

Information au sujet du programme de déjudiciarisation d'ALST (information copiée du site Internet: <http://www.aboriginallegal.ca/background.html>)

The Community Council is a project that allows the Aboriginal community of Toronto to take a measure of control over the manner that the criminal justice system deals with Aboriginal offenders. It is a variation on the diversion concept in use with young offenders. With a diversion, an accused person who admits responsibility with respect to the charge(s) they face does not go to court or get a criminal record for the particular offence(s). Rather they receive an alternative type disposition such as counselling, treatment, restitution etc.

The Community Council Program takes the diversion concept and applies it to adult criminal offenders. The system works as follows: The ALST Criminal Court Workers, the Coordinator or Director approach a Senior Crown Attorney when they see a Aboriginal accused that may be an appropriate candidate for the Community Council. Referrals come from defense/duty counsel, Aboriginal and non-Aboriginal agencies, clients and their families and many other sources. The decision on whether a person can be helped by the Council depends solely on the resources available in the community - not on any particular characteristic of the offence.

The Crown reviews the facts of the case and decides whether it is appropriate that the case goes before the Council. Decisions by the Crown are made on a case by case basis but the fact that the accused person might go to jail if convicted will not prevent the matter from being diverted. In fact, individuals who have already been to jail are one of the Council's target groups and make up most of those diverted.

If the Crown consents to the diversion, the offender is approached and asked if they wish to go before the Council. Since the Council cannot decide guilt or innocence, the accused person must first admit that they are responsible, to some degree, for their charge(s). Before the individual decides whether they wish to go before the Council, they are required to consult with defense/duty counsel. Counsel will explain the Community Council process, including potential dispositions the individual may face at a Council hearing and the penalties for not complying with a Council decision. Counsel will also stress to individuals that if they feel they are not guilty of the offence then they should try for an acquittal in court. If the accused person agrees to go before the Council, the charge(s) against him or her are stayed or withdrawn by the Crown Attorney.

A Council hearing will usually have three people serving. The Council will reach its decision by consensus and only the individuals involved with the offence themselves discuss their cases with the Council. Where the offence involves a victim, every effort is made to encourage victim participation in the hearing.

The role of the Community Council is to begin the healing process necessary to reintegrate the individual into the community. In deciding how best to accomplish this healing, the Council will make a decision requiring the individual to do certain things. Any option, except jail, is available to them in making this decision. Some options include counselling, restitution, community service, treatment suggestions or a combination of the above. If an individual does not comply with the decision of the Council they are required to reappear before the Council to explain their lack of action. In addition, a person who fails to comply with a Council decision is not allowed into the Community Council if they are arrested again. The charges(s) are not relaid if a person does not comply with a Council decision other than in exceptional circumstances. The charge(s) can be brought back by the Crown Attorney if the individual fails to appear for the Council hearing itself.

The concept of the Community Council is not new. This is the way justice was delivered in Aboriginal communities in Central and Eastern Canada for centuries before the arrival of Europeans to North America. It is also the way that disputes continue to be informally resolved in many reserve communities across the country. The idea behind the Community Council Program is that the Aboriginal community best know how to reach Aboriginal offenders. We know that the dominant justice system does nothing but provide a revolving door from the street to the jail and back again for most Aboriginal accused. The program has been operational since March of 1992 and our experience is that the Community Council process is more relevant and meaningful to offenders. It is our hope that the Council can serve to reduce the recidivism rate among Aboriginal offenders.

Aboriginal Legal Services of Toronto administers the Community Council Program, but the ultimate success of the project depends on the support it receives from the Aboriginal community. A Council member is expected to serve at only one hearing a month and the hearing of cases does not require more than one afternoon or evening a month of a person's time. The responsibility of seeing that Council decisions are complied with is that of ALST's.

