



GLADUE PRINCIPLES

A guide to culturally relevant
sentencing for Indigenous peoples



Mi'gmaq Justice
Initiative



What is Gladue?

If you identify as Indigenous and are charged with a crime, the court must apply **Gladue principles** when dealing with your case.

Gladue refers to a legal principle in Canadian law that requires courts to consider the unique circumstances of Indigenous people, including the impacts of colonialism, Residential Schools/ Day Schools, and systemic discrimination, when determining sentences for crimes.

It is named after the 1999 Supreme Court case *R v. Gladue*, which emphasized the importance of understanding these principles in sentencing and encouraged alternative, culturally relevant approaches to justice for Indigenous offenders.

Gladue principles aim to address these issues by requiring judges to consider the specific challenges that Indigenous peoples have faced and fought against, such as:

- Historical and Intergenerational Trauma
- Disconnection from community and culture
- Experiences of racism and discrimination
- Loss of language
- Involvement with Child Protection and Foster Care

These challenges are known as **Gladue factors**.

Gladue principles require judges to consider a person's specific Indigenous heritage and community connections.

For example, there may be Indigenous laws or customs that offer guidance on how to address the offense. A person's community might recommend a restorative approach to addressing the harm, rather than relying on jail time. A person's community could be their First Nation or any network of people they are connected to. Even an Indigenous person living in an urban center, without a direct connection to a First Nation, still has a community.

The court should also be aware of available options to help the individual overcome the challenges that led to their involvement in the justice system. While an Indigenous offender may choose to waive their Gladue right, the court is still required to consider "Gladue factors" during sentencing.



When do Gladue principles apply?

Gladue principles apply when an Indigenous person is involved in a criminal case, particularly during sentencing. Courts must consider these principles in the following situations:

- Sentencing
- Bail Hearings
- Incarceration Decisions
- Parole Hearings
- Appeals, etc.

The court must consider alternatives to prison, such as a fine, community service, probation, or participation in a restorative justice program. If prison time is imposed, Gladue principles can still influence the length of the sentence, though they do not automatically result in a reduced sentence.

Gladue principles also apply to decisions regarding whether, and under what conditions, a person should:

- Be ordered to face charges in another country (extradition).
- Be subject to strict, long-term conditions due to serious crimes (long-term or dangerous offender designations.)

Who can access Gladue Services?

Those who self-identify as Indigenous (First Nations, Inuit, or Métis), regardless of whether they live on or off reserve, or in urban or rural areas.

NOTE: An Indigenous offender in an urban center without a support network is still entitled to Gladue services, and the sentencing judge is obligated to explore alternatives to imprisonment.



How do judges receive information about Gladue factors?

A Gladue report is one way to help courts to apply Gladue principles. The report tells a story about an Indigenous person their family, and their community, including:

- What unique challenges brought the Indigenous person before the court.
- Family and community perspectives, including the offense and how to address the harm done.
- Steps the Indigenous person can take to overcome these challenges, or available options to do so.
- Any relevant laws, customs, or traditions of the Indigenous person's community.

The report is based on interviews with the Indigenous person, as well as their family, partners, friends, and community members.

It will often recommend an outcome based on this information.

Gladue reports are different from other reports, such as forensic psychiatric assessments (FPAs) and presentence reports (PSRs), as these do not typically contain the necessary information to apply Gladue factors. Gladue report writers must also have specific knowledge and experience with Indigenous issues.

Depending on the case, information about Gladue factors can also be communicated through a simpler format, called Gladue submissions. These can be oral statements to the court, or written statements, like a letter. Gladue submissions are usually used for cases for less serious offences, where the Crown is seeking a shorter sentence.

Are Gladue Reports only available during sentencing?

No. While Gladue reports and letters are mostly used at sentencing, they are also available for bail, after a finding of plea or guilt, at parole hearings, appeals, etc.



How do I access Gladue Services?

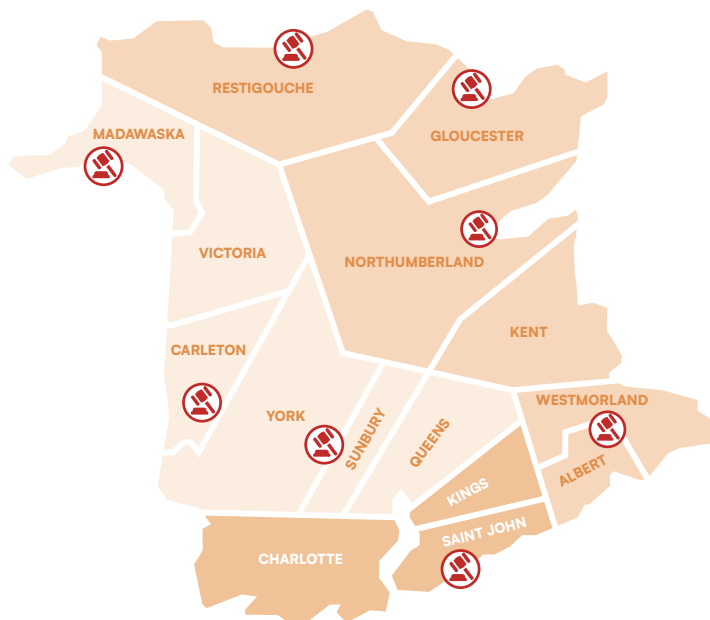
Notify your legal representative or court that you are Indigenous early in the process to ensure Gladue services are considered. They can request the report on your behalf.

Contact the Gladue service in your region.

The court will review whether a Gladue report is appropriate based on the nature of the offence and other factors.



Gladue in New Brunswick



Western Region

Madawaska to Queens County.

Serviced by WTCI
(Wolastoqey Tribal Council Inc.).

Eastern Region

Restigouche to Albert County

Serviced by MJJ (Mi'gmaq Justice Initiative).

Saint John Courthouse

Serviced by MJJ and WTCI.

NOTE: Charlotte, Kings, and St. John County are jointly serviced.

Who To Contact

Eastern Region

If you reside in the Eastern Region of the province (includes Campbellton, Bathurst, Miramichi, Moncton Courthouses) please contact Gladue Services at MJJ.

☎ (506) 451-1430

✉ gladue@migmaqjustice.org

Western Region

If you reside in the Western Region of the Province (includes Madawaska, Woodstock, Fredericton, St. John Courthouses) please contact Gladue Services at WTCI (Wolastoqey Tribal Council Inc.).

☎ (506) 459-6341

✉ gladue@wolastoqey.ca



IN COLLABORATION WITH:

