

3.0 Crown Protocol

3.1 Introduction

This protocol outlines Crown authority and responsibility to consider referral to the Nova Scotia Restorative Justice Program.

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

3.2 Authorization

The NSRJP was approved 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 their authority and discretion available at law and as consistent with their roles and responsibilities.

In addition, the NSRJP is authorized as a program of alternative measures for use by the Crown for adults under section 717 of the Criminal Code, RSC 1985, c C-46, and as a program of extrajudicial sanctions for young persons 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 (**Program Authorization**).

A referral by Crown to the NSRJP, once accepted by the RJ Regional Team, commences a restorative process that constitutes alternative measures for adults and extrajudicial sanctions for young persons, overseen and facilitated by the applicable restorative justice regional team. The program employs a principle-based approach to process case work, design and facilitation focused on understanding and addressing harms and impacts to support future just relations among individuals, groups, communities and institutions involved. Processes will generally result in an agreed upon restorative plan developed in collaboration with participants. The outcomes are not pre-determined but developed through the process and tailored to the specific circumstances and needs of the parties involved.

Justice Partners have undertaken shared commitments to use, support and advance a restorative approach in the criminal justice system and in the community. All partners have signed a **Memorandum of Understanding** committing to collaborate in support of restorative justice in Nova Scotia and to coordinated implementation of the NSRJP.

3.3 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**

3.4. Eligibility

3.4.1 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'kmaq 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.

3.4.2 Eligibility

All matters are eligible for referral by 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 considering referrals, referral agents shall ensure the following criteria for eligibility are met:

- a) the person referred fully and freely consents to participate
- b) the person has, before consenting to participate, been advised of the right to be represented by counsel
- c) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed
- d) 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
- e) the prosecution of the offence is not in any way barred at law

In furtherance of the overall principles, goals and objectives outlined in section 3.3, 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, Justice Partners 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 other Justice Partners as appropriate, to consider potential for referral.

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. 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)

3.5 Referral Procedures

3.5.1 Preparing a Referral

Referrals to NSRJP must be communicated to the Regional RJ Team Leads in a timely manner. The Regional RJ Team Leads are 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 Leads with a **Referral Form** from the referral source. Referral agents are to use this form to communicate relevant information, including public interest considerations and relevant information regarding the offender, victim and community involved in a case. Referral forms must include attachment(s) as specified on the referral form.

3.5.2 Case Communications

Crown may consult the Lead Team of the Regional RJ Teams for information to inform a decision to refer and regarding current cases referred to the Regional RJ Team. Communications with the Regional RJ Team are intended to assist with decision-making regarding referrals and shall **not dictate or set conditions or pre-conditions on the restorative justice process**.