Re-storying Indigenous Trauma: Considerations for Indigenous Ethics of Relational Care in Gladue Reporting

by

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ABSTRACT

After no reduction in Indigenous incarceration rates, the initiatives set out by the Supreme Court of Canada (SCC) in *R. v. Gladue* [1999] have become a more than two-decades-long disappointment, having utterly failed in keeping their commitment to lower Indigenous incarceration rates and bring about justice to Indigenous people and their communities. This project is a preliminary review of *R. v. Gladue* [1999], Gladue scholarship, and grey literature to uncover ethical issues in re-storying Indigenous trauma through Gladue reports and presenting them to public courts. My analysis of Gladue materials illustrates the state's sidestepping of responsibility for Indigenous trauma by situating settler colonialism solely in the past rather than admitting its ongoing harms. I show that Gladue reporting processes, as settler-colonial operations, can, in fact, (re)provoke felt trauma for Indigenous participants when little care and support is made available. The project challenges the existing and future Gladue programs and research to consider the benefits of implementing Indigenous trauma theory and engaging Indigenous perspectives on ethics of relationality to improve the Gladue experience and related work.

PREFACE

This thesis is an original work by A. F. Barlow. The research project was generously funded by a Social Sciences and Humanities Research Council Joseph-Armand Bombardier Canada Graduate Scholarship Master's Award.

DEDICATION

To Allan, my chosen family, who first revealed to me when we were kids that the “Law does not understand lived experience.”

ACKNOWLEDGEMENTS

First, I would like to acknowledge those who have prison experience and have been through the Gladue reporting process: you are the true experts; may your voices be heard.

To my supervisor, Dr. Nancy Van Styvendale, to whom I owe the success of this project. I would not be where I am without your encouragement, thoughtful guidance, and generosity of time. Your work has set fire to my imagination, and I am so thankful for your invitation and trust to broaden my relational circle.

To my committee member, Dr. Chris Andersen, and external examiner Dr. Jana Grekul, I extend my sincere gratitude for this opportunity, your kindness, and your openness in sharing your knowledge.

I celebrate Dr. Jennifer Ward and her brilliant decolonial work.

I also extend my recognition and appreciation to my fellow co-students in the Faculty of Native Studies and Graduate Studies, from whom I have learned so much about the meaning and practice of wâhkôhtowin and friendship, hiy hiy and maarsii!

Finally, I praise my family and friends, whose support, patience, and willingness to bend an ear has helped me immensely. I am revitalized by your imperishable support and the depths of our capacity to change, respect, and love one another well; thank you, ay ay, merci, bedankt, and wela'lioq to you all!

TABLE OF CONTENTS

LIST OF FIGURES

CHAPTER ONE: Introduction

No one wants to be defined by the worst thing that has ever happened to them or the worst thing they have ever done. When we think about people who are incarcerated, it can be easy to forget that many of them have been victims themselves. What can be harder to remember is that once a person appears before a court or even serves their time in prison, an additional public punishment of stigmatization can carry beyond an individual's past and continue to impact their future (Pate 2016). Even worse, public reprimand can heighten negative characterizations, re-traumatize persons with carceral experience, and extend further into the lives of their own and the victim's families and communities (Courtney and Pelletier 2016; Davis 2003; Link and Phelan 2001). I should know. I am a daughter whose parent was in and out of the carceral system until their death, and I am a survivor of violent crime.

As a white settler residing on Treaty 6 territory and Métis homeland, I recognize my role in the continued occupation of Indigenous lands. I and this master's project benefit from the privilege manufactured by Canada's ongoing colonization, exploitation of Indigenous peoples, and stealing resources. My strongest family connections belong to the Metepenagiag First Nation. Along with my work with Indigenous women who have experienced incarceration, these relationships and experiences inform my caring commitment to live and work in ways that do not oppress others (TallBear 2017; Cruz 2011).

This master's project critically engages how Indigenous trauma narratives have been constructed and discussed within the criminal justice system context through an analysis of *R. v. Gladue* [1999], Gladue scholarship, and government and legal grey material sources. Further, my analysis considers Gladue pre-sentence reporting and the impacts of how such re-storying of Indigenous experiences for public courts can spill out to create further harm and injustice for

Indigenous individuals and their communities. My project is grounded in Indigenous studies theory and argues for dismantling one-sided settler-colonial narratives that create barriers to Indigenous justice. This work passionately supports self-determining approaches that reflect Indigenous ethics of relational care to de-incarcerate Indigenous people in Canada.

Contextual Overview

It is vital to understand the hyper-incarceration of Indigenous people because it is the premise upon which the highest court in Canada mandated an active large-scale justice strategy (through *R. v. Gladue* [1999]) to intervene against this injustice. *R. v. Gladue* [1999] called for the "judicial duty to consider" Gladue rights and marked the legal undertaking of re-storying trauma by creating pre-sentence Gladue reports (Rath-Wilson 2021, 31; Department of Justice 2017, 16). Explicitly intended for Indigenous individuals, the strategy behind Gladue reporting is to lower Indigenous incarceration rates by providing "information [that] will help a judge give an offender[1] a just sentence that addresses the effects of discrimination and colonization on Indigenous peoples" (BearPaw Legal Education 2022). I briefly overview the dismal reality of the Canadian state's current Indigenous incarceration rates. I then offer a snapshot of *R. v. Gladue* [1999] and its logics.

[1] Note: The use of "offender" is directly quoted from the source. However, my project works to reject criminal justice language that uses stigmatizing labels.

Hyper-Incarceration of Indigenous People in Canada

As this project unfolds, my research will show that the abhorrent rates of Indigenous 'over-representation' in Canada's prisons are rooted in colonial harms, systemic racism, and discrimination (Department of Justice 2017; *R. v. Gladue* [1999]).[2] Indigenous people in Canada are imprisoned at a rate seven times higher than the national average, now accounting for 32.7% of all those incarcerated, despite representing just 5% of the general population (Record Editorial 2022; Office of the Correctional Investigator 2020, January 21, see Fig. 1)[3].

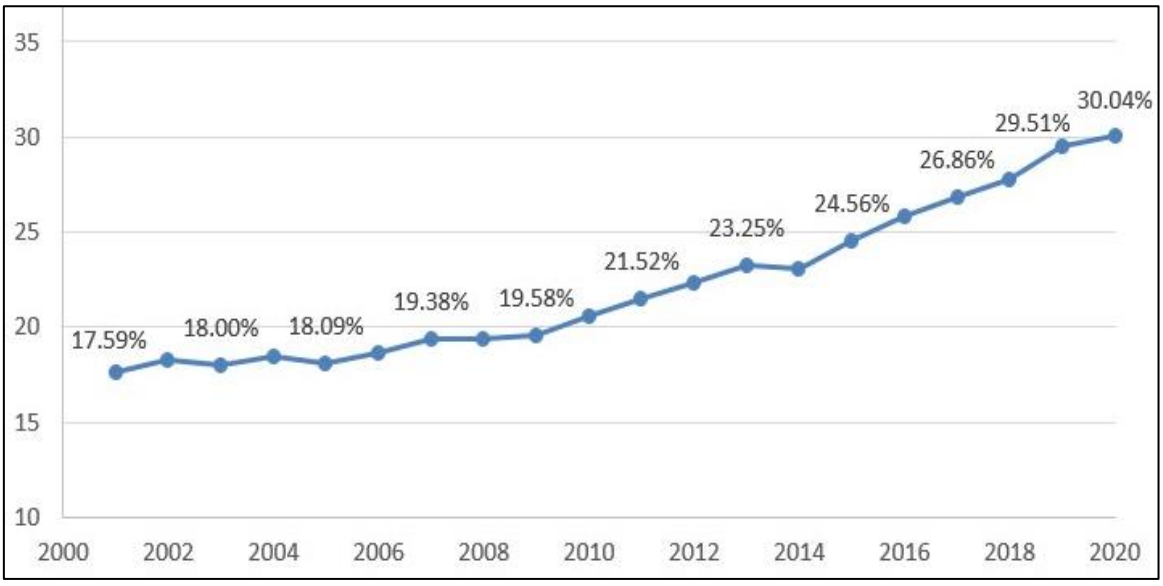

Figure 1. Federally Incarcerated Indigenous Population since 2001
"Graph showing the percent of federally incarcerated population that identifies as Indigenous each year since 2001. The graph demonstrates that the proportion of the incarcerated Indigenous has been steadily increasing, from 17.59% in 2001 to 30.4% at present."
Source: https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx#grph1.[1]

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[2] There are tensions with using terms like "over-incarceration" and "disproportionate" in the context of Indigenous incarceration. In Robert Nichols' (2014) critique of state sovereignty, he explains that such tensions exist in how the state maintains its power and control over territory through techniques of oppression such as the incarceration of Indigenous peoples. My initial use of these terms is due to the widespread use of the terminology in nearly all primary and secondary scholarship about the incarceration of Indigenous people. That said, I am personally working to reduce my use of them.

[3] Given that the Indigenous population is probably overcounted, these rates are likely higher (Andersen pers. comm. July 14, 2023).

For Indigenous women, the statistics look even bleaker. One in every twenty women who live in Canada is Indigenous. However, as of spring 2022, Indigenous women represented at least 50% of all federally incarcerated females (White 2022; Office of the Correctional Investigator 2021, December 17). Patrick White of the *Globe and Mail* reported in May of 2022 that "prisons held 298 non-Indigenous women and 298 Indigenous women. This is the first time the ratio has reached 50/50…" (White 2022, n.p.). However, Alicia Clifford (2019), who researches incarceration programming, reports, "It is estimated that by 2030 over 6500 Indigenous women will be federally incarcerated" (26). Ivan Zinger of the Office of the Correctional Investigator said of the deplorable statistic that "surpassing the 50% threshold suggests that current efforts to reverse the *Indigenization* of Canada's correctional population are not having the desired effect and that much bolder and swifter reforms are required" (Office of the Correctional Investigator 2021, December 17, see Fig. 2).

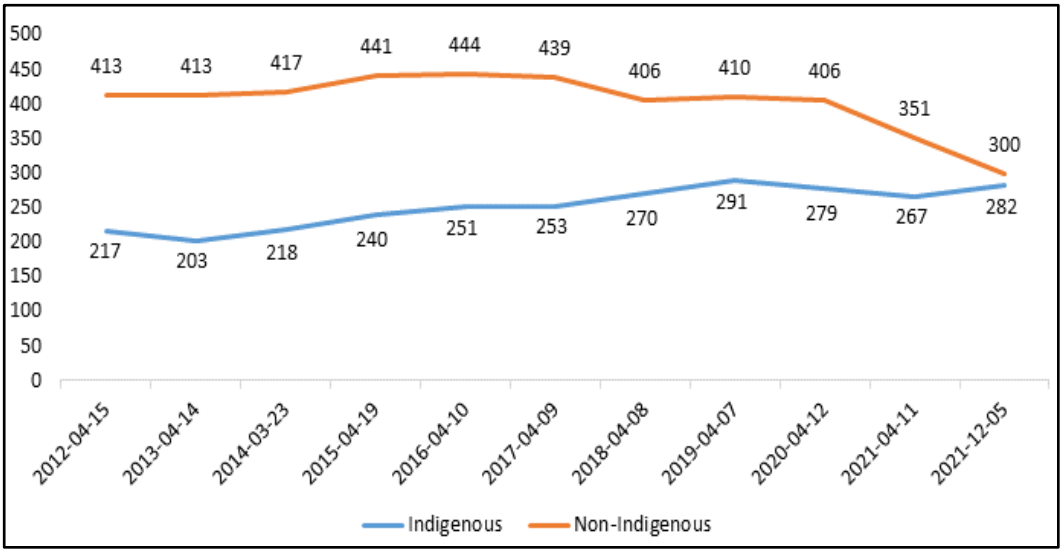

Figure 2. Federally Sentenced Women In-Custody since 2012
The graph shows that while the incarceration rates for non-Indigenous women have been dropping steadily over the last decade, simultaneously, the federal imprisonment of Indigenous women has been increasing at a surprising but near-equal pacing. Source released on December 17, 2021, https://www.oci-bec.gc.ca/cnt/comm/press/press20211217-eng.aspx.

Today, the rate of Indigenous incarceration across all Canadian correctional centres persists ever upward while the number of non-Indigenous inmates is trending downward (see Fig. 3).[4]

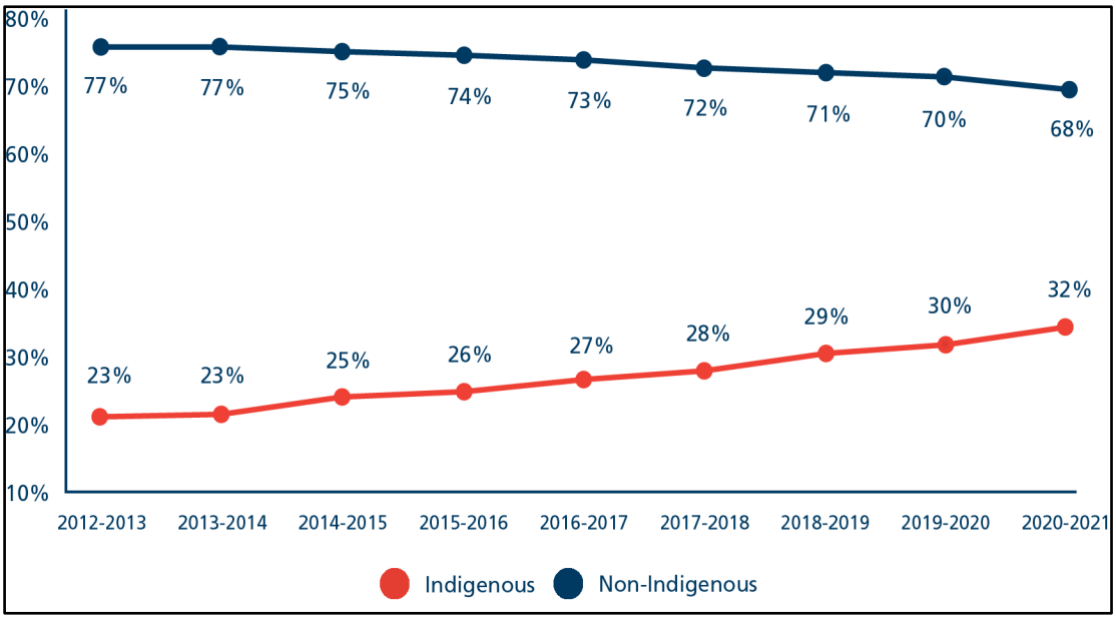

Figure 3. Proportion of Indigenous and Non-Indigenous In-Custody since 2012
The Office of the Correctional Investigator Annual Report 2021-2022 (2021, Updated on February 15, 2022) showed that 68.3% of Indigenous Peoples are in custody versus 54.8% of non-Indigenous individuals. Source: https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20212022-eng.aspx#s13.

Zinger asserts that the federal levels of excessive and concentrated Indigenous imprisonment undeniably highlight our shame in this ongoing human rights violation (Office of the Correctional Investigator 2021, December 17). The Office of the Correctional Investigator

[4] I think it is important to acknowledge that even though the conditions for Indigenous prison populations remain the most disproportionate in all measures compared to their non-Indigenous counterparts, the Correctional Investigator reported that over the last decade, correctional circumstances remain unimproved or are getting worse for Black prisoners. Zinger exposed this similar (but different) disparaging trend in a news conference on November 1, 2022: "Today, I am releasing an update of the Office's 2013 ground-breaking investigation looking into the experiences of Black prisoners under federal custody. I am very disappointed to report that the same systemic concerns and barriers identified nearly a decade ago, including discrimination, stereotyping, racial bias and labelling of Black prisoners, remain as pervasive and persistent as before. In fact, the situation for Black people behind bars in Canada today is as bad, and, in some respects, worse than it was in 2013." Source: Office of the Correctional Investigator 2022, https://www.oci-bec.gc.ca/cnt/comm/press/press20221101-eng.aspx.

further underscored the issue, stating that "in fact, in the last ten years, the overall Indigenous inmate population has increased by 18.1%, whereas the non-Indigenous population who have been incarcerated has decreased over the same period by 28.26%" (2021, December 17). Addressing the state and the Correctional Service of Canada directly, Zinger clarified that the "over-representation of Indigenous people in correctional settings remains one of Canada's most pressing human rights issues, and is evidence of public policy failures over successive decades as no government has been able to stop or reverse this trend" (Office of the Correctional Investigator 2021, December 17). In the next section, I demonstrate the connection between Indigenous mass incarceration and colonization addressed in *R. v. Gladue* [1999].

Gladue

In *R. v. Gladue* [1999], the SCC recognized the link between Indigenous hyper-incarceration and the harmful impacts of settler colonialism[5]. As a measure to decrease Indigenous incarceration rates, this landmark case ruled that courts must consider the life circumstances of an Indigenous person before the court, including, for example, experience in the residential school or child welfare system (*R. v. Gladue* [1999]). These life circumstances are outlined and re-storied in 'Gladue reports.' I refer to the Gladue reporting writing style as 're-storying'[6] because each

[5] Canada has indeed imposed the systems and processes of colonialism upon Indigenous peoples and their lands. Thus, both colonialism and settler colonialism are active here. However, I apply the term "settler colonialism" throughout this project because I think the term and its features better fit this project's discussion of Gladue. I understand "settler colonialism" as a type of colonization in which strangers invade Indigenous peoples' lands and declare it to belong to them in perpetuity (Tuhiwai-Smith, Tuck, and Yang 2019). Further, this translates to mean that settler colonialism does not just exist in the past and today. Still, it will continue to exist as long as settlers occupy Indigenous lands (Hurwitz and Bourque, 2014).

[6] When people recount personal stories, they may not always follow a linear order of logic. Therefore, 're-storying' is defined as the process of gathering a participant's stories, identifying their main elements (e.g., place, time, circumstances, factors, or conditions, etc.) to organize and rewrite the story to place it within a cohesive narrative that contextualizes the participant's lived experiences (Ollerenshaw and Creswell 2002, 323).

participant's life story is guided by a series of interviews conducted by a Gladue writer who asks specific questions and then puts the participant's responses into words in a fixed format for the specific purpose of presenting the report to public court.[7] Gladue reports are meant to offer each participant a set of remedial and culturally appropriate alternatives to imprisonment (Denis-Boileau and Steininger 2022; Legal Services Society 2018; Department of Justice 2017, 13; Parkes et al. 2012; *R. v. Gladue* [1999]). Demands for Gladue reports have skyrocketed in jurisdictions across the nation. In Alberta alone, report requests have increased from twenty petitions in 2012 to 747 by last June (Alberta Justice and Solicitor General 2022, n.p.). This number translates to a 26 percent increase from the year prior, even though COVID-19 effectively stalled court processes (Alberta Justice and Solicitor General 2022). On top of this, with the recent opening of the Edmonton Indigenous Court, Alberta anticipates a significant upsurge in report needs (Edmonton Law Courts 2022). Despite the explosion of Gladue reports seen over the past twenty-four years, Indigenous incarceration rates are higher than ever and continue to climb (Blackburn and Needham 2022; Sandstrom 2020).

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[7] It is essential to understand that it is unlikely that a person would recount their life story by following a "Gladue report format" in other circumstances where they are not facing sentencing. Although people will have their own unique responses to Gladue interview questions, an individual's story told through a Gladue report, and thus the criminal justice system, is confined to what is asked. A Gladue story begins and ends within the interview framework. It is also significant to note that Gladue interview frameworks (i.e., the questions and how they are asked) vary from jurisdiction to jurisdiction (provincial or territorial). There is no standard template for Gladue questionnaires across Canada. I use the term 're-storying' rather than 'narrating' because Gladue reports are a tool of the Crown. Gladue programs encourage writers to use an "active voice" about the 'subject's actions' (Istvanffy 2011, Appendix 3A-1), remain "objective" (Ralston 2020, 69) and often include exact quotes from interviewees (Ralston 2020, 67). However, reports are not interview transcripts either. Although the stories 'belong' to participants, the tension at play between 're-storying' versus 'narrating' exists in the conditions under which the story is told. Reports are specifically for the criminal justice system and are not meant to advocate for participants. In this current reporting framework, the state is not really 'narrating' on behalf of the participant to tell their life story; it is more about gathering key experiences that have brought a participant before the court to set sentencing sanctions, which reinforce state narratives more than that of the participant. In Chapter Three, I examine Gladue's role in stereotyping and stigmatizing Indigenous people and their communities.

Research Problem & Questions

Gladue reports have yet to have the desired effect of reducing Indigenous incarceration. However, Gladue's process of re-storying Indigenous trauma for the courts certainly affects participants and the writers who pen them (Legal Services Society of British Columbia 2013, 60-61; Turpel-Lafond 1999). To explain, since Gladue reporting entails asking participants to open up about sensitive information while Gladue writers collect and re-story participant responses that often detail trauma, the process can produce or reproduce residual trauma for both participants and writers (Ralston 2020). Further, as demands for Gladue reports increase, so too does the pressure from the justice system on Indigenous participants and their assigned Gladue writers to create even more in-depth reports (usually through numerous intense interviews) that speak to the individual and collective trauma to elicit Gladue-desired outcomes of resilience and healing (Canadian Institute for the Administration of Justice 2021, February 17; March 17). Gladue processes are made even more difficult by the public presentation of Gladue reports in open courts, during which families, members of the public, and the media can spectate. Some of these observers may hear certain traumatic details for the first time, which can widen the ripple of painful experiences (Canadian Institute for the Administration of Justice 2021, February 17). Nevertheless, little is known about the real-life impacts that Gladue reporting has on participants or how re-storying Indigenous trauma influences those who write or publicly witness them (Bellrichard 2020; Ralston 2020; Roach 2014; Legal Services Society of British Columbia 2013, 64; Parkes et al. 2012). This issue leads me to one central question: *What are the ethical complexities of re-storying Indigenous trauma in Gladue reporting?*

Project Rationale & Main Argument

Since various legal and governmental experts predominantly inform the current Gladue work, there is increasing demand for a better understanding of the negative impacts of re-storying the trauma of participants and bringing in Indigenous community insights (Ralston 2020, 70 and 75; British Columbia Justice Summit Steering Committee 2018). While government, legal, and Indigenous groups have expressed an urgent need for this research (Indigenous Watchdog 2022; Shamlawi 2020; Barkaskas et al. 2019; Legal Services Society 2018; Parsons 2018; Department of Justice Canada 2017; Truth and Reconciliation Commission of Canada 2015; BearPaw Legal Education 2014), to date, there is no comprehensive investigation of the implications of Gladue's re-storying of Indigenous lives that considers the hazards of provoking felt trauma (Ralston 2020; McIvor and Oag 2019; Parsons 2018; Legal Services Society of British Columbia 2013). The rationale for my project is underlined by this gap in research between how Gladue work discusses reporting's potential to elicit and reveal Indigenous trauma for the criminal justice system and the need to understand the ethical implications of Gladue better. I address this gap in research by reviewing *R. v. Gladue* [1999], Gladue scholarship, and Gladue grey literature and their discussion of trauma, Gladue reporting, and the public presentation of reports to courts.

Although *R. v. Gladue* [1999], Gladue scholarship, and grey literature acknowledge the harms perpetuated by settler colonialism against Indigenous people and their communities, they fail to present it as ongoing. In addition, while some Gladue materials indicate that reporting processes can produce further trauma and reinforce negative stereotypes for Indigenous people in the public sphere, these works do not address such impacts with deep consideration. Addressing the traumatic impacts of Gladue reporting, I argue that Indigenous trauma theory can help dismantle dominant settler-colonial narratives brought about by the criminal justice system to bring

forward better thinking and practice in Gladue reporting rooted in notions of Indigenous ethics of relationality and care.

Jodi A. Byrd explains that relationality is a central feature of Indigenous epistemologies that engage community, kinship, complementary duality, and reciprocity (2020, 120). For example, Indigenous conceptions of relationality refer to practices within human and other-than-human relationships, learning from the land, and involve expressions of responsibility, balance, unity, and acceptance of multiple truths (Tynan 2021, 597–610). These elements are pertinent to my learning about the ethical impacts of re-storying trauma through Gladue. I am curious how Gladue reporting can engage in better relationality, especially with the idea that "stories and storytelling are widely acknowledged as culturally nuanced ways of knowing produced within networks of relational meaning-making" (Hunt 2014, 27). Since Gladue stories get submitted to public courts, it is interesting to consider what Gladue narratives might 'mean' for participants, their communities, and mainstream perceptions.

Decolonizing Research Methodology

This project applies a decolonized approach to Gladue reporting grounded in Indigenous trauma theory and Indigenous perspectives on relational caretaking. Therefore, I conduct this analysis through a decolonial methodology to strengthen the dialogue about Gladue reporting from the singular hold of legal and government expertise by challenging the Gladue scholarship and grey literature with Indigenous trauma theory and Indigenous scholarly critiques. In addition, by engaging in a decolonial methodology, I can assist with answering the call for more research of this kind in the academy (Antoine 2017). To assist me with articulating my research methodology, I have applied the guidance of Maggie Walter and Chris Andersen's (2016) formula for

"Conceptualization of a Research Methodology" in their book *Indigenous Statistics: A Quantitative Research Methodology* (45, fig. 2.1). Their formula for methodology is composed of the following aspects: 1) researcher standpoint (self-location), 2) a theoretical framework, and 3) method. I express my research methodology through self-locating, which informs my chosen theoretical framing to later build out my research method(s) for this master's project.

Self-Location

Locating myself in my research is a necessary first step in my commitment to researching through an Indigenous theoretical lens and one of the essential aspects of being accountable within my methodology (Absolon and Willett 2005, 97). My standpoint comprises my social position, epistemology, axiology, and ontology (Walter and Andersen 2016, 45-46) and ensures that I am available for critical analysis. This step is transparent about my 'situated' somewhere (Haraway 1988). Self-locating also pushes back against notions of researcher impartiality and can bring about "stronger objectivity" (Harding 1995) while I challenge Gladue materials to *see themselves* through an Indigenous theoretical lens (TallBear 2017, 3; Moreton-Robinson 2013, 333).

Social Position

Colonialism perpetuates 'norms' that manifest my privilege as a white, hetero-facing, able-passing, housed, educated, and cis-gendered woman living in what is now called Edmonton, Alberta, on Treaty 6 territory and Métis homeland. As I contemplate what biographical information to share about my experience as the daughter of a parent who was incarcerated, as a person with permanent disabilities, and as a victim of violent crime, I cannot help but reflect on what it would be like to have a Gladue story written about me if I were an Indigenous person facing criminal

charges. I recognize my discomfort in sharing personal details about my life, knowing that this work will be publicly available. However, I have chosen this circumstance. In my everyday relations, I am open about my challenges. However, in this formal and academic context, I get emotional and anxious about not knowing who might read this in future years. I have always been a person who likes to 'sit crooked and talk straight.' Whether I have just met a person or known them for years, I find that there is no better way to connect than sitting on a couch, sipping something warm, and getting to know each other.

Doing this is an act of love. When I share my experiences and feelings with you, I am letting you know that I want you to see me and know me. I invite you to witness my life. When you share your story with me, I understand you are doing the same. I know that only some deserve my story; only some deserve yours (Tuck and Yang 2014). In this way, this seemingly simple act is a complex and deep undertaking of bearing witness to each other's lives through reciprocal relationality (Hunt 2018). I hear your story, appreciate your care and courage, and am honoured by your gift of trust. In terms of setting out the gap in Gladue's consideration of Indigenous trauma injury that my work intends to address, I consider how much more difficult it indeed is for a Gladue participant to have their story re-told and witnessed and how this must be more troubling in the context of facing judicial sentencing.

Epistemology

My epistemology was embedded in a settler normative way of knowing while growing up (Walter and Andersen 2016, 49). This way of thinking was established early on *not* to understand my settler and white privileges. Often, to the exasperation of the adults in my life, I constantly questioned and pushed back against various forms of authority — a white settler privilege. As I

grew up, I found that the dominant western and settler epistemological framework that I was accustomed to unravelled bit by bit as I sought out alternative perspectives and explanations — again, a benefit of white settler privilege. I was expressly taught that racism harmed others rather than how stereotyping and stigmatization benefited me (McIntosh 1989, 1). These benefits are built upon the colonial oppression of Indigenous peoples and their communities. They have given me unearned privileges my entire life, including the colonial systems of education, government, and law, which advantage me and my current work's ability to critique them.

My understanding expanded as an undergrad student of Indigenous Studies when I started learning Cree (nêhiyawêwin 'Y' dialect) as a dynamic living language. From there, I began to learn about Indigenous ethics of relationality. For this project, relationality is an essential aspect of Indigenous Studies research and thus ought to be for Gladue work. Upholding this research principle of relationality and the centring of Indigenous standpoints, Aileen Moreton-Robinson (2017), a Goenpul scholar located in what is now known as Australia, explains that "relationality is the interpretive and epistemic scaffolding shaping and supporting Indigenous social research and its standards are culturally specific" (69). She explains that "relationality is grounded in a holistic conception of the inter-connectedness and inter-substantiation between and among all living things and the earth, which is inhabited by a world of ancestors and creator beings" (Moreton-Robinson 2017, 71). It also involves "the interconnectedness of what people are doing and experiencing as the outcome of actions in the actualities of their lives and lands" (Moreton-Robinson 2017, 71). Relationality has become the core value from which I shape my thinking and operationalize my work. "We are related to everything"[8] (Skidmore 2016), and what we do or do not make impacts on one another (human or other-than-human) as we become the beings we are. In trying to do better

[8] Elder George Bretton quoted in Skidmore's (2016) video, see bibliography.

and taking responsibility for my obligations, I recognize all the unlearning and learning I must do. Walking through this discomfort and taking accountability is my life's work, and I stand in gratitude to my chosen kin, settler, and Mi'kmaq family for their support. This epistemological shift in my thinking is shaped by local epistemologies that encode relationality in Natural Cree Law (nêhiyaw wiyasowêwina) and ᐊᐤᐦᑯᐤᑐᐃᐣ or wâhkôhtowin.[9] Wâhkôhtowin encapsulates our mutual obligations and responsibilities to one another as a practice of respectful relationality. Esteemed Métis-Cree author and filmmaker Elder Maria Campbell (2007) explains:

> There is a word in my language that speaks to these issues: "wahkotowin." Today it is translated to mean kinship, relationship, and family as in human family. But at one time, from our place it meant the whole of creation. And our teachings taught us that all of creation is related and interconnected to all things within it. Wahkotowin meant honouring and respecting those relationships. [It was] our stories, songs, ceremonies, and dances that taught us from birth to death our responsibilities and reciprocal obligations to each other. Human to human, human to plants, human to animals, to the water and especially to the earth. And in turn, all of creation had responsibilities and reciprocal obligations to us. (5)

Over time, wâhkôhtowin has become one of the frameworks I have been applying to think through incarceration and trauma injury and how falling out of respectful relationality contributes to the issues surrounding Gladue. Because settler colonialism has broken the once intact wâhkôhtowin kinship circle(s), wâhkôhtowin is a vital way to think through what relational responsibilities and reciprocal obligations exist when Gladue reports are re-storying Indigenous trauma for public courts.

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[9] Note: There are various Roman orthography spellings for wâhkôhtowin (ᐊᐤᐦᑯᐤᑐᐃᐣ) that appear throughout this thesis work. The version I learned is "wâhkôhtowin," found in the (Cree) nêhiyawêwin 'Y' dialect. However, I quote the version used by the respective author.

Axiology & Ontology

Having disabilities, numerous trauma injuries, family with mental and physical health issues, prison experience, and Indigenous and 2SLGBTQA+ kin has shaped my value system (Walter and Andersen 2016, 50) and has drawn me to want to place the 'least powerful' at the centre of my thinking and this inquiry (TallBear 2017). Coming to this project through the lens of these values does make me very skeptical of the colonial institutions I seek to unsettle. I recognize that my tendency to assume the worst of colonial systems (e.g., prisons) could skew my work, especially when thinking through any future pathways that might include state policies. I also acknowledge that my outsider positioning, especially in terms of my unearned privilege, will have to be checked constantly throughout my goal of locating knowledge in more socially equitable ways (Innes 2009, 456).

This way, locating myself in my research can never be a one-off event. Instead, it is crucial to my project that I remain relational and open to what Gladue experts and Indigenous scholars have to say in the literature and that I keep steadfast in my checking and rechecking all aspects of my research even when it discomforts me (Edmunds et al., 2013; Heckert 2010, 41-42; Harding 1992). As I keep in mind the inevitably more difficult plight of Gladue participants to have their lives re-storied over my discomfort in self-locating, my standpoint informs this project's theoretical framing to challenge settler-colonial structures to reconsider the ethical impacts of Gladue report submissions. That said, as jarring as it feels now, the little I have shared about myself here recognizes that there is change within myself ahead and looks to see if Gladue reports could also offer hope to participants after the hard work of public testimony. Locating myself now moves into locating the theoretical standpoint of my project.

Theoretical Position: Indigenous Trauma Theory

My project is grounded in Indigenous trauma theory that considers the complexities of putting Indigenous trauma on display (Pind and Mason 2021; Million 2013). In the context of *The Truth and Reconciliation Commission of Canada* hearings, Indigenous scholars have discussed trauma in public forums by pushing back against the state's asking of Indigenous peoples to shoulder the responsibility of 'educating' the public (Government of Canada 2020; Nagy 2020; Cook 2018; James 2010). Indigenous trauma theory assists me in better understanding how Gladue may risk reproducing stigmatization because reporting asks Indigenous people to expose trauma publicly (Bellrichard 2020; Roach 2014; Parkes et al. 2012; Kirmayer et al. 2011; Andersson 2008). This project invites the intervention of a critical Indigenous trauma theoretical framework, specifically Dian Million's felt theory (2013; 2009). Million's felt theory argues against colonialism's ongoing production of Indigenous trauma and state oppression to invite how Indigenous 'felt' (or lived) experience can become part of Indigenous community knowledge that does not belong to their oppressors (2013, 57). Felt theory is an important starting point for this work since Gladue life stories unveil trauma reported and recorded for the criminal justice system. Both Gladue processes and Indigenous hyper-incarceration add to persistent negative characterizations of Indigenous peoples as "damaged" and "traumatized" despite their strength and resilience (Tuck 2009).

Million's ideas on public testimony, within a very different context than Gladue, provide a broad theoretical framework for my analysis of Gladue as 'public testimony.' Public testimony raises Million's concern about state interference with Indigenous people(s) sharing their stories. Since testimony before the public is often framed in a certain way and within particular contextual settings (e.g., RCAP forums and TRC testimonials), Million warns that narratives risk being revised or glossed over to fit the state's given conditions of speaking (2013, 76-77). Her feminist

notion of "felt theory," on the other hand, acknowledges Indigenous women's first-hand testimony as knowledge gained through lived and emotional experience (2009). This theory's use of the word 'felt' comes from the feeling language used by Indigenous women to push back against their colonial circumstances and the mainstream narratives that surround Indigeneity, gender, and sexuality (Million 2009; 2013). Million (2009) critiques the colonial masculinization of narrative that undervalues 'women-only' lived and emotional knowing. This downplaying of the wisdom of lived and felt experience restricts Indigenous perspectives *because* the knowledge is grounded in thought and feeling (Million 2009). Public testimony under state frameworks thus set the terms of putting Indigenous pain on display. Million recognizes that the repercussions of state framing increase the likelihood of Indigenous trauma narratives being used/misused in public forums (i.e., RCAP and the TRC)[10] for state self-interest. Felt theory unsettles those testimonial formats propagated to whitewash and homogenize Indigenous trauma.[11]

This project will contribute to the broader Gladue work by applying Indigenous trauma theory to the current Gladue scholarship and grey literature. This contribution will initiate the critical connection between thinking through the implications of potentially traumatic impacts of Gladue reporting processes (report creation and public presentation) and how Gladue (re)produces

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[10] For example, Indigenous concerns about Canada's asking Indigenous peoples to shoulder the responsibility of 'educating' the public through testimony came about as a result of the *Royal Commission on Aboriginal Peoples* (RCAP) attempt to examine turbulence within Indigenous and non-Indigenous relations, including "four years of consultation, testimony and research studies, including 178 days of public hearings, [and] 96 community visits" (Loumankis 2023) and later, similar issues were brought forward again with the onset of The Truth and Reconciliation Commission of Canada (Government of Canada 2020; Nagy 2020; Cook 2018; James 2010), which was said to be "committed solely to finding the truth of a nation-state's abuses against an Indigenous population" (Million 2013, 2).

[11] Million's (2013) ideas exemplify how Indigenous trauma can get wrapped up in a web of human rights campaigns self-nominated to "be the face needed to 'educate' a national public" (53). Such education relies upon a sensitized public that can 'feel the social need.' Million says these campaigns "seek to affectively and empirically educate 'publics' on what feels to them like repetitive crisis rather than the regular, ongoing outcomes of 'colonial' relations" (53). Million says that these relations (or everyday acts of colonial oppression) must change as ongoing colonial trauma gets "normalized in Indigenous women's lives as moral crisis" (53). Million uses *Stolen Sisters* (Amnesty International report) as an excellent example of work devoted to giving MMIWG2S victims and their families respect and care despite state indifference.

Indigenous trauma narratives in public. This project demonstrates that Gladue work (scholarly and grey literature) can improve with a more profound reflection on how Gladue reporting can elicit Indigenous trauma injuries. This project intends to unpack the current Gladue work, identify where trauma lacks ethical consideration, and enhance it through the lens of Indigenous theory, which better understands approaches to justice for Indigenous Gladue participants and their communities because this ethic of relationality comes from them.

Defining Indigenous Trauma

This thesis project takes up Indigenous trauma in three defining registers: 1) the Canadian state's production of Indigenous trauma; 2) *R. v. Gladue* [1999], Gladue scholarship, and grey literature's construction of Indigenous trauma; and 3) the experience of trauma through telling one's own story through the criminal justice system. From the outset, I must make clear that I do not assume the experiences of Gladue participants because I understand that not everyone will have the same experience or necessarily have a trauma response. Additionally, although I acknowledge that the above three registers can overlap and intersect with a complexity of other ideas and conceptions of trauma, this project does not delve into trauma through any frameworks beyond my academic training (i.e., psychoanalytic or therapeutic approaches that step outside this project's parameters). I think people know their own experiences, and I leave it at that.

1) The Canadian State's Production of Indigenous Trauma

Renee Linklater, a Rainy River First Nations member and a foremost expert on trauma and healing, explains that before settler colonialism, Indigenous trauma was "predictable and was consistently set in a cultural context" (2014, 32). She adds that trauma hinged on death and

starvation in the community or when tribal wars and separation occurred (Linklater 2014). However, European colonization distinctly transformed Indigenous trauma, now "foreign and unpredictable" (Linklater 2014, 32). Settler colonialism brought unique trauma to Turtle Island[12] that has culminated in, for example, "mass deaths caused by foreign disease, the loss of lands and resources through relocation and treaties, the imposition of state legislation and institutions, including residential/boarding schools and the child welfare system" (Linklater 2014, 32). These forms of trauma were unfamiliar to Indigenous peoples, but colonial disruption continues to invade Indigenous lives (Linklater 2014).

What Linklater (2014) describes as this new and unique Indigenous trauma is precisely what *R. v. Gladue* [1999] points to when it "directs judges to undertake the sentencing of such offenders individually, but also differently because the circumstances of aboriginal people are unique" (*R. v. Gladue* [1999]; Federal Government of Canada 1996, Section 718.2(*e*)). Influenced by Eduardo Duran's explication of "colonization as a soul wound" (Million 2013, 155; Duran, Firehammer, and Gonzalez 2008; Duran et al. 1998), Dian Million expands his and Linklater's (2014) definition, demonstrating that settler colonial violence *is* Indigenous trauma (2013). She says that Indigenous peoples articulate the ongoing intergenerational experience of state-sanctioned abuse "as the wound to their most basic relations: in family between men and women, between mothers and fathers and children, extending onward in the relations that are community and, finally, nation" (Million 2013, 7).

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[12] Turtle Island is now known as North America, including Canada. Regarding Canada, the term 'Indigenous' has serious shortcomings since it homogenizes many diverse peoples and communities, including more than 630 First Nation communities (who represent more than 50 different nations and languages), nearly 600,000 self-identified Métis (Statistics Canada 2016), and at least 53 Inuit communities in Inuit Nunangat, "the place where Inuit live" (Government of Canada 2021).
Source: https://www.rcaanc-cirnac.gc.ca/eng/1100100013785/1529102490303.

Linklater's (2014) and Million's (2013) definitions assist my understanding of Indigenous trauma as the ongoing hurt that has been (and is) produced and reproduced by the Canadian settler state's objective to take and keep power, lands, and resources for profit and control. Settler colonial policies, institutions, and structures reinforce the state's mandate. This project focuses on how the criminal justice system operates the state's ever-increasing practice of taking and placing Indigenous lives in prison custody. Even more, the state activates Indigenous trauma by its refusal to admit culpability for the trauma it causes and shifts the attention to creating Gladue reports that zero in on an Indigenous participant's explanation for what brought them before the court.

2) The Gladue Material's Construction of Indigenous Trauma

Dian Million discusses how trauma became the essence of state-promoted narratives depicting Indigeneity (2013). She explains that the onset of the human rights era compelled Canada to address its history of violence against Indigenous peoples; however, fearing an astronomical financial burden, the state began to flip the narrative from it being the perpetrator of violence to Indigenous peoples as victims of trauma (Million 2013, 5-6). Million argues that the state reinforces Indigenous victimry through narratives of Indigenous trauma and locates such trauma squarely in the past. Nevertheless, despite Canada's motivation to keep Indigenous trauma tucked away in a historic location, Million is adamant that it is impossible to keep past trauma separated from the continued state abuses inflicted on Indigenous peoples in the now (Million 2013, 74). Nancy Van Styvendale further argues that because of Canada's "institutional complicity in larger, nationwide attempts to forget the trauma of Native peoples" (2008, 204-5), Indigenous trauma is reproduced, multiplied, and augmented intergenerationally and individually. The above reasonings are critical to my understanding of how *R. v. Gladue* [1999], Gladue scholarship, and grey literature language

usage reflect and support Canada's avoidance of contemporary responsibility for producing Indigenous trauma. As I will show, Gladue materials continue to (re)construct narratives that showcase settler colonial harms in a historical context.

3) Re-Storying Indigenous Trauma through the Criminal Justice System

Finally, this project discusses the experience of trauma through telling one's own story through the criminal justice system and then having it re-storied and presented in public courts. Suzanne Methot, a Nêhiyaw writer, social historian, and expert in creating and practicing equity and anti-oppression frameworks, contends that judges ignore *R. v. Gladue* [1999] and Gladue jurisprudence (2019). She demonstrates judicial neglect of Gladue rights in her lengthy comparison between Indigenous and non-Indigenous incarceration rates, noting an enormous gap in the severity of sentencing favours non-Indigenous offenders (Methot 2019). Methot defines the carceral inequities that *R. v. Gladue* [1999] failed to correct as "part of the chronic trauma experienced by Indigenous peoples at the hands of the colonial control figure" (Methot 2019, 54). Methot's (2019) concerns help justify not only my examination of *R. v. Gladue* [1999] and related work but also critique the point of the justice system's invitation to submit Gladue reports in the first place, especially given that they are not assisting with fair or equitable sentencing.[13]

That said, it is also important to remember the powerful impact that Indigenous first-person and experiential accounts (such as a Gladue story) have had in confronting white-settler, "mostly male mainstream scholarship," as Million argues, making a case for these personal narratives being

[13] Since judges must respect Gladue rights regardless of a defendant's ability to provide a Gladue submission or report (Legal Aid BC 2022), it is confounding why there is such a push for Gladue stories in the first place.

"political acts in themselves" (2013, 56). Further, Million's felt theory suggests that Indigenous felt and experiential knowledge can unsettle our (and especially Gladue's) tendency to accept state renderings of "Canadian (and US) colonial histories" (56). In this way, although Gladue's re-storying of Indigenous lives may elicit pain, it could transform and crush the current colonial narrative as default. Nevertheless, Indigenous public testimony gets repeatedly tokenized by a settler state that refuses to admit its role in an ever-growing wave of reported Indigenous trauma (Million 2013). As I consider the myriad of tensions that add nuance to this attempt to 'define' Indigenous trauma, I worry that I have got it all wrong. I get out of the way so that Spokane author Gloria Bird can better speak to Indigenous trauma: "[W]hile the realities of our lives are more complicated than simply transcending pain, and that pain is not the only measure of our existence, we cannot deny its impact on our experience" (1993, ix).

Research Methodology

To mobilize my decolonized research methodology, I will filter Gladue work through a lens of Indigenous trauma theory as a strategy to address my research problem. This project deals with strands of Gladue text to see what they are saying or not saying about trauma. The Gladue work I focus on includes *R. v. Gladue* [1999], Gladue scholarship, and Gladue grey literature (comprised mainly of reports, government documents, policy and legal literature, unpublished conference papers and presentations, community literature, and executive summaries). The technique I use is a focused and close-reading method. My style of close reading entails colour coding with highlighters, going over a piece multiple times, making notes in the margins to synthesize what I have read or bring more attention to certain ideas, and paying close attention to the words an author chooses to communicate their analysis in the specific context of Gladue and trauma. By applying

a close reading of the Gladue work through an Indigenous trauma theoretical lens, my objective is threefold: 1) to delimit how re-storying Indigenous trauma is currently discussed in settler legal and government spheres; 2) to dispel settler approaches as 'the default' pathway to highlight Indigenous critical engagement in creating Gladue stories instead; 3) to promote better relational care within the Gladue discourse and its reporting processes.

The idea behind my application of this close-reading method as the driving technique in this project's decolonizing methodology comes from what Linda Tuhiwai-Smith (2021) calls "taking a local approach to critical theory" (242) through Kaupapa Māori theory. Tuhiwai-Smith's colleague Leonie Pihama explains that elemental "to Kaupapa Māori theory is an analysis of existing power structures and societal inequalities" and that this analysis can be an "act of exposing underlying assumptions that serve to conceal the power relations that exist within society and how dominant groups construct concepts of 'common-sense' and 'facts' to provide *ad hoc* justification for the maintenance of inequalities and the continued oppression of Māori peoples" (Pihama in Tuhiwai-Smith 2021, 242).

Given this aspect of Kaupapa Māori theory described by Pihama, I can quickly draw out similarities in which the Canadian state and its justice system have disproportionately incarcerated Indigenous people while assuming they know how to deal with and 'heal' Indigenous trauma through Gladue reporting. In many ways, Gladue reporting has been handled and defended by legal and government experts and scholars as a fact-seeking and common-sense legal approach to healing Indigenous trauma despite the shortage of culturally appropriate sentencing options. Given the abovementioned comparison, I think this project's decolonial methodology is also an "act of exposing underlying assumptions" (Tuhiwai-Smith 2021, 242) within the Gladue body of work. Although I understand that Kaupapa Māori theory, to its full extent, is meant to be practiced by Māori researchers for the benefit of Māori peoples, these scholars help articulate why grounding

projects locally matters. I have conducted this research in the Indigenous Studies discipline, hoping to add to the "discussion on culturally appropriate ethics and to encourage the ongoing development of culturally sympathetic methods" (Tuhiwai-Smith 2021, 249). Establishing the research this way means being accountable to and for the benefit of Turtle Island's Indigenous peoples and communities. Secondly, although I am a non-Indigenous researcher, it does not preclude me from my relational responsibilities by holding this work as part of the Indigenous Studies scholarly discipline in the Faculty of Native Studies at the University of Alberta. I need to hold this project within this specific Indigenous Studies discipline so that it does not get institutionally mislocated within western academic action (Andersen 2016).

Reflecting on Tuhiwai-Smith's first edition of *Decolonizing Methodologies*, Eve Tuck (2013) aptly shows her appreciation for raising Indigenous voices and methodologies within the academic setting, saying, "It honours the significance of Indigenous critiques of research, emphasizing traditions of researching back, talking back and writing back, invoking a knowingness of the colonizer and a recovery of ourselves" (366). Finally, the outcome of using this method of close-reading analysis will draw out questions from this master's theoretical work and be applied to my Ph.D. community-engaged Gladue project. Reading curiously from the gaze of Indigenous theory will contribute to formulating relevant questions in my upcoming conversational interviews with Gladue participants, whose lived and felt knowledge no doubt puts them at the forefront of Gladue expertise.

Purpose of Research Project

The overall goal and purpose of this study are to start a conversation that underscores the implications of re-storying Indigenous trauma to come to a more fulsome understanding of the

potential of Gladue to be empowering or disempowering. This project is a conversation that engages Gladue and Indigenous scholarship to present more ethical considerations about Indigenous trauma. Such considerations are needed to support future Gladue and Indigenous studies researchers (including my own), justice practitioners, Indigenous people, and their communities. My Ph.D. project will investigate how Gladue reports have impacted the lives of Indigenous Gladue participants by directly asking for the input of those with lived carceral experience. This master's project aims to bring forward Indigenous conceptions of relational care to support Indigenous participants and groups in choosing their own approaches to healing and achieving justice (McCaslin 2005). I want to promote more action from criminal justice workers and the state for greater reflection on the ethical issues Gladue presents whenever Indigenous pain gets re-storied for court sentencing. By bringing Indigenous insights about trauma and relationality to the table in this work, I hope to instill the importance of such reflections to promote the relational caretaking necessary in writing and presenting reports in service to the Indigenous people and communities that Gladue reports impact the most. Because this is the first project about Gladue reporting from an Indigenous Studies disciplinary perspective, it is a new way to discuss Gladue and its reporting processes. This discussion underscores the colonial connections to Indigenous incarceration and holds the state accountable for ongoing harm. Additionally, this project broadens the existing Gladue work and Indigenous scholarships while offering new possibilities for Indigenous justice.

Project Roadmap to Considering the Ethical Complexities in Gladue Reporting

In the next section, Chapter Two, I analyze the justice system as an operation of ongoing settler colonialism; however, I show how this fact is sidestepped by *R. v. Gladue* [1999], Gladue

scholarship, and grey literature's tendency to focus on settler colonialism as something only situated in the past. My argument extends to problematize the habit of Gladue materials to place the responsibility of overcoming colonial-produced trauma on the individual (and their communities) rather than holding the state answerable. My research begins with providing some contextual background and an overview of *R. v. Gladue* [1999]. I then discuss the mainstream critiques of Gladue and employ Dian Million's Indigenous trauma theory to underscore how Indigenous trauma is ongoing because of persistent settler colonialism. I conduct a close reading analysis of *R. v. Gladue* [1999], Gladue scholarship, and grey literature to highlight the underlying assumptions that Gladue work makes about Indigenous trauma. My analysis exhibits the problem of Gladue work situating settler colonialism solely in the historical tense to open the discussion of how such inaccurate pre-conceptions of Indigenous trauma impact Gladue reporting materials and processes.

Chapter Three carries an in-depth analysis of the private and public phases of Gladue reporting. I examine how the private process of creating Gladue reports (Phase I: Private) and then presenting them in public courts (Phase II: Public) can both (re)produce further participant trauma through a lens of Indigenous felt trauma theory. This chapter begins with reviewing Gladue materials for what is said or not said about trauma during Phase I of the private report writing process, which happens before reports get submitted to public courts. I unpack the ethical implications that come into play for participants in this first phase (which includes those participants that the Gladue story is about, the writers, and other interviewees). I then review Gladue materials to determine what caretaking and support are offered to persons who experience trauma. Secondly, this chapter reviews Gladue work to consider the ethics of submitting Gladue reports to public courts (Phase II: Public). My analysis here is informed by Million's (2013) critique of public testimony (i.e., in the context of Truth and Reconciliation forums) for how it (re)produces

Indigenous trauma and puts it on display. I also investigate the ethical issues of Gladue stories in courts being exposed in the media to understand Gladue's role in reinforcing the wrongful stigmatization and stereotyping of Indigenous people and their communities. This examination considers how using relational language within Gladue and criminal justice discourses can avoid and reduce provoking felt trauma in participants and their communities.

Chapters Two and Three comprehensively analyze the ethical complexities that Gladue reporting evokes during the report writing and public court submission phases of Gladue reporting processes. The chapters build upon each other to identify the ethical gaps within the spectrum of Gladue materials and processes. I identify these barriers to expand on the possibilities of what Indigenous scholarly insights can teach us to improve how Gladue reporting is thought about and practiced.

In my last chapter, I summarize the findings of this thesis project to exhibit how my analysis has responded to the proposed research problem. I conclude by engaging Indigenous perspectives on the ethics of relationality to rethink current approaches and re-imagine how Gladue reporting and research can improve participant experience and build community. I assess the knowledge I have gained and expose my project's limitations, and I look forward to my and others' future research about Gladue reporting.

CHAPTER TWO: Language Matters – Ethical Issues in Situating Colonization Solely in the Past and the Shifting of Responsibility within Gladue Works

They say that I must live
A white man's way.
This day and age
Still being bent to what they say,
My heart remains
Turned to native time.

-Rita Joe[14]

Settler colonialism remains ongoing in Canada. In particular, the Canadian justice system is a mechanism of settler colonialism that continues to interfere with Indigenous lives and manufacture trauma (Evans 2021; Cunneen and Tauri 2019; Monchalin 2016; Nichols 2014; Tauri and Porou 2014; Million 2013). However, hardly any Gladue-related materials reflect this fact. This chapter argues that most Gladue work frames colonialism solely in the historical past. Through this framing, the justice system and, more expressly, *R. v. Gladue* [1999] and related work is: 1) denying settler colonialism as an ongoing reality; 2) sidestepping responsibility for the state's continued (re)production of harm against Indigenous peoples; and 3) placing the burden of overcoming colonial trauma on the shoulders of Indigenous individuals and their communities.

First, I explain how *R. v. Gladue* [1999] came about and the mainstream critiques of Gladue that consider its failure to reduce the incarceration of Indigenous people. I then clarify that although *R. v. Gladue* [1999] acknowledges Indigenous trauma as symptomatic of colonialism, this has not been the predominant focus in Gladue materials. Second, I offer a language critique of Gladue and the incarceration of Indigenous people as a 'crisis.' Additionally, I offer a brief discussion of

[14] This poem has been selected from Joe, Rita, and Lynn Henry. 2011. Song of Rita Joe: Autobiography of a Mi'kmaq Poet. Wreck Cove, Cape Breton, Nova Scotia: Brenton Books, 43. Note: I have chosen to begin Chapters Two and Three with poems by Rita Joe in honour of my Mi'kmaq family.

Indigenous trauma theory to show the importance of recognizing the ongoing trauma of settler colonization. Third, I conduct a close-reading analysis of Gladue materials through Indigenous trauma theory as explained by Dian Million (2013). I identify where trauma has been recognized in Gladue materials to ultimately demonstrate that the language used to describe Indigenous trauma betrays the ongoing nature of settler colonialism and highlights the state's avoidance of its role in Indigenous (re)traumatization and hyper-incarceration by shifting its focus to the individual and their communities.

Contextual Background for *R. v. Gladue* [1999]

The Canadian criminal justice system and its perpetual imprisonment of Indigenous people are connected directly to settler colonialism (Chartrand 2019; Monchalin 2016; Nichols 2014). The verifiable truth that Indigenous people are sentenced and imprisoned more than any other group in the nation (Office of the Correctional Investigator 2020) confirms the fact that the system was never created in collaboration with, in consultation with, nor planned with Indigenous peoples in mind (Hanson 2009; Rudin 2005b). Lisa Monchalin (2016) further affirms that Indigenous peoples never consented to participate in this justice system in the first place. Echoing Monchalin's assertion, Mary Ellen Turpel[15] (1990) explains that state legal models, like the rule of law (meaning that all persons are to be considered equally by the same legal standards[16]), are "highly legalistic,

[15] Ms. Turpel is a former judge who has worked extensively as a children's and Indigenous rights advocate. Recently, her claims of Indigenous ancestry have been disputed. As of last December 2022, she no longer holds her role as a tenured professor at the University of British Columbia (Ryan 2023).

[16] Rule of Law is a fundamental principle of Canadian democracy where courts are required to follow key standards, including 1. The government enacts law in an open and transparent manner. 2. The law is clear and known, and it is applied equally to everyone. 3. The law will govern the actions of both government and private persons, and their relationship with each other. 4. The courts will apply the law independently of political or outside influence (Office of the Chief Judge 2020). Source: https://www.provincialcourt.bc.ca/enews/enews-04-11-2020.

adversarial, and abstract" and "developed according to the needs of the predominantly Anglo-Canadian colonialists" (6).

Indigenous studies perspectives that critique the criminal justice system as an extension of colonization and state oppression of Indigenous lives are vital to this research because Gladue logics centre on the same acknowledgments (Nichols 2014, 437; Jacobs 2012, 42; Battiste 2011; *R. v. Gladue* [1999]; Turpel 1993). *R. v. Gladue*'s [1999] landmark acknowledgment of the ongoing predicament of settler colonial policies that largely and negatively impact Indigenous peoples is enshrined in the connection between settler colonialism and Indigenous hyper-incarceration. As these colonial policies continued to cause acute Indigenous imprisonment, the 1999 Supreme Court decision marked the establishment of the legal right to submit a Gladue report to public courts to reduce this systemic plight of racism. In the upcoming sections, I look at exemplar cases that lay bare the logics of Gladue. I begin by addressing how *Section 718.2(e)* of the *Criminal Code*, a parliamentary directive meant to address the judicial use of (and reliance on) imprisonment as a sentencing sanction, sparked these cases, paying particular attention to *R. v. Gladue* [1999] itself.

Section 718.2(e) of the Criminal Code of Canada

The Canadian state adopted new sentencing laws in 1996 (BearPaw Legal Education 2014, 3). One of the most critical adjustments to these laws included adding *Section 718.2(e)* of the *Criminal Code of Canada* (BearPaw Legal Education 2014; *Criminal Code of Canada* 1985). This new addition made it compulsory for judges to consider any available and reasonable sentencing pathways aside from imprisonment "when sentencing all offenders, but particularly when sentencing an Aboriginal person" (BearPaw Legal Education 2014; Adjin-Tettey 2007; *Criminal Code of Canada* 1985). According to the *Research and Statistics Division* and the *Department of*

Justice Canada, a sentence must be: "(a) proportionate to the gravity of the offence and the degree of responsibility of the offender; (b) individualized to take into account the particular circumstances, background, and experiences of the offender; and (c) restrained such that it imposes the least restrictive sanction appropriate in the circumstances, with imprisonment used only when no other sanction is appropriate" (Berger 2017, 12). While the changes to the *Criminal Code* attempted to clarify the conditions needed for alternative sentencing measures, they had an unfortunate outcome (Rudin 2005a). Overall, the results of the new section culminated in more significant benefits for non-Indigenous offenders than Indigenous defendants (MacIntosh and Angrove 2012, 12; Adjin-Tettey 2007). It took three more years before a claimant, a young Cree-Métis mother named Jamie Tanis Gladue, would put forward a case to bring about any significant Indigenous benefit from *Section 718.2 (e)* (Department of Justice 2017; Adjin-Tettey 2007).

***R. v. Gladue* [1999]**

Previously, the nineteen-year-old Jamie Tanis Gladue had pleaded guilty to the manslaughter of her common-law partner, Reuben Beaver, who was also Indigenous (*R. v. Gladue* [1999]). Ms. Gladue was sentenced to three years in jail. During that sentencing hearing, the judge disregarded *Section 718.2 (e)*, saying "that there were no special circumstances arising from the Aboriginal status of the accused and the victim that he should take into consideration." He noted that "both were living in an urban area off-reserve and not 'within the aboriginal community as such'" (*R. v. Gladue* [1999]). On April 23, 1999, Ms. Gladue asked the Supreme Court of Canada (SCC) to consider her circumstances as an Indigenous defendant in *Section 718.2 (e)*, giving rise to the landmark *R. v. Gladue* [1999] case.

It was the first time the SCC interpreted *Section 718.2 (e)* (Department of Justice 2017, 5). The case argued that *Section 718.2(e)* was meant as a remedial provision to the inequitable incarceration of Indigenous people (Department of Justice 2017, 7). The SCC judges agreed with the above-stated inequities and thus considered "the magnitude and gravity of the problem" of the overrepresentation of Indigenous people in the nation's penitentiaries (Department of Justice 2017; *R. v. Gladue* [1999], para 64). This time, the SCC's interpretation of *Section 718.2(e)* clarified that for all Indigenous people, "the term 'community' must be defined broadly to include any network of support and interaction that might be available" (Public Safety Canada 2018, 39), whether they were on or off-reserve and whether urban or non-urban.

The SCC held that a lack of "any network of support does not relieve the sentencing judge of the obligation to try and find an alternative to imprisonment" whenever an Indigenous individual's freedom is concerned (Public Safety Canada 2018, 39-40). Concurrently, the SCC also saw that *Section 718.2(e)* correlated Indigenous hyper-incarceration with the urgency to offer culturally relevant sentencing (*R. v. Gladue* [1999], para 57). However, to meet the specific needs of Indigenous defendants and their uniquely traumatic circumstances, the SCC saw a need to inform judges of specific Indigenous factors that led an individual to appear before the Crown (BearPaw Legal Education 2014, 3). Nevertheless, Andrew Welsh and James R. P. Ogloff (2008) signalled that, even with amendments, the *Criminal Code* still "underestimated the true complexity of the over-representation problem" (512), predicting that judges would never singularly be able to impact the disproportion of Indigenous imprisonment, despite *R. v. Gladue*'s [1999] added interpretation. Others also began to cast doubt on the effectiveness of the SCC's interpretations, arguing there was "no further explanation as to how [Gladue rights and reporting Gladue factors] will practically happen" (MacIntosh and Angrove 2012, 130). Such concerns spurred an even broader debate about the logics of Gladue.

Mainstream Critiques of Gladue

Despite the Crown's attempted recognition of state harms perpetuating Indigenous trauma, including systemic racism and discrimination, Gladue came under fire. The decision was met with both political and mainstream critiques that countered Gladue as a "race-based discount on sentencing" or that "a treaty card is like a get out of jail free card" (Roach and Rudin 2000, 356). Gladue writer Mark Marsolais-Nahwegahbow strongly disagreed, explaining that "Gladue isn't about getting out of jail, [it] is about explaining and understanding, and holding the system accountable" (Edwards 2017). Moreover, Gladue's framework was clear: implementing restorative measures and alternative sanctions was in no way more lenient a punishment (Department of Justice 2017, 12). Still, Gladue controversy lingered. The outcome of the new SCC decision proved unmitigatedly discouraging in reducing Indigenous interaction with the criminal justice system.

After *R. v. Gladue* [1999], concerns arose over applying *Section 718.2(e)*. These concerns came to a head after thirteen years when the SCC noted Gladue's lack of success in *R. v. Ipeelee* [2012], which brought forth that not only had the rate of Indigenous imprisonment not dropped, but it was getting worse. In *R. v. Ipeelee* [2012], the SCC reiterated that in all cases, judicial consideration of Indigenous circumstances ought to be made when passing sentences (Rae 2015; *R. v. Ipeelee* [2012]). Anishinaabe lawyer and adjunct law professor Holmes Skinner summarized the main idea expressed in *Ipeelee*: "Remember everything we said in 1999 in *Gladue*? Yeah. We meant it. Now go do it and do it right this time" (Ling 2020). However, despite *R. v. Ipeelee*'s call for judges to respond by engaging *Section 718.2(e)* and Gladue factors more consistently, the hyper-incarceration of Indigenous people persists (Office of the Correctional Investigator 2020; Department of Justice 2017, 48; Makin 1999).

No longer the beacon of hope it once presented in its early days, Gladue has government and legal experts ruminating over its pathetic outcomes and trying to pinpoint where Gladue went

so wrong. Professor of law at the University of Toronto, Ken Roach (2009), says the misstep is the court's fixation on the gravity of the offence over the life circumstances of the Indigenous defendant. However, Johnathan Rudin, an expert on Indigenous justice, says Gladue has yet to fall from grace, explaining that we could be optimistic about its outcomes if we could only see that Gladue "is not a self-executing process" (2009, 447). Often, legal experts call for a collaborative approach between the state, justice workers, and grassroots initiatives. Both Roach and Rudin agree that Gladue could produce better outcomes if, first, the justice system and relevant communities could (through Gladue reporting) address how Gladue is applied and interpreted (Roach 2009), and second, if the court's complacent reliance on imprisonment could be overturned (Rudin 2009). Some law experts suggest that improved Gladue outcomes may begin with language. Next, I examine how Gladue work talks about Indigenous incarceration, and I call for reframing the discourse.

Language Matters

Language matters, and legal and government experts have been paying close attention to it. What is particularly interesting is the language used to emphasize the importance of addressing Indigenous mass imprisonment. However, just because something is significant and should be a serious 'national' priority does not necessarily make it a disaster for the state. Over the years, rates of Indigenous incarceration keep being called a flat-out national crisis (Milward 2022; Ralston 2020; Coletta 2018; Newell 2013; Rudin 2007; *R. v. Gladue* [1999], para 64); yet, while calling attention to the issue as a 'crisis' may be built on good intentions, this language is a significant problem. Ontario Senator Kim Pate, who has divided her time between teaching law and penal reform activism, recently struggled to formulate more appropriate terminology to discuss the

escalation of incarcerating Indigenous women: “Two decades ago, the Supreme Court of Canada called this a crisis,” she stated. “I don’t know what you’d call it now” (Cardoso and Mercer 2022). Perhaps the tension here comes from the contradictory language within *R. v. Gladue* [1999].

R. v. Gladue [1999] acknowledges the ‘normalization’ of Indigenous incarceration and mass systemic discrimination in the justice system, stating that “the extent and severity of this problem are disturbingly common” (*R. v. Gladue* [1999], para 62). However, at the same time, the case seemingly flips the narrative from an everyday inequitable condition to a much more pressing turning point: “The figures are stark and reflect what may fairly be termed a crisis in the Canadian criminal justice system” (*R. v. Gladue* [1999], para 64). In other instances, the SCC chooses to characterize the same issue as “a long-standing problem” (*R. v. Gladue* [1999], para 57), “the general problem,” “well documented” (*R. v. Gladue* [1999], para 59), and “disturbingly common” (*R. v. Gladue* [1999], para 62). Gladue’s contradictory language begs the question: Is the over-incarceration and oppression of Indigenous people within the criminal justice system a catastrophic condition of instability that has finally hit a critical turning point (a crisis?), or is it a commonplace occurrence?

Shedding light on the concern with using 'disaster' or 'crisis' terminology within a Canadian Indigenous carceral context, Efrat Arbel (2019) explains that using such language is flawed because it obfuscates the reality of colonialism as a continuous project. She argues that there is “nothing extraordinary” (439) happening with this unbroken surge of Indigenous imprisonment (Arbel 2019). Instead, Arbel argues that Indigenous incarceration rates "are as predictable and fixed as the colonial structures that produce them...and as deployed, the language of 'crisis' obscures this fact” (2019, 439). Arbel goes further to explain that legal decisions surrounding Indigenous hyper-incarceration never really take accountability for the role the justice system plays in cultivating Indigenous trauma:

> ...while both Gladue and Ipeelee make inroads in recognizing the systemic prejudices and widespread racism of the Canadian legal system—with Ipeelee also identifying colonialism and the legacy of residential schools—neither decision assumes responsibility for the production of Indigenous mass imprisonment as colonial violence. Even at their most progressive and laudable moments, and even as they criticize the Canadian legal system, both turn to that same system to resolve the problem. They do so despite the fact that the legal system is responsible for producing not just Indigenous incarceration and alienation, but also persistent and normalized trauma, violence, death, and harm. (Arbel 2019, 453)

The language surrounding Gladue is even more perplexing given the inequitable harms that are so deeply entrenched within the justice system — where harm is co-produced by the state not taking responsibility and cultivating narratives built upon its legal language of 'acknowledgment' to cushion its ongoing production of Indigenous trauma. Jonathan Rudin (2009) asserts that Gladue's language and its use of the words "crisis in the Canadian justice system" (*R. v. Gladue* [1999], para 64) to describe the state's incarceration of Indigenous people is "quite striking" and that "the significance of this statement cannot be over-emphasized" (448). Rudin (2009) explains that the SCC language in Gladue proves that "the court was locating the problem in the justice system itself" (448) and that the purpose of *R. v. Gladue* [1999] is to reduce Canada's overreliance on imprisoning Indigenous people as punishment. Rudin says that the actual problem was (and still is) not about lessening offences committed by Indigenous persons; rather, "it was the [court's] response to that offending behaviour that was problematic" (2009, 448). To explain, the language in Gladue is meaningful in demonstrating that the actual problem in the justice system has nothing to do with the number of Indigenous transgressions that occur. Instead, the issue is how the state (and Gladue) is responding — that compared to any other group, the state is locking up Indigenous people at stratospheric rates, and Gladue cannot seem to stop it. The supposed "crisis" here is that there isn't one; it is just the usual business of settler colonialism.

