for Gladue communication, see also *R v Gamble*, 2021 SKCA 72 at para 45 [*Gamble*].

[42] Neither *Gladue* nor *Ipeelee* mention judicial knowledge nor specialised *Gladue* training. The list of avenues for *Gladue* communication presented by Dickson & Smith does not include this either, and the list in *Gamble* omits it as well. By judicial knowledge, I do not mean "judicial notice" in the sense employed in Canadian jurisprudence, see *R v Find*, 2001 SCC 32 at para 48 [*Find*]. Rather, I mean a judge's generalised awareness of certain facts, very plainly what a judge happens to know.

[43] Maurutto & Hannah-Moffat, "Aboriginal Knowledges", *supra* note 12 at 459. This could prove especially insufficient given Canada's near-total lack of Indigenous judges. See Andrew Griffiths, "Diversity among federal and provincial judges" (4 May 2016), online: *Policy Options*

indicated that a high proportion of judiciary receives specialised training on how to apply *Gladue*, though doubts remain as to its efficiency.[44] Several jurisdictions do not offer such training, with many judges remaining ignorant as to whether it is even available.[45] More research is required on the content, availability, and use of Gladue training within the Canadian judiciary, with a further inquiry into the role of a judge's "common knowledge" in such proceedings.

i) Pre-Sentence Reports and Gladue Reports Distinguished

The *Criminal Code* in s.721 outlines the procedure surrounding PSRs. When ordered to do so by a judge, a probation officer will write a report to help craft a fit sentence for the offender.[46] Though provincial guidelines vary,[47] PSRs must at least contain information as to "the offender's age, maturity, character, behaviour, attitude and willingness to make amends,"[48] their criminal history, [49] and alternative measures already employed.[50]

For Indigenous offenders, two forms of PSR may reach the courts. Each have diverging implications on how judges frame offenders and pass down sentences. Gladue reports are one special type of PSR.[51] The other type takes on the same structure as what is envisioned in s.721 of the *Criminal Code* but contains

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<policyoptions.irpp.org/2016/05/04/diversity-among-federal-provincial-judges/>.

[44] See Dickson & Smith, *supra* note 41 at 35; Department of Justice, *Gladue Practices in the Provinces and Territories*, by Sébastien April & Mylène Magrinelli Orsi (Ottawa: Department of Justice, 2013) at 6 [Department of Justice, *Gladue Practices*].

[45] See Department of Justice, *Gladue Practices*, *supra* note 44 at 6.

[46] See *Criminal Code*, *supra* note 15, s 721(1).

[47] See *ibid*, s 721(2).

[48] See *ibid*, s 721(3)(a).

[49] See *ibid*, s 721(3)(b).

[50] See *ibid*, s 721(3)(c).

[51] See *Gladue*, *supra* note 2 at 93(7); *Ipeelee*, *supra* note 9 at para 60. Note that there is no statutory requirement mandating the production of a Gladue report. See *R v Desjarlais*, 2019 SKQB 6 at para 26 [*Desjarlais*].

a "Gladue component" by virtue of provincial guidelines—these may be prepared in addition or lieu of Gladue reports properly-so-called. [52] Drawing on Kelly Hannah-Moffat and Paula Maurutto's seminal work to this effect, I will describe the differences between Gladue reports and PSRs with a Gladue component.

The first difference is methodological. Though jurisdictions vary,[53] Gladue reports are generally written by "empathic peers" conducting several interviews with the offender and close members of their community. [54] They require substantial engagement with older generations in the community, namely Elders, to help connect community history to the background factors that may have led the offender to the court.[55] As such, Gladue writers are often "Indigenous persons with specific expertise about their own Indigenous community/communities, experience working with Indigenous people, and lived experience as Indigenous persons."[56]

In contrast, PSRs with a Gladue component are prepared by probation officers who may dedicate between one and two-and-a-half hours conducting interviews with the offender and people close to them. [57] This difference is significant. Compared with Gladue writers, probation officers spend little time preparing PSRs,

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[52] See Barkaskas et al, "Production and Delivery of Gladue Pre-sentence Reports: A Review of Selected Canadian Programs" (9 October 2019) at 41, online (pdf): *International Centre for Criminal Law Reform and Criminal Justice Policy* <icclr.org/2020/02/26/production-and-delivery-of-gladue-pre-sentence-reports-a-review-of-selected-canadian-programs/>. These guidelines exist pursuant to *Criminal Code*, *supra* note 15, s 721(2), and exist in several provinces. See Kelly Hannah-Moffat & Paula Maurutto, "Re-contextualizing pre-sentence reports: Risk and race" (2010) 12:3 Punishment & Society 262 at 267 n 11 [Hannah-Moffat & Maurutto, "Re-contextualizing pre-sentence reports"].

[53] See Barkaskas et al, *supra* note 52 at 60.

[54] See *R v Sand*, 2019 SKQB 18 at paras 45–47 [*Sand*]; Department of Justice, *Spotlight on Gladue*, *supra* note 6 at 27. See also Hannah-Moffat & Maurutto, "Re-contextualizing pre-sentence reports", *supra* note 52 at 275–76.

[55] See David Milward & Debra Parkes, "Gladue: Beyond Myth and towards Implementation in Manitoba" (2011) 35:1 Man LJ 84 at 88. On the usefulness of Gladue reports for repeat offenders, see Hannah-Moffat & Maurutto, "Re-contextualizing pre-sentence reports", *supra* note 52 at 278–79.

[56] Barkaskas et al, *supra* note 52 at 41.

[57] See Milward & Parkes, *supra* note 55 at 88.

conduct a narrower inquiry, and are less trusted by the people they assess. As "officers of the court," probation officers are sometimes perceived as complicit with a system that has historically discriminated against Indigenous people. It may therefore be more difficult for them to extract the necessary information from offenders and their community, and accordingly more challenging to write a report well-tailored to the offender's circumstances.[58]

The second difference is more substantive. A PSR, even with a Gladue component, is a risk-assessment tool. Most jurisdictions in Canada employ actuarial tools[59] within these PSRs to calculate an offender's risk to re-offend, and even those that do not use such tools nevertheless structure PSRs within a language of risk.[60] Interviews centre around identifying the offender's "criminogenic factors," with each question constructed to identify their chances of recidivism.[61] As such, a PSR's Gladue component will typically only offer a few paragraphs on the offender's history and their community.[62] Without the in-depth analysis offered by a Gladue writer, these specialised components tend to have a "boilerplate,"[63] "rubber-stamp,"[64] or "cut-and-paste"[65] quality to them. Crucially, PSRs are not constructed to seek alternatives to incarceration—probation officers will advocate for imprisonment when necessary and will not always search for culturally appropriate restorative justice programs.[66]

In comparison, Gladue reports are rooted in s.718.2(e)'s explicit non-carceral purpose. They are meant to inform courts of

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[58] See Hebert, *supra* note 37 at 160–61.

[59] The LSI-OR tool is particularly prevalent. See Hannah-Moffat & Maurutto, "Re-contextualizing pre-sentence reports", *supra* note 52 at 272.

[60] See Hannah-Moffat & Maurutto, "Re-contextualizing pre-sentence reports", *supra* note 52 at 270 ("[The] language of risk can informally shape a probation officer's conceptualization of what information should be included in PSRs.").

[61] See *ibid* at 272.

[62] See Hebert, *supra* note 37 at 161; *Desjarlais*, *supra* note 51 at para 20.

[63] Milward & Parkes, *supra* note 55 at 90.

[64] Department of Justice, *Gladue Practices*, *supra* note 44 at 11–12.

[65] Hebert, *supra* note 37 at 161.

[66] See *ibid* at 160.

available non-custodial alternatives in relation to the offender's culture and heritage, regardless of the community's remoteness.[67] This is not to say that Gladue assessments are anti-carceral in all circumstances.[68] Rather, it is to highlight how Gladue reports are culturally situated and remedial tools. Gladue reports provide a more holistic, elaborate analysis of the systemic background factors linking the offender's Indigenous identity to their involvement in the criminal justice system. Factors deemed "criminogenic" under a PSR's risk-assessment logic may instead be contextualised within systemic histories.[69] The emphasis on individual behaviour is shifted to a greater degree on the government's role in creating the conditions for crime in the first place.[70] Offenders whose life histories are inextricably caught up within legacies of colonialism, be it through substance abuse, poverty, racism, or community breakdown,[71] are framed not as a "constellation of [risk] factors," but as full human beings.[72]

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[67] Hannah-Moffat & Maurutto, "Re-contextualizing pre-sentence reports", *supra* note 52 at 274.

[68] See *Gladue*, *supra* note 2 at para 33 ("it will generally be the case as a practical matter that particularly violent and serious offences will result in imprisonment for aboriginal offenders as often as for non-aboriginal offenders.").

[69] See Hannah-Moffat & Maurutto, "Re-contextualizing pre-sentence reports", *supra* note 52 at 277–78. It has frequently been noted in expert witness testimony and in recent research that actuarial tools and logic tend to overstate risk for Indigenous offenders and are generally insufficient ways to contextualise the risk that offenders may indeed pose to others. See *R v Natomagan*, 2022 ABCA 48 at paras 47–48, 50, 100–02, 123–24; *R v HGR*, 2015 BCSC 681 at para 10 [*HGR*]; *Desjarlais*, *supra* note 51 at paras 18–20. See also Jane Dickson & Michelle Stewart, "Risk, rights and deservedness: Navigating the tensions of *Gladue*, Fetal Alcohol Spectrum Disorder and settler colonialism in Canadian courts" (2022) 40 Behavioural Sciences & L 14 at 19; Barkaskas et al, *supra* note 52 at 39. See generally Stephane M Shepherd & Thalia Anthony, "Popping the Cultural Bubble of Violence on Risk Assessment Tools" (2018) 29:2 J Forensic Psychiatry & Psychology 211.

[70] See Maurutto & Hannah-Moffat, "Aboriginal Knowledges", *supra* note 12 at 463.

[71] These factors are often referred to within Gladue assessments. See *R v Laliberte*, 2000 SKCA 27 at para 59; *R v Macintyre-Syrette*, 2018 ONCA 259 at para 15.

[72] Hannah-Moffat & Maurutto, "Re-contextualizing pre-sentence reports", *supra* note 52 at 272; Department of Justice, *Spotlight on Gladue*, *supra* note 6 at 27.

The judiciary has signalled a profound understanding of the differences between Gladue reports and PSRs,[73] and empirical evidence is beginning to shed light on the different results that the production of a Gladue report may have for an offender. For one, Dickson and Smith's 2021 study indicated a stark preference among judges for Gladue reports over PSRs with a Gladue component.[74] In studied jurisdictions, Indigenous offenders who have Gladue reports prepared for them receive fewer and more lenient custodial sentences and re-offend at lower rates.[75]

Though the research presented above suggests that Gladue reports are the best tool for communicating Gladue information, some nuance is warranted. First is the issue of time: Gladue reports may take anywhere between six weeks and four months to prepare for a single offender.[76] This delay is especially problematic in jurisdictions with few Gladue writers, for judges may simply forego a Gladue report in favour of PSRs and counsel submissions even if the alternatives are less satisfactory.[77] Second are more content-related problems: Judges have expressed

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[73] See *R v Knockwood*, 2012 ONSC 2238 at para 10 [*Knockwood*]; *R v Parent*, 2019 ONCJ 523 at paras 60–61 [*Parent*]; *R v Derion,* 2013 BCPC 382 at para 9; *Sand*, *supra* note 54 at paras 45–47.

