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Gladue Primer



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*For the purposes of this report and organization, the term *Aboriginal, Indigenous* or *First Nations* will refer specifically to the rights on Inuit clients unless stated otherwise.

*Both Gladue reports and letters will henceforth be referred to as Gladue reports.

Section 718.2(e) of the Criminal Code of Canada states:

718.2 A court that imposes a sentence shall also take into consideration the following principle(s):

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

It was later noted that section 718.2(e) applies to all aboriginal people wherever they reside: on- or off-reserve, in a large city or a rural area.

WHAT IS GLADUE?

Gladue ensures that Indigenous offenders have the opportunity to exercise their rights under **Section 718.2(e) of the Criminal Code of Canada**.

The premise behind the provision is for the criminal justice system to find alternatives to punitive sentencing of Indigenous offenders. This is to mitigate the astronomically high incarceration rates of Indigenous offenders and to reduce the recidivism rates.

When the offender and lawyer inform the courts of the offender's Gladue rights, the presiding judge must consider all options other than incarceration, that all internal and external factors are considered when their sentencing or bail is being determined.

For example, Gladue encourages judges to use restorative justice and culturally appropriate practices, this may require the Indigenous offender to participate in drug or alcohol rehabilitation, anger management, or counselling. However, **Gladue does not mean the client gets a "get out of jail free card"**.

If a serious crime has been committed, there may be no choice but incarceration. If this is the case, the judge must still apply Gladue when considering the length of sentence.

It's also important to remember that participating in these healing and wellness paths are not an easy way out, they are often challenging and difficult for the offender. Participating in restorative justice requires the offender to take ownership of their wrong doing and to make amends.

TI provides Gladue support for Inuit clients that are referred from the courts or their legal representative. The Gladue team is responsible for describing the process and what to expect. Interviews and report writing commences and may continue for several weeks.

Once the Gladue report is completed, it is submitted to the courts. The Gladue report includes personal accounts and experiences of the Indigenous offender, having been marginalized or otherwise affected by their tragic history, cultural oppression, poverty, or abuse suffered from residential school attendance. The report also includes a list of recommendations for culturally appropriate and culturally relevant programming and services for the offender to enter into a healing and wellness plan.

This may involve the use of a healing circle, where community members, the accused and the victim (should they wish to participate) discuss actions of the offender and implement methods to make amends and restore harmony.

HISTORY OF GLADUE

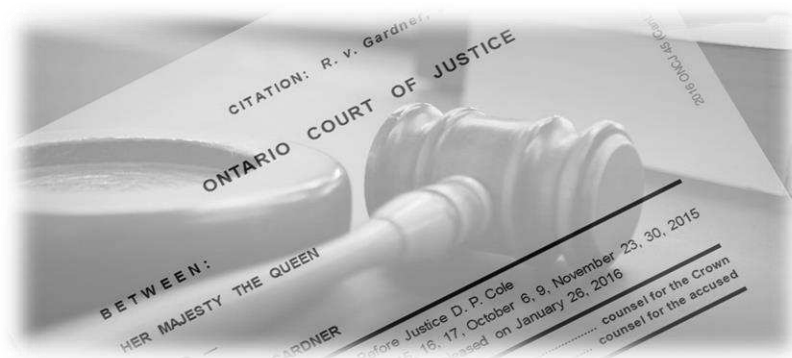
In 1995, a young Cree woman named Jamie Tanis Gladue was celebrating her 19th birthday with some friends and with her fiancé, Reuben. The couple had a history of domestic violence. Following a confrontation with Ruben about his affair with Jamie's sister, Jamie fatally stabbed him in the chest. She was extremely intoxicated during the assault and didn't appear to know what she was doing.

Jamie was charged with 2nd degree murder, however she pled guilty to manslaughter. During sentencing, the judge took into consideration many aggravating factors and sentenced her to three years in prison. The offence took place 'off reserve' in a city, the judge felt her Indigenous status was not pertinent to the case. At the time, she was 20yrs old and did not have a criminal record.

Jamie appealed her sentencing outcome with the BC Court of Appeal on the grounds that the judge did not take her Indigenous status into account. However, they dismissed her appeal and upheld the original sentencing.

Jamie and her lawyer then appealed her case with the Supreme Court of Canada in 1999. Gladue claimed that **s.718.2(e) of the Code** had not been considered in deciding the sentence. This was the first time that this new provision of the *Code* was interpreted by the courts.