Using 'disaster' language in Gladue normalizes colonialism. I extend Arbel's (2019)

reasoning to argue that, however familiar, nothing should 'make normal' colonial harms. *R. v. Gladue*'s [1999] language normalizes colonial oppression. The predictability of this oppression is the state's pattern of concurrent acknowledgement and denial of responsibility. Scott Veitch (2007) illustrates that the criminal justice system 'organizes' its responsibility just as much as it 'organizes' its deflection of responsibility. The state uses language to organize its responsibility, making it harder to shine a light on the justice system's 'irresponsibility.' He explains, "The organization is traced here to the legal forms [produced by Canada's colonial project], and the social and political conditions, that sustain 'our' complicity in human suffering" (Veitch 2007, n.p.).

I foresee layers of problematic implications in *R. v. Gladue*'s [1999] wording, especially in creating narratives around Indigenous trauma and how these narratives can spill out into dangerous mainstream thinking.[17] I take Arbel's (2019) point further to argue that in addition to shifting how we re-frame the state's hyper-incarceration of Indigenous people, we must also make changes in the language we use to talk about how settler colonialism and Indigenous trauma are connected, contextualized, and interpreted throughout *R. v. Gladue* [1999] and related work. Emma LaRocque (1990), a Plains Cree and Métis scholar and writer, helps us consider the ethical importance and gravity of such language use. While LaRocque discusses the "war of words" more generally, her arguments apply to my analysis of language use in *R. v. Gladue* [1999], related works, and indeed within Gladue reports. She asserts that:

> [m]uch of this 400-year-old pain has been expressed in the war of words against us. And to that, we are pressed to explain, to debunk, and to dismantle. To the war of ways against us, we are moved to retrieve, redefine, and to reconcile our scattered pieces. To the voices of despair among us and in us, we are challenged to dream new visions to bring hope for the future. (xxvii)

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[17] In my upcoming chapter, I unpack more about Gladue reporting and the criminal justice system's potential for producing trauma.

The language that flows from *R. v. Gladue* [1999] influences Gladue work. The influence of the language becomes evident through an Indigenous theoretical framing of the language used in Gladue materials. This lens can enlighten Gladue's possibilities to counter the legal and government experts from habitual defaulting to interpretations of language made by colonial expressions of justice.

Indigenous Trauma Theory: Recognizing the Ongoing Trauma of Settler Colonialism

This master's work applies Indigenous trauma theory to tease out my analysis of how *R. v. Gladue* [1999], Gladue scholarship, and grey literature discuss Indigenous trauma. Examining these Gladue materials is to think about this body of work through an Indigenous theoretical lens and propose making more decisive ethical considerations to better the Gladue reporting processes for all Indigenous participants. Part of this thesis's argument is to show that settler colonialism is an ongoing form of settler-state violence that is responsible for evoking lasting Indigenous collective and individual traumas that traverse the historical into the now (McGuire and Murdoch 2021; Monchalin 2010; Monture-Angus, 1999a, 1999b). This ongoing colonial project cannot be separated from Canada's targeting of Indigenous peoples to bring them into the criminal justice system (Chartrand 2019). The significance of presenting settler colonialism as ongoing provides the contextual platform for considering the ethical issues involved in re-storying Indigenous lives (and trauma) through Gladue reports and their public presentation in my forthcoming chapter. Here, I hope to inspire reconsideration of the current Gladue work and encourage the application of Indigenous theory and relational ethics at the forefront of future Gladue-related work.

I ground my area of theoretical focus on Dian Million's trauma theory, which recognizes the ongoing trauma of settler colonization. Her theoretical work bolsters my use of a decolonizing research methodology. Million (2009) says that "to 'decolonize' means to understand as fully as possible the forms colonialism takes in our own times" (55). Gladue reporting and research need to be framed within this understanding that settler colonialism is ongoing. As Million points out, whenever Indigenous claims are made, they arise from an "original act of colonialism" (2009, 70). I agree with Million's assertion that whenever 'historical' is applied to the 'now' in writing about colonized peoples, it can be an insidious strategy to value settler-state perspectives over Indigenous ones (2013, 70). Her commentary is especially poignant as I consider *R. v. Gladue* [1999], Gladue scholarship, and grey literature's habit of applying 'past tense' to Indigenous trauma. I am also concerned about how this habit may function to mislead the mainstream for the sake of state self-interest. Million's work is grounded in and informed by historian Richard White (1998), who similarly highlights the issue of colonial cherry-picking within settler-nation (or hegemonic, as Million puts it) accounting of truth:

> For history to do effective work in the world over the long term, it has to be true to the complexity of the past. Without some commitment to the past on its own terms and a desire to portray its fullness, excursions into the past become an intellectual shopping trip to find what is useful to the present. If historical knowledge is made *simply* tactical, then the past becomes valued only as a tool in present struggles. The past loses its integrity. The past as past, as a different country with different concerns and rules, a place where we might actually learn something different from what we already know, vanishes. Such tactical uses of the past discredit those who use them within the academy. (236)

White's (1998) and Million's (2013) critiques assist my thoughts about the problem I am posting to the various forms of Gladue work and the lack of ethical discussion about reproducing Indigenous trauma narratives for the courts.

Million's (2013) articulation of colonial "violence as trauma" (7) urges Indigenous peoples to confront and interrogate their colonial overlords and speak to their lived experiences. I rely on Million's felt theory, a theoretical model mobilized into "actions informed by experience and analysis" (2008, 268), to intervene with *R. v. Gladue* [1999] and its related work. Million's felt theory examines how felt experience becomes felt knowledge and then felt action to unsettle the colonial justice system and support movements of Indigenous self-determination (2013). Million's theory (2008) considers how Indigenous trauma narratives get entangled with colonial conquest in such a way that "contemporary representations of *historical abuse* are languages" (268) that uphold settler power structures throughout Canada's platforms on justice, truth-telling, and reconciliation.[18] The critical implication here is that Million points to how the settler colonial state constructs arenas for 'truth-telling' (whether as TRC tribunals or presenting Gladue reports to courts) that force Indigenous folks to revisit trauma and appeal to their oppressor in order to legitimize their claims (2013; 2008). As I contemplate the justice system as a tool of settler colonialism and the SCC's call for Gladue stories, it becomes more apparent that the settler state never has to revisit its abusive infringement and defend its legitimacy because its past actions and power continually go unchecked. Further, because the state and its justice system never have to testify to its actions, a separate path is carved out that allows its silence (veiled in moral authority) to abdicate any relational responsibility for continuing to perpetrate harm. One way to 'check' the self-imposed colonial authority is to challenge how Gladue addresses Indigenous trauma, as I do below.

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[18] Chapter Three discusses Million's work regarding the state's use/abuse of Indigenous trauma narratives.

Close-Reading Analysis of *R. v. Gladue* [1999], Gladue Scholarship, and Grey Literature

In the following two sections, I engage a close-reading method to focus on the specific language used to discuss Indigenous trauma in a) *R. v. Gladue* [1999] and b) Gladue scholarship and grey literature to present two interconnected arguments. First, I show that while *R. v. Gladue* [1999] connects Indigenous trauma and over-incarceration with settler colonialism, there is a lack of detail about the "unique systemic and background factors" (known as 'Gladue factors') that have brought Indigenous people before the court. The details that *are* given presume colonial trauma to Indigenous people is situated only in the historic tense and sidesteps the responsibility of the settler state for said colonial harms by situating this responsibility in Indigenous people who participate in Gladue and more broadly their communities.

Second, building on this argument, I advance that *R. v. Gladue*'s [1999] focus on historical factors has flowed into the thinking of scholars and creators of grey literature who have attempted to flesh out the logics of Gladue. The impact of *R. v. Gladue*'s [1999] influence on scholarly and grey materials has furthered the trend of situating settler colonialism solely in the past, thus overlooking the state's role in the ongoing production of Indigenous trauma. The ironic tension here is that these three categories of Gladue materials (the original 1999 SCC decision, scholarship, and grey literature) all work to recognize the trauma of settler colonialism while also perpetuating it. To show the extensive problem of Gladue materials' tendency to situate Indigenous trauma solely in the past, I offer examples from *R. v. Gladue* [1999] and Gladue scholarly and grey works. So as not to pass over Gladue's seemingly benign use of language, I have elected to *italicize* the quoted text to demarcate the areas of particular concern in my analysis.

Use of Language to Discuss Indigenous Trauma in *R. v. Gladue* [1999]

The issue of Gladue discourses gravitating to use only 'past tense' language around Indigenous trauma is evidenced at the outset of *R. v. Gladue* [1999]. For example, *R. v. Gladue* [1999] points to the "*...tragic history of the treatment of aboriginal peoples* [Emphasis added] within the Canadian criminal justice system…" (para. 34). Later, the Supreme Court of Canada asks for sentencing judges to maintain their *section 718.2(e)* duty "to impose a sentence that is fit for the offence and the offender" (para. 33) and, additionally, to take two different steps whenever sentencing Indigenous individuals:

> The words of s. 718.2(*e*) instruct the sentencing judge to pay particular attention to the *circumstances of aboriginal offenders* [Emphasis added], with the implication that those circumstances *are significantly different from those of non-aboriginal offenders* [Emphasis added]. The *background* [Emphasis added] considerations regarding the distinct situation of aboriginal peoples in Canada encompass a wide range of unique circumstances, including, most particularly:
>
> (A) The *unique systemic or background factors* [Emphasis added] 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* [Emphasis added] for the offender because of his or her particular aboriginal heritage or connection.
>
> (*R. v. Gladue* [1999], para. 66*)*

Above, *R. v. Gladue* [1999] encapsulates Indigenous trauma under the umbrella of "*circumstances*" and "*unique systemic or background factors*" (para. 66 — [Emphasis added]). Even though I can appreciate that not all life 'circumstances' are alike, this generalization of what Indigenous persons face within the context of a settler-colonial state and its justice system is, at best, insufficient. I also note that using the word "*background*" itself overshadows the trauma that an Indigenous individual no doubt experiences in the present tense of facing sentencing, especially

as the justice system does not cultivate favour or even understand their interests and experiences. While *R. v. Gladue* [1999] goes on to assert that "it must be recognized that the circumstances of aboriginal offenders '*differ*' [Emphasis added] from those of the majority because many aboriginal people are victims of systemic and direct discrimination, many suffer the *legacy of dislocation* [Emphasis added]" (*R. v. Gladue* [1999], para. 68), the decision promotes little understanding of the broader range of complexities that make this '*difference*' in Indigenous circumstances possible. Here, the SCC seems to be withholding any absolute clarity on the "*background factors*" that are understood better as some of the "*symptoms*" of ongoing settler colonialism (Dickson and Stewart 2021, 15). Moreover, Indigenous people are taking on more than just a "*legacy of dislocation*" because settler colonialism is not 'just' handed down from the past; it is still a living state-infringement that continues to disrupt Indigenous autonomy.

Another example where *R. v. Gladue* [1999] places Indigenous trauma only in the past is in its citing of scholarship by a law professor, Michael Jackson. The SCC's decision includes Jackson's (1989) commentary on the acute rates of Indigenous incarceration in Saskatchewan to support the idea that prison has become an Indigenous legacy: "Put another way, this means that in Saskatchewan, *the prison has become for many young native men, the promise of a just society which high school and college represent for the rest of us. Placed in an historical context, the prison has become for many young native people the contemporary equivalent of what the Indian residential school system represented for their parents* [Emphasis added]" (Jackson 1989, 216; quoted in *R. v. Gladue* [1999], para. 60). The essence of the above quote is "prisons are the 'new residential schools'" (Macdonald 2016). As Indigenous expert Ryan Beardy shared of his childhood, "jail is normalized" (Beardy in Monkman 2018). However, the article cited in *R. v. Gladue* [1999] was written nearly a decade before "the last of Canada's 139 residential schools for

indigenous children closed" (Cooper 2022) in 1998.[19] Although the decision in *R. v. Gladue* [1999] came the year following the last residential school shutdown, it obscures the still very present reality of residential schools by placing them in the past, not even in the 'recent' past. Strictly speaking, even with the last residential school closing a year prior to the case, it was still so fresh that I think it is a major stretch to place the devastating impacts of residential schools "*in an historical context* [Emphasis added]" (*R. v. Gladue* [1999], para. 60; Jackson 1989, 216). Indeed, the trauma of the residential school system would not be earnestly accounted for until the 1991 Royal Commission on Aboriginal Peoples and the 2006 formation of the Truth and Reconciliation Commission of Canada, and more recently, the hundreds of unmarked graves that were finally identified on residential school grounds, which served to indisputably validate what many Indigenous communities already knew but have had to (and continue to) fight to prove (Austen 2022).

In addition to the problem of only situating settler colonialism in the past, *R. v. Gladue* [1999] locates trauma in the individuals and their communities rather than pointing to the state for producing trauma. Locating trauma in the individual implies that the Gladue participant is 'responsible' for their crime (as an implicit personal choice). This responsibilization of the individual overshadows colonial state culpability and suggests that the individual is somehow responsible for their own oppression. For example, *R. v. Gladue* [1999] states that "*years of dislocation and economic development have translated, for many aboriginal peoples, into low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation* [Emphasis added]," factors which

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[19] The last residential school, St. Michael's Indian Residential School, was closed in 1998 (Cooper 2022; Thomson 2021).

"*contribute to a higher incidence of crime and incarceration* [Emphasis added]" (R. v. Gladue [1999], para 67). This state avoidance of responsibility is *in* the language, and the language fuels colonial perspectives within the justice system that hold Indigenous people(s) and their experience of trauma at the centre of their own circumstances of state oppression.

The above quote in the SCC decision, which begins with "years of dislocation and economic development have *translated* [Emphasis added] …" (R. v. Gladue [1999], para 67), is particularly notable to me for two reasons: First, *R. v. Gladue* [1999] '*translated*' a weak description of the unrelenting horrors that Canada puts Indigenous people through. The SCC's wording obscures state responsibility by drawing attention to the suffering Indigenous peoples experience rather than stating what the state does to create this suffering. The SCC language also keeps an eye on an individual's crimes while holding the crimes of the colonial project at arm's length from the justice discourse (as Million [2013] has suggested). Law professor Irene Watson illustrated such a settler-state arrangement as "an act of state…as though doctrines of state supremacy conjure a magic, which absolves centuries of unlawfulness and violence against indigenous peoples" (2002, 265). In this way, the SCC's language has made 'disappear' state-specific accountability and '*translated*' an altogether different rendering of *who* is responsible for Gladue factors — an excellent example of literal whitewashing of narrative.

Second, the SCC's choice of the word "*translated*" really *is* a 'translation' because the details that the SCC *does* provide as Gladue factors have harmful implications. For instance, instead of detailing the state's removal of Indigenous children from their homes into residential schools and its stealing of lands to displace peoples onto federally-run-owned-and-patrolled reservations, the SCC decided to say, *"lack or irrelevance of education* [and] *community fragmentation* [Emphasis added]." Instead of explaining state-enforced poverty, the SCC decision chooses to use the words "*low incomes* [and] *high unemployment* [Emphasis added]." Rather than pointing to, say,

systemic racism in any number of current or former settler colonial institutions, the SCC gives Gladue factors that, at least in part, reinforce and lean on a participant's life experiences and behaviours as implicit personal choice over unpacking the state's explicit role in producing the circumstances of their trauma and concurrent context of crime.[20]

In other words, it is not just about the lack of detail in *R. v. Gladue*'s [1999] interpretation; it is also about the details that *are* given. *R. v. Gladue*'s [1999] use of the word "*translated*" and its language choices to detail Indigenous-specific factors omit entirely what Indigenous accounts might describe as colonial violence into a more 'palatable' narrative that serves state interests. This colonial-state rewording illustrates my argument and supports what Million (2013) pushes against when she calls out settler-power's destruction of Indigenous knowing to formulate a discourse that not only allows the state to maintain its authoritative system of intrusion and theft but also bypasses ever taking any blame for it.

R. v. Gladue's [1999] use of language paradoxically validates and undermines Gladue's mandate to recognize colonial harm and lower Indigenous incarceration rates. Subsequently, another exemplar case, *R. v. Ipeelee* [2012], tried to clarify Gladue's logics, but persisted in assigning past tense to colonial harms against Indigenous peoples. *R. v. Ipeelee* [2012] built on Gladue as "an explicit acknowledgement of Canada's complicity in creating this problem and contributing to its perpetuation" (Department of Justice 2017, 15), yet used similarly flawed language to *translate* Indigenous trauma. In doing so, it becomes clear that the SCC did not fumble its words: the *translation* is an arrangement of language by design of the justice system. For example, the case instructs sentencing judges to "take judicial notice of such matters as the *history*

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[20] In the following section, I offer an example of how grey literature's tendency to focus on Gladue factors as an implicit personal choice can distract from the state's role in an Indigenous person's ongoing trauma experience.

of colonialism [Emphasis added], displacement, and residential schools and *how that history continues to translate* [Emphasis added] 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" (*R. v. Ipeelee* [2012], para. 60). By taking "judicial notice[21]," the SCC *translates 'such matters'* of colonial abuse into what sounds like residual after-effects instead of admitting that colonial violence remains unchanged. The SCC acknowledges trauma in the past. However, it stops there, stating, "No one's *history* [Emphasis added] in this country compares to Aboriginal people's" (*R. v. Ipeelee* [2012], para. 77). No one's *present circumstances* in this country compare either. The following section examines how existing tensions in the language applied within *R. v. Gladue* [1999] extend even further within the Gladue scholarship and grey literature.

Use of Language to Discuss Indigenous Trauma in Gladue Scholarship and Grey Literature

R. v. Gladue [1999] "takes judicial notice" of the connection between settler colonialism and the snowball effect of Indigenous hyper-imprisonment and production of trauma (*R. v. Gladue* [1999], para 57). The decision's language remains both vague and specific by describing the circumstances of Indigenous trauma as "unique and systemic background factors" (R. v. Gladue [1999], para. 66). In turn, this description of Gladue factors has scholars and experts creating academic publications and grey literature that not only perpetuate confusion about Gladue factors

[21] Note: *Section 781(2) of the Criminal Code of Canada* under Part XXVI Extraordinary Remedies states, "Proclamations, orders, rules, regulations and by-laws mentioned in subsection (1) and the publication thereof shall be judicially noticed" which recognizes matters without having to bring evidence forward to prove it in a trial. Source: https://laws-lois.justice.gc.ca/eng/acts/c-46/page-128.html.

but echo the ethical issue of incorrectly situating Indigenous trauma solely in the historical past. I discuss both issues below.

Many Gladue scholars and experts agree that the SCC's bandwidth for Gladue factors (systemic or background factors of Indigenous trauma) needs a deeper explanation. As they work to interpret Gladue's list of factors, experts have been calling out Gladue for its "lack of clarity" and "little guidance"[22] (Anand 2000; 412 and 419), saying that its factors are "relatively scant" (Flaminio 2013, 74). Recently, the *Gladue Awareness Project* (2020) and other grey literature have tried to explain Gladue factors more comprehensively. The *Gladue Awareness Project*, an information-sharing initiative of the Law Foundation of Ontario about Indigenous incarceration rates and the justice system's response, explores the complexities of Indigenous trauma as Gladue factors, including poor mental and physical health brought on by the state (Ralston 2020, 25 - 30). However, many legal workers remain unclear despite the best efforts of some Gladue scholars and producers of grey literature to define the criteria for Gladue factors. To evidence such confusion, Ralston (2020) reported that while lawyers may be cognizant of the decisions made in Gladue and Ipeelee, "they [are] still unsure of exactly what unique systemic or background factors judges need individualized information to meet their obligations under this framework" (23). Ralston explains further that this presents serious concerns and sizable roadblocks to implementing Gladue's two-pronged framework to provide pertinent information to judges (2020, 23), who must ensure that sentencing and sanctions are culturally tailored to the Indigenous individual before them.

The Gladue court's unwillingness to lay out the factors of Indigenous trauma more clearly has obscured its ability to acknowledge settler colonialism and its harmful impacts. Such lack of clarity has many of the experts writing Gladue materials seemingly more concerned about the level

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[22] Especially in the directions Gladue provides to low courts.

of harm said to be caused by the Gladue participant rather than focusing on the severity of harm that the state has inflicted and its role in creating conditions for criminalizing Indigenous people (Department of Justice 2017; Johnson and Millar 2016; Istvanffy 2011; Welsh and Ogloff 2008). I speculate that Gladue participants, exposed to another layer of trauma through the process, might be at an even higher risk of recidivism. However, as I exemplify next, the existing producers of scholarly and grey literature are having a different conversation about finding Indigenous resource options for sanctions.

The academic and grey literature justifies the need for reporting Gladue factors most powerfully through the mandate that Gladue reports must list available options for judges to choose sentencing sanctions and programs. For Justice Brent Knazan (2003), Gladue is supposed to spell out for courts that they "should keep Aboriginal offenders out of prison unless imprisonment is the only reasonable sanction in the circumstances" (2). However, the literature also demonstrates that Gladue writers struggle to find culturally appropriate and community-based resources for judicial consideration (Department of Justice 2017, 26). This deficit of Indigenous sentencing alternatives can set the stage for "harsher and less appropriate [sanctions] for Indigenous people due to various ongoing systemic issues" (Ralston 2020, 81), such as courts applying colonial programming where no Indigenous-based resources have been available. Not only does this appalling lack of resources (due to the state's refusal to give adequate funding for services and infrastructure) miss the point of Gladue's remedial action to recognize colonially imposed harms, but it means subjecting Indigenous people to more settler institutions and services that could ignite even deeper colonial injury and trauma (Hartmann et al. 2019).

Marie-Eve Sylvestre, for example, states that Indigenous groups have engaged their own legal practices and are developing more. In the context of Gladue processes and Indigenous justice,

she asserts further that "state involvement is a problem" (Sylvestre, Canadian Institute for the Administration of Justice 2021, March 17) and goes on to argue that Indigenous peoples gain more autonomy by using their own healing and justice practices. Nevertheless, the roadblock is that sanctioned programs are being decided by prosecutors and judges (who lack a deeper understanding of Gladue factors) when Indigenous communities should make these choices (Canadian Institute for the Administration of Justice 2021, March 17). Keeping this issue of identifying and accessing suitable programming in mind, I look forward to listening to what Gladue participants will say about their experiences with programming and support in my future work. Nonetheless, failure to understand that colonial traumatization of Indigenous people is at the core of Gladue sets related scholarly and grey materials on the incorrect path. This wavering away from Gladue's core occurs when materials focus more on crime and exercising common law to sentence a 'defendant' for the supposed safety of the public — while overlooking how the state makes Indigenous people(s) less safe and works to criminalize them.

