

A SENTENCING CIRCLE

Mary Crnkovich

Introduction

The author observed the proceedings of the first sentencing circle held in the Nunavik Region of Quebec and prepared a report for the Department of Justice Canada and Pauktuutit. This is an edited version of that report: the names of the victim, the accused, and community members have been omitted to protect the victim from unnecessary publicity. The community is referred to by the initial C.

In the spring of 1993 Judge Jean-Luc Dutil conducted the first sentencing circle in Nunavik.¹ Approximately two months earlier a man had pleaded guilty to the common assault of his wife. This assault had taken place while the accused was on probation for a previous assault on his wife, and this conviction was his fourth for the same crime. The judge ordered the accused to move to another community, and to have no contact with his wife. This order was to remain in force until the sentencing circle had been held and a sentence had been ordered.

The Sentencing Circle in C

This section gives an outline account of the sentencing circle. The notes made by the author while observing the circle are reproduced in the Appendix.

¹ Throughout the process the Judge used the terms 'healing circle' and 'sentencing circle' interchangeably. In this report I have used the term 'sentencing circle' to describe the circle held in C. This circle was very different from the traditional Indian healing circle.

A SENTENCING CIRCLE
Mary Crnkovich

Objectives of the sentencing circle

As many studies expose the imprudence of setting punishment as the central objective in sentencing, rehabilitation and reconciliation are properly accorded greater emphasis. These other objectives call upon communities to become more actively involved and to assume more responsibility for resolving conflict. To engage meaningful community participation, the sentence decision-making process must be altered to share power with the community, and, where appropriate, communities must be empowered to resolve many of the conflicts now processed through the criminal courts (*Regina v. Moses*: 360).

It is fair to say that when Judge Dutil proposed the use of the sentencing circle to help him determine the sentence for the accused in this case, those involved knew very little about why he was doing this. There was no explanation provided to the community about what this circle was supposed to do, or where the idea of a sentencing circle originated. Nothing was said about how it related to Inuit customs and traditions. In his opening statement to the circle the judge noted that the sentencing circle approach had been used in the Yukon and, in his view, had resulted in a lower crime rate. The Yukon case cited by the judge was *Moses*. The judge's reference to this case without any description assumed all others were familiar with the case. It would have been useful had the judge told the group a little about what the sentencing circle had done in that case. In the case the accused was a repeat offender with an increasing level of violence in his crimes. The judge in the case explained that the circle was being asked to help create a sentence to "break this vicious cycle that has engulfed the accused... what might be best to protect the community and extricate the accused from the grip of alcohol".

Judge Dutil did not explain in detail how the circle was intended to operate, how it was different from the regular sentencing procedure, or what the role of the participants in the circle would be. In the author's view, the passing reference to the *Moses* case left many bewildered about what they could do and were supposed to do in this circle. Even a brief summary of the judge's decision in the *Moses* case would have provided useful information on how the circle was set up in that case and what procedures were followed.

This was the first time a sentencing circle had been held in Nunavik, and therefore the need to explain thoroughly what this was about was even greater. However, there seemed to be a high degree of unfamiliarity with the concept. This unfamiliarity was evidenced by the judge's repeated reference to the sentencing circle as a 'healing circle' and his use of these terms interchangeably throughout the process, despite their notable differences. From discussion with the judge, it appeared that there had not been a lot of preparatory work on the part of the court

in determining how other sentencing circles operated in other parts of Canada. This, in the author's view, impacted upon how the people in the circle communicated with one another and the amount and type of discussion that took place.

People in Inuit communities are familiar with offenders being sent to jail, especially when the same crime is committed repeatedly. Therefore to some the use of the sentencing circle in this specific case, which involved a repeat offender guilty of a violent crime against his wife, may have seemed inappropriate. What, they may have wondered, was different in this case? What were the people in the circle supposed to do?

Having briefly mentioned that sentencing circles had been used in the Yukon, the judge stated that the method was being tried here because of the recommendations in the Inuit Justice Task Force *Final Report* (1993). He then quoted a specific recommendation:

That the present court system provide for community participation and involvement in the sentencing process... by effecting modifications to the Criminal Code and Rules of practice of the Court du Québec and any other necessary relementation changes in order to compel the court to provide full community participation and involvement in the sentencing process. (Inuit Justice Task Force 1993: 121)

The judge continued by saying that the circle came about through a request by the accused for help from his community. From these remarks and others made earlier by the judge during the regular court session,² participants could conclude only that this

² In the regular court session Judge Dutil ordered another sentencing circle to be held in C. That case involved two young offenders who burned down a community building. While searching for the appropriate sentence, the judge called upon the mayor for his comments, and then suggested that in this case a sentencing circle would be useful because the community had directly suffered a loss - the burning down of its old public school valued at approximately \$350,000. Again the judge cited the same recommendation from the Inuit Justice Task Force (1993). He appeared to want to use the sentencing circle in this specific case because of the direct impact of the offence on the community. While the objective of the sentencing circle in both cases was to involve the community in direct participation in the sentencing process, the latter case seems to have been more appropriate because the offence caused loss directly to the community as a whole. The judge specifically addressed this point in his comments:

A SENTENCING CIRCLE
Mary Crnkovich

sentencing circle was something new and that it was supposed to include Inuit in the sentence decision-making process. The judge stressed the need to provide the community with some role in the sentencing process, but did not explain what the participants could do or were expected to do 'to help' the accused.

