

PROGRAM AUTHORIZATION

A Restorative Justice Program as set out in the document **Restorative Justice: A Program for Nova Scotia, Department of Justice**, attached as Schedule "A" ("the Program"), is hereby approved by the Attorney General for Nova Scotia as a program of alternative measures pursuant to section 717 of the *Criminal Code* (Canada) and as a program of extrajudicial sanctions pursuant to section 10 of the *Youth Criminal Justice Act* (Canada) and section 10 of the *Youth Justice Act* (Nova Scotia).

A Police Cautioning Program as set out in the document **Restorative Justice: A Program for Nova Scotia, Department of Justice**, attached as Schedule "A" ("the Program"), is hereby approved by the Attorney General for Nova Scotia pursuant to section 7 of the *Youth Criminal Justice Act* (Canada) and section 7 of the *Youth Justice Act* (Nova Scotia).

Police officers and probation officers acting within the scope of the Program shall be agents of the Attorney General under section 717(1)(f) of the *Criminal Code* and section 10(2)(f) of the *Youth Criminal Justice Act* (Canada) and section 10(2)(f) of the *Youth Justice Act* (Nova Scotia) for the purposes of referring cases to community agencies as approved by the Department of Justice and facilitating sessions pursuant to the Restorative Justice Program.

The provisions of this Program shall constitute guidelines pursuant to s. 6(a) of the *Public Prosecutions Act*.

The Attorney General may, from time to time, establish protocols not inconsistent with the Program for the implementation of the Program.

Police agencies, the Public Prosecution Service, the Correctional Services Division and the Victim Services Unit of the Policing and Victim Services Division of the Department of Justice, and community agencies as approved by the Department of Justice, may, from time to time, establish internal directives not inconsistent with the programs and protocols referred to above for the implementation of the Program.

Dated this day of , 2003.

Jamie Muir
Attorney General for the Province
of Nova Scotia

SCHEDULE "A"

RESTORATIVE JUSTICE: A PROGRAM FOR NOVA SCOTIA

1. PROGRAM GOALS AND OBJECTIVES

1.1 The Restorative Justice Program is designed to:

- 1.1.1 reduce recidivism - it has been shown that face-to-face meetings with victims can have a profound effect on the future behaviour of offenders. The nature of the restorative process provides an opportunity to focus on the underlying causes of the criminal behaviour and the constructive reintegration of the offender into the community;
- 1.1.2 increase victim satisfaction - by having a forum in which victims can discuss the impact of the offence and identify the reparative measures to be taken, they will derive greater satisfaction;
- 1.1.3 strengthen communities - by promoting a restorative approach which invites community participation in achieving reconciliation between offenders and those harmed through the commission of an offence; and
- 1.1.4 increase public confidence in the justice system - greater participation by communities and victims in community-based restorative justice processes as an alternative or supplement to the formal criminal justice system will enhance public confidence.

2. DEFINITIONS

- 2.1 Accountability Program - To be eligible, youth must meet the criteria set out in s. 10 as well as the criteria set out in the provincial guidelines. Youth are referred by police officers and Crown attorneys to a community agency which conducts an accountability session run by volunteers. The accountability session can include the offender, his/her parents, two volunteers, a police officer, and in some cases, the victim and his/her support people. It can also be held as a group accountability session where youth are required to participate in an educational workshop, and to develop reparation plans which will form their agreement terms. These sessions conclude with agreements reached by the participant which include how the offender will make amends for the offence.

(Revised January 2003)

