



Indigenous rights: Diversion

What is Indigenous diversion?

Indigenous diversion is a voluntary way for some Indigenous people accused of a crime to resolve minor criminal charges. It is not available in every courthouse.

If you're offered diversion and agree to participate, you don't plead guilty to the charges against you, or have a trial. You don't have to accept the police or court version of events, but you must take some responsibility for the actions that led to your arrest.

Your case is moved out of court and dealt with by an Indigenous organization or community. You don't get a criminal conviction.

Diversion often means that you agree to do a certain number of hours of community service. You may also agree to counselling or job training. The community work is supposed to help you deal with the issues that brought you before the court.

Your diversion program should focus on personal accountability, community accountability, and healing instead of punishment. And, it is supposed to be meaningful to your Indigenous identity.

Indigenous diversion is for 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.

Get legal advice

Talk to your lawyer or duty counsel to see if diversion is right for

you. You can also speak directly to the Indigenous court worker if there is one at your courthouse.

How does Indigenous diversion work?

Like many other diversion programs, Indigenous diversion is usually available for less serious and non-violent offences. Examples include theft, not following bail conditions, and not showing up to court. Diversion is not usually offered for violent crimes where there are injuries, domestic assault charges, and other serious offences like drug trafficking.

Both you and the Crown must agree to diversion. In most cases the Crown will refer your case to the Indigenous diversion program. You can also ask your lawyer or duty counsel if diversion is an option for you and what types of diversion are available at your courthouse.

The court process for Indigenous diversion is different across Ontario. In some cases, the Crown might ask the court to have your charges stayed or withdrawn as soon as you agree to diversion. In other cases, the Crown might ask the court to have your charges stayed or withdrawn only when you show proof that you completed your diversion.

A stay or withdrawal means there is no trial or criminal conviction. The criminal charges are not added to your criminal record.

It's important that you complete your diversion to the best of your ability. The time it takes to complete depends on what you're asked to do and how quickly you can do it. If you don't complete your diversion, you may not be able to do another diversion program in the future if you get more charges.

What is Gladue?

Every court must apply Gladue principles even if it's not a Gladue

Court.

Gladue Court is a special criminal court for Indigenous people charged with a crime.

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.

In Ontario, these Gladue principles are also applied to bail hearings.

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.