

# Your Gladue Rights



Legal  
Services  
Society

British Columbia  
[www.legalaid.bc.ca](http://www.legalaid.bc.ca)

October 2017

© 2017 Legal Services Society, BC  
First edition: March 2017; reprinted with minor revisions  
October 2017

ISSN 2560-6247 (print)  
ISSN 2560-6255 (online)

### **Acknowledgements**

Writer: Judy Clarke  
Editors: Jennifer Hepburn and Carol Herter  
Designer: Brian Goncalves  
Legal reviewer: Halie Bruce  
Development coordinator: Patricia Lim

This booklet may not be commercially reproduced, but copying for other purposes, with credit, is encouraged.

*Your Gladue Rights* is published by the Legal Services Society (LSS), a non-profit organization that provides legal aid to British Columbians. LSS is separate from the BC government, its primary funder. It also receives grants from the Law Foundation and the Notary Foundation (of BC).

This booklet explains the law in general. It isn't intended to give you legal advice on your particular problem. Because each person's case is different, you may need to get legal help. *Your Gladue Rights* is up to date as of October 2017.



## What Gladue Means

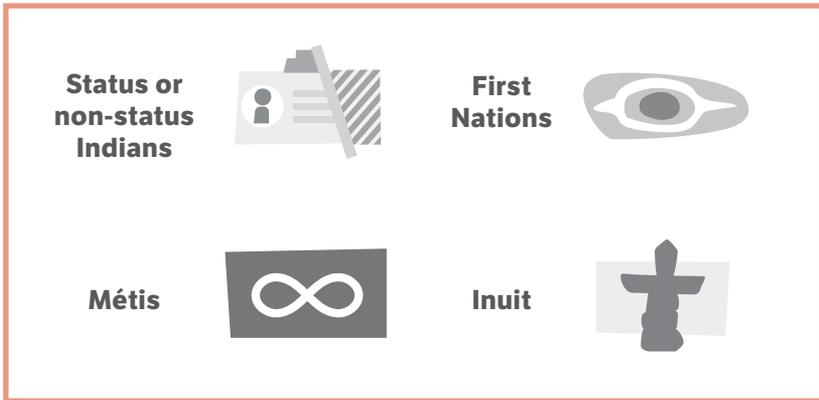
Aboriginal peoples have legal rights under the Criminal Code of Canada called **Gladue** rights. These rights apply to Aboriginal peoples because of their special circumstances (experiences) in Canada.

The word *Gladue* comes from a Supreme Court of Canada case about an Aboriginal woman named Jamie Gladue. In this case, the court said the criminal justice system failed Aboriginal people and too many were being sent to jail. The court also said Aboriginal peoples face racism, in Canada and in the justice system. Judges must keep this in mind and treat Aboriginal peoples fairly when they're before the court.

If you're Aboriginal, and in custody for a bail hearing or being sentenced, the judge must apply your Gladue rights. You also have Gladue rights at an **appeal** (the court looks at your sentence again) when Gladue wasn't applied at your sentencing. It means the judge must think about the challenges you face in your life as an Aboriginal person, and give you a sentence other than jail when possible.

# Who Has Gladue Rights

Gladue rights apply to all Aboriginal peoples:



You can live:

- on reserve,
- off reserve,
- in an Aboriginal community, or
- in a non-Aboriginal community.

Gladue also applies if:

- a non-Aboriginal family adopted you, or
- you grew up in a foster home.

## Restorative Justice

In the Gladue case, the court said judges must think about sentences other than jail to repair the harm your crime has done. This is called **restorative justice**. You're not automatically released, but you may get a community sentence or a lighter sentence.

The goal of restorative justice is to give you, your victims, and the community a chance to heal and move forward. For example, your sentence might involve drug or alcohol rehab, anger management, or counselling. Or you might have to attend a healing circle or other culturally appropriate programs. This is where you, your victim, and the community talk about the harm you caused and what you need to do to repair it.