[74] See Dickson & Smith, *supra* note 41 at 29 ("72.5% of respondents ranked full Gladue reports as "most satisfactory" compared to 15% for pre-sentence reports with Gladue content.").

[75] Hebert, *supra* note 37 at 171 ns 138, 140. With these different outcomes in mind, it is not unreasonable to wonder, as one judge did, about the "endless [possibilities that] exist for an Indigenous person with a Gladue report versus those that do not have the benefit of one." See *R v CJHI*, 2017 BCPC 121 at para 25.

[76] See Marie-Eve Sylvestre & Marie-Andrée Denis-Boileau, "Ipeelee and the Duty to Resist" 51:2 (2018) UBC L Rev 548 at 589; Barkaskas et al, *supra* note 52 at 68.

[77] See Dickson & Smith, *supra* note 41 at 33. In a post-*Jordan* context, courts may be increasingly conscious of delay and potentially deterred from ordering Gladue reports However, as one judge argued, the "culture of complacency" lamented by the *Jordan* court indeed applies to "all participants in the criminal justice system," and should "[include] the Government ensuring resources for Probation and Gladue caseworkers to meet the standards of a Gladue Report." See *Jordan*, *supra* note 8 at paras 4–5; *Parent*, *supra* note 73 at para 32.

concern with poor research, subpar writing, and lackluster proposals for alternatives to incarceration.[78]

In my view, this second issue is symptomatic of a broader problem with the Gladue framework: no countrywide minimum standards exist for the content of a Gladue report.[79] It is thus impossible to conclusively state whether a Gladue report is *by definition* a more satisfactory means of gathering and conveying individualised information to the courts, as opposed to a standard PSR or counsel submissions. Arguably, this issue could be partially remedied through a legislatively prescribed standard like what already exists for PSRs in s.721 of the *Criminal Code*. This minimum set of requirements could help reduce confusion as to what exactly is expected of such reports, and their comparative benefits to other means of communication.

ii) Counsel Submissions

Gladue[80] and *Ipeelee*[81] require counsel to adduce case-specific information for each offender. Further case law has also confirmed that defence lawyers *and* Crown prosecutors must convey this information—especially when Gladue reports and PSRs are insufficient.[82]

Research suggests that oral submissions from defence counsel are simultaneously the most common and least satisfactory way for judges to receive individualised information on the offender. Judges have notably cited heavy variation in quality of counsel and inconsistent knowledge of the *Gladue* framework as relevant factors in this regard.[83] One other possibility is that judges view defence counsel as inherently biased and deeply partisan sources of information, especially compared

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[78] See Dickson & Smith, *supra* note 41 at 33–34. See also Hebert, *supra* note 37 at 158–159.

[79] See *Desjarlais*, *supra* note 51 at para 20; *Gamble*, *supra* note 41 at paras 48–49.

[80] See *Gladue*, *supra* note 2 at para 93(7).

[81] See *Ipeelee*, *supra* note 9 at para 60.

[82] See *R v Blanchard*, 2011 YKTC 86 at para 25 [*Blanchard*]; *R v Tom*, 2012 YKTC 55 at para 76; *R v Peepeetch*, 2019 SKQB 132 at para 41 [*Peepeetch*]; *R v Lawson*, 2012 BCCA 508 at para 27 [*Lawson*]; *HGR*, supra note 69 at para 19.

[83] See Dickson & Smith, *supra* note 41 at 29–31.

to purportedly neutral PSRs and Gladue reports—though empirical research would be necessary to elevate this claim beyond conjecture.[84]

C. *The Jurisprudential Divide Over Form and Substance*

This section covers jurisdictional differences on the methods considered sufficient for conveying Gladue information. It first assesses the more commonly held position that PSRs with a Gladue component are satisfactory, before analysing the stance whereby Indigenous offenders are owed Gladue reports as a right. I conclude with a brief overview of disparity in access to Gladue reports.

i) The Pragmatic Approach

British Columbia,[85] Manitoba,[86] Ontario,[87] Saskatchewan[88], and the Yukon[89] have interpreted *Ipeelee* as mandating Gladue information as indispensable to sentencing judges, and formal Gladue reports as useful but optional tools. *Corbiere* offers a

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[84] On the inherently partisan nature of defence lawyers, see Federation of Law Societies of Canada, *Model Code of Professional Conduct*, Ottawa: FLSC, 2019, s 5.1-1, commentary 1, 9. Much research has been conducted on the differences in judicial perception between different types of criminal defence lawyers, but not necessarily on the perception of information related to Gladue assessments coming from lawyers as opposed to other actors. On the former point, see generally James M Anderson & Paul Heaton, "How Much Difference Does the Lawyer Make: The Effect of Defense Counsel on Murder Case Outcomes" (2012) 122:1 Yale LJ 154; Floyd Feeney & Patrick G Jackson, "Public Defenders, Assigned Counsel, Retained Counsel: Does the Type of Criminal Defense Counsel Matter" (1991) 22:2 Rutgers LJ 361.

[85] See *Lawson*, *supra* note 82 at paras 26–28; *HGR*, supra note 69 at para 19.

[86] See *R v Park*, 2016 MBCA 107 at para 27; *R v ERC*, 2016 MBCA 74 at para 28; *R v C (OE)*, 2013 MBCA 60 at para 37; *R v Harry*, 2013 MBCA 108 at paras 77–83.

[87] See *R v Corbiere*, 2012 ONSC 2405 at paras 22–23 [*Corbiere*]; *R v Doxtator*, 2013 ONCJ 79 at para 23 [*Doxtator*].

[88] See *Gamble*, *supra* note 41 at para 47; *R v Angus*, 2020 SKQB 205 at para 16; *Peepeetch*, *supra* note 82 at para 41; *Sand*, *supra* note 54 at para 30; *Desjarlais*, *supra* note 51 at para 27; *R v Burwell*, 2017 SKQB 375 at para 83.

[89] See *Blanchard*, *supra* note 82 at para 25; *R v Atkinson*, 2012 YKTC 62 at paras 12–17.

statement of principle regarding this more pragmatic approach, declaring that

> [t]here is no magic in a label. A "Gladue Report" by any other name is just as important to the court. Its value does not depend on it being prepared by a particular agency. Its value does hinge on the content of the document and the extent to which it has captured the historical, cultural, social, spiritual and other influences at play in this context.[90]

The operating idea of "a 'Gladue Report' by any other name" emphasises "substance over form," with a greater interest in whether the information before the court is sufficient than how the information was gathered and conveyed. A judge may have everything they need to sentence an Indigenous offender through counsel submissions and a PSR with a Gladue component, thereby eschewing the need for a Gladue report. Though *Corbiere* acknowledges the potential shortcomings of other tools compared to Gladue reports, its influential framework firmly rebukes the notion of "substance [following] form."[91]

ii) The Righteous Approach

As it stands, the only jurisdiction mandating Gladue reports is Alberta. The operating standard in this regard came from two 2014 Court of Appeal rulings. First came *Mattson*, interpreting *Ipeelee*'s description of "current practice" as making "clear [...] that when sentencing an Aboriginal [offender,] it is required that a Gladue report be prepared." [92] Second came *Napesis*, requiring that sentencing assessments "be informed by a Gladue report."[93] These two rulings have been followed in subsequent Albertan jurisprudence, such that many Indigenous offenders benefit both from PSRs and Gladue reports.[94]

To the extent that all Indigenous offenders may equally benefit from the most robust form of Gladue analysis possible, this

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[90] *Corbiere*, *supra* note 87 at para 23.

[91] Hebert, *supra* note 37 at 172.

[92] *R v Mattson*, 2014 ABCA 178 at para 50 [*Mattson*].

[93] *R v Napesis*, 2014 ABCA 308 at para 8 [*Napesis*].

[94] See *R v Wolftail*, 2022 ABPC 102; *R v Paquette*, 2020 ABPC 173; *R v Manyshots*, 2018 ABPC 17 at para 30.

approach is commendable. Alexandra Hebert has noted however that some flaws remain. Namely, that the absence of a Gladue report is not a reviewable error on appeal.[95] This severely undermines the principle that all Indigenous offenders must have their unique circumstances fully assessed before being sentenced—thereby hollowing out what could have been a uniquely effective guarantee. A similarly incomplete approach has been adopted in Prince Edward Island, which despite favourably citing *Mattson*, does not mandate Gladue reports.[96] With that said, their Court of Appeal has stated that the absence of a report comprehensively analysing Gladue factors for an Indigenous offender is a reviewable error.[97] Though both jurisdictions have to some degree indicated a willingness to consider the unique circumstances of Indigenous offenders, fulfilling the promise of s.718.2(e) could require mandating Gladue reports while making their absence a reviewable error.

iii) Inconsistent Access to Gladue Reports

Six out of thirteen of the country's provinces and territories do not have any formal process for the preparation of Gladue reports.[98] Even when such programs exist, limited resources and concerns about timeliness constrain a judge's ability to order these reports.[99] As such, access to Gladue reports varies heavily across

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[95] See Hebert, *supra* note 37 at 164. See also *Mattson*, *supra* note 92 at para 50; *Napesis*, *supra* note 93 at para 9.

[96] See *R v McInnis*, 2019 PECA 3 at para 45.

[97] See *R v Legere*, 2016 PECA 7 at paras 21, 24. See also Hebert, *supra* note 37 at 165.

[98] Newfoundland, New Brunswick, Manitoba, Saskatchewan, the Northwest Territories and Nunavut currently lack such programs. See *Desjarlais*, *supra* note 51 at para 26. They exist in Alberta, British Columbia, the Yukon, Ontario, Nova Scotia, Prince-Edward-Island, and Quebec. However, British Columbia and the Yukon limit who is eligible for a report, see Barkaskas et al, *supra* note 52 at 60, 64. See also Skolnik, *supra* note 38 at 635 ("In many jurisdictions, there are no Gladue report writers, and no Gladue reports. In the year 2018, there was only one Gladue report writer in all of Saskatchewan, even though three quarters of the provincial prison population was comprised of Indigenous persons.").

[99] See Dickson & Smith, *supra* note 41 at 31 ("12.5% of judges indicated that funding constraints limit their ability to order full Gladue reports."). Lack of awareness about these established programs may also be a factor. See Department of Justice, *Spotlight on Gladue*, *supra* note 6 at 27.

