

The Nova Scotia Restorative Justice Program

October 2018



© Crown copyright, Province of Nova Scotia, 2018

Nova Scotia Restorative Justice Program: October 2018

Department of Justice

ISBN: 978-1-55457-897-9

The Nova Scotia Restorative Justice Program

Beginnings of the Restorative Justice Program in Nova Scotia

The Nova Scotia Restorative Justice program (NSRJP) was established in 1999. The development of restorative justice in Nova Scotia coincided with significant changes brought about by the Youth Criminal Justice Act, which was grounded in principles consistent with a restorative approach and created opportunities for alternatives to the formal criminal justice process. Nova Scotia took a restorative approach to alternative measures for youth through the development of the NSRJP and was an early adopter and leader nationally in this regard.

The NSRJP was designed to be implemented in four phases:

1. The first phase began in 1999 with a pilot for youth restorative justice in four regions: Cape Breton Regional Municipality, Annapolis Valley, Cumberland County, and Halifax Regional Municipality.
2. Next was the full implementation for youth across the province in 2001, with restorative justice youth services being administered by eight community-based restorative justice agencies.
3. The full youth rollout was followed by a pilot expansion to adults in 2011 in the Cape Breton Regional Municipality and Colchester County–East Hants, and through an initiative at Dalhousie University. For the adult pilot, restorative justice services were administered by the restorative justice agencies, Mi'kmaw Legal Support Network (MLSN), and Community Corrections staff.
4. In November of 2016, the NSRJP expanded to include adults in all regions of Nova Scotia, replacing Nova Scotia's existing adult diversion programs.

From the start, the intention of the NSRJP has been to insert a restorative approach throughout the criminal justice system with the assertion that restorative justice, in some modality, could be applicable to all offenders and all offences throughout the province. In support of this goal, justice stakeholders in the province embarked on a collaborative process to renew the NSRJP in June 2017. The restorative justice renewal initiative was led by an interim Governance and Management Committee, which represented the justice system and community stakeholders and had a mandate to address program, policy, and implementation issues within the NSRJP. The committee focused on how best to integrate the recently expanded Adult Restorative Justice program with the long-established Youth Restorative Justice program in order to successfully implement a cohesive and principled approach to restorative justice in Nova Scotia. The renewal initiative resulted in a memorandum of understanding confirming justice stakeholders' commitment to this new, integrated approach to restorative justice and new, integrated protocols to support implementation of the NSRJP.

The restorative approach to justice in the province was developed and nurtured by a strong alliance among government, community, universities, and across sectors. Partnership and collaboration between the justice system and community has been core to the successful development, governance, and implementation of restorative justice in Nova Scotia. The program has also depended upon the important partnership with the Mi'kmaw Legal Support Network (MLSN). Nationally, MLSN is unique in its service delivery approach and is the sole provider of culturally appropriate community-based justice services for aboriginal persons in Nova Scotia. MLSN is an organization approved by the 13 Nova Scotia chiefs to offer the Mi'kmaw Customary Law program and Court Worker program.

What is Restorative Justice?

Restorative justice takes a relational approach in response to crime. It is based on and guided by the following principles:

- **Relationally focused:** attention to interconnection, seeking to understand and promote just relations between individuals, groups and communities
- **Comprehensive and holistic:** takes into account histories, contexts and causes of harm and its impacts
- **Inclusive and participatory:** culturally grounded and trauma informed, attentive to the needs of parties and the safety and well-being of participants
- **Responsive:** Contextual, flexible practice, accessible, efficient and effective processes, informed by data and knowledge
- **Focused on promoting individual and collective accountability & responsibility**
- **Collaborative and non-adversarial:** among parties to the process and system and community partners
- **Forward-focused:** educative (not punitive), problem-solving, preventative and proactive

When the law is broken, a restorative approach considers the impact on the people and their relationships at interpersonal, social, and institutional levels. Restorative justice is aimed at understanding and addressing the harms and needs of those affected by crime with an aim to support *just* relations in future. Restorative justice processes bring together those with a stake in the outcome of a situation—those who have been affected, those with responsibility for what happened, and those who can support a good outcome. Restorative justice processes consider the contexts, causes, circumstances, and impacts related to the crime to determine what is required for a just outcome. Through restorative justice, parties can participate together in processes designed to address harms and needs. Restorative justice engages those responsible for harms as active participants in planning and action to address the harm and ensure they relate justly in future. Restorative processes generally result in plans in which those responsible agree to take actions to address harms and needs related to the crime, and take the steps necessary to secure a just outcome for the future.

