

# The Case of the Aboriginal Young Offender: A Look at Sentencing Circles

## Mock Sentencing Scenario: R. v. Brown

### Teacher Resource

**Curriculum Links:** Understanding Canadian Law (CLU3E), Grade 11, Workplace Preparation

**Legal Focus:** Sentencing Circles

**Estimated Time:** 1 period

#### Overall Expectations:

- Identify the sentencing options available to judges in a criminal trial or provincial prosecution.
- Communicate legal knowledge effectively.

#### Specific Expectations:

- Identify some common and alternative sentencing options available to a judge in a criminal trial.
- Explain the purpose and principles of sentencing.
- Demonstrate an ability to listen and read critically, find relevant information, and express and support opinions, using proper legal terminology.

#### Description of the Scenario

Frank Brown is an 18-year old high school student from a First Nations community. One night, Frank convinced some friends to break into the local grocery store with him. They decided to break in late at night so that no one would be there. The young men were surprised to find Johnny Cardinal, the storeowner, making a late night delivery that night. Frank attacked Mr. Cardinal and beat him up badly, leaving him with a broken arm and scars on his face. The community was outraged and most people felt that Frank was a dangerous young man who posed a threat to their community.

This was not the first time that Frank had been in trouble. He had a previous conviction for breaking and entering and had been sent to a youth detention centre for six months.

Unfortunately, his time there didn't seem to have a positive impact on his life. Instead, he learned more negative behaviour from the other troubled teens he met there. Frank has a history of getting angry easily and has had problems with alcohol since Grade 9.

People in the community knew that Frank’s childhood had been unstable and probably contributed to his troubled teen years. Even so, they believed this latest crime was too serious to be overlooked. Many members of the community were demanding that Frank be given a lengthy jail term.

Frank was convicted of assault under sections 265 and 266 of the *Criminal Code of Canada*. His trial received a lot of media attention in the local newspapers.

### ***The Final Judgment***

This is a mock scenario. Students should use the information provided to determine a fair sentence during a mock sentencing circle.

### ***Teaching & Learning Strategies***

1. Read *The Big Question* and ask students to write their views on the issue. Discuss the issue as a class.
2. In partners or small groups, ask students to read *The Facts of the Case* and discuss *The Issue*. Students can refer to their written answers to *The Big Question* when discussing this topic. Once students have completed the exercises, review the facts a second time to clarify any questions and point out any issues that might be unclear. Have students share their views with the class.
3. Review *The Relevant Law* and explain how the law applies to the facts of the case.
4. Using a teacher- or student-centred reading strategy, read *Taking a Closer Look*. Stop after each paragraph to clarify concepts and answer questions. Guide students in a discussion about sentencing circles and the need for alternatives for Aboriginal offenders.
5. Ask students to complete the *Check for Understanding* exercise and take up the answers as a class.
6. Have students review the information about Frank outlined in *You Be the Judge*. When they are done, have students answer the questions that follow, including giving a recommendation for a sentence that they think is appropriate in Frank’s case.
7. Hold a mock sentencing circle in the class using the procedure and roles outlined in *The Final Judgment* exercise. You may choose to have students complete the sentencing circle in small groups or do a large circle with the entire class. For more information about running a sentencing circle in your class, please see OJEN’s resource, *Making the Case – Mock Trial Toolkit* (pgs. 49-52).

## Assessment & Evaluation

- Class discussions
- *The Big Question*
- *Check for Understanding* worksheet
- *You Be the Judge* worksheet
- *The Final Judgment* mock sentencing circle

## Resources

Ontario Justice Education Network

[www.ojen.ca](http://www.ojen.ca)

- Mock Sentencing Scenario: *R. v. Brown*
- Mock Sentencing Scenario: *R. v. Cain*
- *Making the Case: Mock Hearing Toolkit*

# The Case of the Aboriginal Young Offender: A Look at Sentencing Circles

## Mock Sentencing Scenario: R. v. Brown

### Student Handout

#### *The Big Question*

What do you think are the benefits of having a justice system that incorporates Aboriginal traditions and beliefs for Aboriginal offenders? Why is this important?

