



# Indigenous Led Justice in a Western Justice Framework

Presented at the 2023 Provincial HSJCC Conference

Melanie Garant (she/her)



# Overview

Arriving at my perspective

Indigenous overrepresentation in the criminal  
justice system

Restorative justice practices

Indigenous People's/Gladue Courts

The Gladue Report process

Truth and Reconciliation calls to action



# Arriving at my perspective

- 17: I wanted to work with Indigenous people in conflict with the law – lawyer?
- 19: Summer placement at the Can-Am Indian Friendship Centre in Windsor
- University: BA Honours Psychology/Criminology and Master's Sociology
- Worked for the Federal Government for 6 years
- Worked for the Can-Am Indian Friendship Centre for 9 years
- 2016: Started working for Aboriginal Legal Services as a Gladue Writer

# Indigenous Overrepresentation in the Criminal Justice System

- Federal penitentiaries: Indigenous populations have increased almost 40% since 2006
- Indigenous men represent 30% of all in-custody males
- In 2018, Indigenous inmates represented 28% of the total federal in-custody population while comprising just 4.3% of the Canadian population.
- Between 2009 and 2018, the number of Indigenous federally sentenced women increased by 60%.



# Indigenous Overrepresentation in the Criminal Justice System

- The incarceration rate of Indigenous women continues to be much higher (12.5 times) than that of non-Indigenous women.
- In 2018, 40% of incarcerated women in Canada were of Indigenous ancestry.
- In 2016/2017 Aboriginal female youth accounted for 60% of female admissions to correctional services, while Aboriginal male youth made up 47% of male youth admissions.

## Indigenous Peoples and the Court

- Indigenous people are less likely to plea bargain or to benefit from a negotiated plea
- Often underrepresented or unrepresented in court
- More likely to plead guilty
- More likely to be incarcerated upon conviction
- Lack of understanding
- It is unlikely that Indigenous offenders will be able to face such an adversarial system unscarred.
- The impact of the justice system is most apparent at the sentencing stage.

# Why the Need for Restorative Justice?

- Knowledge of how the justice system works or lack thereof
- Repair of the debt to the victim
- The principle of non-interference

# What ELSE Can Be Done?

Use of Indigenous/restorative justice processes:

- Diversion circles
- Mediation/Healing circles
- Sentencing circles
- Indigenous People's Courts/Gladue Courts
- Gladue Reports



# Sentencing Circles

- Description of sentencing circles
- What was done traditionally when a wrong had occurred?
- Delegation of judicial power to the community

# Sentencing Circles

- Victim input
- Adaptation to conventional court protocol vs adoption of traditional dispute resolution practices
- Availability and accessibility of resources



# What ELSE Can Be Done?

Use of Indigenous/restorative justice processes – one example from the Six Nations Justice Department

<https://youtu.be/mje8CYVcgIY>

## Section 718.2(e) CCC

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 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.**

This section was explained when the Supreme Court of Canada gave its decision in R v Gladue in 1999.