Canada.[100] The unfairness here is rather blatant: An Indigenous offender from an urban area may have access to a *Gladue* report, a specialised Indigenous court, and culturally appropriate sentencing options—that same exact offender for the same exact crime in rural Saskatchewan will likely have none of these.[101]

An Indigenous offender's prospects for an individualised and/or non-custodial sentence may depend to a large extent on factors completely irrelevant to any determination of moral blameworthiness, i.e., geography. Though "there is no such thing as a uniform sentence for a particular crime," variation in sentencing practices between jurisdictions due solely to differences in the availability of Gladue programs are neither "just [nor] appropriate"[102] considering s.718.2(e)'s broad restorative promise. It may be well past time for all territories and provinces to create Gladue writing programs and culturally appropriate sentencing alternatives.[103]

Section II. Not One of Those Jurisdictions: Critically Assessing the Absence of Gladue Reports in Nunavut

Inconsistent views on the function and necessity of Gladue reports make Nunavut a fascinating case study. Three reasons come to mind for this. First, the NCJ has done more than simply acknowledge the unavailability of Gladue reports: it has articulated reasons for refusing them as a tool.[104] Second,

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[100] See Dickson & Stewart, *supra* note 69 at 18.

[101] See Sylvestre & Denis-Boileau, *supra* note 76 at 588–90; *Doxtator*, *supra* note 87 at para 64. On Saskatchewan's specific standard for ordering *Gladue* reports, see *Gamble*, *supra* note 41 at para 50; *Peepeetch*, *supra* note 82 at para 28.

[102] *R v M (CA)*, [1996] 1 SCR 500 at para 92, 1996 CanLII 230 (SCC).

[103] One creative judicial response to disparity in access to Gladue reports involved a judge reducing an Indigenous offender's sentence on the grounds that this deficient access amounted to state misconduct. See *Knockwood*, *supra* note 73 at paras 57, 70–72. See also *R v Noble*, 2017 CanLII 32931 (NL PC) at paras 52–53, 93–95, 97.

[104] See generally *R v GH*, 2020 NUCJ 21 [*GH*, 2020 NUCJ 21].

Nunavut deals almost exclusively with Indigenous offenders.[105] Third, the NCJ relies heavily on people from outside the territory. The NCJ employs six resident judges and had recruited, as of 2014, ninety-one temporary judges (or "deputy judges") from southern superior courts to help the Court meet Nunavummiut needs. None have ever been Inuk.[106] These contrasting arenas of over-representation form the context in which we turn our attention to Nunavut.

A. *The Nunavut Court of Justice*

i) The Nunavut Court of Justice as a Gladue Court

The NCJ considers itself a "Gladue Court," with policymakers and researchers doing little but confirm this impression.[107] No formal policy has designated the Court as such—its status is self-proclaimed by virtue of its setting.

The term "Gladue Court" lacks legal definition, although it remains a name by which some courts refer to themselves. Most

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[105] As of 2017, they represented ninety-eight percent of adults in sentenced custody. See Department of Justice, *Spotlight on Gladue*, *supra* note 6 at 8. This aspect of Nunavut also eliminates one of the difficulties about sentencing Indigenous offenders Canada-wide. Namely, how some counsel might not even know whether their clients are Indigenous. See e.g. *R v Bibeau*, 2011 QCCQ 6970.

[106] See Nunavut Tunngavik Incorporated, "Annual Report on the State of Inuit Culture and Society (2013-2014): Examining the Justice System in Nunavut" (2014) at 6–7, online (pdf): *Tunngavik* <tunngavik.com/publications/annual-report-on-the-state-of-inuit-culture-and-society-2013-2014/>. See also *GH*, 2020 NUCJ 21, *supra* note 104 at para 17.

[107] See *R v Jaypoody*, 2018 NUCJ 36 at para 99 ("As a Gladue court, the Nunavut Court of Justice keeps the culture, history and traditions of Nunavummiut at the forefront of all its deliberations.") [*Jaypoody*]; *R v Anugaa*, 2018 NUCJ 2 at para 41 ("The Nunavut Court of Justice is not just another court; it is Canada's principal Gladue court.") [*Anugaa*]; *R v Mikijuk*, 2017 NUCJ 2 at para 16 ("The Nunavut Court of Justice is a Gladue court. We serve all Nunavummiut.") [*Mikijuk*]; Don Couturier, "Judicial Reasoning across Legal Orders: Lessons from Nunavut" (2020) 45:2 Queen's LJ 319 at 326 ("Amongst Gladue courts, Nunavut illuminates because, unlike other Gladue courts which may hear matters implicating several Indigenous legal traditions, Nunavut judges encounter only one—Inuit maligait—and develop experience with IQ more broadly over time."); Department of Justice, *Spotlight on Gladue*, *supra* note 6 at 44 ("Gladue elements are in a sense built into the court because of the mostly Inuit population in Nunavut.").

notable is the Gladue Court at Old City Hall (OCH) in Toronto. Established in 2001 by the Ontario Court of Justice in collaboration with Aboriginal Legal Services of Toronto, the OCH Gladue Court was the first to hold sentencing and bail hearings exclusively for Indigenous accused.[108] Its distinct features include Gladue training for all personnel (including judges and counsel), the presence of Indigenous Court Workers, Gladue reports written by specially trained members of ALST, and Indigenous Community Councils who work with the offender to provide culturally appropriate alternatives to incarceration. As of 2017, Indigenous offenders having been processed through the Gladue Court had lower recidivism rates than their counterparts in other jurisdictions.[109] According to the Department of Justice, eight jurisdictions have now followed the OCH model and have established their own specialised courts for Indigenous offenders.[110]

If one takes the term "Gladue Court" to mean something analogous to the OCH, the NCJ's self-identification may seem inaccurate. Though both serve near-exclusively Indigenous populations and employ Indigenous Court workers,[111] community justice committees are effectively never used in Nunavut,[112] and culturally appropriate alternatives to incarceration are rarely

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[108] See Jonathan Rudin, "A Court of Our Own: More on the Gladue Courts" (2006) at 2, online (pdf): <nanlegal.on.ca/wp-content/uploads/2018/11/a-court-of-our-own-more-on-gladue-courts.pdf>.

[109] See Department of Justice, *Spotlight on Gladue*, *supra* note 6 at 41–42.

[110] See *ibid* at 40 n 25. ("These include: Alberta, British Columbia, Nova Scotia, Nunavut, Ontario, Saskatchewan, Yukon, and Northwest Territories. A specialized court is supported by a range of services that ensure that information about an Indigenous accused's/offender's background and the kinds of non-custodial sentences available to Indigenous accused/offenders are incorporated systematically into the bail and sentencing decision-making procedures in order to allow the court to prepare decisions in keeping with the directive of the Supreme Court in *Gladue*. Additionally, those working in the court (e.g. defence lawyers, Crown attorneys/prosecutors and judges) are knowledgeable of the range of programs and services available to Indigenous people.")

[111] The role of Indigenous Court Workers in Nunavut will be elaborated on later in this article.

[112] See Jessica Black, Tupiq Nappaqtauliqtuq: Meeting Over-Incarceration and Trauma with Re-Centering Inuit Piusiit (Toronto, ON: The Gordon Foundation, 2017) at 36–37.

available.[113] Aside from some deputy judges receiving informal training, the NCJ refuses to view Gladue training and reports as necessary on account of their generalised judicial knowledge of Nunavut history and culture.[114] As such, the NCJ has never in its shared twenty-three-year history with *Gladue* ordered a Gladue report.

With that said, Nunavut's political history is so unique—and the function of its court so structurally different—that even if the NCJ's status as a Gladue court is contested, its specificities warrant recognition.

ii) History and Function of the Nunavut Court of Justice

Inuit make up eighty-four percent of the Nunavut's population,[115] and formed the territory after obtaining exclusive title to 350,000 square kilometers of land through the *Nunavut Land Claims Agreement* (*NLCA*). In return, they relinquished any further assertion of Aboriginal title anywhere else in Canada.[116] Nunavut's 37,000 inhabitants now cover Canada's northern two-thirds in twenty-five isolated communities.[117]

Simultaneously with the *NLCA*, Canadian Parliament passed the *Nunavut Act* and created the new territorial government.[118] In building this new territory, Scott Clark notes how the federal and territorial Departments of Justice acknowledged the need "(a) to provide substantive and procedural rights equivalent to those

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[113] See Kara Brisson-Boivin, "Standardizing 'Corrections': The Politics of Prison Expansionism and Settler Colonial Representations of Punishment in Nunavut" (2018) 7 Ann Rev Interdisciplinary Justice Research 372 at 397.

[114] See Department of Justice, *Gladue Practices*, *supra* note 44 at 6–7; Dickson & Smith, *supra* note 41 at 29; Public Safety and Emergency Preparedness Canada, Presentence Reports in Canada, by James Bonta et al (Ottawa: The Minister of Public Safety and Emergency Preparedness, 2005) at 13–14 ("In Nunavut we found all three judges agreeing that Gladue considerations did not really apply in their jurisdiction because almost all offenders were Aboriginal.").

[115] See Statistics Canada, *Profile Table for Nunavut* (Ottawa: Statistics Canada, 2021) [Statistics Canada, *Profile Table for Nunavut*].

[116] See *Nunavut Land Claims Agreement Act*, *supra* note 3; Loukacheva, *supra* note 3 at 41. See also Connie Mah, "Our Land: Our Laws - Court in Nunavut" (2001) 26:3 LawNow 5 at 5.

[117] See Statistics Canada, *Profile Table for Nunavut*, *supra* note 115; *Anugaa*, *supra* note 107 at para 26.

[118] See *Nunavut Act*, *supra* note 1.

enjoyed elsewhere in Canada; (b) to provide court-based justice services in a fair and inclusive manner; and (c) to provide an efficient and accessible court structure capable of responding to the unique needs of Nunavut."[119] A unique judicial mechanism was therefore created for the new Canadian North.[120]

The resulting institution was the NCJ, Canada's sole "unified" court, i.e., the typically separate powers of provincial and territorial courts are united into one superior court to simplify access to justice.[121] Though Nunavut has only one physical courthouse (situated in Iqaluit), the Court travels on circuit from community to community, holding hearings in various facilities as needed.[122]

With these factors in mind, I will assess how Nunavut's particular approach to the administration of justice informs the NCJ's attitude towards the Gladue framework.

B. Articulating Refusal: Nunavut's Gladue Report Jurisprudence

Nunavut's first Gladue report request came in 2020 and was firmly denied.[123] In this section, I will critically assess how the NCJ's position on Gladue reports has been articulated in its jurisprudence, paying particular attention to the logic underpinning the rejection of this first request.

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[119] Scott Clark, "The Nunavut Court of Justice: An Example of Challenges and Alternatives for Communities and for the Administration of Justice" (2011) 53:3 Can J Corr 343 at 345.

[120] See *An Act to amend the Nunavut Act with respect to the Nunavut Court of Justice and to amend other Acts in consequence*, SC 1999, c 3; *Nunavut Judicial System Implementation Act*, SNWT 1998, c 34; *Criminal Code*, *supra* note 15, ss 573–573.2.

[121] See Clark, *supra* note 119 at 345; "Nunavut Court of Justice" (2022), online: *Nunavut Courts* <nunavutcourts.ca/index.php/nunavut-court-of-justice>.

[122] A judge, clerk, sheriffs, interpreter, reporter, and counsel will fly into a community for at least a week to conduct as many cases as reasonably possible, before flying to another community or back to Iqaluit. See "Nunavut Court of Justice", *supra* note 121.

[123] See Tranter, *supra* note 5. There has been one case since which has employed a privately funded Gladue report, see *R v Napayok*, 2021 NUCJ 40.

i) *R v GH*

At issue in *GH* was a request for the NCJ to order a Gladue report for an Inuk offender, on the grounds that doing so would be necessary to properly apply s.718.2(e).[124] The applicant argued that other methods of communicating Gladue information were insufficient and that Gladue reports could provide a more comprehensive analysis of the unique systemic factors that brought them before the criminal justice system. With nearly all judges, counsel, and probation officers in Nunavut being non-Inuit, the applicant also raised the issue of these actors "not [knowing] what they [do not] know" in relation to the special background circumstances considered. All these points were well-received by the Court.[125] With that said, the NCJ raised two objections and ultimately rejected this request.

First, due to the absence of Gladue programs in Nunavut, the territory lacked writers with the necessary community connections to conduct the extensive inquiries required in a Gladue assessment.[126] Any Gladue report ordered for an Inuk offender would therefore be written by someone outside of the territory, leading the Court to urge caution in assuming "that a Gladue writer experienced in serving First Nations and Métis communities [would] easily translate those skills to an Inuit context."[127] Second, and relatedly, the Court deemed that the deficient aspects of PSRs and counsel submissions would not be remedied by a Gladue report sourced outside of Nunavut. In the absence of any profound connection to Nunavut communities, the Court could not be convinced that such "writers [could] enlighten [non-Inuit legal professionals] to the material extent necessary to

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[124] See *GH*, 2020 NUCJ 21, *supra* note 104 at para 2.

[125] *Ibid* at paras 7–8. For a case where the absence of a Gladue report was explicitly compensated for with a PSR and counsel submissions, see *R v Metuq*, 2018 NUCJ 25 at paras 22–23.

[126] See *GH*, 2020 NUCJ 21, *supra* note 104 at para 10.

[127] *Ibid* at para 12. See also *ibid* at para 13 ("Indeed, as we know from the history of colonization in Nunavut, a pan-Indigenous approach to government programming is ineffective and does not meet the specific needs of Inuit. As Rebecca Kudloo, president of Pauktuutit Inuit Women of Canada, said in relation to the national inquiry into missing and murdered Indigenous women and girls, "A lot of times we're lumped in with First Nations and we constantly have to tell the government that up North is different.'").

justify an order requiring the production of a report."[128] The Court would instead "rely on the expertise of Indigenous Court Workers, Inuit elders, resident counsel, and resident probation officers."[129]

Following this rejection, the applicant went on to privately fund a Gladue report.[130] A PSR was prepared in addition.[131] Though the report indeed informed the Court as to the offender's unique personal circumstances, the Chief Justice found it lacking in several respects. For one, he noted that he was already familiar with the systemic circumstances outlined in the report, for they were "well known in Inuit communities."[132] Further, he refused every proposal for community-based alternative forms of sentencing. The report suggested that in-lieu of incarceration, the offender receive counselling from his uncle, an Elder who had voiced desire to be involved in his nephew's rehabilitation. This process could have taken place in his home community or out on the land. Moreover, the report proposed that the offender offer food as restitution to those affected by his actions.[133]

On the grounds that community leaders would need to be involved with and agree to the measure, the Court refused Elder counselling as an alternative to incarceration, and imposed a custodial sentence with counselling as a probationary order.[134] As for restitution in food, the Court expressed doubt on the "wisdom of such a suggestion from a non-Inuit source."[135] In the absence of

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[128] *GH*, 2020 NUCJ 21, *supra* note 104 at para 15.

[129] *Ibid* at paras 16–18.

[130] See *R v GH*, 2020 NUCA 16 at para 15 n 9 [*GH*, 2020 NUCA]. The report was written by Jane Dickson, scholar of Indigenous and restorative justice. See e.g. Jane Dickson-Gilmore, "Whither Restorativeness? Restorative Justice and the Challenge of Intimate Violence in Aboriginal Communities" (2014) 56:4 Can J Corr 417; Jane Dickson-Gilmore & Carol La Prairie, *'Will the Circle be Unbroken?' Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change* (Toronto: University of Toronto Press, 2005); EJ Dickson-Gilmore, "Finding the ways of the ancestors: Cultural change and the invention of tradition in the development of separate legal systems" (1992) 34:3–4 Can J Crim 479.

[131] See *R v GH*, 2020 NUCJ 33 at para 42 [*GH*, 2020 NUCJ 33].

[132] *Ibid* at para 46.

[133] See *ibid* at paras 51–52.

[134] See *ibid* at paras 29, 50–51.

[135] *Ibid* at para 53.

confirmation from Inuit authorities, he would deny this proposal. The Chief Justice nevertheless opined that "[such] an arrangement would likely contravene the basic community relationship of provider to receiver," which is a "relationship central to Inuit life, where systems of food-giving are complex and built on specific social ties."[136] The carceral sentence and all refusals to alternative measures were later upheld on appeal.[137]

It is notable that despite refusing the Gladue report's recommendation on the grounds of insufficient consultation with Inuit authorities, the non-Inuit Chief Justice spoke on the nature of "[relationships] central to Inuit life"[138] without referring to any Inuit sources of knowledge. He questioned the "wisdom [of the Gladue report's] suggestion from a non-Inuit source,"[139] but did not place his own characterisation of Inuit life under the same critical lens. The foregoing type of analysis may illustrate some of the problems with non-Indigenous judges applying Indigenous law, and some of the challenges inherent to legal pluralism in Nunavut—both are issues which have warranted articles of their own and are beyond the scope of this paper.[140]

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[136] *Ibid* at para 53.

[137] See *GH*, 2020 NUCA, *supra* note 130.

[138] *GH*, 2020 NUCJ 33, *supra* note 131 at para 53. For some Indigenous advocates, including Inuk advocate Lucy Grey, expressions like Inuit "life," "tradition," "custom," or "societal values" evade what may be more properly called "law." See Marie-Andree Denis-Boileau, "The Gladue Analysis: Shedding Light on Appropriate Sentencing Procedures and Sanctions" (2021) 54:3 UBC L Rev 537 at 560 n 82. See also Loukacheva, *supra* note 3 at 80–81.

[139] *R v GH*, 2020 NUCJ 33 at para 53.

[140] See Couturier, *supra* note 107 at 326. Incorporating Indigenous law in the Gladue analysis has been theorised as a necessary part of assessing community perspectives on culturally sensitive sanctions. See Sylvestre & Denis-Boileau, *supra* note 76 at 554–55. In this vein, several decisions handed down at the NCJ have sought to incorporate Inuit law in their sentencing analyses. See *R v Arnaquq*, 2020 NUCJ 14; *R v Iqalukjuaq*, 2020 NUCJ 15; *R v Itturiligaq*, 2018 NUCJ 31; *Jaypoody*, *supra* note 107; *Mikijuk*, *supra* note 107; *Anugaa*, *supra* note 107; *R v Ippak*, 2018 NUCA 3 [*Ippak*]. For brief treatments on the content and context of Inuit law, see David Matyas, "Short Circuit: A Failing Technology for Administering Justice in Nunavut" (2018) 35 Windsor YB Access Just 379 at 393; Loukacheva, *supra* note 3 at 65–67, 79–87. For more a comprehensive treatment of the subject, see generally Joe Karetak, Frank J Tester & Shirley Tagalik, eds, *Inuit Qaujimajatuqangit: What Inuit Have Always Known to be True* (Halifax: Fernwood Publishing, 2017). On the challenges of non-Indigenous judges applying Indigenous law, see John Borrows, *Canada's Indigenous*

ii) Critically Assessing Nunavut's Gladue Report Jurisprudence

Two issues illustrated in *GH* warrant further consideration. Each raises concerns about the NCJ's unique relationship to the population it serves, and its ability to fully individualise offenders.

First is the notion that Gladue writers must belong to the communities they serve. Incorporating community-based information is central to the requisite analysis when sentencing Indigenous offenders.[141] A Gladue report's recommendations, if lacking the perspectives and general assent of the community, may indeed fail to meet s.718.2(e)'s restorative objectives.[142] This is why Gladue writers tend to be Indigenous people with connections to the communities they serve and knowledge of how the systemic factors related to colonialism have affected its members.[143] With that be said, it is not always beneficial for Gladue writers to work close to home.

In more rural or isolated settings, community dynamics and conflicts of interest may impede the writer's ability to have the complete trust of those consulted.[144] Indigenous Gladue writers have indicated discomfort with writing reports for people in their own communities, especially in situations where a crime has caused tension between the families of victim and offender. Some may perceive writers as siding with the offender, which may cause uneasiness with those close to the victim. Such community dynamics make doing the job considerably more difficult. For the sake of averting this personal hardship, but also for ensuring the report's neutrality, Indigenous Gladue writers have suggested that

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Constitution (Toronto: University of Toronto Press, 2010) at 16; The Honourable Chief Justice Lance SG Finch, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (November 2012) at 6–7, online (pdf): *Continuing Legal Education Society of British Columbia* <cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Documents_deposes_a_la_Commission/P-253.pdf>.

[141] See *Wells*, *supra* note 21 at para 38; *Gladue*, *supra* note 2 at paras 70–72.

[142] See Denis-Boileau, *supra* note 138 at 546, 549–50.

[143] See Barkaskas et al, *supra* note 52 at 41.

[144] See *ibid* at 49, 89. On the challenges of justice in small communities, albeit in a different context, see generally Erlendur Baldursson, "Prisoners, Prisons and Punishment in Small Societies" (2000) 1 J Scandinavian Studies Criminology & Crime Prevention 6.

outsiders from the community were in fact better suited to the task.[145] These concerns may be especially relevant in Nunavut, where nine out of twenty-five communities have fewer than 1000 people.[146]

Second is the role of judicial knowledge. In *GH*, the Chief Justice had a PSR and Gladue Report to help individualise the offender. Still, he noted that many in Nunavut were already well-aware of the historical events described in the report.[147] A crucial distinction arises here between general and individualised Gladue information: The Chief Justice may have already known about the community's *general* history, but he could not have been intimately aware of the offender's *individual* circumstances without counsel submissions, the PSR, and the Gladue report.

Ipeelee provides guidance on the difference between general and individualised information. First, sentencing courts must take judicial notice of "colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples."[148] The factors listed here are general, and only form the context for understanding the case-specific information produced by a Gladue report and counsel submissions.

Gladue reports fulfil an additional function: The focus of a Gladue report is to situate a specific person within a history. The subject is not the community in which they live nor the groups to which they belong. [149] It is what "[brought] the *particular*

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[145] See Barkaskas et al, *supra* note 52 at 89.

[146] See Statistics Canada, *Population and dwelling counts: Canada, provinces and territories, and census subdivisions (municipalities)* (Nunavut) (Ottawa, Statistics Canada, 2021).

[147] See *R v GH*, 2020 NUCJ 33 at para 46.

[148] *Ipeelee*, *supra* note 9 at para 60. The meaning of this judicial notice is that any judge in the country may treat the matters listed in *Ipeelee* as "so notorious or generally accepted as not to be the subject of debate among reasonable persons [and] capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy." See *Find*, *supra* note 42 at para 48.

[149] See *GH*, 2020 NUCA, *supra* note 130 at paras 24–26.

aboriginal offender before the courts"[150] (emphasis added). General, or even in-depth knowledge on the factors listed in *Ipeelee* cannot replace the person-specific analysis present in a Gladue report, PSR, or counsel submissions.[151] No amount of time spent in Nunavut nor level of knowledge on its unique history and culture can undo the need for individualised information.

The lack of Gladue reports leaves a gap in the individualised information available to judges. I have found that Nunavut courts tend to fill this gap by simply assuming things about the lives of the Indigenous offenders it sentences.

Consider *Evic*, a 2020 case where defence counsel raised several "Gladue factors" before the NCJ in relation to prevalent substance abuse in the offender's small community. No Gladue report was prepared. Despite this, the Court posited that "[the report] would [have outlined] the conditions facing those living in these conditions, both historically and today."[152] It is difficult to understand how exactly the judge would have known about the hypothetical contents of this Gladue report without guessing—and even more difficult to know how "the conditions facing those living in these conditions"[153] would have applied to the offender's unique personal circumstances. This is not to say that a Gladue report would *not* have outlined community conditions. Rather, it is to suggest that merely supposing what a comprehensive report would have contained does not replace the analytical value of an actual report, especially as it relates to individualising an offender.

The same issue arises in *Mala*, where the Nunavut Court of Appeal noted that despite not having a Gladue report, it was "prepared to and [would] infer that Gladue factors existed in [the offender's] life and his upbringing in the circumstances which led to the commission of this offence."[154] Such an analysis, in its lack of consideration for how exactly these "Gladue factors" affected the offender, gives somewhat of a "rubber-stamp" quality to them. The specific ways in which systemic background factors led the

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[150] *Gladue*, *supra* note 2 at para 66.

[151] See *Parent*, *supra* note 73 at para 106.

[152] *R v Evic*, 2020 NUCJ 7 at para 17.

[153] This expression is also a tautology, which does not help in terms of clearly identifying the individual circumstances of the offender.

[154] *R v Mala*, 2018 NUCA 2 at para 27.

Indigenous offender to the criminal justice system cannot be inferred in the same way that a court takes judicial notice of colonialism. Even in communities where many offenders may have similar lived experiences in relation to these "Gladue factors," the analysis must be individualised and case specific.

The Nunavut Court of Appeal dealt with a similar concern in *Kuliktana*. At issue here was the appropriateness of a joint sentencing submission. One question under review was whether counsel had communicated enough information about the offender's circumstances for the Court to craft a suitable sentence, considering that no Gladue report had been prepared. The submission was upheld ultimately upheld for the following reasons.

Although "it [was] a matter of conjecture as to what influence more Gladue information might have had on counsel or the Court,"[155] the Court suggested that counsel was blameless in failing to obtain a Gladue report. Indeed, they would have "presumably contemplated the appellant's circumstances as they knew them when composing the joint submission."[156] Whether counsel had *explicitly* elaborated on the offender's individual or general Gladue circumstances when crafting the submission was besides the point: The Court found it highly improbable that "counsel at the trial level would have been unaware of such considerations on the individual side or on the general side," and it did not strike the authoring judge "that counsel would be oblivious to either side of the considerations even if they might not [have] expressly [addressed] their minds to either subject at any specific point in time, or might [have failed] to articulate doing so."[157] In the absence of a Gladue report, and in the same manner that a court takes judicial notice of broad systemic factors, the judge deemed it appropriate to simply infer what the offender's life circumstances might have entailed.[158]

Of course, the Court was not drawing inferences out of thin air—information was provided about the offender's circumstances

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[155] *R v Kuliktana*, 2020 NUCA 7 at para 33 [*Kuliktana*].

[156] *Ibid*.

[157] *Ibid*.

[158] See *ibid* at para 35.

through counsel submissions on appeal.[159] Further, one could reasonably believe that experienced and responsible counsel were aware of the general and individual considerations in the case's Gladue analysis. Nonetheless, "common-sense inference"[160] may be an inappropriate tool for assessing how an offender's unique personal circumstances led them to interact with the criminal justice system, particularly when compensating for the lack of a Gladue report.[161] The level of detail obtained through weeks of interviewing and community-based inquiry is higher than what could be produced through inference and assumption—especially considering how few (if any) Nunavut judges come from the communities they serve or have any formal Gladue training. Even if Gladue reports do not always produce an exact account of an offender's life story, they reduce the possibility of a judge resorting to intuition to fully flesh out an offender's personal circumstances.

C. *Arctic Expertise*

Upon refusing Nunavut's first-ever request for a Gladue report, the Chief Justice chose instead to "rely on the expertise of Indigenous Court Workers, Inuit elders, resident counsel, and resident probation officers." [162] Engaging with Nunavut's approach to Gladue information means analysing how each of these actors affect the sentencing process. My sense is that these tools are underutilised or insufficient substitutes for Gladue reports.

i) Indigenous Court Workers

The Chief Justice placed much value in the contributions of Indigenous Court Workers. First acknowledging how they are an "under-used resource," he noted their "long and distinguished history of collaboration and cooperation" with the Legal Services

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[159] See *Kuliktana*, *supra* note 155 at para 35.

[160] *Ibid*.

[161] Some have also raised a broader question for judges lacking Gladue reports: Without comparing a Gladue report to the other information received, how might these judges have the confidence that they possess sufficient information to sentence the offender? See *Parent*, *supra* note 73 at para 33.

[162] *GH*, 2020 NUCJ 21, *supra* note 104 at para 18. This has now been recognised as standard practice in Nunavut. See *R v Anaittuq*, 2022 NUCJ 37 at para 13 [*Anaittuq*].

Board of Nunavut (LSB, Nunavut's Legal Aid regime) and how they "have served as invaluable resources and providers of community and individual knowledge to counsel."[163] The Court even raised the "risk [of] remaining ignorant of the specific cultural knowledge already present in existing community resources like Indigenous Court Workers" in cautioning against the use of southern Gladue writers in Nunavut.[164]

With this framing in mind, one may be inclined to imagine Court Workers as working closely with defence counsel to obtain the case-specific information essential for a Gladue analysis. However, current research would betray this image as inaccurate. Like most Inuit employed by the GN's Department of Justice,[165] the Court Workers are administrative support staff. Their role is almost entirely restricted to the "intake phase of the judicial process,"[166] where they "provide much needed administrative assistance in coordinating community legal aid applications, maintaining contact to clients without phones or computers, and serving documents."[167] Given the NCJ's purported reliance on their cultural expertise, it comes as a surprise to note how only two reported decisions explicitly acknowledge contributions from an Indigenous Court Worker.[168]

Three factors may explain why despite being "a very useful source of information about the community and offenders," the contributions of Indigenous Court Workers are practically absent

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[163] *GH*, 2020 NUCJ 21, *supra* note 104 at para 11.

[164] *Ibid* at para 12.

[165] See Nunavut Tunngavik Incorporated, *supra* note 106 at 6 ("The GN Department of Justice has the second smallest proportion of Inuit employees of any government department; 91 per cent of these Inuit employees are paraprofessionals and administrative support.").

[166] Department of Justice, *Gladue Practices*, *supra* note 44 at 20.

[167] Nunavut, Legal Services Board of Nunavut, *Annual Report (2018-2019)*, (Iqaluit: 2019) at 21.

[168] See *R v Etuangat*, 2009 NUCA 1 at paras 33–35 ("Defence counsel told the trial judge that he had spoken with the court worker who revealed the respondent's upbringing had been 'absolutely horrific.'"); *R v EA*, 2017 NUCJ 16 at para 48 ("I have also been provided with a letter of support signed by several community members and friends of Ms. E.A.'s family. This letter [EX D-1] is written by the local legal aid court worker. It outlines some of the struggles that Ms. E.A.'s family has endured over the years…") [*EA*].

from NCJ jurisprudence.[169] The first two seem plausible in the circumstances but require more research to be fully validated.

First, the contributions of Indigenous Court Workers may not be explicit in defence counsel submissions. Lawyers could not be informing the Court that their information about the accused came from Court Workers, perhaps because they, too, are partisan sources. Unlike Court Workers in specialised Indigenous Courts in the south, Nunavut's Indigenous Court Workers assist defence counsel: "they do not play an independent role."[170] Second, the decisions in which the NCJ has relied on the expertise of Indigenous Court Workers may simply be unreported. In a fast-paced circuit court setting where many decisions are only given oral reasons, judges may have considered the contributions of Indigenous Court Workers with only those present being able to know.[171] Third, as Clark and the late Justice Beverley Browne noted, Indigenous Court Workers do not receive the adequate training necessary to help defence counsel in substantive matters, such that "a potentially effective resource [is] being underutilised."[172] Although Nunavut's Department of Justice originally intended that community-based Inuit Court Workers could support defence counsel in communicating with clients, conducting research, and even representation in some criminal matters, it appears that inadequate resources, training, and infrastructure have limited their effectiveness. Clark noted that this lack of training ultimately results in more work for LSB lawyers.[173]

ii) Inuit Elders

The NCJ's purported reliance on the expertise of Inuit Elders for Gladue assessments also merits further examination. Once more, the process through which their knowledge and

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[169] Department of Justice, *Gladue Practices*, *supra* note 44 at 20.

[170] *Ibid* at 8.

[171] On the staggering caseload of circuit courts in Nunavut, see Matyas, *supra* note 133 at 389–91. On the difficulties of reporting oral reasons in criminal cases, see "Frequently Asked Questions (FAQ)", online: *CanLII* <canlii.org/en/info/faq.html#2.3> ("[M]any decisions issued orally will never be distributed in a written format. This often happens in certain criminal cases for instance, when verdict decisions are rendered by a jury, without written reasons.").

[172] Clark, *supra* note 119 at 356.

[173] See *ibid* at 355–56.

recommendations are transmitted to the Court remains somewhat unclear. According to the NCJ website, in a circuit court setting, Elders may sit alongside the judge and "speak with the accused between sentencing submissions and the passing of sentence."[174] This is the sole official description of an Elder's role, and it leaves more questions than answers. Nowhere is it explained that an Elder can communicate their knowledge or recommendation to counsel or to the judge. Nor is there any mention as to what exactly Elders communicate to offenders. It is perhaps implied that Elders are invited to share what they told the offender with the rest of the Court, but there is no way of knowing this with any degree of certainty.

Like with Court Workers, the presence of Inuit Elders in the NCJ's jurisprudence is scarce.[175] This may be due again to unreported decisions in a circuit setting—but more research is required to confirm my suspicion.

When Elders do appear in NCJ decisions, it is almost exclusively for "Elder counselling" as a probation condition.[176] As required in *Gladue* and *Ipeelee*, this measure is likely culturally appropriate. However, it should be noted that just like in *GH*, every reported decision mandating this counselling as a probationary condition did so after imposing a custodial sentence.[177] It thus seems that Elder expertise is not currently

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[174] "Nunavut Court of Justice", *supra* note 121.

