

PROTOCOL BETWEEN ABORIGINAL LEGAL SERVICES OF TORONTO AND THE TORONTO CROWN ATTORNEY'S OFFICE

WITH REGARD TO THE COMMUNITY COUNCIL PROJECT

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

The rationale behind the Community Council project is that the Native community best knows how to reach native 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 Native offenders.

The concept of the Community Council is not new - it is the way justice was delivered in Native 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 - however this is the first project. Regular meetings between ALST and the Crown Attorneys' office will be required to ensure that the project works in the best interests of all parties concerned and in the public interest.

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

The general format for the protocol between ALST and the Crown Attorneys' office is as follows:

1. ALST's Adult Criminal Court Workers at Old City Hall and Collage Park will be solely responsible for identifying and selecting Native people to participate in the program.
2. Once a Court Worker identifies an individual who might participate in the program, he or she will contact the Community Council Co-ordinator determine if the individual has previously been before the Council and whether or not the individual complied with the Council's decision .
3. a) The Court Worker will then go to the Team Leader of the particular court and ask that the case be diverted to the Council. The Team Leader will endeavour to make his or her decision regarding diversion as quickly as possible. The approval of the Team Leader will be evidenced by his/her signature on the consent form from described in Paragraph 4.

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 Team Leader, no offences are

inherently ineligible for diversion. As well, no individual, by virtue solely of his or her prior criminal record, is ineligible for diversion to the Council.

c) When the Court Worker requests the Team Leader consider diverting an individual, the Court Worker will indicate to the Team Leader whether the individual in question has previously been before the Council. If the individual has been before the Council previously, the Court Worker will provide details around 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.

4. a) Once consent has been received from the Team Leader 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 will then discuss the matter with Duty Counsel who will provide the individual with independent legal advice. If 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 Duty Counsel.

b) The consent form will indicate that the individual admits having committed the offence (or one of the offences) with which he or her is charged 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 Court Worker, the Community Council Co-ordinator and the members of the Community Council.

5. a) Following the discussion with Duty Counsel, the Court Worker will inform the Team Leader whether the individual has consented to the diversion.

b) If the individual has consented to the diversion, the Team Leader will supply the Court Worker 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 will also furnish the Court Worker with information regarding any prior convictions of the individual.

c) If the individual has not consented to diversion - or if 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 at trial.

6. Where the individual has consented to diversion to the Community Council and steps 1-5 (above) have been completed, the Assistant Crown Attorney will attend in Court and, on his or her own motion, either stay or withdraw the charge(s) against the individual.

7. The success of the Community Council program depends in large measure upon victim participation in the process. For this reason, after a case has been diverted, all efforts will be made by ALST to ensure that the victim takes part in the Council hearing.

8. If the individual fails to appear at the Council hearing, the Court Worker will inform the Team Leader of this fact. The Team Leader may choose to revive the charge(s) at the time.

9. Following a completed hearing, the Court Worker will inform the Team Leader of the Council's decision. If the individual does not comply with the decision of the Council, charges will not be revived except in exceptional circumstances. Individuals who do not comply with the decisions of the Council will not be eligible for diversion to the Council on other matters for a particular period of time. In any event, as noted in 3(c) above, the Team Leader 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. If the Court Worker become aware of individuals charged with offences in the perimeter courts (Scarborough, North York and Etobicoke) they may deal with Team Leader in those courts with regard to item 1 - 5.

11. This protocol will be the subject of regular review by both Crown Attorney and Aboriginal Legal Services of Toronto.