It would appear that the group was being asked to help construct a sentence that would prevent the accused from repeating this crime, but this was not explicitly stated. Was the sentencing circle being asked to develop a sentence that would reconcile the accused with the community or to protect the victim? This was not clear, as the direction given to the group by the judge was merely the question, 'What are we going to do with this man?':

In the matter at hand, a person broke the law, that is the court's ground. After guilt is proved or found, there is sentencing. In this forum, it is up to each and every one of us... [to decide] what can we do to help [the accused] get a fresh start...

In the absence of a clear direction from the judge about the objective of this process, the participants may have limited their discussion to the question of what could be done to help the accused get 'a fresh start', when other issues could also have been addressed. This focus was emphasized again in the introductory remarks made by the chair of the Inuit Justice Task Force. He said that the people of Nunavik wanted to be more involved in deciding how people in the justice system were treated. He then encouraged the others in the circle to focus on helping the accused 'get a fresh start'.

Members of the circle other than those working in the justice system had no idea what type of sentence the accused would have faced had he gone through the regular process, and they were unfamiliar with the principles upon which sentencing practices are based. Nor were they informed about their opportunity to leave traditional sentencing practices behind and create a unique sentence for this

Mr Mayor you may think the community is involved... this is a public loss... a loss because it involves one of its members and he is young. I wonder if in October with a pre-sentence report a few of us meet to talk about what he was doing - his parents, an elder, a friend... When I look at the Task Force Report it says the present system should provide for community participation. I do not want to multiply healing circles but every citizen in C is involved in this case... the group together will discuss this, you Mr Mayor, his coach, his mother, some teachers and others, Mr Mayor, you identify.

case. This type of information might have been useful in putting the discussion into a context or setting parameters for the group. If the intention behind the use of alternatives, such as the sentencing circle, is to improve sentencing operations and place a greater emphasis on rehabilitation and reconciliation as central objectives in sentencing (as suggested by Stuart Terr. Cr. J. in *Moses*), then the people should be informed of this. In the *Moses* case, at the commencement of the circle Judge Stuart invited both defence and Crown Counsel to make their sentencing submissions, as they would have done in a regular court sentencing hearing. In explaining his reasons for beginning this way the judge stated he felt it was necessary for the participants to know what the upper limits were should they fail to reach a decision.

In short, in the present case questions about why this special circle was being used instead of the regular court hearing; what power the circle had to create new sentencing options; what a sentence was supposed to do; or what possible sentence the law provided for someone convicted of wife assault, were never answered.

The process

(a) Organization of the circle

The organization of the circle appeared to be left to the day of the event. The circle was held in a classroom of the local school during an afternoon. This timing accommodated the court party's schedule but precluded much community participation since many people were at work. The size of the room also limited the number of people who could participate or observe.

The court party, including the judge, had no prepared plan on how to arrange the room for the circle, nor a list of participants. It was only during the regular court session in the morning that the judge discussed with the chair of the Inuit Justice Task Force how the room should be set up and whether tables or only chairs were needed. The circle of chairs traditionally used is intended to draw everyone into the discussion and create a comfortable place where all the participants face each other. This is in furtherance of the theory behind the circle, which is that everyone in the circle is of equal status. The circle is intended to promote equal access and equal exposure (*Moses*: 365-366). Little thought appeared to be given by the court to how this circle could be structured and where specific participants would sit. This lack of planning could be attributable to the court party's unfamiliarity with this new sentencing concept.

Dominating the centre of the circle were microphones hooked up to a recording

A SENTENCING CIRCLE
Mary Crnkovich

device, and all the discussion in the circle was tape recorded. At the start of the circle the judge explained briefly that the proceedings would be video-taped but that the tape would not be distributed without the permission of the accused and the accused's attorney. The judge informed the group that the film was being made by Makivik, the organization which represents Northern Quebec Inuit, but would be turned over to the court. It would be reviewed by the court for instructional purposes only. When the chair of the Inuit Justice Task Force arrived later, after the proceedings had commenced, he explained that, before the film could be shown to anyone other than the court, all participants in the circle must agree that it could be shown.

There was considerable mis-communication regarding the organization of this circle. The judge relied upon the Makivik representatives and the mayor of the community to set up the circle and prepare the community for the event. Because of a communication problem, this was not done, since Makivik thought the court would be undertaking the task. However, it appeared that the mayor had taken some time to contact individuals in the community about the case and their availability to participate. I myself was informed by the judge that he had asked the mayor to identify people to participate. He indicated he would not impose any limitation on persons wishing to participate. In fact, he invited me and any others in the audience who wished to participate, to do so.

The reliance upon the mayor to mobilize the community and with them organize the circle and undertake all the necessary arrangements underscores a common problem in the north. A considerable degree of responsibility was placed upon the mayor, taxing his already limited resources and time without providing the necessary information or additional assistance. It was presumed that the mayor could deal with these issues. While a circle may be in the best interests of the community, if it is not properly organized, it can be of little benefit to anyone. In the case of C there was a very diligent and sensitive mayor who was committed to helping the community and its members. This may not always be the case.