[175] There are three reported decisions from the NCJ mentioning the contributions of Elders in assessing an offender's individual circumstances. See *R v Kukkik*, 2007 NUCA 4 at para 3; *R v Pudlat*, 2000 CanLII 2423 (NU CJ) at para 10; *R v Parr*, 2020 NUCA 2 at para 63. In one decision the Nunavut Court of Appeal even affirms (albeit not in a sentencing context), that while elder advice has "social credibility," it is not binding on the government. See *R v Irngaut*, 2020 NUCA 4 at para 30.

[176] See *R v AA*, 2021 NUCA 13 at para 17 [*AA*]; *EA*, *supra* note 168 at para 138; *R v Cooper-Flaherty*, 2020 NUCJ 43 at para 35 [*Cooper-Flaherty*]; *R v Manik*, 2021 NUCJ 1 at para 102 [*Manik*]; *R v FO*, 2021 NUCJ 45 at para 144 [*FO*]; *Kuliktana*, *supra* note 155 at para 78; *R v JN*, 2015 NUCJ 22 at para 72 [*JN*].

[177] See *AA*, *supra* note 176 at para 16; *EA*, *supra* note 168 at para 134; *Cooper-Flaherty*, *supra* note 176 at paras 33–34; *Manik*, *supra* note 176 at para 97; *FO*, *supra* note 176 at para 143; *Kuliktana*, *supra* note 155 at para 77; *JN*, *supra* note 176 at paras 67–68. In one case at the Nunavut Court of Appeal, a concurring judgement would have imposed elder counselling as an alternative to incarceration. See *Ippak*, *supra* note 140 at para 99.

relied upon by the NCJ for the purposes of individualising Indigenous offenders or finding culturally appropriate alternatives to incarceration—but as another source of prison aftercare.

iii) Resident Counsel

The expertise of resident counsel in Nunavut will be relied upon in any sentencing hearing, as is expected in *Gladue*[178] and *Ipeelee*.[179] Due to factors mentioned earlier, oral submissions from counsel are not always a satisfactory method of communicating Gladue information—despite it being the most common means in that regard.[180] With that said, additional considerations are at play in Nunavut.

The "resident counsel" to which *GH* refers are the defence lawyers at LSB, Nunavut's statutorily created legal aid regime.[181] Operating under a principle of presumed eligibility, LSB takes on virtually every single criminal file in Nunavut.[182] As of 2019, they employed twelve staff criminal lawyers and twenty-nine private panel defence counsel, i.e., private lawyers occasionally contracted by LSB to accept legal aid certificates. None, however, were Inuk.[183]

This lack of Inuk lawyers has serious implications on the quality of justice in the territory. The first central issue is the language barrier: Despite Inuktitut or Innuinaqtun being the main or sole language spoken in most communities, neither legal aid nor private panel lawyers tend to know them at all.[184] When interpreters or Court Workers are not available to translate, communication between counsel and client is near impossible—and this is assuming that LSB was even capable of contacting the client in the first place, which is a notoriously challenging feat.[185]

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[178] See *Gladue*, *supra* note 2 at para 93(7).

[179] See *Ipeelee*, *supra* note 9 at para 60.

[180] See Dickson & Smith, *supra* note 41 at 29–31. It should be noted that Nunavut did not participate in Dickson and Smith's study.

[181] See generally *Legal Services Regulations*, RRNWT (Nu) 1990, c L-8.

[182] See Clark, *supra* note 119 at 351–52.

[183] See Legal Services Board of Nunavut, *supra* note 167 at 6, 14.

[184] See Clark, *supra* note 119 at 349; Department of Justice, *Spotlight on Gladue*, *supra* note 6 at 44.

[185] See Clark, *supra* note 119 at 349.

Nunavut's institutional context only worsens things. Given the absence of Gladue programs in the territory, all gathering of individualised information will fall upon defence counsel unless a probation officer has prepared a PSR.[186] If neither the client nor their community speak English, it remains implausible that LSB defence counsel will be able to obtain all the information they need to conduct a proper sentencing hearing.

A second issue compounds the first: LSB struggles to recruit and retain staff lawyers, such that resident counsel is often comprised of newly arrived southern lawyers with little experience nor knowledge of the North.[187] Difficulties staffing LSB largely stem from low salaries, harsh living conditions, and extremely heavy caseload. This last factor also tends to limit case preparation time.[188]

This portrait of resident counsel in Nunavut is worrying. However, there is reason for optimism: a predominantly Inuit legal community may yet be forged in Nunavut.[189] In 2017, the University of Saskatchewan collaborated with the Government of Nunavut (GN) to launch the Nunavut Law Program, thus giving the opportunity for twenty-five Nunavummiut to attend and complete law school.[190] Having studied the law with an emphasis on Inuit knowledge systems and Indigenous language revitalisation, the graduates emerging from the Program in 2021

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[186] See *ibid* at 352. Though Crown counsel is also expected to help adduce *Gladue* information, this does not seem to be the case in Nunavut. See Department of Justice, *Gladue Practices*, *supra* note 44 at 11–12 ("The Crown does not generally buy into *Gladue* other than by way of discounted sentences and there is no sense that the Crown has an obligation to provide alternatives."). See also Department of Justice, *Spotlight on Gladue*, *supra* note 6 at 44.

[187] See Clark, *supra* note 119 at 359.

[188] See *ibid* at 352, 359.

[189] See *GH*, 2020 NUCJ 21, *supra* note 104 at para 17.

[190] See James Shewaga, "Inuit students happy to have JD program" (14 December 2018), online: *University of Saskatchewan College of Law* <law.usask.ca/about/articles/2018/inuit-students-happy-to-have-usask-law-program.php>. See also "College of Law launches Nunavut Law Program" (13 September 2017), online: *University of Saskatchewan College of Law* <law.usask.ca/about/articles/2017/college-of-law-launches-nunavut-law-program.php>; Emma Tranter, "'To make change in Nunavut': Homegrown lawyers ready to enter legal profession", *CBC News* (31 May 2021), online: <cbc.ca/news/canada/north/nunavut-homegrown-lawyers-1.6046886>.

may provide much needed assistance to LSB (provided they join the organisation). With future iterations of the Nunavut Law Program hopefully forthcoming, some of the issues I have addressed regarding resident counsel could be remedied.

iv) Resident Probation Officers

The only specialised PSRs available in Nunavut are those with a Gladue component prepared by resident probation officers.[191] Though I have already covered their potential deficiencies compared to Gladue reports, Nunavut's institutional context only exacerbates them.

In Nunavut, the Community Corrections Division at the GN Department of Justice prepares PSRs.[192] It should be noted at this juncture that "[the] GN Department of Justice has the second smallest proportion of Inuit employees of any government department [and that] 91 percent of these Inuit employees are paraprofessionals and administrative support."[193] As such, those who conduct client interviews and gather Gladue information in a PSR are likely not Inuk.

As with resident counsel, this is not to suggest that non-Indigenous professionals are incapable of producing quality work regarding Indigenous offenders. Rather, it is to highlight the extent to which the implicit degree of trust facilitating exchanges between Indigenous Gladue writers and offenders may be less present in a context like Nunavut. A lack of shared cultural history has been shown to exacerbate tensions between probation officers and Indigenous offenders. This distance is arguably inherent to the criminal justice system, where probation officers as "officers of the

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[191] See *GH*, 2020 NUCA, *supra* note 130 at para 15. With that said, testimonies collected from Nunavut counsel by the Federal Department of Justice cast some doubt on the quality of PSRs in the territory. See Department of Justice, *Gladue Practices*, *supra* note 44 at 11–12. These doubts may have been confirmed in a recent NCJ case, where one judge plainly suggested that Nunavut PSRs do not contain Gladue components out of "recognized and pragmatic practice." See *Anaittuq*, *supra* note 162 at para 13.

[192] See *GH*, 2020 NUCA, *supra* note 130 at para 15.

[193] Nunavut Tunngavik Incorporated, *supra* note 106 at 6.

court" tend to lack credibility for Indigenous offenders—despite being seen as credible by courts.[194]

It should be remembered in this regard that Nunavummiut know the criminal justice system to have first been a "tool to extend Ottawa's reach into the Inuit regions of Canada (Inuit Nunangat) and lay sovereignty claims to this vast region."[195] When relying upon the expertise of resident probation officers, Nunavut judges should consider that these employees have been tasked with extracting sensitive information from people who do not trust the institutions they represent.

D. Ways Forward: Potential Models for Gladue Programs

Having established how the absence of Gladue reports in Nunavut is problematic, it follows that creating a territorial Gladue writing program is imperative. This section will therefore contain a brief description of two Gladue programs whose structures may be potentially emulated in Nunavut. The first is the Council of Yukon First Nations (CYFN) program, the second is the Cree Nation Justice Department program. I have chosen to examine these two as opposed to other Gladue writing programs for each either operate within a territorial[196] legislative framework or comprehensive Crown-Indigenous land claims agreement,[197] thus offering a similar (though not identical) context in relation to Nunavut.[198]

i) The Yukon

Despite not mandating them for all Indigenous offenders,[199] the Yukon has made some impressive strides towards the

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[194] See Dickson & Stewart, *supra* note 69 at 18–19; Department of Justice, *Spotlight on Gladue*, *supra* note 6 at 27.

[195] Nunavut Tunngavik Incorporated, *supra* note 106 at 5.

[196] As opposed to provincial. See *Yukon Act*, SC 2002, c 7.

[197] See *Act approving the Agreement concerning James Bay and Northern Québec*, CQLR c C-67.

[198] See *Nunavut Act*, *supra* note 1; *Nunavut Land Claims Agreement Act*, *supra* note 3.

[199] See *Blanchard*, *supra* note 82 at para 25; *R v Atkinson*, 2012 YKTC 62 at paras 12–17.

production and delivery of Gladue reports across its territory. Recognising that insufficient resources to support Indigenous offenders posed a significant challenge to the administration of justice in the Yukon,[200] and that PSRs with Gladue components were insufficient tools for helping judges fully consider the unique and systemic factors for sentencing Indigenous offenders,[201] the CYFN started a Gladue writing program in 2019.[202]

Prior to the CYFN program, no official oversight or guidelines existed for Gladue reports in the Yukon. Writers (often Indigenous Court Workers) were called upon to prepare reports on an *ad-hoc* basis, having neither any funding nor training to do so. Many did not even live in the Yukon, and thus lacked the necessary community knowledge and resources to adequately situate the offenders in their unique context.[203] After consultations within the territory's Gladue Management Committee, it was decided that a First Nations-led Gladue program was required to properly sentence Indigenous offenders.[204] With funding from the Yukon territorial government,[205] the CYFN trains First Nations members in writing, interviewing, and in identifying the relevant legal factors in a Gladue assessment.[206] Select offenders may then apply to the CYFN to have a writer of their choice prepare a Gladue report for them without having to fund it in any part. If the applicant has previously had the benefit of such a report, it is reviewed and updated at cost.[207]

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[200] See Sylvestre & Denis-Boileau, *supra* note 76 at 591.

[201] See Barkaskas et al, *supra* note 52 at 71.

[202] See Yukon & Council of Yukon First Nations, News Release, 19-184, "Council of Yukon First Nations takes over administration of Gladue Report Writing Pilot Project" (29 August 2019), online: <yukon.ca/en/news/council-yukon-first-nations-takes-over-administration-gladue-report-writing-pilot-project>.