# Indigenous People's/Gladue Courts in Ontario

Thunder Bay Indigenous Peoples Court

Brantford Child Protection Indigenous Court

Brantford Indigenous Persons Court

Cayuga Indigenous Peoples Court

London Gladue Court

Ottawa Indigenous Peoples Court

Sarnia Gladue Court

Eglinton Gladue Court in Scarborough

Niagara Indigenous Peoples' Court in St. Catherines

Nishnawbe-Aski Restorative Justice Program in Thunder Bay

# Indigenous People's/Gladue Courts in Ontario

Kenora Justice Centre

Community Justice Council in the Peel and Durham Region and  
Newmarket

Giiwedin Anang Council in the Greater Toronto area

Finch Gladue Court in Toronto

College Park Gladue Court in Toronto

Jarvis Aboriginal Youth Court in Toronto

Jarvis Child Welfare Gladue Court in Toronto

Old City Hall Gladue Court in Toronto

Walpole Island First Nation Gladue Court

Akwesasne\*



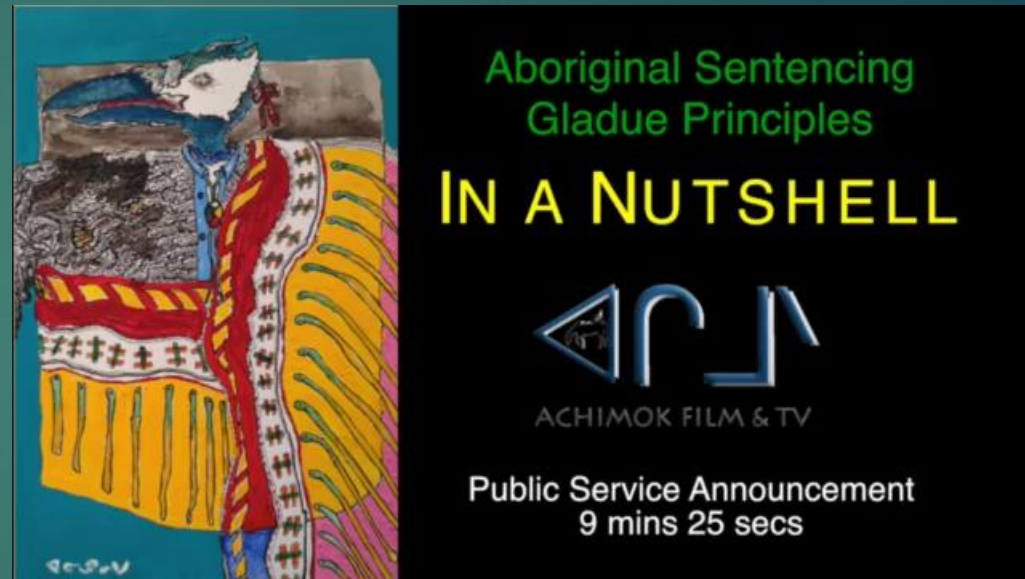
# Need for and Use of Indigenous People's/Gladue Courts in Ontario

- Why did the courts come into being?
- Specialized court
- Adopting a more restorative approach
- Response to a critical issue
- Indigenous Court Worker's role

## VIDEO: ABORIGINAL SENTENCING GLADUE PRINCIPLES IN A NUTSHELL



Jonathan Rudin  
Director of Special Projects  
Aboriginal Legal Services



<https://vimeo.com/117986070>

# How to Request a Gladue Report

The request form can be found by going to [www.aboriginallegal.ca](http://www.aboriginallegal.ca) and clicking on Gladue Request Forms.

A Gladue Request Form cannot be given directly to a Gladue Writer. It must be faxed the Aboriginal Legal Services head office first.

Kim Whiteduck, the Gladue Coordinator for Aboriginal Legal Services, sends the Gladue Report requests to the Senior Manager of the Gladue Program for assignment. There are 11 regions in Ontario where ALS Gladue Writers are present.



# What type of information does the judge need?

## Background Information

The judge needs to know that the person is Indigenous. The judge also needs information about who they are, how they got here, and what happened to their parents and their family.

For example:

- Did they or a family member go to residential school?
- Were they adopted or in the child welfare system?
- Did they grow up in a home where there was abuse or addictions?
- Do they have addictions, mental health issues, or FASD (fetal alcohol spectrum disorder)?
- Information about their community.

## What type of information does the judge need?

### Non-Jail Options

- The judge needs to be told about sentencing options instead of jail. All non-jail options can be considered under Gladue, even if they are not Indigenous programs.
- If there are substance abuse programs or other types of healing programs the judge will need to know where those programs are and if the person can get in.
- The judge may also want to know about any suitable programs or activities in the person's community, on or off reserve. Again, the judge will need to know if the person can get in.

## When does Gladue apply?

- Gladue does not apply to the trial process.
- Gladue applies to the person's bail hearing.
- Gladue applies again if the person is tried and found guilty or they plead guilty. The judge then has to apply Gladue when deciding the person's sentence.
- If the person is sent to jail, Gladue applies to their parole hearing in jail.



## Roles of the Gladue Writer

- The Gladue Writer will receive the assignment from head office and contact the client as soon as possible.
- The first interview the Gladue Writer learns about their client's Indigenous ancestry
- Sometimes the Gladue Writer must do some genealogical research to verify the client's Indigenous ancestry.
- The Gladue Writer will interview the client about their unique life circumstances as an Indigenous person.

## Roles of the Gladue Writer

- The Gladue Writer will interview other people familiar with the client's life circumstances, such as: parents, foster parents, grandparents, siblings, partners, adult children, Native Inmate Liaison Officers, social workers, counsellors, program facilitators, employers and the list goes on.
- The Gladue Writer will roll up all the interviews and write the Gladue report.
- In consultation with the client the Gladue Writer will provide recommendations for sentencing.
- Once the report is edited the Gladue Writer will send it off to the judge, defence counsel and the Crown attorney prior to sentencing.

## Truth and Reconciliation Commission Calls to Action – Justice Sector

30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.

31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.

32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.



# Truth and Reconciliation Commission Calls to Action – Justice Sector

38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.

42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by Canada in November 2012.

**Questions**

**Comments**

A vibrant aurora borealis (northern lights) display in shades of green and blue against a dark, starry night sky. The lights are seen through a circular frame on the left side of the slide.

# Thank You

**MELANIE GARANT, B.A. (Hons.), M.A.**

**GLADUE WRITER - WINDSOR**

**ABORIGINAL LEGAL SERVICES**

**OFFICE PHONE (TOLL FREE): 1-844-633-  
2886 EXT. 219**

**CELL PHONE: 226-787-1560**

**EMAIL: [melanie@aboriginallegal.ca](mailto:melanie@aboriginallegal.ca)**