(b) The participants and their roles in the circle

The following persons participated in the sentencing circle in C, sitting in this order:

Accused
Victim
Chairperson, Inuit Task Force
Court translator
Judge

Elder Male, member of Community Council
Sister-in-law of victim
Sister of victim
Mother of accused
Sister of accused
Youth representative
Sister-in-law of accused
Crown prosecutor
Mayor
Community health worker
Social worker - family violence (from regional office)
Probation officer (from regional office)
Defence counsel

While the room was being organized for the circle I had an opportunity to speak with members of the community who were standing in the hall watching what was going on. One woman not invited to participate seemed interested. I suggested she go and sit down in one of the empty chairs. Reluctantly she came into the room and took a seat in the circle close to a friend. The others in the circle were there at the invitation of the mayor.

The victim came to the room visibly nervous. I spoke with her and her counsellor, the family violence worker, while the room was being set up. The victim did not know what was going to happen to her in the circle. She told me she was afraid and thought she had to be there because she was going to be a witness at a trial. It was explained to her what was about to happen and that she only had to participate if she wanted to and she could sit wherever she pleased. The judge was then informed about the reluctance of the victim to participate and her fear of the court.

Judge Dutil attempted to clarify his role and the roles of the other participants. He explained that everyone in the circle was "on the same level" and "equal". However, some confusion was caused when, after stressing this equality, he explained that he was "not obliged to follow advice" given by the circle members. The idea of the circle is to "break down the dominance that traditional court rooms accord lawyers and judges" (*Moses: 366*). Referring to the group's work as 'advice' while stressing the equality of everyone in the circle presents a mixed message. Raising questions about how 'equal' the members really are is likely to reinforce scepticism about the ability of circle sentencing to provide the community with a real opportunity to share in the sentencing responsibility, since true power appeared to be reserved to the judge and everyone else to be a mere advisor. For the more cynical, it leaves room to speculate about whether the court was truly willing to explore real alternatives to the traditional sentencing

A SENTENCING CIRCLE
Mary Crnkovich

procedure. Symbolically the judge had become one of the people as he stepped out of his judicial robes and entered the circle. Nonetheless, the vestiges of the court remained with him. Despite his good intentions, his awkwardness with being an equal while retaining ultimate responsibility for the sentence was evident.

This awkwardness appeared to impact upon the circle in other ways as well. In attempting to be an equal, the judge did not want to be seen directing or chairing the discussion. He kept his remarks brief. He did not provide any obvious structure or content to the process, such as by giving information about what he expected of the group, how the sentencing circle had been carried out in other cases (for example in *Moses*), setting ground rules for the circle in this specific case, or asking everyone to introduce themselves. In the author's view, the judge could have provided needed structure and content without dominating.

The judge indicated that he did not ask people to introduce themselves at the outset because he was afraid such a request would appear to be meddling. However, this resulted in the individuals not knowing exactly who everyone in the circle was. Without introductions, some of the participants were left wondering who certain other individuals were while others felt excluded. The judge did later ask people to identify themselves in terms of their relation to the accused or victim. This was after the first intermission, and one hour into the discussion.

A number of participants did not speak until called upon by the judge. The victim, Crown counsel, and probation officer were asked to comment on specific questions asked of them by the judge. Some participants never spoke or declined comment when asked, for example, the youth representative and the probation officer. The author's notes of the circle discussion show that those who spoke most often were the judge, the mayor, the chair of the Task Force, the sister of the victim, the accused, and the community health worker. While one cannot determine the impact or influence of participants merely by the number of times each speaks, it is interesting to note how seldom the victim spoke. When she did speak she said very little. While the accused spoke only five times, on each occasion his comment was lengthy.

The discussions were not as 'free-flowing' as might have been expected. This could have been due, in part, to the language barriers within the group. For the benefit of unilingual Inuktitut and English speakers, the court interpreter was a member of the circle. However, her role was taken over by the chair of the Task Force, who began interpreting and summarizing the discussions. No one suggested the chair permit the court interpreter to interpret. Without simultaneous or concurrent interpretation, unilingual speakers, both Inuktitut and English, were unable to participate on an equal footing. The judge and other non-Inuktitut speaking participants were not part of the free flow of discussion that took place.

In fact they received what appeared to be editorialized and summarized versions of the discussion after speakers had spoken. The impact of speakers' comments, especially the emotion and feeling behind the words, were likely to be lost. At one point a discussion between the mayor, the chair, the accused and the sister of the victim took place for several minutes without any interpretation. At the end of this the chair apologized for not interpreting what had been said and summarized the discussion of the four speakers as a discussion of "how members can assure the court the community will do something tangible [with the accused]". He then presented the mayor's and the accused's proposals for a sentence. The author's impression was that the dominance of the judge and lawyers in traditional court process was simply replaced by that of those influential in the community – the chair of the Inuit Justice Task Force, a respected Inuit political leader, and the mayor.

The subject-matter of the discussion in the circle

As appears from the notes reproduced in the Appendix, in the sentencing circle discussions the focus was primarily on the accused, centering on what could be done to 'help' him and what he would have to do himself to overcome the problem. The tone was never adversarial or emotional. Everyone who spoke did so in a calm and straightforward manner. This could be attributable to the language barrier and the type of interpretation provided. No Inuit observing the circle, as distinct from those people sitting in the circle, was asked to speak.

