



Indigenous rights: Sentencing

What are Gladue factors?

Gladue principles apply to sentencing 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 what sentence is appropriate. Jail should always be a last resort for Indigenous people.

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 sentencing?

All alternative penalties must be considered before jail, including culturally appropriate sentences. Alternative penalties include a fine or a sentence that can be served in the community, like probation. This does not mean that Indigenous people can't be sentenced to jail or that they automatically get a lesser sentence.

It's important that you 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.

A judge can use a sentencing circle or Gladue Report to help them decide on an appropriate sentence.

What is a Gladue report?

A Gladue report describes an Indigenous person's background and how they might have been impacted by discrimination. It makes recommendations on options other than jail that might address the reason you're in court.

Reports are usually ordered when the Crown is asking for a sentence of 3 or more months. If the Crown is asking for a shorter sentence, ask your lawyer or duty counsel about getting a Gladue letter, which is a shorter report.

What is a plan of care?

If you can't get a Gladue report or letter, make a plan of care that your lawyer or duty counsel can use at your sentencing hearing. The plan of care might include suggestions for community resources and 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 plan of care. If not, your lawyer or duty counsel can help you.

What is a sentencing circle?

Sentencing circles vary in structure and process. They are generally available for sentences of 6 months or longer. They are not available for sentences longer than 2 years or for certain serious crimes. In most cases, you must first plead guilty.

The circle is based on the idea that a crime is an offence against the entire community, not just the victim. Members of the community and criminal justice system come together to try and agree on an appropriate sentence. It includes an elder, judge, Crown Attorney, and your defence lawyer if you have one. The circle might also include an Indigenous court worker, police officer, members of your family, and the victim or their family.

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.

In Ontario, 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.