Restorative justice in Nova Scotia has the following goals and objectives:

- **Respond to needs of individuals and communities affected by crime:** with particular attention to the needs of victims and those harmed by crime (individuals and communities)
- **Harm reduction:** reduce cycle of harm and injustice, prevent further harms to vulnerable individuals and communities and reduce over-representation of marginalized individuals in the justice system
- **Support individual and collective taking of responsibility for harm and public safety**
- **Increase access to justice:** more effective, timely, inclusive, equitable justice system
- **Provide responsive justice:** human-centered justice processes that consider root causes and seek meaningful outcomes and responses
- **Increase public confidence and accountability in the administration of justice**
- **Build and support healthy, safe and strong communities**

How Does the Nova Scotia Restorative Justice Program Work?

Who or what is restorative justice used for in Nova Scotia?

Who is eligible?

The NSRJP is available to youth aged 12–17 and adults across the province.

For what sorts of offences?

Criminal Code and Controlled Drugs and Substances Act matters are eligible to be considered for referral by police, Crown, courts, corrections, and victim-serving agencies. Police, Crown, and corrections must consider all matters for referral, except where

- a provincial hold or moratorium is in place
- referral is otherwise barred by law

All matters can be referred at any stage in the criminal justice process. However, some will generally only be referred by the courts unless a case can be made (consistent with the principles, goals, and objectives of the program) for earlier referral by the police or Crown. These matters include cases involving death, offences involving abuse of a minor child, and serious crimes against the administration of justice.

Referrals can only be made where

- the person referred fully and freely consents to participate
- the person has been advised of the right to be represented by counsel before consenting to participate
- the person accepts responsibility for the act or omission that forms the basis of the offence the person is alleged to have committed
- there is, in the opinion of the attorney general or the attorney general's agent, sufficient evidence to proceed with the prosecution of the offence, and the prosecution of the offence is not in any way barred at law

In considering whether to refer to restorative justice, system stakeholders will consider whether a referral will advance the goals and objectives of restorative justice, and, in particular, whether any of the following factors are significant in a case:

- Opportunity for more culturally appropriate, meaningful, and effective justice process
- Reduction of harm for direct parties (trauma informed)
- Potential for victim participation
- Enhanced opportunity for access to justice for affected communities—increased confidence in the administration of justice
- Opportunity to understand and consider root causes or systemic issues connected to the parties or offence
- Reduce over-representation in the justice system for individuals from vulnerable and marginalized communities/groups
- Access to better supports and wrap-around responses to parties' needs

Limits/restrictions?

There has been a moratorium in place on referrals to the NSRJP for intimate partner violence and sexual violence offences since 2000. Currently, the only exception to this is the provision of sentencing circles for intimate partner violence files at MLSN.

When can restorative justice be used?

Cases can be referred at several points in the criminal justice process before there is a criminal charge, before a conviction, or after a conviction. Referrals can be made by the police, the Crown, the judiciary, corrections officials, and victim-serving agencies.

Nova Scotia also takes a restorative approach within its justice system through the application of restorative justice principles, particularly within our specialty courts (mental health/wellness and domestic violence court) as well as within some of our correctional facilities.

Who provides restorative justice?

Restorative justice is founded on a collaboration between justice stakeholders from the justice system and community. The NSRJP memorandum of understanding reaffirms justice stakeholders' commitment to the integrated restorative justice program.

These stakeholders include

- community-based restorative justice agencies
- Mi'kmaw Legal Support Network (MLSN)
- Nova Scotia Department of Justice (Court Services, Victim Services, Correctional Services, Public Safety and Security)
- Nova Scotia Public Prosecution Service
- Nova Scotia Legal Aid
- Nova Scotia police agencies
- The Nova Scotia Criminal Lawyers' Association

Cases are referred to the restorative justice regional teams located across the province. These teams include members from the community-based restorative justice agencies in the province and from the Community Corrections unit of the Department of Justice. Members of the team work collaboratively to provide restorative justice in adult cases, while the community-based restorative justice agencies are the primary providers in cases involving young people.