- 2.2 Adult Diversion Program - A post-charge Program approved by the Attorney General for Nova Scotia pursuant to s. 717 of the *Criminal Code*. If the offender meets the eligibility criteria set out in s. 717 and the criteria set out in the provincial guidelines, a police officer or Crown attorney may refer the offender to the Adult Diversion Program. The Adult Diversion Program is administered by probation officers who, in interviewing the offender and the victim, reach a formal adult diversion agreement which outlines how the offender will make amends for the offence.
- 2.3 Community Agency - A community-based agency which enters into an agreement with the Attorney General of Nova Scotia to provide an Accountability Program or Restorative Justice processes as defined in 2.4 and 2.5 below.
- 2.4 Extrajudicial Sanctions - The process where referrals are made to community agencies at the Peace Officer Entry Point - pre-charge, or the Crown Attorney Entry Point - post-charge/pre-finding of guilt, and are dealt with by use of an Accountability Program or a Restorative Justice Process.
- 2.5 Police Cautioning Program - A Police Caution is an exercise of police discretion and an extrajudicial measure pursuant to s. 6 of the *Youth Criminal Justice Act* (Canada) and s. 6 of the *Youth Justice Act* (Nova Scotia). The purpose of the Police Cautioning Program is to deal quickly and simply with less-serious offenders. A Police Caution is presumed to be an adequate way to deal with a first-time offender who the police officer believes has committed a Level 1 offence. A Police Caution can only be administered if the police officer has reasonable and probable grounds to lay a charge. A Police Caution is recorded by a letter mailed/presented to the offender and his/her parent. While Police Cautions are not a truly restorative mechanism, they constitute an ancillary diversion process essential to the maintenance of balanced case management within the Program.
- 2.6 Restorative Processes - All restorative processes focus on offender accountability, victim healing, offender reintegration, repairing the harm caused by the offence, and allowing for community involvement. Restorative processes can include victim-offender conference, restorative conference and sentencing circle.
- 2.6.1 Victim-Offender Conference - A restorative process which provides an opportunity for victims and offenders to meet face to face in the presence of a trained facilitator. The parties have an opportunity to talk about the crime, to express their feelings and concerns, get answers to questions, and negotiate an agreement outlining how the offender will make amends for the offence.
- 2.6.2 Restorative Conference - A restorative process similar to a victim-offender conference in that it involves a face-to-face meeting between the victim and the offender. A restorative conference, however, engages a larger group of

participants which includes the support people for both the victim and the offender, community representatives, relevant professionals, the facilitator and the investigating officer.

- 2.6.3 Sentencing Circle - A restorative process which can involve the same participants as a restorative conference, as well as the presiding judge, Crown attorney and defence counsel, where appropriate. The circle goes beyond developing a sentence for the offender and engages the support of all participants to assist the offender in fulfilling the terms of the sentence.

3. PROGRAM AUTHORITY AND STRUCTURE

- 3.1 The Restorative Justice Program is a Program approved by the Attorney General for Nova Scotia as a program of alternative measures pursuant to s. 717 of the *Criminal Code* and as a program of extrajudicial sanctions pursuant to s. 10 of the *Youth Criminal Justice Act (Canada)* and s. 10 of the *Youth Justice Act (Nova Scotia)* and is administered by the Nova Scotia Department of Justice.
- 3.2 The Police Cautioning Program is a Program established by the Attorney General for Nova Scotia as a program pursuant to s. 7 of the *Youth Criminal Justice Act (Canada)* and s. 7 of the *Youth Justice Act (Nova Scotia)* authorizing the police to administer cautions to young persons instead of starting judicial proceedings.
- 3.3 Police officers and probation officers acting within the scope of the Program shall be agents of the Attorney General under s. 717(1)(f) of the *Criminal Code* and s. 10 of the *Youth Criminal Justice Act (Canada)* and s. 10 of the *Youth Justice Act (Nova Scotia)* for the purposes of referring cases to community agencies and facilitating restorative justice sessions.
- 3.4 The provisions of this Program shall constitute guidelines pursuant to s. 6(a) of the *Public Prosecutions Act*.
- 3.5 Referral can be made to the Restorative Justice Program from four distinct entry points in the criminal justice system:
- i) Peace Officer Entry Point - pre-charge
 - * Referral by police officers and probation officers
 - * Referral of Level 1 and Level 2 offences (See section 7 below)
 - ii) Crown Attorney Entry Point - post-charge/pre-finding of guilt
 - * Referral by Crown attorneys
 - * Referral of Level 1 and Level 2 offences

- iii) Court Entry Point - post-finding of guilt/pre-sentence
 - * Referral by judges
 - * Referral of Level 1, Level 2 and Level 3 offences

- iv) Corrections Entry Point - post-sentence
 - * Referral by Correctional Services/Victim Services Unit staff
 - * Referral of all levels of offences

- 3.6 Participation in the Restorative Justice Program will be based on consensus among those parties involved in the restorative justice process which, once completed, will, at the pre-charge or post-charge/pre-finding of guilt entry points, terminate any further criminal proceedings in relation to the offence (subject to s. 717(4) of the *Criminal Code* and s.10(5) of the *Youth Criminal Justice Act*) (Canada) and s. 10(5) of the *Youth Justice Act* (Nova Scotia).

