

INTRODUCING THE GLADUE SUBMISSION GUIDE

A Practical Resource for Indigenous Clients
and their Legal Counsel

The logo of the Law Society of Saskatchewan, featuring a stylized tree with a white trunk and branches, and a gold and white leaf-like shape at the base.

Law Society
of Saskatchewan

The logo for Legal Aid Saskatchewan, featuring the words "LEGAL AID" in a serif font, with a stylized hand holding a feather between the words, and "SASKATCHEWAN" in a smaller sans-serif font below.

LEGAL AID
SASKATCHEWAN

WHAT WILL THIS PRESENTATION COVER?

1. ADDRESSING THE GAPS

- Purpose: Why do we need a Gladue Submission Guide in Saskatchewan?
- Challenges
- Pre-Sentence Reports

2. WHAT CAN BE FOUND IN THE GLADUE SUBMISSION GUIDE?

- Gladue Principles and Gladue Factors
- Question Guide for Clients
- Question Guide for Legal Counsel

3. THE GLADUE DATABASE

- Locating additional resources
- Learning more about making a Gladue Submission



WHERE DO GLADUE PRINCIPLES COME FROM?

In R v Gladue (1999), the Supreme Court stipulated

The social, political, and historical circumstances of Indigenous peoples are unique. In sentencing an Indigenous person, the judge must consider:

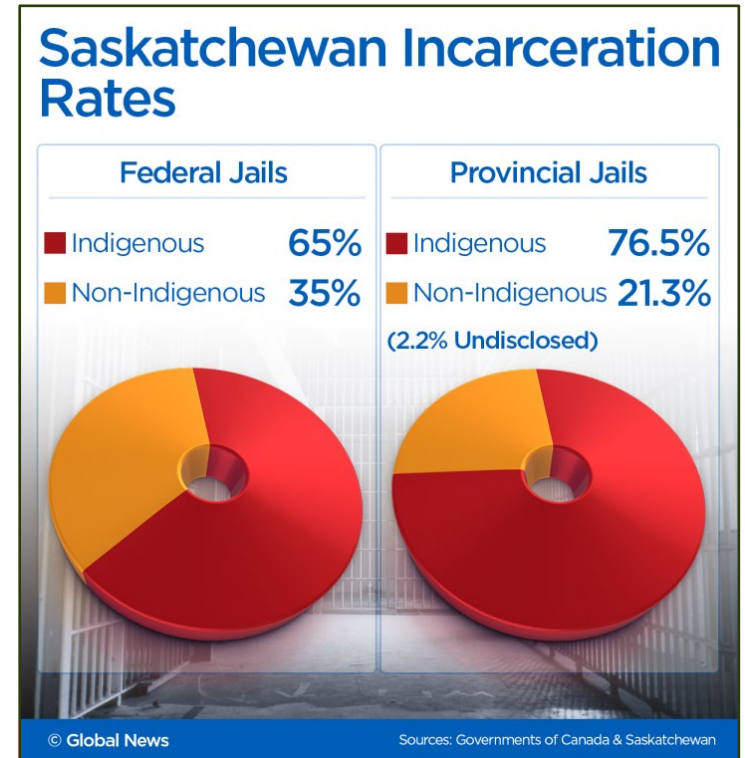
The unique systemic and background factors which may have contributed to their presence before the courts

Appropriate sentencing procedures which are culturally relevant and restorative to their Indigenous culture or connection



WHY DO WE NEED A GLADUE SUBMISSION GUIDE IN SASKATCHEWAN?