The Supreme Court ruled that the judge who sentenced Jamie may have made a mistake by not granting her special consideration under the provision. As a result of her case, the court acknowledged that Indigenous people face racism in Canada, resulting in a severe overrepresentation of First Nations, Inuit, and Metis people in the criminal justice system.



Staggering Rates of Indigenous Offenders in Prison



The **Supreme Court of Canada** recognized the overrepresentation of Indigenous people in the Canadian judicial system and set out to rectify this.

The courts also recognized that the number of Indigenous people being sent to jail has been increasing over the last several decades. According to Statistics Canada in 2006-2007, Indigenous people represented 3.8% of the Canadian population, but they formed 20% of the adult federal inmate population.

By 2017, Indigenous people made up 4.1% of the Canadian population, but they formed 28% of the federal inmate population. The rates are even higher when looked at provincially, and have been trending upwards for over 20 years.

These rates are dramatically different than the rest of the non-Indigenous Canadian population.



Supreme Court of Canada:

the highest level of court in Canada and the final court of appeals in the Canadian Justice System.

Tungasuvvingat Inuit represents Inuit clientele only

How can Gladue help clients?

Gladue is a way for the criminal justice system to reduce the rate of the Indigenous population in the correctional system, and to reduce the rates of reoffences. Gladue provides clients an opportunity to avoid becoming a statistic and for them to take control of their healing and wellness. It provides clients with access to culturally relevant and culturally appropriate programs, services and resources to realize their healing and wellness plan.

Gladue Eligibility

If clients self-identify as Inuk (meaning if they think of themselves as **Inuit** descent), they have specific rights under the Criminal Code section 718.2(e) known as Gladue rights.

All Inuit are eligible to access Gladue. Gladue applies to Inuit regardless of:

- Residency in the North or South.
- Whether they were raised by Inuit parents or not.
- Adoption within the Inuit community or with Southern families.
- Or raised in a foster home or group home in the North or South.

Tungasuvvingat Inuit **DOES NOT** require you to show proof of Inuit beneficiary status under the four Inuit Land Claims Agreements.

The judge has a legal responsibility to provide Indigenous offenders the opportunity to access Gladue.



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Makivik Corporation

THE GLADUE PROCESS

What does the judge need in order to apply Gladue?

The Judge and legal representative must be made aware that the client requests Gladue applied to their case and that they have Gladue rights as an Inuk person. A formal referral to the TI Gladue Program will take place. TI only needs their consent to create a report for them.

If the client doesn't want to use Gladue, they can waive their Gladue rights. This is their choice entirely; the crown, judge, or their lawyer cannot make that decision for them. If their lawyer isn't familiar with Gladue they can still request a Gladue report. It's usually not a good idea to waive Gladue rights. By waiving their Gladue rights, a Gladue report won't be created. This means the judge will not take their Indigenous status, personal history and harms they may have experienced into consideration when sentencing occurs.

When does the judge apply Gladue?

When the judge is setting the clients bail or sentencing them, he or she must consider all options other than incarceration.

With the client's consent, the judge will apply Gladue:

- When they plead guilty (in which case the case won't go to trial)
- Or when the judge finds the client guilty at their trial, this then becomes a bail hearing.

How will the clients know if they need a Gladue Report?

While the common term is Gladue report, in instances where the Crown is seeking less than 90 days in jail, a smaller more condensed version of a report are generally about 5-8 pages in length. **Gladue Reports** are in or around 20 pages long and are reserved for sentences that are seeking more than 90 days.

The Gladue report will have a list of special recommendations that are tailored towards the individual client and what works best for them as a healing and wellness plan. The healing and wellness plan are centered around restorative justice techniques as alternatives to incarceration, and for incarceration to be a last resort.

Gladue Report:

used for sentences seeking more than 90 days

Indigenous Peoples Court (IPC): Court held specifically for indigenous offenders

The Gladue Process Continued

What if the client is sent to jail?

Gladue doesn't apply to the trial itself. If the client is sent to jail, Gladue applies if they have a parole hearing in jail.

In Ottawa, the client can choose to have any and all of these occur at the **Indigenous People's Court** within the Elgin Courthouse. These run on Monday and Wednesday afternoons starting at 2pm.

How long will the process take?

Since the report is written in a linear, chronological order of their life, it generally takes several interviews to get all the information required to illustrate the circumstances that lead them before the courts. In the initial interview, the team explains the Gladue process in detail and gets all required consent forms signed. Once the consent forms are signed, the team answers any questions the client's still have about the process and sets up the second interview.

