

A Court of Our Own:
More on the Gladue Courts

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In June, the third Gladue (Aboriginal Persons) Court in Toronto will open at the College Park Courthouse. The Court, which will sit on Thursdays, will join a Gladue Court at the 1000 Finch Courts (which sits on Mondays) and the original Gladue Court at the Old City Hall Courts, which sits Tuesdays and Fridays.

Gladue Courts deal only with Aboriginal people who have matters before the courts. The Courts hear bail applications and sentence Aboriginal people who wish to plead guilty to their charges. The existence of Gladue Courts is an illustration of the flexibility of the court process and its ability to respond to the needs of Aboriginal accused persons.

Gladue Courts get their name from the 1999 decision of the Supreme Court of Canada in the case of R v. Gladue. That case was the first to consider the meaning of amendments to the sentencing provisions of the Criminal Code passed in 1996. The case focused on section 718.2(e).

The section reads “A court that imposes a sentence shall also take into consideration the following principles: 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.”

In Gladue, the Supreme Court was particularly concerned with interpreting the last portion of the section.

In its decision the Supreme Court noted the significant over-representation of Aboriginal people in the criminal justice system. The Court called this over-representation “a crisis in the Canadian criminal justice system.” The Court specifically referred to discrimination faced by Aboriginal people in the criminal justice system as well as other systemic factors as explanations for over-representation.

The Court said that s. 718.2(e) offered sentencing judges a chance to address these issues by looking to more restorative sentencing options when sentencing Aboriginal people. In order to change the way Aboriginal people were sentenced, the court needed to know about the particular circumstances that brought the Aboriginal offender before the court and the types of options that might be available when passing sentence.

The decision of the Supreme Court was seen as a groundbreaking one that provided some hope that the over-representation of Aboriginal people in prisons might finally be addressed.

Sadly, in the weeks, months and years that passed following the Gladue decision, little

changed in the Canadian legal landscape. In fact, in the years since the decision, Aboriginal over-representation has increased.

In September 2000, at a conference of Provincial Court judges from across the country, the seeds of the Gladue Court were planted. Aboriginal Legal Services of Toronto (ALST) – who had appeared before the Supreme Court in Gladue - was invited to the conference to present a workshop on the realities of the urban Aboriginal offender. One of the topics discussed at the workshop was the lack of progress in making the Gladue decision a reality in the courts.

At the end of the workshop, a judge who sits at the Old City Hall Courthouse met with the Aboriginal Legal Services of Toronto (ALST) presenters and suggested that one way to address the challenge presented by Gladue was to create a court specifically for Aboriginal people. One year later, in October 2001, the first Gladue Court opened its doors.

Gladue Courts do not look much different from other courts. The judge sits where the judge always sits, and there are duty counsel, Crowns and defence lawyers. What distinguishes the court is that most of those involved in the court have had some training on the issues of relevance to Aboriginal people appearing before the court.

ALST supplies an Aboriginal Courtworker to the court as well as an additional staff person – a Gladue Caseworker. It is the role of the Gladue Caseworker to write Gladue reports regarding Aboriginal people who have pled guilty (or been found guilty) of criminal offences. Gladue reports – which average 12 to 18 pages in length - focus in depth on the life circumstances of the Aboriginal offender. When necessary, the report links that life story to broader issues facing Aboriginal people such as the inter-generational trauma of residential schools, or the 60s scoop.

These Gladue reports also provide detailed recommendations for the judge to consider in terms of sentencing. If, for example, it might be reasonable for the offender to take part in a drug or alcohol treatment program the report would not only indicate this, but the writer would have assisted the person to fill out an application to an appropriate treatment centre, would have confirmed an acceptance date for the person and, where necessary, assisted in covering the cost of transporting the individual to the treatment centre.

In addition to participating in Gladue Courts, ALST's Gladue Caseworkers write reports for Aboriginal offenders who find themselves in courts other than Gladue Courts. Currently, ALST has three Gladue Caseworkers, two of whom work in Toronto and one in the Hamilton/Brantford area. Funding for the program comes from the Ministry of the Attorney General and Legal Aid Ontario.

In the wake of the establishment of Gladue Courts, other programs and services have been developed to further meet the needs of Aboriginal accused persons. Some of these

services are delivered by ALST, others by Aboriginal and non-Aboriginal agencies.

In Gladue, the Supreme Court made it clear that s. 718.2(e) applies to all Aboriginal people in all courts all across the country. The Gladue related initiatives taken by ALST show that the criminal justice system is willing to change to accommodate the very real needs of Aboriginal offenders. The fact that Gladue Courts and Gladue caseworkers cannot be found anywhere other than ALST, however, suggests that much more work needs to be done before we can be even a little bit hopeful that the Supreme Court of Canada's landmark decision becomes a practical reality for Aboriginal people across the country.

For more information on Gladue Courts and the Gladue decision, please visit Aboriginal Legal Services of Toronto's website – www.aboriginallegal.ca.

NOTE: Evelyn Baxter, our Executive Director, has had some very preliminary discussions with Mr. Justice Fraser about starting a Gladue court in Thunder Bay. We will bring updates as things develop with this concept.