

Justice as Healing

A Newsletter on Aboriginal Concepts of Justice

Sentencing Circle: A General Overview and Guidelines

Introduction

The sentencing circle is a method of dealing with members of the community that have broken the law. A sentencing circle is conducted after the individual has been in the present western justice system and found guilty or if the accused has accepted guilt and is willing to assume their responsibility. This sentencing method encourages the offender and the community to accept responsibility and acknowledges the harm they have done to society and the victims.

A sentencing circle's aim is to shift the process of sentencing from punishment to rehabilitation and responsibility. It provides a new alternative for courts to incarceration. The sentencing circle provides an opportunity to start a healing process for both the offender and the victim. The offender is presented with the impact of their actions in front of respected community members, elders, peers, family, the victim and their family, stimulating an opportunity for real change.

When to Hold a Sentencing Circle

The criteria come from a decision from Judge Fafard of the Saskatchewan Provincial Court:

1. The accused must agree to be referred to the sentencing circle.
2. The accused must have deep roots in the community in which the circle is held and from which the participants are drawn.
3. There are elders or respected nonpolitical community leaders willing to participate.
4. The victim is willing to participate and has been subjected to no coercion or pressure in so agreeing.
5. The court should try to determine beforehand, as best it can, if the victim is subject to battered woman's syndrome. If she is, then she should have counseling and be accompanied by a support team in the circle.
6. Disputed facts have been resolved in advance.
7. The case is one which a court would be willing to take a calculated risk and depart from the usual range of sentencing.

Rules Governing a Sentencing Circle:

- There are no special powers or privileges for anyone in the circle. Everyone in the circle has the same power;
- There are no interruptions while a person is speaking. In a sentencing circle a person may only speak in turn. The laws of the Creator shall govern the person speaking. Those laws are honesty, sharing, kindness, and respect;
- In the circle decisions are made on the basis of consensus;
- At all times during the proceedings of a sentencing circle the Chairperson will maintain the order and the process of the Circle.

Sentencing Circle Exclusions

For purely punitive sanctions or where a term of incarceration in excess of two years is realistic, the sentencing circle is *not* appropriate. The circle is also not appropriate where:

- there have been frequent repeat offenses or the offence is indictable;
- the attitude of the offender prohibits his/her involvement;
- there are no community sentencing options available to the circle; and
- the community is not prepared to be involved in the circle.

Sentencing Circle Involvement and Requirements

The judge, lawyer, police should be:

- willing and able to participate;
- the decision as to whether a sentencing circle will be granted is the judge's alone but must take into consideration all the criteria as to whether or not to grant a sentencing circle and whether the court is prepared to take a calculated risk with respect to this offender; and
- after the circle has reached a consensus as to the sentence for the offender, the judge then steps back into his judicial role and may choose to impose or reject the sentence that the circle has recommended. However, the sentence is rarely rejected by the judge.

The community should be:

- be willing and able to participate and provide follow-up;
- totally supportive of the process and be familiar with the proceedings;
- feel free to ask questions, express their opinions as their views are important and more valid than those views of people from outside the community but people should refrain from counseling the offender or talking in excess;
- be involved in ongoing supervision, re-integration of the offender into the community and evaluation of the offender's progress on a regular basis;
- be willing to organize the circle and provide translation services if necessary (anyone can organize a circle, i.e. probation officer, social work, First Nation Justice Committee member, Band Councilor or an Elder);
- be willing to provide support for the offender, attend the circle and monitor the sentence, e.g. curfew, report progress to the circle, provide a contact; and
- be willing and able to mobilize community resources so as to assist the offender and his/her family in the process of rehabilitation and recovery if necessary; welcome the participants, if possible provide coffee, milk, Kleenex, lunch and transportation for the Elders if needed.

The offender should be:

- willing to participate and accept responsibility for his/her actions;
- willing to face his/her victims and make whatever amends may be necessary;
- willing to participate in traditional or Christian ceremonies to initiate the healing process;
- willing to spend time with an Elder and participate in any preparations the Elder recommends at his/her home reserve or reserve of his/her choice; and
- willing to make whatever legal amends necessary to the victim and do whatever is necessary to reconcile the negative relationship created between themselves, the victim and the community as a result of the offense.

The victim should be:

- involved in the sentencing circle process directly or through the aid of a representative or surrogate victim (when that is realistic);
- given as much consideration and respect as possible in recognizing compensation and/or restitution for the victim or a community service agency of the victim's choice; and
- willing to become involved with the community in some way to facilitate the healing of the offender.

Sentencing Options Available to Sentencing Circles:

- peer counseling;
- restitution/compensation, i.e. replace broken window;
- community service work;
- mediation;
- compulsory school attendance/work attendance;
- referral to specialized programs, i.e. anger management, sexual abuse awareness training;
- referral to counseling and/or treatment;
- Aboriginal spiritual activities, i.e. sweats, forgiveness/sacrifice ceremonies;
- Aboriginal cultural activities, i.e. pow wow security, Elders assistant, cleaning grounds, ration distribution;
- talking and healing circles;
- curfew rules and regulations respecting residency;
- disassociation from the negative influence of peers;
- keep the peace and be of good behavior (court undertakings);
- counseling for offender and family;
- speaking/teaching to students for example; and
- traditional sentences, i.e. fines, incarceration, probation, house arrest, electronic monitoring (six months usual).

Sentencing Circle Guidelines

- should be held in a community facility, court or even outdoors;
- there should be a sufficient number of chairs for participants arranged in a circle;
- arrange an inner and outer circle if participation is high;
- the inner circle includes: judge, crown prosecutor, defense council, victim, accused, community supports system, family, friends, outside support system, i.e. Justice Unit, observers;
- usually a tape recorder is used to record the comments in the center of the circle;
- preparation of the sentencing circle consists of any ceremonies directed by the Elders;
- seating is either pre-set or people sit where they feel comfortable;
- everyone in the circle is equal and has an equal voice;
- the judge or the designated chairperson outline the ground rules that govern the circle;
- the judge, the designated chairperson or an elder makes the opening prayer and remarks;
- all religious beliefs are tolerated and welcomed;

- moving clockwise, everyone is given an opportunity to speak. Participants have the option to speak or remain silent. There may be several rounds of speaking. An example of these rounds would be: The first go around, “Why did I come today?” and “Why am I here?” The second go round, participants speak to the victim and the affect on self, family and community. The final go around participants outline expectations to the offender and/or state opinion as to what needs to be done to restore balance; and
- anyone has the right to ask anyone else questions.

Option: The defense may present their argument for a sentence. Then the Judge, the victim, and the victim’s support system (family, defense, friends) leave the circle. The accused and community support discuss the sentence presented, add, delete and collectively arrive at a sentence. The two parties reconvene and reconcile and the Judge determines the sentence.

Editor’s note: A copy of this overview and guideline was provided by Ms. Tracy Grohs, an Alternative Measures Case Worker with the Yorkton Tribal Council Treaty Four Nations. The office of the Yorkton Tribal Council Treaty Four Nations is located at 21 Bradbrooke Drive North in Yorkton, Saskatchewan, S3N 3R1; telephone: (306) 786-7888; fax: (306) 786-7855.