The Community Council also calls upon the resources of Aboriginal social service agencies. To provide offenders with realistic and meaningful dispositions, there must be adequate resources in the community. Resources can range from community service activities to treatment programs for problems such as substance abuse. We recognize that many agencies are already overextended and we do not expect agencies to drop their current clients to attend to the needs of individuals referred by another group. The expansion of the program will always be guided by the resources available in the Aboriginal community.

**ELDERS AND TRADITIONAL TEACHERS GATHERING  
BIRCH ISLAND**

**AUGUST 27-30, 1991**

**KINDNESS AND RESPECT:** At the heart of the Community Council must be a real, conscious feeling of kindness and respect for both the offender and the victim. When the offender and victim realize that the Council members actually care about them and respect them, then the message of the Council has a better chance of getting through.

The most important characteristic of those serving as Council members should be a sense of kindness. Those sitting on the Council also should, where possible, have a personal understanding and experience of the problems and challenges faced by those who come before them. For example, if an offender comes before the Council with a history of problems with alcohol, the Council members selected to serve on the pane would ideally have personally dealt with this problem as well. In the same vein, where an individual comes from a particular reserve, or speaks a Native language, then there should be someone from that reserve who speaks that language on the Council panel.

**SENTENCING:** It must always be remembered that changing a person's lifestyle can only be done by the person him/herself. While a person can be ordered to stop certain actions and to start doing other things, whether or not the person will respond is in their hands alone. It may well take time for the important messages from the Council members to reach an offender. Time in this sense could well be measured in years, not just days or months. At the same time, even if a person is not yet ready to make the changes in their life that are necessary, they may be taking steps in the right direction and those steps should be encouraged. Council decisions therefore should be realistic and should motivate the person to look at their life and re-examine it. For example, assume a man comes before the

Council having broken a store window while drunk. The Council might feel that what the person needs is to address their drinking problem - why is he drinking? What can the person do to change what is ultimately a self-destructive path? However, the Council cannot simply order a person to seek treatment at this or that agency or attend certain meetings. The person has to want to change. This does not mean the Council is powerless. In such a case they may well order the person to pay the store owner for the cost of replacing the window, or to perform community service activities. At the same time, Council members would likely talk to the offender about what he could do to face his problem. The important message - that the person should examine his life and seek to change it - might not sink in for a while, but if the person has successfully made the restitution or performed the community service and then gets in trouble again, he will likely listen more closely to the Council members the next time around. And because he has successfully completed his decision, he will be able to come back to the Council feeling that he has managed some degree of control in his life and perhaps more willing to take on other suggestions.

In terms of community resources for offenders, the Council should always keep in mind that some of the most important resources are the Elders and teachers of the community, either on a person's home reserve or in Toronto itself. Professional agencies can help an offender but sometimes the most meaningful help an offender can receive comes from a person who is spending time with them because they want to, not because they are paid. This in fact is one of the strong points of the Council, the people hearing the cases will not be judges pulling down large salaries, but members of the community volunteering their time.

**SELECTION OF OFFENDERS TO COME BEFORE THE COUNCIL:** It is the role of the Court Workers to make the initial selection of those to go before the Council. In making these choices however, the Court Workers cannot try to guess what offenders will be more likely than others to get something positive from the program. It is not the Court Worker's job to judge who will likely benefit or not benefit from the Council. How can anyone know the answer to such a question? The Council should be open to any offender. The only restriction to offender participation in the Council should be the lack of resources in the community, either in terms of the ability to help a certain number of people at any one time, or the ability to help that particular individual.

PROCEDURE OF THE COUNCIL: A Community Council hearing will look very different from courtroom. There will be four members on each Council panel. The Council will meet wherever is necessary and appropriate, and if it can meet outdoors and out of town on occasion, so much the better. The offenders and victims who attend the Council should be made to feel welcome and to know that the Council members really do care about their situation. Council hearings should be closed to the media.

Council members will reach their decisions by consensus. In some cases they may discuss the case in the presence of the accused and the victim, in others they may go into another room. There may be times when they wish to consider the case for a period of time and would thus ask that the parties return a few days later for the final decision.

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