People appeared to be willing to 'help' the accused as long as he indicated he was prepared to be helped. From the author's perspective, certain elements were missing from the discussion. There was virtually no discussion about the harm suffered by the offender's wife, children and family relations because of his actions. The focus of the discussion always seemed to be on his experiences. For example, his mother commented that when he first began abusing his wife all the positive things, like his good jobs in the community, began to disappear, thus implying that the principal loser was the accused, not his abused wife.

Very little was said about the victim during the session, other than that she suffered a burden when her husband was not in the community to help her raise her children. Only the family violence worker raised the need for the victim to have her own source of support should her husband begin assaulting her again. The activities and lifestyle of the accused were discussed initially as 'his problem'. As the proceedings progressed some members of the circle started talking about 'their problem'. This shift in focus implied that some degree of blame or responsibility for the abuse was being placed on the victim.

A SENTENCING CIRCLE
Mary Crnkovich

At no time during the circle discussion did the offender or others hear from the victim, in her own words, what the impact of the accused's actions had been on her or her family. The victim appeared to be very nervous in the circle and would speak only briefly when asked a question by the judge. Before the circle started I had spoken with her. She seemed nervous and unwilling to participate. 24 hours before the circle commenced her husband, the accused, had returned to the community for the sentencing and had stayed with her at their house. During this time the order prohibiting him from any contact with his wife was still in effect. She explained that she had spoken with her husband and that she wanted to sit beside him. She said he had come up with a solution. When I asked her what she thought should happen to him she again said that her husband felt that they should get counselling together by people in the community. She appeared to feel that this was sufficient. The family violence worker asked what she would want to happen if he did abuse her again. She explained that he had promised not to beat her. When I asked her if she would want to get separate counselling from her husband she indicated that she did not know and would have to speak to him about this. It was unclear whether she was responsive to her husband's wishes because she truly believed in them or because she was afraid to speak against him. During our conversation the accused walked by several times and stood nearby, within hearing distance. The victim looked visibly nervous. The conversation ended when he finally called her to join him.

The victim's participation is essential, according to advocates of circles, because her comments are significant and necessary to developing a sentence that will rehabilitate the accused. Thus in *Moses Stuart*, Terr. Cr. J. stresses the need to find an appropriate means of including the victim or, at the very least, stressing the impact of the crime on the victim in order to motivate the offender to successfully pursue rehabilitation.

The accused on the other hand did address the circle. While he often kept his head down and spoke softly, he did not state that he was ashamed of what he had done. He did say that he never wanted to be an abuser and that he had no admiration for those people who caused conflict among his people. He said he did not like all this attention being paid to him. He and others spoke of the failure of the justice system to help the accused and, in particular, how jail did not help offenders, including the accused, to deal with problems. While the accused stated that he was upset by the fact that he was not liked by the community, neither he nor others spoke about why this was so. No one from the circle indicated any dislike or anger for what he had done to his wife. While he was told what he had done was wrong, this was presented to him in a very gentle way.

The sentence pronounced by the judge was very much the sentence created by the group based on the proposals of the mayor and the accused. He would be

restricted from alcohol consumption. He was required to meet with a selected 'support group' weekly. The judge suggested that his wife 'should also attend'. The judge stated that he would expect this support group to meet with him in October to find out if the accused had met with them weekly. The judge also indicated that he would like to speak with the offender's wife during the October meeting, and the accused was told that he was to keep the peace and not molest or physically or verbally assault his wife.

At the end of the proceedings the author asked the victim what she thought about the circle and the outcome. She appeared relieved and simply said, "It was good".

The Inuit Justice Task Force Recommendations on Sentencing Circles

The Inuit Justice Task Force consultations and inquiries resulted in over 40 recommendations being presented to improve the existing justice system in Nunavik (Inuit Justice Task Force 1993). One addressed the need for community participation in sentencing. This recommendation was quoted by Judge Dutil when he announced he would be using a sentencing circle to determine the sentence in two specific cases arising in C.³

This alternative approach to the existing sentencing process was welcomed by many. It was seen by the judge and the chair of the Task Force as a first step in making the justice system more accountable to Inuit. The author's observations during the first sentencing circle in Nunavik suggest that it is unclear how this accountability is to be achieved.

The existing justice system is denounced regularly. Many respondents to questionnaires administered by the Task Force said the existing system was far removed from Inuit and foreign to their own beliefs about justice. With this type of condemnation it is understandable that the sentencing circle can be seen as a welcome alternative. However, this alternative needs to be examined closely in the light of the other recommendations of the Report and the concerns raised in it.

The sentencing circle is a relatively new, community-based initiative introduced to the North in the late 1980s. Judge Stuart of the Yukon Territorial Court was the first judge to use it with the intention of reflecting and incorporating the traditions of the Indians living in the area. Since then several different models of the circle

³ These were the case now under examination, and the case of the two youths who had burned down a local school, referred to above, note 2.

A SENTENCING CIRCLE
Mary Crnkovich

have been used in the Yukon and northern Saskatchewan.

The sentencing circle begins to address some of the many problems encountered with an itinerant court system made up of non-Inuit judges and lawyers unfamiliar with the Inuit culture and traditions, and the communities in Nunavik. By involving community members, the judge and lawyers involved in a case are provided with a greater appreciation of what type of sentence will help to resolve, rather than exacerbate, the fundamental problems promoting the crime. Nonetheless, this is but one alternative to existing sentencing practices, and it originates in another aboriginal tradition, not within Inuit tradition. Are there other community-based initiatives that incorporate or promote Inuit culture and traditions in a more appropriate and sensitive way? Are there ways of modifying this model to reflect Inuit traditions? Many of the recommendations of the Report stress the need to develop a role for Inuit customary law and traditions in the justice system of Nunavik.