4. PROGRAM GUIDELINES FOR POLICE CAUTIONS

- 4.1 Prior to issuing a Police Caution, a police officer shall consider whether taking no further action, giving a verbal warning or, with the consent of the young person, referring the young person to a program or agency in the community would, after taking into consideration the principles in s. 4 of the *Youth Criminal Justice Act* (Canada) and s. 5 of the *Youth Justice Act* (Nova Scotia), be sufficient to deal with the offence.

- 4.2 Subject to paragraph 4.1, a police officer shall issue a Police Caution in relation to a first-time offender who the police officer believes has committed a Level 1 offence, unless the police officer determines that issuing a Police Caution would be insufficient to deal with the offence after considering the principles set out in s. 4 of the *Youth Criminal Justice Act* (Canada) and s. 5 of the *Youth Justice Act* (Nova Scotia).

- 4.3 The police officer must have reasonable and probable grounds to believe that the young person has committed an offence prior to issuing a Police Caution.

- 4.4 Persons who believe that a Police Caution has been inappropriately issued may obtain review of the Caution through relevant administrative procedures applicable to the police agency in question.

5. MINIMUM REQUIREMENTS

- 5.1 Prior to an offender becoming actively involved in the Restorative Justice Program,

other than receiving a Police Caution, the following minimum requirements must be met in accordance with s. 717(1) of the *Criminal Code* and s. 10(2) of the *Youth Criminal Justice Act* (Canada) and s. 10(2) of the *Youth Justice Act* (Nova Scotia). Extrajudicial sanctions are only used if the young person cannot be adequately dealt with by a warning, caution or referral to a program or agency in the community because of the seriousness of the offence, the nature and number of previous offences, or any other aggravating circumstances pursuant to s.10(1) of the *Youth Criminal Justice Act* (Canada) and s. 10(1) of the *Youth Justice Act* (Nova Scotia).

5.1.1 Minimum requirements for pre charge/post charge referral to the Program:

- 5.1.1.1 the referral is consistent with the protection of society;
- 5.1.1.2 the referral is considered appropriate, having regard to the needs of the young person and the interests of society;
- 5.1.1.3 the offender accepts responsibility for his/her actions;
- 5.1.1.4 the offender has been informed of and consents freely and fully to participation in the Program;
- 5.1.1.5 the offender is advised of his/her right to counsel without delay and is given a reasonable opportunity to retain and instruct counsel;
- 5.1.1.6 there is sufficient evidence to proceed with the prosecution;
and
- 5.1.1.7 prosecution of the offence is not barred by law.

5.1.2 Minimum requirements for post-finding of guilt /post-sentence referral to the Program:

- 5.1.2.1 the referral is consistent with the protection of society;
- 5.1.2.2 the referral is considered appropriate, having regard to the needs of the offender and the interests of society;
- 5.1.2.3 the offender accepts responsibility for his/her actions;
- 5.1.2.4 the offender has been informed of and consents freely and fully to participation in the Program;
- 5.1.2.5 the offender is advised of his/her right to counsel without delay and is given a reasonable opportunity to retain and

instruct counsel.

6. DISCRETIONARY FACTORS

- 6.1 Prior to an offender being referred to the Restorative Justice Program at any of the referral entry points, the following discretionary factors must be considered:
 - 6.1.1 the cooperation of the offender;
 - 6.1.2 the willingness of the victim to participate in the process;
 - 6.1.3 the desire and need on the part of the community to achieve a restorative result;
 - 6.1.4 the motive behind the commission of the offence;
 - 6.1.5 the seriousness of the offence and the level of participation of the offender in the offence, including the level of planning and deliberation prior to the offence;
 - 6.1.6 the relationship of the victim and offender prior to the incident, and the possible continued relationship between them in the future;
 - 6.1.7 the offender's apparent ability to learn from a restorative experience and follow through with an agreement;
 - 6.1.8 the potential for an agreement that would be meaningful to the victim;
 - 6.1.9 the harm done to the victim;
 - 6.1.10 whether the offender has been referred to a similar program in recent years;
 - 6.1.11 whether any government or prosecutorial policy conflicts with the restorative justice referral; and
 - 6.1.12 such other reasonable factors about the offence, offender, victim and community which may be deemed to be exceptional and worthy of consideration.

