

Justice as Healing

A Newsletter on Aboriginal Concepts of Justice

Addendum to the factum of the respondent in *R. v. Rope*

In the Fall issue of "Justice as Healing", a portion of the factum of the respondent in R. v. Rope was published in an article entitled, Restoring the Shattered Confidence. As noted by the editors, this factum was filed before the decision in R. v. Morin was delivered by the Saskatchewan Court of Appeal on August 25, 1995. In Morin, the Court allowed the Crown's Appeal of the sentence recommended by a Sentencing Circle and, in doing so, added 15 months imprisonment to the time already served. Although the province has had Sentencing Circles in the north, this was the first to be held in an urban setting. As a consequence of this decision, counsel for Charleton Rope submitted an addendum to the factum. The following is the addendum submitted on September 1, 1995 by Mary Ellen Turpel-Lafond, co-counsel for the respondent. On September 8, 1995 the Saskatchewan Court of Appeal handed down its decision in R. v. Rope.

ADDENDUM

"1. It is respectfully submitted that the decision of this Honourable Court in *R. v. Morin* (August 25, 1995, unreported) [reported [1995] 4 C.N.L.R. 37], accepts the use of Sentencing or Healing Circles as a valid vehicle for reflecting Aboriginal culture and traditions in the criminal justice system. (at p. 2) In the majority judgment Mr. Justice Shertobitoff stated: 'The very purpose of sentencing circles seems to be to fashion sentences that will differ in some mix or measure from those which the courts have up to now imposed in order to take into account aboriginal culture and traditions, and in order to permit and to take into account direct community participation in both imposition and administration of sentence.' (at p. 12)

"2. Mr. Justice Shertobitoff in *R. v. Morin* was reluctant to set guidelines in respect of whether or not a Sentencing Circle should be used in a particular case. Instead he decided to comment on some principles at work in sentencing which provide general guidance at the trial and appeal levels. (at p. 7-8).

"3. This Honourable Court recognized that when there is a disparity between the established range of sentence and the recommendation of a Sentencing Circle, a judge is able to accept the recommendation of the Sentencing Circle, if there are reasons for placing the rehabilitation of the offender ahead of other relevant factors. (at p. 16)

"4. In this regard, the Court recognized that in the context of adult offenders, such as Mr. Morin, who was a repeat offender, there must be a clear indication and a sensible and community-supported plan for rehabilitation. In *Morin*, Shertobitoff expressed concerns that Mr. Morin said nothing of his plans to reform or rehabilitate himself but provided only a general promise that he would do better in the future (at p. 17)

"5. In the case on appeal, Mr. Rope, through the Sentencing Circle, adopted a definite and focused plan for rehabilitation. Indeed, Mr. Rope has gone beyond this plan and is now playing a wider role in the First Nations community by explaining how his rehabilitation has enabled him to better understand that alcohol abuse is dangerous, unhealthy, and destructive for First Nations families and communities.

"6. It is our respectful submission that while Mr. Rope's situation is clearly distinguishable from that in the *Morin* case, the principles guiding Sentencing Circles within the First Nations Community reflect ancient and distinct cultural and social values. It is our further submission that Chief Justice Bayda, in describing the genesis of the Sentencing Circle in *Morin*, properly reflected the uniqueness of this device. (at p. 13-17)

"7. Given the uniqueness of the history and the values of Sentencing Circles, in our respectful submission the development of any rigid guidelines for their usage would be inappropriate without the explicit input and guidelines of First Nations Elders and Leaders. It is further submitted that Sentencing Circles have developed as a mechanism to reflect First Nations values and practices in the criminal justice system and

[Sample Article]

any unilateral attempt to define or constrain the operation of these values by the non-Indian system, without direct involvement by First Nation Elders and Leasers, would be inappropriate and disrespectful of the different values and practices expressed through the Sentencing or Healing Circle.

“8. Finally, it is respectfully submitted that the decision of this Honourable Court in the *Morin* supports the position of the respondent in this appeal and we respectfully request this Honourable Court to dismiss the appeal”