

**PROTOCOL
(COMMUNITY COUNCIL PROJECT)**

**THE DEPARTMENT OF JUSTICE
(TORONTO REGIONAL OFFICE)
AND
ABORIGINAL LEGAL SERVICES OF TORONTO**

The Community Council is a project designed and operated by Aboriginal Legal Services of Toronto (ALST). The project uses the diversion model; in certain cases Aboriginal accused will be taken out of the criminal justice system and be brought before a community council composed of members of the Aboriginal community in Toronto. Diversion will allow the Aboriginal community of Toronto some measure of control over the manner in which criminal conduct by Aboriginal accused is dealt with. Diversion may be allowed where it will benefit the accused and is in the public interest.

Alternative methods of dealing with criminal conduct by Aboriginal accused have been implemented elsewhere, but not in an urban setting . Given the innovative nature of this project, regular meetings between the Department of Justice and ALST will be required to ensure that the objectives of the project are being met and that the public interest is being serviced.

Offences Subject to Diversion

1. This protocol applies to the following offences:
 - i) Possession of a narcotic (sec. 3 NCA);
 - ii) Failure to disclose previous prescriptions (sec. 3.1 NCA)
 - iii) Trafficking in a narcotic (sec. 4(1) NCA)
 - iv) Possession of a narcotic for the purpose of trafficking (sec. 4(2) NCA)
 - v) Failure to disclose previous prescriptions (sec. 38.1 FDA)
 - vi) Trafficking in a controlled drug (sec. 39(1) FDA)
 - vii) Possession of a controlled drug for the purpose of trafficking (sec. 39(2) FDA)
 - viii) Possession of a restricted drug (sec. 47 FDA)
 - vix) Trafficking in a restricted drug (sec. 48(1) FDA)
 - x) Possession of a restricted drug for the purpose of trafficking (sec. 48(2) FDA)

Procedure Governing Diversion

1. Court Workers representing ALST at Old City Hall will be responsible for identifying and selecting Aboriginal people to participate in the program. Aboriginal people are those whose Aboriginal and treaty rights are protected under section 35 of the Constitution Act, 1982.
2. Once a Court Worker has identified an accused to participate in the program, he or she will contact the Community Council Coordinator to determine if that accused has previously been before the Council and whether or not the accused complied with the decision of the Council.
3. A request for diversion will be made by the Court Worker to the Deputy Section Head, Prosecutions Section, Department of Justice (Toronto Regional Office). Approval will be evidenced by the signature of the Deputy Section Head on the consent form. Such a request shall be accompanied by a synopsis, or summary, of the allegations and a record of arrest for the offence(s). The Court Worker will also indicate if the accused has previously been diverted to the Community Council, the offences in question, the decision of the Community Council and whether the accused complied with that decision. The fact

- that an accused has previously been diverted to the Community Council, has successfully complied with a decision of the Community Council, and has subsequently re-offended, is not, in and of itself, a bar to diversion. An accused who has previously failed to comply with a decision of the Community Council will not be diverted again.
4. If diversion is approved by the Department of Justice the Court Worker will ask the accused if he or she wishes to participate in the Community Council. The consent of the accused will be evidenced by his or her signature on the consent form. A copy of this consent form will be provided to the Department of Justice by ALST.
 5. Where an accused is diverted in accordance with the foregoing Crown counsel will either withdraw or stay the charges in question. If diversion is not agreed to by the Department of Justice or the accused, the fact that it was discussed shall not be raised in the criminal proceedings.

Reporting Requirement

1. Aboriginal Legal Services will advise the Department of Justice of all decisions taken by the Community Council in respect to cases diverted in accordance with this protocol. The Department of Justice will be immediately advised by ALST if an accused has failed to attend a hearing of the Community Council or has not complied with the decision of the Community Council. In such cases the Department of Justice may re-institute the charge(s) that was diverted.

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