Referral & Initial Contact

To get started on a Gladue Report, the client or their lawyer must first contact the Gladue team. An intake and first interview will be scheduled.



The Gladue Interview Process

Intake & First Interview

After first contact, the client will meet the Gladue team at TI's Gladue Program site at 604 Laurier Ave West.

The Gladue team at TI will set up a meeting and help the client fill out a simple consent form. The lawyers and the Judge will be made aware that the offender is starting the process. This is the time the clients questions will be answered and the Gladue team goes over the process in detail with them.

Second Interview

The second interview is where the client gets to tell their story. The team is able to meet anywhere they feel comfortable, as well as has private meeting rooms at many of the TI locations. The interview goes at their own speed and can often be very emotional as they may be resurrecting past traumas. This interview is usually the longest and depending on how much the client shares, can take anywhere from 1-4 hours. Once this interview is complete, the Gladue team writes up a draft of the report. It's in writing this draft that they come up with questions for the next interview to fill in any gaps of information that were left out, or forgotten. A third interview is then scheduled at their convenience.

Third Interview

On the third interview, the team presents the client with the draft they've created, as well as any remaining questions. This interview is generally shorter than the rest and lasts about 1-2 hours. Once the remaining information is gathered from this interview, the team writes a final draft that they then present to the client to ensure accuracy. Any remaining information is put in and a fourth interview, which is rarely necessary; is used to put the last-minute touches on the report. Once read over and signed by the client, the report is then sent to their legal representative, the sentencing Judge, and the Crown. All parties listed above read the report before the client's court date and therefore have a full understanding of all the mitigating factors that brought them before the courts. The report is not read to the courts or to anyone else to ensure confidentiality. The sentencing is now up to the Judge who has read through their report, taken into consideration their specific background, and makes a decision based on the information provided by the report.

What kind of information is included in a Gladue report?

A Gladue report gives the judge the information they need to make the best decision possible when setting bail or sentencing the client. The judge needs to be able to answer some very broad but important questions, with answers that are as unique as the client:

- Why is this particular Inuk before the court? (In other words, how or why did they end up getting into trouble with the law?)
- What sentencing options other than jail are available that might help to address the reasons why this Inuk person is before the court? (In other words, what kinds of culturally relevant programming is available for them and how will it help them to address the issues that got them into trouble with the law?)
- What community is the client from? Were they relocated a lot as a youth?
- Has the client or any of their family members ever been in foster care or group homes?
- Did the client or family members attend residential school?
- Has the client ever struggled with substance abuse (drug or alcohol abuse)? Have they been affected by someone else's substance abuse? For example, did the client grow up in a home where there was substance abuse or addictions?
- Did the client grow up in a home where there was domestic violence or abuse?
- Has the client participated in community activities such as hunting, fishing, sewing circles, beading, throat singing, or even just their connection with country food?

The more the information in their Gladue report that can be supported by other people, the better it will be. Sometimes we might ask the clients consent to talk to siblings, parents, or grandparents, just to help us fill in any missing pieces.

However, even if the client can't support the information in some way or if there's no one who can back up the information (this can often be the case for information about abuse), the client should still include it. The judge still needs as much information about them as possible.

Aftercare:

Specific healing recommendations listed on the back of a Gladue report

Some of the information in the clients Gladue report may be private or sensitive to them, and they may not like to talk about it. If the client doesn't want this information discussed out loud in court, they can ask their lawyer to give this information in writing to the judge and Crown counsel. The Gladue report is never read out loud at the courts or in front of others.

Aftercare

The final page of the report is a list of culturally relevant recommendations that are suited to fit the client's specific needs, called Gladue **Aftercare**. These recommendations are used by the judge when considering alternatives to jail.

The Judge can either make them recommendations or, reporting conditions for the client. The aftercare worker has already discussed with the client several agencies, methods, and options for their healing that will be beneficial to their specific circumstances. The aftercare worker then sets up each appointment, meeting, and introduction to whichever recommendations the client chooses or, are applied to them as conditions. The aftercare worker follows up with the client and the service providers in order to track their progress. Any questions, concerns or changes can be addressed through the aftercare worker who is already familiar with the clients Gladue report, background, and personal preferences. The aftercare worker is then in a position to present their progress to the courts or to their lawyer.

The judge then makes their decision having taken into consideration all the details within the Gladue report along with the healing plan recommendations. This process is intended to reduce the over-representation of Inuit in the Canadian judicial system and work with more traditional, restorative based healing techniques opposed to punitive consequences. Using Gladue is the client's choice, and their right. It is completely up to them whether or not they want the courts to take into consideration their status and use Gladue.



