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ONTARIO JUSTICE EDUCATION NETWORK  
RÉSEAU ONTARIEN D'ÉDUCATION JURIDIQUE

# Aboriginal Sentencing Scenario

## *R. v. Brown*

### Charge: Assault

Frank Brown is an 18 year-old high school student from a First Nations community. One evening, Frank persuaded some friends to break into the local grocery store with him. They decided to break into the store late at night so that no one would be there. However, they unexpectedly ran into the storeowner, Johnny Cardinal, who was making a late night delivery. Frank assaulted him very seriously, leaving him with a broken arm and scars on his face. The community was outraged and felt that Frank was a dangerous young man.

This wasn't the first time Frank had been in trouble. He had a previous conviction for breaking and entering and had been sent to a youth detention centre for 6 months. Unfortunately, his time at the detention centre didn't seem to have any kind of positive impact on his life. In fact, he learned more negative behaviour from the other troubled teens he met there. Frank also has a history of getting angry very easily and has had problems with alcohol since Grade 9.

People in the community were aware that Frank's early home life had been unstable and probably contributed to his troubled teen years. However, they believed this latest crime was too serious to be overlooked. Several members of the community were demanding that Frank be given a lengthy jail term.

Frank's trial received a great deal of media attention in the local newspapers. Ultimately, Frank was convicted of assault under sections 265 and 266 of the Criminal Code of Canada.

## Discussion Questions:

1. Do you think Frank is a danger to the community?
2. Is this an offence that requires imprisonment? Why or why not?
3. What advantages and disadvantages might come from putting Frank in prison?
4. Consider the following alternatives to imprisonment. Which, if any, of these would be appropriate in this case? Can you think of others?
  - Community service (e.g. working at the youth centre, at community events or at the Pow Wow)
  - Probation, with reporting requirement
  - Curfew
  - Anger management counselling
5. What factors should be considered in determining an appropriate sentence?
6. How much weight should Judges give to victim impact statements? Is it fair for the same offence to have different punishments based on the impact reported by the victim?
7. What sentence do you suggest? Why?

Ontario Ministry of Community Safety and Correctional Services

**PRESENTENCE REPORT**

*R. v. Brown*

**Offences**

Assault, Sections 265 and 266 of the Criminal Code of Canada

**Maximum Sentence**

- ❑ Five Years Imprisonment (Indictable Offence)
- ❑ \$2000 fine or 6 months imprisonment or both (Summary Conviction Offence)

No Minimum Sentence

Firearms Prohibition Available up to 10 years

**Sentencing Options:** all available

**Sentencing Range:** probation -> conditional sentence -> imprisonment

**Date Report Requested:** April 3

**Sentence Date:** May 9

**Court and Location:** Ontario Court of Justice

**Justice:** TBA

**Crown Counsel:** TBA

**Defence Counsel:** TBA

**Gender:** Male

**Date of Birth:** January 19, 1988

**Citizenship:** Canadian

**Address:** Eabametoong, Fort Hope

**Telephone Number:** Not Available

**Marital Status:** Single

**Number of Dependants:** 0

**Language Spoken:** English

**Court Information**

**Plea:** Not Guilty

**Remand:** In Custody

**Law Enforcement Agency:** Nishnawbe Aski Police Services

**Co-accused:** Nil

## **Sources of Information**

Frank Brown, the offender  
Offender's Grandparents  
High School Records and Files

## **Personal Information**

Frank is the only child born to his mother. His father is unknown to him. At the age of 12, Frank went to live with his maternal grandparents.

Frank's grandfather is aged 71 and his grandmother is age 69. Frank is their only grandchild. Frank's grandfather reported that their daughter gave birth to Frank when she was 15 and single. She cared for Frank until he was age 12. At that time, Frank's mother became involved in a relationship and found that she could no longer deal with Frank's behaviour. He had a number of incidents involving the police. At the age of 12 Frank went to live with his grandparents. He continued to have contact with the police and at the age of 16, he left school. Frank's grandmother confirmed the information.

Frank enjoys good physical health.

Before Frank left school, a psychologist assessed him. The psychologist's report held in the school's records indicates that Frank is easily frustrated and is quick to anger to the extent that his anger often seems out of proportion to the event that caused the anger. Frank is extremely impulsive. He was assessed as immature for his age. He experiences difficulty relating cause and effect. Frank is living only in the present and is unable to consider future events.

## **Character/Behaviour/Attitude**

Frank has had a number of encounters with the police. He left school at age 16. Frank's grandparents reported that Frank required a lot of structure and discipline in his early life and admitted that they could not provide this structure or discipline.

## **Education**

Frank reported that he left school at the age of 16. Frank admitted that he skipped classes, did not follow the direction of the teachers, and did not complete assignments.

The high school's records and files indicate that Frank completed two credits at the grade 9 level. He skipped classes, failed to complete assignments, and opposed authority.

Frank was suspended on two occasions for opposition to authority prior to being expelled from school.

## **Employment**

Frank has never managed to secure work.

## **Addictions**

Frank reported that he consumes alcohol and smokes marijuana when he has extra money to purchase the substances. He denies that his use of alcohol or drugs is a problem.

Frank's grandmother confirmed that she and her husband are aware that Frank consumes alcohol and smokes marijuana. They hoped that he would not do so but added that his friends also use alcohol and drugs. Frank's grandparents reported that they drink socially and do not use illegal drugs.

