

SENTENCING CIRCLES

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INTRODUCTION

What is a sentencing circle?

A sentencing circle is composed of a group of people whose significant role is to mediate or to stay in focus on giving the righteous judgment to both parties involved in whatever case tackled. Those who are part of the sentencing circle shall address shall address all the concerns of both sides. No one shall be on a biased side. Otherwise, justice will not be served.

Members of sentencing circles will have to listen to every angle of the structure involving the "victim" and the "suspect". On the victim side, there will be supporters, on the side of the offender/suspect has to side with them, which usually is the defendant has the right to defend himself too. The judge and the court personnel, the defence panel, investigators, police and all other interested parties within the circle can mediate before trial process. If there is a way that both sides will agree and prevent further disputes they can resolve it within the sentencing circle.

The most criminal court has forgotten the reconciliation of sentencing circle, a series of new crimes dominate practices known as community justice system revived to use of rehabilitation and attention to control certain minor offenses. Community justice serves as a simple come-back to reconcile ideal but approachable punishment to the crime that is thoroughly different from the traditional sentencing circle. The emphasis attacking the cause of the evil rehabilitates individual differences and reconciling would cause by the criminal rather than simply punishing the offender. Community justice flourishes even the dominant criminal justice system that faces the crisis of the judgment in which extraordinary number of Aboriginals.

Sentencing circle in most cases follows particular steps;

1. The suspect has to apply for the participation of sentencing circle process – the offenders, of course, shall make this move. Offenders reason of asking for the sentencing circle is sometimes not to go on further investigation, to prevent from spending time and money for trials just in case the victim and its supporter agree for mediation.
2. A healing process for the victim – sometimes the victim has forgivable heart but sometimes justice or even getting even is what they want to happen. Some victim doesn't also wish to spend lots of time and effort on trials that sometimes takes months and years before the decision is given. Some victim only wants the truth to prevail thus, hearing the confession from the mouth of the suspect would provide them with satisfaction and mediation on sentencing circle job would be less complicated. The role of the sentencing circle is to listen, assess and do something to resolve the problem before the proper trial on the court begins.
3. To ease the tension on the part of the suspect – the suspect is the "star" of the investigation. It has been observed, studied and the finding of each step will be presented to the court. Before it happens, the suspect shall be given a chance to prove himself whether he did or did not commit the crime. Not all defendants are the doers, some are innocent and a victim too. They will remain as a suspect until proven guilty so before going trial, the suspect is given a chance to offer something or do something that could ease the pain of the victim.
4. The sentencing circle tends to develop agreement on both parties – as the mediator. The sentencing circle would make a plan on how both sides would be given balanced considerations. Meeting halfway is the most common agreement that both parties would want to consider. Sometimes the victim demands for a *public apology*, a Big word isn't it? But it is really up to the suspect if the willingness in him prevails. In some cases, the defendant is the one who suggests an offer to the victim. The sentencing circle role is to listen to both parties and later on convince both sides to agree on the purpose of which is to prevent further disputes.
5. Follow-up or monitor the progress of the offender – these shall be included in the sentencing plan, the offender shall assure the sentencing circle, commit to the whole system, to the community, to the members of the family of the victim that whatever that was agreed shall be followed.

Sentencing circles also deal with young and old offenders with different offenses in any region both in rural or urban. The primary goal of the sentencing circle is to develop a general agreement resulting to indirect remarks of the members of the circle to the judge. Everybody shall speak to

every member of the circle¹. The legal text and opinions submitted by the members of the circle are standard in a formal court are replaced. The offender is being questioned with any available information that the investigators gathered, and the victim has also questioned anything about the resources that are available in the community.

Lots of data or information comes from the suspect, as mentioned earlier the suspect is the “star” of the trial, his acts, his words, social history, contributing factor as to where it’s going to pinpoint the circumstance that may lead to confirmation of him as the offender. The result depends on the offenders’ need, and the risking factor makes it better if there is limited information from the community. The difference between the sentencing circle and the formal court is that the circle avoids complex texts while the proper court can be understood by everyone. The decision of the court even in a form writing should be well recognized by the community, by the victim and the by the offender.

IS THERE A NEED OF SENTENCING CIRCLES?

Sentencing circle plays a significant role in trials and judgments. The following are reasons why mediating group before trial should be taken into consideration.