Many within the justice system appear willing to support the findings and to implement the recommendations of the Inuit Justice Task Force, but it is essential that these attempts to incorporate new alternatives directly involve all segments of the community in both planning and implementation. As Stuart J. stated in *Moses*, "[i]f simply imposed upon communities by the justice system, community alternatives will fail".

The sentencing circle in C allowed for the involvement of selected Inuit participants in the sentencing of one of their community members. Specific individuals in the community were given significant discretion by the court for deciding who would participate in the circle. No preparatory work was done with any of the participants. Very little information was provided to the community in general about what the sentencing circle is and how it operates. And no opportunity was provided for the community to design the circle, this particular function being apparently left to those in the C classroom a few hours before the circle was scheduled to start.

The sentencing circle as an alternative to a sentencing hearing should be closely examined. For certain segments of the community, the circle as it is now structured may not provide any greater benefit and may impose greater damage than the procedures of the existing system.

The Impact of Sentencing Circles in Victims of Wife Abuse and Sexual Assault⁴

A fine line was drawn between justice for all and justice for few in the sentencing circle in C.

The case for the sentencing circle and other community-based justice initiatives has been advanced by individuals and groups throughout Canada struggling to limit the use of incarceration. Their focus has been on reconciliation and rehabilitation as goals for sentencing. The aim has been to broaden sentence alternatives so as to lessen government expenditure and provide for more community participation and a greater role for victims of crime.

Criticism of the C sentencing circle is difficult to justify, not because the approach in that case was perfect but because the existing system appears to be failing and virtually any alternative can be seen as an improvement. Moreover, this specific alternative has received support from Inuit political leaders and the judiciary. Both the chairperson of the Inuit Justice Task Force and the judge presiding over the case supported it. In endorsing circle sentencing, both acknowledged that there might be some problems with it, but held that the overall concept should be welcomed as an experimental alternative.

With such support, it is with great trepidation that one criticizes a sentencing circle or even questions whether sentencing circles are an alternative that is in the best interests of all members of the Inuit community. Some would argue that, when communities are already hard pressed to provide basic services with inadequate resources, the involvement of community representatives in sentencing may be the only effective and realistic way to stimulate new community programs and make the system more accountable to the community.

It appears that the court is willing to use sentencing circles for a variety of offences including crimes of violence against women, as in the case in C. In his decision in *Moses*, Stuart J. states that circle sentencing may not be appropriate for all cases. However, the cases for which he suggests that it would not be appropriate are those involving offences such that "a jail sentence in excess of two years [is] expected". If this is taken as a bench mark, almost all sexual assaults, with the exception of major sexual assaults, would be likely candidates of circle sentencing.

⁴ While this discussion refers to Inuit women, the comments are intended to apply to all victims of violent sexual assaults and abuse, including children.

A SENTENCING CIRCLE
Mary Crnkovich

If circle sentencing is to be used in cases involving women who are victims of violence - and many would argue that it should not - considerable sensitivity is required. More thought should be given to the best way to represent the victim in the circle or, at minimum, to providing information to the circle about the impact of the crime on the victim. It may be too much to have the victim participate; nonetheless, those involved in the selection of participants should ensure that the victim's interest is represented. Of the participants in the C circle, only the sister of the victim, the family violence worker, and her trusted friend - the sister-in-law of the accused - had any supportive relationship with the victim.

In the C case, the victim was not prepared for the circle, in that she was not aware of what the circle was intended to do, how it would operate, or what her role was. She said very little during the entire process and only spoke when called upon to do so by the judge. From the facts known of the case, this woman had suffered tremendous acts of violence at the hands of her husband, and he was able to prevent her from saying anything about many of the previous assaults. Little time or effort was given to creating an atmosphere in the circle that made it comfortable for the victim, as well as others, to speak out.

The sentence given required the victim and accused to attend counselling together. This may have reinforced a view that the problem, and the responsibility for the abuse, was shared between the accused and the victim. The judge did not 'order' the victim to attend counselling with her husband, but he strongly suggested this would be a good thing, and indicated he would want to speak with her upon his return to the community in October. When the judge was asked why he made this request, he suggested it was better they both attend to ensure that the accused was kept honest. What the judge tended to overlook was his own power over the victim. To her, there was little difference between a 'suggestion' and an order of the judge. He also underestimated the power the husband had over his wife when he assumed she could and would speak out if her husband began beating her again. The facts lend little support to this assumption.

Aside from the fact that the sentence was based on a proposal by the accused, the victim could hardly, in her position, oppose such a proposal or complain that it was not working. Again, to suggest that her attendance would keep the accused honest demonstrates, in the author's view, the judge's misunderstanding of the life circumstances of this woman as a victim of violence. How could this woman speak out against her husband? How could she speak out against the mayor, the chair of the Inuit Justice Task Force, and others in her community? The victim's actions, or lack thereof during the circle, demonstrated the degree of fear and deference she paid to her spouse.