- Saskatchewan courts are struggling to uphold the Gladue Principles and *Gladue* Decision on a systemic level
- Supreme Court stipulated that Gladue Principles must be considered for all Indigenous accused
- Desire for *Gladue* materials from service-providers
- **Agencies from other jurisdictions have their own Gladue processes in place**
 - Legal Aid BC “Gladue Submission Guide” and BC First Nations Justice Council
 - Ontario Gladue Court
 - Alberta’s Gladue Report Writer roster





ADDRESSING THE ABSENCE OF GLADUE IN SK

Challenges

- Ability or willingness for sentencing judge to suggest alternative methods to incarceration and rehabilitation
- Willingness of the Crown engage with the *Gladue* Principles, pursue restorative sanctions
- Lengthy wait-times for a report and appropriate funding
- Program Options and availability (ie. Federal vs. Provincial penitentiary, waitlists and eligibility, requirement of a formal diagnosis like FASD, ADHD, or Psychiatric assessment, etc.)

Addressing the service gap

- Gladue Submission Guide
- The Gladue Database



RECENT DEVELOPMENTS

- Gladue principles/factors are dynamic, and they require a dynamic response – one size does not fit all
- BILL C-5: Mandatory Minimum Penalties repealed on 14 offences under the Criminal Code
 - Indigenous and racialized offenders are over-represented in convictions related to offences involving firearms, drugs, controlled substances
- While there are limits to what sentencing can reasonably suggest, recent caselaw shows innovative approaches:
 - R v Tawiyaka, 2022 SKPC 25 (CanLII), <https://canlii.ca/t/jrkjb>
 - R v Hotomanie, 2022 SKCA 119 (CanLII), <https://canlii.ca/t/jslq9>
 - R v L.P., 2022 SKPC 27 (CanLII), <https://canlii.ca/t/jqd26>
 - R v Katcheech, 2021 SKPC 6 (CanLII), <https://canlii.ca/t/jflt>



GLADUE FACTORS IN PRE-SENTENCE REPORTS

RELYING ON PSRs

- Inclusion of Gladue Factors in PSRs has become habitual
- Saskatchewan relies on PSRs in place of Gladue Submissions or Reports
 - File Hills Qu'Appelle Tribal Council is the exception – their justice unit is producing effective and well-received PSRs
- Generally, PSRs fail to engage a meaningful analysis of *Gladue* - fundamentally different purposes
- PSRs cannot effectively substitute a Gladue Submission or Report

WHAT'S THE DIFFERENCE?

- PSR: risk-based analysis of the individual, which may identify Gladue Factors as indicators of risk
 - Likelihood of reoffending assessed on probability, may potentially use Gladue Factors against the individual
- Gladue Submissions: how has the individual been impacted by their Gladue Factors and how has this contributed to presence in court?
 - Is not a risk-based assessment
 - Allows client and counsel to identify supports and potential alternatives to incarceration

GLADUE SUBMISSION OR GLADUE REPORT

GLADUE SUBMISSION

- Most common way Gladue Principles are addressed in Saskatchewan, faster to prepare
- Written or Oral submission to the court – in the client’s own words
- Involve interviews with client and some members of their support network (ie. family, partner, etc.)
- Submissions are generally prepared by Legal Counsel, a Parole Officer, or a Court Worker, in conjunction with the client

GLADUE REPORT

- Detailed, written account that involve interviews between the Report Writer, the client, their family, support network, friends, partner, community members, etc.
- SK: 8-12 weeks to complete
 - FASD Network and IJP Report times can vary anywhere between 2-10 weeks
- Prepared by a Gladue Report Writer
- Can explore, in depth, the reasons why the client is before the court

GLADUE SUBMISSION GUIDE

A USER MANUAL FOR INDIGENOUS
CLIENTS AND LEGAL COUNSEL

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References

Gladue Submission Guide - Legal Aid Saskatchewan

WHAT'S IN THE GUIDE?