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#### *The Facts of the Scenario*

Frank Brown is an 18-year old high school student from a First Nations community. One night, Frank convinced some friends to break into the local grocery store with him. They decided to break in late at night so that no one would be there. The young men were surprised to find Johnny Cardinal, the storeowner, making a late night delivery that night. Frank attacked Mr. Cardinal and beat him up badly, leaving him with a broken arm and scars on his face. The community was outraged and most people felt that Frank was a dangerous young man who posed a threat to their community.

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

People in the community knew that Frank’s childhood had been unstable and probably contributed to his troubled teen years. Even so, they believed this latest crime was too serious to be overlooked. Many members of the community were demanding that Frank be given a lengthy jail term.

Frank was convicted of assault under sections 265 and 266 of the *Criminal Code of Canada*. His trial received a lot of media attention in the local newspapers.

### **The Issue**

- Why is it important for the Canadian justice system to incorporate Aboriginal traditions and practices when dealing with Aboriginal offenders?

### **The Relevant Law**

#### ***Criminal Code of Canada***

##### **Assault**

265(1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
- (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

266. Everyone who commits an assault is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction.

##### **Purposes and Principles of Sentencing**

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

## Taking a Closer Look

According to Statistics Canada, the 2006 census indicates that Canada's Aboriginal population accounts for 3.8 % of our total population. The Aboriginal population is growing six times faster than the non-Aboriginal population. In addition to this, almost half (48%) of the Aboriginal population is under the age of 25.

Aboriginal people are overrepresented in the Canadian prison system. According to Correctional Service Canada, Aboriginal offenders continue to be disproportionately represented at all levels of the criminal justice system, including in the federal correctional system. At the end of March 2006, Aboriginal people represented 16.7% of federally-sentenced offenders compared to 1.7% of the Canadian adult population. In an effort to address this, when judges impose sentences, they are obliged to consider the particular circumstances of Aboriginal offenders, including the historical factors that may have brought them in contact with the justice system (see *R. v. Gladue*). Special mention has been made to this in the principles of sentencing in section 718 of the *Criminal Code of Canada*.

One way the justice system may respond to Aboriginal offenders is by incorporating Aboriginal traditions and practices into the sentencing process. Generally, these approaches allow the sentences of Aboriginal offenders to be decided by members of their own Aboriginal communities where the focus is on treating and healing the victim, the offender, and the community, rather than on punishment and retribution. One such method is the sentencing circle.

### What is a sentencing circle?

Sentencing circles take place in an informal setting and are an alternative to conventional sentencing. Victims, wrongdoers, their families, elders, and community members discuss the crime, the impact it has had on each person, and collectively decide on an appropriate sentence for the wrongdoer. Everyone involved has an opportunity to express their views on what took place, the effect it has had, and how they feel it should be dealt with. Sentencing circles focus on healing those involved and addressing the underlying causes of the crime. Those who participate in the circle are free to introduce Aboriginal traditions and practices into the process, however they must do so within the existing boundaries of the Canadian justice system. Once the group has reached a consensus on the sentence, a recommendation is made to the courts. Some examples of sentences are:

- Community service
- Counselling or treatment programs (e.g. to treat alcohol or drug addiction)
- Traditional remedies that incorporate specific Aboriginal practices (e.g. Potlach)
- Paying reparations to the victim and/or community

Sentencing circles reflect the principle that crimes harm not only victims, but the community and wrongdoers as well. This approach aims to repair the damage caused by the crime and reintegrate the wrongdoer into the community.

