Top 10 Gladue myths and facts

1. A court order initiates funding for an LSS Gladue report — **MYTH**
   Gladue report funding for a legal aid client is initiated by the defense counsel submission of a request for disbursement to case management on behalf of the legal aid client.

2. The lawyer is responsible for payment to the Gladue writer — **FACT**
   Once the approved Gladue report is completed and submitted to defense counsel for court filing, the lawyer is responsible for payment to the Gladue writer upon receipt of the writer’s invoice. LSS then reimburses the lawyer.

3. A defendant must be an Indian residential school survivor to qualify for a Gladue report — **MYTH**
   While attendance at an Indian Residential School is a Gladue factor, the intergenerational impact of Indian residential schools on Aboriginal family members and the community is also a Gladue factor.

4. BC has a Gladue court in New Westminster — **FACT**
   The First Nations Court in New Westminster sits once per month, presided over by Judge Marion Buller Bennett, and provides a restorative justice approach in sentencing Aboriginal defendants.

5. Raising Gladue factors is solely the responsibility of defense counsel — **MYTH**
   All counsel, defense and crown, have a duty to address Gladue factors as asserted in *R. v. Kakekagamick*; further, the Supreme Court of Canada stated in *R. v. Ipeelee* that a Gladue report “...is an indispensable sentencing tool to be provided at a sentencing hearing for an Aboriginal offender and it is also indispensable to a judge in fulfilling his duties under s. 718.2(e) of the *Criminal Code*.”

6. Gladue reports are expert reports — **MYTH**
   The BC Court of Appeal held in *R. v. Lawson* that “Gladue reports are not expert reports and the law does not require them to meet the threshold of expert reports. However, Gladue reports should provide information about the writer, including relevant background and experience. This basic information is an obvious factor in assessing the reliability of the report.” The Court also held that the reports are not meant as advocacy for the Aboriginal defendant and must present information in an unbiased manner.
7. Gladue principles apply in bail hearings — FACT
   Gladue principles have been applied in bail hearings, R. v. Bain⁴, and recently Gladue factors were cited in an extradition hearing, United States v. Leonard⁵.

8. Gladue reports funded by LSS require eight weeks’ preparation — FACT
   Gladue reports are labour intensive and require the writers to interview family members and research restorative justice resources.

9. A client must be a status Indian to qualify for a Gladue report. — MYTH
   Clients can self-identify as Aboriginal to assert Gladue considerations and request a Gladue report.

10. The court is not required to consider Gladue factors for serious offences. — MYTH
    The Supreme Court of Canada stated in R. v. Ipeelee⁶ that courts must consider Gladue factors for all Aboriginal offenders and failure to do so is grounds for appeal.

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3. R. v. Lawson, (Surrey Docket 189310-2C)