Law Society
of Saskatchewan



ACCESSING THE SUBMISSION GUIDE

- Through Legal Aid Saskatchewan's Website:
<https://legalaid.sk.ca/community-resources/gladue/>
- Through the Gladue Database:
<https://gladue.usask.ca/gladuesubmissionguide>



PURPOSE OF THE GLADUE SUBMISSION GUIDE

Plain-language, accessible guide for Indigenous clients and Legal Counsel that outlines:

1. When and how the Gladue Principles apply
2. A non-exhaustive, but detailed list of potential Gladue Factors that are frequently considered by courts
3. A self-directed Question Guide for Indigenous clients that can be filled out before, during, and/or after meetings with Legal Counsel
 - Contact and Personal Information
 - Background Information
 - Historical and Community Information
 - Building their Healing Plan
4. Questions to help Legal Counsel build their client's Healing Plan and Submission
5. Examples of Culturally Appropriate Alternatives and Options that have been used in Canada
 - Used to illustrate the types of restorative approaches that may be appropriate in sentencing
6. **PLEASE NOTE:**
 - "Would you like me to read through the guide and write down your answers with you?"



PART I: THE GLADUE PRINCIPLES

- Background information on the *Gladue* Principles
- Explains the *Gladue* Decision
- Important contextual information needed before drafting a Submission or Report
- Accessible summaries that can be read alone, with support networks, or Legal Counsel
- PLEASE offer to go over the Submission Guide with your client – they may refuse but, they need to know the option is there
 - You may need to do this multiple times
 - If they have a Support or Court Worker, work with them and the client to build the Gladue Submission

The fact that an Indigenous person lives in an urban centre, in a rural community, on a reserve, or anywhere else does not impact the Gladue Principles, or their right to a Gladue Report or Gladue Submission.

Gladue Principles apply to every First Nations, Inuit, and Métis person in Canada, regardless of where they live.



PART II: GLADUE INFORMATION QUESTION GUIDE

- Outlines a client's Gladue information (personal, background, community, historical)
- Prompts client to think about their experiences, how these affected their life, and identify contacts to help support their testimony
- Prompts a client to outline steps for their wellbeing and healing journey
- The information provided by a client builds the Gladue Submission

1.5 - BUILDING YOUR HEALING PLAN

Are there any alternative justice programs or sentencing options available in a community you are connected to?

For example: Where you live, your home or reserve community/communities, another community that would be willing to work with you, an urban justice program, counselling or addictions services.

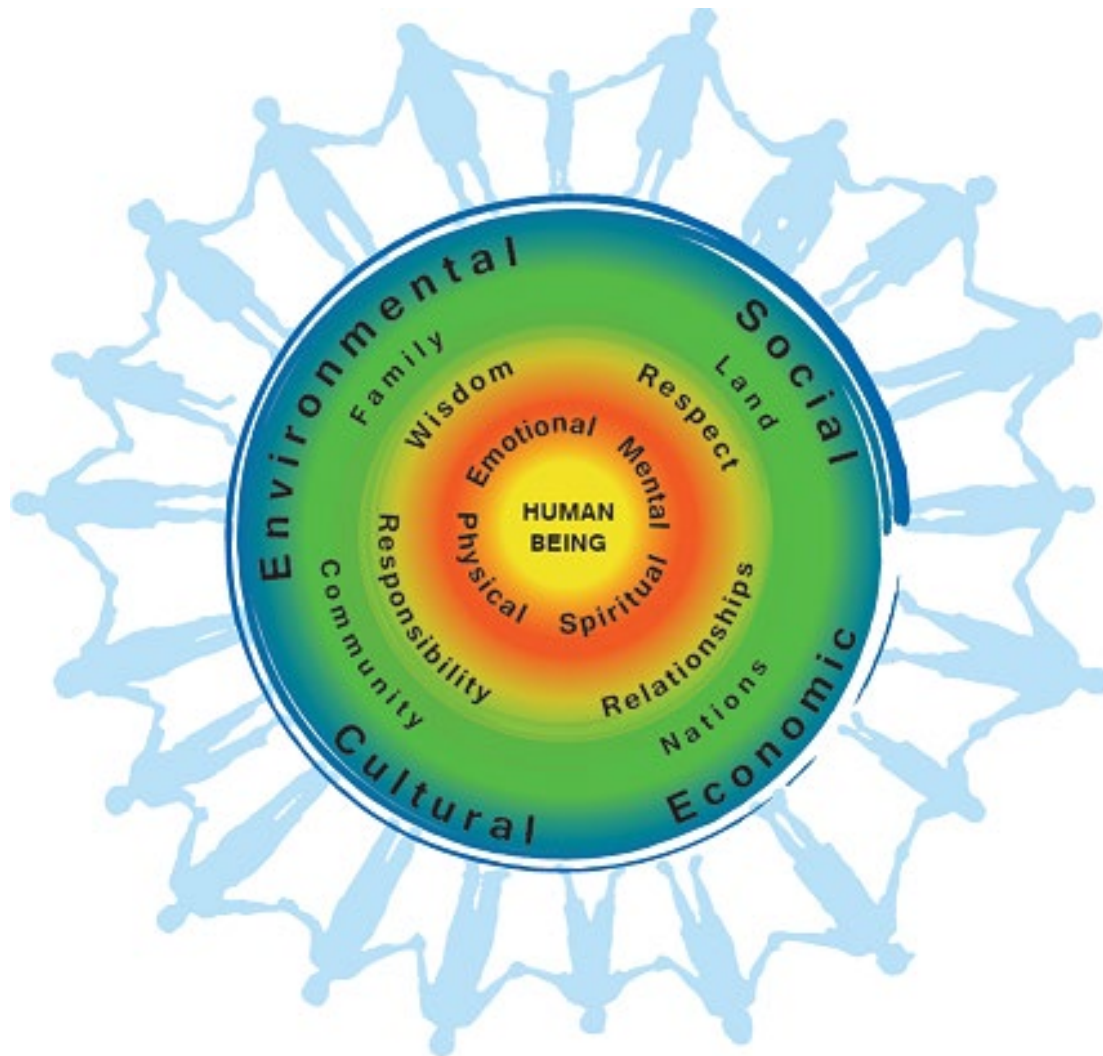
22. What could help you work through the issues that got you in trouble with the law? Think of your wellbeing, what could help you achieve a better sense of wellbeing and healing?

PART III: QUESTION GUIDE FOR LEGAL COUNSEL

- Provide Legal Counsel with guidance on the types of options that may be appropriate for a client's Healing or Aftercare Plan
- Important and often neglected aspect of a Gladue Submission
- Judges rely on Healing and Aftercare plans to form sentencing decisions
 - A robust Healing and Aftercare plan can make the difference between a conditional release or further incarceration
 - Demonstrating a network of Support is key – what services, resources, and people can support your client? How can they do this?
- Questions engage with restorative justice principles and help identify rehabilitative alternatives
 - Healing and Rehabilitation plans play a role in reducing mass-incarceration

- Are there alternative sentencing traditions in the Indigenous community or communities to which they are connected (e.g. Elder counselling or sentencing circles)?
- How else are common social issues being addressed by the Indigenous community or communities to which they are connected?
- What culturally relevant alternatives to prison can be set in place that would be healing for the offender and all others involved, including the relevant community or communities as a whole?
- Is there an Indigenous community to which they are connected that has the resources to assist in their supervision?
- What is their understanding of and willingness to participate in traditional Indigenous forms of justice, whether through a relevant Indigenous community or local Indigenous support agencies?