## Check for Understanding

1. Frank Brown was convicted of assault under ss. 265 and 266 of the *Criminal Code of Canada*.  
**TRUE/FALSE**
2. This incident was the first time Frank had been in trouble with the law.  
**TRUE/FALSE**
3. According to the 2006 census, Aboriginal people account for 4.6% of Canada's total population.  
**TRUE/FALSE**
4. Aboriginal people are overrepresented in Canada's justice system.  
**TRUE/FALSE**
5. Judges in Canada must consider the specific issues facing Aboriginal people when sentencing Aboriginal offenders.  
**TRUE/FALSE**
6. Sentencing circles focus on punishment and retribution.  
**TRUE/FALSE**
7. A sentencing circle incorporates only the victim and offender of a crime.  
**TRUE/FALSE**
8. In a sentencing circle, the sentence is decided upon by everyone involved in the circle.  
**TRUE/FALSE**
9. A sentencing circle might recommend that an offender must pay a victim a sum of money as repayment for a crime.  
**TRUE/FALSE**



## You Be the Judge

Review the background information about Frank Brown below. This information is similar to what might be presented at a sentencing circle. Take a few moments to read about Frank and the events in his life prior to the attack that led to his conviction.

- Frank is an only child. He doesn't know his father. His mother had him when she was 15 years old. She took care of Frank by herself until he was 12. She then became involved in a relationship and could no longer deal with Frank's behaviour.
- When he was 12, he went to live with his grandparents. Frank's grandfather is 71 and his grandmother is 69. He had a number of incidents involving the police and at the age of 16, he left school.
- Frank's grandparents said he needed a lot of structure and discipline as a child and admitted that they could not provide this for him.
- Frank admitted that he skipped classes, did not listen to teachers, and did not complete assignments. He was suspended twice for opposition to authority before being expelled from school.
- Frank completed two credits at the grade 9 level.
- Frank is physically healthy.
- A school psychologist assessed him before leaving school and the report included in Frank's school records indicated that:
  - Frank is easily frustrated
  - Frank is quick to anger and this anger is often out of proportion to the event that caused the anger.
  - Frank is extremely impulsive.
  - He was assessed as immature for his age.
  - Frank lives in the present and is unable to consider the future.

- Frank drinks alcohol and smokes marijuana when he has the money. He denies that his use of alcohol or drugs is a problem.
- Frank has never worked. Payment of restitution to compensate the victim for the harm would be difficult but he is able and willing to complete community services hours.
- Frank is awaiting sentencing on a charge of assault. He is not attending school and is not employed.

1. Do you think that Frank should be imprisoned for his offence? Why or why not?

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2. What are the advantages of putting Frank in prison?

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3. What are the disadvantages of putting Frank in prison?

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4. If you had to consider an alternative to imprisonment, which of these do you feel would be appropriate? Add one more option of your own.

- Community Service
- Curfew
- Anger Management
- Counselling
- Treatment for drug and alcohol addiction
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5. Taking everything into consideration, what do you feel would be the most appropriate sentence for Frank? Give as much detail as possible and include any conditions that you think should apply.

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## ***The Final Judgment***

Using the procedure and roles outlined below, hold a mock sentencing circle to determine an appropriate sentence for Frank Brown.

### **Procedure**

There are numerous different ways that a sentencing circle can take place. A common way is for the designated chairperson to outline the ground rules that govern the circle. These could include:

- 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

The designated chairperson or an elder may then make the opening remarks, or perform a traditional prayer. Every participant is given an opportunity to speak. Everyone has the right to speak or to remain silent. There may be several rounds of speaking. An example of these rounds would be:

1. The first round: "Why did I come today?" and "Why am I here?"
2. The second round: participants speak to the victim and offender and explain the effect that the incident has had on them, their family, and/or community. The offender is also invited to speak about the incident.
3. The final round: participants outline expectations to the offender and/or state opinions as to what needs to be done to restore balance

After the final round of speaking, participants try to reach a consensus on the sentence for the offender. The Circle presents its sentencing recommendation to the judge. The judge may choose to impose or reject the sentence that the circle has recommended. However, sentences are rarely rejected by the judge.

### **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

You might be asked how you feel about the crime that you committed against Johnny Cardinal. You feel badly about what happened. You should also describe anything you think 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 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

### ***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 for six years 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

### ***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; offender, and offender’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 elder/chairperson rarely rejects sentences. The elder/chairperson 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