Not only did the victim have a history of being silenced by her husband, but the

sentencing circle may have imposed an even greater silence. This circle was the first of its kind, being supported by the judge and Inuit leaders. The sentence was endorsed not only by the mayor and other participants, but also by the judge and a highly respected Inuit politician. The pressure not to speak out against a sentencing alternative supported by so many is great. If the victim were to speak out about further abuses or her dislike of this sentence, what would she be saying about this process, which everyone supported? Now, in addition to fearing her husband's retribution, she may fear to admit she is being beaten because such an admission may be interpreted as a failure of the process. She may hold herself to blame and once again continue to suffer in silence.

Safeguards to Protect Inuit Women Victims of Violence

The following suggestions are based upon the author's observations of the C sentencing circle, the concerns raised by Inuit women throughout the North, and the limited number of articles about sentencing circles.

More discussion is needed about what cases will be allowed to go through the circle. This decision should not be left to the judge. This is an important issue that should be decided by the judge along with the community.

Organization of the circle should be done by the courts in close consultation with representatives of the communities, identified by those communities. If the decision to conduct circles continues to rest with the court, the court should be prepared to provide the financial resources necessary to organize the circle and prepare the community for it.

If sentences for sexual assault and wife assault are to be dealt with in community sentencing circles, more work has to be done to ensure the victim is represented in the court and the impact upon her is fully recognized. Efforts should be made to ensure the victim has the necessary support group within the circle itself. It has been recognized that this is an issue requiring further work. Greater awareness about wife abuse and violence against women is needed in the community, if the community is to take responsibility for these types of sentences.

In addition a fairly good understanding has to be reached about the objectives of alternatives such as the sentencing circle. Consideration must be given to broadening the accepted general principles of sentencing. For example, in sexual assault and wife assault cases, the sentencing alternative must be designed not only to deal with rehabilitation of the offender, but also with rehabilitation and protection of the victim and family independently of what is decided for the accused. In the Yukon case *R. v. P (J.A.)*, Lilles, CJTC stated that the focus of

A SENTENCING CIRCLE
Mary Crnkovich

the sentence for the sexual assaults that took place "should not be on the removal of the offender from the community but on healing both the victims and wrongdoer in the community." What is missing from this focus on "healing" is the assurance that, if the wrongdoer stays in the community, the victim will be protected from further assaults. Without such protection, it is unlikely the victims will ever "heal".

As in the C case, the crime of violence against women is often seen by the court and others as a problem shared by the accused and the victim. It is then concluded that, as such, it should be worked out by them together. To suggest that the only way in which to resolve the problem is to bring the victim and accused together is problematic. A syndrome of abuse such as that which the victim in the C case suffered may require that she be allowed the necessary support and counselling apart from the man who is abusing her. To require that they work the problem out together may impose ever greater abuse upon the victim.

Another issue of importance is the responsibility for the selection of circle members. In the C case the judge asked the mayor to deal with this. The decision of who participates in the circle should not be made unilaterally by the judge or by his or her delegate. Representatives, identified by the community in consultation with the judge, can decide how many people should participate and who will identify people for the circles.

The selection process for members of sentencing circles should be broadened. Perhaps guidelines should be developed stating who in the community is eligible to participate in the circle. This would be especially useful when the circle is dealing with crimes of violence against women and children. For example, where a victim is afraid to participate alone, people who can support her should perhaps also be allowed to participate. A thorough discussion is needed regarding the involvement of relatives and special segments of the community such as elders, youth, or women. In sexual assault and wife abuse cases, should relatives of the accused and victim be allowed to participate? If so, should it be an equal number of relatives of the accused and victim? Traditionally the family was responsible for dealing with conflict between its members, so from this perspective Inuit may see the involvement of relatives as a necessity, whereas the court may see it as causing a conflict of interest. These issues have to be discussed in the community and with the court.

There appears to be some confusion between Inuit-based and community-based justice initiatives. The fact that Inuit are the majority within the community does not necessarily make a community-based initiative an Inuit-based initiative. In fact very few of the community-based initiatives are rooted in Inuit tradition. Adult diversion and circle sentencing are not Inuit traditions. For alternatives to be Inuit-

based, Inuit must be allowed to design and implement them. Those within the justice system who endorse alternatives must be willing to allow their models to be reconstructed to reflect Inuit values and traditions.

Within the Inuit community, this reconstruction must be done in a way that is appropriate for and includes all segments of the community. If alternative procedures simply transfer the power of the judge to a select and powerful few in the community, little will have been accomplished. Women have expressed concern about the introduction of Inuit traditions into the justice system without further examination and discussion because of their tendency to discriminate against women. Much careful and extensive discussion is required about these alternatives in light of the concerns being raised. Frank discussion is needed where traditional ways are relied on in community-based initiatives and those ways have the effect, even though unintended, of discriminating against women. Once this is done, the community-based initiatives can better reflect the beliefs and views of all Inuit.

Afterward

Since this paper was written the author has held two workshops with women of Nunavik, including some who participated in the circle, to discuss circle sentencing, other sentencing alternatives, and the justice models being proposed by the judiciary, the Inuit Justice Task Force, and the Advisory Committee on the Administration of Justice in Native Communities (in Québec). During the more recent workshop, the woman who was the victim of the assault dealt with by the circle expressed her views about the use of the circle and the impact on her family and herself of the circle's recommendations that were adopted by the judge. She cautioned the chair of the Advisory Committee about the use of the circle to address family violence. She described her fears about the process and the consequences of the circle she personally suffered. Her courage in speaking out on this issue did not go unnoticed by the judge and it is our hope that her words and those of the other women of Nunavik will be heard in the final report of the Advisory Committee.

