

**PROTOCOL BETWEEN ABORIGINAL LEGAL SERVICES OF TORONTO
AND THE TORONTO CROWN ATTORNEY'S OFFICE
WITH REGARD TO THE YOUNG OFFENDER COMMUNITY COUNCIL PROJECT**

The Young Offender Community Council is a project designed, developed and operated by Aboriginal Legal Services of Toronto (ALST) that allows the Aboriginal community of Toronto to take a measure of control over the manner in which the criminal justice system deals with Aboriginal young offenders. The project uses the diversion model to take the sentencing of some Aboriginal young offenders out of the courts, and put it in the hands of the Community Council - made up of members of the Toronto Aboriginal community.

The rationale behind the Community Council project is that the Aboriginal community best knows how to reach Aboriginal offenders. It is the expectation of ALST that this project will be more relevant and meaningful to both offenders and victims and thus will ultimately reduce the recidivism rates among Aboriginal offenders.

The concept of the Community Council is not new - it is the way justice was delivered in Aboriginal communities in Central and Eastern Canada for centuries before the arrival of Europeans to North America and also the way that disputes continue to be informally resolved in many reserve community across the country.

The program will operate in all Toronto courts where young offender cases are heard. The program is open to both Phase I and Phase II young offenders.

The framework for the operation of this program is the subject of an agreement between the Toronto Crown Attorney's Office, the Ministry of the Attorney General and ALST. The following protocol will outline the manner in which ALST the Ministry of the Attorney General and the Crown Attorney's Office will work together to further the goals of the project.

The specific protocol between ALST, the Ministry of the Attorney General, and the Crown Attorneys' office is as follows:

1. ALST's staffpersons will be solely responsible for identifying and selecting Aboriginal people to participate in the program.
2. a) ALST's staffperson will initiate a diversion by going to the Team Leader or designate responsible for the case and asking that the case be diverted to the Council. The Team Leader or designate will endeavour to make his or her decision regarding diversion as quickly as possible. The approval of the Team Leader or designate will be evidenced by his or her signature on the consent form described in Paragraph 3 and appended to this protocol.

b) While the nature of the offence committed by the individual will be a factor in the determination of whether or not to divert the case by the Assistant Crown Attorney, no Class I or Class II offences are inherently ineligible for diversion.

c) No individual, by virtue solely of his or her prior youth record, is ineligible for diversion to the Council.

d) When the staffperson requests the Team Leader or designate consider diverting an individual, the staffperson will indicate to the Team Leader or designate whether the individual in question has previously been before the Council. If the individual has been before the Council previously, the staffperson will provide details of the Council's decision. The fact that an individual has been before the Council previously, has successfully complied with the Council's decision and has subsequently re-offended, is not, in and of itself, a bar to diversion to the Council on another occasion.

3. a) Once consent has been received from the Team Leader or designate to divert a case, the individual in question will be asked if he or she wishes to participate in the Community Council Program. If the individual indicates that he or she wishes to do so, the individual must then discuss the matter with defence or duty counsel who will provide the individual with independent legal advice. If defence or duty counsel concludes that the individual has a defence on the merits, diversion will not proceed. If the individual does not have a defence on the merits and consents to the diversion, he or she will sign a consent form in the presence of defence or duty counsel.

b) The consent form will indicate that the individual takes responsibility for the actions leading to one or more of the criminal charges that the individual is facing and consents to participating in the Council process. The form will also indicate that the individual consents to the release of information concerning the circumstances of the offence, relevant police information and background information on the individual to the staffperson and the Community Council.

4. a) Following the discussion with defence or duty counsel, the staffperson will inform the Team Leader or designate whether the individual has consented to the diversion.

b) If the individual has consented to the diversion, the Team Leader or designate will supply the staffperson with a copy of the Crown brief - the brief will include the police report of the incident and the statement(s), if any, of the victim and the offender and other relevant material. The Team Leader or designate will also furnish the staffperson with information regarding any prior convictions of the individual.

c) If the individual has not consented to diversion - or if defence or duty counsel has determined that diversion is not appropriate - the fact that the accused discussed diversion to the Community Council will not be raised by the Crown Attorney at trial.

5. Where the individual has consented to diversion to the Community Council and steps 2-4 (above) have been completed, an Assistant Crown Attorney will attend in Court and, on his or her own motion, either stay or withdraw the charge(s) against the individual.

6. a) The success of the Community Council program depends in large measure upon victim participation in the process. For this reason all efforts will be by ALST to both notify victims that their matter has been diverted and to ensure that the victim takes part in the Council hearing.

b) ALST will endeavour to contact all victims of violence prior to bringing a matter before the Team Leader or designate for consideration for diversion.

c) Diversion to the Community Council will in no way impair the right of any victim for compensation from the Criminal Injuries Compensation Board or under the provisions of the Parental Responsibility Act.

8. If the individual fails to appear at the Council hearing, the staffperson will inform the Team Leader or designate who initially dealt with the case of this fact. The Team Leader or designate may choose to revive the charge(s) at the time.

9. Following a completed hearing, if the individual does not comply with the decision of the Council, charges may be revived at the discretion of the Crown Attorney. Individuals who do not comply with the decisions of the Council will not be eligible for future diversion to the Council on other matters. In any event, as noted in 2(d) above, the Team Leader or designate will always be informed if an individual seeking diversion to the Council has been before the Council previously, and will also be informed of the circumstances relating to the Council's decision, including the individual's compliance or noncompliance with the decision.

10. This protocol will be the subject of regular review by both the Crown Attorneys Office and Aboriginal Legal Services of Toronto.