- Solve any dispute before taking it to the court of justice. So that if ever there is a possibility that some arguments could be resolved before the disputed would deepen. Forgiving sometimes occurs beforehand.
- The suspect is given the opportunity to make his barter, to make amendments, or make an offer to the victim or even prove his innocence by talking sincerely to the victim and at least prove to the victims’ supporter that he is willing to take the chances of preventing the subjects' case to go into more complicated questioning of the court.
- Gives the victim courage and be heard as to what a solution might work for both parties. The victim can demand or propose terms and conditions so that it would not spend time, effort and money on both sides. As we all know, courts, lawyers' fee, investigation processes and so on is not a joke. It cost a lot of money and effort, unless of course if the victim is dedicated to pursue the case and gamble for winning the case against the suspect. Remember, the defendant remains as is until proven and judged guilty.

¹ <https://www.iirp.edu/eforum-archive/4250-circle-sentencing-part-of-the-restorative-justice-continuum> [Circle Sentencing: Part of the Restorative Justice Continuum]

- During the mediation, the circle will have the opportunity to observe both parties on their psychological behavior, especially on the side of the suspect. The movement of his body, the eyes, the hands, etc. can be taken into consideration. That everybody has the chance to talk about it and show certain and untrue behavior even both parties. Looking right through the eyes and read between the lines in most cases proves to show that one is telling the truth or not.
- The community in the sentencing circle the ability to resolve conflict before it reaches to court. Human, as you are, tends to change mind and emotions that could happen while mediating. It depends on how they carry it. But resolving the dispute would be more comfortable if everybody in the circle has a relaxed mode. There will never be a mediation done if one is closed minded or furious because no matter how sentencing circle lay the pan or no matter how hard you convince the subject if one party is not considering the offer then there is no other way but to pursue the case.
- Mediation group thus helps the environment promote and share the values as an example to other people or what you call an eye-opener to the community. If the story reaches the community, there will be comments and reactions it may be solicited or unsolicited the crime has already been a part of the history. That some people may look back if something familiar happens to them thus becomes an awareness to some².

A sentencing circle is not authorized to solely discreet the judgment on a judicial process. It is just a part of the court process. It follows procedure but not strict and should follow rules of natural justice and legalities established by the law.

1. All criminal records and other reported materials that are presented in the court is marked as exhibits in the process of hearings – this should be done to have the accurate presentation of evidence to establish the side of each party that would lead to probable cause. The judge would then decide and weigh the facts of every evidence presented in the court.
2. A record of the trials should be shown – the court has to record every proceeding so that each argument of both parties will be heard over and over. In some cases, the voice of witnesses so sometimes leads to factual and untrue statements thus, taking himself (the witness) to become a questionable witness leading to another dispute. Because if you become a witness, you will come under oath that if you are caught lying, then you are going to be in trouble because the court will be the one to file a case against you.

² <http://www.rjlilloet.ca/documents/restjust.pdf> [Restorative Justice in Canada: what victims should know - Prepared by the Canadian Resource Centre for Victims of Crime]

3. The sentencing circle hearing is for public viewing and discussion – it should be all known by the community for everybody's' awareness especially if it is a criminal investigation and should be all known to the public.
4. The suspect must voluntarily present himself for mediation so that the subject will have a chance to prove his innocence.
5. The suspect is entitled to choose a lawyer/s to represent him/her from the investigation, to mediation, and to proper court hearings.
6. The lawyer of the victim should properly represent the victims' side to the public to ensure victim's welfare are fully canvassed and recommend according to the texts.
7. The media is allowed to cover the proceedings, but some restrictions are highly imposed on stating specific ones' side of the circle.
8. Members of the circle must be provided with a copy of the documents filed as exhibits even before sentence report.
9. The judge is only responsible for establishing the sentence, that whatever the judge imposes must be by the law.
10. The decision of the judge can still be reviewed, reprocess and can be taken to a higher court.

The importance of sentencing circle is to prevent more tensed disputes of both parties outside and inside the court. Mediation means in the middle no one to the side, thus ensuring fair and proper proceedings.³

SITUATION IN COUNTRIES AND COMPARISON

CANADA:

The sentencing concept is born in Canada. The sentencing principles in the Criminal Code was amended in 1996 the objective of which is to give weight to the community and their views be heard to promote a sense of responsibility to partake and make preparation for the crime they have done to their victims.

³ http://compass.port.ac.uk/UoP/file/c7ffec37-0632-475f-84ba-ae018a2f0f38/1/Types_of_law_IMSLRN.zip/page_11.htm
[Types of Justice: 'Retributive Justice' v. 'Restorative Justice']

Paragraph 718.2(e) of the Criminal Code states "all available punishment aside from imprisonment that is rational in situation shall be considered for all of the offenders with specific attention to the relevance of Aboriginal offenders." In the case of Gladue case, the Supreme Court of Canada declined the view of the therapeutic approach is a more charitable approach to crime, or that the sentenced focused on a lighter justice sentence. Reinstating of harmony involves regulation sentence that responds to the victims' need, the community and so as the offender. Supporters of sentencing circle believe that the best interest of the society to support the suspect in leading the crime to learn to behave in a socially satisfactory manner. Sentencing circle programs consider being encouraging the offenders to express and recognize the offense that they have done to the victim/s and accepted the consequence for their actions.

Since the sentencing circles are community-based therefor, religious communities are active participants. They based their faith according to Bible they believe that justice shall always follow the rules of God. Many justice programs until present if based on faith principles. Thus reconciliation, healing and restoring relationships is the primary purpose of the sentencing circle. Some members disagree with this kind of system especially on the side of the victim. Some people agree and find it satisfying.

Forgiveness and reconciliation are observed as underlying respond to human lawlessness. Focusing on making things right, reconciliation and balancing the sentencing circle is the significant impression in the religious world. Members of justice system must be cautious in applying and dealing with faith and religion as a basis for judgments. Some victims may feel unjust in dealing with the criminal justice system. Other may have found principles of forgiving peacefully and satisfying but to some may sense adding insult to injury⁴. The victims are the ones hurt the most thus pressuring them to overlook the suspect would cause them more pain. If the victim chooses not to reconcile with the defendant or not to forgive, then the trial will continue it is a failure rate on the part of the sentencing circle.

UNITED KINGDOM

⁴ <http://www.justicerestaurative.org/en/article/french-platform-restorative-justice> [The French Platform of Restorative Justice]

The sentencing system in England and Wales is considered as "retributive" form of the justice system where the punishment focuses more on the victim rather than the suspect. If the defendant is found guilty, it is then assured the subject shall be given penalty rather than reconciliation. Here, the primary consideration is the victim, the witness or witnesses, and the community thus, concerning balances between the victim and the offender, the community, and the others.

In some cases, retributive kind of justice system concern criminal law restoration justice in line with the civil law; the criminal law penalizes while the civil law restores or reconciles. But the reason for the emphasis of the criminal and civil law is to give more detailed meaning and focus of the two justice system.

For example, criminal court can now issue a statement with a description of how the evidence weighs that may have caused the offender to execute the crime. The court decides in a case to case basis if the suspect is underage both can arrange a mediation proper where the defendant is explained about the consequence of what he/she did. In some countries a sentencing circle involves the offender, the family of the offender and the victim, the community wherein all can discuss the appropriate punishment would be by informing the judge.

UNITED STATES

Sentencing circle in the United States of America is precisely the same as Canada. Both belief in "holistic" healing process. Most of the member decided to disclose the experiences of sexual assault victims' experiences that led to advanced reconciliation circles their way of dealing with the harm created by the suspect and healing on the part of the victim. Circles have expanded most substantially in Yukon Canada, Saskatchewan Canada, and Manitoba Canada. The initial of the U.S mainstream sentencing justice system where Navajo mediating courts have been used by the circles in 1996 in Minnesota. The system nowadays is being used in the entire North America and other countries around the globe for both young and adult offenders.

As with the sentencing justice system, the conference provides a meeting between the victim and the suspect, but it is beyond the involvement of the community. The members may range from the community concerning the crime committed by the suspect and the victims' family members and

people who are on each side up to the members of the justice system. They all represent as the voices of the proceedings⁵.

Canada and U.S have the similar platform of sentencing circles both are into religious commitment type of justice. They give more emphasis as to what the Bible says. Forgiving, reconciliation and restoration. This kind of system weighs more on the side of the suspect. While U.K justice system mainly focuses on punishing the one who has committed the crime. Which in this kind of justice system the weigh is more on the side of the victim. The question is. Does it work? Sometimes it does, and there are times it works. It depends on how the sentencing circles handle every case, and on how deep is the wound of the victim, and how the suspect and the community deal with it. As for the victim if he/she doesn't find it in her heart to forgive or to reconcile then the proceedings will continue to roll until such time the justice or the decision is served.

PROS AND CONS OF SENTENCING CIRCLES

The defender is given a chance to prove his worth of forgiving or reconciliation to the victim and the community. The state of impact is less. The decision is actually up to the community and the judges who might have less involvement with the life of those affected by the crime committed. The circle can work on both ways. Communities may want to execute the suspect, but some crimes are harsh that it would be almost impossible to forgive or to consider reconciliation with the help of the sentencing circle. For example, the crime committed is one from the neighborhood or someone close to the victim, the offense is primarily assessed, but, the circle would want to empathize and give reconciliation and chances to the suspect, showing mercy an compassion to the offender resulting in various plans with the community just to give understanding so that the victim would show mercy to the suspect.

The ICC's (International Criminal Court) rampant campaigns' purpose of which is to push justice over peace. Frequently the prosecution ends up more complex and regains merely old wounds. Moreover, the use of amnestic would end any conflict. The ICC comes across the victims according to the Western Justice System because most of their voices were never into consideration. The focus

⁵ <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/circles/#sthash.q8y0M3oK.dpbs> [sentencing circle in the U.S] by Lynnette Parker Copyright Prison Fellowship International.

was not on the actual crime but the need to stand-up for political points through scoring for any prosecution.

Aboriginal conflict is necessary after the battle, especially where the federal jury may be biased or not fair. Say for example in Kenya, after the election held the year 2008 there was a vast of violence involving different party; the ICC took the responsibility of the dispute in Kenya.

The sentencing circle depends on the ability to follow the law and policies that threaten the legitimacy of the state. While the law may stay the same, it is only relevant if justice is served. Here, the state fails its power to punish the offender by the rift of the particular law and risking factor of the individual community weaken as the ability to prevent committing of social crimes. Because of these different areas, the system may choose to punish the offender differently thus create a "patch" over the justice, was the offense can be punished more vividly in one area and can harm more with the dangerous behavior.

The summary of the circle is generalized by features that developed sentencing. The lawyer plays a crucial role to the victim and the subject of the community and hostile way of the natural process. If one participates actively in the hearings the lawyer sometimes does the talking thus takes the higher responsibility for both before the proceedings. The sentencing circle tends to broaden the fundamental rights to set out the Criminal Code, mainly, the suspect's right to speak favor before the sentence is uttered. However, the understanding and its participation that the subject will be facing will not be jeopardized just because he/she is outspoken. A suspect must proclaim his/her rehabilitation.

The community justice was born as part of attempting the war on the crisis of authority facing the criminal justice system. The community reorganization shares two essential innovations:

1. Involvement of the citizens in the establishment of the crime control policies tailored to arise the attention to the need for the community of the local community. This idea is an advantage to the side of the one who committed the crime. However, the chance of committing the crime over and over again may arise because of the merciful justice system.
2. In response to the crime by finding a reconciliation on the part of the offender the other part is the one who suffers more because of this kind of justice system, community justice programs presently operate on the perimeter of the criminal justice system. This type of system is typically low-level crimes. The community court has broadened parallel into solving problem courts such as family

disputes, mental health, domestic crimes court. There are no precise movements as the will to expand the community court of law to broaden severe further crime mediation

CONCLUSION

Sentencing circle plays a vital role in the proceedings. The crime committed by the offender belief should be punished however if the suspect is not yet sentenced fair justice shall also be given. The subject has the right to seek the assistance of the lawyer, and the job of the lawyer is to represent the offender and the victim. If the subject pleaded guilty, then the victim would then decide if the subject is entitled to mercy or reconciliation. If the subject pleaded his/her innocence, then the trial will push through but how can you mediate if the subject denied the allegations? It has to go to court. The suspect will be innocent until proven guilty. The judge will be the sole decision maker based on the trials and proceedings by the law.

On the part of the victim, the community can only make plans on how to convince the victim to agree if he/she is open for mediation. It depends on how the crime is done. It may be harsh, and you want to seek for the right justice then you may close your door of mediation because the role of the sentencing community is to prevent the fire of dispute before the court. That's normal for the community to do that because that is how they function. However, if you wish to close your door for negotiations, then it is really up to you.