Appendix: Notes from the Circle

In the course of his introduction the judge informed the group that when the accused had appeared before him earlier he had requested help from his community because he was not liked in his community. This was a result of an incident which had taken place some ten years previously, which had resulted in his being charged with a sexual assault. Since that time he had felt his community

A SENTENCING CIRCLE
Mary Crnkovich

did not like him. He took out his problems on his wife. He admitted to the judge that, while he had been convicted of assaulting his wife maybe three or four times, he had made this assault 50 to 100 times on his wife. He told the judge he wanted help from his people.

The judge told the group that this was "a problem common to many northern people, when we discuss [this] case we talk a lot about the problems of many people".

He continued by saying that this was a healing circle where everyone was at the same level and anyone could give their opinion, and the question was, "what can we do to prevent this crime... the question is what are we going to do with [the accused]?"

The first speaker following the judge's introduction was a male elder who was also a member of the community council. He talked about how Inuit were sent to jails in the south and since people down south did not speak their language, offenders did not get the help they needed. He was thankful that something was being done now, and he stressed that in the community people shared the same lifestyle and language and would know how to help. The elder noted that when the accused was in the court there was limit to how Inuit could be involved.

Members of the accused's family also spoke up early in the process. His sister explained to the circle that she had spent time talking with him while he was staying in her community. (The judge had ordered him to go to that community until the circle was held.) Because he was kept in an Inuit village, he didn't miss anything. They were able to talk about his life and what he felt, and this had helped their family a lot in coping with this problem.

The mayor spoke, explaining that he knew the accused thought a lot about what he did while he was in jail. He said that people were trying to help him even though he felt he was not welcomed in C. Inuit welcomed everyone, so it was important to talk about the problem and look for a solution.

The elder who had spoken first then repeated a question put by the judge, asking the court "what can we do?" He said he knew the couple (the accused and victim) because the victim was the sister of his wife. In the past the victim had told her sister that she was tired of being treated badly by her husband. He related a story about when he was on a plane flying south and the accused was on the same plane. The elder said they had not been able to speak freely to each other, although he knew that the accused had really wanted to talk to him, and the elder had wanted to speak as well. He had wanted to tell him that women were weaker than men and that women did not deserve to be beaten. He suggested that there

was a need for better communication between the husband and wife. The elder said that if the husband was willing to improve, he should be helped.

When the judge inquired how this might be done, the community health worker responded. She said that first they had to be open to the accused so that he could talk to them when he had problems. They needed to communicate more and they should pray together.

The sister of the victim said she had been invited to the circle. She commented generally on how in the court no one would talk except the judge and lawyers. She said that no one wanted a person to be taken to jail in the south. The circle was the best way to find a solution. However, she felt that before the circle began to devise a solution the accused should speak.

The accused spoke in Inuktitut. His comments were interpreted in summary form by the chair of the Inuit Justice Task Force. The chair said that the accused would like to give a brief description of the cause of this problem. He inflicted physical and verbal abuse on his wife. He knew she had suffered both types of abuse by him. When he was first arrested for this, he had in his mind that his behaviour would improve when he went to jail. He explained that this did not happen. The second time he was arrested and got a longer jail term, he thought his stay in jail would cure his problem and "fix what causes me to do this". Again he said there was no cure. After the third arrest he thought that this would just keep happening. He wondered what he could do to alter his behaviour. He said he never wanted to be an abuser and that he had no admiration for those people who caused conflict among his people. When he was abusing his wife, he tried to hide it. He wanted to keep it a secret because he did not want a reputation as an abuser. When his wife suggested to him that he needed help, he told her he did not need or want help.

The judge then asked the members of the circle whether they were willing to give the accused the help he needed.

The sister of the victim was the first to respond. She said she would be willing to help because when given a chance to speak, the accused had spoken and revealed that he wanted help and was open to help from community members.

The accused continued. He said that he had a big problem. When he seemed able to resolve one problem - his jealousy, for example - another appeared. He was ashamed to be the cause of so much attention, and he had been turning inward to find out what his problem was. He had thought about this seriously, and after reflecting on this, he felt there was a solution. He believed that he had found a personal way of dealing with this.

A SENTENCING CIRCLE
Mary Crnkovich

The mother of the accused then spoke. She said her son had many good qualities and had had many good jobs before his problem started. He was a teacher, a police officer, and an airport worker. All of these positive experiences seemed to have dropped away when his problem overcame him, according to his mother. After the first assault he could no longer be a police officer. He began to hide this problem from his mother and father. His mother believed that he must be very open to his parents and to the elders if he wanted to be helped. He must make a special effort not to keep secrets from the family and elders. Also, if the mayor or social worker extended help to him, he should be open to them. If he kept secrets, he could not be helped.

At this point the judge asked to hear what the victim had to say. The victim sat next to the accused and, up until this time, she had remained silent with her eyes lowered to the floor. Her response to the judge's query was brief: "I have thought about how could he get help and I have wondered how he could get help".

The judge asked the group how this problem could be solved and who would solve it.

