

GLADUE (ABORIGINAL PERSONS) COURT
ONTARIO COURT OF JUSTICE- OLD CITY HALL
FACT SHEET

October 3, 2001

On April 23, 1999, the Supreme Court of Canada released its decision in R v. Gladue [1999] 1 S.C.R. 688. The decision provided the Supreme Court's first interpretation of s. 718.2 (e) of the Criminal Code of Canada. The section, which was part of a comprehensive series of amendments made in 1996 to the sentencing law in Canada, 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 circumstances 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 (para. 33). The Court noted that Canada, compared to other countries, showed an overreliance on incarceration as a response to criminal activity. This was particularly the case with respect to Aboriginal people:

If overreliance upon incarceration is a problem with the general population, it is of much greater concern in the sentencing of aboriginal Canadians. (para. 58)

After canvassing numerous studies, commissions and reports on Aboriginal people and the criminal justice system, the Court concluded:

These findings cry out for recognition of the magnitude and gravity of the problem, and for responses to alleviate it. The figures are stark and reflect what may fairly be termed a crisis in the Canadian criminal justice system. The drastic overrepresentation of aboriginal peoples within both the Canadian prison population and the criminal justice system reveals a sad and pressing social problem. It is reasonable to assume that Parliament, in singling out aboriginal offenders for distinct sentencing treatment in s. 718.2(e), intended to attempt to redress this social problem to some degree. The provision may properly be seen as Parliament's direction to members of the judiciary to inquire into the causes of the problem and to endeavour to remedy it, to the extent that a remedy is possible through the sentencing process. (para 64)

Responding to the Gladue decision in a city like Toronto poses real challenges. Some of these challenges became apparent at the joint conference of the Ontario Conference of Judges and the Canadian Association of Provincial Court Judges in Ottawa, in September 2000. Judges from across the country who attended workshops about how to apply the Court's decision in Gladue expressed common concerns - some as fundamental as knowing when an Aboriginal person was before them. More importantly, judges thought

that everyone - lawyers, probation officers and judges - did not yet have the directed resources to give full attention to the special circumstances of Aboriginal people appearing in court.

In response to these concerns a group of judges, academics and community agencies met for a year to discuss how to meaningfully develop a response to the Gladue decision at the Old City Hall Courts in Toronto - the busiest court in Canada. The result was the creation of the Gladue (Aboriginal Persons) Court. The objective of the court is:

To establish this criminal trial court's response to Gladue and s.718.2(e) of the Criminal Code and the consideration of the unique circumstances of Aboriginal accused and Aboriginal offenders.

The court will be available to all Aboriginal persons - Indian (status and non-status), Metis and Inuit who wish to identify themselves as such. Aboriginal Legal Services of Toronto's (ALST) Aboriginal Court Worker may assist the court should questions arise as to an accused's identity.

While the court is open to all Aboriginal accused persons, no person will be required to have his or her charges heard by the court. Aboriginal individuals are free to have their matters dealt with in any court. However once a matter is heard in the Gladue (Aboriginal Persons) Court, it will normally continue in that court until it is resolved. Initially the court will sit Tuesday and Friday afternoons, however this schedule may change if volume dictates.

The Gladue (Aboriginal Persons) Court will perform no different activities than any other court at Old City Hall, although it will offer all of them in one court: bail hearings and bail variations (with consent of the Crown Attorney), remands, trials and sentencing. What will distinguish the court is that those working in it will have a particular understanding and expertise of the range of programs and services available to Aboriginal people in Toronto. This range of expertise will allow the court to craft decisions in keeping with the directive of the Supreme Court in Gladue because the information required to develop such responses will be put before the court.

The Gladue (Aboriginal Persons) Court sees existing resources redistributed. The Court will have a dedicated Crown Attorney, Duty Counsel, Probation and Parole Officer and court clerk. ALST's Aboriginal Court Worker will work closely with the court. The only new position created in response to the development of the court is that of the Aboriginal Caseworker - an employee of ALST who will be available to defence counsel to assist in the preparation of sentencing reports to the court. This position has been funded initially by a grant from Miziwe Biik Aboriginal Employment and Training. Initially, four judges will rotate through the court although this number will increase as other judges express interest in sitting in the court.

In order to assist all who are involved with the court, ALST has agreed to co-ordinate training and education sessions on relevant issues. These sessions will also be made available to members of the defence bar who wish to take part in them.

For more information on the Gladue (Aboriginal Persons) Court please contact: Jonathan Rudin, Program Director, Aboriginal Legal Services of Toronto - 416-408-3967 ext. 226.