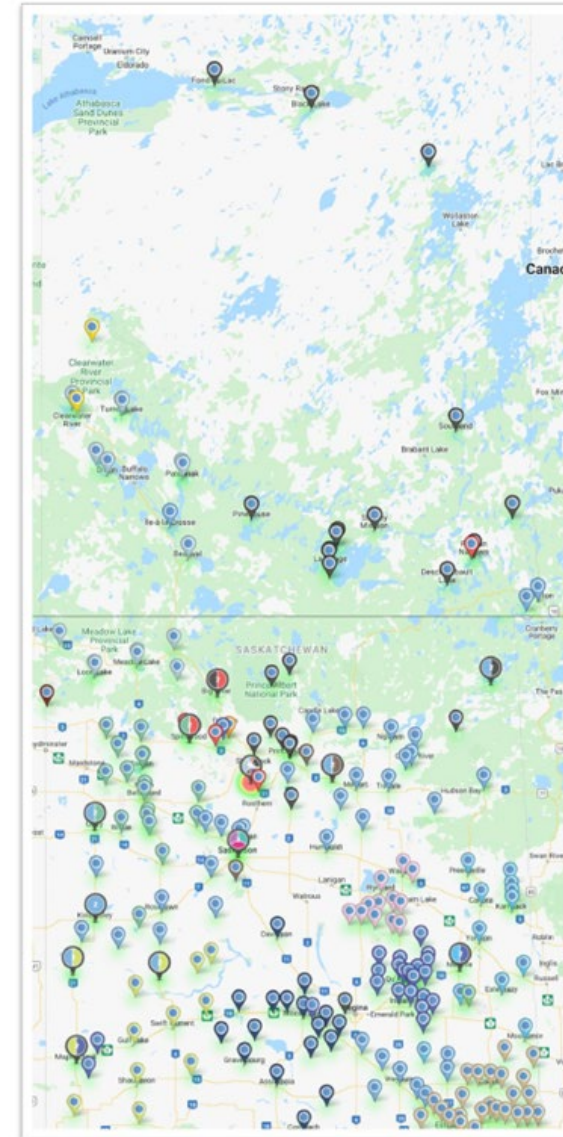
A Healing Plan should illustrate the connection between a client's Indigenous heritage and WHY restorative/rehabilitative justice principles might be more relevant or appropriate because of this.

Gladue Reports and Submissions should demonstrate a client's strengths, goals, and perspectives. They should not focus solely on dysfunction or the criminal record of a client.



WHERE CAN I LOCATE RESTORATIVE JUSTICE RESOURCES?

- Directory: Alternative Measures and Extrajudicial Sanctions Agencies in Saskatchewan
 - <https://gladue.usask.ca/node/6654>
- Directory: Community Justice Programs (FSIN Affiliated and Independently Affiliated)
 - <https://gladue.usask.ca/communityjusticeprograms>
- 2019-2020 Rehabilitative Alternatives to Incarceration – A Handbook of Community & Government Programs in Saskatchewan
 - <https://indigenouslaw.usask.ca/publications/rehabilitative-alternatives-to-incarceration-handbook.php>
- Directory of Restorative Justice Programs (Government of Canada)
 - <https://www.justice.gc.ca/eng/cj-jp/rj-jr/programs-programmes.aspx>



Community Justice Service Areas in Saskatchewan

- Agency Chief Tribal Council Inc.
- Ahtakahkoop
- Beardy's & Okemasis' Cree Nation
- Cowessess
- Fee For Service Providers
- File Hills Qu'Appelle Tribal Council Inc.
- John Howard Society of Saskatchewan
- La Loche Friendship Centre
- MLTC Program Services Inc.
- Northwest Professional Services Corp.
- Onion Lake Native Justice Inc.
- Restorative Circles Initiatives of Saskatoon Inc.
- P.A.G.G. Holdings Inc.
- Saskatoon Community Mediation Services Inc.
- Saskatoon Tribal Council Inc.
- SMILE Services Inc.
- STC Urban First Nation Services Inc.
- The Governing Council of the Salvation Army
- Touchwood Agency Tribal Council Inc.
- Yorkton Tribal Administration Inc.



NAVIGATING CHALLENGES

- Gladue Submission Guide is only available in English – this is a large barrier for many residents, especially in the North
- Corrections – ensuring clients can access their Guide while incarcerated, or at court
- Cognitive disabilities and literacy
- Reopening of Trauma
- Privacy and Confidentiality concerns – managing who has access to a client's Gladue information



WHERE CAN I LEARN MORE ABOUT MAKING A GLADUE SUBMISSION?