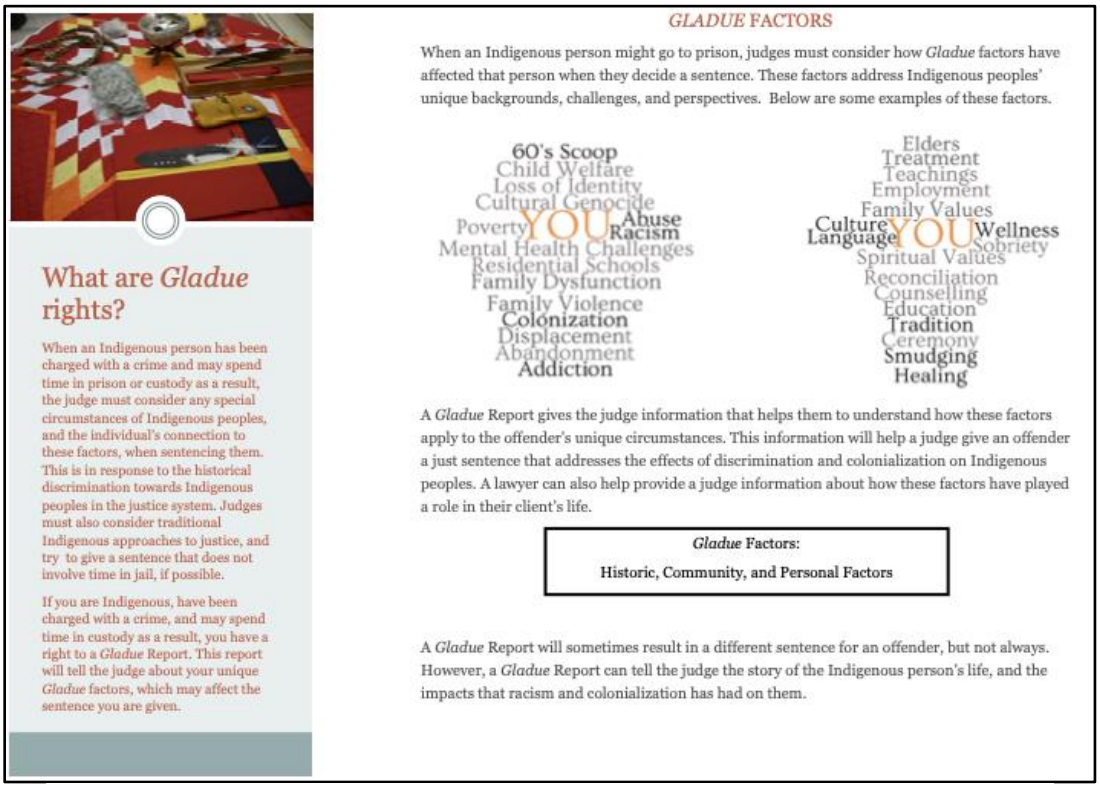
Suppose legal workers need clarification about what needs to be said in a Gladue report. In that case, I wonder about the ethics of asking Gladue participants to reveal their pain, especially under the genuine risk of further (re)traumatization, so legal workers and courts may understand how to fulfil their obligations. The problem is that despite attempts to clarify Gladue's criterion for Indigenous trauma, both Gladue scholarship and grey literature have fallen into the trappings of simply reiterating the vagueness of systemic and background factors, and people are not getting the resources they need. Perhaps part of the issue is that Gladue factors are being defined only in the past tense in *R. v. Gladue* [1999], and this same language flows into the related work.

The bulk of Gladue work is missing the central point of Gladue's recognition of Indigenous peoples' unique circumstances by failing to adjust its focus from settler colonialism as historical to

ongoing. Spring boarding out of *R. v. Gladue* [1999], most of the language in academic scholarship and grey literature authored by government and legal experts implies that these harms are considered historical and can be easy to miss. A few examples include: 1) The "Aboriginal Justice Inquiry of Manitoba (1991) attributes higher crime rates to 'the despair, dependency, anger, frustration, and sense of injustice prevalent in Aboriginal communities,' which stem from the trauma and loss of culture experienced by families and communities *as a result of colonial policies over the past century* [Emphasis added]" (Department of Justice 2017, 31). 2) Offering an example of such '*historical*' *policy*, the *Gladue Awareness Project* describes "the loss or denial of status under the *Indian Act*, which impacts an individual's ability to live on reserve, be a member of a First Nation, vote in First Nation elections, and access various benefits for members. This is *linked to a long and complex history of Canadian laws, policies, and practices* [Emphasis added] aimed at restricting the number of 'status Indians'" (Ralston 2020, 23). Given that the *Indian Act* has been amended but never dissolved, along with a myriad of other active state laws, policies, and practices that remain restrictive and prejudicial to Indigenous people(s), the true denial is to situate state protocol only within "*a long and complex history* [Emphasis added]" when such practices are still commonplace. 3) Finally, the Department of Justice (2017) reiterates "that judges have a duty to take judicial notice of systemic and background factors, including the *history of colonialism* [Emphasis added] …" (16). Again, these sources do not mention the ongoing production of Indigenous trauma and hyper-incarceration at the hands of the state because of ongoing colonial harms.

Frequently, Gladue materials function to divert attention from state culpability to participant responsibility, even when they have the best of intentions. A closer look at the language used in BearPaw Media and Education resources will illustrate this. BearPaw Media and Education "produce[s] and distribute[s] public legal education resources for Indigenous Peoples in Alberta

that are culturally relevant" (BearPaw Legal Resources 2023). BearPaw, in my opinion, is the best available legal resource in Alberta because it assists the public with what the organization calls "wâwâkamow" — a Nêhiyawêwin (Cree) word for 'winding' like a river (Skidmore 2021, 08:36) or navigating the justice system to cut through inaccessible legal jargon to understand one's rights better. While BearPaw's outstanding efforts to focus on participants do indeed offer people measures of control in their legal dealings, this focus can have the unintended consequence of only telling part of the story. Even though holding a participant-focused narrative is essential since so few resources do this for Indigenous people, especially at the ground level, doing so can regrettably divert attention away from the Gladue factors that detail the implicit choices made by settler colonial operations that produce Indigenous trauma. Illustrating this point, the 2022 BearPaw brochure centres '*YOU*' (the Indigenous participant) in its framing of Gladue factors:



What are *Gladue* rights?

When an Indigenous person has been charged with a crime and may spend time in prison or custody as a result, the judge must consider any special circumstances of Indigenous peoples, and the individual's connection to these factors, when sentencing them. This is in response to the historical discrimination towards Indigenous peoples in the justice system. Judges must also consider traditional Indigenous approaches to justice, and try to give a sentence that does not involve time in jail, if possible.

If you are Indigenous, have been charged with a crime, and may spend time in custody as a result, you have a right to a *Gladue* Report. This report will tell the judge about your unique *Gladue* factors, which may affect the sentence you are given.

GLADUE FACTORS

When an Indigenous person might go to prison, judges must consider how *Gladue* factors have affected that person when they decide a sentence. These factors address Indigenous peoples' unique backgrounds, challenges, and perspectives. Below are some examples of these factors.

60's Scoop
Child Welfare
Loss of Identity
Cultural Genocide
Poverty
YOU
Abuse
Racism
Mental Health Challenges
Residential Schools
Family Dysfunction
Family Violence
Colonization
Displacement
Abandonment
Addiction

Elders
Treatment
Teachings
Employment
Family Values
Culture
Language
YOU
Wellness
Sobriety
Spiritual Values
Reconciliation
Counselling
Education
Tradition
Ceremony
Smudging
Healing

A *Gladue* Report gives the judge information that helps them to understand how these factors apply to the offender's unique circumstances. This information will help a judge give an offender a just sentence that addresses the effects of discrimination and colonialization on Indigenous peoples. A lawyer can also help provide a judge information about how these factors have played a role in their client's life.

***Gladue* Factors:**
Historic, Community, and Personal Factors

A *Gladue* Report will sometimes result in a different sentence for an offender, but not always. However, a *Gladue* Report can tell the judge the story of the Indigenous person's life, and the impacts that racism and colonialization has had on them.

Figure 4. Gladue Brochure.
This brochure was published online by BearPaw in conjunction with Legal Aid Alberta on March 10, 2022. This clipped portion is part of a two-sided Gladue Rights brochure (meant to fold into three vertical sections). The full version can be viewed at Appendices on p.124-5.

Indeed, the brochure's focus on the participant (their story) centres the individual in a way that is both supportive and empowering. However, the focus on '*YOU*' also reinscribes the discourse of personal responsibility, which locates the impetus for change in the individual rather than the state and its criminal justice system. The brochure displays factors in a binary manner. It separates them into two rows: on the left, some factors seem to list negative impacts or events a person may have experienced, and on the right, the factors listed seem to be positive actions or options a person can take to counteract the first list on the left. The issue with the two lists is that neither fully acknowledges the state's role in producing these negative impacts nor its Gladue-mandated responsibility to correct and repair the harms it has caused through appropriate sentencing measures.

To have a more fulsome discourse on responsibility, we must address Gladue factors (such as the '60s scoop, child welfare, loss of identity, racism, poverty, residential schools, etc.) beyond the impacts of an individual to make clear that settler colonialism is not 'part of' the list of Gladue factors, it is the *reason why* these factors occur in the first place. Holding the state responsible is not meant to diminish a participant's responsibility in their charges. However, failing to contextualize Gladue factors within both the past and present Indigenous circumstances does sidestep the state's continued role in producing harm. As indicated by the Gladue factors listed on the right side of the brochure, this trauma needs care (like the guidance of Elders, treatment, ceremony, culture, family values, language, etc.). Further, the care ought to be chosen by the participant. The brochure's initiative could improve by telling a more fulsome story that describes the personal experience and providing information beyond historical intergenerational trauma to highlight that the criminal justice system is mechanized by ongoing settler colonialism.

In another BearPaw resource, Robyn Scott of Native Counselling Services of Alberta succinctly brings forth the essence of Gladue: "Aboriginal people are in the system for a reason,

and the Gladue reports and the Gladue decisions gave the courts the information of why they [participants] were in the system, how they got there in the first place" (Gladue Pre-Sentence Report Video 2011, 00:43-00:54). In other words, the spirit of *R. v. Gladue* [1999] was supposed to stop the cycle of systemic racism perpetuated by the state to marginalize and disproportionately imprison Indigenous peoples. Instead, the wrong state rhetoric (that settler colonialism is no longer happening) has influenced *R. v. Gladue* [1999] and has gone on to bleed out this error into ensuing Gladue materials.

Situating colonial harm only in the past is unethical because it is a partial truth masquerading as 'universal.' The impacts of settler colonization trigger old trauma and create new trauma injuries to Indigenous people and their communities daily. At the same time, we see little tangible responsibility from the state and its justice system. Anishinaabe Justice Jessica Wolfe says, "There is widespread racism to Indigenous people in the criminal justice system" (Canadian Institute for the Administration of Justice 2021, February 17). Brian R. Pfefferle (2008) explains that this is primarily due to the "cultural differences between Aboriginal and non-Aboriginal peoples." However, the trauma can be seen today in the ongoing complexities of colonial-produced discrimination, racism, enforced poverty, under/over-policing, and hyper-incarceration experienced by Indigenous folks. In this thesis, the groundwork of reviewing *R. v. Gladue*'s [1999] broadly defined and historical framing of Indigenous circumstances (trauma) shows how Gladue scholarship and grey literature mirror the state's underlying mistake of putting trauma solely in the past. My analysis of the language used in Gladue materials confirms a systemic acceptance of the state's refusal to fully admit its role in (re)producing Gladue factors (aka Indigenous trauma), thereby off-loading responsibility onto participants.

In the next chapter, I illustrate how the justice system, specifically Gladue reporting processes, are settler-colonial instruments that can actually (re)construct traumatic experiences for

participants and their communities. To address this issue, I consider how Gladue materials discuss Indigenous trauma and what support and care are available to participants in both the private and public phases of Gladue reporting. Through Million's (2013) trauma theory, I consider the ethical implications within these two phases to promote using relational care in language within Gladue and the justice discourse to reduce the unfair stereotyping and stigmatization of Gladue participants and their communities.

CHAPTER THREE: Ethical Complexities in Re-Storying Indigenous Trauma: The Private Process of Writing Gladue Reports and the Presentation of Gladue Reports to Public Courts

Justice seems to have many faces
It does not want to play if my skin is not the right hue,
Or correct the wrong we long for,
Action hanging off-balance
Justice is like an open field
We observe, but are afraid to approach.
We have been burned before
Hence the broken stride
And the lingering doubt
We often hide

Justice may want to play
If we have an open smile
And offer the hand of communication
To make it worthwhile

Justice has to make me see
Hear, feel.
Then I will know the truth is like a toy
To be enjoyed or broken

- Rita Joe[23]

The criminal justice system, particularly the private writing process and the public presentation of Gladue reports as tools of settler colonialism, can (re)produce trauma for Indigenous people and their communities. I forward this argument via Dian Million's (2013) theoretical perspective on Indigenous trauma, which recognizes the ongoing trauma of settler colonialism. This chapter's analysis distinguishes between two phases of Gladue reporting: private and public. In Phase I: Private, I consider the ethical implications within the pre-trial private process of creating a Gladue report. In Phase II: Public, my analysis examines the ethical issues that arise from presenting Gladue reports to public courts.

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[23] This poem was published in 1991 in *Lnu and Indians We're Called*. I quoted it here from Joe, Rita, and Lynn Henry. 2011. *Song of Rita Joe: Autobiography of a Mi'kmaq Poet*. Wreck Cove, Cape Breton, Nova Scotia: Brenton Books, 117-118.

I begin "Phase I: Private" through Million's (2013) theory by reviewing what Gladue materials say about Indigenous trauma. This review is distinct from the last section[24] in its focus on what Gladue materials reveal about the ethical complexities in re-storying Indigenous trauma, specifically during the phase of the private processes of writing Gladue reports[25]. My analysis finds insufficient ethical consideration to avoid provoking felt trauma in Gladue participants (and their report writers) during this private phase of report composition. On top of this problem, my analysis exhibits that although there are Gladue materials that do recognize that trauma is (re)produced during the private process of writing and may call for more support and 'aftercare[26],' Gladue reporting remains characterized by general negligence in attending to the trauma it evokes.

In "Phase II: Public," I examine what little Gladue materials say about the added ethical implications of presenting Gladue reports to public courts. Million's (2013) trauma theory illuminates how settler colonialism's habit of (re)constructing Indigenous pain narratives for the public often presents Indigenous people as 'damaged' rather than focusing on the terrible damage perpetrated by the settler colonial state. Million's (2013) theory is concerned with how Indigenous testimony is publicly staged and explicitly represented within human rights and power relations, for example, during the truth-telling forums of the Truth and Reconciliation Commission of Canada (TRC). Thus, the context of Million's theory differs greatly from Gladue reporting. However, her work offers a broad theoretical framework that remains useful to my consideration of the public

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[24] Chapter Two of this project critiqued the SCC's use of language in *R. v. Gladue* [1999] and how that language flowed into Gladue materials to maintain the sidestepping of state responsibility and situate colonial harms that produce Indigenous trauma solely in the past.

[25] This private process of writing a Gladue report happens before the sentencing trial. I refer to this as the 'private' process of Gladue reporting because it takes place during the pre-trial private phase of writing Gladue stories (through a series of participant interviews by a Gladue writer) before the report is presented to public courts.

[26] Note: Several Gladue materials use the term 'aftercare' regarding support for participants, their plan of care, and the position of an Aftercare Worker (Ralston 2020; Barkaskas et al. 2019; Legal Services Society of British Columbia 2018; Clark 2016; Department of Justice 2016; Flaminio 2013; Legal Services Society of British Columbia 2013; Parkes et al. 2012).

presentation of Gladue reports. I discuss Gladue reports as 'public testimony' to highlight how they can reinforce and create negative narratives through public submission in open courts and potentially further stereotypes through media translations. When this happens in the media, public conceptions are falsely informed and influenced, perpetuating the harmful treatment of Indigenous peoples and their communities. However, we are aided in unsettling one-sided dominant narratives that create barriers to Indigenous justice by weaving these considerations (in Phase I: Private and Phase II: Public) about Gladue reporting through a lens of Indigenous trauma theory and scholarship.

Finally, this chapter addresses these above-stated issues by looking at how relational care in the language choices made within Gladue and criminal justice discourses can lower the risk of participant (re)traumatization, stereotyping, and stigmatizing Indigenous people and their communities.

Phase I: Private

Review of Gladue Work on Reporting and Trauma

Most Gladue work has yet to fully consider the ethical impacts of Gladue reporting. The private process of creating a report involves participant agreement to undergo a series of interviews conducted by a Gladue writer. The writer then re-stories the life experiences that may have brought the person before the court and offers customized options for sentencing. This process has immeasurable ways that trauma can be produced or reproduced: re-storying a life in this context often involves digging up complex and raw information, whether by the participant's own account or by opening themselves up to having others speak within their report (e.g., community interviewees). Additionally, reporting processes pose a risk for Gladue writers to experience vicarious trauma (Ralston 2020). Yet, for those few Gladue materials that have begun to note the dangers of provoking felt trauma (both in the private process of creating a Gladue report and its presentation in public court), an analysis of the ethical implications remains in its infancy.

Trauma is complicated. I want to reiterate that I make no claims of knowing, assuming, or predicting that all Gladue participants experience trauma in the Gladue reporting process; what might feel unsafe for one person may be an area of comfort for another. However, with the guidance of Dian Million's (2013) trauma (felt) theory, this chapter speaks to the growing body of Gladue scholarship and related grey literature to unpack how Indigenous trauma is talked about and what care and support are made available to those telling their story through the criminal justice system. Although perspectives within Indigenous trauma theory do not directly address Gladue reporting as the legal and government materials I reviewed do (McIvor and Oag 2019; Roach 2014), Million's work helps me to understand the critical concern of unnecessarily eliciting and exposing Indigenous felt trauma for state-sanctioned purposes. Million's theory instead counters that

empowering narratives that expand community knowledge and ethical relationality can be reframed as felt experiences (2013; 2008). Indeed, ethical issues are always at play when people are asked to be vulnerable and expose or witness pain and trauma. I argue this is markedly so for Gladue participants, who are under pressure and promise that creating a report can result in alternatives to prison.

What Gladue Materials Say About Trauma During the Private Process of Creating a Gladue Report

Existing Gladue work largely fails to centre on how the private process of creating a report may provoke participants' trauma. Instead, the focus of the existing Gladue material is on the accountability of the individual participant (Department of Justice 2017; 2016; 2013; Legal Services Society of British Columbia 2018; Roach 2014; 2009; Parkes et al. 2012; Istvanffy 2011; Pfefferle 2006-2008). To evidence that deeper ethical consideration is lacking about Gladue's reporting potential to (re)traumatize, I now consider where Gladue work specifically talks about Indigenous trauma. Within these materials, I found that 'trauma' is represented in Gladue work when participants are asked to answer sensitive interview questions, revisit the past, and have their responses re-storied and read back to them. Gladue work discusses trauma in two main areas: **1)** in the private process of creating Gladue reports, during which interviews are often purportedly difficult and emotional, not only for participants but for writers too[27]; and **2)** in the provision of support for participants during this private phase of report writing. Below, I offer examples of how

[27] I also forward that similar difficulties or emotions can be experienced by other interviewees (e.g., family members, victims, victims' family, Elders, community members, etc.) who may be interviewed during the private process of creating a Gladue report for a participant. However, my research thus far has not found any discussion about the experiences of these stakeholders mentioned above in Gladue materials, save for one exception in the *Gladue Report Disbursement: Final Evaluation Report*, where concern for the inadequate representation of victims in reporting was articulated (Legal Services Society of British Columbia 2013, 32).

Gladue work missteps by not making a fuller consideration of Indigenous trauma injury in these two areas.

1) How Gladue Work Discusses Trauma During the Private Process of Creating Reports (Interviews)

The risk of (re)provoking trauma in participants (and their writers) during the private process of creating a Gladue report is very high. Gladue's work clarifies that the trust between participant and writer is a cause for concern in the private phase of Gladue report writing. However, this concern may need to be more ethical and relational. For instance, the *Guide for Lawyers Working with Indigenous Peoples* (2018) states that "it is important to understand that trust and cadence play a key role in the initial contact with a client…to take a few minutes to understand which community or Nation a client is from, which will help gain trust...[and] also be cautious of opening old wounds of intergenerational and systemic traumas and the need for closure after traumatic or sensitive questioning" (Advocates' Society, Indigenous Bar Association, and Law Society of Ontario, 45). Although legal workers must be aware of issues surrounding trauma and the need for trust, this guide overlooks how understanding and developing trust are needed far beyond the "initial contact" and must be earned throughout all interactions. Trust relations cannot be nurtured and formed overnight. Further, since the legal worker is in a more powerful position than the Gladue participant, they cannot say if or when trust is established; instead, the participant must feel and decide to trust.

Moreover, I would argue that legal workers must take longer than "a few minutes" to familiarize themselves with a person's community connections and history, especially if they want to be trusted. Becoming familiar with someone is a relational exchange based on ongoing reciprocal respect. I also find the guide's wording and context of caution to "opening old wounds of

intergenerational and systemic traumas" concerning - as though the individual in this situation is not actively traumatized by the criminal justice system. Further, this preliminary phase of informing someone of their Gladue rights and the option of reporting should not involve "traumatic or sensitive questioning" whatsoever to avoid eliciting a new trauma response. Former judge and professor Turpel-Lafond (1999) draws attention to Gladue participants' "reluctance to share their experiences" (39). She states, "Many Aboriginal people who have experienced racism, poverty, discrimination, addictions and family breakdown may not be at a point in their life where they are willing to identify these issues, much less discuss them with strangers" (39). She goes on to explain that individuals may choose to relinquish their right to a Gladue report to protect their privacy (or the privacy of others), adding that potential participants' distrust may also have them ponder why they would be asked to provide such personal details and whether the justice system can use these details against them (Turpel-Lafond 1999).

My review of Gladue materials also revealed a total lack of information about how Gladue reporting programs prepare potential participants to engage in the process. This shortcoming raises concerns about appropriate consent and caretaking for persons who choose to participate. Should an Indigenous person decide to go through with having a report written, *The Gladue Principles: A Guide to the Jurisprudence* advises report writers to "be considerate when asking questions and mindful of the fact that this may be the first time either the subject or their collaterals are sharing some of this information. Not everyone is willing to undergo the same level of investigation and introspection into their personal, familial, and community circumstances. Even if your interviewees willingly respond to all your questions, they can be inadvertently retraumatized by some of these inquiries" (Ralston 2021, 15-16). The *Gladue Awareness Project* found that it "is often a highly emotional experience for these individuals [Indigenous participants] to hear their own Gladue report read back to them at the end of the interviewing process" (Ralston 2020, 67). The

Honourable Justice Jessica Wolfe advises legal workers and Gladue writers not to put their clients through unnecessary trauma. She explains that this is especially important since participants are often living in difficult prison conditions, and it is vital that Gladue reporting does not contribute to further trauma injury (Canadian Institute for the Administration of Justice 2021, February 17).