Regional restorative justice teams are responsible for communicating with referring partners; assessing referrals, case planning and management; preparing and facilitating restorative processes; reporting back to referring agents; as well as oversight and follow-through for plans and agreements resulting from restorative processes.

There are currently eight community-based restorative justice agencies in Nova Scotia authorized and funded by the province to deliver the NSRJP. They also play an essential role as community partners in the development, governance, and oversight of the NSRJP. They are located in and serve the regions surrounding Yarmouth, Bridgewater, Halifax, Kentville, Truro, New Glasgow, Amherst, and Sydney. Community Corrections staff (probation officers) collaborate within the restorative justice regional teams and with restorative justice agency staff to deliver restorative justice processes to adults.

Referrals involving individuals who identify as indigenous must first be considered for referral to the Customary Law program offered by MLSN. If the matter is determined by MLSN not to be appropriate for resolution under customary law then a referral may be made to the NSRJP.

What happens when a case is referred to restorative justice?

Cases are received by the leads of the restorative justice regional team and assessed to ensure they are eligible for the program. The case will be reviewed and assigned to the appropriate member(s) of the team to do the casework required. The team members assigned will contact all parties involved or connected to the case to understand the issues, needs, and impact involved. They will design the process (including the number, form, and nature of sessions that might be held) and engage the parties involved in appropriate ways to come to understand

- what happened
- what matters about what happened (including harms and impacts)
- what needs to happen in order to address these harms and impacts in a way that will ensure a just outcome and just relations in future

The restorative process (including preparatory casework, session[s], plans/agreements, and follow-up supervision and support) will reflect the principles of a restorative approach, and endeavor, to the extent possible, to facilitate all parties' participation and collaboration within the process.

All parties can expect to be consulted and supported in advance of any session with respect to their needs, roles, and responsibility (if any) within the process. Generally, a restorative process will involve session(s) that bring together those who are connected to the case (including, as appropriate, those who have been harmed or otherwise affected, those who hold responsibilities for those harms, and those who can offer information or support in the process).

Restorative processes generally result in plans aimed at addressing the issues, harms, and impacts, and moving forward in a better way. These plans typically include agreements by individuals or others responsible for the harm to undertake actions determined through the process to address the harms and to make things right for the future. The plans, actions, and outcomes vary depending on the situation, circumstances, issues, and needs involved in a given case. The agreements and expectations that are part of the plan will be recorded and shared with the parties and, as required, with justice stakeholders. The restorative justice regional team will provide follow-up support and supervision as required to ensure plans are successfully completed.

How is the program governed?

Governance of the NSRJP is shared among the justice stakeholders. Justice stakeholders are expected to contribute to the collaborative and shared governance of the NSRJP through the program's Governance and Management Committee. The work and development of the NSRJP is overseen by this committee.

Referrals to the NSRJP are governed by the program protocols. Each justice system stakeholder is committed to ensuring their internal policies and procedures align with these protocols and support the successful implementation of the program. There are service provider agreements in place that outline the commitment and requirements for service providers and ensure the oversight of the implementation of the integrated NSRJP. A principle-based guide for practice provides guidelines and standards for implementation of restorative justice processes by members of the regional restorative justice teams.

The program is supported at the provincial level by the Nova Scotia Restorative Justice program coordinator who works within the Restorative Initiatives Unit at the Department of Justice alongside the director of restorative initiatives and the restorative approach coordinator.

What is the authority for the NSRJP?

The attorney general for Nova Scotia has authorized the Nova Scotia Restorative Justice program to be used by police and Crown as a program of alternative measures allowed for under section 717 of the Criminal Code, RSC 1985, c C-46, and as a program of extrajudicial sanctions under section 10 of the Youth Criminal Justice Act, SC 2002, c 1 and Section 10 of the Youth Justice Act, SNS 2001, c 38. The NSRJP replaced previous programs for youth and adult diversion. The Nova Scotia Restorative Justice program is not limited to these uses by police and Crown. All justice system stakeholders can refer to the NSRJP at their respective stages of the criminal justice process pursuant to their authority and discretion available at law and as consistent with their roles and responsibilities.