

# Are you Aboriginal?

## Do you have a bail hearing?

## Are you being sentenced for a crime?

## Do you know about First Nations Court?

Legal  
Services  
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www.legalaid.bc.ca

If you self-identify as Aboriginal (meaning if you think of yourself as Aboriginal), you have rights under the Criminal Code, often called Gladue rights. These rights apply to all Aboriginal people, whether you're status or non-status Indian, First Nations, Métis, or Inuit, and whether you live on or off reserve. In addition to your Gladue rights, you may be able to have your bail or sentencing hearing in the First Nations Court of BC in New Westminster.

### What is Gladue?

In 1999, an Aboriginal woman named Jamie Gladue had her case heard by the Supreme Court of Canada. As a result of this case, the court said that there are too many Aboriginal people being sent to jail. The court also said that Aboriginal people face racism in Canada and in the justice system.

Now the word Gladue refers to the special consideration that judges must give an Aboriginal person when sentencing or setting bail. When your lawyer informs the court of your Gladue rights, the judge must keep in mind that Aboriginal offenders face special circumstances. When the judge is sentencing you, he or she must consider *all options other than jail*.

**Note:** It's *your right* to have Gladue applied to your case. Your lawyer should do everything possible to make sure your Gladue rights are respected. More information on Gladue is available in the *Gladue Primer* (see [www.legalaid.bc.ca/publications](http://www.legalaid.bc.ca/publications)), or from the booklet *Are You Aboriginal?* (see [www.cleonet.ca](http://www.cleonet.ca)). If you don't have a lawyer, the judge must still apply Gladue.

**NOTE** Contact legal aid immediately to find out if you qualify for a free lawyer.

#### Legal aid:

604-408-2172 (Greater Vancouver)

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

### Will Gladue keep me out of jail?

Gladue does not automatically mean you won't get jail time. However, your sentence could involve participating in a program that would help you to address the issues that got you into trouble with the law in the first place. This is called a **community sentence**. A community sentence might involve participating in drug rehabilitation or counselling. If you do a community sentence, you may get less or no time in jail.

However, the judge may have no choice but to send you to jail. If this is the case, the judge must still apply Gladue when deciding how long your jail sentence will be.

### What is a Gladue report?

In order to apply Gladue, the judge needs to understand your circumstances and to know what kinds of community sentences are available. To help the judge, your lawyer needs to provide the court with a **Gladue report**. A Gladue report gives the judge, the **Crown counsel** (the government lawyer), and your lawyer as much information as possible about you. The other side of this fact sheet has some questions that can help you and your lawyer get started on preparing your Gladue report.

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## Do you know about First Nations Court?

You may be able to have your bail or sentencing hearing at First Nations Court. First Nations Court takes a **restorative** approach to sentencing. This means that the judge, Crown counsel, Aboriginal community members, and your family will work with you and your lawyer to come up with a healing plan.

First Nations Court sits once a month and hears criminal and related child protection matters. For more information, contact the First Nations Court expanded **duty counsel** at **1-877-601-6066** (call no charge from anywhere in BC).

Duty counsel are lawyers who give free legal advice. If you don't have a lawyer, the expanded duty counsel can give you legal advice on or *before* the day of court. He or she can also help you prepare your Gladue report.

**Note:** It's *your choice* whether you exercise your Gladue rights or apply to have your matter heard in First Nations Court. Talk to your lawyer about what's best for you. If you don't have a lawyer, contact the First Nations Court expanded duty counsel at **1-877-601-6066** (call no charge from anywhere in BC).

## Some questions for preparing your Gladue report

**Note:** Some of this information may be private or sensitive for you and you may not like to talk about it. If you don't want this information discussed out loud in court, you can ask your lawyer to give this information in writing to the judge and the government lawyer.

- Where are you from? Do you live in a city or in a rural area? Do you live on reserve?
- Have you ever been in foster care? Have other members of your family been in foster care (your parents, brothers and sisters, or your children)?
- Did you or a family member attend an Indian residential school?
- Have you ever struggled with **substance abuse** (drug or alcohol abuse)? Have you been affected by someone else's substance abuse?
- What level of education do you have? What is your reading level?
- Did you or a family member have any issues that may have affected your opportunities to learn, such as trauma, Fetal Alcohol Spectrum Disorder (FASD), or learning disabilities?

## Your important details

Name of lawyer: \_\_\_\_\_

Bail hearing: \_\_\_\_\_

Trial hearing: \_\_\_\_\_

Sentencing hearing: \_\_\_\_\_

Special thanks to Community Legal Education Ontario for use of the information in their booklet *Are you Aboriginal?* (2009).