However, with that said, Justice Wolfe recognizes that Gladue reports can be either healing or (re)traumatizing (Canadian Institute for the Administration of Justice 2021, February 17). Others are also focusing on the "healing" potential of Gladue reports (International Centre for Criminal Law Reform and Criminal Justice Policy 2022; Legal Aid BC 2022; Walker 2020, February 2; Niman 2018; Boudakian 2015). Unfortunately, such materials reproduce Gladue logics of individual healing rather than focusing on relational caretaking or situating the participant on a broader web of relations more appropriate to Indigenous community contexts. For example, *The Gladue Principles: A Guide to Jurisprudence* states, "Gladue reports are designed to be 'restorative in nature,' providing the individual being sentenced with an opportunity for introspection and critical contemplation of their own personal history…" (Ralston 2021, 221). However, it seems the experience of trauma and the need for healing during and after the private process of writing a Gladue story is impacting more than just the participants.

Writers are experiencing trauma. The Gladue works that have expressed concerns about (re)traumatizing participants have noted that reporting processes have also provoked past or vicarious traumatic emotional effects on Gladue writers (Barkaskas et al. 2019; British Columbia Justice Summit Steering Committee 2018; Legal Services Society of British Columbia 2013, 61-62). Gladue writers face the challenges of their work but are also often confronted with the residual effects of re-storying participant pain and requiring care themselves. The Legal Services Society of British Columbia (2013) revealed that "Gladue interviews are such that they unearth stories of trauma, violence, and sadness. For many writers who have also experienced or witnessed similar

stories, this can be emotional and may trigger past trauma or vicarious trauma" (61-62). One writer shared that it is "important that report writers don't forget about themselves. You are taking this information in, and it is horrific. There is a reason these people are where they are. Self-care is very important. As an Aboriginal person, I have experienced this and studied it. I internalize it. There are nights where I don't sleep and can't find a way to put the words onto paper" (S.T., Report writer, Legal Services Society of British Columbia 2013, 61). Another writer quit her job of creating Gladue reports altogether, stating that "she felt there was not enough emphasis or support for the emotional effects on the writer" (Legal Services Society of British Columbia 2013, 61). Since pain is transmitted during interviews and re-storying beyond the participant, I want to underscore the relational oversight of the justice system's (and Gladue') narrow focus on healing the 'individual.'

With Gladue scholarship and literature's acknowledgement that Gladue reporting can produce and reproduce trauma for participants and writers, the prospect offered by relational caretaking could expand beyond the 'healing' of participants to all impacted stakeholders, including writers. However, besides Gladue work consistently recommending more support, training, resources, and funding for new or improved Gladue report programming (Rudin 2019; 2005b), little is done in Gladue work to call for more meaningful ethical considerations within the legal system and its Gladue processes. For now, the acknowledgment of trauma and what to do in reporting seems more bureaucratic than relational. It matters now to examine how Gladue work talks about caring for trauma because it will uncover the potential ethical concerns in this private phase of Gladue reporting processes and underscore the existing barriers that participants face in accessing trauma support.

2) How Gladue Work Discusses Caretaking and Support for Trauma During the Private Phase of Gladue Reporting

This section summarizes how Gladue work discusses caretaking and support for trauma for those involved in the private process of creating a Gladue story. There are numerous barriers to ensuring that participants get the support they need for preventing trauma and ethically caring for trauma responses should they arise. For example, Gladue work has reported that in addition to a lack of suitable resources (Guyot 2018; Department of Justice 2017), the legal system remains limited on what participants may even want or need.

In the absence of participant voices in Gladue scholarship and grey literature, my upcoming Ph.D. project will focus solely on the perspectives of former Gladue participants and include their recommendations for improved relational caretaking and support. It is hard to discern what type of support participants would find helpful in addressing their trauma. Therefore, I am relying on what little Gladue writers have disclosed regarding trauma and care to examine what Gladue materials reveal about the role of writers in offering support to participants. In the absence of participant voices, my review intends to give us an idea of what participants might go through in having their lives re-storied through Gladue to discern whether they are getting the care and support they require.

In my review of the literature, I am still looking for a Gladue program that is doing a robust job of attending to relational caretaking and the support needs of participants during Gladue report writing and interviews, as well as post-trial. Many materials fail to discuss trauma or care. Those who do consider care explain that while some community justice programs are in place to assist Indigenous people with navigating the justice system and Gladue processes (specifically in Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Ontario,

Prince Edward Island, Saskatchewan, and the Yukon),[28] these programs are dealing with ongoing challenges (Lafferty 2020; Barkaskas et al. 2019; Legal Services Society of British Columbia 2013), including communication and sharing information across all jurisdictions. Such challenges are evident in the Crown's and the defence's lack of awareness that some Gladue programs exist (Department of Justice 2013). One legal representative reported that on top of keeping up with what Gladue programming is available to participants, there is also a need to attend post-trial aftercare programming (Department of Justice 2013), the literature on which is similarly scant. According to Sebastien April and Mylene Magrinelli Orsi of the Research and Statistics Division of the Department of Justice Canada, information sharing about programs due to ethical issues surrounding privacy and confidentiality remains inadequate (Department of Justice 2013). However, there is no reason why communicating the availability of Gladue programs across jurisdictions should infringe on privacy.

Most legal and government experts recommend more aftercare supports (Ralston 2020; Department of Justice 2013) following a report's completion but rarely discuss relationality or the need to implement care at the outset of Gladue reporting's private writing processes (and offered frequently throughout) for participants and writers.[29] Overall, they conclude that support for participants and their writers is insufficient (Legal Services Society of British Columbia 2013), highlighting a lack of "resources going to community-based Aboriginal justice initiatives, healing programs, and other community supports necessary to achieve success for Aboriginal people in the

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[28] The Department of Justice (2013) reported that New Brunswick and Nunavut representatives could not confirm any formal programming that explicitly focuses on helping Indigenous individuals throughout legal processes (20). However, I have heard from some Mi'kmaq community members that a plan is in the works for new programming regarding Gladue and family law in New Brunswick as of 2021.

[29] Ralston (2020) explains that "it is worth noting that Gladue programming in Nova Scotia and Prince Edward Island links Gladue report recommendations with aftercare as well, and Alberta is developing post-Gladue navigators within Indigenous communities to address this need" (69).

community," and not enough Gladue liaison workers to help with the preparation of reports or attending court (Parkes et al. 2012, 2 and 31).

While writers on the outside (i.e., non-incarcerated) might have more support options than participants, more is needed (Legal Services Society of British Columbia 2013). Specifically, the Legal Services Society of British Columbia states that "more emphasis could be placed on supporting writers emotionally to deal with the trauma and stress related to this work" (2013, 64). However, it is even harder for those on the inside (i.e., imprisoned), who have fewer care options available, and they are often forgotten. For example, one writer explained that "seeing people [Gladue participants] put their hearts on the line and then not having the follow-up is too much" (E.B., 62). Although support is never guaranteed for individuals when they need it most, care is also unlikely to come from a worker trained explicitly in trauma care or knowledgeable about a participant's community and cultural practices.

While it is undoubtedly hard to be proactive in preventing trauma responses during Gladue reporting (especially because prison environments favour reactive responses), more (and better) caretaking and support are needed. The very nature of what Gladue sets out to re-story undoubtedly risks conjuring up pain and trauma in some shape or form (Legal Services Society of British Columbia 2018). For instance, the Legal Services Society of British Columbia reported that participants might appear safe and emotionally stable during interviewing but are often left "feeling raw and vulnerable" (2013, 62). Gladue writers particularly worry about retraumatizing participants who are incarcerated and putting them at risk:

> The interviews are very hard. They are very emotional. Especially if a person is in custody. I've had guys say, 'I can't talk about that because I can't cry here.' Sometimes I wonder if we are retraumatizing them. We need to have resources available and continuous training for how to take different approaches to interviewing. They need someone to debrief with after the interview. (D.G., report writer, 62)

With regards to treating Indigenous trauma, some Gladue scholars claim that "the accused is never without help in contacting those services [outlined in a Gladue report treatment plan] through the Gladue Aftercare Worker" (Parkes et al. 2012, 30).[30] Some practitioners have suggested that the opposite is true, claiming that Gladue interviews "triggered a bunch of stuff and there was no support inside and nowhere for [the participant] to go...I felt very concerned about him not having support" (E.V., report writer, Legal Services Society of British Columbia 2013, 62). It is troubling that writers are expressing anxiety over participants (and other interviewees) not getting the support they require, especially when most of Gladue's grey literature and writing guides emphasize that it is up to the writers themselves to inform their clients of what supports are available and how to contact them during the private process of report creation (Legal Services Society of British Columbia 2018, 28; BearPaw Legal Education 2014, 9; Istvanffy 2011, Appendix 2B - 1 and 2).

Where Gladue processes are more established, most guidelines advise Gladue writers to take notice when a participant is experiencing trauma and instruct them to "stop the interview immediately. Have a counsellor's contact information ready to give to your subject…[or] notify correctional staff immediately to get help from support services in the facility" (Legal Services Society of British Columbia 2018, 28). While I understand that stopping the interview may mean that writers should stop the specific dialogue that seems particularly difficult for the participant, it also seems relationally unethical just to STOP and leave before the arrival of support. Still, I am not sure how realistic Parkes et al.'s (2012) statement that "the accused is never without help" and Legal Services Society of British Columbia's (2018) directive for writers to get their clients

[30] I am puzzled by why someone who has been sentenced and is following a treatment plan is still referred to as 'the accused.'

"immediate help" really are. A discussion I had with a Correctional Officer further substantiates this problem:

> Support is not always available and if it is, it is usually a Chaplain who also works as the contact for Elders when (or if) there is one on contract. Help isn't usually available immediately due to staffing issues and such support staff work on shifts, unit rotations, and not every day. So, if a guy comes out of a Gladue interview and needs help, he's got to wait until the Chaplain comes to his specific unit or has to fill out a form to request counselling. Plus, there's no guarantee that the spiritual supports are trained in trauma-informed counselling; I have no idea if they are. (Anonymous pers. comm., March 16, 2021)

Highlighting the problem of accessing help for incarcerated men, another Gladue writer laments, "I never feel comfortable just leaving because I know what it is like for them inside, they have to look tough and are not allowed to cry, they can't show weakness. So, I just opened a can of worms, and I'm gonna throw him to the wolves?" (M.C., Report writer, Legal Services Society of British Columbia 2013, 63).[31] For participants experiencing trauma, the Legal Services Society of British Columbia (2013) says that the "nature of the Gladue interview topics are such that they open old emotional wounds," and writers have been sending the message that they are "worried about clients interviewed in custody, as the setting is harsh and vulnerability can be dangerous" (62).

Today, most territorial, and provincial jurisdictions have failed to implement any formal or consistent Gladue writing processes, including appropriate support to participants and writers during and after telling a Gladue life story (Department of Justice 2021; 2017; 2013; Barkaskas et al. 2019; Bellrichard 2019). A recent report finalized through the *Gladue Awareness Project* (2020) observes a continued (and total) "absence of any standardized oversight or guidance for writers"

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[31] Scholar and manager at *nātawihowin and mamawiikikayaahk Research Networks* (Saskatchewan Network Environments for Indigenous Health Research), Allison Piché (2015), notes the double-sided danger of toxic masculinity within the prison context, where posturing and asserting a veneer of power is often perceived as a mechanism of survival necessary for those imprisoned; yet, at the same time, such toxic representations form a particularly hostile environment for those dealing with trauma (203).

(Ralston 2020, 67). However, despite legitimate concerns over participant (re)traumatization and safety (Alberta Justice and Solicitor General 2016; Legal Services Society of British Columbia 2013), participants and their writers have been facing increasing pressure to produce more detailed and complex reports to meet the demands of judges (Ralston 2020; Rudin 2009, 454). Report quality and continuity are critiqued simultaneously with concern from the judicial system about insufficient details (Ralston 2020, 65-66). These critiques add to the escalating tension between creating more detailed and intimate Gladue stories and the role of writers in offering support to participants. At the same time, writers are warned against taking an advocacy approach and advised to maintain a 'generalized' perspective (Ralston 2021, 244; Legal Services of BC 2013, 4), while also being told that reports should be case-specific yet impartial.

In tension with this demand for neutrality, however, is the preference for writers to have lived familiarity with a participant's community to "be able to provide a more culturally-specific approach" (Ralston 2020, 4). Judicial preference for Gladue writers to have intimate knowledge or connection to a Gladue participant's specific community has the justice system actively recruiting more Indigenous writers (Rudin, Canadian Institute for the Administration of Justice 2021, February 17; Ralston 2020; Tranter 2020). Writers have been called "empathic peers"[32] yet given contradictory instructions to "stay neutral" while "developing a connection and building a relationship with the [participant]" (BearPaw Legal Education 2014, 8 and 9).

I agree that a report must fully reflect a participant's voice (and other interviewees) and not the writer's opinions. However, I do not see how experiencing or hearing about trauma (or its long-lasting consequences) can be neutral for anyone. I imagine 'neutrality' is incredibly unrealistic for

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[32] Source: R. v. Sand, 2019 SKQB 18, para 47, citing Justice Melvin Green, "The Challenge of Gladue Courts" (2012), 89 Criminal Reports (6th), 363.

writers if they are culturally or experientially situated similarly to the participants they work with. This improbability gets even more augmented in the context of Gladue. Given the disproportionate rates of Indigenous imprisonment, it is clear that "incarceration is not a neutral intervention" (Rudin 2009, 448). Accordingly, writers are seeking clarification and guidance. For example, the Legal Services Society of British Columbia (2013) reported that "most writers indicated an interest in more training and mentoring to address the challenges around trauma, aftercare for clients, access to documents and other resources to produce objective and well-substantiated reports" (4).

Judges continue to debate whether a writer and a Gladue report support participants or themselves in making sentencing decisions. While *R. v. Gladue* [1999] was clear that judges needed more details about participants, it came up short on how exactly these details would be communicated to the court (Rudin 2009, 454). Justice Jessica Wolfe recommends avoiding putting participants through any additional pain, explaining that not only does this hold the potential for settler-voyeurism and exploitation, but also that trauma is not helpful to a judge (Canadian Institute for the Administration of Justice 2021, February 17). Instead, she argues that, as "caretakers of these [Gladue] stories," what judges are looking for is report recommendations that bring solutions (Wolfe, Canadian Institute for the Administration of Justice 2021, February 17). From a different angle, Justice Melvyn Green sees writers and reports as providing participants with the opportunity to "critically contemplate his or her personal history and situate it in the constellation of family, land and ancestry that informs identity and worth" (Department of Justice 2017, 27; Green 2012, 9). However, my concern for writers builds as I contemplate how they attempt to balance the conflicting objectives of remaining 'neutral' while building trust and relationality and the additional challenge of locating suitable programs for participants.

The responsibility for finding programs that offer culturally relevant sentencing options has fallen on writers' shoulders. While *R. v. Gladue* [1999] states that judges are "to craft a sentence

that takes into account the principles of restorative justice and the needs of the parties involved" (Department of Justice 2021; 2017, 12; *R. v. Gladue* [1999], para 93), Gladue writers are tasked with the practicalities of researching and planning options for judges to choose from. Despite ongoing requests for increased state funding for "community sanctions that will provide realistic alternatives to imprisonment" (Truth and Reconciliation Commission of Canada 2015, Call to Action #31), there are not enough care programs (CBC News 2022; Metcalfe 2018). For writers, this shortage of support programs presents a significant obstacle to creating tenable reports - reports where the options presented are well suited to support the participant and will also be considered seriously by judges. Even where programs exist, Gladue writers have disclosed "problems with residential treatment centres that often would not accept [people] or make arrangements until after passing of sentence" (Parkes et al. 2012, 31), despite the judicial expectation that the plan described in the report has been secured before sentencing and can be executed to the court's specification after sentencing (Parkes et al. 2012).

However, despite the challenges faced by Gladue writers and the shortage of available sentencing alternatives for them to give as options[33], Gladue scholars and the Supreme Court of Canada still claim that Gladue reporting is an "indispensable" service for all Indigenous people who encounter the criminal justice system (Guyot 2018; Cree Department of Justice and Correctional Services 2015). I am inclined to believe that this cannot possibly be true for every participant, not only because the state's incarceration of Indigenous people continues to escalate but because reports are a response operating out of a settler-colonial legal system entangled in rigid

[33] Rudin says that the SSC claimed, "judges needed more information about particular Aboriginal offenders before the court..." (2009, 454), yet some participants say that Gladue reports sometimes go unread or ignored by judges (Edwards 2017). Such inconsistencies put writers at greater risk of being held accountable for poor reporting when the problem may be the state and justice system's overall lack of support and neglect in funding viable programs.

processes that do not account for the time and space needed for storytelling, listening, and healing. Confirming my thinking, I came across one short interview with a Gladue participant (referenced as Participant Z) who, when asked about their experience with being the 'subject' of a Gladue report, said:

> It didn't serve me well… that's what I'm saying… it didn't serve me well [....] We need to have people spending time and you know realizing that this person's story is sacred, it's their life, you know and being a part of it, as little as that might be, listening to them, helping them on their journey, making those recommendations to ensure that they get the help they need [....] The healing journey that we talk about…it can be somewhat of an obstacle [....] I have come to learn, though, that [a checklist] is not what a Gladue report is. It is supposed to touch on these on these different aspects. But, that didn't happen for me though. (Participant Z, 2015)[34]

The private interviewing and writing process can conjure difficult feelings for participants and writers. However, caretaking and support are reportedly unavailable when needed most, and program options need to be improved. Above, Participant Z concisely articulates how time, listening, connection, trust, and respect for a person and their story are needed to make the process of Gladue reporting an actual 'healing journey.' In short, Participant Z has described relational caretaking. My examination of Gladue materials has revealed that the private phase of creating Gladue stories can, in fact, (re)produce trauma that requires deeper ethical consideration and support. Such consideration and support mean honouring a person's culture, meeting them where they are, and providing a Gladue plan that addresses their needs. The following section will review Gladue work to understand better how the criminal justice system's potential for (re)producing trauma also holds ethical implications when Gladue stories are told to the public.

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[34] Source for Participant Z: (Boudakian 2015, 55).

Phase II: Public

The acted role of the Indian,
A character assumed wrong.
The continuous misinterpretations
Of a life
That is hurting

Echoes climb,
Distorted
Endlessly by repeated lies.
An undertow of current time.

Will it ever die?
Loosen the bond.
Undo?
Will not this relating ease

So that we may rest,
Performance over
And unravel the mistake––
Stories told
Of Indians and white men.[35]

Implications of Presenting Gladue Reports in Public Courts

Presenting Gladue reports in public courts is rife with ethical implications. The first segment of this analysis looks at what Dian Million's trauma theory has to say about public testimony. Million focuses on the wide-ranging impacts of historical trauma that occupy the public imagination (i.e., the TRC forums where residential school survivors shared their experiences). Although her work does not speak directly to Gladue, her concern over how the state compels Indigenous people(s) to tell their stories provides a broad framework to contemplate the ethics of Gladue as public testimony. I apply Million's ideas to consider what Gladue materials say about

[35] This poem is from Joe, Rita. 2017. *We Are the Dreamers*. Edited by Ronald Caplan. 2017th, 1999th ed. Canada: Brenton Books, 63.

the ethical impacts of reproducing Indigenous pain narratives as 'Gladue reports' for the public to witness. This application of Million's theory is helpful to see how putting Gladue reports on display in courts can lead to and reinforce wrongful stereotyping and stigmatization within the media and thus shape public perceptions.[36] The consequence is the repeated mistreatment of Indigenous people and their communities. However, Million's theory also suggests that public testimony holds the potential to be relational and empowering. Her ideas help carve out an opportunity for us to think about what can remedy Gladue's ethical issues.

Contemplating Gladue as Public Testimony Through Million's Theory

The bulk of Gladue work lacks meaningful consideration about the consequences of making Indigenous trauma available to public audiences. Because Gladue reporting asks Indigenous people to expose trauma publicly (Bellrichard 2020; Roach 2014; Parkes et al. 2012; Kirmayer et al. 2011; Andersson 2008), Million's critique of public testimony helps in the consideration of Gladue's role in constructing Indigenous trauma narratives and their public consumption.

In her exploration of "what 'power' is in our times" (Million 2013, 3), Million discusses how trauma became the underlying characterization and sentiment surrounding Indigenous peoples in public perception. Million shows how colonial othering in Canada had Indigenous peoples seeking justice for state abuses through International Human Rights (2013, 28). With the world's

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[36] Scholars and Gladue report writers Jane Dickson and Michelle Stewart (2022) provide evidence that some examinations of Gladue factors' have the capacity to reinscribe stereotypes that could hinder Gladue's objectives to reduce Indigenous incarceration rates (n.p.). As an example, they point to Gladue factors listed in a 2006 United Kingdom study by scholars David Denney, Tom Ellis, and Ravinder Barn that reviewed Canadian pre-sentence reports (PSRs) that exhibited racist characterizations of Indigenous participants: The UK study found PSRs naming an individual's use of substances, a "lack of emotional closeness to parents and siblings'; 'frustration'; and 'unhappiness'"...[and] "the supposed inability of Aboriginal people to control their anger" (10) as "examples of negative subjective contextuali[z]ation of race" (11) (Denney, Ellis, and Barn 2006, 10-11). In this way, what reports say about supposed Gladue factors can be attributed to baseless racialized stereotyping and such misrepresentations can be destructively translated into and by the media (Nagy, Cesaroni, and Douai 2022).

attention, tens of thousands of residential school survivors began to come forward and confront their oppressors, and the colonial state and its churches were forced to reckon financially with the atrocities they committed against Indigenous peoples (Crown-Indigenous Relations and Northern Affairs 2019; Million 2013). Canada scrambled to reposition its reputation by establishing truth tribunals. Million explains that mounting abuse cases became the point of demand for forming The Truth and Reconciliation Commission of Canada (TRC), which set the stage to have the lived experiences of Indigenous survivors "substantiated by Canada's own judicial system" (2013, 5). Under this testimonial framework, "human rights narratives…force its participants to draw upon the past to adjudicate present grievances. Trauma requires all those positioned by its narratives to return to the site of the crime to legitimate their claims" (Million 2008, 268).

Million (2008) says the consequence of such a framework for testimony is that Indigenous people have been 'positioned' to try and take back "their power by appealing to the moral discourse of the perpetrator" (Million 2008, 268). Her contention with this 'appeal' process is that it comes from the same political arrangement that turned Indigenous people(s) into "colonized subject[s]" (Million 2013, 6). She explains that the process makes Indigenous folks 'objects' of trauma within state narratives (Million 2013). Indigenous peoples, as subjects of 'historical' violence, have been asked to come forward as subjects of 'truth and reconciliation'[37] (Million 2013, 3) and reckon with the depth of their injuries:

> Indigenous peoples embraced their grand-parents', their parents', and their own residential school experiences as a *wound*, calling Canada out as the perpetrator of abuse. These cases coupled with ongoing national reports highlighting intense disparities in health and well-being between Indigenous and mainstream Canadians sparked a number of social and personal health initiatives that are largely known as healing. Healing highlights Canada's historical legacy of colonization as it became

[37] For example, The *United Nations Declaration on the Rights of Indigenous Peoples* and the largest class action lawsuit in Canada culminated in the *Indian Residential Schools Settlement Agreement,* which led to the forming of The Truth and Reconciliation Commission of Canada.

> linked to poor health, both physical and mental, substance abuse, suicide risk, and early death, understood as a holistic, tightly intertwined effect. The colonized subject became a trauma victim. (Million 2013, 5-6)

The justice system's fixation with needing public testimony to substantiate its narrative of 'reconciliation' has meant that Indigenous trauma is its principal feature. Narratives that 'justice is addressing colonial harms' (like Gladue) then create the need for 'Indigenous healing' and the state justification to further involve itself in the healing process. State involvement means that Indigenous 'healing' will fall under the state's terms (as is the design of the colonial project). These terms are what Million (2013) calls a "trauma economy" (8). She presents the financial and political usefulness of Indigenous 'pain' and 'healing' as capital within state-led public forums that assume a human rights narrative. The economic benefit for the state thus makes reconciliation "the only show in town" (76). She warns Indigenous folks that this framework is "where the testimony of our lived experiences becomes currency" (77).

Million's theory provides a broad but compelling framework to consider how Gladue reports present Indigenous trauma to the public. Million's theory has likewise sparked my thinking about how *R. v. Gladue*'s [1999] recognition of colonial harm and the massive inequities within the justice system have the courts similarly asking for pain stories as a band-aid for Indigenous mass incarceration. However, as much as Million's concern for whitewashing Indigenous narratives shapes my contemplation of the ethics of telling Gladue stories in public courts, I am also reflecting on her idea that Indigenous 'felt' (or lived) experience (as perhaps Gladue stories are) becomes part of Indigenous community knowledge that does not belong to their oppressors (2013, 57). In this way, Million's theoretical influence helps reinforce my project's backing that Indigenous stories belong to them only and my consideration of the possibilities in Gladue to offer

counter-narratives. Next, I review Gladue scholarship and grey literature to understand how the ethical implications of presenting Gladue reports in public courts are being discussed.

What Gladue Materials Say About Presenting Gladue Reports to Public Courts

Gladue materials speak meagrely of the traumatic impacts of submitting Gladue reports in open court presents. My research thus far has found only a few Gladue-related sources that touch on this subject. For example, Francis T. Lavandier (2019) discusses how participants find reading their reports aloud highly emotional. Ralston (2020) surmises that "this may be in part due to the tendency for Gladue reports to include lengthy verbatim quotes from interviewees" (67). Jonathan Rudin (2022) explains that Gladue reporting is meant to give the court many views and opinions about the participant. Ralston adds to this idea, saying, "When the individual undergoing sentencing hears their own report, these diverse voices and perspectives are brought directly to their attention as well" (2020, 67).

In my first chapter, I flagged Rudin's point that family, community members, and even participants often hear their Gladue story for the first time in public court (Canadian Institute for the Administration of Justice 2021, February 17). Here, I acknowledge the ineffable difficulties that potentially arise for participants when having all the trauma and pain that they have either experienced or caused so rawly exposed in open court. When a pain narrative is heard, it is also felt. Sometimes, a participant hearing what other interviewees have said in their Gladue story is a surprise. Other times, they can guess what is going to be said, and it is just amplified by the cacophony of "verbatim quotes" (Ralston 2020, 67) because Gladue reports can include "many voices and perspectives" (Ralston 2020, 67; Rudin 2019, 109). For participants, these perspectives

"are brought directly to their attention" (Ralston 2020, 67) and broadcast to all court attendees and anyone else who reads the news.

Court attendees, specifically family members, may also hear the participant's story (either new or more fulsomely) for the first time. This witnessing of a Gladue story can potentially have negative and positive ramifications. On the one hand, this scene could risk outing family secrets that the participant or other family members may not be ready to share or want others to know about. Further, recounting such private or sensitive information could result in bleeding out into their communities, extending troublesome and unwanted dynamics. In a different context, Million (2013) adds that Indigenous stories about colonial violence, whether collective or individual, were "hard to 'tell'...[because] they were neither emotionally easy nor communally acceptable…[and] to 'tell' called for a re-evaluation of reservation and reserve beliefs about what was appropriate to say about your own family, your own community" (59). On the other hand, for family members to hear previously unknown details about a Gladue participant's life, even if discomforting, could be constructive for inter-family and inter-community relationships. Some details may draw out empathy and a better understanding of the participant's actions and one another. In either case, there exists a formidable capacity for turning Indigenous trauma into a public spectacle (Baloy 2014), a spectacle counter to what some call the "sacred" nature of Gladue stories (Canadian Association of Social Workers 2018; Vancouver Community College 2018; Marsolais 2016; Cree Nation Government and Department of Justice and Correctional Services 2015).

In an evaluation of the Gladue Courts for Old City Hall in Toronto, Clark (2016) raises the ethical issue of sharing sensitive information in court:

> A related question is whether personal details about an accused individual's background should be raised in court. Information of this type would be consistent with Section 718.2(e) of the Criminal Code, insofar as judges require knowledge of an Aboriginal person's background in order to give proper consideration to disposition. As a member of the defence bar told us, the problem is that individuals

> often do not want the painful details of their life raised in a public forum. Moreover, many accused persons suffer the direct or intergenerational effects of past trauma - most notably residential schooling - and would find open discussion of their problems difficult to endure. In light of this reality, defence counsel who are familiar with Gladue Court and the challenges facing individuals who appear there usually refer in general terms to past trauma when making their submissions and refer the judge to specific pages in the Gladue Report (of which the judge will have a copy). This approach, while providing judges with the kind of information presumably indicated in Section 718.2(e) and in Gladue, offers some protection from additional trauma to particularly vulnerable people in court. Other lawyers, however, continue to raise difficult personal details in court, which is a problem in view of the common presence of other accused and students in the gallery. (Clark 2016, 29)

Clark's (2016) report suggests that the decision of what and how much information is shared rests in the hands of lawyers, and I have yet to find evidence to the contrary.

The issue of sharing sensitive information is further complicated by Gladue reporting's conceptualization of a participant as a 'trauma victim' and a 'criminal who traumatizes.' Assuming this contradiction can over-simplify participants' circumstances, especially given that the idea of Gladue's ability to translate trauma into true catharsis is so often presented within Gladue materials. Even more, this notion that Gladue reporting, and its processes are healing rarely goes unchallenged. In fact, 'Gladue a pathway to healing' has been trending in Gladue scholarship and grey literature (International Centre for Criminal Law Reform and Criminal Justice Policy 2022; Legal Aid BC 2022; Walker 2020; Niman 2018). For example, a report submitted by the *International Centre for Criminal Law Reform and Criminal Justice Policy*[38] espoused the virtues

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[38] Note: Barkaskas et al. (2019) state that "the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) is a member of the United Nations Crime Prevention and Criminal Justice Programme Network Institute; an independent UN-affiliated international research institute based in Vancouver, Canada. Founded in 1991, ICCLR is a joint initiative of the Government of Canada, the University of British Columbia, Simon Fraser University, the International Society for the Reform of Criminal Law, and the Province of British Columbia. It is officially affiliated with the United Nations pursuant to a formal agreement between the Government of Canada and the UN" (I).
Source: https://icclr.org/wp-content/uploads/2020/02/Production-and-Delivery-of-Gladue-Reports-FINAL.pdf?x30145.

of Gladue reporting as "therapeutic," saying how helpful the process is to participants with piecing together the fragments of their history, life experiences, and trauma to identify how these culminate into why they are facing sentencing (Barkaskas et al. 2019, 29-30).

The report further qualifies its argument that Gladue can be healing with commentary from a Gladue writer and a lawyer:

> "It is a bit of a revelation for some individuals to link their personal circumstances to the past and to broader events and factors. It often tends to be a very emotional experience for individuals". A Crown attorney observed that "the benefits of Gladue reports go way beyond the actual contents of the reports. What people do not always realize is that it is not just the final product, but also how for many offenders it is often the first time that they can connect with the court process, connect with their own history, feel that people actually care about them and see them for the first time" (30). (Barkaskas et al. 2019)

Nevertheless, Gladue work does little to tell us about how participants perceive reporting processes and whether they are 'healing.' However, the Legal Services Society of British Columbia (2013) recounted the sentiments of a participant about their experience with the criminal justice system, stating, "the court system doesn't really care about our people. Just another Indian off the street (A.T., Gladue report recipient)" (Legal Services Society of British Columbia 2013, 65). A.T.'s comment shows that Gladue participants receive unwanted attention in and out of court. As Gladue reports and factors are submitted to public courts, they get translated into media, where negative assumptions can deepen Indigenous stigmatization which does not happen by accident (King 2020).

How Gladue Reports Get Translated into Media and Shape Public Perception

Million discusses how the media has increasingly become a site of public persuasion that can condition society to believe stereotypes that allow the state to reassert dominance (2013, 53).

The public presentation of Gladue reports allows media coverage of a Gladue participant's life story. Along with the risk of (re)traumatization, when the media exposes sensitive details, it is crucial to contemplate what discriminatory impacts might exist for the participants, the victims, and, more broadly, their communities (Canadian Institute for the Administration of Justice 2021, February 17; Department of Justice 2021; Ralston 2020, 65; Clark 2016; Lansdowne 2009, 42). Media exposure can shape the public mindset and unfairly add to persistent negative characterizations of Indigenous peoples as "damaged" and "traumatized" despite their strength and resilience (Tuck 2009). Some Gladue materials reveal that reporting contributes to the public's stigmatization and stereotyping of Indigenous people(s) through the media. The news can spark magnified biases in mainstream attitudes. For instance, a Gladue participant recounted, "'…White people, they don't understand the plight of the Native.' He continued to illustrate this point, discussing the public response he observed in a news story to a high-profile case involving Gladue principles: 'Public outcry was terrible. They were calling it a 'get out of jail free card.' That is how uneducated white people are (L.S., Gladue report recipient)" (Legal Services Society of British Columbia 2013, 65). The *Legal Services Society of British Columbia*'s final evaluation report, meant to ensure access to Gladue reports for persons facing sentencing or bail hearings, quoted "a lawyer [who] reinforce[d] their concerns: 'the intensity and breadth of racism in the North is astounding. There was a jury selection in [town name omitted] about two years ago where after lengthy submissions the judge finally agreed to challenge the panel and asked how many people thought they would be able to deliver a fair verdict on an Aboriginal accused. Approximately 15 people stood up and said they didn't think they could (L.A., Lawyer)" (2013, 65-66). Indeed, "widespread bias against aboriginal people…[has] translated into systemic discrimination" (*R. v. Gladue* [1999], para. 61). But, in mainstream consciousness, damaging attitudes can continue to

spread long after the headlines fade because the information in a Gladue reports remains available in court records for anyone to look up, anytime.

Gladue stories cannot be untold. Community Legal Education Ontario (2019) explains the permanency of a Gladue report in the following terms: "The information in the report is not confidential and becomes part of the court record. Your lawyer can ask the judge not to make it a formal court exhibit, but the judge decides what to do" (n.p.). To explain, the SCC clearly states that in Canada, "all court documents are a matter of public record…unless in the rare case that they are sealed by legislative provision or court order" (Supreme Court of Canada 2022). On top of this, a person can "... request to have a Gladue Report prepared for every single matter that results in a criminal conviction" (Kahane 2004). Whether someone has one or more, their Gladue report(s) can follow them years later.

Even if a Gladue report was helpful in sentencing, it still holds the risk of creating significant barriers for individuals after release, for example, problems with accessing services, finding employment, or maintaining relationships (Roth and Law 2015, 2), particularly as the 'paperwork' about a person gets passed between all sorts of systematic bureaucracies or if their story gets laid out in the papers. Gladue reports summon and collect a slew of disparate injuries experienced by participants (the person whom the report is about, the interviewees, and the writers) that can be translated through the media to build narratives that influence the public imagination (Miller and Tougaw 2002, 1-2). The media focus is all too often on criminality. The news rarely outlines a participant's accomplishments or talents that can be illustrated in a Gladue report; instead, the emphasis is usually on past crimes and abuses. Unfortunately, I have read many examples of journalistic reporting that have served up sensitive details with little ethical care for the 'subject' of their article. I will not illustrate the particulars and make the same mistake. However, one example has a news writer reporting on a court's decision to spare the accused person

a fine for having a role in a store robbery. Yet, the author also chose to list out all the individual's Gladue factors and the trauma experiences of their Gladue report's interviewees, with no measure of consideration for the impacts of republishing their history (Sims 2022).[39]

When the media prints Gladue report details, they turn into 'Gladue' stereotypes that underline public misconceptions. Misconception gets socially accepted and presents stigmatizing consequences that escalate inequities in the justice system, for instance, heavier sentencing for Indigenous individuals. Nêhiyaw educator Suzanne Methot (2019) ties such unfair treatment in sentencing and high rates of Indigenous incarceration to the state's operationalizing of stereotypes and stigma to recharacterize Indigenous people. She explains that "by creating conditions that ensure overrepresentation of Indigenous peoples in the justice system, the colonial state also creates and sustains a distorted conception of Indigenous identity" (2019, 54). Methot (2019) says this is a contributing factor to excessively labelling and categorizing Indigenous people in a manner "that allows the state to apply an indeterminant sentence, with no parole hearing for at least seven years…for 'really ludicrous offences,' such as bar fights, which would put a non-Indigenous person in jail for only a short period of time" (55)[40] while producing more profound trauma and perpetuating false stereotypes and stigma to the individual, their family, and their broader community.

Through media, Gladue report details are widely available to the broader public and alter conceptions about participants unfairly and distortedly. Such publications create oversimplified perceptions of 'criminality' and 'victimry' that can produce a fixed and 'common' imaginary of

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[39] Note: I love curious people; however, in this specific instance, I urge readers not to look up this example.

[40] Methot (2019) references Macdonald, Nancy. 2016. "Canada's Prisons Are the 'New Residential Schools': A Months-Long Investigation Reveals That at Every Step, Canada's Justice System Is Set Against Indigenous People." *Maclean's Magazine*, February 18, 2016. Source: https://www.macleans.ca/news/canada/canadas-prisons-are-the-new-residential-schools/.

Indigenous individuals who encounter the legal system. Such sloppy media creates stigmatizing marks of 'disgrace' where harmful labels lead to (re)producing trauma and many other obstacles for participants during and after their time is served. It can go on to similarly impact their loved ones. By extended consequence, media influence is magnetic enough to reinforce state narratives and justify the continued oppression of Indigenous people(s) and their communities.

However, not all Gladue participants fit the stereotypical 'mould,' which creates its own problems. Lawyer Kyla Lee states one such example: "I recently argued a case where the Crown suggested my client's Gladue factors were irrelevant because he didn't have the stereotypical outcomes like alcoholism, sexual abuse, etc., …It was awful and painful for him, his family, and me, as an Indigenous person, to hear the way the Crown was effectively ignoring the point of the case and whitewashing — literally — his experiences" (Ling 2020, n.p.). When the Crown glosses over and generalizes Indigenous experiences, it erases Gladue's acknowledgement of Indigenous participants' 'unique circumstances.' As Million (2013) forewarned, whitewashing is a risk when lived experiences get funnelled through a state-guided framework. Next, I set out to encourage (especially producers and researchers of Gladue-related work, including media) to reconsider our ethics in language usage, what activists Victoria Law and Rachel Roth frame as "the negative connotations of criminal justice language [that] have real-life consequences for people who experience incarceration" (2015, 1).

Relational Care in the Language Used within Gladue and Justice Discourses

Applying Indigenous notions of ethical, relational care in our language choices can help minimize the risk of participant (re)traumatization and reduce Gladue's role in the stereotyping and

stigmatization of Indigenous people and their communities. Law and Roth[41] (2015), co-authors of "Names Do Hurt," critique criminal justice language (such as "inmate") for how it is "used to reduce human qualities, separate and disparage" (2015, 1). The state process of operationalizing dehumanizing language translates into stereotypes and stigma. Further aggravating this process is when such language gets activated by the media, which "has tremendous power to promote and reinforce what seems normal, natural, and acceptable. Journalists can influence their readers' perceptions by the language they use" (1). Using derogatory language such as 'the accused' or 'perpetrator,' journalists (and other writers or scholars) redirect the public's consideration of the 'real' person referenced and accentuate their 'incarcerated' or 'criminal' status (Law and Roth 2015). This derogatory labelling can be retraumatizing for Gladue participants since no one wants to be known only for their 'legal' circumstances. Furthermore, the rampant use of criminal justice language that stigmatizes and stereotypes can shift public thinking in ways that make it 'easier' for the state to continue the mass incarceration of Indigenous individuals and ignore and mistreat them and the voices of their communities.

Law and Roth (2015) explain that this language has "real-life consequences" that obstruct rights and access to basic needs, like health care or food, during and long after a person serves time in prison. Their argument gets bolstered by expert educator and activist Tina Reynolds, who describes the impact of such unfair characterizations during her time inside. She explains that such language "underscores the invisibility of the human being. It undermines the self-esteem and self-worth of people as individuals, parents, and family members. It is "wholly dehumanizing" (Law and Roth 2015, 1). Advocate Andrea James further illustrates how dehumanizing terms and calling incarcerated people by a number rather than their name are part of state programming: "It stays

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[41] Note: Neither Roth nor Law (2015) locate as Indigenous as far as I understand.

with you, creating a public and subconscious persona that is far removed from a person's true identity" (James quoted in Law and Roth 2015, 1).

Throughout this project, the word 'participant' is chosen over other terms all too often used within criminal justice discourses, for example, 'inmate' or 'informant' (Ralston 2020; Shamlawi 2020). Unfortunately, these problematic terms prevail in most Gladue scholarship and grey literature. These language choices matter because they possess the power to uplift or stigmatize people. Nevertheless, my review found that criminal justice terms often get used inaccurately beyond the importance of demonstrating ethical consideration and respect. For instance, people who are facing charges and awaiting trial get slapped with descriptions (e.g., 'convict, 'con or ex-con,' and 'offender') that criminalize or give the appearance of guilt when, in fact, they have yet to be convicted and further may not be[42] (Government of Canada 2019; Perlin 2019; Baker III 2023; Roach and Rudin 2000). When inaccuracy happens, these terms get used interchangeably or as pan-descriptions, adding to stereotypes and stigma. These stereotypes and stigma distract the public from the more pressing matter of a flawed justice system. When language is stigmatizing, it helps the state to remain unchallenged.

This project counters language that whittles the wonderful complexity of a whole person down to an untrue simplification that actually describes no one. Relational language choices are crucial for researchers and producers of Gladue materials because, regardless of the work's standpoint, they have an ethical responsibility to respect those who inform the work. At the very least, by showing respect and care for the people our research is interested in, we send a message that others should care, too.

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[42] For example, labels that criminalize can often occur when a person is remanded and awaiting trial.

Relational care in language choices is an ethical response essential to reducing harm to Indigenous participants and their communities when Gladue reports are created and then presented to courts and thus to the public. Million (2013) warns against taking stories of Indigenous experiences to a wider public audience because this involves complicated and inequitable power dynamics under the state's 'moral' conditions for testimony. However, she also signals the possibility of Indigenous pain narratives as a way for Indigenous people to imagine what they want their futures to be. Million (2013) explains that Indigenous people have "developed a profound literature of experience" (61) and argues that public testimony about personally difficult things can be relational and empowering. She argues that Indigenous communities have "...always richly storied their experience. Personal narrative and personal testimony empowered individual experience, and 'bearing witness' was a powerful tool (Million 2013, 59). Million illustrates that part of this power is fuelled by "Earlier First Nations and Métis women's affective personal narrative…" and what Million refers to as "...their sixth sense about the moral affective heart of capitalism and colonialism…," which "...transformed the debilitating force of an old *shame* into a powerful experience to speak from their generation…" (2013, 56).

Following Million's lead, I reframe the potential of Gladue reporting as 'healing' if "healing is a counter-narrative to [the state's label of] *victimization* and is seen as a pathway to sovereignty in an emancipation narrative" (Million 2013, 161). Million's felt theory further demonstrates that those who witness trauma narratives hold wisdom and relational responsibilities. She asserts that "stories form bridges that other people might cross, to feel their way into another experience. That is the promise of witnessing. These feelings, these effects, are part of their power of transformation in politically charged arenas, as 'embodied pain, shame, distress, anguish, humiliation, anger, rage, fear, terror, can promote healing and solidarity…and provide avenues for empathy across circuits of difference'" (2013, 76; inner text quoted Schaffer and Smith 2004, 6). When Indigenous trauma

stories have been relationally cared for, they come from the heart. The narratives themselves can intercede to create new "conditions for justice" (Million 2013, 77). Sarah Hunt (2018) adds support to Million's stance, suggesting that "witnessing, then, might be understood as a methodology in which we are obligated, through a set of relational responsibilities, to ensure frameworks of representation allow for the lives that we have witnessed to be made visible…" (284), and "...within this network of relational responsibilities, witnessing can thus adapt and transform as we aid one another in the healing work of decolonization" (293).

Million's theory illuminates the possibilities of relational care in Gladue reporting to be understood and used as a counter-narrative to reset the conditions for Indigenous justice. Where Million's (2013) felt theory "underline[s] the importance of felt experience as community knowledge" (57), Gladue holds the potential to transmit felt experience into felt knowledge that can inform decolonial community-led action. In their discussion of "how Indigenous stories of resilience are critical to the resurgence of our communities," in the context of Nuu-chah-nulth peoples[43], Jeff Corntassel, Chaw-win-is, and T'lakwadzi (2009) engage haa-huu-pah ("truth-telling," a Nuu-chah-nulth term for teachings and storytelling). Within public testimony, they regard haa-huu-pah as a mode of "truth-telling" that can re-story settler colonial narratives (Corntassel, Chaw-win-is, and T'lakwadzi 2009, 138-139). They say that the "'awareness of truth [...] compels some kind of action.'[44] Re-storying and truth-telling processes are ineffective without some more significant community-centred, decolonizing actions behind them. Thus, haa-huu-pah

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[43] Nuu-chah-nulth refers to fourteen related First Nations tribes whose territorial lands run along what is now known as the Pacific Northwest Canadian coastline. The fourteen tribes are divided into three regions: 1) Southern Region: Ditidaht, Huu-ay-aht, Hupacasath, Tse-shaht, and Uchucklesaht, 2) Central Region: Ahousaht, Hesquiaht, Tla-o-qui-aht, Toquaht, and Yuu-cluth-aht and 3) Northern Region: Ehattesaht, Kyuquot/Cheklesaht, Mowachaht/Muchalaht, and Nuchatlaht. Source: https://nuuchahnulth.org/

[44] Corntassel, Chaw-win-is, and T'lakwadzi (2009) quote Waziyatawin. 2008. *What Does Justice Look Like? The Struggle for Liberation in Dakota Homeland*. St Paul: Living Justice Press, 11.

signifies a starting point for renewing Indigenous family and community responsibilities in the ongoing struggle for Indigenous justice and freedom" (Corntassel, Chaw-win-is, and T'lakwadzi 2009, 139). These scholars inform my thinking about how Indigenous perspectives on ethical relationality can also reshape Gladue reporting.