## **Restitution/Community Services**

Frank is not currently employed, making the payment of restitution difficult. Frank is capable and amenable to complete community services hours.

## **Present Situation/Plans for the Future**

Frank is awaiting sentencing on a charge of assault. He is not attending school and he is not employed.

## **Assessment**

Single male subject age 18 appears before the court on a charge of assault. He has a young offender record.

Frank is the only child born to his mother and his father is unknown to him. At the age of 12 he went to live with his maternal grandparents, as his mother was involved in a new relationship and unable to deal with his negative behaviour. Frank has not completed high school.

Frank was assessed by a psychologist prior to leaving high school. The psychologist's report indicates that Frank is easily frustrated and quick to anger to the extent that his anger often seems disproportionate to the event(s) that caused the anger. Frank is extremely impulsive and was assessed as immature for his age. He has difficulty relating cause and effect. He lives only in the present and is unable to consider future events.

Frank consumes alcohol and smokes marijuana when he has extra money to purchase the substances.

## **Recommendations**

Should the court place Frank Brown on community supervision in addition to, or in lieu of, other sentences, the following conditions may assist in the rehabilitation of the offender:

- Report as directed by the Probation and Parole Officer
- Attend treatment assessment and counselling to address anger management, impulsivity, and addictions
- Abstain absolutely from the purchase, possession, and consumption of alcohol, drugs, and/or prescription medications, unless prescribed by a physician
- Seek and maintain full time employment OR attend school full time and show proof of employment/attendance at school to the Probation and Parole Officer
- Not associate or communicate directly or indirectly with the victim of the offence
- Not visit or be in the vicinity of the victim's place of residence or employment
- Provide restitution as directed by the court

**Respectfully submitted,**

**PPO/Conditional Sentence Supervisor**

# Ontario Ministry of the Attorney General

## VICTIM IMPACT STATEMENT

**Date:** April 24, 2008

**Victim's Name:** Johnny Cardinal

**Accused's Name:** Frank Brown

### Emotional Loss

I was terrified and I thought I was going to die. After I was punched and kicked in the head and left on the floor of my store, I couldn't breath properly and I thought that no one would find me. It seemed like forever before somebody finally came. I was in a lot of pain and I'm sure I lost consciousness a few times because I was flown to the hospital in Thunder Bay but don't really remember getting there. It was hard because none of my family could come with me because they had to take care of the store.

### Physical Injury

I was in the hospital for about three weeks with a skull fracture and serious concussion. My eyes were swollen shut and I had a lot of stitches to my face. My left arm was broken in two places and the doctors say I might not get all the feeling back in some of my fingers. I don't think the scars on my face will ever go away completely.

### Financial Impact

My daughters have had to stay out of school so that we could keep the store open while I was in the hospital. I'm worried about them getting back to school because it is taking so long for my injuries to heal. When they broke into my store, they knocked over a lot of shelves and a lot of the inventory was smashed. I don't have any insurance.

## Key Roles



### Frank Brown (Offender)

- You are 18 years old
- You regularly consume alcohol and smoke marijuana
- You live with your grandparents
- You broke into Johnny Cardinal's grocery store and caused him serious injuries
- You did not finish high school
- You do not have a job

The judge might ask you how you feel about the crime that you committed against Johnny Cardinal. You should let the judge know if you feel badly about what happened. You should also tell the judge if you think there is something you could do to make up for the crime you committed.



### Johnny Cardinal (Victim)

- You own the local grocery store
- You were beaten up very badly by Frank Brown and had to go to the Thunder Bay Hospital for three weeks
- A large portion of your inventory was damaged during the break-in
- Your daughters had to leave school to help out at the store while you were in the hospital
- You broke your arm and you have scars on your face
- You might not get all the feeling back in your fingers

The judge might want you to read your statement, or the Crown lawyer can do this for you.



### Edna and Johnson Brown (Offender's Grandparents)

- Your grandson is Frank Brown
- Frank has lived with you since he was 12
- Your daughter sent Frank to live with you because he was causing trouble at home and she was having difficulty dealing with him
- You have had a hard time raising Frank because of his bad behaviour and anger issues
- You would like to be able to help Frank have a good life, but are worried about the way he treats other people

The judge or the Crown lawyer might want you to say a few words about how you can help support Frank.



## Judge/Elder/Chairperson

- You are responsible for outlining the rules governing the sentencing circle:
  - Everyone has the right to ask anyone else questions
  - Everyone in the circle is equal and has an equal voice
  - All religious beliefs are tolerated and welcomed
- You will welcome all participants and explain the format of the sentencing circle:
  - **Round one:** participants introduce themselves and explain why they came
  - **Round two:** victim, and victim's family and supporters describe what happened and the impact it had; accused, and accused's family and supporters describe what happened, including the circumstances that triggered the event
  - **Round Three:** participants discuss what needs to be done to restore balance and try to reach a consensus on a sentence for the offender
- You may choose to accept or reject the sentence that the circle has recommended, however, the judge rarely rejects sentences. The judge closes the circle.

## Additional Roles

- Frank's mother
- Police Officer
- School Psychologist
- Community Elder
- School Principal
- Frank's Teachers
- Johnny Cardinal's wife
- Johnny Cardinal's daughters
- Frank's friends
- Community Members