



Indigenous rights: Bail

What are Gladue factors?

Courts in Ontario have said that the Gladue principles apply to bail hearings. Every court must apply the Gladue principles even if it's not a Gladue Court. This means a judge must look at an Indigenous person's background and the impact of discrimination on them when deciding if bail is appropriate.

All types of releases must be considered before detention. Detention, or holding an Indigenous person without bail, is a last resort.

Examples of Gladue factors include:

- Are you or someone in your family a residential school survivor?
- Are you or someone in your family affected by the "Sixties Scoop", where the government removed Indigenous children from their homes?
- Were you put in a foster home or involved in the child protection system?
- Have you or someone in your family experienced poverty?
- Have you or someone in your family experienced racism, trauma, childhood abuse, violence, or addictions?

Gladue principles apply to anyone who self-identifies as Indigenous, Metis, First Nations, Aboriginal, or Inuit. It doesn't matter if you live on or off reserve, or if you have a status card.

How do Gladue factors affect bail?

A bail hearing is not a trial. The court does not decide whether you're guilty or innocent of the criminal charges. Instead, it decides if you should be released from custody into the community while your case is being decided.

It's important to tell your lawyer or duty counsel if you self-identify as Indigenous. With your permission, your lawyer can tell the court about your Indigenous identity and make arguments, called Gladue submissions, about how the Gladue principles apply to your case. This may help you get bail that is reasonable in your circumstances.

For example, if the court wants a family member to be a surety that can supervise you while on bail, you may not have someone who can do this. This might be because you're not in touch with your family because of trauma, your involvement in child welfare, or because you moved to the city from a remote community.

What is a release plan?

Your lawyer or duty counsel can use your release plan to negotiate your release with the Crown. If the Crown won't agree to your release, your release plan can be used at your bail hearing to convince the judge to release you.

Your plan should include:

- where you will live
- who is available to help supervise you
- information about your job or any courses you're taking
- how you plan to address any drug use, or alcohol issues
- how you plan to keep track of and go to your court dates

The purpose of a release plan is to set out the community resources that can help you while you're on bail waiting for your trial. For example, the plan might suggest Indigenous supports for mental health, trauma, addictions, or homelessness. It might also include suggestions for participation in cultural activities.

Ask if there is an Indigenous court worker at the courthouse who can help you with your release plan. If not, your lawyer or duty counsel can help you.

Surety

The court may ask for a surety. A surety is someone who promises money to the court and agrees to supervise you while you're released on bail. Usually the surety is a friend or relative who knows you well and who the court thinks will make sure you follow your bail conditions.

If you don't have a surety, ask your lawyer or duty counsel to refer you to the bail program. The bail program is a government-funded program that gives bail supervision to some people who don't have sureties. Ask if there is a special bail program for Indigenous people.

What is Gladue?

The word Gladue is taken from the name of an important court case decided in 1999. In the Gladue case, the Supreme Court of Canada said:

- The high number of Indigenous people in prisons across the country is a serious issue that courts must consider.
- There are systemic or background factors that courts must take into account when sentencing Indigenous people.
- Jail sentences should be a last resort.

Get legal help

Indigenous Court Worker Programs

- Ontario Federation of Indigenous Friendship Centres
1-800-772-9291 / www.ofifc.org
- Aboriginal Legal Services
416-408-3967 / www.aboriginallegal.ca
- Akwesasne Community Justice Program
613-575-2250 / www.akwesasne.ca
- Walpole Island First Nation
519-627-3907 / www.walpoleislandfirstnation.ca
- Nishnawbe Aski Nation (NAN)
1-800-465-5581 / www.nanlegal.on.ca

Legal Aid Ontario: 1-800-668-8258 / www.legalaid.on.ca

For general information and advice.

Law Society Referral Service: <http://lsrs.lso.ca/lsrs>

Get the name of a lawyer who can give free legal advice for up to 30 minutes.

JusticeNet: 1-866-919-3219 / www.justicenet.ca

For a directory of law professionals who provide services at reduced rates depending on income.



Visit www.stepstojustice.ca for more information about criminal law. This is general information for people in Ontario, Canada. It is not intended to be used as legal advice.

Vous pourriez avoir droit à des services en français devant les tribunaux ou auprès d'organismes gouvernementaux. Visitez www.justicepasapas.ca/droits-linguistiques-des-francophones.