[203] See Barkaskas et al, *supra* note 52 at 48.

[204] This Management Committee considered input from "Yukon courts, the Yukon Public Prosecution Services Office, the Yukon Government's Department of Justice, the Yukon Legal Services Society, the Council of Yukon First Nation's Justice Program, and Kwanlin Dun First Nation's Justice Department." See Barkaskas et al, *supra* note 52 at 49.

[205] See Yukon & Council of Yukon First Nations, *supra* note 202.

[206] See Barkaskas et al, *supra* note 52 at 50.

[207] See *ibid* at 49.

Though it is still too early to gain an accurate assessment of whether this program has indeed resulted in more appropriate sentences for Indigenous offenders in the Yukon, the CYFN offers an interesting model for Indigenous-led territorial Gladue coverage. However, one central difference between the Yukon and Nunavut is the plurinational context of the former. Indeed, there are fourteen Nations to consider in the Yukon,[208] and almost exclusively Inuit in Nunavut. In theory, this smaller range of Indigenous Nations to account for should only make the recruitment and training of prospective Gladue writers in Nunavut a simpler task. However, it should be noted that Nunavut has used the fact that it exclusively deals with one Indigenous Nation to justify its refusal to give its judges any Gladue training, namely on the basis that the NCJ has already developed a "general knowledge of the communities in question."[209]

ii) The Cree Nation

Since the *James Bay and Northern Québec Agreement* (*JBNQA*) of 1975, the Quebec and Cree Nation governments have collaborated to establish culturally appropriate initiatives to deliver justice for Cree offenders.[210] With funding from the Quebec Ministry of Justice, the Cree Nation has built justice facilities to hold provincial and superior court hearings, developed probation and parole programs, and even Cree-language rehabilitation programs centred on crime prevention and conflict resolution. Included within this framework is also the

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[208] Carcross/Tagish First Nation, Champagne and Aishihik First Nations, Ehdiitat Gwich'in Council, First Nation of Nacho Nyak Dun, Gwichya Gwich'in Council, Kluane First Nation, Little Salmon Carmacks First Nation, Nihtat, Gwich'in Council, Selkirk First Nation, Ta'an Kwach'an Council, Teslin Tlingit Council, Tetlit Gwich'in Band Council, and Tr'ondek Hwech'in. See "Nations", online: *Council of Yukon First Nations* <cyfn.ca/nations/>.

[209] Sylvestre & Denis-Boileau, *supra* note 76 at 588. See also Bonta et al, *supra* note 114 at 13–14 ("In Nunavut we found all three judges agreeing that Gladue considerations did not really apply in their jurisdiction because almost all offenders were Aboriginal.").

[210] See Cree Nation, Department of Justice and Correctional Services, *Brief of the Department of Justice and Correctional Services of the Cree Nation Government to the Public Inquiry Commission on Relations Between Indigenous Peoples and Certain Public Services in Quebec: Listening, Reconciliation and Progress* (Val-d'Or: 2017) at 2–3.

responsibility to produce Gladue reports for Cree offenders.[211] Indigenous Justice Committee coordinators and Cree justice social reintegration workers may serve as the chosen Gladue writers, but the Nation largely mostly contracts independent writers on a case-by-case basis.[212] Dozens of these writers have received training at Cree Justice,[213] but some concerns remain as to whether there is sufficient support and oversight for them.[214] The Ministry plans to set up a larger framework for Gladue report support and quality control in the coming years.[215]

Additional time and research will show whether this program reduces Indigenous over-incarceration. In the interim, the Cree provide an example of an Indigenous Nation willing to forge appropriate services for its constituents. Nunavut, whose governance structure is also the product a land-claims agreement, could use this example of inter-governmental cooperation as inspiration for an eventual Gladue writing program.

Conclusion

Twenty-three years have now passed since the Supreme Court of Canada termed Indigenous over-incarceration a "crisis."[216] To label it a "crisis" today would risk undermining the enduring nature of the problem. Despite s.718.2(e) and *Gladue*'s remedial ethos, the past three decades have seen a near 300 percent increase in the number of federal incarcerated Indigenous offenders.[217] Nunavut is no exception to this trend. The rate at which Inuit Nunavummiut are sent to prison is alarming, and the conditions in which they serve out their sentences are among the

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[211] See Barkaskas et al, *supra* note 52 at 53–54.

[212] Some of these writers are funded by the Federal Government as well. See *ibid* at 73.

[213] See *ibid* at 88.

[214] See *ibid* at 73.

[215] See *ibid*.

[216] *Gladue*, *supra* note 2 at para 64.

[217] Indigenous women, in particular, are the most likely to be incarcerated. See Skolnik, *supra* note 38 at 634–35.

most oppressive in the country.[218] Overall, one may get the sense that the NCJ is in a paradoxical position, asked simultaneously to "assert Canadian sovereignty and somehow provide the means for accommodating Indigenous difference."[219]

Gladue reports are not a panacea for all the problems facing Nunavut's administration of justice.[220] With that said, I hope to have demonstrated in this article how their absence hinders the NCJ's capacity to fully consider the "unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts."[221] If Nunavut and *Gladue* are caught up in each other's destiny, creating a Gladue program for Nunavummiut can only help fulfil their shared promise of dignity for Inuit.

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[218] See Tammy C Landau, "Plus Ça Change: Correcting Inuit Inmates in Nunavut, Canada" (2006) 45:2 How J Crim Just 191 at 204; Brisson-Boivin, *supra* note 106 at 397.

[219] See Jeanette Gevikoglu, Sentenced to Sovereignty: Sentencing, Sovereignty, and Identity in the Nunavut Court of Justice (LLM Thesis, University of Victoria, 2011) [unpublished] at 158.

[220] The circuit court system, and its failure to deliver effective and timely justice for Nunavummiut, is a problem warranting much consideration. See generally Matyas, *supra* note 140. Another issue is the general lack of mental health services in more remote communities, see generally Priscilla Ferrazzi & Terry Krupa, "'Symptoms of something all around us': Mental health, Inuit culture, and criminal justice in Arctic communities in Nunavut, Canada" (2016) 165 Soc Science & Medicine 159.

[221] *Gladue*, *supra* note 2 at para 66.

Bibliography

LEGISLATION

Act approving the Agreement concerning James Bay and Northern Québec, CQLR, c C-67.

An Act to amend the Nunavut Act with respect to the Nunavut Court of Justice and to amend other Acts in consequence, SC 1999, c 3.

Criminal Code, RSC 1985, c C-46.

Legal Services Regulations, RRNWT (Nu) 1990, c L-8.

Nunavut Act, SC 1993, c 28.

Nunavut Judicial System Implementation Act, SNWT 1998, c 34.

Nunavut Land Claims Agreement Act, SC 1993, c 29.

Yukon Act, SC 2002, c 7.

JURISPRUDENCE

R v AA, 2021 NUCA 13.

R v Anaittuq, 2022 NUCJ 37.

R v Angus, 2020 SKQB 205.

R v Anugaa, 2018 NUCJ 2.

R v Arnaquq, 2020 NUCJ 14.

R v Atkinson, 2012 YKTC 62.

R v Blanchard, 2011 YKTC 86

R v Burwell, 2017 SKQB 375.

R v CJHI, 2017 BCPC 121.

R v Cooper-Flaherty, 2020 NUCJ 43.

R v Corbiere, 2012 ONSC 2405.

R v Derion, 2013 BCPC 382.

R v Desjarlais, 2019 SKQB 6.

R v Doxtator, 2013 ONCJ 79.

R v EA, 2017 NUCJ 16.

R v Etuangat, 2009 NUCA 1.

R v Evic, 2020 NUCJ 7.

R v Find, 2001 SCC 32.

R v FO, 2021 NUCJ 45.

R v Gamble, 2021 SKCA 72.

R v GH, 2020 NUCA 16.

R v GH, 2020 NUCJ 21.

R v GH, 2020 NUCJ 33.

R v Gladue, [1999] 1 SCR 688, 171 DLR (4th) 385.

R v HGR, 2015 BCSC 681.

R v Ipeelee, 2012 SCC 13.

R v Ippak, 2018 NUCA 3.

R v Iqalukjuaq, 2020 NUCJ 15.

R v Itturiligaq, 2018 NUCJ 31.

R v Jaypoody, 2018 NUCJ 36.

R v JN, 2015 NUCJ 22.

R v Jordan, 2016 SCC 27.

R v Knockwood, 2012 ONSC 2238.

R v Kuliktana, 2020 NUCA 7.

R v Laliberte, 2000 SKCA 27.

R v Lawson, 2012 BCCA 508.

R v M (CA), [1996] 1 SCR 500, 1996 CanLII 230 (SCC).

R v Macintyre-Syrette, 2018 ONCA 259.

R v Mala, 2018 NUCA 2.

R v Manik, 2021 NUCJ 1.

R v Manyshots, 2018 ABPC 17.

R v Mattson, 2014 ABCA 178.

R v McInnis, 2019 PECA 3.

R v Metuq, 2018 NUCJ 25.

R v Mikijuk, 2017 NUCJ 2.

R v Nahanee, 2022 SCC 37.

R v Napayok, 2021 NUCJ 40.

R v Napesis, 2014 ABCA 308.

R v Natomagan, 2022 ABCA 48.

R v Noble, 2017 CanLII 32931 (NL PC).

R v Oakes, [1986] 1 SCR 103, 26 DLR (4th) 200.

R v Parranto, 2021 SCC 46.

R v Paquette, 2020 ABPC 173.

R v Parent, 2019 ONCJ 523.

R v Peepeetch, 2019 SKQB 132.

R v Sand, 2019 SKQB 18.

R v Sharma, 2022 SCC 39.

R v Tom, 2012 YKTC 55.

R v Wells, 2000 SCC 10.

R v Wolftail, 2022 ABPC 102.

SECONDARY MATERIAL: GOVERNMENT DOCUMENTS

Canada, Department of Justice, Gladue *Practices in the Provinces and Territories*, by Sébastien April & Mylène Magrinelli Orsi (Ottawa: Department of Justice, 2013).

Canada, Department of Justice, *Spotlight on* Gladue*: Challenges, Experiences, and Possibilities in Canada's Criminal Justice System* (Ottawa: Research and Statistics Division, 2017).

Cree Nation, Department of Justice and Correctional Services, *Brief of the Department of Justice and Correctional Services of the Cree Nation Government to the Public Inquiry Commission on Relations Between Indigenous Peoples and Certain Public Services in Quebec: Listening, Reconciliation and Progress* (Val-d'Or: 2017).

Public Safety and Emergency Preparedness Canada, *Presentence Reports in Canada*, by James Bonta et al (Ottawa: The Minister of Public Safety and Emergency Preparedness, 2005).

Nunavut, Legal Services Board of Nunavut, *Annual Report (2018-2019)*, (Iqaluit: 2019).

Nunavut Tunngavik Incorporated, "Annual Report on the State of Inuit Culture and Society (2013-2014): Examining the Justice System in Nunavut" (2014), online (pdf): *Tunngavik* <tunngavik.com/publications/annual-report-on-the-state-of-inuit-culture-and-society-2013-2014/>.