Barriers to Gladue

There are numerous barriers to the Gladue process including but not limited to:

- Judges and lawyers unfamiliar with the Gladue process
- Lack of services providing Gladue
- No dedicated Gladue court for indigenous offenders
- Cost of Gladue Reports (if not covered by province or funders)
- Lack of knowledge of the systemic factors faced by Indigenous People
- Lack of knowledge or refusal to consider alternatives to incarceration by lawmakers/ legal representatives
- Little to no availability for restorative justice programs as alternatives to incarceration

Gladue Cost by Province

Gladue reports are available in a number of provinces and generally, there is no charge. In some provinces there may be funding gaps which results in private providers offering Gladue services. In this case, individuals wanting to use Gladue services will have to pay for it. These can cost anywhere from \$2,000-\$6,000 each. In Ontario, Gladue reports are **free of charge**, meaning you or your lawyer do not have to pay any fees or costs. There are numerous agencies across Ontario who can provide Gladue reports that tailor to each individual's unique Aboriginal status.

What other resources can the client access?

There are multiple services throughout the Ottawa area that offer similar services tailored to Indigenous Peoples, First Nations, Inuit and Metis. These services can be reached through references at TI or through an internet search of social service providers.

Tungasuvvingat Inuit (TI) has an entire team dedicated to helping you through the court process. The **Pisiksik Justice Department (PJD)**, consist of two full-time **Gladue Writers**.

Tungasuvvingat Inuit does not and cannot provide legal advice

**Tungasuvvingat
Inuit (TI):**

an Ottawa based, not-for-profit organization that seeks to provide social support, cultural activities, counselling and crisis intervention to meet the rapidly growing needs of Inuit in Ontario

**Pisiksik Justice
Department:**

Department of TI that houses Gladue and Restorative Justice programs, as well as any other programs that assist Inuit in conflict with the law.

Gladue Writer:

Responsible for writing the Gladue Reports

Duty Counsel:

private bar or Legal Aid Ontario lawyers who can give immediate, legal assistance to low-income people who appear in court without a lawyer.

Legal Aid:

Provides legal service for financially- eligible, low income Ontarians in the following areas: domestic violence, family law, immigration/refugee law, and criminal law

The **Duty Counsel** at the Ottawa Courthouse on Elgin Street can answer some questions as the client prepares your Gladue report. The duty counsel can give them legal advice on, or before the day of court.

For more information, contact Duty Counsel at:

161 Elgin Street 2nd floor

Ottawa

K2P 2K1

Telephone: 613-238-7931

Toll-free: 1-800-668-8258

It's a good idea to get a lawyer to represent the client at their bail hearing, especially if they've been charged with a serious offence. Contact **Legal Aid** immediately to find out if the client qualifies for a **free lawyer**. If they don't qualify for a free lawyer, most courts in Ontario have duty counsel. Duty counsel are lawyers who can give the client free legal advice on or before the day of court. Legal aid can give the client more information on when and where they can meet with a duty counsel in their area.

Legal Aid Ottawa:

73 Albert Street Ground Floor

Telephone: 613-238-7931 Extension:

Toll-free: 1-877-314-0933

Fax: 1-613-238-3410

TTY (Telephone device for the hearing impaired)

TTY local: 416-598-8867

TTY Toll-free: 1-866-641-8867

To contact T.I. about its Gladue service or if there are any questions, please contact:

Gladue Writer:

Gwen Gordon

Cell: (343) 551-5747

Email: ggordon@tiontario.ca

Location:

282 Dupuis St.

Ottawa, ON

K1L 7H9

Local Services

An array of services are also available at the following providers in Ottawa:

Odawa Native Friendship Centre
Ontario Native Womens Association (ONWA)
Wabano
John Howard
Minwaashin Lodge

Reference/Statistics

All stats referenced in this document are from Statistics Canada and the Government of Canada website. All relevant material and supporting documents can be found at:

www.statscan.gc.ca

www.justice.gc.ca

For more information on Jaimie Gladue's case in the Supreme Court, refer to:

Regina v. Gladue at **www.canlii.org**

Special thanks to the Legal Services Society (LSS) of British Columbia for creating Canada's first Gladue Primer. Though similar, any likeness is solely coincidental and not in any way meant to duplicate their efforts. The BC Gladue Primer can be viewed at:

www.legalaid.bc.ca