7. CONTINUUM OF PROCESS OPTIONS

7.1 The following continuum of options is available in the Restorative Justice Program:

7.1.1 Police Cautions;

7.1.2 Restoratively-oriented Options, including:

7.1.2.1 Accountability Program:

7.1.2.1.1 accountability sessions;

7.1.2.1.2 group accountability sessions;

7.1.2.2 Adult Diversion; and

7.1.3 Restorative Justice Processes, including:

7.1.3.1 Victim-Offender Conference;

7.1.3.2 Restorative Conference;

7.1.3.3 Sentencing Circles.

8. INCLUDED AND EXCLUDED OFFENCES

8.1 The following table summarizes the included and excluded offences for the four entry points:

<p style="text-align: center;">LEVEL 1 OFFENCES:</p> <p>These are the only offences for which a Police Caution is an option (pre-charge).</p>	<ul style="list-style-type: none"> • Provincial Statute offences • Minor property offences • Disorderly conduct offences • Minor assaults not resulting in physical injury • Minor mischief
<p style="text-align: center;">LEVEL 2 OFFENCES:</p> <p>These offences can be referred at all four entry points (pre-charge; post-charge/pre-finding of guilt; post-finding of guilt/pre-sentence; and post-sentence).</p>	<p>This is the largest group of offences. They constitute all Level 1 offences and all <i>Criminal Code</i> offences that are not Level 3 or Level 4 offences.</p>
<p style="text-align: center;">LEVEL 3 OFFENCES:</p> <p>These offences can be referred at the Court (post-finding of guilt/pre-sentence and Corrections (post-sentence) entry points.</p>	<ul style="list-style-type: none"> • Fraud and theft-related offences over \$20,000 • Robbery • Sexual offences (proceeded with as a summary offence) • Aggravated assault • Kidnapping, abduction and confinement • Criminal negligence/dangerous driving causing death • Manslaughter • Spousal/partner violence offences • Criminal harassment • Impaired driving and related offences
<p style="text-align: center;">LEVEL 4 OFFENCES:</p> <p>These offences can be referred only at the Corrections (post-sentence) entry point</p>	<ul style="list-style-type: none"> • Sexual offences (indictment) • Murder

9. RANGE OF DISPOSITIONAL OUTCOMES

9.1 The range of dispositional outcomes which may result from a session pursuant to the Restorative Justice Program include the following:

9.1.1 restitution/financial compensation;

- 9.1.2 community service work;
- 9.1.3 personal service to the victim;
- 9.1.4 community reconciliation;
- 9.1.5 education programs;
- 9.1.6 assessment for counseling;
- 9.1.7 any other outcome(s) agreed upon by the participants of the session pursuant to the Restorative Justice Program; or
- 9.1.8 no further action.

10. OTHER CONSIDERATIONS

- 10.1 No admission, confession or statement by the offender made in the course of restorative justice discussions will be admissible in evidence against that person in later proceedings in accordance with s. 717(3) of the *Criminal Code* and s. 10(4) of the *Youth Criminal Justice Act* (Canada) and s. 10(4) of the *Youth Justice Act* (Nova Scotia).
- 10.2 If at any point during a session pursuant to the Restorative Justice Program the offender or the community agency feels that the session should not continue, the process may be terminated by that party, and the offender may be referred back to the formal justice system.
- 10.3 Compliance with the dispositional outcome(s) will be monitored by the community agency to which the case is referred. Upon noncompliance, the offender may be referred back to the formal justice system.

11. REFERENCE

- 11.1 For the purposes of interpreting and implementing the Restorative Justice Program, reference may be made to the document published by the Nova Scotia Department of Justice entitled **Restorative Justice: A Program for Nova Scotia, June 1998**.

G:\!Shared\!Subject\RJ PROGRAM\Administrative files\Program Authorization\Final
Jan.03.wpd