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**Legal  
Services  
Society**

August 2018

## **Legal Aid Brief**

### **Support for lawyers working with Indigenous clients**

**In this issue:** It's a good time to request a Gladue report; Making Gladue submissions without a report; Sentencing in First Nations Court; How to use the Indigenous client support tariff; Matrimonial real property on reserve

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#### **It's a good time to request a Gladue report**

LSS has more money to fund Gladue reports this year, so if you have ever considered getting a report on behalf of an Indigenous client, now's the time to make a request.

LSS believes Gladue reports are one of the best ways to support Indigenous offenders. You can submit one in any court, not just First Nations Court. If Crown is seeking a lengthy sentence and it won't prejudice your client to wait about two months for the completed report, it can be worthwhile waiting for one.

"I would encourage my colleagues to make the effort to get a Gladue report," said lawyer and LSS Indigenous Services VP Renzo Caron. "Gladue rights are a high bar, but it's a bar that we need to reach to ensure Indigenous people are treated with justice."

The Gladue Report disbursement will pay for a writer to describe your client's unique background and the best

restorative justice options available to them. “In my experience, a Gladue report (or a substantive Gladue submission) can influence and persuade the court to deliver a sentence that is more just,” Caron added.

The authorization request form is easy to fill out – we just need some basic information – then LSS will quickly review your request.

If your request is approved, we indicate which trained writer can do the report – unless you have someone in mind already. It takes an average of eight weeks to get a completed report **from the time the writer receives defense’s materials**. Then, when you get invoiced by the writer, bill us right away and you’ll be paid within 11 days!

[More about how to request a Gladue report.](#)

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### **What you need to know about making Gladue submissions *without* a report**

We’re happy to see that some lawyers are using the new tariff fee for Gladue submissions without a report. Sometimes a submission that considers Gladue factors is more suitable than getting a full Gladue report – such as when an Indigenous offender is in custody waiting for a sentencing hearing with the prospect of receiving only a short sentence.

When you bill the Gladue fee, we expect that you have made a substantive Gladue submission in court and, in doing so, you:

- interviewed your client to identify relevant Gladue factors as well as contact information for extended family, Elders, counsellors, and other community supports;
- contacted extended family, Elders, counsellors, and other community supports, as appropriate, to identify relevant Gladue factors and gather supporting information; and
- prepared some culturally appropriate restorative justice options for bail or sentencing.

We don't ask for this information every time you bill, but it's a good idea to keep your notes about what you did to support your submission just in case we need to request it.

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## **Sentencing in First Nations Court**

You can now charge a higher block fee for sentencing in a [recognized First Nations Court](#) (if sentencing occurred after May 6, 2018, that is). We introduced the higher fee because we believe these courts are key to creating trust in the justice system for Indigenous clients.

**CFCSA & FAMILY**

## **How to use the new Indigenous client support tariff**

Indigenous clients often benefit from lawyers taking a holistic approach to their case. The new Indigenous client support tariff is designed to help you do that. It gives you up to 2 hours to tackle some of the related legal and non-legal issues that will help resolve a client's primary legal issue.

For example, say your Indigenous client needs housing to be able to keep their children at home and not in government care. You could use the support tariff item to call BC Housing or the client's Band office to see what housing might be available.

The client support hours are available *in addition to* General preparation (Family & CFCSA) and Collateral issues (CFCSA) hours. You could use them for anything from interviewing community members to identify laws, customs, and traditions applicable to your client or their children; linking your client to an Elder or helping them to fill out forms; to developing a cultural safety agreement or healing plan. For more, see the [Family Tariff](#), [CFCSA Tariff](#).

If you have questions about what you can bill under the Indigenous client support tariff, contact [Lawyer.Support@lss.bc.ca](mailto:Lawyer.Support@lss.bc.ca) or [Rhaea.Bailey@lss.bc.ca](mailto:Rhaea.Bailey@lss.bc.ca).

## FAMILY

**Helping legal aid clients with issues related to matrimonial real property on reserve**

LSS recently introduced a new Family Tariff item: Up to 10 hours to prepare for issues related to matrimonial real property on reserve. This will help people eligible for family legal aid and have a family home or other real property on reserve.

Spouses living on reserve may lack rights and protections regarding matrimonial property when their relationships break down, which can have serious consequences, particularly for women and children. For example, due to the severe lack of housing on reserve, having possession of on-reserve property can often determine a woman's ability to remain within the community and, in some cases, her ability to keep her children.

If you have an Indigenous or non-Indigenous client whose spousal relationship has broken down and matrimonial real property on reserve issues, the 10 hours will help you prepare a case on their behalf.

## Questions or comments?

Contact our Lawyer Support team:

- call 604-601-6155; 1-888-401-6206 (no charge), or
- email [lawyer.support@lss.bc.ca](mailto:lawyer.support@lss.bc.ca)



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