In some situations, the judge may have no choice but to send you to jail. But the judge must still apply Gladue when they decide how long your jail sentence will be.

## What Happens in Court

You must tell your lawyer or the court you're Aboriginal. The judge needs to know to apply your Gladue rights. Even if you don't have a lawyer, the judge must still apply Gladue.

To apply Gladue, the judge has to know about:

**you, + your family, and + your community.**

You can give the court information about yourself in a written Gladue report. Or you can give an oral Gladue submission (out loud in court). See page 6.

The judge thinks about the **factors** (reasons) that may have brought you to court. For example:

- Where are you from? Do you live in a city or in a rural area (the country)? Do you live on or off reserve?
- Have you or any of your family members been in foster care?
- Did you or a family member go to an Indian residential school?

- Have you struggled with alcohol or drug misuse?
- How much education do you have?
- Did you or a family member have any issues that affected your education? Some examples are trauma, Fetal Alcohol Spectrum Disorder (sometimes called FASD), or learning disabilities.

Then the judge thinks about you as an Aboriginal person, and asks:

- How or why did you get into trouble with the law?
- What kind of sentence might help you work through the issues that got you into trouble with the law?

To understand about you, the court must think about Aboriginal peoples' history.

## **Aboriginal Peoples' History**

Generations of Aboriginal peoples are disconnected from their culture, traditions, and identity. Laws, policies, and practices in Canada caused this situation. These include:

- the Indian Act,
- forced attendance at Indian residential schools, and
- the large numbers of Aboriginal children taken into foster care or adopted out.

Survivors struggled with abuse and neglect. Some passed on the same patterns to their own children. The result is Aboriginal peoples experience high rates of social problems.

These include high rates of contact with the criminal justice system, convictions and jail times, suicide, addictions, health issues, unemployment, illiteracy, high school dropout, domestic abuse, violence, and sexual abuse.

Because of this history, Aboriginal peoples continue to face racism in their everyday lives and in the justice system.

# History of Gladue

Gladue rights come from section 718.2(e) of the Criminal Code, and how the Supreme Court of Canada interpreted it. In the Gladue case, the Supreme Court said the justice system was sending too many Aboriginal people to jail. To reduce the number of Aboriginal people in jail, the court said judges must think about:

- the special circumstances of Aboriginal peoples in Canada,
- the Aboriginal person's background, and
- restorative justice.

## The Gladue court case

In 1995 a young Cree woman named Jamie Tanis Gladue was charged with the second-degree murder of her common-law husband. She pleaded guilty to manslaughter. The sentencing judge thought Jamie's Aboriginal status wasn't important to her case because Jamie lived off reserve in a city and wasn't in an Aboriginal community. The judge sentenced Jamie to three years in jail.

Jamie and her lawyer decided to appeal her sentence. They said the judge didn't follow the law about her special circumstances. Jamie's case went to the Supreme Court of Canada in 1999.

The Supreme Court said the judge who sentenced Jamie made a mistake to say that Jamie's Aboriginal status wasn't important. They said Jamie's sentence didn't have to be changed. But the court recognized that the number of Aboriginal people in jail was too high. Because of this, judges must follow sentencing rules in section 718.2(e) of the Criminal Code.

## The Ipeelee court case

In the Ipeelee court case of 2012, the Supreme Court of Canada again talked about what Gladue means.

The court said judges must look at how special circumstances affect all Aboriginal peoples, and the Aboriginal person in court. Judges must explain *how* they thought about the person's special circumstances.

The court also said Gladue applies to *all* crimes under the Criminal Code, even very serious ones. The judge must try to come up with a sentence that fits the crime, the person who committed it, their community, and the victim.

The court said a written Gladue report may be the best way to make sure a judge thinks about Gladue factors and restorative justice.

## Gladue Reports and Oral Gladue Submissions

It's important to give the judge a detailed plan so they can decide the best sentence for you and your community. You can give the judge a written **Gladue report** or **oral Gladue submission** so they know about you and your family history. This helps to explain why you're in court.