Statistics Canada, *Population and dwelling counts: Canada, provinces and territories, and census subdivisions (municipalities) (Nunavut)* (Ottawa, Statistics Canada, 2021).

Statistics Canada, *Profile Table for Nunavut* (Ottawa: Statistics Canada, 2021).

Truth and Reconciliation Commission of Canada, Calls to Action, (Winnipeg: Truth and Reconciliation Commission, 2012).

SECONDARY MATERIAL: ARTICLES

Anderson, James M & Paul Heaton, "How Much Difference Does the Lawyer Make: The Effect of Defense Counsel on Murder Case Outcomes" (2012) 122:1 Yale LJ 154.

Baldursson, Erlendur, "Prisoners, Prisons and Punishment in Small Societies" (2000) 1 J Scandinavian Studies Criminology & Crime Prevention 6.

Balfour, Gillian, "Falling between the cracks of retributive and restorative justice: The victimization and punishment of aboriginal women" (2008) 3:2 Feminist Criminology 101.

Brisson-Boivin, Kara, "Standardizing 'Corrections': The Politics of Prison Expansionism and Settler Colonial Representations of Punishment in Nunavut" (2018) 7 Ann Rev Interdisciplinary Justice Research 372.

Clark, Scott, "The Nunavut Court of Justice: An Example of Challenges and Alternatives for Communities and for the Administration of Justice" (2011) 53:3 Can J Corr 343.

Couturier, Don, "Judicial Reasoning across Legal Orders: Lessons from Nunavut" (2020) 45:2 Queen's LJ 319.

Denis-Boileau, Marie-Andree, "The *Gladue* Analysis: Shedding Light on Appropriate Sentencing Procedures and Sanctions" (2021) 54:3 UBC L Rev 537.

Dickson, Jane & Kory Smith, "Exploring the Canadian Judiciary's Experiences with and Perceptions of *Gladue*" (2021) 63:3–4 Can J Corr 23.

Dickson, Jane & Michelle Stewart, "Risk, rights and deservedness: Navigating the tensions of *Gladue*, Fetal Alcohol Spectrum Disorder and settler colonialism in Canadian courts" (2022) 40 Behavioural Sciences & L 14.

Dickson-Gilmore, EJ, "Finding the ways of the ancestors: Cultural change and the invention of tradition in the development of separate legal systems" (1992) 34:3–4 Can J Crim 479.

Dickson-Gilmore, Jane, "Whither Restorativeness? Restorative Justice and the Challenge of Intimate Violence in Aboriginal Communities" (2014) 56:4 Can J Corr 417.

Doob, Anthony N & Cheryl Marie Webster, "Weathering the Storm - Testing Long-Standing Canadian Sentencing Policy in the Twenty-First Century" (2016) 45 Crime & Justice 359.

Feeney, Floyd & Patrick G Jackson, "Public Defenders, Assigned Counsel, Retained Counsel: Does the Type of Criminal Defense Counsel Matter" (1991) 22:2 Rutgers LJ 361.

Ferrazzi, Priscilla & Terry Krupa, "'Symptoms of something all around us': Mental health, Inuit culture, and criminal justice in Arctic communities in Nunavut, Canada" (2016) 165 Soc Science & Medicine 159.

Hannah-Moffat, Kelly & Paula Maurutto, "Re-contextualizing pre-sentence reports: Risk and race" (2010) 12:3 Punishment & Society 262.

Hebert, Alexandra, "Change in Paradigm or Change in Paradox: *Gladue* Report Practices and Access to Justice" (2017) 43:1 Queen's LJ 149.

Klein, Alana, "Gladue in Quebec" (2009) 54:4 Crim LQ 506.

Landau, Tammy C, "Plus Ça Change: Correcting Inuit Inmates in Nunavut, Canada" (2006) 45:2 How J Crim Just 191.

Mah, Connie, "Our Land: Our Laws - Court in Nunavut" (2001) 26:3 LawNow 5.

Matyas, David, "Short Circuit: A Failing Technology for Administering Justice in Nunavut" (2018) 35 Windsor YB Access Just 379.

Maurutto, Paula & Kelly Hannah-Moffat, "Aboriginal Knowledges in Specialized Courts: Emerging Practices in *Gladue* Courts" (2016) 31:3 CJLS 451

McGill, Jena, "An institutional suicide machine: Discrimination against federally sentenced aboriginal women in Canada" (2008) 2:1 Race/Ethnicity Multidisciplinary Global Contexts 89.

McGuire, Michaela M & Danielle J Murdoch, "(In)-justice: An exploration of the dehumanization, victimization, criminalization, and over-incarceration of Indigenous women in Canada" (2022) 24:4 Punishment & Society 529.

Milward, David & Debra Parkes, "*Gladue*: Beyond Myth and towards Implementation in Manitoba" (2011) 35:1 Man LJ 84.

Novikova, Natalya Ivanovna, "Who is responsible for the Russian Arctic? Co-operation between indigenous peoples and industrial companies in the context of legal pluralism" (2016) 16 Energy Research & Soc Science 98.

Rudin, Jonathan, "Aboriginal Over-representation and R. v. Gladue: Where We Were, Where We Are and Where We Might Be Going" (2008) 40 SCLR 687.

Rudin, Jonathan, "Addressing Aboriginal Overrepresentation Post-Gladue: A Realistic Assessment of How Social Change Occurs" (2009) 54:4 Crim LQ 447.

Rudin, Jonathan, "Looking Backward, Looking Forward: The Supreme Court of Canada's Decision in *R. v. Ipeelee*" (2012) 57 SCLR 375.

Shepherd, Stephane M & Thalia Anthony, "Popping the Cultural Bubble of Violence on Risk Assessment Tools" (2018) 29:2 J Forensic Psychiatry & Psychology 211.

Skolnik, Terry, "Criminal Justice Reform: A Transformative Agenda" (2022) 59:3 Alta L Rev 631.

Sylvestre, Marie-Eve & Marie-Andrée Denis-Boileau, "Ipeelee and the Duty to Resist" (2018) 51:2 UBC L Rev 548.

SECONDARY MATERIAL: BOOKS

Borrows, John, Canada's Indigenous Constitution (Toronto: University of Toronto Press, 2010).

Bunikowski, Dawid & Patrick Dillon, "Arguments from Cultural Ecology and Legal Pluralism for Recognising Indigenous Customary Law in the Arctic" (2017) in Leena Heinämäki & Thora Martina Herrmann, eds, *Experiencing and Protecting Sacred Natural Sites of Sámi and other Indigenous Peoples* (Cham, SZ: Springer Polar Sciences, 2017).

Dickson-Gilmore, Jane & Carol La Prairie, *'Will the Circle be Unbroken?' Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change* (Toronto: University of Toronto Press, 2005).

Gover, Kirsty, "Legal Pluralism and Indigenous Legal Traditions" in Paul Schiff Berman, ed, *The Oxford Handbook of Global Legal Pluralism* (Oxford, UK: Oxford University Press, 2020).

Kaiser-Derrick, Elspeth, *Implicating the System: Judicial Discourses in the Sentencing of Indigenous Women* (Winnipeg, MB: University of Manitoba Press, 2019).

Karetak, Joe, Frank J Tester & Shirley Tagalik, eds, *Inuit Qaujimajatuqangit: What Inuit Have Always Known to be True* (Halifax: Fernwood Publishing, 2017).

Loukacheva, Natalia, The Arctic promise: Legal and Political autonomy of Greenland and Nunavut (Toronto, ON: University of Toronto Press, 2007).

Oosten, JG & Frédéric Laugrand, eds, *Inuit Worldviews: An Introduction, 2nd edition* (Iqaluit: Nunavut Arctic College Media, 2017).

Oosten JG, WCE Rasing & Frédéric Laugrand, *Inuit Laws: Tirigusuusiit, Piqujait, and Maligait: Interviewing Inuit Elders: Mariano Aupilaarjuk, Marie Tulimaaq, Akisu Joamie, Émile Imaruittuq, and Lucassie Nutaraaluk*, 2nd edition (Iqaluit: Nunavut Arctic College Media, 2017).

SECONDARY MATERIAL: THESES AND DISSERTATIONS

Gevikoglu, Jeanette, *Sentenced to Sovereignty: Sentencing, Sovereignty, and Identity in the Nunavut Court of Justice* (LLM Thesis, University of Victoria, 2011) [unpublished].

OTHER MATERIAL

"Frequently Asked Questions (FAQ)", online: *CanLII* <canlii.org/en/info/faq.html#2.3>.

"Nations", online: *Council of Yukon First Nations* <cyfn.ca/nations/>.

"Nunavut Court of Justice" (2022), online: *Nunavut Courts* <nunavutcourts.ca/index.php/nunavut-court-of-justice>.

"The Judiciary" (2022), online: *Nunavut Courts* <nunavutcourts.ca/index.php/judiciary-nucj>.

Barkaskas et al, "Production and Delivery of *Gladue* Pre-sentence Reports: A Review of Selected Canadian Programs" (9 October 2019), online (pdf): *International Centre for Criminal Law Reform and Criminal Justice Policy* <icclr.org/2020/02/26/production-and-delivery-of-gladue-pre-sentence-reports-a-review-of-selected-canadian-programs/>.

Black, Jessica, Tupiq Nappaqtauliqtuq: Meeting Over-Incarceration and Trauma with Re-Centering Inuit Piusiit (Toronto, ON: The Gordon Foundation, 2017).

Federation of Law Societies of Canada, *Model Code of Professional Conduct*, Ottawa: FLSC, 2019.

George, Jane, "Nunavut led country in violent crimes in 2021, says Statistics Canada report", *CBC News* (3 August 2022), online: <cbc.ca/news/canada/north/nunavut-violent-crime-statistics-canada-report-1.6539172>.

Griffiths, Andrew, "Diversity among federal and provincial judges" (4 May 2016), online: *Policy Options* <policyoptions.irpp.org/2016/05/04/diversity-among-federal-provincial-judges/>.

Rudin, Jonathan, "A Court of Our Own: More on the Gladue Courts" (2006), online (pdf): <https://nanlegal.on.ca/wp-

content/uploads/2018/11/a-court-of-our-own-more-on-gladue-courts.pdf>.

The Honourable Chief Justice Lance SG Finch, "The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice" (November 2012), online (pdf): *Continuing Legal Education Society of British Columbia* <cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Documents_deposes_a_la_Commission/P-253.pdf>.

Tranter, Emma, "'To make change in Nunavut': Homegrown lawyers ready to enter legal profession", *CBC News* (31 May 2021), online: <cbc.ca/news/canada/north/nunavut-homegrown-lawyers-1.6046886>.

Tranter, Emma, "Top Nunavut judge denies request for territory's first written Gladue report", *The Globe and Mail* (8 October 2020), online: <theglobeandmail.com/canada/article-top-nunavut-judge-denies-request-for-territorys-first-written-gladue-2/>.

Yukon & Council of Yukon First Nations, News Release, 19-184, "Council of Yukon First Nations takes over administration of Gladue Report Writing Pilot Project" (29 August 2019), online: <yukon.ca/en/news/council-yukon-first-nations-takes-over-administration-gladue-report-writing-pilot-project>.