As Indigenous people have continued to voice their experience of colonial violence, Million (2013) confirms that "theirs was a personal and political power found in finding and making relations, a 'radical relationality'" (2013, 75; inner quote Smith 2005, 115). Building on this observation, I am excited about the idea of Gladue as a 'living strategy.' I define 'living strategy' as a long-term commitment to maintaining respectful relational 'active' care towards co-creating dynamic, compassionate, and flexible Gladue processes that intend to be negotiated, critiqued, torn down, and reconfigured by participants and their communities to dismantle settler-state narratives and forward Indigenous decolonial movements - one of which is to decarcerate their people. By having examined the ethical implications within the private process of writing Gladue reports and the subsequent issues that arise from submitting them to public courts through Million's (2013) perspectives, the connection I make here is a steppingstone for my concluding chapter which reviews this project's findings and addresses how Indigenous theoretical perspectives on relational caretaking can be activated to re-imagine Gladue work and research.

CHAPTER FOUR: Summary of Findings and Engaging Indigenous Perspectives on Ethics of Relationality to Re-Imagine Gladue Reporting

Despite *R. v. Gladue*'s [1999] acknowledgement of settler-colonial harm to Indigenous peoples and their communities, Gladue reports have utterly failed to lower Indigenous incarceration rates to bring about more equitable justice (Department of Justice 2021; Atkinson 2018; Edwards 2017; Truth and Reconciliation Commission of Canada 2015). After nearly two and a half decades, it is impossible to frame this problem as "Gladue growing pains" (Barnett and Shields 2013). While Gladue reporting processes centre Indigenous trauma over state culpability, I found little discussion about the potential risks or impacts of (re)provoking felt trauma in those Gladue participants whose life stories are spoken, re-storied, and presented in public courts or in those who witness them (Bellrichard 2020; Ralston 2020; Roach 2014; Legal Services Society of British Columbia 2013; Parkes et al. 2012).

Through the lens of Dian Million's Indigenous (felt) trauma theory, this project reviewed Gladue materials to uncover the ethical complexities of re-storying Indigenous trauma in Gladue reporting. Felt theory embraces "what pain and grief and hope meant or mean now in [Indigenous] pasts and futures" (57) to underscore how felt experience becomes felt knowledge and "create[s] new language for communities" (Million 2013, 57). Gladue materials do not focus on the state's responsibility in bringing Indigenous people before the courts (and the formidable consequences of their hyper-incarceration and colonization). Instead, *R. v. Gladue* [1999] and much of Gladue work obscure state culpability by incorrectly situating settler colonialism and its traumatic impacts on Indigenous peoples solely in the past. Relational responsibilities are disrespected when those involved in implementing Gladue are not on the same page about our shared history. Failing to

uphold these responsibilities continues to be a considerable barrier to successfully implementing Gladue programs — and by successful, I mean seeing any reduction in Indigenous incarceration.

Through Million's theory (2013), I consider how the state's narrative influences Gladue stories and how reporting standards within the private process of writing reports move to "shape how research is operationalized" (Moreton-Robinson 2017, 69). Language matters, and Gladue reports are meant to assist with 'putting into words' a participant's life story. Since such stories may encompass individual and intergenerational traumas, including trauma inflicted by the state, and are the fundamental duty of the Crown to hear (Government of Ontario 2019; Department of Justice 2017; *R. v. Gladue* [1999]), reports hold the opportunity to have a new, more fulsome conversation. However, this conversation must be respectful and relational. Discourses surrounding Gladue must acknowledge our relational responsibilities since Gladue reports simultaneously hold the potential of opening new trauma for participants in asking them to re-tell and (perhaps re-live) past pain while also holding the possibility to lift Indigenous voices. The responsibilities and tensions within Gladue reporting are accentuated when we consider that they come from a constitutional acknowledgment of the rippling effects of colonial-imposed trauma in a systemically racist framework. Further, Gladue reporting also works under the pressure of sentencing that focuses more on the individual and their charges rather than addressing the harms and trauma Canada commits against Indigenous peoples (Parsons 2018; Department of Justice 2017; *R. v. Gladue* [1999]).

The central findings of this research are: The Canadian justice system is an operation of ongoing settler colonialism. However, Gladue work sidesteps this fact by focusing only on the past. As settler-colonial operations, Gladue reporting processes can provoke (re)traumatization for Gladue participants and writers. With the criminal justice system's potential for (re)producing trauma through Gladue reports and their presentation in public courts, Gladue reporting can

reinforce and create narratives that unfairly and falsely stereotype and stigmatize participants, their families, and their communities. The state-imposed framework and its 'conditions of speaking' under which Gladue stories are told and the use of criminal justice language in Gladue materials perpetuate whitewashed narratives that go on to inform and influence the public's imagination and misconception of Gladue participants, and thus the ongoing mistreatment of Indigenous people and their communities. However, by considering the ethical implications in Gladue through a lens of Indigenous (felt) trauma theory, we are offered a counter-narrative that helps us to understand these complex ethical entanglements. By addressing Gladue's ethical issues, this project challenges Gladue reporting processes and future research to fulfill their relational responsibilities and rethink how their work can be ameliorated by implementing relational care in language and centring Indigenous perspectives on the ethics of relationality to improve participant experience and build stronger community.

Indigenous Perspectives on Ethics of Relationality

By engaging Indigenous perspectives on ethical relationality, we can be better equipped to address the ethical issues in Gladue. Chief Justice Robert Yazzie illustrated this by saying that "respect and relationships are not qualities you can measure, and it is difficult to institutionalize them. However, they are the keys to indigenous justice and essential if you wish to incorporate indigenous methods into non-indigenous frameworks" (2004, 114). This project wishes to extend Yazzie's sentiment to carve out a path more in keeping with Gladue law's promise (and struggle to make good on that promise) of applying culturally relevant sentencing conditions. When Gladue interview and report writing processes do not reflect a culturally appropriate narrative tailored to the participant or its presentation of program options is not culturally appropriate (e.g.,

recommending western forms of therapy over Indigenous healing practices), neither can sentencing outcomes be. This means rethinking how current Gladue processes and work are approached to prevent avoidable (re)traumatization by providing participants with better and more relational care while recalibrating the colonial narrative.

Million's trauma theory centres on how felt experience as knowledge gets transmitted into felt actions to counter state oppression and mobilize Indigenous self-determination enacted through Indigenous ways of healing (Million 2013; 2008). This theory offers us a starting point to think through the ethical issues that Gladue's re-storying presents so we may work to address the existing gaps of respect and care. In this way, a Gladue story genuinely cared for as sacred could expand on Indigenous-based ways to relationally care and heal (TallBear 2019; TallBear 2016; Yamashiro 2015). Relational caretaking is an ongoing endeavour, as Participant Z pointed out earlier in this project: It is about being a part of someone's life and journey through the challenges, even in small ways. Million's trauma theory offers an empowering activation of Indigenous trauma to temper this colonial state-produced wound and scab picking to heal oneself and community by pushing back against harmful state practices by rearticulating Indigenous narratives into the 'now' (2013, 74).

Gladue participants who may be actively dealing with unresolved and ongoing trauma could be aided by relational care if we can recontextualize how Gladue reporting processes are approached. Nishnaabeg scholar Leanne Betasamosake Simpson (2014) says that "we should all recognize pretty clearly that the learning changes when the relational context changes…[and] visiting within Nishnaabeg intelligence means sharing oneself through story, through principled and respectful consensual reciprocity with another living being" (18). Adding to this sentiment, Simpson exemplifies relational caring through an Anishinaabe sensory experience of prose and poetry in her novel *Noopiming: The Cure for White Ladies* (2020). In *Noopiming*, Mindimooyenh

is an older woman embodying ethical conscience who expresses frustration with the colonial concept of self-care, arguing that "we are self-caring our way into fascism…that's not a thing…it is just care" (Simpson 2020, 86). In this view, care cannot be singularity for the self. Instead, relational care is intertwined with how we care for ourselves and others while learning to be open to receiving care as well. We are all related, and our felt experience of being cared for (by ourselves and others) is interconnected with our action of caring (for ourselves and others). Again, what Simpson (2020) says is 'just care' is mutually symbiotic caring that is inseparable from self and 'other.' All caring is in relation. The idea that caring for self *is* caring for others and vice versa counters the general focus of 'individual healing' in the Gladue discourse.

Gladue interviews could be more like visiting with our relatives — as Métis scholar Janice Cindy Gaudet (2019) understands Indigenous ethics of care and what she refers to as keeoukaywin, a 'visiting way methodology.' Gaudet describes keeoukaywin as "practical, social, political, and spiritual" (2019, 48). Approaching Gladue participants in a 'visiting way' or incorporating other narrative-based Indigenous methodologies for writing Gladue reports makes sense since they work to encompass Indigenous life experiences through story. Margaret Kovach's (2010) conversational methods uphold such relationality and storytelling as a means of connecting through knowledge sharing and learning through dialogue. She shows that a conversational method of interviewing is inviting for both Indigenous and non-Indigenous speakers and listeners, which would enhance Gladue processes' capability to build meaningful connections (Kovach 2010).

Similarly, in their community-engaged work with former gang members and university students, Sarah Buhler, Priscilla Settee, and Nancy Van Styvendale mobilize the concept of wâhkôhtowin (or kinship) as a framework for "encountering 'strangers'" and re-thinking what "justice" means in an inner-city classroom (2016; 2014). Their unsettling of the 'stranger' category functions to disquiet colonial conditioning by regarding participants as respected friends. This

caring approach aligns very well with my proposal to Gladue and other legal workers to reconsider how they approach interviewees (or rather, how they encounter 'strangers'). As Buhler, Settee, and Van Styvendale (2014) have demonstrated through their wâhkôhtowin-centred initiative that "embraces a commitment to healthy relationships as justice in action and aims to enact the restoration of right relations…" (186), I submit that Gladue programs would experience similar benefit from such relational practice.

Asking Gladue to reframe itself through theory and methodologies that endorse Indigenous perspectives of ethical relationality is also very pragmatic. Métis professor of criminal justice Anna Flaminio (2013) honours Gladue stories by way of kinship relationality to explain that even though Gladue interviewing processes come under a particular objective and format, "the underlying intent of the interview is to foster a sense of trust and safety within the relationship, which entails conversing with a relative who has come into conflict with Canadian law" (150). Flaminio says that interviews should be approached conversationally and that helping a participant feel more at ease is essential in Gladue exchanges. Her proposed method of conducting Gladue interviews highlights familiar openness "about [a participant's] ancestral home, familial relations and history, and various life experiences" (150) to assist a participant in being more comfortable sharing.

Wâhkôhtowin and other perspectives on Indigenous ethics hold the power to act as living strategies to benefit any institutional community. For example, in addressing issues of racism (structural and otherwise) within educational institutions, Jennifer Ward, Ellen Watson, and Cathryn van Kessel (2021) asked communities of learning to "consider building their communities upon wahkohtowin" (16-17) and treat such spaces "as sites of kinship while valuing differences" (17; Buhler, Settee, and Van Styvendale 2016). Add this notion of kinship, and you have what Blackfoot scholar Leroy Little Bear (2005) describes as a kind of interrelational "renewal' that has the overarching objective of renewing "harmony and balance" (10). Little Bear says this renewal

is an Indigenous paradigm that includes elements of mobilized flux, adaptability, showing kindness to all as relations moving “in a sea of friendship, easy-goingness, humour, and good feelings” (2005, 10). Additionally articulating this type of moving renewal, Eduardo Duran and Bonnie Duran advise us that “the movements that gain ground in Indian Country are just as strongly spiritual as they are ‘developmental’” (Million 2013, 156). Since such Indigenous thinking pushes up against state interference and challenges the colonial desire to possess all (including the taking and keeping of Indigenous bodies in state prisons), combining a sense of kinship relationality with a living strategy that encapsulates flexibility for development could be Gladue’s key ingredient to decarcerating Indigenous people.

Gladue programs and materials cannot be remedied (only) through the "inclusion" of Indigenous perspectives in current colonial structures; instead, a wholesale systemic change is required. As I have previously discussed, Gladue remains an operative of the settler colonial state that continues to produce trauma, and the problems of Indigenous mass incarceration require the state, not Indigenous people, and their communities, to shoulder the responsibility and stop its violence. Renee Linklater (2014) adds to this view, cautioning us that Indigenous ways of knowing and healing are not always meant to be shared, especially with outsiders and non-Indigenous persons. She explains that it is imperative that “the protection of Indigenous knowledge must be recognized, and specific efforts to avoid exploitation and appropriation must be employed at all times” (2014, 158). To be clear, practicing ethical relationality does not mean appropriating cultural or spiritual practices. The purpose of working through various Indigenous perspectives can improve Gladue programs is to set the stage for this thesis’s intervention of Gladue to be re-imagined through Indigenous ethics of relation care. The following is a little taste of what Indigenized Gladue reporting could look like.

Re-Imagining Gladue Reporting Through Indigenous Relationality

Placing a practice of Indigenous ethics of relational care at the core of Gladue thinking and reporting processes is a practical vision. Offering an Indigenized relational perspective on how Gladue reporting can focus less on a person's offence and trauma and more on remembering their life purpose and gifts, community-engaged Métis legal scholar Anna Flaminio (2013) says that Gladue stories should support participants "to heal their wahkotowin[45] circle" (142). She forwards a "Gladue-Through-wahkotowin approach" where if a Gladue participant is viewed "as not just a human being with potential, but as a person who is looked upon as a respected relative, it becomes possible to assist a person on a much deeper level" (Flaminio 2013, 142). A Gladue writer or a lawyer who follows wâhkôhtowin to understand a participant as a relative will instinctively speak with high respect for their client and remain open to that person's cultural and community perspectives (Flaminio 2013). This respect and openness would be reflected in the Gladue interview processes as the Gladue story gets created. Beyond addressing the factors of settler colonialism and its impacts, a wâhkôhtowin-informed report would highlight a participant's inherent strengths and talents over reliving mistakes and pain. Ottowan Gladue writer Mark Marsolais-Nahwegahbow reminds us that a Gladue report is distinctly powerful and different from other court records: "It's their sacred story and it has to be respected" (Eneas 2022). Putting wâhkôhtowin at the forefront, all workers in the legal system would know that their job is to honour their client's specific Indigenous standpoint and commit to their relational responsibilities of helping their relative get back into balance, mend their circle, and live out their purpose of

[45] Flaminio (2013) uses this spelling "wahkotowin" throughout her work.

"pursuing a good life"[46] (Borrows 2016, 12) or miyo pimitisiwin (Flaminio 2013, 101).[47] By the same token, this practice of respectful relationality would extend even further to the participant's network, the victim(s), their families, and their respective communities. Flaminio (2013) suggests that Gladue teams should include Elders who "would be helpful in assisting [participants] to heal their wahkotowin circle, including re-connecting elders, or old ones, with young people" (142). I love the pragmatism of designing a 'Gladue team' that dulls out unhelpful 'shaming' and stigma to lift a person's dignity instead. I also appreciate that a team working within a relational mindset can support a Gladue participant beyond reporting processes and court proceedings as a living strategy to sustain a heartened community.

Frank Morven, a descendant of the Tsimshian First Nation and the Nisga'a First Nation, is a Parole Officer with Prince Rupert Community Corrections committed to improving Gladue writing processes. He explains that when writing a Gladue report, "on a macro-level, we are rebuilding a RELATIONSHIP with the First Nations Community" (n.d., 7). Morven's comment is significant because he is pointing out that relationality is, in fact, intrinsic to Gladue processes. Hence, reporting is not just about developing interpersonal relations but also the intercommunity relationships that require honouring, trust, and respect. The process is not a solitary endeavour; "Gladue reports are an opportunity for community engagement and empowerment necessary to

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[46] Flaminio notes that "Miyo pimitisiwin is a concept in the Nehiyow/Cree language that connotes living a balanced, good way of life. Anishinaabe peoples espouse a very similar belief in the good life or "biimaadiziwin" (Flaminio 2013, 101; King 2012, 225).

[47] As I process what Gladue as a living strategy might entail, I am grateful to Lesley King (2012), an Anishinaabe (Ojibwe) scholar and Gladue caseworker, for adding greater depth to my analysis through his explanation that "fostering biimaadiziwin in [Gladue participant] lives, as mapped out in Gladue reports, entails re-visioning their past, reflecting on their current circumstances and refocusing on their future aspirations to become active participants in their own and in the community's overall move toward, or maintenance of, biimaadiziwin. What is biimaadiziwin? Biimaadiziwin is more than just a destination. It is a lifelong expedition… 'Aboriginal peoples pursue biimaadiziwin.' It is a process that is engaged in at both an individual and collective level. It is a daily journey, with new tasks, new struggles, and the potential for fresh victories every day. Biimaadiziwin is performative; it is a verb, not a noun" (226).

support a rehabilitative path to healing" (International Centre for Criminal Law Reform and Criminal Justice Policy 2022). The 'healing' that needs to happen is in everyone,[48] not just a Gladue participant. Jonathan Rudin clarifies that Gladue reports tell a story, which is how lessons are learned (Canadian Institute for the Administration of Justice 2021, February 17). However, more than just telling the story of an individual, Rudin says that reporting also tells what we as Canadian citizens have done and what our grandparents have done; it is our story (Canadian Institute for the Administration of Justice 2021, February 17). Everyone in this country should care about Gladue stories to learn more about the truth of our shared history and present experience and the lessons we need to strengthen our objectivity (Harding 1995). Rudin affirms, "That is how social change occurs" (Rudin, Canadian Institute for the Administration of Justice 2021, February 17; Rudin 2009). Melissa Atkinson (2018) is Han, Tlingit, and Kaska and a senior lawyer with the Yukon Legal Services Society who understands the broader impact of Gladue issues within the context of settler colonialism to poignantly summarize that "this is not an Indigenous issue, this is not just a criminal law issue, this is a Canadian issue" (Atkinson 2018).

Concluding Remarks

This investigation into the representation of trauma within Gladue materials has worked to identify and advocate for improvements in Gladue reporting. Even more critically, my analysis has served to cue current research and programming to take a step back and take the time to learn Indigenous trauma theory and other Indigenous insights. Ethical relationality is better situated to activate the improvements Gladue needs to be more effective and can bring about new ways of

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[48] 'Everyone' means all Gladue stakeholders: participants, victims, their families and communities, writers, legal system workers from judges, lawyers, parole officers, correctional employees, police, social workers, lawmakers, health care staff, and Indigenous and non-Indigenous communities impacted by or perpetrating Gladue factors, such as the media, the public, and the Canadian settler colonial state.

confronting the ethical complexities of Gladue altogether. As Indigenous voices insist on telling their own stories, new ways of speaking and thinking about Gladue issues are bound to overcome and re-story harmful colonial narratives.

Although this study is a preliminary snapshot of a much larger picture of Indigenous mass incarceration, justice, and self-determination, it is the first to focus on Gladue through the insights of Indigenous trauma theory to make a solid contribution to scholarly Indigenous, legal, and governmental materials. It can serve as a valuable resource for Indigenous communities, Gladue research, justice system workers, and Gladue programs in growth, making, or reconsidering. However, without the input of people who have had a Gladue report written about them, this project is limited in elucidating the real-life impacts of Gladue reporting. As such, I intend to continue this discussion and add to the growing body of Gladue and Indigenous scholarship. In my upcoming community-engaged doctoral project, I will invite former Gladue participants to share their on-the-ground expertise to ask if their Gladue report helped or hindered them and what they propose would improve the experience.

I hope to transform what I learn from participants into a collaborative and creative opportunity for the group by welcoming everyone to re-imagine Gladue in an artistic expression. For example, participants may consider a Gladue-inspired painting, beading, drawing, recipe, a de-colonial love letter, or a petition of resistance as a potential piece to submit to *The Conditional Release*.[49] Million (2013) has me considering this project's Gladue analysis with her discussion of

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[49] *The Conditional Release* is a prison newsletter initiative of the *Walls to Bridges* program which brings inside and outside university students together. I participated in the class during the 2023 Winter term, and we learned about Kingston's Prison for Women, the Native Sisterhood, and their contributions to the penal press and advocacy towards improving conditions for women who experience incarceration. *The Conditional Release* was published this summer and shared with multiple Indigenous communities across these lands thanks to funding provided by the Indigenous Prison Arts and Education Project (IPAEP).

felt theory and how artists and poets have used their mediums to confront settler colonial power structures in acknowledging that they are "ever-changing yet forever the same" (30). She intertwines felt theory and poetry within this political discourse to represent "the power of felt knowledge, felt theory here, as 'poetic knowledge' that incites for life: 'progressive social movements do not simply *produce statistics and narratives of oppression* [Emphasis added]; rather the best ones do what great poetry always does: *transport us to another place, compel us to look at horrors* [Emphasis added] and, more importantly, *enable us to imagine a new society* [Emphasis added]" (30). This brings to a close this project's final pondering of how the state is responsible for producing "*statistics*" (that we know as the appalling rates of Indigenous incarceration) and producing "*narratives of oppression*" (Gladue as public testimony and its potential to stigmatize), to "*transport us to another place*" (Gladue work wrongly situating trauma and colonialism only in the past), "*compel us to look at horrors*" (the state's fetishizing Indigenous pain in Gladue reports and its public display), but through felt theory, we are "*enabled to imagine a new society*" (which is the very premises of this project's analysis of Gladue work to show how felt theory and Indigenous understandings of relationality can re-imagine Gladue processes and research in better ways). Million's words fill my heart with anticipation for what 'felt-Gladue' could be in the scholarship to come: "It is that imagination, an effort to see the future in the present, that I shall call 'poetry' or poetic knowledge. I would add that what good social movement, good social analysis, and good poetry have in common is the ability to incite, as in arouse, as in *feel* to make relations" (2013, 31). To my past, present, and future relations, I invite you to please join me in this work.

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APPENDICES

Figure 4. Gladue Brochure Side One.

Figure 4. Gladue Brochure Side Two.

What are *Gladue* rights?

When an Indigenous person has been charged with a crime and may spend time in prison or custody as a result, the judge must consider any special circumstances of Indigenous peoples, and the individual's connection to these factors, when sentencing them. This is in response to the historical discrimination towards Indigenous peoples in the justice system. Judges must also consider traditional Indigenous approaches to justice, and try to give a sentence that does not involve time in jail, if possible.

If you are Indigenous, have been charged with a crime, and may spend time in custody as a result, you have a right to a *Gladue* Report. This report will tell the judge about your unique *Gladue* factors, which may affect the sentence you are given.

GLADUE FACTORS

When an Indigenous person might go to prison, judges must consider how *Gladue* factors have affected that person when they decide a sentence. These factors address Indigenous peoples' unique backgrounds, challenges, and perspectives. Below are some examples of these factors.

A *Gladue* Report gives the judge information that helps them to understand how these factors apply to the offender's unique circumstances. This information will help a judge give an offender a just sentence that addresses the effects of discrimination and colonialization on Indigenous peoples. A lawyer can also help provide a judge information about how these factors have played a role in their client's life.

***Gladue* Factors:**

Historic, Community, and Personal Factors

A *Gladue* Report will sometimes result in a different sentence for an offender, but not always. However, a *Gladue* Report can tell the judge the story of the Indigenous person's life, and the impacts that racism and colonialization has had on them.