### Gladue report

You, an **advocate** (community worker who can help with your legal issue), or a trained Gladue writer can write your Gladue report. Because trained writers know about Aboriginal peoples' history and experiences, they can clearly describe your Gladue factors.

They base the report on interviews with you, your family members, and community services. The report includes factors such as your:

- history at residential school, in the child welfare or criminal justice systems, or with adoption;
- personal experiences as a child, youth, and adult;
- health, and if you or your family misused alcohol or drugs; and
- education, employment, and criminal history.

The report tells the judge about your strengths. It also talks about where you can get help to deal with issues that brought you to court and to reach your personal goals. Help for you may include programs and services for health and wellness, education, or employment.

Gladue reports can be written for bail or sentencing hearings, and appeals when Gladue wasn't applied at sentencing.

The judge doesn't need the same amount of information to apply Gladue at a bail hearing as at a sentencing hearing. They need to know certain details about you for bail, such as your employment and education. They also look at other options instead of jail while you wait for your next court date.

A Gladue report can be 10 to 20 pages long and take eight weeks or longer to write. If you take the time to get a Gladue report, your bail hearing might be delayed for a few weeks. But your report may be used as part of your bail plan. This means you're more likely to be released until your trial or hearing.

A written Gladue report may help you to put sensitive information before the court without having to say it in open court.

## Oral Gladue submission

An oral Gladue submission has the same general information as a full written Gladue report. But it doesn't have as much detail. Preparing an oral submission is faster. It's most useful if you're:

- likely to receive a shorter sentence,
- likely to receive a suspended sentence,
- likely to receive a conditional sentence or probation, or
- can't wait eight weeks or longer for a full written Gladue report.

You might think the information in your submission is too sensitive to say out loud in court. Instead, you can give it in writing to the judge or **Crown counsel** (government lawyer).

## First Nations Courts

If you accept you're responsible for your crime and plead guilty, you may be able to go to one of BC's First Nations Courts for sentencing. First Nations Courts are in Duncan, Kamloops, Merritt, New Westminster, and North Vancouver. There may be more locations in the future.

At First Nations Court, the judge, your lawyer, Crown counsel, Aboriginal community members, and your family work with you to come up with a healing plan.

For more information, see **[aboriginal.legalaid.bc.ca](http://aboriginal.legalaid.bc.ca)**. Click Your rights. Then click First Nations Court.

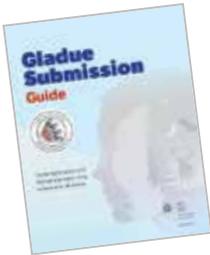
# More about Gladue



*Gladue Rights  
at Bail and  
Sentencing*



*What's  
First Nations  
Court?*



*Gladue  
Submission  
Guide*



*Gladue  
Report  
Guide*

[aboriginal.legalaid.bc.ca](http://aboriginal.legalaid.bc.ca)

## **If You're Charged with a Crime**

Call Legal Services Society (Legal Aid BC) to find out if you qualify for a free lawyer.

**604-408-2172** (Greater Vancouver)

**1-866-577-2525** (no charge elsewhere in BC)

# How to Get Free Copies of Legal Aid BC Aboriginal Publications

Legal Aid BC offers many free publications on Aboriginal issues such as Aboriginal harvesting rights (fishing, hunting, and gathering) and income assistance on reserve.

**Read:** [aboriginal.legalaid.bc.ca](http://aboriginal.legalaid.bc.ca)  
(under We can help, click Free publications)

**Order:** [crownpub.bc.ca](http://crownpub.bc.ca)  
(under Quick Links, click BC Public Legal Education & Information)

## Questions about ordering?

**604-601-6000**  
**[distribution@lss.bc.ca](mailto:distribution@lss.bc.ca)**

## Feedback on this publication?

**[publications@lss.bc.ca](mailto:publications@lss.bc.ca)**



@ legalaidbc