The Gladue Principles: An Interview with Benjamin Ralston (28 min)

<https://gladue.usask.ca/node/6673>



1. What does the implementation of the Gladue principles look like across Canada?
2. What can typically be found in a Gladue report?
3. What are some of the criticisms or challenges that Gladue reports have faced in the past and how are Gladue report practices changing?
4. What are some of the criticisms or challenges that Pre-Sentence Reports have faced in the past and how are PSR practices changing?
5. How can lawyers prepare effective Gladue submissions and how might they best rely on the information in a Gladue report or PSR to do so?





THE GLADUE DATABASE

RESEARCH AND SUBMISSION RESOURCES



WHAT IS THE GLADUE DATABASE?

- Gladue.usask.ca
- Free and Publicly Accessible – no login required!
- A practitioner tool to support Indigenous clients, Legal Counsel, and others working within the Justice System prepare Gladue Submissions/Reports, effectively address the *Gladue* Principles
- Saskatchewan-focused resources, guides, and research on Indigenous histories & cultures, colonialism, the "systemic and background factors" to assist clients and practitioners write Gladue Submissions and review Gladue Reports
- Resources to help identify potential restorative and alternative justice options (programs, agencies, services)



WHERE CAN I FIND COMMUNITY INFORMATION ON THE DATABASE?

[Social Context Summaries](#) ▾ [Systemic Factors](#) ▾ [Legal Traditions](#) ▾ [Justice Resources and Programming](#) ▾ [Browse](#) ▾

[Community Directory](#) [Contact Us](#) [Using the Database](#)

Gladue Rights Research Database

Explore

[Gladue Principles](#)

[Gladue Submission Guide](#)

[Gladue Factors](#)

What is the purpose of the database?

The Gladue Rights Research database is an ever-expanding work in progress, and updated frequently with new resources to better assist practitioners and their clients in the recognition of Gladue Rights (also known as the *Gladue Principles*). It is designed to assist Indigenous peoples, their legal counsel, and others working within the justice system with information that aids in the protection of Gladue Rights/Principles. Database users can find summaries and videos on the history of settler colonialism in Saskatchewan up to c. 1990, Social Context and Systemic Factors, and legal resources that will assist practitioners in building a Gladue Submission or Report. It is licensed under [Creative Commons](#), and is available to everyone.

Model of Restorative Justice

"Gladue principles apply in many

VICTIM

You can find Community information under the Community Directory

Search Tool

Search the Database using keywords and/or phrases.

Use Advanced Search to filter content by types:

Basic Page, Resource, Event, School, or Community.

What's New?

- [Research Summary: Child Welfare and the Effects of Apprehension](#)

- Community Pages have standard information that can help “fill in the blanks” of a Gladue Submission
 - Historical/Alternate Community Names
 - A short description of the Community
 - Links to general information, summaries across the database, resources, and services (Community Justice Programs, Alternative Measures Programs)
 - CIRNAC Federal First Nation Profile (Statistics Canada)
 - Location (Google Maps)
 - Related Events/Resources hosted on the database

GLADUE GUIDES, HANDBOOKS, AND RESOURCES

- *The Gladue Principles: A Guide to Jurisprudence* (Benjamin Ralston) & Handbooks (report writers, judges, defence and crown counsel)
- Gladue Submission Guide (Print Copy and Fillable-PDF Copy), *Gladue and You* Brochure
- Social Context and Systemic Factor Summaries
- Social Context and Systemic Factor Videos
 - https://gladue.usask.ca/video_resources
- Indigenous Justice and Legal traditions (Cree, Dene, and Métis are available – plans to develop this section further with appropriate consultation)
- A Complete list of Residential Schools in SK, their years of operation, and links to information profiles (UofR); Information on Day Schools
- A repository for publications: journal articles, theses, agency reports, etc.
- ...And more!



