

What is a Gladue Court?
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In January of this year, we were invited to participate in the Mushkegowuk Justice Conference. One of the many important issues that were discussed there was the Gladue courts and how needed and necessary they are in the Northern communities. Jonathan Rudin, program director with the Aboriginal Legal Services of Toronto led the discussion.

While the only Gladue courts in Ontario are only available in Toronto, the hope that they will come to the Nishnawbe Aski Nation communities may someday be a reality. In the meantime, it is important that we are all aware of what the Gladue courts are , what they do and how they seek to improve justice for First Nation offenders.

Background to the Gladue Courts

On April 23, 1999, the Supreme Court released its decision regarding *R. v. Gladue*. The decision provided the Court's first interpretation of s. 718.2 (e) of the Criminal Code. The section says:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(e) all available sanctions other than imprisonment that are reasonable in the circumstance should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

The Court stated that these amendments represented a change in the way judges should approach the sentencing process.

What is the Gladue Court?

The Gladue courts were a response to the Galdue decision. It was created by a group of Toronto Judges and Aboriginal Legal Services of Toronto and it began functioning October of 2001.

The court is available to all Aboriginal persons, be they Métis, Inuit or status or non-status Indians. However it is up to the accused person to chose to have his or her matter heard by the Gladue Court.

The court accepts guilty pleas, conducts remands and trials, sentences offenders and carries out bail hearings and variations.

How is the Gladue Court Different from a Regular Court?

The Gladue court is of more benefit to an Aboriginal offender simply because a judge must consider two things:

- The unique system or background factors which may have played a role in bringing the offender before the court, and

- The types of sentencing procedures and sanctions that may be appropriate in the circumstances to the offender due to his or her Aboriginal heritage, including the examination of alternative justice processes such as Restorative Justice.

The above is done in order to address the finding of the Royal Commission's report on criminal law, "Bridging the Cultural Divide", which stated that the reason for the Euro-Canadian system of justice being unable to deal with Aboriginal offenders is due to the fact that there is a "*fundamentally different world views of Aboriginal and non-Aboriginal people with respect to such elemental issues as the substantive content of justice and the process of achieving justice.*"

It is a fact that Aboriginal offenders respond better to a Restorative Justice model which advocates sharing, reparation and a holistic approach rather than the discriminations, adversarial stance and incarceration that is often synonymous with the Criminal Justice system.

In order to make sure that those two considerations are properly explored, the Gladue courts have Gladue case workers who are employed by Aboriginal Legal Services of Toronto. The job of the Gladue case worker is to prepare reports for the judges regarding the offender's background and alternative justice programs available to him or her after a finding of guilt.

All of these add up to a court that is more in tune of its user's background and environment which is the beginning of a better justice system.

For additional information please see the
Aboriginal Legal Services of Toronto website at
<http://www.aboriginallegal.ca>