

PROVINCE OF ONTARIO
MINISTRY OF ATTORNEY GENERAL

CROWN POLICY MANUAL

March 21, 2005

ABORIGINAL JUSTICE

PRINCIPLES

The history of aboriginal peoples separates them from all other minority groups in Canadian society and mandates special legal and constitutional status. The rights of aboriginal people are recognized and affirmed in The Constitution Act 1982 and the Canadian Charter of Rights and Freedoms. Despite their unique status, aboriginal people have been historically disadvantaged.

Aboriginal people have experienced years of dislocation, deprivation of economic opportunity and enforced familial disruption through the use of residential schools. For many, this has translated into low incomes, high unemployment, lack of opportunities, lack of education, loneliness, and community fragmentation. The disproportionate rate of suicide, imprisonment and substance abuse among the aboriginal population is, in part, a testimony to the wrongs suffered by the aboriginal people over decades.

Many aboriginal offenders have been subject to systemic and direct discrimination. Traditional sentencing ideals of deterrence, separation, and denunciation are, for many aboriginal people, far removed from their understanding of sentencing. Most traditional aboriginal conceptions of sentencing place a primary emphasis upon the ideals of restorative justice. Aboriginal people have a fundamentally different perspective on the process of achieving justice – one that emphasizes community healing and community based sanctions.

In recognition of their particular circumstances, culture, and history of marginalization and discrimination, aboriginal people warrant special, and sometimes differential, consideration within the criminal justice system. Depending on the circumstances of a particular case and the background of the offender, this may require an emphasis on restorative justice and remedial measures, rather than incarceration. In reflection of this principle, the Criminal Code requires a different methodology for assessing a fit sentence for an aboriginal offender, in order to achieve a truly fit and proper sentence in the

particular case. The fundamental purpose of s.718.2(e) of the Criminal Code is to treat aboriginal offenders fairly by taking into account their differences.

Aboriginal people are entitled to be treated fairly by the criminal justice system, in accordance with their special circumstances. Crown counsel should recognize and take into account the unique systemic or background factors that may have contributed to an aboriginal person's criminal conduct. As well, Crown counsel should also consider procedures and sanctions appropriate in the circumstances of the offender because of his or her particular aboriginal heritage or connection. The maintenance of social harmony, safety and stability, within aboriginal communities, and as between these communities and non-aboriginal communities, should be a significant consideration of Crown counsel, in cases involving an aboriginal offender.

Crown counsel should maintain a flexible and open approach to all criminal matters arising in the aboriginal community and should work with the aboriginal community to ensure that the ultimate dispositions represent the wisest possible choices in terms of community safety and social harmony, in both the short and the long term.

Aboriginal Community Justice Programs: In recognition of the unique historical, cultural and socio-economic position of aboriginal people in contemporary Canadian society, and to give effect to their legal and constitutional entitlements, Aboriginal Community Justice Programs (ACJP) should be developed. This should be done in consultation with the aboriginal community. ACJP play an important part in ensuring fair and equal treatment for aboriginal Offenders. Crown counsel have a critical role in ensuring that such programs are just, adequately safeguard the community and meet the needs of victims, as well as offenders.