GLADUE AND YOU

- A short, plain-language, need-to-know pamphlet on *Gladue*
- Developed for clients – extremely condensed version of the Submission Guide
- The brochure explains the *Gladue* Decision, the meaning behind *Gladue* and why it's important, Gladue Factors, Gladue Reports and Submissions, how to request a Gladue Report or Submission, and contact information for Support Services

Access the Brochure:

- https://gladue.usask.ca/gladue_and_you_brochure



GLADUE AND YOU

YOUR RIGHTS AS AN INDIGENOUS PERSON

WHAT IS THE *GLADUE* DECISION AND WHY DOES IT MATTER?

In Canada, Indigenous people are put in jail more often than non-Indigenous people because of colonialism and systemic discrimination.

In 1996, the Government of Canada changed the law. The Government said that judges need to think about sentencing Indigenous people differently.

In 1999, the Supreme Court of Canada explained the meaning of this law in the *Gladue* decision.

The *Gladue* decision requires judges to sentence Indigenous people differently. Judges are asked to consider Indigenous ways of healing and wellbeing, worldviews, legal traditions, customs, and responses to crime.

Judges are also asked to consider the life-story and background of an Indigenous person.



OF PEOPLE INCARCERATED IN
SASKATCHEWAN ARE INDIGENOUS

Section 718.2(e) of the Criminal Code

"...the circumstances of (A)original people are unique. In sentencing an (A)original offender, the judge must consider:

(a) the unique systemic or background factors which may have played a part in bringing the particular (A)original 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 (A)original heritage or connection..."



SYSTEMIC FACTOR SUMMARIES

- **13** Research summaries that explore the “systemic factors” frequently considered in a *Gladue* analysis
- Provide evidence-based research, quotes, statistics, on the relationship between systemic factors, systemic discrimination, and over-incarceration
- Provides necessary context for lawyers, judges, report writers, to unpack the impacts of settler colonialism
- Topics such as: Housing and Socio-Economic Marginalization; Employment and Education; Systemic Discrimination and Racism; FASD; Childhood Apprehension; and more
- Reviewed by expert Scholars and Academics to ensure accuracy, comprehensiveness, credibility
- Summary “roll out” is underway – some already available, others expected to be available by November 2023





LOOKING FORWARD: COMMUNITY PROFILES

- Development of First Nations and Métis Community Profiles (Saskatchewan)
- Consultation with Community-representatives
- Community profiles will provide:
 - Historical summaries for each Indigenous community (e.g., Lac La Ronge, Mistawasis) and information on Indigenous Cultures (e.g., Cree, Dene, Métis) – provided by the community
 - Statistical profiles for Indigenous Communities that include data on Population, Income, Workforce, Education Characteristics, and more (this piece already exists on Community Pages)
 - A directory of links and information on Culturally relevant, Traditional, Alternative and/or Rehabilitative Justice programs and resources within community / neighbouring communities



LOOKING FORWARD: REHABILITATIVE ALTERNATIVES MANUAL

- A complete update of the CLASSIC Law Manual: [“2019-2020 Rehabilitative Alternatives to Incarceration – A Handbook of Community & Government Programs in Saskatchewan”](#)
- Ideally, will be released in late 2024
- Will include updated descriptions and contact information for service-providers and programs across the province, organized by community
- Includes urban centres, towns, villages, and First Nations
- Includes Federal and Provincial programming
- Will greatly reduce the amount of time and effort required by practitioners to locate this information, key to outlining Healing and Aftercare Plans



Thank you!

For further information or questions, please reach out to:

- Morgan Ryan-Roe, Gladue Database Coordinator, Legal Aid Saskatchewan (mryanroe@legalaid.sk.ca)
- Andrea Phillips, Indigenous Policy Counsel, Legal Aid Saskatchewan (aphillips@legalaid.sk.ca)