The community health worker responded by saying that if he was prepared to ask for and receive help, the group could try to provide it. She reiterated that he must ask because if he did not the people would not know that he needed help. If he did not lie, if he was sorry for what he had done, and if he was willing to improve, they would help.

The community health worker then asked the judge a question: "If you don't find someone to help him, will you send him away?"

The judge said he was not prepared to answer that question at that time. He then asked the group if they wanted the accused back in C.

The community health worker explained that he should return because in his absence his wife had a great burden to take care of their children by herself.

The judge asked the wife if she wanted him back. The victim responded by saying she agreed with the concern that "she has many children to look after and it is a big burden to raise them."

The mayor explained that if the accused were to return, he would require proper supervision. There were no probation officers located in the community, but the mayor felt that the man could meet with either himself or the community social worker on a regular basis. He said that he should not be allowed to "slack off this supervision". He explained that if the person did not make a conscientious effort

to meet with the mayor or social worker and stay sober it would not work. If he was prepared to do this, the community would welcome him back. The mayor expressed the hope that perhaps he could recover some of the jobs he had had in the past. He then asked if the group could hear what the offender's solution was.

Before the man had a chance to respond, his sister-in-law spoke. She said that she wanted more men to be visible and vocal about their abuse. She stressed a need for men to get together to deal with their problem. The men had to create awareness to stop abuse. Traditionally, she explained, there was a bond between men and this bond could keep men under control. In her view, the men needed to practice their traditions and respect this bond to keep this problem under control.

The judge asked the probation officer for his comments. He declined to comment until he had heard what the accused was proposing as a solution.

The accused explained that he had experience of meeting with the probation officer on a regular basis. He said that, while he did think that this was not bad, he felt it was not adequate. He asked that certain people be designated as a support group. He suggested two or three people. He explained that he and his wife would meet with this group on a regular basis. He said that he had discussed this with his wife and she could go. By including his wife, he said that she could get support from this group if he was not open.

The first to respond to the accused's proposal was his mother. She indicated that the responsible authorities should be involved like the mayor and the social worker along with family members. She felt they should meet on a regular basis and include others who were also keeping secret their abuse. She felt the people of the community could put their minds together and develop support groups to meet weekly.

Next the family violence worker spoke. She said that the wife's biggest problem was her own secrecy because she had not told anyone about the abuse she was suffering. An outlet for the wife had to be built into the solution for she had been restricted by her husband from talking to people. She would need her own outlet so that she could speak privately to people.

The sister of the accused endorsed her brother's solution. She remarked that much thought should be given to the membership of the support group providing this service. Some people might not be open to the mayor or the social worker. She suggested they think about the type of qualities needed. Elders should be included because they had traditional knowledge and they could share their wisdom about traditions.

A SENTENCING CIRCLE
Mary Crnkovich

The accused's mother responded, saying that she did not belittle the role of the court but the plan to see local people have a role in resolving this type of problem was better. She felt the justice system needed all the help it could get, and she endorsed this cooperative approach.

A discussion between the mayor, the chair of the Justice Task Force, the sister of the victim, and the accused then took place. No interpretation was provided. At the end of this discussion the chair apologized for not interpreting throughout the discussion and explained that the group had been discussing how the members should assure the court that the community would do something tangible.

The chair explained the approach the group should take. It was felt that the accused "and his wife should be consulted first about whom they can share their problem with". The chair said that the mayor would like to form a support group for spousal assault, asking the couple for the names for the support group first. If they could not think of names, the mayor suggested asking the council to come up with a list of names. The accused said that he was willing to take advice and discuss his problem, but he could not name anyone at this time. The mayor assured the judge that they would provide a support group. When the judge asked when the committee would be formed, the mayor said this would be given emergency attention by the council and names would be picked later in the week.

The judge asked the Crown Counsel for his comments. He supported the idea and agreed that other abusers should be included in the group. He requested that the victim tell the group right away if something should happen to her.

After hearing these comments the judge said that he did not know what to do with the accused until the group was formed. He did not know where he should send him. The judge suggested that the group discuss among themselves the formation of a group to provide support to the accused and his wife. He said that if they could agree on a group, he would return to the community in October to meet with them.

The circle was adjourned while members of the group attempted to find names of people to make up the support group. The circle was re-convened when the names had been chosen. Identified as members of the support group were the mayor, the social worker, and the sister-in-law of the accused. When the judge asked the victim if she was satisfied with this choice, she said yes. He indicated he was concerned with having someone related to the accused in the group. The mayor informed the judge that this relative was trusted by the wife and was her choice.

With this selection made, the judge adjourned the circle and resumed court. He indicated that the conditions imposed upon the accused were now amended. The

condition to live in a different community was no longer in effect, along with the condition not to communicate with his wife. The judge asked the accused if he wanted to retain the condition that he not consume alcohol. The man indicated he did not mind this condition. New conditions added were the requirements to meet with the group on a weekly basis and for the group to meet with the judge in October 1993 to find out if the accused had met with them on a weekly basis. The judge said he would also wish to speak with the wife during the October meeting, and he requested that she attend the weekly meetings. He indicated he could not force her to go but he felt it would be a good thing. The conditions retained were to keep the peace and not to molest physically or verbally assault his wife.

Reference

Inuit Justice Task Force
1993 *Final Report*.

Case cited

Regina v. Moses (Moses)
11 C.R. (4th) 359.