

4.0 Court Protocol

4.1 Introduction

Restorative Justice is a discretionary tool available to the Judiciary post-guilty plea/finding of guilt. It can be used to hold persons accountable, to address or repair harms caused and to restore relationships. The Judiciary may, in their authority and discretion, make referrals to the NSRJP to incorporate restorative justice processes into proceedings and assist in sentencing options. This protocol outlines how the Judiciary may, within their discretion, choose to use the NSRJP.

There are separate protocols guiding use of the NSRJP by police, crowns, corrections, victim serving agencies and the Regional RJ Team. There are **Definitions** and a **General Protocol** that apply to all protocols.

4.2 Authorization

The NSRJP was established by the Attorney General for Nova Scotia as an integrated program for adults and young persons in conflict with the law. The program may be used by Justice Partners and the Judiciary at their respective stages of the criminal justice process as contemplated in these protocols and pursuant to authority and discretion available at law and as consistent with their roles and responsibilities.

Court referrals to the NSRJP are not part of a program of alternative measures for adults authorized by the Attorney General under Section 717 of the Criminal Code, RSC 1985, c C-46, or a program of extrajudicial sanctions for young persons approved by the Attorney General 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. A judge's discretion to incorporate restorative justice arises from their authority over court proceedings and sentencing including, for adults, under subsections 723(2) and (3), Section 726.1 and clause 718(e) of the Criminal Code and, for youth, under Section 19 of the YJCA and Section 16 of the YJA. The Judiciary may refer to or incorporate restorative justice processes as part of proceedings to inform sentencing and/or to acquire necessary information to discharge their sentencing responsibilities. The Judiciary may refer to restorative justice following a guilty plea/finding. These referrals do not result in the dismissal of a charge upon successful completion of a restorative process. As contemplated in this protocol a judge may refer to the NSRJP to inform sentencing decisions. Options for sentencing following a restorative justice process remain with the Judiciary to be determined within their authority and discretion. Referral to the NSRJP may also be incorporated into a sentence where appropriate.

4.3 Principles, Goals and Objectives

Justice Partners are committed to a restorative approach to justice grounded in the following principles, which guide the development, governance and implementation of the NSRJP and the work of the Justice Partners in support of the NSRJP:

- **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

Justice Partners have adopted the following goals and objectives for the NSRJP:

- **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**

4.4. Eligibility

4.4.1 Indigenous Persons

If a person in conflict with the law identifies as an Indigenous person, consideration must first be given to referral to the Mi'kmaw Legal Support Network (MLSN) to assess whether the matter is appropriate for resolution under Customary Law according to policy and procedure. If not, then the matter may be considered for referral to the NSRJP in accordance with these program protocols.

4.4.2 Eligibility

All matters are eligible for referral by the police, crown, courts, corrections and victim serving agencies. Police, crown and corrections shall consider all matters for referral except where:

- **A provincial hold or moratorium is in place;** or
- Referral is otherwise barred by law.

In furtherance of the overall principles, goals and objectives outlined in section 4.3, referral agents shall also consider the following factors as weighing in favour of referral:

- 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 justice system for individuals from vulnerable and marginalized communities/groups
- Access to better supports and wrap around responses to parties needs

In considering whether a referral to the NSRJP is appropriate, the Judiciary may, at any time:

- Consult the Regional RJ Team for information, or
- Request a case conference be convened with the Regional RJ Team Leads, or a designated representative and Justice Partners as appropriate, to consider potential for referral.

A judge may refer any matter to the NSRJP post-guilty plea/finding of guilt.

Certain offences are presumed eligible for referral only post-guilty plea/finding. This presumption may be rebutted, and a matter referred earlier in the criminal justice process, where a referral is consistent with the overall principles, goals and objectives of the NSRJP set out in section 3.3. However, due to this presumption, a matter may not have been referred at an earlier stage.

Those offences presumed eligible for referral only post-guilty plea/finding are as follows:

- Cases involving death (murder, manslaughter, criminal negligence causing death, impaired driving causing death)
- Offences involving abuse of a minor child (under 18 years old) or another vulnerable person, by a person in a position of trust
- Child pornography (adult)
- Firearms offences
- Impaired driving (adult)
- Serious crimes against the administration of justice (perjury or intimidation of a justice system participant)

4.4.3 Options for Referral

The Judiciary may, in their discretion, use the principles of restorative justice throughout proceedings. Offences covered by a provisional hold or moratorium cannot be accepted by the Regional RJ Teams for service by RJ Agencies. Options for using restorative justice include but are not limited to:

- Hearing from victims or community members during a court process
 - Judges may wish to incorporate an NSRJP process into court proceedings by requesting that victims, supports or other community members attend to provide more information on the circumstances of the offence, the impacts and harms caused, the needs generated, and the relationships impacted
- Restorative pre-sentence reports
 - Judges may ask for a restorative pre-sentence report that includes details of cultural and contextual circumstances surrounding the offence, the offender, the victim and/or the community
- Restorative sentencing recommendations
 - Judges may ask for sentencing recommendations that contemplate NSRJP processes
- Case conferencing
 - Judges may call a case conference (with or without the judge in attendance) to bring the accused, the victim, community members and all of their supports into a room to discuss the matter and generate broad information for the judge to consider
- Restorative approach to administrative breaches
 - The NSRJP may be an option for offenders who are brought back to court on an administrative breach

- Before a sentencing order
 - Judges may have an individual participate in an interim NSRJP process while awaiting sentencing, to ensure ongoing accountability to the community
- As part of a sentencing order
 - Judges may include referral to the NSRJP in a sentencing order to help address the harm caused by the offence
- Creating a plan following short custodial sentence
 - Judges may refer an offender to NSRJP to assist the offender in crafting a reintegration plan
- As part of a community-based sentence
 - Judges may require that an offender complete a NSRJP process as part of a community-based sentence, and ask that the NSRJP provide oversight of the components of a community-based sentence

4.5 Referral Procedures

4.5.1 Preparing a Referral

Referrals to NSRJP must be communicated to the applicable Regional RJ Team Lead Team in a timely manner. The Regional RJ Team Lead Team is responsible for considering the referral and making the final determination on whether the referral is appropriate in accordance with the protocol.

Referrals to the NSRJP will be forwarded to the appropriate Regional RJ Team with a **Referral Form** from the referral source. The Referral Form will communicate relevant information, including public interest considerations and relevant information regarding the offender, victim and community involved in a case.

4.5.2 Case Communications

As detailed in the Restorative Justice Program **Court Referral Communication Flow Chart** communications with respect to court referrals shall flow between the Lead Team and the court clerk unless otherwise required by the Court.